



Substitute House Bill No. 5073

Public Act No. 12-32

AN ACT CONCERNING REVISIONS TO CONNECTICUT'S MODEL ENTITY TRANSACTIONS ACT AND THE CONNECTICUT BUSINESS CORPORATION ACT.

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

Section 1. Subsection (a) of section 33-819 of the 2012 supplement to the general statutes, as amended by section 38 of public act 11-241, is repealed and the following is substituted in lieu thereof (*Effective January 1, 2014*):

(a) After a plan of merger or share exchange has been adopted and approved as required by sections 33-600 to 33-998, inclusive, a certificate of merger or share exchange shall be [executed] signed on behalf of each party to the merger or the share exchange by any officer or other duly authorized representative of such party. The certificate of merger or share exchange shall set forth: (1) The names of the parties to the merger or the share exchange; (2) the name of the corporation that will be the survivor of the merger or that will acquire the shares of the other party to the share exchange; (3) the date on which the merger or the share exchange is to be effective; (4) if the certificate of incorporation of the survivor of a merger is amended, or if a new corporation is created as a result of a merger, the amendments to the survivor's certificate of incorporation or the certificate of incorporation

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of the new corporation; (5) if the plan of merger or share exchange required approval by the shareholders of a domestic corporation that was a party to the merger or the share exchange, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by sections 33-600 to 33-998, inclusive, and the certificate of incorporation; (6) if the plan of merger or share exchange did not require approval by the shareholders of a domestic corporation that was a party to the merger or the share exchange, a statement to that effect; and (7) as to each foreign corporation that was a party to the merger or the share exchange, a statement that the plan and the performance of its terms were duly authorized by all action required by the law of the state or country under which the corporation is organized or by which it is governed, and by its certificate of incorporation.

Sec. 2. Subsection (b) of section 34-193 of the 2012 supplement to the general statutes, as amended by section 46 of public act 11-241, is repealed and the following is substituted in lieu thereof (*Effective January 1, 2014*):

(b) A limited liability company organized under sections 34-100 to 34-242, inclusive, to render professional services may merge or consolidate only with another domestic limited liability company organized under said sections if such other company is organized to render the same professional service. A merger or consolidation of a limited liability company organized under sections 34-100 to 34-242, inclusive, to render professional services with any foreign limited liability company or foreign other entity is prohibited.

Sec. 3. Subsection (b) of section 34-608 of the 2012 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2014*):

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(b) This chapter shall not be used to effect a transaction that (1) involves any entity referenced in subsection (a) of this section, [or] (2) is a conversion, merger, consolidation, interest exchange, division or any other transaction governed by this chapter between or among entities of the same type, or (3) is a conversion, merger, consolidation, interest exchange, division or other transaction governed by sections 34-600 to 34-646, inclusive, involving a domestic entity organized to render professional services unless the transaction involves another domestic entity organized to render the same professional service, except as otherwise permitted by the laws of this state.

Sec. 4. Subsection (c) of section 34-621 of the 2012 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2014*):

(c) If a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to an interest exchange, such provision shall apply to an interest exchange in which the domestic entity is the acquired entity as if the interest exchange were a merger until such time after [October 1, 2011] January 1, 2014, as the provision is amended.

Sec. 5. Subsection (c) of section 34-631 of the 2012 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2014*):

(c) If a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to a conversion, such provision shall apply to a conversion of the entity as if the conversion were a merger until such time after [October 1, 2011] January 1, 2014, as the provision is amended.

Sec. 6. Subsection (d) of section 34-641 of the 2012 supplement to the general statutes is repealed and the following is substituted in lieu

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thereof (*Effective January 1, 2014*):

(d) If a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to a domestication, the provision shall apply to a domestication of the entity as if the domestication were a merger until such time after [October 1, 2011] January 1, 2014, as the provision is amended.

Sec. 7. Subdivision (1) of section 22a-134 of the 2012 supplement to the general statutes, as amended by section 53 of public act 11-241, is repealed and the following is substituted in lieu thereof (*Effective January 1, 2014*):

(1) "Transfer of establishment" means any transaction or proceeding through which an establishment undergoes a change in ownership, but does not mean:

(A) Conveyance or extinguishment of an easement;

(B) Conveyance of an establishment through a foreclosure, as defined in subsection (b) of section 22a-452f, foreclosure of a municipal tax lien or through a tax warrant sale pursuant to section 12-157, an exercise of eminent domain pursuant to section 8-128, 8-169e or 8-193 or by condemnation pursuant to section 32-224 or purchase pursuant to a resolution by the legislative body of a municipality authorizing the acquisition through eminent domain for establishments that also meet the definition of a brownfield, as defined in section 32-9kk, or a subsequent transfer by such municipality that has foreclosed on the property, foreclosed municipal tax liens or that has acquired title to the property through section 12-157, or is within the pilot program established in subsection (c) of section 32-9cc, or has acquired such property through the exercise of eminent domain pursuant to section 8-128, 8-169e or 8-193 or by condemnation pursuant to section 32-224 or a resolution adopted in accordance with this subparagraph,

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provided (i) the party acquiring the property from the municipality did not establish, create or contribute to the contamination at the establishment and is not affiliated with any person who established, created or contributed to such contamination or with any person who is or was an owner or certifying party for the establishment, and (ii) on or before the date the party acquires the property from the municipality, such party or municipality enters and subsequently remains in the voluntary remediation program administered by the commissioner pursuant to section 22a-133x and remains in compliance with schedules and approvals issued by the commissioner. For purposes of this subparagraph, subsequent transfer by a municipality includes any transfer to, from or between a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132, a nonprofit economic development corporation formed to promote the common good, general welfare and economic development of a municipality that is funded, either directly or through in-kind services, in part by a municipality, or a nonstock corporation or limited liability company controlled or established by a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132;

(C) Conveyance of a deed in lieu of foreclosure to a lender, as defined in and that qualifies for the secured lender exemption pursuant to subsection (b) of section 22a-452f;

(D) Conveyance of a security interest, as defined in subdivision (7) of subsection (b) of section 22a-452f;

(E) Termination of a lease and conveyance, assignment or execution of a lease for a period less than ninety-nine years including conveyance, assignment or execution of a lease with options or similar terms that will extend the period of the leasehold to ninety-nine years, or from the commencement of the leasehold, ninety-nine years, including conveyance, assignment or execution of a lease with options

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or similar terms that will extend the period of the leasehold to ninety-nine years, or from the commencement of the leasehold;

(F) Any change in ownership approved by the Probate Court;

(G) Devolution of title to a surviving joint tenant, or to a trustee, executor or administrator under the terms of a testamentary trust or will, or by intestate succession;

(H) Corporate reorganization not substantially affecting the ownership of the establishment;

(I) The issuance of stock or other securities of an entity which owns or operates an establishment;

(J) The transfer of stock, securities or other ownership interests representing less than forty per cent of the ownership of the entity that owns or operates the establishment;

(K) Any conveyance of an interest in an establishment where the transferor is the sibling, spouse, child, parent, grandparent, child of a sibling or sibling of a parent of the transferee;

(L) Conveyance of an interest in an establishment to a trustee of an inter vivos trust created by the transferor solely for the benefit of one or more siblings, spouses, children, parents, grandchildren, children of a sibling or siblings of a parent of the transferor;

(M) Any conveyance of a portion of a parcel upon which portion no establishment is or has been located and upon which there has not occurred a discharge, spillage, uncontrolled loss, seepage or filtration of hazardous waste, provided either the area of such portion is not greater than fifty per cent of the area of such parcel or written notice of such proposed conveyance and an environmental condition assessment form for such parcel is provided to the commissioner sixty

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days prior to such conveyance;

(N) Conveyance of a service station, as defined in subdivision (5) of this section;

(O) Any conveyance of an establishment which, prior to July 1, 1997, had been developed solely for residential use and such use has not changed;

(P) Any conveyance of an establishment to any entity created or operating under chapter 130 or 132, or to an urban rehabilitation agency, as defined in section 8-292, or to a municipality under section 32-224, or to the Connecticut Development Authority or any subsidiary of the authority;

(Q) Any conveyance of a parcel in connection with the acquisition of properties to effectuate the development of the overall project, as defined in section 32-651;

(R) The conversion of a general or limited partnership to a limited liability company;

[(R)] (S) The transfer of general partnership property held in the names of all of its general partners to a general partnership which includes as general partners immediately after the transfer all of the same persons as were general partners immediately prior to the transfer;

[(S)] (T) The transfer of general partnership property held in the names of all of its general partners to a limited liability company which includes as members immediately after the transfer all of the same persons as were general partners immediately prior to the transfer;

[(T)] (U) Acquisition of an establishment by any governmental or

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quasi-governmental condemning authority;

[(U)] (V) Conveyance of any real property or business operation that would qualify as an establishment solely as a result of (i) the generation of more than one hundred kilograms of universal waste in a calendar month, (ii) the storage, handling or transportation of universal waste generated at a different location, or (iii) activities undertaken at a universal waste transfer facility, provided any such real property or business operation does not otherwise qualify as an establishment; there has been no discharge, spillage, uncontrolled loss, seepage or filtration of a universal waste or a constituent of universal waste that is a hazardous substance at or from such real property or business operation; and universal waste is not also recycled, treated, except for treatment of a universal waste pursuant to 40 CFR 273.13(a)(2) or (c)(2) or 40 CFR 273.33 (a)(2) or (c)(2), or disposed of at such real property or business operation; [or]

[(V)] (W) Conveyance of a unit in a residential common interest community in accordance with section 22a-134i;

(X) Acquisition of an establishment that is in the abandoned brownfield cleanup program established pursuant to section 32-9ll and all subsequent transfers of the establishment, provided the establishment is undergoing remediation or is remediated in accordance with subsection (g) of said section 32-9ll;

(Y) Any transfer of title from a bankruptcy court or a municipality to a nonprofit organization; or

(Z) Acquisition of an establishment that is in the brownfield remediation and revitalization program and all subsequent transfers of the establishment, provided the establishment is in compliance with the brownfield investigation plan and remediation schedule, the commissioner has issued a no audit letter or successful audit closure

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letter in response to a verification or interim verification submitted regarding the remediation of such establishment under the brownfield remediation and revitalization program, or a one-hundred-eighty-day period has expired since a verification or interim verification submitted regarding the remediation of such establishment under the brownfield remediation and revitalization program without an audit decision from the Commissioner of Energy and Environmental Protection.

Sec. 8. Section 33-640 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

(a) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(b) The bylaws of a corporation may contain any provision [for managing the business and regulating the affairs of the corporation] that is not inconsistent with law or the certificate of incorporation.

(c) The bylaws may contain one or both of the following provisions:

(1) A requirement that if the corporation solicits proxies or consents with respect to an election of directors, the corporation include in its proxy statement and any form of its proxy or consent, to the extent and subject to such procedures or conditions as are provided in the bylaws, one or more individuals nominated by a shareholder in addition to individuals nominated by the board of directors; and

(2) A requirement that the corporation reimburse the expenses incurred by a shareholder in soliciting proxies or consents in connection with an election of directors, to the extent and subject to such procedures or conditions as are provided in the bylaws, provided that no bylaw so adopted shall apply to elections for which any record date precedes its adoption.

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(d) Notwithstanding subdivision (2) of subsection (b) of section 33-806, as amended by this act, the shareholders in amending, repealing or adopting a bylaw described in subsection (c) of this section may not limit the authority of the board of directors to amend or repeal any condition or procedure set forth in or to add any procedure or condition to such a bylaw in order to provide for a reasonable, practicable and orderly process.

Sec. 9. Section 33-806 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

(a) A corporation's shareholders may amend or repeal the corporation's bylaws.

(b) A corporation's board of directors may amend or repeal the corporation's bylaws unless: (1) The certificate of incorporation, section 33-808 or, if applicable, section 33-809 reserves that power exclusively to the shareholders in whole or part; or (2) except as provided in subsection (d) of section 33-640, as amended by this act, the shareholders in amending, repealing or adopting a bylaw expressly provide that the board of directors may not amend, repeal or reinstate that bylaw.

Sec. 10. Section 33-778 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

(a) A corporation may, by a provision in its certificate of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with section 33-771 or advance funds to pay for or reimburse expenses in accordance with section 33-773. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in subsection (c) of section 33-773 and

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subsection (c) of section 33-775. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with section 33-773 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

(b) A right of indemnification or to advances for expenses created by this subpart or under subsection (a) of this section and in effect at the time of an act or omission shall not be eliminated or impaired with respect to such act or omission by an amendment of the certificate of incorporation or bylaws or a resolution of the directors or shareholders, adopted after the occurrence of such act or omission, unless, in the case of a right created under subsection (a) of this section, the provision creating such right and in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such act or omission has occurred.

[[b)] (c) Any provision pursuant to subsection (a) of this section shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the certificate of incorporation, bylaws or resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by subdivision (3) of subsection (a) of section 33-820.

[(c) A] (d) Subject to subsection (b) of this section, a corporation may, by a provision in its certificate of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to sections 33-770 to 33-779, inclusive, as amended by this act.

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[[d]] (e) Sections 33-770 to 33-779, inclusive, as amended by this act, do not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with his appearance as a witness in a proceeding at a time when he is not a party.

Sec. 11. Section 33-709 of the general statutes is amended by adding subsection (f) as follows (*Effective October 1, 2012*):

(NEW) (f) Whenever a provision of sections 33-600 to 33-998, inclusive, as amended by this act, provides for voting of classes or series as separate voting groups, the rules provided in subsection (c) of section 33-798 for amendments of the certificate of incorporation apply to that provision.

Sec. 12. Subsection (a) of section 33-798 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

(a) If a corporation has more than one class of shares outstanding, the holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by sections 33-600 to 33-998, inclusive, as amended by this act, on a proposed amendment to the certificate of incorporation if the amendment would:

(1) Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(2) Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;

(3) Change the rights, preferences or limitations of all or part of the shares of the class;

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(4) Change the shares of all or part of the class into a different number of shares of the same class;

(5) Create a new class of shares having rights or preferences with respect to distributions [or to dissolution] that are prior or superior to the shares of the class;

(6) Increase the rights, preferences or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions [or to dissolution] that are prior or superior to the shares of the class;

(7) Limit or deny an existing preemptive right of all or part of the shares of the class; or

(8) Cancel or otherwise affect rights to distributions that have accumulated but not yet been authorized on all or part of the shares of the class.

Sec. 13. Subsections (a) and (b) of section 33-856 of the 2012 supplement to the general statutes are repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

(a) A shareholder is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder's shares, in the event of any of the following corporate actions:

(1) Consummation of a merger to which the corporation is a party (A) if shareholder approval is required for the merger by section 33-817 and the shareholder is entitled to vote on the merger, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger, or (B) if the corporation is a subsidiary and the merger is governed by section 33-818;

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(2) Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the exchange, except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;

(3) Consummation of a disposition of assets pursuant to section 33-831 if the shareholder is entitled to vote on the disposition, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series if (A) under the terms of the corporate action approved by the shareholders there is to be distributed to shareholders in cash its net assets, in excess of a reasonable amount reserved to meet claims of the type described in sections 33-886 and 33-887, (i) within one year after the shareholders' approval of the action, and (ii) in accordance with their respective interests determined at the time of such distribution, and (B) the disposition of assets is not an interested transaction;

(4) An amendment of the certificate of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created; or

(5) Any other merger, share exchange, disposition of assets or amendment to the certificate of incorporation to the extent provided by the certificate of incorporation, the bylaws or a resolution of the board of directors.

(b) Notwithstanding subsection (a) of this section, the availability of appraisal rights under subdivisions (1), (2), (3) and (4) of subsection (a) of this section shall be limited in accordance with the following provisions:

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(1) Appraisal rights shall not be available for the holders of shares of any class or series of shares which is:

(A) A covered security under Section 18(b)(1)(A) or (B) of the Securities Act of 1933, as amended;

(B) Traded in an organized market and has at least two thousand shareholders and a market value of at least twenty million dollars, exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors and beneficial shareholders owning more than ten per cent of such shares; or

(C) Issued by an open-end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and may be redeemed at the option of the holder at net asset value.

(2) The applicability of subdivision (1) of this subsection shall be determined as of: (A) The record date fixed to determine the shareholders entitled to receive notice of the meeting of shareholders to act upon the corporate action requiring appraisal rights; or (B) the day before the effective date of such corporate action if there is no meeting of shareholders.

(3) Subdivision (1) of this subsection shall not be applicable and appraisal rights shall be available pursuant to subsection (a) of this section for the holders of any class or series of shares (A) who are required by the terms of the corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in subdivision (1) of this subsection at the time the corporate action becomes effective, or (B) in the case of the consummation of a disposition of assets pursuant to section 33-831, unless such cash,

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shares or proprietary interests are, under the terms of the corporate action approved by the shareholders, to be distributed to the shareholders, as part of a distribution to shareholders of the net assets of the corporation in excess of a reasonable amount to meet claims of the type described in sections 33-886 and 33-887, (i) not later than one year after the shareholders' approval of the action, and (ii) in accordance with their respective interests determined at the time of the distribution.

(4) Subdivision (1) of this subsection shall not be applicable and appraisal rights shall be available pursuant to subsection (a) of this section for the holders of any class or series of shares where the corporate action is an interested transaction.

Approved May 14, 2012