

OFFICE OF LEGISLATIVE RESEARCH  
PUBLIC ACT SUMMARY



**PA 12-32**—sHB 5073

*Banks Committee*

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

**SUMMARY:** This act broadens the list of transactions exempted from Connecticut's Model Entity Transaction Act (META) (PA 11-241) (see BACKGROUND). It reinstates exemptions to the Transfer Act that were removed by PA 11-241 and makes minor, technical, and conforming changes. PA 11-241 is scheduled to take effect on January 1, 2014.

The act also makes changes to the business corporation statutes pertaining to allowable bylaw provisions, indemnification rules, voting group requirements, and appraisal rights.

**EFFECTIVE DATE:** January 1, 2014, except for the changes to the corporation statutes, which are effective October 1, 2012.

§§ 1, 3-6 — MODEL ENTITY TRANSACTIONS ACT

PA 11-241 provides a mechanism through which specified business entities can change their entity type through mergers, conversions, interest exchanges, and domestications. The mechanism can be used for transactions between different types of entities, not transactions between and among entities of the same type. The act also prohibits several types of entities, including cooperative associations, business corporations, credit unions, public service companies, and cooperatives among others, from using the mechanism to complete those transactions.

The act broadens the list of transactions exempted under PA 11-241 to include conversions, mergers, consolidations, interest exchanges, divisions, or other transactions involving a domestic entity organized to render professional services and a different type of entity. Transactions involving two or more domestic entities organized to render the same professional service remain subject to the act.

§ 7 — TRANSFER ACT

The Transfer Act regulates conveyances of businesses or properties that handle hazardous waste. The act reinstates the following exemptions removed by PA 11-241:

1. conversions of a general or limited partnership to a limited liability corporation (LLC),
2. transfers of titles from a municipality or bankruptcy court to a nonprofit organization, and
3. acquisition of brownfields that are remediated or undergoing remediation

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through the Department of Economic Development's (DECD) Abandoned Brownfield Cleanup (ABC) Program or the Brownfield Remediation and Revitalization Program (see BACKGROUND).

A property in either brownfield program is eligible for the Transfer Act exemption if it complies with its investigation plan and remediation schedule. A property that was remediated under the Brownfield Remediation and Revitalization Program is exempted from the Transfer Act if:

1. the Department of Energy and Environmental Protection (DEEP) commissioner (a) receives a verification or interim verification letter regarding remediation and (b) issues a no audit letter or successful audit closure letter or
2. 180 days have passed since the verification or interim verification was submitted without the DEEP commissioner issuing an audit decision.

### § 2 — LLC MERGER AND CONSOLIDATION

Under prior law, an LLC organized to render professional services could merge or consolidate only with another domestic LLC. Under the act, they may do so only if both LLCs are organized to render the same professional service. The law prohibits the merger or consolidation of an LLC organized to render professional services with any other foreign LLC or foreign entity.

### §§ 8–13 — BUSINESS CORPORATIONS

#### *Allowable Bylaw Provisions (§§ 8-9)*

The law authorizes a corporation's incorporators or board of directors to adopt initial bylaws and the board or shareholders to amend or repeal bylaws. The act allows bylaws to include any provisions, not just those related to managing the business and regulating the corporation's affairs as under prior law, that are not inconsistent with the law or the certificate of incorporation. It allows the bylaws to require the corporation to:

1. include in its proxy statements and forms one or more individuals nominated by a shareholder in addition to individuals nominated by the board of directors, to the extent the bylaws allow the corporation to do so when it solicits proxies or consents regarding a director's election; and
2. reimburse the expenses a shareholder incurs from soliciting proxies or consents in connection with an election of directors, to the extent allowed in the bylaws.

The bylaws authorizing the reimbursement requirement cannot apply to any election with a record date (i.e., the date for determining shareholders' eligibility to vote) prior to the bylaws' adoption.

The act limits the extent to which shareholders can amend, repeal, or adopt a bylaw regarding a director's election. Prior law prohibited the board of directors from amending or repealing a bylaw adopted by shareholders that expressly prohibited the board from amending, repealing, or reinstating it.

The act prohibits shareholders, when amending, repealing, or adopting a bylaw relating to the act's provisions on directors' elections, from limiting the

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board's authority to amend or repeal any condition or procedure in or add any procedure or condition to a bylaw in order to provide for a reasonable, practicable, and orderly process.

### *Variation of Indemnification Rules by Corporate Action (§ 10)*

By law, a corporation can obligate itself by its certificate of incorporation, bylaws, resolution, or contract to indemnify directors, officers, employees, and agents or advance them funds to pay for or reimburse lawsuit expenses.

The act prohibits shareholders or directors from amending the certificate of incorporation or bylaws or passing a resolution that eliminates these obligations for an act or omission that has already taken place, unless the provision in effect at the time of the act or omission explicitly authorizes the right's elimination or impairment after such an act or omission has occurred.

### *Voting Groups Requirements (§§ 11-12)*

By law, if a proposed amendment to a certificate of incorporation allowing the shareholders of two or more classes or series to vote as separate voting groups would affect those classes or series in the same or a substantially similar way, all the affected shareholders must vote together as a single voting group on the proposed amendment, unless otherwise specified by the certificate of incorporation or required by the board of directors. The act extends this voting requirement to all provisions for voting of classes or series as separate groups.

By law, holders of the outstanding shares of a class of stock are entitled to vote as a separate voting group on a proposed amendment to the certificate of incorporation if the amendment would do certain things. The act eliminates this right to vote as a separate group when the amendment would:

1. create a new class of shares having rights or preferences with respect to dissolutions that are prior or superior to the shares of the class or
2. 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 dissolutions that are prior or superior to the shares of the class.

### *Appraisal Rights (§ 13)*

By law, a shareholder is entitled to appraisal rights, and to obtain payment of the shares' fair value, if (1) the corporation disposes its assets, leaving no significant continuing business activity and (2) the shareholder is entitled to vote on the disposition. The act prohibits the shareholder from having appraisal rights in this situation if:

1. under the terms of the corporate action approved by the shareholders, they will receive the corporation's net assets in cash, in excess of a reasonable amount reserved for legal claims against the dissolved corporation, (a) within one year after the shareholders' approval of the action and (b) according to their respective interests determined at the time of the distribution and
2. the disposition of assets is not an interested transaction (such as a transaction where a director will gain a benefit not available to other

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shareholders.)

By law, a shareholder is not entitled to appraisal rights for shares that are covered securities (see BACKGROUND), traded in organized markets, or issued by open-end management companies unless the shareholder accepts something other than cash or shares meeting the same criteria at the time the disposition becomes effective.

The act prohibits shareholders from having appraisal rights in a corporate disposition of assets if, under the terms of the corporate action approved by the shareholders, cash, shares, or proprietary interests are to be distributed to the shareholders as part of a distribution of the corporation's net assets in excess of a reasonable amount reserved for legal claims against the dissolved corporation (1) within one year after the shareholders' approval of the action and (2) according to their respective interests determined at the time of the distribution.

### BACKGROUND

#### *Model Entity Transactions Act (META)*

META, effective January 1, 2014, establishes the procedures necessary for four kinds of transactions: (1) the merger of one entity with another, (2) the conversion of an entity to another kind of entity, (3) an interest exchange between two entities so that one controls the other without the two merging, and (4) the domestication of an entity originally formed in one state into another state (PA 11-241).

#### *Abandoned Brownfield Cleanup (ABC) Program*

The Abandoned Brownfield Cleanup Program protects developers from liability for investigating and remediating pollution that emanated from a property before they acquired it. The DECD commissioner determines program eligibility, in consultation with the DEEP commissioner (CGS § 32-91I).

#### *Brownfield Remediation and Revitalization Program*

The DECD's Brownfield Remediation and Revitalization Program protects brownfield owners and their successors from liability to the state and third parties for any contamination that others caused at the property. But this protection does not prevent the DEEP commissioner from requiring remedial action if:

1. the owner provided false information about the property or failed to implement the remediation plan,
2. additional contamination was uncovered at the property after DECD's Office of Brownfield Remediation and Development accepted it into the program, or
3. exposure levels increased to a point threatening human health or the environment (PA 11-141, § 17).

#### *Covered Securities*

A security is a "covered security" if it is:

1. listed, or authorized for listing, on the New York Stock Exchange

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- (NYSE), the American Stock Exchange (ASE), or Nasdaq or
2. listed, or authorized for listing, on a national securities exchange that has listing standards that the Securities and Exchange Commission determined are substantially similar to NYSE, ASE, or Nasdaq (15 USC § 77r).

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