



General Assembly

January Session, 2013

Raised Bill No. 6667

LCO No. 4776



Referred to Committee on JUDICIARY

Introduced by:
(JUD)

AN ACT CONCERNING THE ESTABLISHMENT OF BENEFIT CORPORATIONS AND THE LIABILITY OF AN EMPLOYER WHO DISCIPLINES OR DISCHARGES AN EMPLOYEE ON ACCOUNT OF THE EXERCISE OF CERTAIN CONSTITUTIONAL RIGHTS.

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

1 Section 1. (NEW) (*Effective October 1, 2013*) Sections 1 to 14,
2 inclusive, of this act shall be known and may be cited as the
3 "Connecticut Benefit Corporation Act".

4 Sec. 2. (NEW) (*Effective October 1, 2013*) (a) Sections 1 to 14, inclusive,
5 of this act shall be applicable to all benefit corporations.

6 (b) The existence of a provision of sections 1 to 14, inclusive, of this
7 act shall not of itself create an implication that a contrary or different
8 rule of law is applicable to a business corporation that is not a benefit
9 corporation. The provisions of sections 1 to 14, inclusive, of this act
10 shall not affect a statute or rule of law that is applicable to a business
11 corporation that is not a benefit corporation.

12 (c) Except as otherwise provided in sections 1 to 14, inclusive, of this

13 act, the provisions of chapter 601 of the general statutes shall be
14 generally applicable to all benefit corporations. The specific provisions
15 of sections 1 to 14, inclusive, of this act shall control over the general
16 provisions of chapter 601 of the general statutes. A benefit corporation
17 shall be simultaneously subject to the provisions of sections 1 to 14,
18 inclusive, of this act and the provisions of chapter 601 of the general
19 statutes.

20 (d) A provision of the certificate of incorporation or bylaws of a
21 benefit corporation may not limit, be inconsistent with, or supersede a
22 provision of sections 1 to 14, inclusive, of this act.

23 (e) Nothing in sections 1 to 14, inclusive, of this act shall be
24 construed as creating or granting to any person any contractual rights
25 to, or proprietary interest in, the income or assets of the benefit
26 corporation by virtue of the fact that they may directly or indirectly
27 benefit from the general or any specific public benefit of the benefit
28 corporation. Nothing in sections 1 to 14, inclusive, of this act shall (1)
29 be construed as imposing or creating a charitable use, interest or
30 restriction on any of the property or assets of a benefit corporation, or
31 (2) deprive the Attorney General of jurisdiction over a benefit
32 corporation under any other applicable law.

33 Sec. 3. (NEW) (*Effective October 1, 2013*) As used in sections 1 to 14,
34 inclusive, of this act, unless the context otherwise requires:

35 (1) "Benefit corporation" means a business corporation that has
36 elected to become subject to the provisions of sections 1 to 11,
37 inclusive, of this act, and whose status as a benefit corporation has not
38 been terminated pursuant to section 6 of this act.

39 (2) "Benefit director" means either (A) the director designated as the
40 benefit director of a benefit corporation under subsection (a) of section
41 9 of this act; or (B) if a shareholder agreement of a benefit corporation
42 eliminates the board of directors or transfers to one or more
43 shareholders or other persons all or part of the authority to exercise

44 corporate powers or to manage the business and affairs of the
45 corporation, a person with one or more of the powers, duties or rights
46 of a benefit director as provided in such shareholder agreement.

47 (3) "Benefit enforcement proceeding" means any claim or action for:
48 (A) Failure of a benefit corporation to pursue or create a general public
49 benefit or a specific public benefit purpose set forth in its certificate of
50 incorporation, or (B) violation of any obligation, duty or standard of
51 conduct under sections 2 to 14, inclusive, of this act.

52 (4) "Benefit officer" means the individual designated as the benefit
53 officer of a benefit corporation under section 11 of this act.

54 (5) "Business corporation" means a corporation whose internal
55 affairs are governed by chapter 601 of the general statutes.

56 (6) "General public benefit" means a material positive impact on
57 society and the environment, taken as a whole, assessed against a
58 third-party standard, from the business and operations of a benefit
59 corporation.

60 (7) "Independent" means having no material relationship with a
61 benefit corporation or a subsidiary of the benefit corporation, provided
62 that a person who serves as a benefit director or benefit officer does
63 not lack independence solely by serving in such capacity.

64 (8) "Material relationship" means a relationship between a person
65 and a benefit corporation or any of its subsidiaries if any of the
66 following apply: (A) The person is, or has been within the last three
67 years, an employee other than a benefit officer of the benefit
68 corporation or a subsidiary; (B) an immediate family member of the
69 person is, or has been within the last three years, an executive officer
70 other than a benefit officer of the benefit corporation or a subsidiary; or
71 (C) there is beneficial or record ownership of five per cent or more of
72 the outstanding shares of the benefit corporation, calculated as if all
73 outstanding rights to acquire shares in the benefit corporation had

74 been exercised, by (i) the person, or (ii) an entity (I) of which the
75 person is a director, an officer or a manager; or (II) in which the person
76 owns beneficially or of record five per cent or more of the outstanding
77 equity interests, calculated as if all outstanding rights to acquire equity
78 interests in the entity had been exercised.

79 (9) "Minimum status vote" means (A) in the case of a business
80 corporation, in addition to any other required approval or vote, the
81 satisfaction of the following conditions: (i) The shareholders of every
82 class or series shall be entitled to vote as a separate voting group on
83 the corporate action regardless of a limitation stated in the certificate of
84 incorporation or bylaws on the voting rights of any class or series; and
85 (ii) the corporate action shall be approved by the vote of shareholders
86 of each class or series entitled to cast at least two-thirds of the votes
87 that shareholders of the class or series are entitled to cast on the action;
88 and (B) in the case of a domestic entity other than a business
89 corporation, in addition to any other required approval, vote or
90 consent, the satisfaction of the following conditions: (i) The holders of
91 each class or series of equity interest in the entity that are entitled to
92 receive a distribution of any kind from the entity shall be entitled to
93 vote on or consent to the action regardless of any otherwise applicable
94 limitation on the voting or consent rights of any class or series; and (ii)
95 the action shall be approved by the vote or written consent of the
96 holders described in subparagraph (B)(i) of this subdivision entitled to
97 cast at least two-thirds of the votes that all of those holders are entitled
98 to cast on the action.

99 (10) "Publicly traded corporation" means a business corporation that
100 has shares listed on a national securities exchange or traded in a
101 market maintained by one or more members of a national securities
102 association.

103 (11) "Specific public benefit" includes, without limitation: (A)
104 Providing low-income or underserved individuals or communities
105 with beneficial products or services; (B) promoting economic

106 opportunity for individuals or communities beyond the creation of
107 jobs in the normal course of business; (C) protecting or restoring the
108 environment; (D) improving human health; (E) promoting the arts,
109 sciences or advancement of knowledge; (F) increasing the flow of
110 capital to other benefit corporations or similar entities whose purpose
111 is to benefit society or the environment; and (G) conferring any other
112 particular benefit on society or the environment.

113 (12) "Third-party standard" means a recognized standard for
114 defining, reporting and assessing corporate social and environmental
115 performance that is (A) comprehensive because the standard assesses
116 the effect of the business and its operations upon the interests listed in
117 subparagraphs (B), (C), (D) and (E) of subdivision (1) of subsection (a)
118 of section 8 of this act; (B) developed by an entity that is independent;
119 and (C) transparent because the following information is publicly
120 available about the development and revision of the standard: the
121 identity of the directors, officers, material owners, and the governing
122 body of the entity that developed and controls revisions to the
123 standard; the process by which revisions to the standard and changes
124 to the membership of the governing body are made; and an accounting
125 of the revenue and sources of financial support for the entity, with
126 sufficient detail to disclose any relationships that could reasonably be
127 considered to present a potential conflict of interest.

128 Sec. 4. (NEW) (*Effective October 1, 2013*) A benefit corporation shall
129 be incorporated in accordance with the provisions of chapter 601 of the
130 general statutes by filing its certificate of incorporation with the office
131 of the Secretary of the State, and such certificate of incorporation shall
132 state that the corporation is a benefit corporation.

133 Sec. 5. (NEW) (*Effective October 1, 2013*) (a) A business corporation
134 that was not formed as a benefit corporation may elect to become a
135 benefit corporation by amending its certificate of incorporation so that
136 such certificate contains, in addition to the matters required by chapter
137 601 of the general statutes, a statement that the corporation is a benefit

138 corporation. Any such amendment to the certificate of incorporation
139 shall be adopted in accordance with the procedures set forth in chapter
140 601 of the general statutes. In order to be effective, such amendment
141 shall be approved by a minimum status vote.

142 (b) If an entity that is not a benefit corporation is a party to (1) a
143 merger in which (A) the surviving entity will be a benefit corporation,
144 or (B) shares or other equity interests in such entity will be converted
145 into a right to receive shares of a benefit corporation, or (2) a share
146 exchange with a benefit corporation in which the shares or other
147 equity interests of the entity will be exchanged for shares of a benefit
148 corporation, the plan of merger or share exchange shall be approved
149 by a minimum status vote in addition to any other vote required by
150 chapter 601 of the general statutes, the certificate of incorporation or
151 the bylaws of the benefit corporation. If an entity other than a
152 corporation is a party to any of the foregoing transactions and a
153 minimum status vote by the equity owners of such entity is required
154 for approval of the transaction, the equity owners of the entity shall be
155 entitled to appraisal rights under the procedures set forth in chapter
156 601 of the general statutes as if the entity were a corporation.

157 Sec. 6. (NEW) (*Effective October 1, 2013*) (a) A benefit corporation
158 may terminate its status as such and cease to be subject to the
159 provisions of sections 2 to 14, inclusive, of this act, by amending its
160 certificate of incorporation to delete any provision stating that it is a
161 benefit corporation. Any such amendment to the certificate of
162 incorporation shall be adopted in accordance with the procedures set
163 forth in chapter 601 of the general statutes. In order to be effective,
164 such amendment shall be approved by a minimum status vote.

165 (b) An election to become a benefit corporation may be made
166 irrevocable if the certificate of incorporation of the benefit corporation
167 is amended to provide that the benefit corporation election may not be
168 terminated. Any such amendment may be made no earlier than four
169 years after the formation of the benefit corporation or the election to

170 become a benefit corporation, as the case may be, and in order to be
171 effective such election shall be approved by the unanimous vote or
172 written consent of the shareholders of every class or series, regardless
173 of a limitation stated in the certificate of incorporation or bylaws on the
174 voting rights of any such class or series.

175 (c) If a benefit corporation is a party to (1) a merger in which (A) the
176 surviving entity will not be a benefit corporation, or (B) shares of such
177 benefit corporation will be converted into a right to receive shares or
178 other equity interests of an entity that is not a benefit corporation, or
179 (2) a share exchange in which the shares of the benefit corporation will
180 be exchanged for shares or other equity interests of an entity that is not
181 a benefit corporation, the plan of merger or share exchange shall be
182 approved by a minimum status vote in addition to any other vote
183 required by chapter 601 of the general statutes, the certificate of
184 incorporation or the bylaws of the benefit corporation.

185 (d) Any sale, lease, exchange, or other disposition of all or
186 substantially all of the assets of a benefit corporation, unless the
187 transaction is in the usual and regular course of business, shall not be
188 effective unless the transaction is approved by a minimum status vote
189 in addition to any other vote required by chapter 601 of the general
190 statutes, the certificate of incorporation or the bylaws of the benefit
191 corporation.

192 Sec. 7. (NEW) (*Effective October 1, 2013*) (a) A benefit corporation
193 shall have a purpose of creating general public benefit. This purpose is
194 in addition to its purposes under chapter 601 of the general statutes.

195 (b) In addition to the purposes set forth in subsection (a) of this
196 section, the certificate of incorporation of a benefit corporation may
197 identify as a purpose one or more specific public benefits that the
198 benefit corporation intends to create. The identification of a specific
199 public benefit under this subsection does not limit the obligation of a
200 benefit corporation under subsection (a) of this section.

201 (c) The creation of general public benefit and specific public benefit
202 under subsections (a) and (b) of this section is in the best interests of
203 the benefit corporation.

204 (d) A benefit corporation may amend its certificate of incorporation
205 to add, amend, or delete as a purpose the identification of a specific
206 public benefit that the benefit corporation intends to create. In order to
207 be effective, the amendment shall be adopted by a minimum status
208 vote in addition to any other vote required by chapter 601 of the
209 general statutes, the certificate of incorporation or the bylaws of the
210 benefit corporation.

211 Sec. 8. (NEW) (*Effective October 1, 2013*) (a) In discharging the duties
212 of their respective positions and in considering the best interests of the
213 benefit corporation, the board of directors, any committee of the board,
214 and the directors of a benefit corporation (1) shall consider the effects
215 of any action upon: (A) The shareholders of the benefit corporation; (B)
216 the employees and workforce of the benefit corporation, its
217 subsidiaries, and its suppliers; (C) the interests of the customers of the
218 benefit corporation as beneficiaries of the general public benefit or
219 specific public benefit purposes of the benefit corporation; (D)
220 community and societal factors, including those of each community in
221 which offices or facilities of the benefit corporation, its subsidiaries, or
222 its suppliers are located; (E) the local and global environment; (F) the
223 short-term and long-term interests of the benefit corporation, including
224 benefits that may accrue to the benefit corporation from its long-term
225 plans and the possibility that these interests may be best served by the
226 continued independence of the benefit corporation; and (G) the ability
227 of the benefit corporation to accomplish its general public benefit
228 purpose and any specific public benefit purpose; (2) may consider: (A)
229 In the circumstances described in subsection (d) of section 33-756 of the
230 general statutes, the interests referred to in said subsection (d); and (B)
231 other pertinent factors or the interests of any other group that they
232 deem appropriate; and (3) need not give priority to the interests of a
233 particular person or group referred to in subdivisions (1) or (2) of this

234 subsection over the interests of any other person or group unless the
235 benefit corporation has stated in its certificate of incorporation its
236 intention to give priority to certain interests related to its
237 accomplishment of its general public benefit purpose or of a specific
238 public benefit purpose identified in its certificate of incorporation.

239 (b) The consideration of interests and factors in the manner required
240 by subsection (a) of this section, (1) shall not constitute a violation of
241 section 33-756 of the general statutes, and (2) is in addition to the
242 power of directors to consider the interests and factors referred to in
243 subsection (d) of section 33-756 of the general statutes in the
244 circumstances described in subsection (d) of section 33-756 of the
245 general statutes.

246 (c) A director shall not be personally liable for (1) any act or
247 omission in the course of performing the duties of a director under
248 subsection (a) of this section if the director performed the duties of the
249 position in compliance with section 33-756 of the general statutes and
250 this section; or (2) failure of the benefit corporation to pursue or create
251 general public benefit or any specific public benefit.

252 (d) A director does not have a duty to a person that is a beneficiary
253 of the general public benefit purpose or a specific public benefit
254 purpose of a benefit corporation arising from the status of the person
255 as a beneficiary.

256 Sec. 9. (NEW) (*Effective October 1, 2013*) (a) The board of directors of
257 a benefit corporation that is a publicly traded corporation shall, and
258 the board of any other benefit corporation may, include a director, who
259 shall (1) be designated the benefit director; and (2) have, in addition to
260 the powers, duties, rights, and immunities of the other directors of the
261 benefit corporation, the powers, duties, rights, and immunities
262 provided in sections 2 to 14, inclusive, of this act.

263 (b) The benefit director shall be elected, and may be removed, in the
264 manner provided under chapter 601 of the general statutes. The benefit

265 director shall be an individual who is independent. The benefit
266 director may serve as the benefit officer at the same time as serving as
267 the benefit director. The certificate of incorporation, bylaws or a
268 shareholder agreement of a benefit corporation may prescribe
269 additional qualifications of the benefit director not inconsistent with
270 this subsection.

271 (c) The benefit director shall prepare, and the benefit corporation
272 shall include in the annual benefit report to shareholders required by
273 section 13 of this act, the opinion of the benefit director on all of the
274 following: (1) Whether the benefit corporation acted in accordance
275 with its general public benefit purpose and any specific public benefit
276 purposes in all material respects during the period covered by the
277 report; (2) whether the directors and officers complied with subsection
278 (a) of section 8 of this act and subsection (a) of section 10 of this act,
279 respectively; and (3) if, in the opinion of the benefit director, the benefit
280 corporation or its directors or officers failed to comply with
281 subdivision (2) of this subsection, and, if so, a description of the ways
282 in which the benefit corporation or its directors or officers failed to
283 comply.

284 (d) The act or omission of an individual in the capacity of a benefit
285 director shall constitute for all purposes an act or omission of that
286 individual in the capacity of a director of the benefit corporation.

287 (e) Regardless of whether the certificate of incorporation of a benefit
288 corporation includes a provision limiting the personal liability of
289 directors, as authorized by chapter 601 of the general statutes, a benefit
290 director shall not be personally liable for any act or omission in the
291 capacity of a benefit director unless the act or omission constitutes self-
292 dealing, wilful misconduct, or a knowing violation of law.

293 Sec. 10. (NEW) (*Effective October 1, 2013*) (a) Each officer of a benefit
294 corporation shall consider the interests and factors described in
295 subdivision (1) of subsection (a) of section 8 of this act in the manner

296 provided in said subdivision if (1) the officer has discretion to act with
297 respect to a matter; and (2) it reasonably appears to the officer that the
298 matter may have a material effect on the creation by the benefit
299 corporation of general public benefit or a specific public benefit
300 identified in the certificate of incorporation of the benefit corporation.

301 (b) The consideration of interests and factors in the manner
302 described in subsection (a) of this section shall not constitute a
303 violation of section 33-765 of the general statutes.

304 (c) An officer shall not be personally liable for (1) an act or omission
305 as an officer in the course of performing the duties of an officer under
306 subsection (a) of this section if the officer performed the duties of the
307 position in compliance with section 33-765 of the general statutes and
308 this section; or (2) failure of the benefit corporation to pursue or create
309 general public benefit or any specific public benefit.

310 (d) An officer does not have a duty to a person that is a beneficiary
311 of the general public benefit purpose or a specific public benefit
312 purpose of a benefit corporation arising from the status of the person
313 as a beneficiary.

314 Sec. 11. (NEW) (*Effective October 1, 2013*) (a) A benefit corporation
315 may have an officer designated as the benefit officer.

316 (b) A benefit officer shall have (1) the powers and duties relating to
317 the purpose of the corporation to create general public benefit or
318 specific public benefit provided: (A) By the bylaws; or (B) absent
319 controlling provisions in the bylaws, by resolutions or orders of the
320 board of directors, and (2) the duty to prepare the benefit report
321 required pursuant to subsection (b) of section 13 of this act.

322 Sec. 12. (NEW) (*Effective October 1, 2013*) (a) Except in a benefit
323 enforcement proceeding, no person may bring an action or assert a
324 claim against a benefit corporation or its directors or officers with
325 respect to (1) failure to pursue or create general public benefit or a

326 specific public benefit set forth in its certificate of incorporation; or (2)
327 violation of an obligation, duty, or standard of conduct under sections
328 2 to 14, inclusive, of this act.

329 (b) A benefit corporation shall not be liable for monetary damages
330 under sections 2 to 14, inclusive, of this act, for any failure of the
331 benefit corporation to pursue or create general public benefit or a
332 specific public benefit.

333 (c) A benefit enforcement proceeding may be commenced or
334 maintained only (1) directly by the benefit corporation; or (2)
335 derivatively in accordance with the provisions of chapter 601 of the
336 general statutes by (A) a person or group of persons that owns
337 beneficially or of record at least five per cent of the total number of
338 shares of all classes and series outstanding on the date the benefit
339 enforcement proceeding is commenced; (B) a person or group of
340 persons that owns beneficially or of record ten per cent or more of the
341 outstanding equity interests in an entity of which the benefit
342 corporation is a majority-owned subsidiary; or (C) other persons as
343 specified in the certificate of incorporation or bylaws of the benefit
344 corporation.

345 (d) For purposes of this section, a person is the beneficial owner of
346 shares or equity interests if the shares or equity interests are held in a
347 voting trust or by a nominee on behalf of the beneficial owner.

348 Sec. 13. (NEW) (*Effective October 1, 2013*) (a) A benefit corporation
349 shall select a third-party standard. Selection or changing a third-party
350 standard shall require approval by (1) the greater of (A) a majority of
351 all the directors in office when the action is taken, or (B) the number of
352 directors required by the certificate of incorporation or bylaws of the
353 benefit corporation to take action under this section, or (2) the vote or
354 written consent of the shareholders required by the certificate of
355 incorporation or bylaws of the benefit corporation to take action under
356 this section.

357 (b) A benefit corporation shall prepare an annual benefit report that
358 includes all of the following information: (1) A narrative description of
359 (A) the ways in which the benefit corporation pursued general public
360 benefit during the year and the extent to which general public benefit
361 was created; (B) both (i) the ways in which the benefit corporation
362 pursued a specific public benefit that the certificate of incorporation
363 states it is the purpose of the benefit corporation to create; and (ii) the
364 extent to which that specific public benefit was created; (C) any
365 circumstances that have hindered the creation by the benefit
366 corporation of general public benefit or specific public benefit; and (D)
367 the process and rationale for selecting or changing the third-party
368 standard used to prepare the benefit report; (2) an assessment of the
369 overall social and environmental performance of the benefit
370 corporation against a third-party standard (i) applied consistently with
371 any application of that standard in prior benefit reports; or (ii)
372 accompanied by an explanation of the reasons for any inconsistent
373 application or the change to that standard from the one used in the
374 most recent prior report; (3) the name of the benefit director and the
375 benefit officer, if any, and the address to which correspondence to each
376 of them may be directed; (4) the compensation paid by the benefit
377 corporation during the year to each director in the capacity of a
378 director; (5) the statement of the benefit director described in
379 subsection (c) of section 9 of this act; (6) a statement of any connection
380 between the organization that established the third-party standard, or
381 its directors, officers or any holder of five per cent or more of the
382 voting power or capital interests in the organization, and the benefit
383 corporation or its directors, officers or any holder of five per cent or
384 more of the outstanding shares of the benefit corporation, including
385 any financial or governance relationship which might materially affect
386 the credibility of the use of the third-party standard; and (7) if a
387 shareholder agreement eliminates the board of directors or transfers to
388 one or more shareholders or other persons all or part of the authority
389 to exercise corporate powers or to manage the business and affairs of
390 the corporation, a description of (A) the persons that exercise the

391 powers, duties and rights and who have the immunities of the board
392 of directors, and (B) the name of the person, if any, who is vested with
393 the powers, duties, rights and immunities of a benefit director.

394 (c) If, during the year covered by a benefit report, a benefit director
395 or benefit officer resigned from or refused to stand for reelection to the
396 position of benefit director or benefit officer, or was removed from the
397 position of benefit director or benefit officer, and the benefit director or
398 benefit officer furnished the benefit corporation with a written
399 statement or correspondence concerning the circumstances
400 surrounding the resignation, refusal, or removal, the benefit report
401 shall include that correspondence as an exhibit.

402 (d) Neither the benefit report nor the assessment of the performance
403 of the benefit corporation in the benefit report required by subdivision
404 (2) of subsection (a) of this section needs to be audited or certified by
405 the third-party standard provider.

406 Sec. 14. (NEW) (*Effective October 1, 2013*) (a) A benefit corporation
407 shall send its annual benefit report to each shareholder (1) not later
408 than one hundred twenty days following the end of the fiscal year of
409 the benefit corporation; or (2) at the same time that the benefit
410 corporation delivers any other annual report to its shareholders,
411 whichever is earlier.

412 (b) A benefit corporation shall post all of its benefit reports on the
413 public portion of its Internet web site, if any; but the compensation
414 paid to directors and any financial, confidential or proprietary
415 information included in any benefit report may be omitted from the
416 benefit report as posted.

417 (c) If a benefit corporation does not have an Internet web site, the
418 benefit corporation shall provide a copy of its most recent benefit
419 report, without charge, to any person that requests a copy of such
420 benefit report, but the compensation paid to directors and any
421 financial, confidential or proprietary information included in the

422 benefit report may be omitted from the copy of the benefit report
423 provided.

424 Sec. 15. Subsections (a) and (b) of section 33-856 of the general
425 statutes are repealed and the following is substituted in lieu thereof
426 (*Effective October 1, 2013*):

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

430 (1) Consummation of a merger to which the corporation is a party
431 (A) if shareholder approval is required for the merger by section 33-
432 817 and the shareholder is entitled to vote on the merger, except that
433 appraisal rights shall not be available to any shareholder of the
434 corporation with respect to shares of any class or series that remain
435 outstanding after consummation of the merger, or (B) if the
436 corporation is a subsidiary and the merger is governed by section 33-
437 818;

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

444 (3) Consummation of a disposition of assets pursuant to section 33-
445 831 if the shareholder is entitled to vote on the disposition, except that
446 appraisal rights shall not be available to any shareholder of the
447 corporation with respect to shares of any class or series if (A) under the
448 terms of the corporate action approved by the shareholders there is to
449 be distributed to shareholders in cash its net assets, in excess of a
450 reasonable amount reserved to meet claims of the type described in
451 sections 33-886 and 33-887, (i) within one year after the shareholders'
452 approval of the action, and (ii) in accordance with their respective

453 interests determined at the time of such distribution, and (B) the
454 disposition of assets is not an interested transaction;

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

460 (5) If the corporation is not a benefit corporation under sections 1 to
461 14, inclusive, of this act, (A) an amendment of the certificate of
462 incorporation to state that the corporation is a benefit corporation; (B)
463 consummation of a merger to which the corporation is a party in
464 which the surviving entity will be a benefit corporation or in which
465 shares in the corporation will be converted into a right to receive
466 shares of a benefit corporation; and (C) consummation of a share
467 exchange to which the corporation is a party and the shares of the
468 corporation will be exchanged for shares of a benefit corporation; or

469 ~~[(5)]~~ (6) Any other merger, share exchange, disposition of assets or
470 amendment to the certificate of incorporation to the extent provided by
471 the certificate of incorporation, the bylaws or a resolution of the board
472 of directors.

473 (b) Notwithstanding subsection (a) of this section, the availability of
474 appraisal rights under subdivisions (1) [~~, (2), (3) and (4)]~~ to (5),
475 inclusive, of subsection (a) of this section shall be limited in accordance
476 with the following provisions:

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

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

481 (B) Traded in an organized market and has at least two thousand

482 shareholders and a market value of at least twenty million dollars,
483 exclusive of the value of such shares held by the corporation's
484 subsidiaries, senior executives, directors and beneficial shareholders
485 owning more than ten per cent of such shares; or

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

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

496 (3) Subdivision (1) of this subsection shall not be applicable and
497 appraisal rights shall be available pursuant to subsection (a) of this
498 section for the holders of any class or series of shares (A) who are
499 required by the terms of the corporate action requiring appraisal rights
500 to accept for such shares anything other than cash or shares of any
501 class or any series of shares of any corporation, or any other
502 proprietary interest of any other entity, that satisfies the standards set
503 forth in subdivision (1) of this subsection at the time the corporate
504 action becomes effective, or (B) in the case of the consummation of a
505 disposition of assets pursuant to section 33-831, unless such cash,
506 shares or proprietary interests are, under the terms of the corporate
507 action approved by the shareholders, to be distributed to the
508 shareholders, as part of a distribution to shareholders of the net assets
509 of the corporation in excess of a reasonable amount to meet claims of
510 the type described in sections 33-886 and 33-887, (i) not later than one
511 year after the shareholders' approval of the action, and (ii) in
512 accordance with their respective interests determined at the time of the
513 distribution.

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

518 Sec. 16. Subdivision (4) of section 33-855 of the general statutes is
519 repealed and the following is substituted in lieu thereof (*Effective*
520 *October 1, 2013*):

521 (4) "Fair value" means the value of the corporation's shares
522 determined: (A) Immediately before the effectuation of the corporate
523 action to which the shareholder objects, (B) using customary and
524 current valuation concepts and techniques generally employed for
525 similar businesses in the context of the transaction requiring appraisal,
526 and (C) without discounting for lack of marketability or minority
527 status except, if appropriate, for amendments to the certificate of
528 incorporation pursuant to subdivision [(5)] (6) of subsection (a) of
529 section 33-856, as amended by this act.

530 Sec. 17. Section 31-51q of the general statutes is repealed and the
531 following is substituted in lieu thereof (*Effective October 1, 2013*):

532 Any employer, including the state and any instrumentality or
533 political subdivision thereof, who subjects any employee to discipline
534 or discharge on account of the exercise by such employee of rights
535 guaranteed by the first amendment to the United States Constitution
536 or section 3, 4 or 14 of article first of the Constitution of the state of
537 Connecticut, [provided such] which activity does not substantially or
538 materially interfere with the employee's bona fide job performance or
539 the working relationship between the employee and the employer,
540 shall be liable to such employee for damages caused by such discipline
541 or discharge, including punitive damages, and for reasonable
542 attorney's fees as part of the costs of any such action for damages. If
543 the court determines that such action for damages was brought
544 without substantial justification, the court may award costs and

545 reasonable attorney's fees to the employer. It shall not be a defense to
 546 an action filed under this section that such activity by an employee
 547 was within the scope of the employee's employment.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2013</i>	New section
Sec. 2	<i>October 1, 2013</i>	New section
Sec. 3	<i>October 1, 2013</i>	New section
Sec. 4	<i>October 1, 2013</i>	New section
Sec. 5	<i>October 1, 2013</i>	New section
Sec. 6	<i>October 1, 2013</i>	New section
Sec. 7	<i>October 1, 2013</i>	New section
Sec. 8	<i>October 1, 2013</i>	New section
Sec. 9	<i>October 1, 2013</i>	New section
Sec. 10	<i>October 1, 2013</i>	New section
Sec. 11	<i>October 1, 2013</i>	New section
Sec. 12	<i>October 1, 2013</i>	New section
Sec. 13	<i>October 1, 2013</i>	New section
Sec. 14	<i>October 1, 2013</i>	New section
Sec. 15	<i>October 1, 2013</i>	33-856(a) and (b)
Sec. 16	<i>October 1, 2013</i>	33-855(4)
Sec. 17	<i>October 1, 2013</i>	31-51q

Statement of Purpose:

To (1) provide for the establishment of benefit corporations in the state, and (2) revise the statutory provision relating to an employer's liability for discharge or discipline of an employee in violation of the employee's constitutional rights.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]