



General Assembly

**Substitute Bill No. 411**

February Session, 2014



**AN ACT CONCERNING REVISIONS TO THE CONNECTICUT  
BUSINESS CORPORATION ACT.**

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

1 Section 1. Section 33-706 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2014*):

3 (a) A shareholder may vote his shares in person or by proxy.

4 (b) A shareholder or his agent or attorney-in-fact may appoint a  
5 proxy to vote or otherwise act for the shareholder by signing an  
6 appointment form or by an electronic transmission of the appointment.  
7 An electronic transmission must contain or be accompanied by  
8 information from which one can determine that a shareholder or his  
9 agent or attorney-in-fact authorized the electronic transmission.

10 (c) An appointment of a proxy is effective when a signed  
11 appointment form or an electronic transmission of the appointment is  
12 received by the inspector of election or the officer or agent of the  
13 corporation authorized to tabulate votes. A photographic or similar  
14 reproduction of an appointment, or a telegram, cablegram, facsimile  
15 transmission, wireless or similar transmission of an appointment  
16 received by such person shall be sufficient to effect such appointment.  
17 An appointment of a proxy is valid for eleven months unless a longer  
18 period is expressly provided in the appointment.

19 (d) An appointment of a proxy is revocable unless the appointment  
20 form or electronic transmission of the appointment states that it is  
21 irrevocable and the appointment is coupled with an interest.  
22 Appointments coupled with an interest include the appointment of: (1)  
23 A pledgee; (2) a person who purchased or agreed to purchase the  
24 shares; (3) a creditor of the corporation who extended it credit under  
25 terms requiring the appointment; (4) an employee of the corporation  
26 whose employment contract requires the appointment; or (5) a party to  
27 a voting agreement created under section 33-716.

28 (e) The death or incapacity of the shareholder appointing a proxy  
29 does not affect the right of the corporation to accept the proxy's  
30 authority unless notice of the death or incapacity is received by the  
31 secretary or other officer or agent authorized to tabulate votes before  
32 the proxy exercises his authority under the appointment.

33 (f) An appointment of a proxy made irrevocable under subsection  
34 (d) of this section is revoked when the interest with which it is coupled  
35 is extinguished.

36 (g) [A] Unless an appointment of a proxy otherwise provides, an  
37 appointment made irrevocable under subsection (d) of this section  
38 continues in effect after a transfer of the shares and a transferee takes  
39 subject to the appointment, except that a transferee for value of shares  
40 subject to an irrevocable appointment may revoke the appointment if  
41 he did not know of its existence when he acquired the shares and the  
42 existence of the irrevocable appointment was not noted conspicuously  
43 on the certificate representing the shares or on the information  
44 statement for shares without certificates.

45 (h) Subject to section 33-708 and to any express limitation on the  
46 proxy's authority stated in the appointment form or electronic  
47 transmission of the appointment, a corporation is entitled to accept the  
48 proxy's vote or other action as that of the shareholder making the  
49 appointment.

50 Sec. 2. Section 33-757 of the general statutes is repealed and the  
51 following is substituted in lieu thereof (*Effective October 1, 2014*):

52 (a) A director who votes for or assents to a distribution made in  
53 violation of section 33-687 or [33-887a] subsection (a) of section 33-887b  
54 or the certificate of incorporation is personally liable to the corporation  
55 for the amount of the distribution that exceeds what could have been  
56 distributed without violating section 33-687 or [33-887a] subsection (a)  
57 of section 33-887b or the certificate of incorporation if it is established  
58 that he did not perform his duties in compliance with section 33-756 or  
59 [33-887a] subsection (a) of section 33-887b. In any proceeding  
60 commenced under this section, a director has all of the defenses  
61 ordinarily available to a director.

62 (b) A director held liable under subsection (a) of this section for an  
63 unlawful distribution is entitled to contribution: (1) From every other  
64 director who could be held liable under subsection (a) of this section  
65 for the unlawful distribution; and (2) from each shareholder for the  
66 amount the shareholder accepted knowing the distribution was made  
67 in violation of section 33-687 or [33-887a] subsection (a) of section 33-  
68 887b or the certificate of incorporation.

69 (c) A proceeding under this section to enforce (1) the liability of a  
70 director under subsection (a) of this section is barred unless it is  
71 commenced within two years after the date (A) on which the effect of  
72 the distribution was measured under subsection (e) or (g) of section 33-  
73 687, (B) as of which a violation of subsection (a) of section 33-687  
74 occurred as a consequence of disregarding a restriction in the  
75 certificate of incorporation, or (C) on which the distribution of assets to  
76 shareholders was made under section [33-887a] subsection (a) of  
77 section 33-887b; or (2) contribution or recoupment under subsection (b)  
78 of this section is barred unless it is commenced within one year after  
79 the liability of the claimant has been finally adjudicated under  
80 subsection (a) of this section.

81 (d) For purposes of this section, a director shall be deemed to have

82 voted for a distribution if such director was present at the meeting of  
83 the board of directors or committee thereof at the time such  
84 distribution was authorized and did not vote in dissent therefrom, or if  
85 such director consented thereto pursuant to section 33-749.

86 Sec. 3. Section 33-776 of the general statutes is repealed and the  
87 following is substituted in lieu thereof (*Effective October 1, 2014*):

88 (a) A corporation may indemnify and advance expenses under  
89 sections 33-770 to 33-779, inclusive, as amended by this act, to an  
90 officer [, employee or agent] of the corporation who is a party to a  
91 proceeding because he is an officer [, employee or agent] of the  
92 corporation (1) to the same extent as a director, and (2) if he is an  
93 officer [, employee or agent] but not a director, to such further extent [,  
94 consistent with public policy,] as may be provided by contract, the  
95 certificate of incorporation, the bylaws or a resolution of the board of  
96 directors except for (A) liability in connection with a proceeding by or  
97 in the right of the corporation other than for expenses incurred in  
98 connection with the proceeding, or (B) liability arising out of conduct  
99 that (i) constitutes a knowing and culpable violation of law by the  
100 officer, (ii) enabled the officer to receive an improper personal gain,  
101 (iii) showed a lack of good faith and conscious disregard for the duty  
102 of the officer to the corporation under circumstances in which the  
103 officer was aware that his conduct or omission created an unjustifiable  
104 risk of serious injury to the corporation, or (iv) constituted a sustained  
105 and unexcused pattern of inattention that amounted to an abdication  
106 of the officer's duty to the corporation. A corporation may delegate to  
107 its general counsel or other specified officer or officers the ability  
108 under this subsection to determine that indemnification or advance for  
109 expenses to such officer [, employee or agent] is permissible and the  
110 ability to authorize payment of such indemnification or advance for  
111 expenses. Nothing in this subdivision shall in any way limit either the  
112 ability or the obligation of a corporation to indemnify and advance  
113 expenses under other applicable law to any officer [, employee or  
114 agent] who is not a director.

115 (b) The provisions of subdivision (2) of subsection (a) of this section  
116 shall apply to an officer [, employee or agent] who is also a director if  
117 the basis on which he is made a party to the proceeding is an act or  
118 omission solely as an officer, [, employee or agent.]

119 (c) An officer [, employee or agent] of a corporation who is not a  
120 director is entitled to mandatory indemnification under section 33-772  
121 and may apply to a court under section 33-774 for indemnification or  
122 advance for expenses, in each case to the same extent to which a  
123 director may be entitled to indemnification or advance for expenses  
124 under said sections.

125 (d) A corporation which was incorporated under the laws of this  
126 state, whether under chapter 599 of the general statutes, revised to  
127 January 1, 1995, or any other general law or special act, prior to  
128 January 1, 1997, shall, except to the extent that the certificate of  
129 incorporation expressly provides otherwise, indemnify under sections  
130 33-770 to 33-779, inclusive, as amended by this act, except subdivision  
131 (2) of subsection (a) of section 33-771, each officer, employee or agent  
132 of the corporation who is not a director to the same extent as the  
133 corporation is permitted to provide the same to a director pursuant to  
134 subdivision (1) of subsection (a) and subsections (b), (c) and (d) of  
135 section 33-771, as limited by section 33-775, and for this purpose the  
136 determination required by section 33-775 may in addition be made by  
137 the general counsel of the corporation, or such other or additional  
138 officer or officers as the board of directors may specify.

139 Sec. 4. Section 33-777 of the general statutes is repealed and the  
140 following is substituted in lieu thereof (*Effective October 1, 2014*):

141 A corporation may purchase and maintain insurance on behalf of an  
142 individual who is a director [,] or officer [, employee or agent] of the  
143 corporation, or who, while a director [,] or officer [, employee or agent]  
144 of the corporation, serves at the corporation's request as a director,  
145 officer, partner, trustee, employee or agent of another domestic or  
146 foreign corporation, partnership, joint venture, trust, employee benefit

147 plan or other entity, against liability asserted against or incurred by  
148 him in that capacity or arising from his status as a director [,] or officer  
149 [, employee or agent,] whether or not the corporation would have  
150 power to indemnify or advance expenses to him against the same  
151 liability under sections 33-770 to 33-779, inclusive, as amended by this  
152 act.

153 Sec. 5. Section 33-778 of the general statutes is repealed and the  
154 following is substituted in lieu thereof (*Effective October 1, 2014*):

155 (a) A corporation may, by a provision in its certificate of  
156 incorporation or bylaws or in a resolution adopted or a contract  
157 approved by its board of directors or shareholders, obligate itself in  
158 advance of the act or omission giving rise to a proceeding to provide  
159 indemnification in accordance with section 33-771 or advance funds to  
160 pay for or reimburse expenses in accordance with section 33-773. Any  
161 such obligatory provision shall be deemed to satisfy the requirements  
162 for authorization referred to in subsection (c) of section 33-773 and  
163 subsection (c) of section 33-775. Any such provision that obligates the  
164 corporation to provide indemnification to the fullest extent permitted  
165 by law shall be deemed to obligate the corporation to advance funds to  
166 pay for or reimburse expenses in accordance with section 33-773 to the  
167 fullest extent permitted by law, unless the provision specifically  
168 provides otherwise.

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

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

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

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

197 (f) Sections 33-770 to 33-779, inclusive, as amended by this act, do  
198 not limit a corporation's power to indemnify, advance expenses to or  
199 provide or maintain insurance on behalf of an employee or agent.

200 Sec. 6. Section 33-715 of the general statutes is repealed and the  
201 following is substituted in lieu thereof (*Effective October 1, 2014*):

202 (a) One or more shareholders may create a voting trust, conferring  
203 on a trustee the right to vote or otherwise act for them, by signing an  
204 agreement setting out the provisions of the trust, which may include  
205 anything consistent with its purpose, and transferring their shares to  
206 the trustee. When a voting trust agreement is signed, the trustee shall  
207 prepare a list of the names and addresses of all voting trust beneficial  
208 owners, [of beneficial interests in the trust,] together with the number  
209 and class of shares each transferred to the trust, and deliver copies of

210 the list and agreement to the corporation's principal office.

211 (b) A voting trust becomes effective on the date the first shares  
212 subject to the trust are registered in the trustee's name. [A voting trust  
213 is valid for not more than ten years after its effective date unless  
214 extended under subsection (c) of this section.

215 (c) All or some of the parties to a voting trust may extend it for  
216 additional terms of not more than ten years each by signing an  
217 extension agreement and obtaining the voting trustee's written consent  
218 to the extension. An extension is valid for ten years from the date the  
219 first shareholder signs the extension agreement. The voting trustee  
220 must deliver copies of the extension agreement and list of beneficial  
221 owners to the corporation's principal office. An extension agreement  
222 binds only those parties signing it.]

223 (c) Limits, if any, on the duration of a voting trust shall be as set  
224 forth in the voting trust, except that a voting trust that became effective  
225 on or before September 30, 2014, is valid for not more than ten years  
226 after its effective date unless such voting trust is: (1) Extended in  
227 accordance with the provisions of subsection (d) of this section; or (2)  
228 amended to provide otherwise by unanimous agreement of the parties  
229 to the voting trust.

230 (d) All or some of the parties to a voting trust in effect on or before  
231 September 30, 2014, may extend such voting trust for additional terms  
232 of not more than ten years each by signing an extension agreement and  
233 obtaining the voting trustee's written consent to the extension. Such  
234 extension is valid for ten years from the date the first shareholder signs  
235 the extension agreement. The voting trustee must deliver copies of the  
236 extension agreement and list of beneficial owners to the corporation's  
237 principal office. An extension agreement binds only those parties  
238 signing the extension agreement.

239 Sec. 7. Section 33-717 of the general statutes is repealed and the  
240 following is substituted in lieu thereof (*Effective October 1, 2014*):

241 (a) An agreement among the shareholders of a corporation that  
242 complies with this section is effective among the shareholders and the  
243 corporation even though it is inconsistent with one or more other  
244 provisions of sections 33-600 to 33-998, inclusive, as amended by this  
245 act, in that it:

246 (1) Eliminates the board of directors or restricts the discretion or  
247 powers of the board of directors;

248 (2) Governs the authorization or making of distributions whether or  
249 not in proportion to ownership of shares, subject to the limitations in  
250 section 33-687;

251 (3) Establishes who shall be directors or officers of the corporation,  
252 or their terms of office or manner of selection or removal;

253 (4) Governs, in general or in regard to specific matters, the exercise  
254 or division of voting power by or between the shareholders and  
255 directors or by or among any of them, including use of weighted  
256 voting rights or director proxies;

257 (5) Establishes the terms and conditions of any agreement for the  
258 transfer or use of property or the provision of services between the  
259 corporation and any shareholder, director, officer or employee of the  
260 corporation or among any of them;

261 (6) Transfers to one or more shareholders or other persons all or  
262 part of the authority to exercise the corporate powers or to manage the  
263 business and affairs of the corporation, including the resolution of any  
264 issue about which there exists a deadlock among directors or  
265 shareholders;

266 (7) Requires dissolution of the corporation at the request of one or  
267 more of the shareholders or upon the occurrence of a specified event or  
268 contingency; or

269 (8) Otherwise governs the exercise of the corporate powers or the

270 management of the business and affairs of the corporation or the  
271 relationship among the shareholders, the directors and the  
272 corporation, or among any of them, and is not contrary to public  
273 policy.

274 (b) An agreement authorized by this section shall be: (1) Set forth  
275 (A) in the certificate of incorporation or bylaws and approved by all  
276 persons who are shareholders at the time of the agreement or (B) in a  
277 written agreement that is signed by all persons who are shareholders  
278 at the time of the agreement and is made known to the corporation;  
279 and (2) subject to amendment only by all persons who are  
280 shareholders at the time of the amendment, unless the agreement  
281 provides otherwise. [; and (3) valid for ten years, unless the agreement  
282 provides otherwise.]

283 (c) The existence of any agreement authorized by this section shall  
284 be noted conspicuously on the front or back of each certificate for  
285 outstanding shares or on the information statement required by  
286 subsection (b) of section 33-677. If at the time of the agreement the  
287 corporation has shares outstanding represented by certificates, the  
288 corporation shall recall the outstanding certificates and issue substitute  
289 certificates that comply with this subsection. The failure to note the  
290 existence of the agreement on the certificate or information statement  
291 shall not affect the validity of the agreement or any action taken  
292 pursuant to it. Any purchaser of shares who, at the time of purchase,  
293 did not have knowledge of the existence of the agreement shall be  
294 entitled to rescission of the purchase. A purchaser shall be deemed to  
295 have knowledge of the existence of the agreement if its existence is  
296 noted on the certificate or information statement for the shares in  
297 compliance with this subsection and, if the shares are not represented  
298 by a certificate, the information statement is delivered to the purchaser  
299 at or prior to the time of purchase of the shares. An action to enforce  
300 the right of rescission authorized by this subsection must be  
301 commenced within the earlier of ninety days after discovery of the  
302 existence of the agreement or two years after the time of purchase of

303 the shares.

304 (d) An agreement authorized by this section shall cease to be  
305 effective when the corporation becomes a public corporation. If the  
306 agreement ceases to be effective for any reason, the board of directors  
307 may, if the agreement is contained or referred to in the corporation's  
308 certificate of incorporation or bylaws, adopt an amendment to the  
309 certificate of incorporation or bylaws, without shareholder action, to  
310 delete the agreement and any references to it.

311 (e) An agreement authorized by this section that limits the  
312 discretion or powers of the board of directors shall relieve the directors  
313 of, and impose upon the person or persons in whom such discretion or  
314 powers are vested, liability for acts or omissions imposed by law on  
315 directors to the extent that the discretion or powers of the directors are  
316 limited by the agreement.

317 (f) The existence or performance of an agreement authorized by this  
318 section shall not be a ground for imposing personal liability on any  
319 shareholder for the acts or debts of the corporation even if the  
320 agreement or its performance treats the corporation as if it were a  
321 partnership or results in failure to observe the corporate formalities  
322 otherwise applicable to the matters governed by the agreement.

323 (g) Incorporators or subscribers for shares may act as shareholders  
324 with respect to an agreement authorized by this section if no shares  
325 have been issued when the agreement is made.

326 (h) Limits, if any, on the duration of an agreement authorized by  
327 this section shall be as set forth in the agreement, except that such an  
328 agreement in effect on or before September 30, 2014, is valid for ten  
329 years unless the agreement provided otherwise.

330 Sec. 8. Section 33-736 of the general statutes is repealed and the  
331 following is substituted in lieu thereof (*Effective October 1, 2014*):

332 (a) The certificate of incorporation or bylaws may prescribe

333 qualifications for (1) directors, or (2) nominees for directors. [A director  
334 need not be a resident of this state or a shareholder of the corporation  
335 unless the certificate of incorporation or bylaws so prescribe.]  
336 Qualifications for directors or nominees for directors shall be lawful  
337 and reasonable as applied to the corporation.

338 (b) A requirement that is based on a past, current or prospective  
339 action, or expression of an opinion, by a nominee or director that could  
340 limit the ability of a nominee or director to discharge his or her duties  
341 as a director is not a permissible qualification under this section; except  
342 that a qualification may include not being or having been subject to  
343 specified criminal, civil or regulatory sanctions or not having been  
344 removed as a director by judicial action or for cause.

345 (c) A director need not be a resident of this state or a shareholder of  
346 the corporation unless the certificate of incorporation or bylaws so  
347 prescribe.

348 (d) A qualification for nomination for director prescribed before a  
349 person's nomination shall apply to such person at the time of  
350 nomination. A qualification for nomination for director prescribed  
351 after a person's nomination shall not apply to such person with respect  
352 to such nomination.

353 (e) A qualification for director prescribed before the start of a  
354 director's term may apply only at the time an individual becomes a  
355 director or may apply during a director's term. A qualification  
356 prescribed during a director's term shall not apply to that director  
357 before the end of that term.

358 Sec. 9. Subsection (f) of section 34-32c of the general statutes is  
359 repealed and the following is substituted in lieu thereof (*Effective*  
360 *October 1, 2014*):

361 (f) Upon the filing of the certificate of reinstatement with the  
362 Secretary of the State, reinstatement shall be effective, the legal  
363 existence of the reinstated limited partnership shall commence and it

364 shall be revested with its rights and powers under this chapter. If  
365 reinstatement follows cancellation of the limited partnership by  
366 forfeiture, as provided in section 34-32b, then the reinstatement shall  
367 relate back to and take effect as of the effective date of the cancellation,  
368 and the limited partnership shall resume carrying out its business as if  
369 the cancellation had never occurred. No action or proceeding, civil or  
370 criminal, to which the limited partnership is a party at the time of  
371 reinstatement shall be affected by such reinstatement except as the  
372 court shall, under the circumstances, determine. The reinstated limited  
373 partnership shall be estopped to deny its legal existence during such  
374 time as its rights and powers were forfeited.

375 Sec. 10. Subsection (f) of section 34-216 of the general statutes is  
376 repealed and the following is substituted in lieu thereof (*Effective*  
377 *October 1, 2014*):

378 (f) Upon the filing of the certificate of reinstatement with the  
379 Secretary of the State, reinstatement shall be effective, the legal  
380 existence of the reinstated limited liability company shall commence  
381 and it shall be revested with its rights and powers under sections 34-  
382 100 to 34-242, inclusive. If reinstatement follows dissolution by  
383 forfeiture, as provided in section 34-215, then the reinstatement shall  
384 relate back to and take effect as of the effective date of the dissolution  
385 by forfeiture, and the limited liability company shall resume carrying  
386 out its business as if the dissolution by forfeiture had never occurred.  
387 No action or proceeding, civil or criminal, to which the limited liability  
388 company is a party at the time of reinstatement shall be affected by  
389 such reinstatement except as the court shall, under the circumstances,  
390 determine. Any claim against the limited liability company barred as  
391 provided in section 34-213 and not otherwise barred, shall be relieved  
392 of such bar upon reinstatement of the limited liability company and  
393 the reinstated limited liability company shall be estopped to deny its  
394 legal existence during such time as its rights and powers were  
395 forfeited.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2014	33-706
Sec. 2	October 1, 2014	33-757
Sec. 3	October 1, 2014	33-776
Sec. 4	October 1, 2014	33-777
Sec. 5	October 1, 2014	33-778
Sec. 6	October 1, 2014	33-715
Sec. 7	October 1, 2014	33-717
Sec. 8	October 1, 2014	33-736
Sec. 9	October 1, 2014	34-32c(f)
Sec. 10	October 1, 2014	34-216(f)

**Statement of Legislative Commissioners:**

In section 9(f), "then the cancellation shall relate back" was changed to "then the reinstatement shall relate back" for accuracy.

**JUD**      *Joint Favorable Subst. -LCO*