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## **OLR Bill Analysis**

### **sSB 411**

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

#### **SUMMARY:**

This bill makes a number of changes to the business corporation statutes. It:

1. limits when business corporations can indemnify and advance expenses to officers;
2. eliminates statutory provisions indemnifying and advancing expenses to corporate employees and agents but does not limit the corporation's ability to provide these protections otherwise;
3. removes time limits on the validity of voting trusts and shareholder agreements and allows the agreements creating them to set their term, for agreements taking effect after September 30, 2014;
4. requires qualifications for directors or nominees for director to be reasonable and adds specific provisions about qualifications;
5. allows the reinstatement of a limited liability company (LLC) or limited partnership (LP) after its administrative dissolution or cancellation for failure to maintain a statutory agent for service of process to relate back to the effective date of the dissolution;
6. makes minor changes regarding proxies; and
7. makes technical and conforming changes and corrects an improper reference.

**EFFECTIVE DATE:** October 1, 2014

## **§ 1 — PROXIES**

### ***Electronic Appointments***

By law, a shareholder or his or her agent or attorney can appoint a proxy to vote or act on the shareholder's behalf by an electronic transmission. The bill requires the electronic transmission to contain or be accompanied by information that allows someone to determine the electronic transmission is authorized by the shareholder, agent, or attorney.

### ***Revocability***

By law, a proxy is irrevocable if (1) it states it is irrevocable and (2) the appointment is coupled with an interest, which includes appointment of someone who purchases or agrees to purchase the shares, a corporate employee whose employment contract requires appointment, or a party to a voting agreement.

By law, someone who purchases shares subject to an irrevocable appointment can revoke the appointment if he or she did not know of it when acquiring the shares and the appointment was not noted conspicuously on certain documents. The bill specifies that an irrevocable appointment continues after other transfers unless the appointment provides otherwise.

## **§§ 3-5 — INDEMNIFICATION**

### ***Officers***

The bill limits when business corporations can indemnify and advance expenses to officers. Currently, they may provide these protections to officers (1) to the same extent as directors, if the officer is also a director or (2) as provided by contract, the corporation's certificate of incorporation or bylaws, or a board resolution. When an officer is not also a director, the bill prohibits indemnification and advancing expenses based on liability from a legal proceeding by or on behalf of the corporation, other than for expenses incurred connected to the proceeding. It also prohibits it when the officer's conduct:

1. was a knowing and culpable violation of law;

2. enabled the officer to receive an improper personal gain;
3. showed a lack of good faith and conscious disregard for the officer's duty to the corporation under circumstances in which the officer was aware that his or her conduct or omission created an unjustifiable risk of serious injury to the corporation; or
4. was a sustained and unexcused pattern of inattention amounting to an abdication of the officer's duty to the corporation.

The bill also specifies that the indemnification laws do not limit a corporation's power to reimburse expenses that officers incur when appearing as a witness in a proceeding when he or she is not a party. Corporations already have this power for directors.

### ***Employees and Agents***

The bill eliminates statutory rules on how corporations indemnify, advance expenses to, and insure employees and agents. These rules currently treat employees and agents the same as officers. The bill also eliminates provisions:

1. entitling an employee or agent to mandatory indemnification for reasonable expenses in an action based on his or her actions as employee or agent, where the employee or agent successfully defended himself or herself and
2. allowing the employee or agent to request indemnification or advances in similar circumstances.

The bill provides that it does not limit a corporation's ability to indemnify, advance expenses, or provide insurance for an employee or agent. Thus, corporations may still provide these protections to employees and agents subject to any common law rules that may apply and contracts the corporations may have with their employees or agents.

### **§ 6 — VOTING TRUST**

By law, shareholders can sign an agreement to create a voting trust

that gives a trustee the right to vote or act on their behalf. Current law limits a voting trust's validity to no more than 10 years but allows the parties to extend it for up to 10 years. The bill establishes new rules for the length of voting trusts' validity.

1. For voting trusts that become effective starting October 1, 2014, the bill allows the trust to set any time limit.
2. For voting trusts effective before October 1, 2014, the bill retains the 10-year limit but allows (a) the parties to unanimously agree to amend the trust to provide a longer limit or (b) all or some of the parties to extend the trust in the same way as currently applies (i.e. by signing an agreement that binds the parties signing it, obtaining the trustee's consent to the extension, and delivering copies of the agreement and a list of beneficial owners to the corporation).

## **§ 7 — SHAREHOLDER AGREEMENTS**

The law allows shareholders to form agreements that are effective between them and the corporation on certain topics, even if they are inconsistent with the statutes governing corporations. These agreements include such things as eliminating the board, restricting the board's powers or discretion, governing distributions, establishing who is a director or officer, governing the exercise or division of voting power between the shareholders and directors, and the exercise of corporate powers or management of the corporation's affairs.

Currently, these agreements are effective for 10 years unless the agreement provides otherwise. For agreements entered into beginning October 1, 2014, the bill allows the agreement to provide any time limit.

## **§ 8 — QUALIFICATIONS FOR DIRECTORS AND NOMINEES**

The bill specifies that the certificate of incorporation or corporate bylaws may set the qualifications for nominees for director, as well as for directors as authorized by existing law.

By law, a director does not need to be a state resident or shareholder

unless the certificate or bylaws requires it. The bill adds new qualifications for directors and nominees that:

1. require any qualification set by the certificate or bylaw to be lawful and reasonable;
2. prohibit requirements based on a past, current, or prospective action or expression of an opinion that could limit the person's ability to discharge the duties of a director; and
3. allow a qualification that a person (a) have no past or current criminal, civil, or regulatory sanctions or (b) not have been removed as a director by judicial action or for cause.

The bill provides that a qualification for nomination only applies to a person if it is prescribed before he or she is nominated. Qualifications for directors prescribed before a director's term starts can apply at the time the individual becomes a director or can apply during the term but those prescribed during a director's term do not apply during that term.

### **§§ 9-10 — REINSTATEMENT OF LLC OR LP**

By law, the secretary of the state can dissolve an LLC or cancel an LP by forfeiture if it fails to maintain a statutory agent for service of process. But, the LLC or LP can apply for reinstatement. Under the bill, the LLC's or LP's reinstatement relates back and is effective as of the dissolution's or cancellation's effective date. The entity resumes carrying out business as if the dissolution or cancellation never occurred. Currently, when these entities are reinstated for these or other reasons, reinstatement takes effect when the certificate of reinstatement is filed with the secretary.

### **BACKGROUND**

#### ***Related Bill***

sHB 5489, favorably reported by the Judiciary Committee, among other things, subjects corporations and other business entities to the secretary of state's administrative dissolution or similar procedure for failing to file an annual report, eliminates certain entity termination

fees, and allows a registered limited liability partnership whose status is revoked by the secretary to file for reinstatement.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 36 Nay 0 (03/28/2014)