



Substitute Senate Bill No. 967

Public Act No. 15-48

AN ACT CONCERNING REVISIONS TO THE CONNECTICUT BUSINESS CORPORATION ACT, THE UNIFORM LIMITED PARTNERSHIP ACT AND THE CONNECTICUT LIMITED LIABILITY COMPANY ACT.

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

Section 1. Section 33-706 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

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

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

(c) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment that conforms with the requirements of subsection (b) of this subsection is received by the inspector of election or the officer or agent of the corporation authorized to tabulate votes. A photographic

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or similar reproduction of an appointment, or a telegram, cablegram, facsimile transmission, wireless or similar transmission of an appointment received by such person shall be sufficient to effect such appointment. An appointment of a proxy is valid for eleven months unless a longer period is expressly provided in the appointment.

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

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

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

(g) [A] Unless an appointment of a proxy otherwise provides, an appointment made irrevocable under subsection (d) of this section continues in effect after a transfer of the shares and a transferee takes subject to the appointment, except that a transferee for value of shares subject to an irrevocable appointment may revoke the appointment if he did not know of its existence when he acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information

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statement for shares without certificates.

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

Sec. 2. Section 33-715 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

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

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

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

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(c) Limits, if any, on the duration of a voting trust shall be as set forth in the voting trust, except that a voting trust that became effective on or before September 30, 2015, is valid for not more than ten years after its effective date unless such voting trust is: (1) Extended in accordance with the provisions of subsection (d) of this section; or (2) amended to provide otherwise by unanimous agreement of the parties to the voting trust.

(d) All or some of the parties to a voting trust in effect on or before September 30, 2015, may extend such voting trust for additional terms of not more than ten years each by signing an extension agreement and obtaining the voting trustee's written consent to the extension. Such extension is valid for ten years from the date the first shareholder signs the extension agreement. The voting trustee must deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing the extension agreement.

Sec. 3. Section 33-717 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

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

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

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

(3) Establishes who shall be directors or officers of the corporation,

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or their terms of office or manner of selection or removal;

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

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

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

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

(8) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors and the corporation, or among any of them, and is not contrary to public policy.

(b) An agreement authorized by this section shall be: (1) Set forth (A) in the certificate of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement or (B) in a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation; and (2) subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement

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provides otherwise.] and (3) valid for ten years, unless the agreement provides otherwise.]

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

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

(e) An agreement authorized by this section that limits the

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discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

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

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

(h) Limits, if any, on the duration of an agreement authorized by this section shall be as set forth in the agreement, except that such an agreement in effect on or before September 30, 2015, is valid for ten years unless the agreement provides otherwise.

Sec. 4. Section 33-736 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

[The certificate of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless the certificate of incorporation or bylaws so prescribe.]

(a) The certificate of incorporation or bylaws may prescribe qualifications for directors or nominees for directors. Qualifications for directors or nominees for directors shall be lawful and reasonable as applied to the corporation.

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

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

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

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

Sec. 5. Section 33-757 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(a) A director who votes for or assents to a distribution made in violation of section 33-687 or [33-887a] subsection (a) of section 33-887b or the certificate of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating section 33-687 or [33-887a] subsection (a) of section 33-887b or the certificate of incorporation if it is established that he did not perform his duties in compliance with section 33-756 or

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[33-887a] subsection (a) of section 33-887b. In any proceeding commenced under this section, a director has all of the defenses ordinarily available to a director.

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

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

(d) For purposes of this section, a director shall be deemed to have voted for a distribution if such director was present at the meeting of the board of directors or committee thereof at the time such distribution was authorized and did not vote in dissent therefrom, or if such director consented thereto pursuant to section 33-749.

Sec. 6. Section 33-773 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

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(a) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred in connection with the proceeding by an individual who is a party to the proceeding because that individual is a member of the board of directors if the director delivers to the corporation [:

(1) A signed written affirmation of the director's good faith belief that the relevant standard of conduct described in section 33-771 has been met by the director or that the proceeding involves conduct for which liability has been limited under a provision of the certificate of incorporation as authorized by subdivision (4) of subsection (b) of section 33-636; and

(2) A] a signed written undertaking of the director to repay any funds advanced if (1) the director is not entitled to mandatory indemnification under section 33-772, and (2) it is ultimately determined under section 33-774, as amended by this act, or 33-775 that the director [has not met the relevant standard of conduct described in section 33-771] is not entitled to indemnification.

(b) The undertaking required by [subdivision (2) of] subsection (a) of this section must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

(c) Authorizations under this section shall be made:

(1) By the board of directors: (A) If there are two or more qualified directors, by a majority vote of all the qualified directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee consisting solely of two or more qualified directors appointed by such a vote; or (B) if there are fewer than two qualified directors, by the vote necessary for action by the board in accordance with subsection (c) of section 33-752, in which

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authorization directors who are not qualified directors may participate; or

(2) By the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the authorization.

Sec. 7. Section 33-774 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(a) A director who is a party to a proceeding because he is a director may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application and after giving any notice it considers necessary, the court shall: (1) Order indemnification if it determines that the director is entitled to mandatory indemnification under section 33-772; (2) order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by subsection (a) of section 33-778, as amended by this act; or (3) order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable [(A)] to indemnify [the director or (B) to] or advance expenses to the director, even if he has not met the relevant standard of conduct set forth in subsection (a) of section 33-771, failed to comply with section 33-773, as amended by this act, or was adjudged liable in a proceeding referred to in subdivision (1) or (2) of subsection (d) of section 33-771, provided if he was adjudged so liable his indemnification shall be limited to reasonable expenses incurred in connection with the proceeding.

(b) If the court determines that the director is entitled to indemnification under subdivision (1) of subsection (a) of this section or to indemnification or advance for expenses under subdivision (2) of

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subsection (a) of this section, it shall also order the corporation to pay the director's reasonable expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subdivision (3) of subsection (a) of this section, it may also order the corporation to pay the director's reasonable expenses to obtain court-ordered indemnification or advance for expenses.

Sec. 8. Section 33-776 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(a) A corporation may indemnify and advance expenses under sections 33-770 to 33-779, inclusive, as amended by this act, to an officer [, employee or agent] of the corporation who is a party to a proceeding because he is an officer [, employee or agent] of the corporation (1) to the same extent as a director, and (2) if he is an officer [, employee or agent] but not a director, to such further extent [, consistent with public policy,] as may be provided by contract, the certificate of incorporation, the bylaws or a resolution of the board of directors except for (A) liability in connection with a proceeding by or in the right of the corporation other than for expenses incurred in connection with the proceeding, or (B) liability arising out of conduct that (i) constitutes a knowing and culpable violation of law by the officer, (ii) enabled the officer to receive an improper personal gain, (iii) showed a lack of good faith and conscious disregard for the duty of the officer to the corporation under circumstances in which the officer was aware that his conduct or omission created an unjustifiable risk of serious injury to the corporation, or (iv) constituted a sustained and unexcused pattern of inattention that amounted to an abdication of the officer's duty to the corporation. A corporation may delegate to its general counsel or other specified officer or officers the ability under this subsection to determine that indemnification or advance for

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expenses to such officer [, employee or agent] is permissible and the ability to authorize payment of such indemnification or advance for expenses. Nothing in this subdivision shall in any way limit either the ability or the obligation of a corporation to indemnify and advance expenses under other applicable law to any officer [, employee or agent] who is not a director.

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

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

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

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Sec. 9. Section 33-777 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

A corporation may purchase and maintain insurance on behalf of an individual who is a director [,] or officer [, employee or agent] of the corporation, or who, while a director [,] or officer [, employee or agent] of the corporation, serves at the corporation's request as a director, officer, partner, trustee, employee or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan or other entity, against liability asserted against or incurred by him in that capacity or arising from his status as a director [,] or officer [, employee or agent,] whether or not the corporation would have power to indemnify or advance expenses to him against the same liability under sections 33-770 to 33-779, inclusive, as amended by this act.

Sec. 10. Section 33-778 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(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, as amended by this act. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in subsection (c) of section 33-773, as amended by this act, and 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, as amended by this act, to the fullest extent permitted by law, unless the provision specifically provides otherwise.

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(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.

(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.

(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.

(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 or officer in connection with his appearance as a witness in a proceeding at a time when he is not a party.

(f) Sections 33-770 to 33-779, inclusive, as amended by this act, do not limit a corporation's power to indemnify, advance expenses to, or

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provide or maintain insurance on behalf of an employee or agent.

Sec. 11. Subsection (f) of section 34-32c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(f) Upon the filing of the certificate of reinstatement with the Secretary of the State, reinstatement shall be effective, the legal existence of the reinstated limited partnership shall commence and it shall be revested with its rights and powers under this chapter. If reinstatement follows cancellation of the limited partnership by forfeiture, as provided in section 34-32b, the reinstatement shall relate back to and take effect as of the effective date of the cancellation, and the limited partnership shall resume carrying out its business as if the cancellation had never occurred. No action or proceeding, civil or criminal, to which the limited partnership is a party at the time of reinstatement shall be affected by such reinstatement except as the court shall, under the circumstances, determine. The reinstated limited partnership shall be estopped to deny its legal existence during such time as its rights and powers were forfeited.

Sec. 12. Subsection (f) of section 34-216 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(f) Upon the filing of the certificate of reinstatement with the Secretary of the State, reinstatement shall be effective, the legal existence of the reinstated limited liability company shall commence and it shall be revested with its rights and powers under sections 34-100 to 34-242, inclusive, as amended by this act. If reinstatement follows dissolution by forfeiture, as provided in section 34-215, the reinstatement shall relate back to and take effect as of the effective date of the dissolution by forfeiture, and the limited liability company shall resume carrying out its business as if the dissolution by forfeiture had

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never occurred. No action or proceeding, civil or criminal, to which the limited liability company is a party at the time of reinstatement shall be affected by such reinstatement except as the court shall, under the circumstances, determine. Any claim against the limited liability company barred as provided in section 34-213 and not otherwise barred, shall be relieved of such bar upon reinstatement of the limited liability company and the reinstated limited liability company shall be estopped to deny its legal existence during such time as its rights and powers were forfeited.

Approved June 5, 2015