

House of Representatives, March 20, 1998. The Committee on Judiciary reported through REP. LAWLOR, 99th DIST., Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING CORPORATE LAW.

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

1 Section 1. Section 33-742 of the general  
2 statutes is repealed and the following is  
3 substituted in lieu thereof:

4 (a) [The] SUBJECT TO SUBSECTION (e) OF THIS  
5 SECTION, THE shareholders may remove one or more  
6 directors with or without cause unless the  
7 certificate of incorporation provides that  
8 directors may be removed only for cause.

9 (b) If a director is elected by a voting  
10 group of shareholders only the shareholders of  
11 that voting group may participate in the vote to  
12 remove him.

13 (c) [If] SUBJECT TO SUBSECTION (e) OF THIS  
14 SECTION, (1) IF cumulative voting is authorized, a  
15 director may not be removed if the number of votes  
16 sufficient to elect him under cumulative voting is  
17 voted against his removal, [. If] AND (2) IF  
18 cumulative voting is not authorized, a director  
19 may be removed only if the number of votes cast to  
20 remove him exceeds the number of votes cast not to  
21 remove him.

22 (d) A director may be removed by the  
23 shareholders only at a meeting called for the

24 purpose of removing him and the meeting notice  
25 must state that the purpose, or one of the  
26 purposes, of the meeting is removal of the  
27 director.

28 (e) IF THE CORPORATION HAS A CLASS OF VOTING  
29 STOCK REGISTERED PURSUANT TO SECTION 12 OF THE  
30 SECURITIES EXCHANGE ACT OF 1934, AS AMENDED FROM  
31 TIME TO TIME, A DIRECTOR MAY NOT BE REMOVED  
32 WITHOUT CAUSE AT ANY SPECIAL MEETING OF  
33 SHAREHOLDERS HELD PURSUANT TO SUBDIVISION (2) OF  
34 SUBSECTION (a) OF SECTION 33-696 WHICH IS HELD  
35 WITHIN TWELVE MONTHS FOLLOWING (1) THE DATE A  
36 PERSON NOT PREVIOUSLY AN INTERESTED SHAREHOLDER  
37 BECOMES AN INTERESTED SHAREHOLDER, OR (2) THE DATE  
38 ANY PERSON ANNOUNCES OR PUBLICLY DISCLOSES A PLAN,  
39 PROPOSAL OR INTENTION TO PURSUE A TRANSACTION  
40 WHICH WOULD RESULT IN SUCH PERSON BECOMING AN  
41 INTERESTED SHAREHOLDER. FOR PURPOSES OF THIS  
42 SUBSECTION, "INTERESTED SHAREHOLDER" MEANS  
43 "INTERESTED SHAREHOLDER" AS DEFINED IN SECTION  
44 33-843, AS AMENDED BY THIS ACT.

45 Sec. 2. Section 33-840 of the general  
46 statutes is repealed and the following is  
47 substituted in lieu thereof:

48 The terms used in sections 33-840 to 33-842,  
49 inclusive, AS AMENDED BY THIS ACT, shall be  
50 defined as follows:

51 (1) "Affiliate", including the term  
52 "affiliated person", means a person that directly  
53 or indirectly through one or more intermediaries,  
54 controls, or is controlled by, or is under common  
55 control with, a specified person.

56 (2) "Associate", when used to indicate a  
57 relationship with any person, means: (A) Any  
58 domestic or foreign corporation or organization,  
59 other than a corporation or a subsidiary of the  
60 corporation, of which such person is an officer,  
61 director, or partner or is, directly or  
62 indirectly, the beneficial owner of ten per cent  
63 or more of any class of equity securities; (B) any  
64 trust or other estate in which such person has a  
65 substantial beneficial interest or as to which  
66 such person serves as trustee or in a similar  
67 fiduciary capacity; and (C) any relative or spouse  
68 of such person, or any relative of such spouse,  
69 who has the same home as such person or who is a  
70 director or officer of the corporation or any of  
71 its affiliates.

72 (3) "Beneficial owner", when used with  
73 respect to any voting stock, means a person: (A)  
74 That, individually or with any of its affiliates  
75 or associates, beneficially owns voting stock  
76 directly or indirectly; or (B) that, individually  
77 or with any of its affiliates or associates, has:  
78 (i) The right to acquire voting stock, whether  
79 such right is exercisable immediately or only  
80 after the passage of time, pursuant to any  
81 agreement, arrangement or understanding or upon  
82 the exercise of conversion rights, exchange  
83 rights, warrants or options, or otherwise; or (ii)  
84 the right to vote or direct the voting stock  
85 pursuant to any agreement, arrangement or  
86 understanding; or (iii) the right to dispose of or  
87 to direct the disposition of voting stock pursuant  
88 to any agreement, arrangement or understanding; or  
89 (C) that, individually or with any of its  
90 affiliates or associates, has any agreement,  
91 arrangement or understanding for the purpose of  
92 acquiring, holding, voting or disposing of voting  
93 stock with any other person that beneficially  
94 owns, or whose affiliates or associates  
95 beneficially own, directly or indirectly, such  
96 shares of voting stock.

97 (4) "Business combination", when used with  
98 respect to any corporation, means: (A) Any merger,  
99 consolidation or share exchange of the corporation  
100 or any subsidiary with (i) any interested  
101 shareholder or (ii) any other domestic or foreign  
102 corporation, whether or not itself an interested  
103 shareholder, which is, or after the merger,  
104 consolidation or share exchange would be, an  
105 affiliate or associate of an interested  
106 shareholder that was an interested shareholder  
107 prior to the transaction; (B) any sale, lease,  
108 exchange, mortgage pledge, transfer or other  
109 disposition, other than in the usual and regular  
110 course of business, in one transaction or a series  
111 of transactions in any twelve-month period, to any  
112 interested shareholder or any affiliate or  
113 associate of any interested shareholder, other  
114 than the corporation or any of its subsidiaries,  
115 of any assets of the corporation or any subsidiary  
116 having, measured at the time the transaction or  
117 transactions are approved by the board of  
118 directors of the corporation, an aggregate book  
119 value as of the end of the corporation's most

120 recent fiscal quarter of ten per cent or more of  
121 the total market value of the outstanding shares  
122 of the corporation or of its net worth as of the  
123 end of its most recent fiscal quarter; (C) the  
124 issuance or transfer by the corporation, or any  
125 subsidiary, in one transaction or a series of  
126 transactions, of any equity securities of the  
127 corporation or any subsidiary which have an  
128 aggregate market value of five per cent or more of  
129 the total market value of the outstanding shares  
130 of the corporation to any interested shareholder  
131 or any affiliate or associate of any interested  
132 shareholder, other than the corporation or any of  
133 its subsidiaries, except pursuant to the exercise  
134 of warrants, rights or options to subscribe to or  
135 purchase securities offered, issued or granted pro  
136 rata to all holders of the voting stock of the  
137 corporation or any other method affording  
138 substantially proportionate treatment to the  
139 holders of voting stock; (D) the adoption of any  
140 resolution for the liquidation or dissolution of  
141 the corporation or any subsidiary proposed by or  
142 on behalf of an interested shareholder or any  
143 affiliate or associate of any interested  
144 shareholder, other than the corporation or any of  
145 its subsidiaries; or (E) any reclassification of  
146 securities, including any reverse stock split, or  
147 recapitalization of the corporation, or any  
148 merger, consolidation or share exchange of the  
149 corporation with any of its subsidiaries which has  
150 the effect, directly or indirectly, in one  
151 transaction or a series of transactions, of  
152 increasing by five per cent or more of the total  
153 number of outstanding shares, the proportionate  
154 amount of the outstanding shares of any class of  
155 equity securities of the corporation or any  
156 subsidiary which is directly or indirectly owned  
157 by any interested shareholder or any affiliate or  
158 associate of any interested shareholder, other  
159 than the corporation or any of its subsidiaries.

160 (5) "Common stock" means any shares other  
161 than preferred shares.

162 (6) "CONTINUING DIRECTOR" MEANS (A) ANY  
163 MEMBER OF THE BOARD OF DIRECTORS WHO IS NOT AN  
164 AFFILIATE OR ASSOCIATE OF AN INTERESTED  
165 SHAREHOLDER OR ANY OF ITS AFFILIATES, OTHER THAN  
166 THE CORPORATION OR ANY OF ITS SUBSIDIARIES, AND  
167 WHO WAS A DIRECTOR OF THE CORPORATION ON THE DATE

168 IMMEDIATELY PRIOR TO THE EARLIER OF (i) THE DATE A  
169 PERSON BECOMES AN INTERESTED SHAREHOLDER OR (ii)  
170 THE DATE A PERSON ANNOUNCES OR PUBLICLY DISCLOSES  
171 A PLAN, PROPOSAL OR INTENTION TO PURSUE A  
172 TRANSACTION WHICH WOULD RESULT IN SUCH PERSON  
173 BECOMING AN INTERESTED SHAREHOLDER, AND (B) ANY  
174 SUCCESSOR TO SUCH CONTINUING DIRECTOR WHO IS NOT  
175 AN AFFILIATE OR ASSOCIATE OF AN INTERESTED  
176 SHAREHOLDER OR ANY OF ITS AFFILIATES, OTHER THAN  
177 THE CORPORATION OR ANY OF ITS SUBSIDIARIES, AND  
178 WAS RECOMMENDED OR ELECTED BY A MAJORITY OF THE  
179 CONTINUING DIRECTORS AT A MEETING AT WHICH A  
180 QUORUM CONSISTING OF A MAJORITY OF THE CONTINUING  
181 DIRECTORS IS PRESENT.

182 [(6)] (7) "Control", including the terms  
183 "controlling", "controlled by" and "under common  
184 control with", means the possession, directly or  
185 indirectly, of the power to direct or cause the  
186 direction of the board of directors, the  
187 management or the policies of a person, whether  
188 through the ownership of voting securities, by  
189 contract, or otherwise, and the beneficial  
190 ownership of ten per cent or more of the voting  
191 power of the voting stock of a corporation creates  
192 a presumption of control.

193 [(7)] (8) "Corporation" or "domestic  
194 corporation" means any corporation with capital  
195 stock formed under the laws of this state before  
196 or after January 1, 1961, including a real estate  
197 investment trust.

198 [(8)] (9) "Equity security" means: (A) Any  
199 share or similar security, certificate of  
200 interest, or participation in any profit-sharing  
201 agreement, voting trust certificate or certificate  
202 of deposit for a share of the corporation; (B) any  
203 security convertible, with or without  
204 consideration, into any share of the corporation,  
205 or any warrant, right or option to subscribe to or  
206 purchase any share of the corporation; or (C) any  
207 put, call, straddle or other option or privilege  
208 of buying any share of the corporation from or  
209 selling any share of the corporation to another  
210 without being bound to do so.

211 [(9)] (10) "Interested shareholder" means any  
212 person, other than the corporation or any of its  
213 subsidiaries, that is the beneficial owner,  
214 directly or indirectly, of ten per cent or more of  
215 the voting power of the outstanding shares of

216 voting stock of the corporation, or is an  
217 affiliate of the corporation and at any time  
218 within the two-year period immediately prior to  
219 the date in question was the beneficial owner,  
220 directly or indirectly, of ten per cent or more of  
221 the voting power of the then outstanding shares of  
222 voting stock of the corporation. For the purpose  
223 of determining whether a person is an interested  
224 shareholder, the number of shares of voting stock  
225 deemed to be outstanding shall include shares  
226 deemed owned by the person through application of  
227 subdivision (3) of this section but shall not  
228 include any other shares of voting stock which may  
229 be issuable to persons other than the person in  
230 question pursuant to any agreement, arrangement or  
231 understanding, or upon exercise of conversion  
232 rights, exchange rights, warrants or options, or  
233 otherwise.

234 [(10)] (11) "Market value" as of any date  
235 means: (A) In the case of shares of stock of a  
236 corporation, the highest closing sale price during  
237 the thirty-day period immediately preceding the  
238 date in question of a share of such stock on the  
239 composite tape for New-York-Stock-Exchange-listed  
240 stocks, or, if such stock is not quoted on the  
241 composite tape, on the New York Stock Exchange, or  
242 if such stock is not listed on such exchange, on  
243 the principal United States securities exchange  
244 registered under the Securities Exchange Act of  
245 1934 on which such stock is listed, or, if such  
246 stock is not listed on any such exchange, the  
247 highest closing bid quotation with respect to a  
248 share of such stock during the thirty-day period  
249 immediately preceding the date in question on the  
250 National Association of Securities Dealers, Inc.  
251 automated quotations system or any system then in  
252 use, or, if no such quotations are available, the  
253 fair market value on the date in question of a  
254 share of such stock as determined by the board of  
255 directors of the corporation in good faith; and  
256 (B) in the case of property other than cash or  
257 stock, the fair market value of such property on  
258 the date in question as determined by the board of  
259 directors of the corporation in good faith.

260 [(11)] (12) "Person" means a natural person,  
261 company, partnership, foreign or domestic  
262 corporation, limited liability company, trust,  
263 unincorporated organization, government or any

264 other entity or political subdivision, agency or  
265 instrumentality of a government. The term also  
266 includes two or more of the foregoing acting as a  
267 partnership, limited partnership, syndicate or  
268 other group for the purpose of acquiring, holding,  
269 voting or disposing of securities of an issuer.

270 [(12)] (13) "Share exchange" means an  
271 exchange offer or any other exchange of securities  
272 of a person for the voting stock of a corporation.

273 [(13)] (14) "Subsidiary" means any  
274 corporation of which voting stock having a  
275 majority of the votes entitled to be cast is  
276 owned, directly or indirectly, by the corporation.

277 [(14)] (15) "Voting stock" means shares of  
278 capital stock of a corporation entitled to vote  
279 generally in the election of directors.

280 Sec. 3. Section 33-842 of the general  
281 statutes is repealed and the following is  
282 substituted in lieu thereof:

283 (a) For purposes of subsection (b) of this  
284 section:

285 (1) "Announcement date" means the first  
286 general public announcement of the proposal or  
287 intention to make a proposal of the business  
288 combination or its first communication generally  
289 to shareholders of the corporation, whichever is  
290 earlier;

291 (2) "Determination date" means the date on  
292 which an interested shareholder first became an  
293 interested shareholder;

294 (3) "Valuation date" means: (A) For a  
295 business combination voted upon by shareholders,  
296 the later of the day prior to the date of the  
297 shareholders vote or the date twenty days prior to  
298 the consummation of the business combination; and  
299 (B) for a business combination not voted upon by  
300 shareholders, the date of the consummation of the  
301 business combination.

302 (b) The vote required by section 33-841 does  
303 not apply to a business combination as defined in  
304 subparagraph (A) of subdivision (4) of section  
305 33-840, AS AMENDED BY THIS ACT, if each of the  
306 following conditions is met:

307 (1) The aggregate amount of the cash and the  
308 market value as of the valuation date of  
309 consideration other than cash to be received per  
310 share by holders of common stock of each class or  
311 series in such business combination is at least

312 equal to the highest of the following: (A) The  
313 highest per share price, including any brokerage  
314 commissions, transfer taxes and soliciting  
315 dealers' fees, paid by the interested shareholder  
316 for any shares of common stock of the same class  
317 or series acquired by it: (i) Within the two-year  
318 period immediately prior to the announcement date  
319 of the business combination; or (ii) in the  
320 transaction in which it became an interested  
321 shareholder, whichever is higher; or (B) the  
322 market value per share of common stock of the same  
323 class or series on the announcement date or on the  
324 determination date, whichever is higher; or (C)  
325 the price per share equal to the market value per  
326 share of common stock of the same class or series  
327 determined pursuant to subdivision (1)(B) of this  
328 subsection, multiplied by the fraction of: (i) The  
329 highest per share price, including any brokerage  
330 commission, transfer taxes and soliciting dealers'  
331 fees, paid by the interested shareholder for any  
332 shares of common stock of the same class or series  
333 acquired by it within the two-year period  
334 immediately prior to the announcement date, over  
335 (ii) the market value per share of common stock of  
336 the same class or series on the first day in such  
337 two-year period on which the interested  
338 shareholder acquired any shares of common stock.

339 (2) The aggregate amount of the cash and the  
340 market value as of the valuation date of  
341 consideration other than cash to be received per  
342 share by holders of shares of any class or series  
343 of outstanding stock other than common stock is at  
344 least equal to the highest of the following: (A)  
345 The highest per share price, including any  
346 brokerage commissions, transfer taxes and  
347 soliciting dealers' fees, paid by the interested  
348 shareholder for any shares of such class or series  
349 of stock acquired by it: (i) Within the two-year  
350 period immediately prior to the announcement date  
351 of the business combination; or (ii) in the  
352 transaction in which it became an interested  
353 shareholder, whichever is higher; or (B) the  
354 highest preferential amount per share to which the  
355 holders of shares of such class or series of stock  
356 are entitled in the event of any voluntary or  
357 involuntary liquidation, dissolution or winding up  
358 of the corporation; or (C) the market value per  
359 share of such class or series of stock on the

360 announcement date or on the determination date,  
361 whichever is higher; or (D) the price per share  
362 equal to the market value per share of such class  
363 or series of stock determined pursuant to  
364 subdivision (2)(C) of this subsection, multiplied  
365 by the fraction of: (i) The highest per share  
366 price, including any brokerage commissions,  
367 transfer taxes and soliciting dealers' fees, paid  
368 by the interested shareholder for any shares of  
369 any class or series of voting stock acquired by it  
370 within the two-year period immediately prior to  
371 the announcement date, over (ii) the market value  
372 per share of the same class or series of voting  
373 stock on the first day in such two-year period on  
374 which the interested shareholder acquired any  
375 shares of the same class or series of voting  
376 stock.

377 (3) The consideration to be received by  
378 holders of any class or series of outstanding  
379 stock is to be in cash or in the same form as the  
380 interested shareholder has previously paid for  
381 shares of the same class or series of stock. If  
382 the interested shareholder has paid for shares of  
383 any class or series of stock with varying forms of  
384 consideration, the form of consideration for such  
385 class or series of stock shall be either cash or  
386 the form used to acquire the largest number of  
387 shares of such class or series of stock previously  
388 acquired by it.

389 (4) (A) After the interested shareholder has  
390 become an interested shareholder and prior to the  
391 consummation of such business combination: (i)  
392 There shall have been no failure to declare and  
393 pay at the regular date therefor any full periodic  
394 dividends, whether or not cumulative, on any  
395 outstanding preferred stock of the corporation;  
396 (ii) there shall have been no reduction in the  
397 annual rate of dividends paid on any class or  
398 series of stock of the corporation that is not  
399 preferred stock, except as necessary to reflect  
400 any subdivision of the stock; and an increase in  
401 such annual rate of dividends as necessary to  
402 reflect any reclassification, including any  
403 reverse stock split, recapitalization,  
404 reorganization or any similar transaction which  
405 has the effect of reducing the number of  
406 outstanding shares of the stock; and (iii) the  
407 interested shareholder shall not have become the

408 beneficial owner of any additional shares of stock  
409 of the corporation except as part of the  
410 transaction which resulted in such interested  
411 shareholder becoming an interested shareholder or  
412 by virtue of proportionate stock splits or stock  
413 dividends. (B) The provisions of subdivisions  
414 (4)(A)(i) and (4)(A)(ii) of this subsection do not  
415 apply if no interested shareholder or an affiliate  
416 or associate of the interested shareholder voted  
417 as a director of the corporation in a manner  
418 inconsistent with subdivisions (4)(A)(i) and  
419 (4)(A)(ii) and the interested shareholder, within  
420 ten days after any act or failure to act  
421 inconsistent with subdivisions (4)(A)(i) and  
422 (4)(A)(ii), notifies the board of directors of the  
423 corporation in writing that the interested  
424 shareholder disapproves thereof and requests in  
425 good faith that the board of directors rectify  
426 such act or failure to act.

427 (5) After the interested shareholder has  
428 become an interested shareholder, the interested  
429 shareholder shall not have received the benefit,  
430 directly or indirectly, except proportionately as  
431 a shareholder, of any loans, advances, guarantee,  
432 pledges or other financial assistance or any tax  
433 credits or other tax advantages provided by the  
434 corporation or any of its subsidiaries, whether in  
435 anticipation of or in connection with such  
436 business combination or otherwise.

437 (c) (1) Unless the certificate of  
438 incorporation provides otherwise, whether or not  
439 such business combinations are authorized or  
440 consummated in whole or in part after June 4,  
441 1984, or after the interested shareholder became  
442 an interested shareholder, the requirements of  
443 section 33-841 do not apply to business  
444 combinations that specifically, generally, or  
445 generally by types, as to specifically identified  
446 or unidentified existing or future interested  
447 shareholders or their affiliates or associates,  
448 have been approved or exempted therefrom by  
449 resolution of the board of directors of the  
450 corporation: (A) Within two months after June 4,  
451 1984, or such earlier date as may be irrevocably  
452 established by resolution of A MAJORITY OF the  
453 [board of] directors WHO ARE CONTINUING DIRECTORS;  
454 or (B) if involving transactions with a particular  
455 interested shareholder or its existing or future

456 affiliates or associates, at any time prior to the  
457 time that the interested shareholder first became  
458 an interested shareholder BY A RESOLUTION OF A  
459 MAJORITY OF THE DIRECTORS WHO ARE CONTINUING  
460 DIRECTORS; (2) unless by its terms a resolution  
461 adopted under this subsection is made irrevocable,  
462 it may be altered or repealed by [the board of  
463 directors] A RESOLUTION OF A MAJORITY OF THE  
464 DIRECTORS WHO ARE CONTINUING DIRECTORS, but this  
465 shall not affect any business combinations that  
466 have been consummated, or are the subject of any  
467 existing agreement entered into, prior to the  
468 alteration or repeal.

469 (d) Unless the certificate of incorporation  
470 provides otherwise, the requirements of section  
471 33-841 do not apply to any business combination  
472 of: (1) A corporation which is not required to  
473 file reports pursuant to Section 13 or 15(d) of  
474 the Securities Exchange Act of 1934, as amended;  
475 (2) a corporation whose original certificate of  
476 incorporation has a provision or whose  
477 shareholders adopt a certificate of incorporation  
478 amendment after June 4, 1984, by a vote of the  
479 holders of at least eighty per cent of the voting  
480 power of the outstanding shares of the voting  
481 stock of the corporation and the holders of at  
482 least two-thirds of the voting power of the  
483 outstanding shares of voting stock of the  
484 corporation other than voting stock held by  
485 interested shareholders of the corporation, or  
486 affiliates or associates of interested  
487 shareholders, expressly electing not to be  
488 governed by sections 33-840 to 33-842, inclusive,  
489 AS AMENDED BY THIS ACT; or (3) an investment  
490 company registered under the Investment Company  
491 Act of 1940.

492 (e) A business combination involving a  
493 corporation that has a certificate of  
494 incorporation provision which provides that a  
495 business combination may be approved by an  
496 affirmative vote of a lesser proportion of the  
497 voting power of the outstanding shares of voting  
498 stock of the corporation than the proportion  
499 required by section 33-841 is subject to the  
500 voting requirements of said section unless one of  
501 the requirements or exemptions of subsection (b),  
502 (c) or (d) of this section have been met.

503 Sec. 4. Section 33-843 of the general  
504 statutes is repealed and the following is  
505 substituted in lieu thereof:

506 For the purposes of sections 33-843 to  
507 33-845, inclusive, AS AMENDED BY THIS ACT:

508 (1) "Affiliate" means a person that directly,  
509 or indirectly through one or more intermediaries,  
510 controls, or is controlled by, or is under common  
511 control with, a specified person.

512 (2) "Announcement date", when used in  
513 reference to any business combination, means the  
514 date of the first public announcement of the  
515 final, definitive proposal for such business  
516 combination.

517 (3) "Associate", when used to indicate a  
518 relationship with any person, means (A) any  
519 corporation or organization of which such person  
520 is an officer or partner or is, directly or  
521 indirectly, the beneficial owner of ten per cent  
522 or more of any class of voting stock, (B) any  
523 trust or other estate in which such person has at  
524 least a ten per cent beneficial interest or as to  
525 which such person serves as trustee or in a  
526 similar fiduciary capacity, and (C) any relative  
527 or spouse of such person, or any relative of such  
528 spouse, who has the same home as such person.

529 (4) "Beneficial owner", when used with  
530 respect to any voting stock, means a person:

531 (A) That, individually or with or through any  
532 of its affiliates or associates, beneficially owns  
533 such stock, directly or indirectly;

534 (B) That, individually or with or through any  
535 of its affiliates or associates, has (i) the right  
536 to acquire such stock, whether such right is  
537 exercisable immediately or only after the passage  
538 of time or upon the occurrence of a specified  
539 event, pursuant to any agreement, arrangement or  
540 understanding whether or not in writing, or upon  
541 the exercise of conversion rights, exchange  
542 rights, warrants or options, or otherwise;  
543 provided, a person shall not be deemed the  
544 beneficial owner of stock tendered pursuant to a  
545 tender or exchange offer made by such person or  
546 any of such person's affiliates or associates  
547 until such tendered stock is accepted for purchase  
548 or exchange; (ii) the right to vote such stock  
549 pursuant to any agreement, arrangement or  
550 understanding whether or not in writing; provided,

551 a person shall not be deemed the beneficial owner  
552 of any stock under this subparagraph if the  
553 agreement, arrangement or understanding to vote  
554 such stock arises solely from a revocable proxy or  
555 consent given in response to a proxy or consent  
556 solicitation made in accordance with the  
557 applicable rules and regulations under the  
558 Exchange Act and is not then reportable on  
559 Schedule 13D under the Exchange Act or any  
560 comparable or successor report; or (iii) the right  
561 to dispose of such stock pursuant to any  
562 agreement, arrangement or understanding whether or  
563 not in writing; or

564 (C) That, individually or with or through any  
565 of its affiliates or associates, has any  
566 agreement, arrangement or understanding whether or  
567 not in writing for the purpose of acquiring,  
568 except pursuant to a tender or exchange offer  
569 until such tendered stock is accepted for purchase  
570 or exchange as described in subparagraph (B)(i) of  
571 this subdivision, holding, voting, except voting  
572 pursuant to a revocable proxy or consent as  
573 described in subparagraph (B)(ii) of this  
574 subdivision, or disposing of such stock with any  
575 other person that beneficially owns, or whose  
576 affiliates or associates beneficially own,  
577 directly or indirectly, such stock.

578 (5) "Business combination", when used in  
579 reference to any resident domestic corporation and  
580 any interested shareholder of such resident  
581 domestic corporation, means:

582 (A) Any merger or consolidation of such  
583 resident domestic corporation or any subsidiary of  
584 such resident domestic corporation with or into  
585 (i) such interested shareholder or (ii) any other  
586 corporation whether or not itself an interested  
587 shareholder of such resident domestic corporation  
588 which is, or after such merger or consolidation  
589 would be, an affiliate or associate of such  
590 interested shareholder;

591 (B) Any sale, lease, exchange, mortgage,  
592 pledge, transfer or other disposition in one  
593 transaction or a series of transactions to or with  
594 such interested shareholder or any affiliate or  
595 associate of such interested shareholder of assets  
596 of such resident domestic corporation or any  
597 subsidiary of such resident domestic corporation  
598 (i) having an aggregate market value equal to ten

599 per cent or more of the aggregate market value of  
600 all the assets, determined on a consolidated  
601 basis, of such resident domestic corporation, (ii)  
602 having an aggregate market value equal to ten per  
603 cent or more of the aggregate market value of all  
604 the outstanding stock of such resident domestic  
605 corporation, or (iii) representing ten per cent or  
606 more of the earning power or net income,  
607 determined on a consolidated basis, of such  
608 resident domestic corporation, except pursuant to  
609 a dividend or distribution paid or made pro rata  
610 to all holders of common stock of such resident  
611 domestic corporation and to all holders of any  
612 other class of stock of such resident domestic  
613 corporation entitled to participate with the  
614 holders of common stock in the receipt of such  
615 dividend or distribution;

616 (C) The issuance or transfer by such resident  
617 domestic corporation or any subsidiary of such  
618 resident domestic corporation in one transaction  
619 or a series of transactions of any stock of such  
620 resident domestic corporation or any subsidiary of  
621 such resident domestic corporation which has an  
622 aggregate market value equal to five per cent or  
623 more of the aggregate market value of all the  
624 outstanding stock of such resident domestic  
625 corporation to such interested shareholder or any  
626 affiliate or associate of such interested  
627 shareholder, except (i) pursuant to a dividend or  
628 distribution paid or made pro rata to all holders  
629 of common stock of such resident domestic  
630 corporation and to all holders of any other class  
631 of stock of such resident domestic corporation  
632 entitled to participate with the holders of common  
633 stock in the receipt of such dividend or  
634 distribution, or (ii) pursuant to the exercise of  
635 warrants or rights to purchase stock or pursuant  
636 to the conversion of convertible securities;

637 (D) The adoption of any plan or proposal for  
638 the complete or partial liquidation or dissolution  
639 of such resident domestic corporation or any  
640 subsidiary of such resident domestic corporation,  
641 or declarations or payments of dividends and  
642 distributions to the holders of stock of such  
643 resident domestic corporation in any twelve-month  
644 period having an aggregate market value of more  
645 than five per cent of the aggregate market value  
646 of all assets, determined on a consolidated basis,

647 of such resident domestic corporation as of the  
648 beginning of such twelve-month period, which plan  
649 or proposal is, or declarations or payments are,  
650 proposed by, or pursuant to any agreement,  
651 arrangement or understanding whether or not in  
652 writing with, such interested shareholder or any  
653 affiliate or associate of such interested  
654 shareholder, at any time following such interested  
655 shareholder's stock acquisition date;

656 (E) Any reclassification of securities  
657 including, without limitation, any stock split,  
658 stock dividend, or other distribution of stock in  
659 respect of stock, or any reverse stock split, or  
660 recapitalization of such resident domestic  
661 corporation, or any merger or consolidation of  
662 such resident domestic corporation with any  
663 subsidiary of such resident domestic corporation,  
664 or any other transaction whether or not with or  
665 into or otherwise involving such interested  
666 shareholder, which reclassification, merger,  
667 consolidation or other transaction (i) has the  
668 effect, directly or indirectly, of increasing the  
669 proportionate share of the outstanding shares of  
670 any class or series of voting stock or securities  
671 convertible into voting stock of such resident  
672 domestic corporation or any subsidiary of such  
673 resident domestic corporation which is directly or  
674 indirectly owned by such interested shareholder or  
675 any affiliate or associate of such interested  
676 shareholder, except as a result of immaterial  
677 changes due to fractional share adjustments, and  
678 (ii) is proposed by, or pursuant to any agreement,  
679 arrangement or understanding whether or not in  
680 writing with, such interested shareholder or any  
681 affiliate or associate of such interested  
682 shareholder at any time following such interested  
683 shareholder's stock acquisition date; or

684 (F) Any receipt by such interested  
685 shareholder or any affiliate or associate of such  
686 interested shareholder of the benefit, directly or  
687 indirectly, except proportionately as a  
688 shareholder of such resident domestic corporation,  
689 of any loans, advances, guarantees, pledges or  
690 other financial assistance or any tax credits or  
691 other tax advantages provided by or through such  
692 resident domestic corporation or any subsidiary of  
693 such resident domestic corporation; provided, for  
694 purposes of subparagraphs (A), (B) and (C) of this

695 subdivision, a corporation, hereinafter referred  
696 to as the "other corporation", which has entered  
697 into a definitive agreement or an agreement in  
698 principle or has an arrangement or understanding,  
699 whether formal or informal, in writing or not,  
700 with such resident domestic corporation or any  
701 subsidiary of such resident domestic corporation  
702 providing for any of the transactions contemplated  
703 by subparagraphs (A), (B) and (C) of this  
704 subdivision between such resident domestic  
705 corporation or any subsidiary of such resident  
706 domestic corporation and the other corporation or  
707 any subsidiary of the other corporation shall not  
708 be deemed to be an associate of such interested  
709 shareholder solely by reason of the fact that,  
710 after the date of such definitive agreement or  
711 agreement in principle or arrangement or  
712 understanding or the date of the first public  
713 announcement or disclosure of such transaction,  
714 whichever is earlier, such interested shareholder  
715 becomes, or after such transaction would become,  
716 directly or indirectly, the beneficial owner of  
717 ten per cent or more of any class of voting stock  
718 of the other corporation.

719 (6) "CONTINUING DIRECTOR" MEANS (A) ANY  
720 MEMBER OF THE BOARD OF DIRECTORS WHO IS NOT AN  
721 AFFILIATE OR ASSOCIATE OF AN INTERESTED  
722 SHAREHOLDER OR ANY OF ITS AFFILIATES, OTHER THAN  
723 THE CORPORATION OR ANY OF ITS SUBSIDIARIES, AND  
724 WHO WAS A DIRECTOR OF THE CORPORATION ON THE DATE  
725 IMMEDIATELY PRIOR TO THE EARLIER OF (i) THE DATE A  
726 PERSON BECOMES AN INTERESTED SHAREHOLDER OR (ii)  
727 THE DATE A PERSON ANNOUNCES OR PUBLICLY DISCLOSES  
728 A PLAN, PROPOSAL OR INTENTION TO PURSUE A  
729 TRANSACTION WHICH WOULD RESULT IN SUCH PERSON  
730 BECOMING AN INTERESTED SHAREHOLDER, AND (B) ANY  
731 SUCCESSOR TO SUCH CONTINUING DIRECTOR WHO IS NOT  
732 AN AFFILIATE OR ASSOCIATE OF AN INTERESTED  
733 SHAREHOLDER OR ANY OF ITS AFFILIATES, OTHER THAN  
734 THE CORPORATION OR ANY OF ITS SUBSIDIARIES, AND  
735 WAS RECOMMENDED OR ELECTED BY A MAJORITY OF THE  
736 CONTINUING DIRECTORS AT A MEETING AT WHICH A  
737 QUORUM CONSISTING OF A MAJORITY OF THE CONTINUING  
738 DIRECTORS IS PRESENT.

739 [(6)] (7) "Control", including the terms  
740 "controlling", "controlled by" and "under common  
741 control with", means the possession, directly or  
742 indirectly, of the power to direct or cause the

743 direction of the management and policies of a  
744 person, whether through the ownership of voting  
745 stock, by contract or otherwise. A person's  
746 beneficial ownership of ten per cent or more of  
747 the voting power of a corporation's outstanding  
748 voting stock shall create a presumption that such  
749 person has control of such corporation.  
750 Notwithstanding the foregoing, a presumption of  
751 control shall not apply where such person holds  
752 voting stock, in good faith and not for the  
753 purpose of circumventing sections 33-843 to  
754 33-845, inclusive, AS AMENDED BY THIS ACT, as an  
755 agent, bank, broker, nominee, custodian or trustee  
756 for one or more beneficial owners who do not  
757 individually or as a group have control of such  
758 corporation.

759 [(7)] (8) "Corporation" means any  
760 corporation, whether domestic or foreign.

761 [(8)] (9) "Exchange Act" means the Act of  
762 Congress known as the Securities Exchange Act of  
763 1934, as the same has been or hereafter may be  
764 amended from time to time.

765 [(9)] (10) "Interested shareholder", when  
766 used in reference to any resident domestic  
767 corporation, means any person, other than such  
768 resident domestic corporation or any subsidiary of  
769 such resident domestic corporation, that: (A) Is  
770 the beneficial owner, directly or indirectly, of  
771 ten per cent or more of the voting power of the  
772 outstanding voting stock of such resident domestic  
773 corporation; or (B) is an affiliate or associate  
774 of such resident domestic corporation and at any  
775 time within the five-year period immediately prior  
776 to the date in question was the beneficial owner,  
777 directly or indirectly, of ten per cent or more of  
778 the voting power of the then outstanding voting  
779 stock of such resident domestic corporation;  
780 provided for the purpose of determining whether a  
781 person is an interested shareholder, the number of  
782 shares of voting stock of such resident domestic  
783 corporation deemed to be outstanding shall include  
784 shares deemed to be beneficially owned by the  
785 person but shall not include any other unissued  
786 shares of voting stock of such resident domestic  
787 corporation which may be issuable pursuant to any  
788 agreement, arrangement or understanding, or upon  
789 exercise of conversion rights, warrants or  
790 options, or otherwise.

791 [(10)] (11) "Person" means a natural person,  
792 company, partnership, foreign or domestic  
793 corporation, limited liability company, trust,  
794 unincorporated organization, government or any  
795 other entity or political subdivision, agency or  
796 instrumentality of a government. The term also  
797 includes two or more of the foregoing acting as a  
798 partnership, limited partnership, syndicate, joint  
799 venture or other formal or informal group for the  
800 purpose of acquiring, holding, voting or disposing  
801 of securities of an issuer.

802 [(11)] (12) "Resident domestic corporation"  
803 means an issuer of voting stock which: (A) Is  
804 organized under the laws of this state; and (B)  
805 has its principal executive offices or significant  
806 business operations located in this state or has a  
807 significant financial relationship with one or  
808 more businesses located in this state; provided no  
809 resident domestic corporation shall cease to be a  
810 resident domestic corporation by reason of events  
811 occurring or actions taken while such resident  
812 domestic corporation is subject to the provisions  
813 of sections 33-843 to 33-845, inclusive, AS  
814 AMENDED BY THIS ACT.

815 [(12)] (13) "Stock" means: (A) Any stock or  
816 similar security, any certificate of interest, any  
817 participation in any profit-sharing agreement, any  
818 voting trust certificate or any certificate of  
819 deposit for stock; and (B) any security  
820 convertible, with or without consideration, into  
821 stock, or any warrant, call or other option or  
822 privilege of buying stock without being bound to  
823 do so, or any other security carrying any right to  
824 acquire, subscribe to or purchase stock.

825 [(13)] (14) "Stock acquisition date", with  
826 respect to any person and any resident domestic  
827 corporation, means the date that such person first  
828 becomes an interested shareholder of such resident  
829 domestic corporation.

830 [(14)] (15) "Subsidiary" of any resident  
831 domestic corporation means any other corporation  
832 of which voting stock, having a majority of the  
833 voting power of the outstanding voting stock of  
834 such other corporation, is owned, directly or  
835 indirectly, by such resident domestic corporation.

836 [(15)] (16) "Voting stock" means shares of  
837 capital stock of a corporation entitled to vote  
838 generally in the election of directors.

839 Sec. 5. Section 33-844 of the general  
840 statutes is repealed and the following is  
841 substituted in lieu thereof:

842 (a) Except as provided in section 33-845,  
843 notwithstanding anything to the contrary in  
844 sections 33-840 to 33-845, inclusive, AS AMENDED  
845 BY THIS ACT, no resident domestic corporation  
846 shall engage in any business combination with any  
847 interested shareholder of such resident domestic  
848 corporation for a period of five years following  
849 such interested shareholder's stock acquisition  
850 date unless such business combination or the  
851 purchase of stock made by such interested  
852 shareholder on such interested shareholder's stock  
853 acquisition date is approved by [the board of] A  
854 MAJORITY OF THE directors of such resident  
855 domestic corporation WHO ARE CONTINUING DIRECTORS  
856 and by a majority of the nonemployee directors of  
857 which there shall be at least two, prior to such  
858 interested shareholder's stock acquisition date.

859 (b) If a good faith proposal is made in  
860 writing to the board of directors of a resident  
861 domestic corporation regarding a business  
862 combination, the board of directors shall respond,  
863 in writing, within forty-five days or such shorter  
864 period, if any, as may be required by the Exchange  
865 Act, setting forth its reasons for its decision  
866 regarding such proposal. If a good faith proposal  
867 to purchase stock is made in writing to the board  
868 of directors of a resident domestic corporation,  
869 the board of directors, unless it responds  
870 affirmatively in writing within forty-five days or  
871 such shorter period, if any, as may be required by  
872 the Exchange Act, shall be deemed to have  
873 disapproved such stock purchase.

874 (c) The provisions of this section shall be  
875 in addition to any other provisions of the general  
876 statutes which apply to such business combination.

877 Sec. 6. This act shall take effect from its  
878 passage and shall be applicable to any special  
879 meeting of shareholders or any action taken by a  
880 board of directors on or after said date.

881 STATEMENT OF LEGISLATIVE COMMISSIONERS: The  
882 prefatory language for section 1, which had been  
883 inadvertently omitted, was added and in subsection  
884 (e) of section 1 "SECURITIES EXCHANGE ACT" was

885 substituted for "SECURITIES AND EXCHANGE ACT" for  
886 accuracy.

887 JUD COMMITTEE VOTE: YEA 28 NAY 8 JFS-LCO

\* \* \* \* \*

"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

\* \* \* \* \*

**FISCAL IMPACT STATEMENT - BILL NUMBER SHB 5695**

STATE IMPACT	See Explanation Below
MUNICIPAL IMPACT	See Explanation Below
STATE AGENCY(S)	Treasurer's Office, Secretary of the State

**EXPLANATION OF ESTIMATES:**

STATE AND MUNICIPAL IMPACT: The bill potentially results in a loss of asset value for state and municipal retirement systems investments in companies incorporated in Connecticut. The degree of loss of investment value cannot be determined but could be significant if Wall Street investors consider this bill a threat and a form of government intervention in the free market. The actual magnitude of the impact will be determined by the securities market, which determines the trading price of stocks of companies.

The value of the State Employees' Retirement Fund and Teachers' Retirement Fund investment in Connecticut incorporated companies is \$13.5 million (market value) in seven Connecticut companies as of the week ending March 20, 1998. The total value of all investments in the combined pensions is \$17.0 billion.

The bill is not expected to have a fiscal impact on commercial recording functions at the Secretary of the State's Office (SOS).

\* \* \* \* \*

**OLR BILL ANALYSIS**

HB 5695

**AN ACT CONCERNING CORPORATE LAW**

**SUMMARY:** This bill makes it harder to achieve a hostile takeover of Connecticut publicly traded corporations. A hostile takeover involves a merger or other combination between a corporation and another entity which is opposed by the corporation's board of directors and management.

The bill, under certain circumstances, prohibits shareholders from removing a director at a special meeting within 12 months after a person (corporate or natural) acquires 10% of a Connecticut corporation's stock or reveals his intention to do so (see BACKGROUND--"Interested Shareholder").

Two laws protect against a hostile takeover by an interested shareholder. One requires a super majority approval of shareholders; the other imposes a five-year waiting period. Each law contains various exemptions including the prior approval of the target company's board of directors. The bill eliminates the ability of an entity contemplating a takeover to avoid these requirements by calling a special meeting to oust the current board of directors and replace it with a board that favors the takeover. It does so by stripping the power of any newly elected board to approve the transaction and thus avoid the protection of these two laws.

The bill applies to any special meeting of shareholders or any action taken by a board of directors on or after its effective date.

EFFECTIVE DATE: Upon passage

**FURTHER EXPLANATION****Removal Of Directors By Shareholders**

Under current law, shareholders may remove directors with or without cause at a special meeting they call for this purpose, unless the corporation's certificate of incorporation allows directors to be removed only

for cause.

The bill establishes a special rule for publicly traded corporations (those with a class of voting stock registered with the Securities and Exchange Commission). It prohibits shareholders from removing directors without cause at a special meeting held within 12 months following the date (1) a person becomes an interested shareholder of that corporation for the first time or (2) a person announces or publicly discloses a plan or intention to pursue a transaction that would result in his becoming an interested shareholder.

### Super Majority Shareholder Approval

By law, a corporation may not enter into mergers, consolidations, or certain other business combinations with an interested shareholder without the approval of its board of directors and the affirmative vote of at least:

1. 80% of the voting power of the corporation's outstanding shares of voting stock, and
2. 66 2/3% of the voting power of its outstanding shares not directly or indirectly controlled by the interested shareholder.

The law establishes several exceptions to this approval requirement. The bill alters one of these exceptions.

By law, a business combination with a particular interested shareholder that has been approved by a resolution of the corporation's board before the person becomes an interested shareholder is exempt from this requirement. The bill instead permits this exemption only if approved by a majority of the directors who are continuing directors.

### Continuing Director

The bill defines a continuing director as one who is not an affiliate or associate of an interested shareholder or any of his affiliates, and who was a director immediately before the earlier of the date a person: (1) becomes an interested shareholder or (2) announces or publicly discloses a plan or intention to

pursue a transaction that would result in his becoming an interested shareholder. A continuing director is also a successor to such a director who is not an affiliate or associate of an interested shareholder or any of his affiliates and was recommended or elected by a majority of the continuing directors at a meeting at which a quorum consisting of the continuing directors is present.

### **Five-Year Waiting Period**

The law prohibits certain Connecticut corporations from engaging in mergers, consolidations, liquidations, or other specified business combinations with any interested shareholders for five years after the person becomes an interested shareholder.

The law exempts business combinations with an interested shareholder if the business combination or stock purchase that makes a person an interested shareholder was approved by the board of directors of the target corporation and by a majority of the nonemployee directors before the person became an interested shareholder. Instead, the bill exempts a business combination if it or such stock purchase was approved by a majority of the board's continuing directors and a majority of the nonemployee directors.

### **BACKGROUND**

#### **Interested Shareholder**

By law, an "interested shareholder" includes any person, other than the corporation or its subsidiary, that is:

1. the beneficial owner of at least 10% of the voting power of the corporation's outstanding shares of voting stock or
2. a corporate affiliate who at any time within the two years preceding the date in question was beneficial owner of at least 10% of the voting power of the corporation's outstanding shares of voting stock.

#### **Affiliates and Associates**

An "affiliate" or "affiliated person" means a person that directly or indirectly controls, is controlled by, or is under common control of a specified person. The term "associate," when used to indicate a relationship with any person, means:

1. any foreign or domestic corporation or other organization of which such person is an officer, director or partner, or the beneficial owner of at least 10% of any class of stock;
2. any trust or estate in which such person has a substantial beneficial interest or to which such person serves as trustee or fiduciary; and
3. any relative or spouse of such person, or any relative of such spouse with the same home or who is a director or officer of the corporation or its affiliate.

#### **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Report  
Yea 28      Nay 8