

Act Number: 09-055

Bill Number: 963

Senate Pages: 1595-1596, 1657, 1659 **4**

House Pages: 3730, 3874-3876 **4**

Committee: Judiciary: 5055, 5057, 5235-
5237, 5272, 5277, 5281-5285 **12**

Page Total: **20**

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**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
2009**

**VOL. 52
PART 5
1351 - 1666**

Calendar 457, House Bill Number 6356, Mr.

President, I move to place this item on the Consent Calendar.

THE CHAIR:

Motion is on the floor for consent. Seeing no objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President. Calendar 458, PR.

Calendar 460, House Bill Number 6301, Mr.

President, I move to place this item on the Consent Calendar.

THE CHAIR:

Motion is on the floor for consent. Seeing no objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President. Calendar 463, Senate Bill Number 646, Mr. President, I move to refer this item to the Appropriations Committee.

THE CHAIR:

Seeing no objection, so ordered, sir.

SENATOR LOONEY:

Thank you, Mr. President. Calendar 465, Senate Bill Number 963, Mr. President, I move to place this item on the Consent Calendar.

md
SENATE

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April 29, 2009

THE CHAIR:

Motion is on the floor for consent. Seeing no objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President. Continuing to calendar page 16, Calendar 466, Calendar 467, and Calendar 468 are all marked PR.

Calendar 469, Senate Bill Number 1100, Mr. President, I move to refer this item to the Committee on Public Health.

THE CHAIR:

Without objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President. Calendar 478 and 479, PR.

Calendar 480, Senate Bill Number 358, Mr. President, that item is marked go.

Calendar 481, Senate Bill Number 533, Mr. President, I move to refer this item to the Education Committee.

THE CHAIR:

Without objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President. Calendar 482, PR.

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SENATE

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Calendar page 6, Calendar 245, Substitute for House Bill 6266.

Calendar page 7, Calendar 272, Substitute for Senate Bill 1040.

Calendar Page 8, Calendar 359, Senate Bill 1082.

Calendar page 10, Calendar 389, Substitute for House Bill 6327; Calendar 391, Substitute for House Bill 5930.

Calendar page 11, Calendar 395, Substitute for House Bill 5297; Calendar 403, House Bill 6462.

Calendar page 12, Calendar 414, Senate Bill 905.

Calendar page 13, Calendar 416, Senate Bill 998;
Calendar 432, Substitute for Senate Bill 1020.

Calendar page 15, Calendar 457, Substitute for House Bill 6356.

Calendar page 16, Calendar 460, Substitute for House Bill 6301; Calendar 465, Senate Bill 963.

Calendar page 18, Calendar 487, Senate Bill 707;
Calendar 489, Substitute for Senate Bill 810.

Calendar page 21, Calendar Number 506, Senate Bill 1136; Calendar 507, Senate Bill 1141.

Calendar page 22, Calendar 515, Substitute for Senate Bill 832.

Calendar page 23, Calendar 524, Substitute for

md
SENATE

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April 29, 2009

Have all Senators voted?

If all Senators have voted, please check the machine. The machine will be locked, the Clerk will call the tally.

THE CLERK:

Motion is on adoption of Consent Calendar Number 1. Total number voting, 36; those voting yea, 36; those voting nay, 0; those absent/not voting, 0.

THE CHAIR:

Consent Calendar Number 1 passes.

Senator Looney.

SENATOR LOONEY:

Thank you, Mr. President. Mr. President, I would move that all items referred to various committees from the chamber today be transmitted to those committees immediately.

THE CHAIR:

Without objection, so ordered, sir.

SENATOR LOONEY:

Thank you, Mr. President. Mr. President, also, would announce that we will be convening tomorrow about -- at 11:30 a.m., it's our intention to pick up with bills that had previously been marked "go" today. So I would move that all items previously marked go

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**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
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PART 12
3578 – 3917**

Thank you, Madam Speaker. It's lovely to see you up there this evening.

DEPUTY SPEAKER ORANGE:

It's always nice to see you as well.

REP. OLSON: (46th)

Thank you. I'm going to moving three items to the Consent Calendar for action later on today in today's Session, Items Number 476, Calendar Number 582 and Calendar Number 614.

HB 6493
SB 963
SB 1028

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

The motion before us is to place the following items on the Consent Calendar for action later in the day. They are Calendar Number 476, Calendar Number 582 and Calendar Number 614.

Is there objection to the motion? Is there objection to the motion? Hearing none, those items are placed on the Consent Calendar for later action today.

Will the Clerk please call Calendar Number 299.

CLERK:

On Page 38, Calendar Number 299, Substitute for House Bill Number 6466 AN ACT CONCERNING PROJECTSW OF

I move for the immediate transmittal of Calendar Number 603 to the Governor, please.

SPEAKER DONOVAN:

The motion is for immediate transmittal of Calendar Number 603 to the Governor. Is there any objection? Any objection? Representative Cafero? Hearing no objection, the Bill is immediately transmitted.

Will the Clerk please call Calendar Number 476.

CLERK:

On Page 15, Calendar Number 476, House Bill Number 6493 AN ACT CONCERNING REGIONAL SCHOOL DISTRICTS. Favorable Report of the Committee on Education.

SPEAKER DONOVAN:

Representative Olson.

REP. OLSON: (46th)

Thank you, Mr. Speaker. We will now be voting on the Consent Calendar. There are three items that we moved to the Consent Calendar earlier in today's Session, Calendar Number 476, Calendar Number 582 and Calendar Number 614. And in fact, we can't forget Calendar Number 594.

HB 6493
SB 963
SB 1028
SB 781

Thank you, Mr. Speaker.

pat
HOUSE OF REPRESENTATIVES

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May 12, 2009

SPEAKER DONOVAN:

The question before us is on passage of the Bills on today's Consent Calendar. Will you remark?

Representative Cafero.

REP. CAFERO: (142nd)

Thank you, Mr. Speaker. Mr. Speaker, unless, and may be I did not hear, those four Bills that are on the Consent Calendar, I heard Representative Olson say something toward the end there, and I didn't quite catch that.

SPEAKER DONOVAN:

Representative Olson, can you repeat what you said?

REP. OLSON: (46th)

Yes. In fact, those are the four items that we moved to the Consent Calendar during today's Session.

SPEAKER DONOVAN:

Representative Cafero.

REP. CAFERO: (142nd)

Thank you.

SPEAKER DONOVAN:

Thank you. Will you remark on today's Consent Calendar? Will you remark?

pat
HOUSE OF REPRESENTATIVES

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May 12, 2009

If not, staff and guests come to the Well of the House. Members take their seats. The machine will be opened.

CLERK:

The House of Representatives is voting by Roll Call. Members to the Chamber.

The House is voting today's Consent Calendar by Roll Call. Members to the Chamber.

SPEAKER DONOVAN:

Have all the Members voted? Have all the Members voted? Members please check the board to make sure your vote has been properly cast.

If all the Members have voted, the machine will be locked, and the Clerk will please take a tally.

Will the Clerk please announce the tally.

CLERK:

On today's Consent Calendar.

Total Number Voting	144
Necessary for Passage	73
Those voting Yea	144
Those voting Nay	0
Those absent and not voting	7

SPEAKER DONOVAN:

The Consent Calendar passes.

**JOINT
STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
PART 16
4929 - 5265**

2009

SENATOR MCDONALD: Martin Transfer?

ROBERT ENRIGHT: Transport.

SENATOR MCDONALD: All right, we'll track (inaudible). Any questions? Thanks very much. Kevin Hennessey, followed by Megan (inaudible)? Is Megan (inaudible) here? Okay, then Raphael Podolsky.

KEVIN HENNESSEY: Good morning, Senator McDonald and members of the Committee. My name is Kevin Hennessey. I'm a staff attorney at CBIA, Connecticut Business and Industries Association and I'm testifying on six bills today. I submitted written testimony so I will be summarizing that.

SB1090
SB1030
SB963

The first three bills that I actually like to lock together because they all entail extending the statute of limitations for various groups. The first is Senate Bill 641 which deals with medical malpractice actions regarding brain injury. The second is for civil action when a police investigation is pending, Senate Bill 1026. And the third is House Bill 6577, which deals with negligence actions by minors.

Everyone knows that today we live in very uncertain times and one of the certainties in our legal courtrooms is that there are statutes of limitations. Businesses need certainty in order to thrive and when we start to change around certainty, it causes them to lose money, to expose themselves to administrative burdens and to potential problems as to grow and invest here. Right now, the legal system is really driven by plaintiffs and the statutes of limitations is

companies aren't subject to federal regulations and state regulation through multiple agencies.

The final two bills are Senate Bill 1030, it's the apportionment of liability when a claim is withdrawn. Currently, you can apportion liability if a claim is waived or if it's settled, but not if it's withdrawn -- released or settled, sorry. So we would like to see that act (inaudible) extended to withdrawn cases. And then finally, Senate Bill 963, we support the Connecticut Business Corporation Act that adopts the Model Business Corporation Act. We think that that's a good measure that will encourage companies to incorporate.

SENATOR MCDONALD: Thanks very much. What's the CBIA's interest in the tolling of statute of limitations for police investigation?

SB1026

KEVIN HENNESSEY: Well, police investigation could be, let's say, a trucking company, or a company that has a fleet of cars and they could be in a car accident. And there could be an investigation pending on that accident and the business has their fleet of trucks and they have the liability. We think that if there's an accident and there's a claim, that the nexus should be based on what happens. If there's an injury, that's when the statute runs. But a police investigation doesn't really determine whether or not there's an injury. So tolling it, you know, a police investigation could last 24 hours, it could last days, we're not sure what the necessity is of extending that limitation. And then our concern, like I said is, that's one group of people, if we extend it to them, who's the next group that comes up? There are obviously going to be compelling people that come up

DOUG MAHONEY: This allows no more than eight years.

SENATOR MCDONALD: Eight years from the -- okay. Is there any inherent wisdom in the selection of eight years?

DOUG MAHONEY: None.

SENATOR MCDONALD: All right, well, thank you for the testimony. Thanks very much. Henry Beck, followed by Mark Ciriello.

HENRY BECK: Senator McDonald, members of the Judiciary Committee, thank you for the opportunity to appear before the Committee to comment on Senate Bill 963, an Act Concerning the Connecticut Business Corporation Act. My name is Henry Beck. I'm a partner with Halloran (inaudible) in Hartford. I'm the vice chair and business liaison with the Business Law Section for the Connecticut Bar Association. The business law section includes 630 Connecticut attorneys interested in business and corporate law issues.

On behalf of this section, I wish to thank the committee for raising Senate Bill 963. The business law section supports bill 963. 963 would amend the Connecticut Business Corporation Act to adopt recent changes to the Model Business Corporation Act concerning a variety of matters including appraisal rights, voting for directors, household mailings and judicial dissolutions. In addition, it allows Connecticut public corporations to make their annual financial statements available to shareholders on the Internet, pursuant to regulations adopted by the U.S. Securities and Exchange Commission.

Connecticut adopted the Model Act in 1994. Our bill is part of the ongoing process of updating Connecticut's corporation statutes to keep them current with the Model Act. There are distinct advantages to Connecticut in adopting the most current version of the Model Act promotes uniformity amongst the states. Connecticut is a small state with relatively little corporate case law so case law from other states can provide valuable insight to assist those in interpreting our statute.

Second, like the Uniform Commercial Code, the Model Act has an official commentary. These comments are a useful source for information to lawyers and the courts about the meaning and interpretation of the law. We believe that Senate Bill 963 is necessary to insure that Connecticut corporate statutes remain current and up to date.

We call your attention to a proposed amendment to Senate Bill 963 in our written testimony. We respectfully request the Committee to adopt this amendment in the substitute bill prior to approval. The amendment seeks to incorporate another bill affecting Connecticut corporations submitted by the Connecticut Bar Association last year which was then known as Senate Bill 441. This bill was incorporated with Senate Bill 440 last year, after unanimous approval by the Judiciary. Both bills were then combined into file number 423, which was approved by the Senate but did not have enough time in the session to go to the House for discussion.

However, in this year's drafting of Senate Bill 963, the final section of file number 423, which was originally senate Bill 441,

was, unfortunately, omitted. We respectfully request the Committee to amend senate Bill 963 to add the final section of last year's file 423. This amendment is designed to cure the unusual problem arising under our statutes dealing with business combinations. Section 33-756D currently requires directors of Connecticut public corporations considering sale to a third party or certain other business combinations to consider the impact on multiple constituencies including employees, customers, creditors, suppliers and the community at large. It will often be appropriate for directors to consider these other constituencies in the context of a business combination. May I finish? However, Connecticut is the only state that requires rather than permits directors to consider each of these other constituencies. This imposes a burden on directors of Connecticut corporations that the directors of corporation organized under laws of other states do not face. There's no standard to measure how a director fulfills his or her duty under this section. It is difficult to advise directors of Connecticut corporations on how to fulfill this statutory mandate. It is, thus, better to allow it to be permissive rather than mandatory. Thank you for the opportunity here before the Committee. I would be pleased to answer any questions.

SENATOR MCDONALD: Thank you. Are there any questions? The whole section, this is the section-approved proposal?

HENRY BECK: Yes, it is.

SENATOR MCDONALD: Thank you very much. Mark Ciriello, followed by Joe Marrione.

**JOINT
STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
PART 17
5266 - 5611**

2009



Connecticut Business & Industry Association

**Testimony of Kevin R. Hennessy
Staff Attorney
Connecticut Business & Industry Association
Before the Judiciary Committee
Legislative Office Building
Hartford, CT
March 20, 2009**

My name is Kevin Hennessy. I am a staff attorney for the Connecticut Business and Industry Association (hereinafter "CBIA"). CBIA represents approximately 10,000 member companies in virtually every industry. They range from large, global corporations to small, family owned businesses. Approximately 90 percent of our member companies have fewer than 50 employees.

Thank you for the opportunity to comment on the following bills:

- **SB-641**, AAC *The Statute of Limitations for Medical Malpractice Actions with Respect to Acquired Brain Injury*;
- **SB-1026**, AAC *The Tolling of Time Periods for Bringing a Civil Action While Police Investigations are Pending*;
- **HB-6577**, AAC *The Tolling of the Statute of Limitations for a Negligence Action by a Minor*;
- **SB-1090**, AAC *the Collection and Disclosure of Social Security Numbers*;
- **SB-1030**, AAC *the Apportionment of Liability After a Claim is Withdrawn, and*
- **SB-963**, AAC *the Connecticut Business Corporation Act*.

The following written testimony is separated by issue area.

CBIA

Connecticut Business & Industry Association

Model Business Corporation Act

CBIA supports SB-963, *AAC the Connecticut Business Corporation Act*. The bill amends the Connecticut Business Corporation Act in an effort to track changes to the Model Business Corporation Act.

SB-963 will promote uniformity with other states and make Connecticut more attractive for public corporations considering whether to organize under Connecticut law or to change their state of organization to another jurisdiction. CBIA supports tracking, where reasonable, the Model Business Corporation Act and urges adoption of this measure.



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Testimony of Henry M. Beck, Jr.
Vice Chair of Business Law Section
Connecticut Bar Association

**IN SUPPORT OF SENATE BILL 963
AN ACT CONCERNING THE CONNECTICUT BUSINESS CORPORATION ACT**

Judiciary Committee
March 20, 2009

Senator McDonald, Representative Lawlor, members of the Judiciary Committee, thank you for the opportunity to appear before the committee and express our **SUPPORT for Senate Bill 963**, An Act Concerning the Connecticut Business Corporation Act. On behalf of the section, we wish to thank the committee for raising this bill again. We believe the bill is important to Connecticut corporations.

My name is Henry M. Beck, Jr. I am a partner with Halloran & Sage in Hartford practicing in the areas of business and corporate law. I am the Vice Chair and legislative liaison of the Business Law Section of the Connecticut Bar Association (CBA). The Business Law Section includes 630 Connecticut attorneys interested in business and corporate law issues.

Senate Bill 963 is the same bill as Senate Bill 440 that was favorably reported upon by this Committee in the last session. The legislation is more important than ever to help Connecticut retain the few remaining public corporations organized under the laws of Connecticut rather than the laws of other states that are perceived as having more modern corporate statutes, like Delaware.

During last year's legislative session, the CBA Business Law Section discussed Senate Bill 440 with the offices of the Secretary of the State and the Connecticut Business and Industry Association. Neither group objected to the proposed legislation. We do not believe that either the Secretary of State or the Connecticut Business and Industry Association has changed its position.

Senate Bill 963 would amend the Connecticut Business Corporation Act (CBCA) to adopt recent changes to the Model Business Corporation Act (MBCA) concerning:

1. Appraisal rights,
2. Shareholder actions without a meeting,
3. Majority voting for directors,
4. Definition of expenses,
5. Notices to shareholders with a common address,

6. Judicial dissolutions,
7. Mergers of subsidiaries, and
8. Electronic posting of annual financial statements.

In addition, upon amendment as requested below, the bill would permit rather than require Boards of Directors to consider the interests of constituencies other than shareholders by corporate directors when evaluating a business combination. These other constituencies include employees, customers, creditors, suppliers and the community at large.

Connecticut adopted the MBCA in 1994. This bill is part of the ongoing process of updating Connecticut's corporation statutes and keeping them current with the MBCA. We would like to emphasize a few provisions that are especially important this year to public corporations that have chosen to be organized under Connecticut law. These provisions will let these corporations comply with current Securities and Exchange Commission rules that are available to corporations organized under the laws of Delaware and other states with modern corporation statutes.

First, many shareholders today are asking public corporations to allow election of directors by majority rather than mere plurality vote, that is, to require that the votes cast in favor of a particular director exceed the votes cast against. Under current Connecticut law, majority voting requires amendment of the Certificate of Incorporation, a burdensome process. Our proposed amendment adopts language from the current Model Business Corporation Act that would permit majority voting if permitted under the corporation's bylaws.

Second, the SEC now allows corporations to save money and paper by mailing only one copy of financial statements to certain shareholders who share a single household. Again following the MBCA, we ask that Connecticut corporations be permitted to "household" their mailings for shareholders who consent to this.

Third, the SEC now allows corporations to make available their annual reports electronically through compliance with the so-called "notice and access" rules. Our bill would make this electronic transmission of annual reports available to corporations organized under Connecticut law in compliance with SEC rules.

There are other advantages to Connecticut's adoption of the MBCA in its most current version. First, the model act promotes uniformity among the states. As Connecticut is a small state with relatively little corporate case law, case law from other states can provide valuable insight to assist with interpreting the statute. Second, like the Uniform Commercial Code, the MBCA has an official commentary. These comments are a useful source of information to lawyers and the courts about the meaning and interpretation of the law. As the MBCA is updated, the official comments are updated as well.

The bill itself is quite lengthy but the changes fall into several categories and can be summarized fairly succinctly. The bill:

- clarifies the information to be included in the form supplied to shareholders with notice of the availability of appraisal rights;
- simplifies the procedure for shareholder action by written consent of fewer than all of the shareholders;
- provides that if directors are elected by written consent, a corporation is not required to hold an annual meeting of the shareholders;
- adopts a universal definition of "expenses" and makes other conforming revisions to the CBCA to reflect this definition;
- limits shareholder suits for the judicial dissolution of a corporation to private corporations and affords shareholders the right to seek judicial dissolution when actual or threatened irreparable injury to the corporation is demonstrated in the context of a directors' deadlock, and
- clarifies that a domestic parent corporation may merge a subsidiary in which it has 90 percent of the voting power into itself or into another such subsidiary without the approval of the Board of Directors or shareholders of the subsidiary unless the certificate of incorporation provides otherwise or, in the case of a foreign subsidiary, such foreign subsidiary's jurisdiction so requires.

As noted, this bill is also designed to permit public companies incorporated in Connecticut to make available their annual financial statements on the Internet, in accordance with new SEC rules, rather than to mail their financial statements to shareholders. This language is not taken from the MBCA, but it addresses a concern of Connecticut public corporations wishing to follow SEC rules on delivery of financial statements. This change is expected to save Connecticut public corporations substantial costs for printing and mailing annual reports that public corporations organized under other state laws need not incur. We believe this is an important amendment to the CBCA.

The CBA submitted another bill affecting Connecticut corporations last year, Senate Bill 441. This bill was incorporated with SB 440 last year after unanimous approval in Judiciary and both bills were then combined into File No. 423 and was approved in the Senate, but did not have enough time in the Session to go to the House for discussion. However, in this year's drafting of Senate Bill 963, the final section of File No. 423, which was originally Senate Bill 441, was omitted.

We respectfully request the Committee to amend Senate Bill 963 to add the final section of last year's File No. 423 which I have included as the last page of my testimony. The amendment would give directors the freedom to consider other constituencies in the context of a business combination. We believe this bill will make Connecticut a more attractive state for public corporations considering whether to organize under Connecticut law or to change their state of organization to Delaware or another jurisdiction.

This amendment is designed to cure an unusual problem arising under our statutes dealing with business combinations. Section 33-756(d) currently requires directors of Connecticut public corporations considering sale to a third party or certain other business combinations to consider the impact on multiple constituencies, including employees, customers, creditors, suppliers and the community at large. It will often be appropriate for directors to consider these other constituencies in the context of a business combination. However, Connecticut is the only state that *requires* rather than *permits* directors to consider each of these other constituencies. This imposes a burden on directors of Connecticut corporations that directors of corporations organized under other state laws do not face. There are no standards to measure how a director fulfills his or her duties under this section. It is difficult to advise directors of Connecticut corporations on how to fulfill this statutory mandate.

We believe that Senate Bill 963, together with this amendment, is necessary to ensure that Connecticut's corporate statutes remain current and up to date.

Thank you for the opportunity to appear before the committee. We appreciate your listening. We would be pleased to answer any questions you may have.

PROPOSED AMENDMENT TO SB 963**---- Insert after Section 30 ----**

Subsection (d) of section 33-756 of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2009):

(d) For purposes of sections 33-817, 33-830, 33-831, 33-841 and 33-844, a director of a corporation which has a class of voting stock registered pursuant to Section 12 of the Securities Exchange Act of 1934, as the same has been or hereafter may be amended from time to time, in addition to complying with the provisions of subsections (a) to (c), inclusive, of this section, [shall] may consider, in determining what he or she reasonably believes to be in the best interests of the corporation, (1) the long-term as well as the short-term interests of the corporation, (2) the interests of the shareholders, long-term as well as short-term, including the possibility that those interests may be best served by the continued independence of the corporation, (3) the interests of the corporation's employees, customers, creditors and suppliers, and (4) community and societal considerations including those of any community in which any office or other facility of the corporation is located. A director may also in his or her discretion consider any other factors he or she reasonably considers appropriate in determining what he or she reasonably believes to be in the best interests of the corporation.