

SENATE, No. 2327

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED NOVEMBER 19, 2012

Sponsored by:

Senator NIA H. GILL

District 34 (Essex and Passaic)

SYNOPSIS

Allows corporate shareholder meeting participation by remote communication and clarifies remedies for dissenting shareholders.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning business corporations and amending N.J.S.
2 14A:5-1, N.J.S. 14A:5-4, and N.J.S. 14A:11-1.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. N.J.S. 14A:5-1 is amended to read as follows:

8 14A:5-1. Place of shareholders' meetings.

9 (1) Meetings of shareholders of every corporation organized for
10 any purpose under any general or special law of this State may,
11 unless otherwise provided by law, be held at such place, within or
12 without this State, as may be provided in the by-laws or as may be
13 fixed by the board pursuant to authority granted by the by-laws. In
14 the absence of any such provision, all meetings shall be held at the
15 registered office of the corporation.

16 (2) A shareholder may participate in a meeting of shareholders
17 by means of remote communication to the extent the board
18 authorizes that participation. Participation by means of remote
19 communication shall be subject to those guidelines and procedures
20 as the board adopts, and shall be in conformity with subsection
21 14A:5-1(3).

22 (3) A shareholder participating in a meeting of shareholders by
23 means of remote communication shall be deemed present and shall
24 be entitled to vote at the meeting if the corporation has
25 implemented reasonable measures to:

26 (a) verify that each person participating remotely is a
27 shareholder; and

28 (b) provide each shareholder participating remotely with a
29 reasonable opportunity to participate in the meeting, including an
30 opportunity to vote on matters submitted to the shareholders, and to
31 read or hear the proceedings of the meeting substantially
32 concurrently with those proceedings.

33 (cf: N.J.S. 14A:5-1)

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35 2. N.J.S. 14A:5-4 is amended to read as follows:

36 14A:5-4. Notice of shareholder' meetings.

37 (1) Except as otherwise provided in this act, written notice of
38 the time, place and purpose or purposes of every meeting of
39 shareholders shall be given not less than 10 nor more than 60 days
40 before the date of the meeting, either personally or by mail, to each
41 shareholder of record entitled to vote at the meeting. If the board
42 has authorized participation by shareholders by means of remote
43 communication pursuant to section 14A:5-1, the notice to that class
44 or series of shareholders shall describe the means of remote
45 communication to be used.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (2) When a meeting is adjourned to another time or place, it
2 shall not be necessary, unless the by-laws otherwise provide, to give
3 notice of the adjourned meeting if the time and place to which the
4 meeting is adjourned are announced at the meeting at which the
5 adjournment is taken and at the adjourned meeting only such
6 business is transacted as might have been transacted at the original
7 meeting. However, if after the adjournment the board fixes a new
8 record date for the adjourned meeting, a notice of the adjourned
9 meeting shall be given to each shareholder of record on the new
10 record date entitled to notice under subsection 14A:5-4(1).

11 (cf: N.J.S. 14A:5-4)

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13 3. N.J.S. 14A:11-1 is amended to read as follows:

14 14A:11-1. Right of shareholder to dissent.

15 (1) Any shareholder of a domestic corporation shall have the
16 right to dissent from any of the following corporate actions

17 (a) Any plan of merger or consolidation to which the
18 corporation is a party, provided that, unless the certificate of
19 incorporation otherwise provides

20 (i) a shareholder shall not have the right to dissent from any
21 plan of merger or consolidation with respect to shares

22 (A) of a class or series which is listed on a national securities
23 exchange or is held of record by not less than 1,000 holders on the
24 record date fixed to determine the shareholders entitled to vote upon
25 the plan of merger or consolidation; or

26 (B) for which, pursuant to the plan of merger or consolidation,
27 he will receive (x) cash, (y) shares, obligations or other securities
28 which, upon consummation of the merger or consolidation, will
29 either be listed on a national securities exchange or held of record
30 by not less than 1,000 holders, or (z) cash and such securities;

31 (ii) a shareholder of a surviving corporation shall not have the
32 right to dissent from a plan of merger, if the merger did not require
33 for its approval the vote of such shareholders as provided in section
34 14A:10-5.1 or in subsection 14A:10-3(4), 14A:10-7(2) or 14A:10-
35 7(4);

36 (iii) a shareholder of a corporation shall not have the right to
37 dissent from a plan of merger, if the merger did not require, for its
38 approval, the vote of the shareholders as provided in subsection (6)
39 of N.J.S.14A:10-3; or

40 (b) Any sale, lease, exchange or other disposition of all or
41 substantially all of the assets of a corporation not in the usual or
42 regular course of business as conducted by such corporation, other
43 than a transfer pursuant to subsection (4) of N.J.S.14A:10-11,
44 provided that, unless the certificate of incorporation otherwise
45 provides, the shareholder shall not have the right to dissent

46 (i) with respect to shares of a class or series which, at the record
47 date fixed to determine the shareholders entitled to vote upon such

1 transaction, is listed on a national securities exchange or is held of
2 record by not less than 1,000 holders; or

3 (ii) from a transaction pursuant to a plan of dissolution of the
4 corporation which provides for distribution of substantially all of its
5 net assets to shareholders in accordance with their respective
6 interests within one year after the date of such transaction, where
7 such transaction is wholly for

8 (A) cash; or

9 (B) shares, obligations or other securities which, upon
10 consummation of the plan of dissolution will either be listed on a
11 national securities exchange or held of record by not less than 1,000
12 holders; or

13 (C) cash and such securities; or

14 (iii) from a sale pursuant to an order of a court having
15 jurisdiction.

16 (2) Any shareholder of a domestic corporation shall have the
17 right to dissent with respect to any shares owned by him which are
18 to be acquired pursuant to section 14A:10-9.

19 (3) A shareholder may not dissent as to less than all of the
20 shares owned beneficially by him and with respect to which a right
21 of dissent exists. A nominee or fiduciary may not dissent on behalf
22 of any beneficial owner as to less than all of the shares of such
23 owner with respect to which the right of dissent exists.

24 (4) A corporation may provide in its certificate of incorporation
25 that holders of all its shares, or of a particular class or series
26 thereof, shall have the right to dissent from specified corporate
27 actions in addition to those enumerated in subsection 14A:11-1(1),
28 in which case the exercise of such right of dissent shall be governed
29 by the provisions of this Chapter.

30 (5) A shareholder entitled to dissent from a corporate action as
31 enumerated in subsection 14A:11-1(1) or as specified pursuant to a
32 corporation's certificate of incorporation shall not have the right to
33 challenge a corporate action from which a shareholder has a right to
34 dissent, regardless of whether the shareholder actually exercised the
35 right to dissent as to that action, except that a shareholder may
36 challenge a corporate action that was:

37 (a) not effectuated in accordance with the applicable provisions
38 of this Chapter or the corporation's certificate of incorporation; or

39 (b) procured as a result of fraud, material misrepresentation, or
40 other deceptive means.

41 (cf: P.L.2001, c.193, s.3)

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43 4. This act shall take effect on the 90th day following
44 enactment.

STATEMENT

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This bill makes various revisions to the “New Jersey Business Corporation Act” regarding participation by shareholders in meetings of shareholders, and the situations in which a shareholder may challenge a corporate action.

The bill provides that a shareholder may participate in a meeting of shareholders by means of remote communication to the extent that the corporation’s board of directors authorizes that participation, and participation shall be subject to such guidelines and procedures as the board adopts.

The bill further provides that a shareholder participating in a meeting of shareholders by means of remote communication shall be deemed present and shall be entitled to vote at the meeting if the corporation has implemented reasonable measures to: (1) verify that each person participating remotely is a shareholder; and (2) provide each shareholder participating remotely with a reasonable opportunity to participate in the meeting, including an opportunity to vote on matters submitted to the shareholders, and to read or hear the proceedings of the meeting substantially concurrently with those proceedings.

The bill also provides that as to that class or series of remotely participating shareholders, the notice required to be given to shareholders about the meeting shall describe the means of remote communication to be used.

Finally, the bill amends N.J.S. 14A:11-1 by adding paragraph (5), which provides that dissenter’s rights are the exclusive remedy for dissatisfied shareholders in corporate mergers and corporate transactions as specified in subparagraphs (a) and (b) of paragraph (1) of N.J.S.14A:11-1. This exclusivity provision follows section 13.02(d) the American Bar Association’s Model Business Corporation Act and provisions enacted by several other states. The sponsor’s intent for these provisions of the bill is that dissenter’s rights should be the exclusive remedy for shareholders who are dissatisfied with the corporate actions enumerated in paragraph (1) (regardless of whether the shareholder has exercised his or her right to dissent), with the exception that a shareholder may bring an action only if the corporation has not complied with Chapter 11 of Title 14A of the New Jersey Statutes or if the corporation has engaged in fraudulent or material misrepresentation, or deceptive means, in obtaining approval of such transactions.