

ASSEMBLY, No. 2970

STATE OF NEW JERSEY 217th LEGISLATURE

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SYNOPSIS

Revises applicability of law concerning derivative proceedings and shareholder class actions.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/6/2018)

1 AN ACT concerning derivative proceedings and shareholder class
2 actions and amending P.L.2013, c.42.

3

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

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7 1. Section 9 of P.L.2013, c.42 (C.14A:3-6.9) is amended to
8 read as follows:

9 9. In any derivative proceeding or shareholder class action
10 against a corporation organized under the provisions of the "New
11 Jersey Business Corporation Act," N.J.S.14A:1-1 et seq.:

12 a. Except for sections 7 and 8 of P.L.2013, c.42 (C.14A:3-6.7
13 and 6.8), which must be expressly made applicable by the
14 corporation's certificate of incorporation, the provisions of
15 P.L.2013, c.42 (C.14A:3-6.1 et seq.) shall apply to actions brought
16 in state or federal court both within and outside of the State of New
17 Jersey **[if the provisions of P.L.2013, c.42 (C.14A:3-6.1 et seq.) are**
18 **made applicable to the corporation by the certificate of**
19 **incorporation]**; and

20 b. The provisions of the corporation's certificate of
21 incorporation may vary the applicability or effect of the provisions
22 of P.L.2013, c.42 (C.14A:3-6.1 et seq.) on that corporation.

23 (cf: P.L.2013, c.42, s.9)

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25 2. This act shall take effect immediately.

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STATEMENT

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30 This bill revises the applicability of provisions of the "New
31 Jersey Business Corporation Act" concerning derivative
32 proceedings and shareholder class actions.

33 Under current law, the derivative proceeding and shareholder
34 class action provisions of the "New Jersey Business Corporation
35 Act" apply only if a corporation makes them applicable in its
36 certificate of incorporation. This bill provides that the following
37 provisions will apply to a corporation unless that corporation
38 chooses to vary the applicability or effect of the provisions in its
39 certificate of incorporation:

40 1) The conditions for commencing and maintaining a derivative
41 proceeding;

42 2) The actions that must be taken before a shareholder may
43 commence a derivative proceeding;

44 3) The conditions for a court to order a stay of a derivative
45 proceeding;

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 4) The conditions for dismissal of a derivative proceeding; and
2 5) The necessity of court approval for the discontinuation or
3 settlement of a derivative proceeding or shareholder class action.

4 The bill also provides that the following provisions of current
5 law will apply only if a corporation makes them applicable in its
6 certificate of incorporation:

- 7 1) The rules governing how a court should allocate expenses
8 following the termination of a derivative proceeding or shareholder
9 class action; and
10 2) The allowance that a defendant corporation in a derivative
11 proceeding and shareholder class action may require the plaintiff to
12 provide security for reasonable expenses related to the proceeding
13 or class action.

14 The New Jersey Corporate and Business Law Study Commission
15 recommends the legislative reforms in this bill.