

ASSEMBLY, No. 1178

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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District 40 (Bergen, Essex, Morris and Passaic)

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District 26 (Essex, Morris and Passaic)

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SYNOPSIS

Permits corporations to use blockchain technology for certain recordkeeping requirements.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 10/22/2020)

1 AN ACT concerning corporate recordkeeping and blockchain
2 technology and amending N.J.S.14A:5-28 and P.L.2009, c.176.

3

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:5-28 is amended to read as follows:

8 14A:5-28. Books and records; right of inspection.

9 (1) Each corporation shall keep books and records of account
10 and minutes of the proceedings of its shareholders, board and
11 executive committee, if any. Unless otherwise provided in the
12 bylaws, such books, records and minutes may be kept outside this
13 State. The corporation shall keep at its principal office, its
14 registered office, **[or]** at the office of its transfer agent, or on an
15 electronic network, a record or records containing the names and
16 addresses of all shareholders, the number, class and series of shares
17 held by each and the dates when they respectively became the
18 owners of record thereof. Any of the foregoing books, minutes or
19 records may be in written form or in any other form capable of
20 being converted into readable form within a reasonable time,
21 including on an electronic network. A corporation shall convert
22 into readable form without charge any such records not in such
23 form, upon the written request of any person entitled to inspect
24 them.

25 (2) Upon the written request of any shareholder, the corporation
26 shall mail to such shareholder its balance sheet as at the end of the
27 preceding fiscal year, and its profit and loss and surplus statement
28 for such fiscal year.

29 (3) Any person who shall have been a shareholder of record of a
30 corporation for at least six months immediately preceding his
31 demand, or any person holding, or so authorized in writing by the
32 holders of, at least 5% of the outstanding shares of any class or
33 series, upon at least five days' written demand shall have the right
34 for any proper purpose to examine in person or by agent or attorney,
35 during usual business hours, its minutes of the proceedings of its
36 shareholders and record of shareholders and to make extracts
37 therefrom, at the places where the same are kept pursuant to
38 subsection 14A:5-28(1). If the records are kept on an electronic
39 network, the corporation shall convert any records so kept into a
40 clearly legible form upon the request of any person entitled to the
41 records in the timeframe required pursuant to this subsection.

42 (4) Nothing herein contained shall impair the power of any
43 court, upon proof by a shareholder of proper purpose, irrespective
44 of the period of time during which the shareholder shall have been a
45 shareholder of record, and irrespective of the number of shares held

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 by him, to compel the production for examination by such
2 shareholder of the books and records of account, minutes, and
3 record of shareholders of a corporation. The court may, in its
4 discretion prescribe any limitations or conditions with reference to
5 the inspection, or award any other or further relief as the court may
6 deem just and proper. The court may order books, documents and
7 records, pertinent extracts therefrom, or duly authenticated copies
8 thereof, to be brought within this State and kept in this State upon
9 whatever terms and conditions as the order may prescribe. In any
10 action for inspection the court may proceed summarily.

11 (5) Holders of voting trust certificates representing shares of the
12 corporation shall be regarded as shareholders for the purpose of this
13 section.

14 (6) A corporation may impose reasonable limitations or
15 conditions on the use or distribution of requested materials provided
16 to a demanding shareholder: (a) pursuant to either subsection
17 14A:5-28(2) or 14A:5-28(3); or (b) prior to the order of a court
18 pursuant to subsection 14A:5-28(4).

19 As used in this section, "electronic network" means one or more
20 electronic networks or databases, including one or more distributed
21 electronic networks or databases that utilize blockchain technology,
22 administered by or on the behalf of the corporation.

23 (cf: P.L.2017, c.364, s.1)

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25 2. Section 2 of P.L.2009, c.176 (C.14A:1-8.1) is amended to
26 read as follows:

27 2. (1) Any notice required or permitted pursuant to the
28 provisions of N.J.S.14A:1-1 et seq., or by a certificate of
29 incorporation or by-laws or any resolution of directors or
30 shareholders, may be provided by electronic transmission as
31 follows:

32 (a) Any notice to shareholders given by the corporation pursuant
33 to any provision of N.J.S.14A:1-1 et seq., or by a certificate of
34 incorporation or by-laws or any resolution of directors or
35 shareholders, shall be effective if given by a form of electronic
36 transmission consented to by the shareholder to whom the notice is
37 given.

38 (i) Any consent given pursuant to paragraph (a) of this
39 subsection shall be revocable by the shareholder by written notice,
40 and not electronic transmission, to the corporation.

41 (ii) Any consent given pursuant to paragraph (a) of this
42 subsection shall be deemed revoked if: (A) the corporation is unable
43 to deliver by electronic transmission two consecutive notices given
44 by the corporation in accordance with the shareholder's consent; and
45 (B) that inability becomes known to the secretary or an assistant
46 secretary of the corporation or to the transfer agent, or other person
47 responsible for the giving of notice following the second missed
48 delivery; provided, however, the inadvertent failure to treat that

1 inability as a revocation shall not invalidate any meeting or other
2 action.

3 (b) Any notice to shareholders given by the corporation pursuant
4 to any provision of N.J.S.14A:1-1 et seq., or by a certificate of
5 incorporation or by-laws or any resolution of directors or
6 shareholders, shall be deemed given:

7 (i) if by facsimile telecommunication, when directed to a
8 number at which the shareholder has consented to receive notice;

9 (ii) if by electronic mail, when directed to an electronic mail
10 address at which the shareholder has consented to receive notice;

11 (iii) if by a posting on an electronic network together with
12 separate notice to the shareholder of that specific posting, upon the
13 later of (A) that posting; or (B) the giving of the separate notice; or

14 (iv) if by any other form of electronic transmission, when
15 directed to the shareholder.

16 (c) An affidavit of the secretary or an assistant secretary or of
17 the transfer agent or other agent of the corporation that the notice
18 has been given by a form of electronic transmission shall, in the
19 absence of fraud, be prima facie evidence that the notice has been
20 given.

21 (d) For purposes of this section, "electronic transmission" means
22 any form of communication, not directly involving the physical
23 transmission of paper, including the use of, or participation in, an
24 electronic network pursuant to N.J.S.14A:5-28, that creates a record
25 that may be retained, retrieved and reviewed by a recipient, and that
26 may be directly reproduced in paper form by that recipient through
27 an automated process.

28 (2) This section shall not apply to notices required or permitted
29 pursuant to N.J.S.14A:6-5, N.J.S.14A:7-3, N.J.S.14A:12-10,
30 N.J.S.14A:12-12 or N.J.S.14A:14-15.

31 (cf: P.L.2009, c.176, s.2)

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33 3. This act shall take effect immediately.

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STATEMENT

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38 This bill provides that corporations may utilize electronic
39 networks, including distributed electronic networks, in order to
40 meet recordkeeping requirements.

41 Current law requires corporations to keep records containing the
42 names and addresses of all shareholders, the number, class and
43 series of shares held by each and the dates when they respectively
44 became the owners of the shares. This bill provides that these
45 corporate records of shares may be kept on an electronic network.
46 It also provides that corporations may use electronic transmissions
47 from electronic networks to meet with certain notice provisions of
48 existing law.

1 As used in the bill, “electronic network” means one or more
2 electronic networks or databases, including one or more distributed
3 electronic networks or databases that utilize blockchain technology,
4 administered by or on the behalf of the corporation.

5 This bill is based on recent changes to the Delaware General
6 Corporation Law which allow Delaware corporations to utilize
7 distributed electronic networks, also known as blockchain
8 technology, in order to create and maintain certain shareholder
9 records and meet with certain shareholder notice requirements.
10 This bill clarifies that New Jersey corporations may use blockchain
11 technology in order to simplify recordkeeping requirements.