

447

2011-2012 Regular Sessions

I N   S E N A T E

(PREFILED)

January 5, 2011

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Introduced by Sen. KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the business corporation law, in relation to attendance of a meeting of shareholders by remote communication

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Paragraphs (b), (c) and (d) of section 602 of the business  
2     corporation law are relettered paragraphs (c), (d) and (e) and a new  
3     paragraph (b) is added to read as follows:  
4     (B)(I) EVERY CORPORATION WHOSE SHARES ARE TRADED ON A STOCK EXCHANGE  
5     OR IN THE OVER-THE-COUNTER MARKET SHALL: (1) IMPLEMENT REASONABLE MEAS-  
6     URES TO PROVIDE SHAREHOLDERS NOT PHYSICALLY PRESENT AT A SHAREHOLDERS'  
7     MEETING A REASONABLE OPPORTUNITY TO WITNESS THE PROCEEDINGS OF THE MEET-  
8     ING SUBSTANTIALLY CONCURRENTLY WITH SUCH PROCEEDINGS; AND (2) PROVIDE  
9     REASONABLE MEANS TO ENABLE SHAREHOLDERS TO VOTE OR CAST PROXIES WITH  
10    RESPECT TO MATTERS SUBMITTED TO THE SHAREHOLDERS AT A SHAREHOLDERS'  
11    MEETING BY MEANS OF ELECTRONIC COMMUNICATION.  
12    (II) THIS PARAGRAPH MAY ALSO APPLY TO OTHER CORPORATIONS IF THE BOARD  
13    OF DIRECTORS HAS ELECTED TO BE SUBJECT TO THIS PARAGRAPH.  
14    (III) NOTHING REQUIRED IN SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH  
15    SHALL LIMIT, RESTRICT OR SUPERSEDE OTHER FORMS OF VOTING AND PARTIC-  
16    IPATION.  
17    (IV) FOR PURPOSES OF THIS PARAGRAPH, "REASONABLE MEASURES" WITH  
18    RESPECT TO WITNESSING PROCEEDINGS SHALL INCLUDE, BUT NOT BE LIMITED TO  
19    AUDIO WEBCAST OR OTHER BROADCAST OF THE MEETING AND FOR VOTING SHALL  
20    INCLUDE BUT NOT BE LIMITED TO TELEPHONIC AND INTERNET VOTING.  
21    S 2. Section 605 of the business corporation law, as amended by chap-  
22    ter 746 of the laws of 1963, paragraph (a) as amended by chapter 498 of  
23    the laws of 1998, is amended to read as follows:

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 S 605. Notice of meetings of shareholders.

2 (a) Whenever under the provisions of this chapter shareholders are  
3 required or permitted to take any action at a meeting, notice shall be  
4 given stating the place, date and hour of the meeting, THE MEANS OF  
5 REMOTE COMMUNICATIONS, IF ANY, BY WHICH SHAREHOLDERS AND PROXYHOLDERS  
6 MAY WITNESS THE PROCEEDINGS OF THE MEETING AND VOTE OR CAST PROXIES AT  
7 SUCH MEETING and, unless it is the annual meeting, indicating that it is  
8 being issued by or at the direction of the person or persons calling the  
9 meeting. Notice of a special meeting shall also state the purpose or  
10 purposes for which the meeting is called. Notice of any meeting of  
11 shareholders may be written or electronic. If, at any meeting, action is  
12 proposed to be taken which would, if taken, entitle shareholders  
13 fulfilling the requirements of section 623 (Procedure to enforce share-  
14 holder's right to receive payment for shares) to receive payment for  
15 their shares, the notice of such meeting shall include a statement of  
16 that purpose and to that effect and shall be accompanied by a copy of  
17 section 623 or an outline of its material terms. Notice of any meeting  
18 shall be given not fewer than ten nor more than sixty days before the  
19 date of the meeting, provided, however, that such notice may be given by  
20 third class mail not fewer than twenty-four nor more than sixty days  
21 before the date of the meeting, to each shareholder entitled to vote at  
22 such meeting. If mailed, such notice is given when deposited in the  
23 United States mail, with postage thereon prepaid, directed to the share-  
24 holder at the shareholder's address as it appears on the record of  
25 shareholders, or, if the shareholder shall have filed with the secretary  
26 of the corporation a request that notices to the shareholder be mailed  
27 to some other address, then directed to him at such other address. If  
28 transmitted electronically, such notice is given when directed to the  
29 shareholder's electronic mail address as supplied by the shareholder to  
30 the secretary of the corporation or as otherwise directed pursuant to  
31 the shareholder's authorization or instructions. An affidavit of the  
32 secretary or other person giving the notice or of a transfer agent of  
33 the corporation that the notice required by this section has been given  
34 shall, in the absence of fraud, be prima facie evidence of the facts  
35 therein stated.

36 (b) When a meeting is adjourned to another time or place, it shall not  
37 be necessary, unless the by-laws require otherwise, to give any notice  
38 of the adjourned meeting if the time and place to which the meeting is  
39 adjourned AND THE MEANS OF REMOTE COMMUNICATIONS, IF ANY, BY WHICH  
40 SHAREHOLDERS AND PROXYHOLDERS MAY WITNESS THE PROCEEDINGS OF THE MEETING  
41 AND VOTE OR CAST PROXIES AT THE MEETING are announced at the meeting at  
42 which the adjournment is taken, and at the adjourned meeting any busi-  
43 ness may be transacted that might have been transacted on the original  
44 date of the meeting. However, if after the adjournment the board fixes a  
45 new record date for the adjourned meeting, a notice of the adjourned  
46 meeting shall be given to each shareholder of record on the new record  
47 date entitled to notice under paragraph (a) of this section.

48 (C) NOTHING REQUIRED IN PARAGRAPHS (A) AND (B) OF THIS SECTION SHALL  
49 LIMIT, RESTRICT OR SUPERSEDE OTHER FORMS OF VOTING AND PARTICIPATION.

50 S 3. This act shall take effect immediately.