

7328

I N S E N A T E

May 2, 2012

Introduced by Sen. RANZENHOFER -- 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) A CORPORATION MAY, IF AUTHORIZED BY THE BOARD OF DIRECTORS:
5 (1) IMPLEMENT REASONABLE MEASURES TO PROVIDE SHAREHOLDERS NOT PHYSICALLY
6 PRESENT AT A SHAREHOLDERS' MEETING A REASONABLE OPPORTUNITY TO PARTIC-
7 IPATE IN THE PROCEEDINGS OF THE MEETING SUBSTANTIALLY CONCURRENTLY WITH
8 SUCH PROCEEDINGS; AND/OR (2) PROVIDE REASONABLE MEASURES TO ENABLE
9 SHAREHOLDERS TO VOTE OR GRANT PROXIES WITH RESPECT TO MATTERS SUBMITTED
10 TO THE SHAREHOLDERS AT A SHAREHOLDERS' MEETING BY MEANS OF ELECTRONIC
11 COMMUNICATION; PROVIDED THAT THE CORPORATION SHALL, IF APPLICABLE, (A)
12 IMPLEMENT REASONABLE MEASURES TO VERIFY THAT EACH PERSON DEEMED PRESENT
13 AND PERMITTED TO VOTE AT THE MEETING BY MEANS OF ELECTRONIC COMMUNI-
14 CATION IS A SHAREHOLDER OF RECORD AND (B) KEEP A RECORD OF ANY VOTE OR
15 OTHER ACTION TAKEN BY A SHAREHOLDER PARTICIPATING AND VOTING BY MEANS OF
16 ELECTRONIC COMMUNICATIONS AT A SHAREHOLDERS' MEETING. A SHAREHOLDER
17 PARTICIPATING IN A SHAREHOLDERS' MEETING BY THIS MEANS IS DEEMED TO BE
18 PRESENT IN PERSON AT THE MEETING.
19 (II) NOTHING REQUIRED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL
20 LIMIT, RESTRICT OR SUPERSEDE OTHER FORMS OF VOTING AND PARTICIPATION.
21 (III) FOR PURPOSES OF THIS PARAGRAPH, "REASONABLE MEASURES" WITH
22 RESPECT TO PARTICIPATING IN PROCEEDINGS SHALL INCLUDE, BUT NOT BE LIMIT-
23 ED TO, AUDIO WEBCAST OR OTHER BROADCAST OF THE MEETING AND FOR VOTING
24 SHALL INCLUDE BUT NOT BE LIMITED TO TELEPHONIC AND INTERNET VOTING.
25 S 2. Section 605 of the business corporation law, as amended by chap-
26 ter 746 of the laws of 1963, paragraph (a) as amended by chapter 498 of
27 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 ELECTRONIC COMMUNICATIONS, IF ANY, BY WHICH SHAREHOLDERS AND PROXYHOLD-
6 ERS MAY PARTICIPATE IN THE PROCEEDINGS OF THE MEETING AND VOTE OR GRANT
7 PROXIES AT SUCH MEETING and, unless it is the annual meeting, indicating
8 that it is being issued by or at the direction of the person or persons
9 calling the meeting. Notice of a special meeting shall also state the
10 purpose or purposes for which the meeting is called. Notice of any meet-
11 ing of shareholders may be written or electronic. If, at any meeting,
12 action is proposed to be taken which would, if taken, entitle sharehold-
13 ers fulfilling the requirements of section 623 (Procedure to enforce
14 shareholder's right to receive payment for shares) to receive payment
15 for their shares, the notice of such meeting shall include a statement
16 of 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 ELECTRONIC COMMUNICATIONS, IF ANY, BY WHICH
40 SHAREHOLDERS AND PROXYHOLDERS MAY PARTICIPATE IN THE PROCEEDINGS OF THE
41 MEETING AND/OR VOTE OR GRANT PROXIES AT THE MEETING are announced at the
42 meeting at which the adjournment is taken, and at the adjourned meeting
43 any business may be transacted that might have been transacted on the
44 original date of the meeting. However, if after the adjournment the
45 board fixes a new record date for the adjourned meeting, a notice of the
46 adjourned meeting shall be given to each shareholder of record on the
47 new record date entitled to notice under paragraph (a).

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.