

SENATE BILL 495

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2003 Regular Session
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By: **Senator Garagiola**

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Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

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CHAPTER 387

1 AN ACT concerning

2 **Corporations - Directors and Stockholders - Meetings, Notices, and**
3 **Consents**

4 FOR the purpose of providing that certain actions by the board of directors of a
5 Maryland corporation, a committee of the board, or the stockholders of the
6 corporation may be taken by a certain consent given in writing or by electronic
7 transmission and filed in paper or electronic form in certain locations; providing
8 that certain meetings of the board of directors of a Maryland corporation may be
9 held by means of remote communication; providing that certain meeting notices
10 may be delivered to the directors and the stockholders of a Maryland corporation
11 by electronic transmission; prohibiting a corporation from providing certain
12 notice to a stockholder by electronic transmission under certain circumstances;
13 authorizing certain persons to waive notice of certain meetings of directors or
14 stockholders by delivering a written waiver or a waiver by electronic
15 transmission; expanding the types of communications equipment that may be
16 used by directors and stockholders of a Maryland corporation to hold certain
17 meetings of directors and stockholders; providing that the board of directors of a
18 Maryland corporation under certain circumstances has the sole power to
19 determine the means of remote communication by which stockholders and proxy
20 holders may be considered present in person and may vote at a special meeting
21 of stockholders; authorizing the charter of a Maryland corporation to provide for
22 the place of stockholders meetings or to provide that the board of directors may
23 determine the place of stockholders meetings; authorizing the board of directors
24 of a Maryland corporation under certain circumstances to determine that
25 meetings of stockholders shall be held by means of remote communication;
26 requiring the board of directors of a Maryland corporation to provide a place for
27 a meeting of stockholders under certain circumstances; authorizing stockholders
28 and proxy holders under certain circumstances to participate in, be considered

1 present at, and vote at certain stockholders meetings held by means of remote
2 communication; requiring stockholders meeting notices to contain certain
3 information with respect to meetings held by means of remote communication;
4 providing that a notice of a stockholders meeting is considered given to a
5 stockholder when it is transmitted to the stockholder by an electronic
6 transmission to a certain address or number; establishing when certain notice
7 given by electronic transmission shall be considered ineffective; providing that
8 notice given by a corporation to a stockholder is effective if given by a single
9 notice, in writing or by electronic transmission, to all stockholders who share an
10 address under certain circumstances; authorizing certain stockholders to take
11 action or consent to any action by delivering consent in writing or by electronic
12 transmission under certain circumstances; defining a certain term; making
13 certain stylistic changes; and generally relating to directors and stockholders of
14 Maryland corporations.

15 BY repealing and reenacting, without amendments,
16 Article - Corporations and Associations
17 Section 1-101(a)
18 Annotated Code of Maryland
19 (1999 Replacement Volume and 2002 Supplement)

20 BY adding to
21 Article - Corporations and Associations
22 Section 1-101(k-1) and 2-504.1
23 Annotated Code of Maryland
24 (1999 Replacement Volume and 2002 Supplement)

25 BY repealing and reenacting, with amendments,
26 Article - Corporations and Associations
27 Section 2-408(c), 2-409, 2-502(e), 2-502.1(a), 2-503, 2-504, and 2-505
28 Annotated Code of Maryland
29 (1999 Replacement Volume and 2002 Supplement)

30 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
31 MARYLAND, That the Laws of Maryland read as follows:

32 **Article - Corporations and Associations**

33 1-101.

34 (a) In this article, unless the context clearly requires otherwise, the following
35 words have the meanings indicated.

36 (K-1) "ELECTRONIC TRANSMISSION" MEANS ANY FORM OF COMMUNICATION,
37 NOT DIRECTLY INVOLVING THE PHYSICAL TRANSMISSION OF PAPER, THAT CREATES
38 A RECORD THAT:

1 (1) MAY BE RETAINED, RETRIEVED, AND REVIEWED BY A RECIPIENT OF
2 THE COMMUNICATION; AND

3 (2) MAY BE REPRODUCED DIRECTLY IN PAPER FORM BY A RECIPIENT
4 THROUGH AN AUTOMATED PROCESS.

5 2-408.

6 (c) Any action required or permitted to be taken at a meeting of the board of
7 directors or of a committee of the board may be taken without a meeting[,] if a
8 unanimous [written] consent which sets forth the action is:

9 (1) [Signed] GIVEN IN WRITING OR BY ELECTRONIC TRANSMISSION by
10 each member of the board or committee; and

11 (2) Filed IN PAPER OR ELECTRONIC FORM with the minutes of
12 proceedings of the board or committee.

13 2-409.

14 (a) Unless the bylaws of the corporation provide otherwise, a regular or
15 special meeting of the board of directors may be held at any place in or out of the
16 State OR BY MEANS OF REMOTE COMMUNICATION.

17 (b) (1) Notice of each meeting of the board of directors shall be given as
18 provided in the bylaws.

19 (2) Unless the bylaws provide otherwise, the notice:

20 (i) Shall be in writing OR DELIVERED BY ELECTRONIC
21 TRANSMISSION; and

22 (ii) Need not state the business to be transacted at or the purpose of
23 any regular or special meeting of the board of directors.

24 (c) Whenever this article or the charter or bylaws of a corporation require
25 notice of the time, place, or purpose of a meeting of the board of directors or a
26 committee of the board, [each] A person who is entitled to the notice waives notice if
27 [he] THE PERSON:

28 (1) Before or after the meeting [signs a] DELIVERS A WRITTEN waiver
29 OR A WAIVER BY ELECTRONIC TRANSMISSION [of the notice] which is filed with the
30 records of the meeting; or

31 (2) Is present at the meeting.

32 (d) (1) Unless restricted by the charter or bylaws of the corporation,
33 members of the board of directors or a committee of the board may participate in a
34 meeting by means of a conference telephone or [similar] OTHER communications
35 equipment if all persons participating in the meeting can hear each other at the same
36 time.

1 (2) Participation in a meeting by these means constitutes presence in
2 person at the meeting.

3 2-502.

4 (e) The board of directors has the sole power to fix:

5 (1) The record date for determining stockholders entitled to request a
6 special meeting of the stockholders and the record date for determining stockholders
7 entitled to notice of and to vote at the special meeting; and

8 (2) The date, time, and place, IF ANY, AND THE MEANS OF REMOTE
9 COMMUNICATION, IF ANY, BY WHICH STOCKHOLDERS AND PROXY HOLDERS MAY BE
10 CONSIDERED PRESENT IN PERSON AND MAY VOTE AT [of] the special meeting.

11 2-502.1.

12 (a) Unless restricted by the charter or bylaws of the corporation, a corporation
13 may allow stockholders to participate in a meeting by means of a conference
14 telephone or [similar] OTHER communications equipment if all persons participating
15 in the meeting can hear each other at the same time.

16 2-503.

17 (A) Unless the charter provides otherwise, meetings of stockholders shall be
18 held as is:

19 (1) Provided in the CHARTER OR bylaws; or

20 (2) Set by the board of directors under the provisions of the CHARTER OR
21 bylaws.

22 (B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IF THE BOARD OF
23 DIRECTORS IS AUTHORIZED TO DETERMINE THE PLACE OF A MEETING OF THE
24 STOCKHOLDERS, THE BOARD MAY DETERMINE THAT THE MEETING NOT BE HELD AT
25 ANY PLACE, BUT INSTEAD MAY BE HELD SOLELY BY MEANS OF REMOTE
26 COMMUNICATION, AS AUTHORIZED BY SUBSECTION (C) OF THIS SECTION.

27 (2) AT THE REQUEST OF A STOCKHOLDER, THE BOARD OF DIRECTORS
28 SHALL PROVIDE A PLACE FOR A MEETING OF THE STOCKHOLDERS.

29 (C) IF AUTHORIZED BY THE BOARD OF DIRECTORS AND SUBJECT TO ANY
30 GUIDELINES AND PROCEDURES THAT THE BOARD ADOPTS, STOCKHOLDERS AND
31 PROXY HOLDERS NOT PHYSICALLY PRESENT AT A MEETING OF THE STOCKHOLDERS,
32 BY MEANS OF REMOTE COMMUNICATION:

33 (1) MAY PARTICIPATE IN THE MEETING OF THE STOCKHOLDERS; AND

34 (2) MAY BE CONSIDERED PRESENT IN PERSON AND MAY VOTE AT THE
35 MEETING OF THE STOCKHOLDERS, WHETHER THE MEETING IS HELD AT A
36 DESIGNATED PLACE OR SOLELY BY MEANS OF REMOTE COMMUNICATION, IF:

1 (I) THE CORPORATION IMPLEMENTS REASONABLE MEASURES TO
2 VERIFY THAT EACH PERSON CONSIDERED PRESENT AND AUTHORIZED TO VOTE AT
3 THE MEETING BY MEANS OF REMOTE COMMUNICATION IS A STOCKHOLDER OR
4 PROXY HOLDER;

5 (II) THE CORPORATION IMPLEMENTS REASONABLE MEASURES TO
6 PROVIDE THE STOCKHOLDERS AND PROXY HOLDERS A REASONABLE OPPORTUNITY
7 TO PARTICIPATE IN THE MEETING AND TO VOTE ON MATTERS SUBMITTED TO THE
8 STOCKHOLDERS, INCLUDING AN OPPORTUNITY TO READ OR HEAR THE
9 PROCEEDINGS OF THE MEETING SUBSTANTIALLY CONCURRENTLY WITH THE
10 PROCEEDINGS; AND

11 (III) IN THE EVENT ANY STOCKHOLDER OR PROXY HOLDER VOTES
12 OR TAKES OTHER ACTION AT THE MEETING BY MEANS OF REMOTE
13 COMMUNICATION, A RECORD OF THE VOTE OR OTHER ACTION IS MAINTAINED BY
14 THE CORPORATION.

15 2-504.

16 (a) Not less than 10 nor more than 90 days before each stockholders' meeting,
17 the secretary of the corporation shall give [written] notice IN WRITING OR BY
18 ELECTRONIC TRANSMISSION of the meeting to:

- 19 (1) Each stockholder entitled to vote at the meeting; and
20 (2) Each other stockholder entitled to notice of the meeting.

21 (b) The notice shall state:

22 (1) The time OF THE MEETING, [and] THE place of the meeting, IF ANY,
23 AND THE MEANS OF REMOTE COMMUNICATION, IF ANY, BY WHICH STOCKHOLDERS
24 AND PROXY HOLDERS MAY BE DEEMED TO BE PRESENT IN PERSON AND MAY VOTE
25 AT THE MEETING; and

26 (2) The purpose of the meeting, if:

- 27 (i) The meeting is a special meeting; or
28 (ii) Notice of the purpose is required by any other provision of this
29 article.

30 (c) (1) For purposes of this section, notice is given to a stockholder when it
31 is:

- 32 (1) Personally delivered to the stockholder;
33 (2) Left at the stockholder's residence or usual place of business;
34 (3) Mailed to the stockholder at the stockholder's address as it
35 appears on the records of the corporation; or

1 (4) (IV) Transmitted to the stockholder by AN electronic [mail]
2 TRANSMISSION to any [electronic mail] address OR NUMBER of the stockholder [or
3 by any other electronic means] AT WHICH THE STOCKHOLDER RECEIVES
4 ELECTRONIC TRANSMISSIONS.

5 (2) IF A CORPORATION HAS RECEIVED A REQUEST FROM A
6 STOCKHOLDER THAT NOTICE NOT BE SENT BY ELECTRONIC TRANSMISSION, THE
7 CORPORATION MAY NOT PROVIDE NOTICE TO THE STOCKHOLDER BY ELECTRONIC
8 TRANSMISSION.

9 (D) (1) AN AFFIDAVIT OF THE SECRETARY, AN ASSISTANT SECRETARY, THE
10 TRANSFER AGENT, OR OTHER AGENT OF THE CORPORATION THAT NOTICE HAS BEEN
11 GIVEN BY A FORM OF ELECTRONIC TRANSMISSION, IN THE ABSENCE OF ACTUAL
12 FRAUD, SHALL BE PRIMA FACIE EVIDENCE OF THE FACTS STATED IN THE AFFIDAVIT.

13 (2) NOTICE GIVEN BY ELECTRONIC TRANSMISSION SHALL BE
14 CONSIDERED INEFFECTIVE IF:

15 (I) THE CORPORATION IS UNABLE TO DELIVER TWO CONSECUTIVE
16 NOTICES; AND

17 (II) THE INABILITY TO DELIVER THE NOTICES BECOMES KNOWN
18 TO THE SECRETARY, AN ASSISTANT SECRETARY, THE TRANSFER AGENT, OR OTHER
19 PERSON RESPONSIBLE FOR THE GIVING OF NOTICE.

20 (3) THE INADVERTENT FAILURE TO DELIVER NOTICE UNDER
21 PARAGRAPH (2) OF THIS SUBSECTION DOES NOT INVALIDATE ANY MEETING OR
22 OTHER ACTION.

23 [(d)] (E) Whenever this article or the charter or bylaws of a corporation
24 require notice of [the time, place, or purpose of] a meeting of the stockholders, each
25 person who is entitled to the notice waives notice if the person:

26 (1) Before or after the meeting [signs a] DELIVERS A WRITTEN waiver
27 OR A WAIVER BY ELECTRONIC TRANSMISSION [of the notice] which is filed with the
28 records of stockholders meetings; or

29 (2) Is present at the meeting in person or by proxy.

30 [(e)] (F) The charter or bylaws may require any stockholder proposing a
31 nominee for election as a director or any other matter for consideration at a meeting
32 of the stockholders to provide advance notice of the nomination or proposal to the
33 corporation of not more than:

34 (1) 90 days before the date of the meeting; or

35 (2) In the case of an annual meeting, 90 days before the first anniversary
36 of:

- 1 (i) The mailing date of the notice of the preceding year's annual
2 meeting; or
- 3 (ii) The preceding year's annual meeting; or
- 4 (3) Another time specified in the charter or bylaws.

5 2-504.1.

6 (A) SUBJECT TO § 2-504(D) OF THIS SUBTITLE, ANY NOTICE GIVEN BY A
7 CORPORATION TO A STOCKHOLDER UNDER THIS ARTICLE OR THE CHARTER OR
8 BYLAWS OF THE CORPORATION IS EFFECTIVE IF GIVEN BY A SINGLE NOTICE, IN
9 WRITING OR BY ELECTRONIC TRANSMISSION, TO ALL STOCKHOLDERS WHO SHARE
10 AN ADDRESS IF:

11 (1) THE CORPORATION GIVES NOTICE, IN WRITING OR BY ELECTRONIC
12 TRANSMISSION, TO THE STOCKHOLDER OF ITS INTENT TO GIVE A SINGLE NOTICE;
13 AND

14 (2) THE STOCKHOLDER:

15 (I) CONSENTS TO RECEIVING A SINGLE NOTICE; OR

16 (II) FAILS TO OBJECT IN WRITING WITHIN 60 DAYS AFTER THE
17 CORPORATION GIVES NOTICE TO THE STOCKHOLDER OF ITS INTENT TO GIVE A
18 SINGLE NOTICE.

19 (B) A STOCKHOLDER MAY REVOKE CONSENT GIVEN UNDER SUBSECTION (A)
20 OF THIS SECTION, WHETHER AFFIRMATIVE OR IMPLIED, BY WRITTEN NOTICE TO
21 THE CORPORATION.

22 (C) THIS SECTION DOES NOT LIMIT THE MANNER IN WHICH A CORPORATION
23 OTHERWISE MAY GIVE NOTICE TO STOCKHOLDERS.

24 2-505.

25 (a) Except as provided in subsection (b) of this section, any action required or
26 permitted to be taken at a meeting of THE stockholders may be taken without a
27 meeting if a unanimous [written] consent which sets forth the action [and] is:

28 (1) [signed] GIVEN IN WRITING OR BY ELECTRONIC TRANSMISSION by
29 each stockholder entitled to vote on the matter; AND

30 (2) [is filed] FILED IN PAPER OR ELECTRONIC FORM with the records of
31 stockholders meetings.

32 (b) Unless the charter requires otherwise, the holders of any class of stock
33 other than common stock, entitled to vote generally in the election of directors, may
34 take action or consent to any action by DELIVERING A [the written] consent IN
35 WRITING OR BY ELECTRONIC TRANSMISSION of the stockholders entitled to cast not
36 less than the minimum number of votes that would be necessary to authorize or take

1 the action at a stockholders meeting if the corporation gives notice of the action to
2 each stockholder not later than 10 days after the effective time of the action.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 June 1, 2003.