
By: **Delegates Barve and Brown**

Introduced and read first time: February 7, 2001

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Corporations - Meetings of Directors and Stockholders**

3 FOR the purpose of providing that certain actions by the board of directors of a
4 Maryland corporation or a committee of the board may be taken by a certain
5 consent given in writing or by electronic transmission; providing that certain
6 meetings of the board of directors of a Maryland corporation may be held by
7 means of remote communication; providing that certain meeting notices may be
8 delivered to the directors of a Maryland corporation by electronic transmission;
9 authorizing the director of a Maryland corporation to waive notice of certain
10 meetings by delivering a written waiver or a waiver by electronic transmission;
11 expanding the types of communications equipment that may be used by
12 directors and stockholders of a Maryland corporation to hold certain meetings of
13 directors and stockholders; authorizing the charter of a Maryland corporation to
14 provide for the place of stockholders' meetings or to provide that the board of
15 directors may determine the place of stockholders' meetings; providing that the
16 board of directors of a Maryland corporation under certain circumstances has
17 the sole power to determine the means of remote communication by which
18 stockholders and proxy holders may be considered present in person and may
19 vote at a special meeting of stockholders; authorizing the board of directors of a
20 Maryland corporation under certain circumstances to determine that meetings
21 of stockholders shall be held by means of remote communication; authorizing
22 stockholders under certain circumstances to participate in, be considered
23 present at, and vote at certain stockholders' meetings held by means of remote
24 communication; requiring stockholders' meeting notices to contain certain
25 information with respect to meetings held by means of remote communication;
26 providing that certain notices of stockholders' meetings are considered given to a
27 stockholder on the occurrence of certain events; providing that a stockholder
28 may deliver a certain waiver of notice in writing or by electronic transmission;
29 providing that certain actions of stockholders of a Maryland corporation may be
30 taken by a certain consent given in writing or by electronic transmission;
31 defining a certain term; making certain stylistic changes; and generally relating
32 to meetings of directors and stockholders of Maryland corporations.

33 BY repealing and reenacting, without amendments,

34 Article - Corporations and Associations

1 Section 1-101(a)
2 Annotated Code of Maryland
3 (1999 Replacement Volume and 2000 Supplement)

4 BY adding to
5 Article - Corporations and Associations
6 Section 1-101(k-1)
7 Annotated Code of Maryland
8 (1999 Replacement Volume and 2000 Supplement)

9 BY repealing and reenacting, with amendments,
10 Article - Corporations and Associations
11 Section 2-408(c), 2-409, 2-502(e), 2-502.1(a), 2-503, 2-504, and 2-505
12 Annotated Code of Maryland
13 (1999 Replacement Volume and 2000 Supplement)

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

16 **Article - Corporations and Associations**

17 1-101.

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

20 (K-1) "ELECTRONIC TRANSMISSION" MEANS ANY FORM OF COMMUNICATION,
21 NOT DIRECTLY INVOLVING THE PHYSICAL TRANSMISSION OF PAPER, THAT CREATES
22 A RECORD THAT MAY BE RETAINED, RETRIEVED, AND REVIEWED BY A RECIPIENT OF
23 THE COMMUNICATION AND THAT MAY BE REPRODUCED DIRECTLY IN PAPER FORM
24 BY A RECIPIENT THROUGH AN AUTOMATED PROCESS.

25 2-408.

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

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

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

1 2-409.

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

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

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

8 (i) Shall be in writing OR DELIVERED BY ELECTRONIC
9 TRANSMISSION; and

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

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

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

19 (2) Is present at the meeting.

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

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

27 2-502.

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

29 (1) The record date for determining stockholders entitled to request a
30 special meeting of the stockholders and the record date for determining stockholders
31 entitled to notice of and to vote at the special meeting; and

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

1 2-502.1.

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

6 2-503.

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

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

10 (2) Set by the board of directors under the provisions of the CHARTER OR
11 bylaws.

12 (B) IF THE BOARD OF DIRECTORS IS AUTHORIZED TO DETERMINE THE PLACE
13 OF A MEETING OF THE STOCKHOLDERS, THE BOARD, IN ITS SOLE DISCRETION, MAY
14 DETERMINE THAT THE MEETING NOT BE HELD AT ANY PLACE, BUT INSTEAD MAY BE
15 HELD SOLELY BY MEANS OF REMOTE COMMUNICATION, AS AUTHORIZED BY
16 SUBSECTION (C) OF THIS SECTION.

17 (C) IF AUTHORIZED BY THE BOARD OF DIRECTORS IN ITS SOLE DISCRETION,
18 AND SUBJECT TO ANY GUIDELINES AND PROCEDURES THAT THE BOARD ADOPTS,
19 STOCKHOLDERS AND PROXY HOLDERS NOT PHYSICALLY PRESENT AT A MEETING OF
20 THE STOCKHOLDERS, BY MEANS OF REMOTE COMMUNICATION:

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

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

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

29 (II) THE CORPORATION IMPLEMENTS REASONABLE MEASURES TO
30 PROVIDE THE STOCKHOLDERS AND PROXY HOLDERS A REASONABLE OPPORTUNITY
31 TO PARTICIPATE IN THE MEETING AND TO VOTE ON MATTERS SUBMITTED TO THE
32 STOCKHOLDERS, INCLUDING AN OPPORTUNITY TO READ OR HEAR THE
33 PROCEEDINGS OF THE MEETING SUBSTANTIALLY CONCURRENTLY WITH THE
34 PROCEEDINGS; AND

35 (III) IN THE EVENT ANY STOCKHOLDER OR PROXY HOLDER VOTES
36 OR TAKES OTHER ACTION AT THE MEETING BY MEANS OF REMOTE
37 COMMUNICATION, A RECORD OF THE VOTE OR OTHER ACTION IS MAINTAINED BY
38 THE CORPORATION.

1 2-504.

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

5 (1) Each stockholder entitled to vote at the meeting; and

6 (2) Each other stockholder entitled to notice of the meeting.

7 (b) The notice shall state:

8 (1) The time and place of the meeting, IF ANY, AND THE MEANS OF
9 REMOTE COMMUNICATION, IF ANY, BY WHICH STOCKHOLDERS AND PROXY HOLDERS
10 MAY BE DEEMED TO BE PRESENT IN PERSON AND MAY VOTE AT THE MEETING; and

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

12 (i) The meeting is a special meeting; or

13 (ii) Notice of the purpose is required by any other provision of this
14 article.

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

16 (1) Personally delivered to the stockholder;

17 (2) Left at the stockholder's residence or usual place of business;

18 (3) Mailed to the stockholder at the stockholder's address as it appears
19 on the records of the corporation; [or]

20 (4) Transmitted to the stockholder by electronic mail to any electronic
21 mail address of the stockholder or by any other electronic means;

22 (5) TRANSMITTED BY A FACSIMILE TELECOMMUNICATION THAT IS
23 DIRECTED TO A NUMBER AT WHICH THE STOCKHOLDER HAS CONSENTED TO
24 RECEIVE NOTICE; OR

25 (6) TRANSMITTED BY A POSTING ON AN ELECTRONIC NETWORK, AND
26 SEPARATE NOTICE IS GIVEN TO THE STOCKHOLDER OF THE SPECIFIC POSTING.

27 (D) (1) WITHOUT LIMITING THE MANNER BY WHICH NOTICE OTHERWISE
28 MAY BE GIVEN EFFECTIVELY TO STOCKHOLDERS, ANY NOTICE TO STOCKHOLDERS
29 GIVEN BY A CORPORATION UNDER THIS TITLE OR UNDER THE CHARTER OR BYLAWS
30 OF A CORPORATION SHALL BE EFFECTIVE IF GIVEN BY A FORM OF ELECTRONIC
31 TRANSMISSION CONSENTED TO BY THE STOCKHOLDER TO WHOM THE NOTICE IS
32 GIVEN.

33 (2) AN AFFIDAVIT OF THE SECRETARY, AN ASSISTANT SECRETARY, THE
34 TRANSFER AGENT, OR OTHER AGENT OF THE CORPORATION THAT NOTICE HAS BEEN

1 GIVEN BY A FORM OF ELECTRONIC TRANSMISSION, IN THE ABSENCE OF ACTUAL
2 FRAUD, SHALL BE PRIMA FACIE EVIDENCE OF THE FACTS STATED IN THE AFFIDAVIT.

3 (3) ANY CONSENT DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION:

4 (I) SHALL BE REVOCABLE BY THE STOCKHOLDER BY WRITTEN
5 NOTICE TO THE CORPORATION; AND

6 (II) SHALL BE CONSIDERED REVOKED IF:

7 1. THE CORPORATION IS UNABLE TO DELIVER BY
8 ELECTRONIC TRANSMISSION TWO CONSECUTIVE NOTICES GIVEN BY THE
9 CORPORATION IN ACCORDANCE WITH THE CONSENT; AND

10 2. THE INABILITY TO DELIVER THE NOTICE BECOMES
11 KNOWN TO THE SECRETARY, AN ASSISTANT SECRETARY, THE TRANSFER AGENT, OR
12 OTHER PERSON RESPONSIBLE FOR THE GIVING OF NOTICE.

13 (4) THE INADVERTENT FAILURE TO TREAT A CONSENT AS REVOKED
14 UNDER PARAGRAPH (3)(II) OF THIS SUBSECTION DOES NOT INVALIDATE ANY
15 MEETING OR OTHER ACTION.

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

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

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

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

27 (1) 90 days before the date of the meeting; or

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

30 (i) The mailing date of the notice of the preceding year's annual
31 meeting; or

32 (ii) The preceding year's annual meeting; or

33 (3) Another time specified in the charter or bylaws.

1 2-505.

2 (a) Except as provided in subsection (b) of this section, any action required or
3 permitted to be taken at a meeting of stockholders may be taken without a meeting if
4 a unanimous [written] consent which sets forth the action and is signed OR
5 DELIVERED BY ELECTRONIC TRANSMISSION by each stockholder entitled to vote on
6 the matter is filed with the records of stockholders meetings.

7 (b) Unless the charter requires otherwise, the holders of any class of stock
8 other than common stock, entitled to vote generally in the election of directors, may
9 take action or consent to any action by DELIVERING A [the written] consent IN
10 WRITING OR BY ELECTRONIC TRANSMISSION of the stockholders entitled to cast not
11 less than the minimum number of votes that would be necessary to authorize or take
12 the action at a stockholders meeting if the corporation gives notice of the action to
13 each stockholder not later than 10 days after the effective time of the action.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 June 1, 2001.