
By: **Senator Baker**

Introduced and read first time: January 11, 2002

Assigned to: Judicial Proceedings

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 directors 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; requiring the
22 board of directors to provide a place for a meeting of stockholders under certain
23 circumstances; authorizing stockholders under certain circumstances to
24 participate in, be considered present at, and vote at certain stockholders'
25 meetings held by means of remote communication; requiring stockholders'
26 meeting notices to contain certain information with respect to meetings held by
27 means of remote communication; providing that certain notices of stockholders'
28 meetings are considered given to a stockholder on the occurrence of certain
29 events; providing that a stockholder may deliver a certain waiver of notice in
30 writing or by electronic transmission; providing that certain actions of
31 stockholders of a Maryland corporation may be taken by a certain consent given
32 in writing or by electronic transmission; defining a certain term; making certain
33 stylistic changes; and generally relating to meetings of directors and
34 stockholders of Maryland corporations.

35 BY repealing and reenacting, without amendments,

1 Article - Corporations and Associations
2 Section 1-101(a)
3 Annotated Code of Maryland
4 (1999 Replacement Volume and 2001 Supplement)

5 BY adding to
6 Article - Corporations and Associations
7 Section 1-101(k-1)
8 Annotated Code of Maryland
9 (1999 Replacement Volume and 2001 Supplement)

10 BY repealing and reenacting, with amendments,
11 Article - Corporations and Associations
12 Section 2-408(c), 2-409, 2-502(e), 2-502.1(a), 2-503, 2-504, and 2-505
13 Annotated Code of Maryland
14 (1999 Replacement Volume and 2001 Supplement)

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

17 **Article - Corporations and Associations**

18 1-101.

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

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

26 2-408.

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

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

32 (2) Filed IN PAPER OR ELECTRONIC FORM with the minutes of
33 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) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IF THE BOARD OF
13 DIRECTORS IS AUTHORIZED TO DETERMINE THE PLACE OF A MEETING OF THE
14 STOCKHOLDERS, THE BOARD MAY DETERMINE THAT THE MEETING NOT BE HELD AT
15 ANY PLACE, BUT INSTEAD MAY BE HELD SOLELY BY MEANS OF REMOTE
16 COMMUNICATION, AS AUTHORIZED BY SUBSECTION (C) OF THIS SECTION.

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

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

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

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

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

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

1 (III) IN THE EVENT ANY STOCKHOLDER OR PROXY HOLDER VOTES
2 OR TAKES OTHER ACTION AT THE MEETING BY MEANS OF REMOTE
3 COMMUNICATION, A RECORD OF THE VOTE OR OTHER ACTION IS MAINTAINED BY
4 THE CORPORATION.

5 2-504.

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

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

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

11 (b) The notice shall state:

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

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

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

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

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

20 (1) Personally delivered to the stockholder;

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

22 (3) Mailed to the stockholder at the stockholder's address as it appears
23 on the records of the corporation; or

24 (4) Transmitted to the stockholder by AN electronic [mail]
25 TRANSMISSION to any [electronic mail] address OR NUMBER of the stockholder [or
26 by any other electronic means] AT WHICH THE STOCKHOLDER RECEIVES
27 ELECTRONIC TRANSMISSIONS.

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

32 (2) NOTICE GIVEN BY ELECTRONIC TRANSMISSION UNDER THIS
33 SECTION SHALL BE CONSIDERED INEFFECTIVE IF:

1 (I) THE CORPORATION IS UNABLE TO DELIVER TWO CONSECUTIVE
2 NOTICES; AND

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

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

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

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

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

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

20 (1) 90 days before the date of the meeting; or

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

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

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

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

27 2-505.

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

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

1 less than the minimum number of votes that would be necessary to authorize or take
2 the action at a stockholders meeting if the corporation gives notice of the action to
3 each stockholder not later than 10 days after the effective time of the action.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
5 effect June 1, 2002.