
By: **Senator Garagiola**
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Assigned to: Judicial Proceedings

A BILL ENTITLED

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; authorizing certain persons to waive notice of certain
12 meetings of directors or stockholders by delivering a written waiver or a waiver
13 by electronic transmission; expanding the types of communications equipment
14 that may be used by directors and stockholders of a Maryland corporation to
15 hold certain meetings of directors and stockholders; providing that the board of
16 directors of a Maryland corporation under certain circumstances has the sole
17 power to determine the means of remote communication by which stockholders
18 and proxy holders may be considered present in person and may vote at a
19 special meeting of stockholders; authorizing the charter of a Maryland
20 corporation to provide for the place of stockholders meetings or to provide that
21 the board of directors may determine the place of stockholders meetings;
22 authorizing the board of directors of a Maryland corporation under certain
23 circumstances to determine that meetings of stockholders shall be held by
24 means of remote communication; requiring the board of directors of a Maryland
25 corporation to provide a place for a meeting of stockholders under certain
26 circumstances; authorizing stockholders and proxy holders under certain
27 circumstances to participate in, be considered present at, and vote at certain
28 stockholders meetings held by means of remote communication; requiring
29 stockholders meeting notices to contain certain information with respect to
30 meetings held by means of remote communication; providing that a notice of a
31 stockholders meeting is considered given to a stockholder when it is transmitted
32 to the stockholder by an electronic transmission to a certain address or number;
33 establishing when certain notice given by electronic transmission shall be
34 considered ineffective; providing that notice given by a corporation to a
35 stockholder is effective if given by a single notice, in writing or by electronic

1 transmission, to all stockholders who share an address under certain
2 circumstances; authorizing certain stockholders to take action or consent to any
3 action by delivering consent in writing or by electronic transmission under
4 certain circumstances; defining a certain term; making certain stylistic changes;
5 and generally relating to directors and stockholders of Maryland corporations.

6 BY repealing and reenacting, without amendments,
7 Article - Corporations and Associations
8 Section 1-101(a)
9 Annotated Code of Maryland
10 (1999 Replacement Volume and 2002 Supplement)

11 BY adding to
12 Article - Corporations and Associations
13 Section 1-101(k-1) and 2-504.1
14 Annotated Code of Maryland
15 (1999 Replacement Volume and 2002 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article - Corporations and Associations
18 Section 2-408(c), 2-409, 2-502(e), 2-502.1(a), 2-503, 2-504, and 2-505
19 Annotated Code of Maryland
20 (1999 Replacement Volume and 2002 Supplement)

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

23 **Article - Corporations and Associations**

24 1-101.

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

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

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

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

1 2-408.

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

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

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

9 2-409.

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

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

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

16 (i) Shall be in writing OR DELIVERED BY ELECTRONIC
17 TRANSMISSION; and

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

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

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

27 (2) Is present at the meeting.

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

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

1 2-502.

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

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

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

9 2-502.1.

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

14 2-503.

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

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

18 (2) Set by the board of directors under the provisions of the CHARTER OR
19 bylaws.

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

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

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

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

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

35 (I) THE CORPORATION IMPLEMENTS REASONABLE MEASURES TO
36 VERIFY THAT EACH PERSON CONSIDERED PRESENT AND AUTHORIZED TO VOTE AT

1 THE MEETING BY MEANS OF REMOTE COMMUNICATION IS A STOCKHOLDER OR
2 PROXY HOLDER;

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

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

13 2-504.

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

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

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

19 (b) The notice shall state:

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

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

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

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

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

29 (1) Personally delivered to the stockholder;

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

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

33 (4) Transmitted to the stockholder by AN electronic [mail]
34 TRANSMISSION to any [electronic mail] address OR NUMBER of the stockholder [or

1 by any other electronic means] AT WHICH THE STOCKHOLDER RECEIVES
2 ELECTRONIC TRANSMISSIONS.

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

7 (2) NOTICE GIVEN BY ELECTRONIC TRANSMISSION SHALL BE
8 CONSIDERED INEFFECTIVE IF:

9 (I) THE CORPORATION IS UNABLE TO DELIVER TWO CONSECUTIVE
10 NOTICES; AND

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

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

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

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

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

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

28 (1) 90 days before the date of the meeting; or

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

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

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

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

1 2-504.1.

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

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

10 (2) THE STOCKHOLDER:

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

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

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

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

20 2-505.

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

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

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

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

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