

## NEW JERSEY BECOMES MORE BUSINESS FRIENDLY

### *Amendments to New Jersey Corporate Laws*

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On April 1, 2013, Governor Chris Christie signed legislation amending the New Jersey Business Corporation Act. This three-bill package is intended to make New Jersey more business friendly as New Jersey corporate statutes come into alignment with those found in neighboring states such as Delaware and New York.



#### SHAREHOLDER'S PROTECTION ACT AMENDMENT

The first law amends the New Jersey Shareholder's Protection Act (the "SPA"), which was designed to help protect New Jersey corporations from hostile takeovers. Specifically, the bill amends the definition of "resident domestic corporation" to make all public corporations incorporated under New Jersey law subject to the protections of the SPA, regardless of the location of their principal executive offices or the level of business operations in New Jersey. Newly-covered corporations, those that do not have principal executive offices or significant business operations in New Jersey, may continue operating without the protections of the SPA by amending their bylaws to specifically provide that the corporation is not subject to the SPA. This amendment must be adopted within 90 days of the effective date of the bill or by June 30, 2013.

The bill also allows a corporation to, with the requisite approvals, engage in certain business transactions with an interested shareholder that were previously prohibited under the SPA. Additionally, the bill provides that shareholders who own five percent or more of the outstanding voting stock in a newly covered corporation, who do not elect to opt-out, will be exempt from the SPA.

#### SHAREHOLDER MEETINGS AND DISSENTERS' RIGHTS

The second law changes the New Jersey Business Corporation Act with regard to shareholder meeting participation and remedies for dissenting shareholders. Under the bill, a shareholder is allowed to participate in a shareholder meeting by remote communication, provided that the corporation's board of directors authorize this type of communication. The bill further amends the dissenters' rights section to clarify the situations in which a shareholder may challenge a corporate action. This amendment makes the dissenters' rights statute the exclusive remedy for dissenting shareholders to challenge a corporate action in the absence of fraud or material misrepresentation.

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## SHAREHOLDER LITIGATION

The third law creates a new section in the New Jersey Business Corporation Act regarding shareholder derivative litigation and makes such suits more difficult to commence and prosecute. Corporations are required to amend their certificates of incorporation if they seek to make these changes applicable to them. If adopted, independent board members have greater flexibility in moving to dismiss the litigation if they determine the suit is not in the best interest of the corporation. Furthermore, the bill raises the value of a plaintiff's shareholdings to \$250,000 for the plaintiff to avoid posting security. The bill also mandates a written demand in every derivative proceeding.

Management and the boards of directors of New Jersey corporations should consult legal counsel to help determine whether the following action items should be taken in response to these amendments:

- Determine whether the SPA now applies as a result of the expanded definition of "resident domestic corporation." If the corporation is now subject to the SPA, then determine whether to "opt out" of the statute. If the decision is made to opt out, then the corporate bylaws must be amended before June 30, 2013 to specifically provide that the corporation is not subject to the SPA.
- Determine whether to permit participation in shareholders' meetings by means of remote communication. If the decision is made to allow such participation, then the corporate bylaws must be amended to authorize remote participation and future meeting notices must describe the remote communication to be used.
- Determine whether to "opt in" to coverage under the new statute governing shareholder derivative and class actions. If the decision is made to opt in, then the certificate of incorporation must be amended to make these changes applicable.

**LOREN L. SPEZIALE** represents private and public corporations, privately held businesses, financial institutions, and individuals in transactional and litigation matters involving commercial and real property disputes, breach of contract claims, and employment-related actions. With deep roots in the New Jersey and Northeast Pennsylvania legal and business communities, Loren is a speaker on various topics including the work product doctrine, the attorney-client privilege, and internet marketing and advertising. Loren was selected for inclusion in the 2013 Pennsylvania Super Lawyers Rising Stars list, a distinction reserved for no more than 2.5% of young attorneys in Pennsylvania. In 2010, and 2011, Loren was recognized by New Jersey Super Lawyers on their Rising Stars list as well. Loren has an AV Preeminent® Peer Review Rating by Martindale-Hubbell®.

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