

Bill and Sponsors Statement identical to A1980

COMMITTEE STATEMENT:

ASSEMBLY: No

SENATE: Yes

Identical to Assembly Statement for A1980

FLOOR AMENDMENT STATEMENT: Yes

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

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ASSEMBLY, No. 1980

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED JANUARY 31, 2000

Sponsored by:

Assemblyman NEIL M. COHEN

District 20 (Union)

SYNOPSIS

Permits certain corporate mergers without shareholder approval or right of dissent.

CURRENT VERSION OF TEXT

As introduced.



A1980 COHEN

2

1 AN ACT concerning certain corporate mergers and amending
2 N.J.S.14A:10-3 and N.J.S.14A:11-1.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. N.J.S.14A:10-3 is amended to read as follows:

8 14A:10-3. Approval by shareholders.

9 (1) The board of each corporation, upon approving such plan of
10 merger or plan of consolidation, shall direct that the plan be submitted
11 to a vote at a meeting of shareholders. Written notice shall be given
12 not less than 20 nor more than 60 days before such meeting to each
13 shareholder of record, whether or not entitled to vote at such meeting,
14 in the manner provided in this act for the giving of notice of meetings
15 of shareholders. Such notice shall include, or shall be accompanied by

16 (a) A copy or a summary of the plan of merger or consolidation;
17 and

18 (b) A statement informing shareholders who, under Chapter 11 of
19 this act, are entitled to dissent, that they have the right to dissent and
20 to be paid the fair value of their shares and outlining briefly, with
21 particular reference to the time periods within which actions must be
22 taken, the procedures set forth in Chapter 11 of this act with which
23 they must comply in order to assert and enforce such right.

24 (2) At each such meeting, a vote of the shareholders shall be taken
25 on the proposed plan of merger or consolidation. Such plan shall be
26 approved upon receiving the affirmative vote of a majority of the votes
27 cast by the holders of shares of each such corporation entitled to vote
28 thereon, and, in addition, if any class or series is entitled to vote
29 thereon as a class, the affirmative vote of a majority of the votes cast
30 in each class vote; except that, in the case of a corporation organized
31 prior to January 1, 1969, the plan of merger or consolidation shall be
32 approved upon receiving the affirmative vote of two-thirds of the
33 votes so cast. Any class or series of shares of any such corporation
34 shall be entitled to vote as a class if the plan of merger or
35 consolidation, as the case may be, contains any provision which, if
36 contained in a proposed amendment to the certificate of incorporation,
37 would entitle such class or series of shares to vote as a class unless
38 such provision is one which could be adopted by the board without
39 shareholder approval as referred to in subsection 14A:9-2(2). The
40 voting requirements of this section shall be subject to such greater
41 requirements as are provided in this act for specific amendments or as
42 may be provided in the certificate of incorporation.

43 (3) Subject to the provisions of section 14A:5-12, a corporation

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 organized prior to January 1, 1969, may adopt the majority voting
2 requirements prescribed in subsection 14A:10-3(2) by an amendment
3 of its certificate of incorporation adopted by the affirmative vote of
4 two-thirds of the votes cast by the holders of shares entitled to vote
5 thereon.

6 (4) Notwithstanding the provisions set forth in subsections
7 14A:10-3(1) and 14A:10-3(2), the approval of the shareholders of a
8 surviving corporation shall not be required to authorize a merger
9 (unless its certificate of incorporation otherwise provides) if

10 (a) The plan of merger does not make an amendment of the
11 certificate of incorporation of the surviving corporation which is
12 required by the provisions of this act to be approved by the
13 shareholders;

14 (b) Each shareholder of the surviving corporation whose shares
15 were outstanding immediately before the effective date of the merger
16 will hold the same number of shares, with identical designations,
17 preferences, limitations, and rights, immediately after;

18 (c) The number of voting shares outstanding immediately after the
19 merger, plus the number of voting shares issuable on conversion of
20 other securities or on exercise of rights and warrants issued pursuant
21 to the merger, will not exceed by more than 40% the total number of
22 voting shares of the surviving corporation outstanding immediately
23 before the merger; and

24 (d) The number of participating shares outstanding immediately
25 after the merger, plus the number of participating shares issuable on
26 conversion of other securities or on exercise of rights and warrants
27 issued pursuant to the merger, will not exceed by more than 40% the
28 total number of participating shares of the surviving corporation
29 outstanding immediately before the merger.

30 (5) As used in subsection 14A:10-3(4):

31 (a) "Participating shares" means shares that entitle their holders to
32 participate without limitation in distributions.

33 (b) "Voting shares" means shares that entitle their holders to vote
34 unconditionally in elections of directors.

35 (6) Notwithstanding the requirements set forth in subsections (1)
36 and (2) of this section, the approval of the shareholders of a
37 corporation shall not be required to authorize a merger with or into
38 a single direct or indirect wholly-owned subsidiary of that corporation
39 (unless its certificate of incorporation otherwise provides) if:

40 (a) the corporation and the direct or indirect wholly-owned
41 subsidiary of the corporation are the only parties to the merger;

42 (b) each shareholder of the corporation whose shares were
43 outstanding immediately before the effective date of the merger will
44 hold the same number of shares in the holding company, with identical
45 designations, preferences, limitations and rights, immediately after the
46 effective date of the merger;

1 (c) the corporation, its direct or indirect wholly-owned subsidiary,
2 the holding company and the surviving corporation are domestic
3 corporations;

4 (d) the certificate of incorporation and by-laws of the holding
5 company immediately after the effective date of the merger contain
6 provisions identical to the certificate of incorporation and by-laws of
7 the corporation immediately before the effective date of the merger
8 (other than provisions, if any, regarding the incorporator or
9 incorporators, the corporate name, the registered office and agent, the
10 initial board of directors and the initial subscribers for shares and the
11 provisions contained in any amendment to the certificate of
12 incorporation as were necessary to effect a change, exchange,
13 reclassification or cancellation of shares, if such change, exchange,
14 reclassification or cancellation has become effective);

15 (e) as a result of the merger, the surviving corporation or its
16 successor corporation remains or becomes a direct or indirect wholly-
17 owned subsidiary of the holding company;

18 (f) the directors of the corporation remain or become the directors
19 of the holding company upon the effective date of the merger;

20 (g) the certificate of incorporation of the surviving corporation
21 immediately after the effective date of the merger is identical to the
22 certificate of incorporation of the corporation immediately before the
23 effective date of the merger (other than provisions, if any, regarding
24 the incorporator or incorporators, the corporate name, the registered
25 office and agent, the initial board of directors and the initial
26 subscribers for shares and the provisions contained in any amendment
27 to the certificate of incorporation as were necessary to effect a change,
28 exchange, reclassification or cancellation of shares, if such change,
29 exchange, reclassification or cancellation has become effective);
30 provided, however, that: (i) the certificate of incorporation of the
31 surviving corporation shall be amended in the merger to contain a
32 provision requiring that any act or transaction by or involving the
33 surviving corporation that requires for its adoption under N.J.S.14A:1-
34 1 et seq., or its certificate of incorporation, approval by the
35 shareholders of the surviving corporation, other than the election or
36 removal of directors of the surviving corporation, shall, by specific
37 reference to this subsection, require approval by the shareholders of
38 the holding company (or any successor by merger), by the same vote
39 as is required by N.J.S.14A:1-1 et seq. or by the certificate of
40 incorporation of the surviving corporation, until thereafter otherwise
41 amended by approval of the shareholders of the surviving corporation
42 and the holding company; and (ii) the certificate of incorporation of
43 the surviving corporation may be amended in the merger to reduce the
44 number of classes and shares of capital stock that the surviving
45 corporation is authorized to issue; and

46 (h) the shareholders of the corporation do not recognize a gain or

1 loss for United States federal income tax purposes as determined by
2 the board of directors of the corporation.

3 (7) On and after the effective date of a merger authorized by action
4 of the board of directors of a corporation and without any vote of the
5 shareholders pursuant to subsection (6) of this section:

6 (a) to the extent that the restrictions of the "New Jersey
7 Shareholders' Protection Act," P.L.1986, c.74 (C.14A:10A-1 et seq.),
8 applied to the corporation and its shareholders at the effective date of
9 the merger, the restrictions shall apply to the holding company and its
10 shareholders immediately after the effective date of the merger as
11 though it were the corporation and all shares of the holding company
12 acquired in the merger shall for purposes of the "New Jersey
13 Shareholders' Protection Act," P.L.1986, c.74 (C.14A:10A-1 et seq.)
14 be deemed to have been acquired at the time that the shares of the
15 corporation converted in the merger were acquired, and provided
16 further that any shareholder who, immediately prior to the effective
17 date of the merger, was not an interested stockholder within the
18 meaning of section 3 of the "New Jersey Shareholders' Protection
19 Act," P.L.1986, c.74 (C.14A:10A-3) shall not solely by reason of the
20 merger become an interested stockholder of the holding company; and

21 (b) if the corporate name of the holding company immediately after
22 the effective date of the merger is the same as the corporate name of
23 the surviving corporation immediately prior to the effective date of the
24 merger, the shares of the holding company into which the shares of the
25 surviving corporation are converted in the merger shall be represented
26 by the stock certificates that previously represented shares of the
27 surviving corporation.

28 (8) If a plan of merger is adopted by a corporation by action of its
29 board of directors and without any vote of shareholders pursuant to
30 subsection (6) of this section, the secretary or assistant secretary of
31 that corporation shall certify on the plan of merger that the plan of
32 merger has been adopted pursuant to that subsection and that the
33 conditions of paragraphs (a) through (h) of subsection (6) of
34 N.J.S.14A:10-3 have been satisfied.

35 (9) As used in subsections (6), (7) and (8) of this section, "holding
36 company" means a corporation which, from its incorporation until
37 consummation of a merger governed by subsections (6), (7) and (8) of
38 N.J.S.14A:10-3, was at all times a direct or indirect wholly-owned
39 subsidiary of the corporation and shares of which are issued in the
40 merger.

41 (cf: P.L.1988, c.94, s.57)

42
43 2. N.J.S.14A:11-1 is amended to read as follows:

44 14A:11-1. Right of shareholders to dissent.

45 (1) Any shareholder of a domestic corporation shall have the right
46 to dissent from any of the following corporate actions

- 1 (a) Any plan of merger or consolidation to which the corporation
2 is a party, provided that, unless the certificate of incorporation
3 otherwise provides
- 4 (i) a shareholder shall not have the right to dissent from any plan
5 of merger or consolidation with respect to shares
- 6 (A) of a class or series which is listed on a national securities
7 exchange or is held of record by not less than 1,000 holders on the
8 record date fixed to determine the shareholders entitled to vote upon
9 the plan of merger or consolidation; or
- 10 (B) for which, pursuant to the plan of merger or consolidation, he
11 will receive (x) cash, (y) shares, obligations or other securities which,
12 upon consummation of the merger or consolidation, will either be
13 listed on a national securities exchange or held of record by not less
14 than 1,000 holders, or (z) cash and such securities;
- 15 (ii) a shareholder of a surviving corporation shall not have the right
16 to dissent from a plan of merger, if the merger did not require for its
17 approval the vote of such shareholders as provided in section
18 14A:10-5.1 or in subsection 14A:10-3(4), 14A:10-7(2) or
19 14A:10-7(4); [or]
- 20 (iii) a shareholder of a corporation shall not have the right to
21 dissent from a plan of merger, if the merger did not require, for its
22 approval, the vote of the shareholders as provided in subsection (6) of
23 N.J.S.14A:10-3; or
- 24 (b) Any sale, lease, exchange or other disposition of all or
25 substantially all of the assets of a corporation not in the usual or
26 regular course of business as conducted by such corporation, other
27 than a transfer pursuant to subsection (4) of N.J.S.14A:10-11,
28 provided that, unless the certificate of incorporation otherwise
29 provides, the shareholder shall not have the right to dissent
- 30 (i) with respect to shares of a class or series which, at the record
31 date fixed to determine the shareholders entitled to vote upon such
32 transaction, is listed on a national securities exchange or is held of
33 record by not less than 1,000 holders; or
- 34 (ii) from a transaction pursuant to a plan of dissolution of the
35 corporation which provides for distribution of substantially all of its
36 net assets to shareholders in accordance with their respective interests
37 within one year after the date of such transaction, where such
38 transaction is wholly for
- 39 (A) cash; or
- 40 (B) shares, obligations or other securities which, upon
41 consummation of the plan of dissolution will either be listed on a
42 national securities exchange or held of record by not less than 1,000
43 holders; or
- 44 (C) cash and such securities; or
- 45 (iii) from a sale pursuant to an order of a court having jurisdiction.
- 46 (2) Any shareholder of a domestic corporation shall have the right

1 to dissent with respect to any shares owned by him which are to be
2 acquired pursuant to section 14A:10-9.

3 (3) A shareholder may not dissent as to less than all of the shares
4 owned beneficially by him and with respect to which a right of dissent
5 exists. A nominee or fiduciary may not dissent on behalf of any
6 beneficial owner as to less than all of the shares of such owner with
7 respect to which the right of dissent exists.

8 (4) A corporation may provide in its certificate of incorporation
9 that holders of all its shares, or of a particular class or series thereof,
10 shall have the right to dissent from specified corporate actions in
11 addition to those enumerated in subsection 14A:11-1(1), in which case
12 the exercise of such right of dissent shall be governed by the
13 provisions of this Chapter.

14 (cf: P.L.1995, c.279, s.21)

15

16 3. This act shall take effect immediately.

17

18 STATEMENT

19

20 This bill permits a New Jersey corporation to reorganize by merging
21 with or into a direct or indirect wholly-owned subsidiary of a holding
22 company without approval by its shareholders and without the need to
23 transfer assets and liabilities. This bill insures that the rights of
24 shareholders of the corporation are not altered by this reorganization,
25 except to the same extent that these rights may be altered without
26 shareholder approval under existing law.

27 Under current New Jersey law, a holding company may be formed
28 by a New Jersey corporation without the approval of the shareholders
29 of that corporation by creating a subsidiary of that corporation and
30 transferring the assets and liabilities of that corporation to the
31 subsidiary, in effect, transforming the corporation into a holding
32 company. For some corporations, this process necessitates the
33 sometimes impractical or burdensome transfers on an asset-by-asset
34 basis.

35 Under this bill, shareholders of the corporation receive, in the
36 merger, the same number of shares in the holding company as they
37 held in the corporation immediately before the effective date of the
38 merger, with the same rights; as a result of the merger, the surviving
39 corporation is a direct or indirect wholly-owned subsidiary of the
40 holding company and the directors of the holding company are the
41 directors of the surviving corporation; provisions of the "New Jersey
42 Shareholders Protection Act," P.L.1986, c.74 (C.14A:10A-1 et seq.)
43 apply to persons who are shareholders of the holding company to the
44 same extent they were applied to shareholders of the corporation; the
45 reorganization is tax-free for federal income tax purposes to
46 shareholders of the corporation; and dissenter's rights are not available
47 in the event of reorganization.

ASSEMBLY COMMERCE, TOURISM, GAMING AND
MILITARY AND VETERANS' AFFAIRS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1980

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 1, 2001

The Assembly Commerce, Tourism, Gaming and Military and Veterans' Affairs Committee reports favorably and with committee amendments Assembly, No. 1980.

As amended by the committee, this bill permits a corporation organized in New Jersey to change from an operating corporation to a holding corporation with one or more wholly-owned subsidiaries by use of a merger without shareholder approval or a transfer of assets. The bill allows a corporation (parent) to form a direct subsidiary and an indirect subsidiary (a subsidiary owned by the direct subsidiary) and to merge the resulting parent corporation into the indirect subsidiary. The direct subsidiary would then become the new parent corporation, and the original parent corporation would become a subsidiary. The bill provides that this merger method does not require shareholder approval if the new parent corporation is structurally identical to, with the same shareholder rights and directors as, the old parent corporation. As shareholders are not affected by the merger, shareholders do not have a right to dissent from the plan of merger under the bill. Since a merger is involved under these circumstances, no transfer of assets is required.

In addition, the shareholders of the corporation do not recognize a gain or loss for federal income tax purposes and the merger method provided in the bill does not require registration of the merger transaction with the Securities and Exchange Commission (SEC), thus putting this merger method on a par with the existing asset transfer merger method which is also free of an SEC registration requirement and does not require shareholder approval.

Finally, the bill provides that, after a transaction allowed pursuant to the provisions of the bill, the provisions of the "New Jersey Shareholders' Protection Act" will apply to the resulting corporations to the extent that they applied prior to the transaction.

The committee adopted numerous technical amendments to the bill in order to make it identical to Senate, No.1232.

[First Reprint]

ASSEMBLY, No. 1980

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED JANUARY 31, 2000

Sponsored by:

Assemblyman NEIL M. COHEN

District 20 (Union)

Co-Sponsored by:

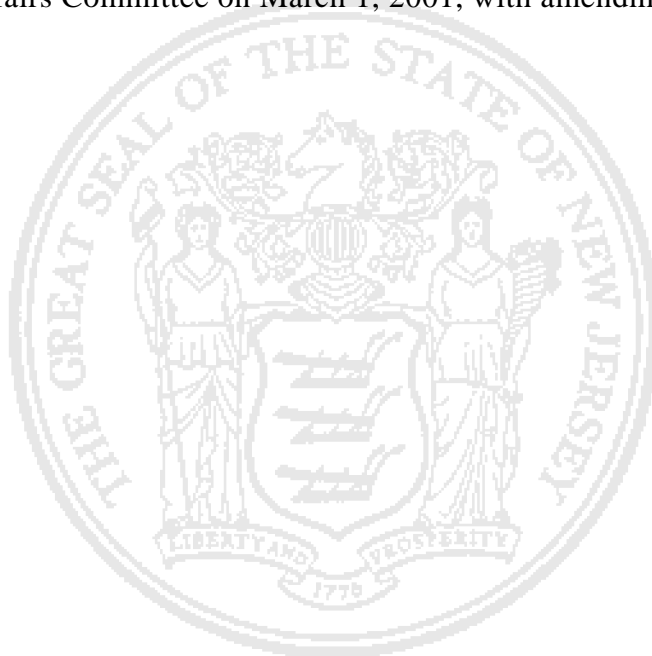
Senator Bennett

SYNOPSIS

Permits certain corporate mergers without shareholder approval or right of dissent.

CURRENT VERSION OF TEXT

As reported by the Assembly Commerce, Tourism, Gaming and Military and Veterans' Affairs Committee on March 1, 2001, with amendments.



(Sponsorship Updated As Of: 6/8/2001)

1 AN ACT concerning certain corporate mergers and amending
2 N.J.S.14A:10-3 ¹, N.J.S.14A:10-4.1¹ and N.J.S.14A:11-1.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. N.J.S.14A:10-3 is amended to read as follows:
8 14A:10-3. Approval by shareholders.

9 (1) The board of each corporation, upon approving such plan of
10 merger or plan of consolidation, shall direct that the plan be submitted
11 to a vote at a meeting of shareholders. Written notice shall be given
12 not less than 20 nor more than 60 days before such meeting to each
13 shareholder of record, whether or not entitled to vote at such meeting,
14 in the manner provided in this act for the giving of notice of meetings
15 of shareholders. Such notice shall include, or shall be accompanied by

16 (a) A copy or a summary of the plan of merger or consolidation;
17 and

18 (b) A statement informing shareholders who, under Chapter 11 of
19 this act, are entitled to dissent, that they have the right to dissent and
20 to be paid the fair value of their shares and outlining briefly, with
21 particular reference to the time periods within which actions must be
22 taken, the procedures set forth in Chapter 11 of this act with which
23 they must comply in order to assert and enforce such right.

24 (2) At each such meeting, a vote of the shareholders shall be taken
25 on the proposed plan of merger or consolidation. Such plan shall be
26 approved upon receiving the affirmative vote of a majority of the votes
27 cast by the holders of shares of each such corporation entitled to vote
28 thereon, and, in addition, if any class or series is entitled to vote
29 thereon as a class, the affirmative vote of a majority of the votes cast
30 in each class vote; except that, in the case of a corporation organized
31 prior to January 1, 1969, the plan of merger or consolidation shall be
32 approved upon receiving the affirmative vote of two-thirds of the
33 votes so cast. Any class or series of shares of any such corporation
34 shall be entitled to vote as a class if the plan of merger or
35 consolidation, as the case may be, contains any provision which, if
36 contained in a proposed amendment to the certificate of incorporation,
37 would entitle such class or series of shares to vote as a class unless
38 such provision is one which could be adopted by the board without
39 shareholder approval as referred to in subsection 14A:9-2(2). The
40 voting requirements of this section shall be subject to such greater
41 requirements as are provided in this act for specific amendments or as
42 may be provided in the certificate of incorporation.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ACT committee amendments adopted March 1, 2001.

1 (3) Subject to the provisions of section 14A:5-12, a corporation
2 organized prior to January 1, 1969, may adopt the majority voting
3 requirements prescribed in subsection 14A:10-3(2) by an amendment
4 of its certificate of incorporation adopted by the affirmative vote of
5 two-thirds of the votes cast by the holders of shares entitled to vote
6 thereon.

7 (4) Notwithstanding the provisions set forth in subsections
8 14A:10-3(1) and 14A:10-3(2), the approval of the shareholders of a
9 surviving corporation shall not be required to authorize a merger
10 (unless its certificate of incorporation otherwise provides) if

11 (a) The plan of merger does not make an amendment of the
12 certificate of incorporation of the surviving corporation which is
13 required by the provisions of this act to be approved by the
14 shareholders;

15 (b) Each shareholder of the surviving corporation whose shares
16 were outstanding immediately before the effective date of the merger
17 will hold the same number of shares, with identical designations,
18 preferences, limitations, and rights, immediately after;

19 (c) The number of voting shares outstanding immediately after the
20 merger, plus the number of voting shares issuable on conversion of
21 other securities or on exercise of rights and warrants issued pursuant
22 to the merger, will not exceed by more than 40% the total number of
23 voting shares of the surviving corporation outstanding immediately
24 before the merger; and

25 (d) The number of participating shares outstanding immediately
26 after the merger, plus the number of participating shares issuable on
27 conversion of other securities or on exercise of rights and warrants
28 issued pursuant to the merger, will not exceed by more than 40% the
29 total number of participating shares of the surviving corporation
30 outstanding immediately before the merger.

31 (5) As used in subsection 14A:10-3(4):

32 (a) "Participating shares" means shares that entitle their holders to
33 participate without limitation in distributions.

34 (b) "Voting shares" means shares that entitle their holders to vote
35 unconditionally in elections of directors.

36 (6) Notwithstanding the ¹[requirements] provisions¹ set forth in
37 subsections ¹[(1) and (2) of this section] 14A:10-3(1) and 14A:10-
38 3(2)¹, the approval of the shareholders of a corporation shall not be
39 required to authorize a merger with or into a single ¹[direct or]¹
40 indirect wholly-owned subsidiary of that corporation (unless its
41 certificate of incorporation otherwise provides) if:

42 (a) the corporation ¹[and the direct or], the holding company and
43 the¹ indirect wholly-owned subsidiary of the corporation are the only
44 parties to the merger; ¹and¹

45 (b) each shareholder of the corporation ¹[whose shares were
46 outstanding immediately before the effective date of the merger]¹ will

1 hold the same number of shares ¹[in] ¹of¹ the holding company, with
2 identical designations, preferences, limitations and rights, immediately
3 after the effective date of the merger; ¹and¹

4 (c) the corporation, ¹[its direct or] the ¹indirect wholly-owned
5 subsidiary ¹[.] and ¹the holding company ¹[and the surviving
6 corporation] ¹are domestic corporations; ¹and¹

7 (d) the certificate of incorporation and by-laws of the holding
8 company immediately after the effective date of the merger contain
9 provisions identical to the certificate of incorporation and by-laws of
10 the corporation immediately before the effective date of the merger
11 ¹[.] ¹other than provisions, if any, regarding the ¹[incorporator or]¹
12 incorporators, the corporate name, the registered office and agent, the
13 initial board of directors ¹[and] ¹, the initial subscribers for shares and
14 the provisions ¹[contained in any amendment to the certificate of
15 incorporation as were] ¹necessary to effect a change, exchange,
16 reclassification or cancellation of shares, if such change, exchange,
17 reclassification or cancellation has become effective ¹[.] prior to the
18 effective date of the merger¹; ¹and¹

19 (e) ¹[as a result of the merger,]¹ the surviving corporation ¹[or its
20 successor corporation] ¹, as a result of the merger,¹ remains or
21 becomes a direct or indirect wholly-owned subsidiary of the holding
22 company; ¹and¹

23 (f) the directors of the corporation remain or become the directors
24 of the holding company upon the effective date of the merger; ¹and¹

25 (g) the certificate of incorporation of the surviving corporation
26 immediately after the effective date of the merger is identical to the
27 certificate of incorporation of the corporation immediately before the
28 effective date of the merger ¹[.] ¹other than provisions, if any,
29 regarding the ¹[incorporator or]¹ incorporators, the corporate name,
30 the registered office and agent, the initial board of directors ¹[and] ¹,
31 the initial subscribers for shares and the provisions ¹[contained in any
32 amendment to the certificate of incorporation as were] ¹necessary to
33 effect a change, exchange, reclassification or cancellation of shares, if
34 such change, exchange, reclassification or cancellation has become
35 effective ¹[.] prior to the effective date of the merger¹; provided ¹[.,
36 however,]¹ that: (i) the certificate of incorporation of the surviving
37 corporation shall ¹[be amended in the merger to]¹ contain a provision
38 requiring that any act or transaction by or involving the surviving
39 corporation that requires for its adoption under N.J.S.14A:1-1 et seq.,
40 or its certificate of incorporation, approval by the shareholders of the
41 surviving corporation, other than the election or removal of directors
42 of the surviving corporation, shall ¹[., by specific reference to this
43 subsection,]¹ require approval by the shareholders of the holding
44 company (or any successor by merger), by the same vote as is required
45 by N.J.S.14A:1-1 et seq. or by the certificate of incorporation of the

1 surviving corporation, until thereafter otherwise amended by approval
2 of the shareholders of the surviving corporation and the holding
3 company; and (ii) the certificate of incorporation of the surviving
4 corporation may be amended ¹[in the merger] ¹ to reduce the number
5 of classes and shares of capital stock that the surviving corporation is
6 authorized to issue; and

7 (h) the shareholders of the corporation do not recognize a gain or
8 loss for United States federal income tax purposes as determined by
9 the board of directors of the corporation.

10 (7) On and after the effective date of a merger authorized by action
11 of the board of directors of a corporation and without any vote of the
12 shareholders pursuant to subsection (6) of ¹[this section]
13 N.J.S.14A:10-3 ¹ :

14 (a) to the extent that the restrictions of the "New Jersey
15 Shareholders' Protection Act," P.L.1986, c.74 (C.14A:10A-1 et seq.),
16 applied to the corporation and its shareholders at the effective date of
17 the merger, the restrictions shall apply to the holding company and its
18 shareholders immediately after the effective date of the merger ¹ in the
19 same manner ¹ as ¹[though] if ¹ it were the corporation and all shares
20 of the holding company acquired in the merger shall for purposes of
21 the "New Jersey Shareholders' Protection Act," P.L.1986, c.74
22 (C.14A:10A-1 et seq.) be deemed to have been acquired at the time
23 that the shares of the corporation converted in the merger were
24 acquired, and provided further that any shareholder who, immediately
25 prior to the effective date of the merger, was not an interested
26 stockholder within the meaning of section 3 of the "New Jersey
27 Shareholders' Protection Act," P.L.1986, c.74 (C.14A:10A-3) shall not
28 solely by reason of the merger become an interested stockholder of the
29 holding company; and

30 (b) if the corporate name of the holding company immediately after
31 the effective date of the merger is the same as the corporate name of
32 the ¹[surviving] ¹ corporation immediately prior to the effective date
33 of the merger, the shares of the holding company into which the shares
34 of the ¹[surviving] ¹ corporation are converted in the merger shall be
35 represented by the stock certificates that previously represented shares
36 of the ¹[surviving] ¹ corporation.

37 (8) ¹[If a plan of merger is adopted by a corporation by action of
38 its board of directors and without any vote of shareholders pursuant
39 to subsection (6) of this section, the secretary or assistant secretary of
40 that corporation shall certify on the plan of merger that the plan of
41 merger has been adopted pursuant to that subsection and that the
42 conditions of paragraphs (a) through (h) of subsection (6) of
43 N.J.S.14A:10-3 have been satisfied.

44 (9) ¹As used in subsections (6) ¹[, (7) and (8) of this section] and
45 (7) of N.J.S.14A:10-3 ¹ , "holding company" means a corporation
46 which, from its incorporation until consummation of a merger

1 governed by subsections (6) ¹[.] and¹ (7) ¹[and (8)]¹ of
2 N.J.S.14A:10-3, was at all times a direct ¹[or indirect]¹ wholly-owned
3 subsidiary of the corporation and shares of which are issued in the
4 merger ¹; and "indirect wholly-owned subsidiary of the corporation"
5 means a corporation all the shares of which are owned, directly or
6 indirectly, by the holding company¹ .

7 (cf: P.L.1988, c.94, s.57 and N.J.S.14A:11-1)

8

9 ¹2. N.J.S.14A:10-4.1 is amended to read as follows:

10 14A:10-4.1. Certificate of merger or consolidation.

11 (1) After approval of the plan of merger or consolidation, a
12 certificate of merger or a certificate of consolidation shall be executed
13 on behalf of each corporation. The certificate shall set forth

14 (a) The name of the surviving or new corporation or new other
15 business entity and the names of the merging or consolidating
16 corporations or other business entities;

17 (b) The plan of merger or the plan of consolidation;

18 (c) The date or dates of approval by the shareholders of each
19 corporation of the plan of merger or the plan of consolidation;

20 (d) As to each corporation whose shareholders are entitled to vote,
21 the number of shares entitled to vote thereon, and, if the shares of any
22 class or series are entitled to vote thereon as a class, the designation
23 and number of shares entitled to vote thereon of each class or series;

24 (e) As to each corporation whose shareholders are entitled to vote,
25 the number of shares voted for and against the plan, respectively, and,
26 if the shares of any class are entitled to vote as a class, the number of
27 shares of each class or series voted for and against the plan,
28 respectively; [and]

29 (f) In the case of a merger governed by subsection 14A:10-3 (4),
30 that the plan of merger was approved by the board of directors of the
31 surviving corporation and that no vote of the shareholders of the
32 surviving corporation was required because of the applicability of that
33 subsection; [and]

34 (g) If, pursuant to subsection 14A:10-4.1(2), the merger is to
35 become effective at a time subsequent to the date of filing with the
36 Secretary of State, the date when the merger is to become effective;
37 and

38 (h) In the case of a merger governed by subsection (6) of N.J.S.
39 14A:10-3, that the plan of merger was approved by the board of
40 directors of the surviving corporation, that no vote of the shareholders
41 of the surviving corporation was required because of the applicability
42 of that subsection, and that the conditions of paragraphs (a) through
43 (h) of that subsection have been satisfied.

44 (2) The executed original and a copy of the certificate shall be filed
45 in the office of the Secretary of State and the merger or consolidation
46 shall become effective upon the date of the filing or at a later time, not

1 to exceed 90 days after the date of filing, as may be set forth in the
2 certificate. The Secretary of State shall, upon filing, forward the copy
3 of the certificate to the Director of the Division of Taxation.¹
4 (cf: P.L.1995, c.279, s.14)

5
6 ¹[2.] 3.¹ N.J.S.14A:11-1 is amended to read as follows:

7 14A:11-1. Right of shareholders to dissent.

8 (1) Any shareholder of a domestic corporation shall have the right
9 to dissent from any of the following corporate actions

10 (a) Any plan of merger or consolidation to which the corporation
11 is a party, provided that, unless the certificate of incorporation
12 otherwise provides

13 (i) a shareholder shall not have the right to dissent from any plan
14 of merger or consolidation with respect to shares

15 (A) of a class or series which is listed on a national securities
16 exchange or is held of record by not less than 1,000 holders on the
17 record date fixed to determine the shareholders entitled to vote upon
18 the plan of merger or consolidation; or

19 (B) for which, pursuant to the plan of merger or consolidation, he
20 will receive (x) cash, (y) shares, obligations or other securities which,
21 upon consummation of the merger or consolidation, will either be
22 listed on a national securities exchange or held of record by not less
23 than 1,000 holders, or (z) cash and such securities;

24 (ii) a shareholder of a surviving corporation shall not have the right
25 to dissent from a plan of merger, if the merger did not require for its
26 approval the vote of such shareholders as provided in section
27 14A:10-5.1 or in subsection 14A:10-3(4), 14A:10-7(2) or
28 14A:10-7(4); [or]

29 (iii) a shareholder of a corporation shall not have the right to
30 dissent from a plan of merger, if the merger did not require, for its
31 approval, the vote of the shareholders as provided in subsection (6) of
32 N.J.S.14A:10-3; or

33 (b) Any sale, lease, exchange or other disposition of all or
34 substantially all of the assets of a corporation not in the usual or
35 regular course of business as conducted by such corporation, other
36 than a transfer pursuant to subsection (4) of N.J.S.14A:10-11,
37 provided that, unless the certificate of incorporation otherwise
38 provides, the shareholder shall not have the right to dissent

39 (i) with respect to shares of a class or series which, at the record
40 date fixed to determine the shareholders entitled to vote upon such
41 transaction, is listed on a national securities exchange or is held of
42 record by not less than 1,000 holders; or

43 (ii) from a transaction pursuant to a plan of dissolution of the
44 corporation which provides for distribution of substantially all of its
45 net assets to shareholders in accordance with their respective interests
46 within one year after the date of such transaction, where such
47 transaction is wholly for

1 (A) cash; or

2 (B) shares, obligations or other securities which, upon
3 consummation of the plan of dissolution will either be listed on a
4 national securities exchange or held of record by not less than 1,000
5 holders; or

6 (C) cash and such securities; or

7 (iii) from a sale pursuant to an order of a court having jurisdiction.

8 (2) Any shareholder of a domestic corporation shall have the right
9 to dissent with respect to any shares owned by him which are to be
10 acquired pursuant to section 14A:10-9.

11 (3) A shareholder may not dissent as to less than all of the shares
12 owned beneficially by him and with respect to which a right of dissent
13 exists. A nominee or fiduciary may not dissent on behalf of any
14 beneficial owner as to less than all of the shares of such owner with
15 respect to which the right of dissent exists.

16 (4) A corporation may provide in its certificate of incorporation
17 that holders of all its shares, or of a particular class or series thereof,
18 shall have the right to dissent from specified corporate actions in
19 addition to those enumerated in subsection 14A:11-1(1), in which case
20 the exercise of such right of dissent shall be governed by the
21 provisions of this Chapter.

22 (cf: P.L.1995, c.279, s.21)

23

24 ¹[3.] 4¹ This act shall take effect immediately.

SENATE, No. 1232

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED MAY 11, 2000

Sponsored by:
Senator JOHN O. BENNETT
District 12 (Monmouth)

SYNOPSIS

Permits certain corporate mergers without shareholder approval or right of dissent.

CURRENT VERSION OF TEXT

As introduced.



S1232 BENNETT

2

1 AN ACT concerning certain corporate mergers and amending
2 N.J.S.14A:10-3 and N.J.S.14A:11-1.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. N.J.S.14A:10-3 is amended to read as follows:

8 14A:10-3. Approval by shareholders.

9 (1) The board of each corporation, upon approving such plan of
10 merger or plan of consolidation, shall direct that the plan be submitted
11 to a vote at a meeting of shareholders. Written notice shall be given
12 not less than 20 nor more than 60 days before such meeting to each
13 shareholder of record, whether or not entitled to vote at such meeting,
14 in the manner provided in this act for the giving of notice of meetings
15 of shareholders. Such notice shall include, or shall be accompanied by

16 (a) A copy or a summary of the plan of merger or consolidation;
17 and

18 (b) A statement informing shareholders who, under Chapter 11 of
19 this act, are entitled to dissent, that they have the right to dissent and
20 to be paid the fair value of their shares and outlining briefly, with
21 particular reference to the time periods within which actions must be
22 taken, the procedures set forth in Chapter 11 of this act with which
23 they must comply in order to assert and enforce such right.

24 (2) At each such meeting, a vote of the shareholders shall be taken
25 on the proposed plan of merger or consolidation. Such plan shall be
26 approved upon receiving the affirmative vote of a majority of the votes
27 cast by the holders of shares of each such corporation entitled to vote
28 thereon, and, in addition, if any class or series is entitled to vote
29 thereon as a class, the affirmative vote of a majority of the votes cast
30 in each class vote; except that, in the case of a corporation organized
31 prior to January 1, 1969, the plan of merger or consolidation shall be
32 approved upon receiving the affirmative vote of two-thirds of the
33 votes so cast. Any class or series of shares of any such corporation
34 shall be entitled to vote as a class if the plan of merger or
35 consolidation, as the case may be, contains any provision which, if
36 contained in a proposed amendment to the certificate of incorporation,
37 would entitle such class or series of shares to vote as a class unless
38 such provision is one which could be adopted by the board without
39 shareholder approval as referred to in subsection 14A:9-2(2). The
40 voting requirements of this section shall be subject to such greater
41 requirements as are provided in this act for specific amendments or as
42 may be provided in the certificate of incorporation.

43 (3) Subject to the provisions of section 14A:5-12, a corporation

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 organized prior to January 1, 1969, may adopt the majority voting
2 requirements prescribed in subsection 14A:10-3(2) by an amendment
3 of its certificate of incorporation adopted by the affirmative vote of
4 two-thirds of the votes cast by the holders of shares entitled to vote
5 thereon.

6 (4) Notwithstanding the provisions set forth in subsections
7 14A:10-3(1) and 14A:10-3(2), the approval of the shareholders of a
8 surviving corporation shall not be required to authorize a merger
9 (unless its certificate of incorporation otherwise provides) if

10 (a) The plan of merger does not make an amendment of the
11 certificate of incorporation of the surviving corporation which is
12 required by the provisions of this act to be approved by the
13 shareholders;

14 (b) Each shareholder of the surviving corporation whose shares
15 were outstanding immediately before the effective date of the merger
16 will hold the same number of shares, with identical designations,
17 preferences, limitations, and rights, immediately after;

18 (c) The number of voting shares outstanding immediately after the
19 merger, plus the number of voting shares issuable on conversion of
20 other securities or on exercise of rights and warrants issued pursuant
21 to the merger, will not exceed by more than 40% the total number of
22 voting shares of the surviving corporation outstanding immediately
23 before the merger; and

24 (d) The number of participating shares outstanding immediately
25 after the merger, plus the number of participating shares issuable on
26 conversion of other securities or on exercise of rights and warrants
27 issued pursuant to the merger, will not exceed by more than 40% the
28 total number of participating shares of the surviving corporation
29 outstanding immediately before the merger.

30 (5) As used in subsection 14A:10-3(4):

31 (a) "Participating shares" means shares that entitle their holders to
32 participate without limitation in distributions.

33 (b) "Voting shares" means shares that entitle their holders to vote
34 unconditionally in elections of directors.

35 (6) Notwithstanding the requirements set forth in subsections (1)
36 and (2) of N.J.S.14A:10A-3, the approval of the shareholders of a
37 corporation shall not be required to authorize a merger with or into
38 a single direct or indirect wholly-owned subsidiary of that corporation
39 (unless its certificate of incorporation otherwise provides) if:

40 (a) the corporation and the direct or indirect wholly-owned
41 subsidiary of the corporation are the only parties to the merger;

42 (b) each shareholder of the corporation whose shares were
43 outstanding immediately before the effective date of the merger will
44 hold the same number of shares in the holding company, with identical
45 designations, preferences, limitations and rights, immediately after the
46 effective date of the merger;

1 (c) the corporation, its direct or indirect wholly-owned subsidiary,
2 the holding company and the surviving corporation are domestic
3 corporations;

4 (d) the certificate of incorporation and by-laws of the holding
5 company immediately after the effective date of the merger contain
6 provisions identical to the certificate of incorporation and by-laws of
7 the corporation immediately before the effective date of the merger
8 (other than provisions, if any, regarding the incorporator or
9 incorporators, the corporate name, the registered office and agent, the
10 initial board of directors and the initial subscribers for shares and the
11 provisions contained in any amendment to the certificate of
12 incorporation as were necessary to effect a change, exchange,
13 reclassification or cancellation of shares, if such change, exchange,
14 reclassification or cancellation has become effective);

15 (e) as a result of the merger, the surviving corporation or its
16 successor corporation remains or becomes a direct or indirect wholly-
17 owned subsidiary of the holding company;

18 (f) the directors of the corporation remain or become the directors
19 of the holding company upon the effective date of the merger;

20 (g) the certificate of incorporation of the surviving corporation
21 immediately after the effective date of the merger is identical to the
22 certificate of incorporation of the corporation immediately before the
23 effective date of the merger (other than provisions, if any, regarding
24 the incorporator or incorporators, the corporate name, the registered
25 office and agent, the initial board of directors and the initial
26 subscribers for shares and the provisions contained in any amendment
27 to the certificate of incorporation as were necessary to effect a change,
28 exchange, reclassification or cancellation of shares, if such change,
29 exchange, reclassification or cancellation has become effective);
30 provided, however, that: (i) the certificate of incorporation of the
31 surviving corporation shall be amended in the merger to contain a
32 provision requiring that any act or transaction by or involving the
33 surviving corporation that requires for its adoption under N.J.S.14A:1-
34 1 et seq., or its certificate of incorporation, approval by the
35 shareholders of the surviving corporation, other than the election or
36 removal of directors of the surviving corporation, shall, by specific
37 reference to this subsection, require approval by the shareholders of
38 the holding company (or any successor by merger), by the same vote
39 as is required by N.J.S.14A:1-1 et seq. or by the certificate of
40 incorporation of the surviving corporation, until thereafter otherwise
41 amended by approval of the shareholders of the surviving corporation
42 and the holding company; and (ii) the certificate of incorporation of
43 the surviving corporation may be amended in the merger to reduce the
44 number of classes and shares of capital stock that the surviving
45 corporation is authorized to issue; and

46 (h) the shareholders of the corporation do not recognize a gain or

1 loss for United States federal income tax purposes as determined by
2 the board of directors of the corporation.

3 (7) On and after the effective date of a merger authorized by action
4 of the board of directors of a corporation and without any vote of the
5 shareholders pursuant to subsection (6) of N.J.S.14A:10-3:

6 (a) to the extent that the restrictions of the "New Jersey
7 Shareholders' Protection Act," P.L.1986, c.74 (C.14A:10A-1 et seq.),
8 applied to the corporation and its shareholders at the effective date of
9 the merger, the restrictions shall apply to the holding company and its
10 shareholders immediately after the effective date of the merger as
11 though it were the corporation and all shares of the holding company
12 acquired in the merger shall for purposes of the "New Jersey
13 Shareholders' Protection Act," P.L.1986, c.74 (C.14A:10A-1 et seq.)
14 be deemed to have been acquired at the time that the shares of the
15 corporation converted in the merger were acquired, and provided
16 further that any shareholder who, immediately prior to the effective
17 date of the merger, was not an interested stockholder within the
18 meaning of section 3 of the "New Jersey Shareholders' Protection
19 Act," P.L.1986, c.74 (C.14A:10A-3) shall not solely by reason of the
20 merger become an interested stockholder of the holding company; and

21 (b) if the corporate name of the holding company immediately after
22 the effective date of the merger is the same as the corporate name of
23 the surviving corporation immediately prior to the effective date of the
24 merger, the shares of the holding company into which the shares of the
25 surviving corporation are converted in the merger shall be represented
26 by the stock certificates that previously represented shares of the
27 surviving corporation.

28 (8) If a plan of merger is adopted by a corporation by action of its
29 board of directors and without any vote of shareholders pursuant to
30 subsection (6) of N.J.S.14A:10-3, the secretary or assistant secretary
31 of that corporation shall certify on the plan of merger that the plan of
32 merger has been adopted pursuant to that subsection and that the
33 conditions of paragraphs (a) through (h) of subsection (6) of
34 N.J.S.14A:10-3 have been satisfied.

35 (9) As used in subsections (6) and (7) of N.J.S.14A:10-3 of this
36 section, "holding company" means a corporation which, from its
37 incorporation until consummation of a merger governed by subsections
38 (6), (7) and (8) of N.J.S.14A:10-3, was at all times a direct or indirect
39 wholly-owned subsidiary of the corporation and shares of which are
40 issued in the merger.

41 (cf: P.L.1988, c.94, s.57)

42

43 2. N.J.S.14A:11-1 is amended to read as follows:

44 14A:11-1. Right of shareholders to dissent.

45 (1) Any shareholder of a domestic corporation shall have the right
46 to dissent from any of the following corporate actions

- 1 (a) Any plan of merger or consolidation to which the corporation
2 is a party, provided that, unless the certificate of incorporation
3 otherwise provides
- 4 (i) a shareholder shall not have the right to dissent from any plan
5 of merger or consolidation with respect to shares
- 6 (A) of a class or series which is listed on a national securities
7 exchange or is held of record by not less than 1,000 holders on the
8 record date fixed to determine the shareholders entitled to vote upon
9 the plan of merger or consolidation; or
- 10 (B) for which, pursuant to the plan of merger or consolidation, he
11 will receive (x) cash, (y) shares, obligations or other securities which,
12 upon consummation of the merger or consolidation, will either be
13 listed on a national securities exchange or held of record by not less
14 than 1,000 holders, or (z) cash and such securities;
- 15 (ii) a shareholder of a surviving corporation shall not have the right
16 to dissent from a plan of merger, if the merger did not require for its
17 approval the vote of such shareholders as provided in section
18 14A:10-5.1 or in subsection 14A:10-3(4), 14A:10-7(2) or
19 14A:10-7(4); [or]
- 20 (iii) a shareholder of a corporation shall not have the right to
21 dissent from a plan of merger, if the merger did not require, for its
22 approval, the vote of the shareholders as provided in subsection (6) of
23 N.J.S.14A:10-3; or
- 24 (b) Any sale, lease, exchange or other disposition of all or
25 substantially all of the assets of a corporation not in the usual or
26 regular course of business as conducted by such corporation, other
27 than a transfer pursuant to subsection (4) of N.J.S.14A:10-11,
28 provided that, unless the certificate of incorporation otherwise
29 provides, the shareholder shall not have the right to dissent
- 30 (i) with respect to shares of a class or series which, at the record
31 date fixed to determine the shareholders entitled to vote upon such
32 transaction, is listed on a national securities exchange or is held of
33 record by not less than 1,000 holders; or
- 34 (ii) from a transaction pursuant to a plan of dissolution of the
35 corporation which provides for distribution of substantially all of its
36 net assets to shareholders in accordance with their respective interests
37 within one year after the date of such transaction, where such
38 transaction is wholly for
- 39 (A) cash; or
- 40 (B) shares, obligations or other securities which, upon
41 consummation of the plan of dissolution will either be listed on a
42 national securities exchange or held of record by not less than 1,000
43 holders; or
- 44 (C) cash and such securities; or
- 45 (iii) from a sale pursuant to an order of a court having jurisdiction.
- 46 (2) Any shareholder of a domestic corporation shall have the right

1 to dissent with respect to any shares owned by him which are to be
2 acquired pursuant to section 14A:10-9.

3 (3) A shareholder may not dissent as to less than all of the shares
4 owned beneficially by him and with respect to which a right of dissent
5 exists. A nominee or fiduciary may not dissent on behalf of any
6 beneficial owner as to less than all of the shares of such owner with
7 respect to which the right of dissent exists.

8 (4) A corporation may provide in its certificate of incorporation
9 that holders of all its shares, or of a particular class or series thereof,
10 shall have the right to dissent from specified corporate actions in
11 addition to those enumerated in subsection 14A:11-1(1), in which case
12 the exercise of such right of dissent shall be governed by the
13 provisions of this Chapter.

14 (cf: P.L.1995, c.279, s.21)

15

16 3. This act shall take effect immediately.

17

18

19

STATEMENT

20

21 This bill permits a New Jersey corporation to reorganize by merging
22 with or into a direct or indirect wholly-owned subsidiary of a holding
23 company without approval by its shareholders and without the need to
24 transfer assets and liabilities. This bill insures that the rights of
25 shareholders of the corporation are not altered by this reorganization,
26 except to the same extent that these rights may be altered without
27 shareholder approval under existing law.

28 Under current New Jersey law, a holding company may be formed
29 by a New Jersey corporation without the approval of the shareholders
30 of that corporation by creating a subsidiary of that corporation and
31 transferring the assets and liabilities of that corporation to the
32 subsidiary, in effect, transforming the corporation into a holding
33 company. For some corporations, this process necessitates the
34 sometimes impractical or burdensome transfers on an asset-by-asset
35 basis.

36 Under this bill, shareholders of the corporation receive, in the
37 merger, the same number of shares in the holding company as they
38 held in the corporation immediately before the effective date of the
39 merger, with the same rights; as a result of the merger, the surviving
40 corporation is a direct or indirect wholly-owned subsidiary of the
41 holding company and the directors of the holding company are the
42 directors of the surviving corporation; provisions of the "New Jersey
43 Shareholders' Protection Act," P.L.1986, c.74 (C.14A:10A-1 et seq.)
44 apply to persons who are shareholders of the holding company to the
45 same extent they were applied to shareholders of the corporation; the
46 reorganization is tax-free for federal income tax purposes to
47 shareholders of the corporation; and dissenter's rights are not available
48 in the event of reorganization.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 1232

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 9, 2001

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 1232.

As amended, this bill permits a corporation organized in New Jersey to change from an operating corporation to a holding corporation with one or more wholly-owned subsidiaries by use of a merger without shareholder approval or a transfer of assets. The bill allows a corporation (parent) to form a direct subsidiary and an indirect subsidiary (a subsidiary owned by the direct subsidiary) and to merge the resulting parent corporation into the indirect subsidiary. The direct subsidiary would then become the new parent corporation, and the original parent corporation would become a subsidiary. The bill provides that this merger method does not require shareholder approval if the new parent corporation is structurally identical to, with the same shareholder rights and directors as, the old parent corporation. As shareholders are not affected by the merger, shareholders do not have a right to dissent from the plan of merger under the bill. Since a merger is involved under these circumstances, no transfer of assets is required.

In addition, the shareholders of the corporation do not recognize a gain or loss for federal income tax purposes and the merger method provided in the bill does not require registration of the merger transaction with the Securities and Exchange Commission (SEC), thus putting this merger method on a par with the existing asset transfer merger method which is also free of an SEC registration requirement and does not require shareholder approval.

Finally, the bill provides that, after a transaction allowed pursuant to the provisions of the bill, the provisions of the "New Jersey Shareholders' Protection Act" will apply to the resulting corporations to the extent that they applied prior to the transaction.

The committee made numerous technical amendments to the bill.

[First Reprint]

SENATE, No. 1232

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED MAY 11, 2000

Sponsored by:

Senator JOHN O. BENNETT

District 12 (Monmouth)

SYNOPSIS

Permits certain corporate mergers without shareholder approval or right of dissent.

CURRENT VERSION OF TEXT

As reported by the Senate Commerce Committee on January 9, 2001, with amendments.



1 AN ACT concerning certain corporate mergers and amending
2 N.J.S.14A:10-3 and N.J.S.14A:11-1.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. N.J.S.14A:10-3 is amended to read as follows:
8 14A:10-3. Approval by shareholders.

9 (1) The board of each corporation, upon approving such plan of
10 merger or plan of consolidation, shall direct that the plan be submitted
11 to a vote at a meeting of shareholders. Written notice shall be given
12 not less than 20 nor more than 60 days before such meeting to each
13 shareholder of record, whether or not entitled to vote at such meeting,
14 in the manner provided in this act for the giving of notice of meetings
15 of shareholders. Such notice shall include, or shall be accompanied by

16 (a) A copy or a summary of the plan of merger or consolidation;
17 and

18 (b) A statement informing shareholders who, under Chapter 11 of
19 this act, are entitled to dissent, that they have the right to dissent and
20 to be paid the fair value of their shares and outlining briefly, with
21 particular reference to the time periods within which actions must be
22 taken, the procedures set forth in Chapter 11 of this act with which
23 they must comply in order to assert and enforce such right.

24 (2) At each such meeting, a vote of the shareholders shall be taken
25 on the proposed plan of merger or consolidation. Such plan shall be
26 approved upon receiving the affirmative vote of a majority of the votes
27 cast by the holders of shares of each such corporation entitled to vote
28 thereon, and, in addition, if any class or series is entitled to vote
29 thereon as a class, the affirmative vote of a majority of the votes cast
30 in each class vote; except that, in the case of a corporation organized
31 prior to January 1, 1969, the plan of merger or consolidation shall be
32 approved upon receiving the affirmative vote of two-thirds of the
33 votes so cast. Any class or series of shares of any such corporation
34 shall be entitled to vote as a class if the plan of merger or
35 consolidation, as the case may be, contains any provision which, if
36 contained in a proposed amendment to the certificate of incorporation,
37 would entitle such class or series of shares to vote as a class unless
38 such provision is one which could be adopted by the board without
39 shareholder approval as referred to in subsection 14A:9-2(2). The
40 voting requirements of this section shall be subject to such greater
41 requirements as are provided in this act for specific amendments or as
42 may be provided in the certificate of incorporation.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SCM committee amendments adopted January 9, 2001.

1 (3) Subject to the provisions of section 14A:5-12, a corporation
2 organized prior to January 1, 1969, may adopt the majority voting
3 requirements prescribed in subsection 14A:10-3(2) by an amendment
4 of its certificate of incorporation adopted by the affirmative vote of
5 two-thirds of the votes cast by the holders of shares entitled to vote
6 thereon.

7 (4) Notwithstanding the provisions set forth in subsections
8 14A:10-3(1) and 14A:10-3(2), the approval of the shareholders of a
9 surviving corporation shall not be required to authorize a merger
10 (unless its certificate of incorporation otherwise provides) if

11 (a) The plan of merger does not make an amendment of the
12 certificate of incorporation of the surviving corporation which is
13 required by the provisions of this act to be approved by the
14 shareholders;

15 (b) Each shareholder of the surviving corporation whose shares
16 were outstanding immediately before the effective date of the merger
17 will hold the same number of shares, with identical designations,
18 preferences, limitations, and rights, immediately after;

19 (c) The number of voting shares outstanding immediately after the
20 merger, plus the number of voting shares issuable on conversion of
21 other securities or on exercise of rights and warrants issued pursuant
22 to the merger, will not exceed by more than 40% the total number of
23 voting shares of the surviving corporation outstanding immediately
24 before the merger; and

25 (d) The number of participating shares outstanding immediately
26 after the merger, plus the number of participating shares issuable on
27 conversion of other securities or on exercise of rights and warrants
28 issued pursuant to the merger, will not exceed by more than 40% the
29 total number of participating shares of the surviving corporation
30 outstanding immediately before the merger.

31 (5) As used in subsection 14A:10-3(4):

32 (a) "Participating shares" means shares that entitle their holders to
33 participate without limitation in distributions.

34 (b) "Voting shares" means shares that entitle their holders to vote
35 unconditionally in elections of directors.

36 (6) Notwithstanding the ¹[requirements] provisions¹ set forth in
37 subsections ¹[(1) and (2) of N.J.S.14A:10A-3] ¹14A:10-3(1) and
38 ¹14A:10-3(2)¹, the approval of the shareholders of a corporation shall
39 not be required to authorize a merger with or into a single ¹[direct
40 or]¹ indirect wholly-owned subsidiary of that corporation (unless its
41 certificate of incorporation otherwise provides) if:

42 (a) the corporation ¹[and] ¹,¹ the direct ¹[or] wholly-owned
43 subsidiary of the corporation and the¹ indirect wholly-owned
44 subsidiary of the corporation are the only parties to the merger;

45 (b) each shareholder of the corporation whose shares were
46 outstanding immediately before the effective date of the merger will

1 hold the same number of shares in the holding company, with identical
2 designations, preferences, limitations and rights, immediately after the
3 effective date of the merger;
4 (c) the corporation, its direct or indirect wholly-owned subsidiary,
5 the holding company and the surviving corporation are domestic
6 corporations;
7 (d) the certificate of incorporation and by-laws of the holding
8 company immediately after the effective date of the merger contain
9 provisions identical to the certificate of incorporation and by-laws of
10 the corporation immediately before the effective date of the merger
11 ¹ [() .¹ other than provisions, if any, regarding the incorporator or
12 incorporators, the corporate name, the registered office and agent, the
13 initial board of directors and the initial subscribers for shares and the
14 provisions contained in any amendment to the certificate of
15 incorporation as were necessary to effect a change, exchange,
16 reclassification or cancellation of shares, if such change, exchange,
17 reclassification or cancellation has become effective ¹ [()¹;
18 (e) as a result of the merger, the surviving corporation ¹ [or its
19 successor corporation]¹ remains or becomes a direct or indirect
20 wholly-owned subsidiary of the holding company;
21 (f) the directors of the corporation remain or become the directors
22 of the holding company upon the effective date of the merger;
23 (g) the certificate of incorporation of the surviving corporation
24 immediately after the effective date of the merger is identical to the
25 certificate of incorporation of the corporation immediately before the
26 effective date of the merger ¹ [() .¹ other than provisions, if any,
27 regarding the incorporator or incorporators, the corporate name, the
28 registered office and agent, the initial board of directors and the initial
29 subscribers for shares and the provisions contained in any amendment
30 to the certificate of incorporation as were necessary to effect a change,
31 exchange, reclassification or cancellation of shares, if such change,
32 exchange, reclassification or cancellation has become effective ¹ [()¹;
33 provided, however, that: (i) the certificate of incorporation of the
34 surviving corporation shall be amended in the merger to contain a
35 provision requiring that any act or transaction by or involving the
36 surviving corporation that requires for its adoption under N.J.S.14A:1-
37 1 et seq., or its certificate of incorporation, approval by the
38 shareholders of the surviving corporation, other than the election or
39 removal of directors of the surviving corporation, shall, by specific
40 reference to this subsection, require approval by the shareholders of
41 the holding company (or any successor by merger), by the same vote
42 as is required by N.J.S.14A:1-1 et seq. or by the certificate of
43 incorporation of the surviving corporation, until thereafter otherwise
44 amended by approval of the shareholders of the surviving corporation
45 and the holding company; and (ii) the certificate of incorporation of
46 the surviving corporation may be amended in the merger to reduce the

1 number of classes and shares of capital stock that the surviving
2 corporation is authorized to issue; and
3 (h) the shareholders of the corporation do not recognize a gain or
4 loss for United States federal income tax purposes as determined by
5 the board of directors of the corporation.
6 (7) On and after the effective date of a merger authorized by action
7 of the board of directors of a corporation and without any vote of the
8 shareholders pursuant to subsection (6) of N.J.S.14A:10-3:
9 (a) to the extent that the restrictions of the "New Jersey
10 Shareholders' Protection Act," P.L.1986, c.74 (C.14A:10A-1 et seq.),
11 applied to the corporation and its shareholders at the effective date of
12 the merger, the restrictions shall apply to the holding company and its
13 shareholders immediately after the effective date of the merger as
14 though it were the corporation and all shares of the holding company
15 acquired in the merger shall for purposes of the "New Jersey
16 Shareholders' Protection Act," P.L.1986, c.74 (C.14A:10A-1 et seq.)
17 be deemed to have been acquired at the time that the shares of the
18 corporation converted in the merger were acquired, and provided
19 further that any shareholder who, immediately prior to the effective
20 date of the merger, was not an interested stockholder within the
21 meaning of section 3 of the "New Jersey Shareholders' Protection
22 Act," P.L.1986, c.74 (C.14A:10A-3) shall not solely by reason of the
23 merger become an interested stockholder of the holding company; and
24 (b) if the corporate name of the holding company immediately after
25 the effective date of the merger is the same as the corporate name of
26 the ¹[surviving]¹ corporation immediately prior to the effective date
27 of the merger, the shares of the holding company into which the shares
28 of the ¹[surviving]¹ corporation are converted in the merger shall be
29 represented by the stock certificates that previously represented shares
30 of the ¹[surviving]¹ corporation.
31 (8) If a plan of merger is adopted by a corporation by action of its
32 board of directors and without any vote of shareholders pursuant to
33 subsection (6) of N.J.S.14A:10-3, the secretary or assistant secretary
34 of that corporation shall certify on the plan of merger that the plan of
35 merger has been adopted pursuant to that subsection and that the
36 conditions of paragraphs (a) through (h) of subsection (6) of
37 N.J.S.14A:10-3 have been satisfied.
38 (9) As used in subsections (6) and (7) of N.J.S.14A:10-3 ¹[of this
39 section]¹, "holding company" means a corporation which, from its
40 incorporation until consummation of a merger governed by subsections
41 (6), (7) and (8) of N.J.S.14A:10-3, was at all times a direct ¹[or
42 indirect]¹ wholly-owned subsidiary of the corporation and shares of
43 which are issued in the merger.
44 (cf: P.L.1988, c.94, s.57)

1 2. N.J.S.14A:11-1 is amended to read as follows:

2 14A:11-1. Right of shareholders to dissent.

3 (1) Any shareholder of a domestic corporation shall have the right
4 to dissent from any of the following corporate actions

5 (a) Any plan of merger or consolidation to which the corporation
6 is a party, provided that, unless the certificate of incorporation
7 otherwise provides

8 (i) a shareholder shall not have the right to dissent from any plan
9 of merger or consolidation with respect to shares

10 (A) of a class or series which is listed on a national securities
11 exchange or is held of record by not less than 1,000 holders on the
12 record date fixed to determine the shareholders entitled to vote upon
13 the plan of merger or consolidation; or

14 (B) for which, pursuant to the plan of merger or consolidation, he
15 will receive (x) cash, (y) shares, obligations or other securities which,
16 upon consummation of the merger or consolidation, will either be
17 listed on a national securities exchange or held of record by not less
18 than 1,000 holders, or (z) cash and such securities;

19 (ii) a shareholder of a surviving corporation shall not have the right
20 to dissent from a plan of merger, if the merger did not require for its
21 approval the vote of such shareholders as provided in section
22 14A:10-5.1 or in subsection 14A:10-3(4), 14A:10-7(2) or
23 14A:10-7(4); [or]

24 (iii) a shareholder of a corporation shall not have the right to
25 dissent from a plan of merger, if the merger did not require, for its
26 approval, the vote of the shareholders as provided in subsection (6) of
27 N.J.S.14A:10-3; or

28 (b) Any sale, lease, exchange or other disposition of all or
29 substantially all of the assets of a corporation not in the usual or
30 regular course of business as conducted by such corporation, other
31 than a transfer pursuant to subsection (4) of N.J.S.14A:10-11,
32 provided that, unless the certificate of incorporation otherwise
33 provides, the shareholder shall not have the right to dissent

34 (i) with respect to shares of a class or series which, at the record
35 date fixed to determine the shareholders entitled to vote upon such
36 transaction, is listed on a national securities exchange or is held of
37 record by not less than 1,000 holders; or

38 (ii) from a transaction pursuant to a plan of dissolution of the
39 corporation which provides for distribution of substantially all of its
40 net assets to shareholders in accordance with their respective interests
41 within one year after the date of such transaction, where such
42 transaction is wholly for

43 (A) cash; or

44 (B) shares, obligations or other securities which, upon
45 consummation of the plan of dissolution will either be listed on a

1 national securities exchange or held of record by not less than 1,000
2 holders; or

3 (C) cash and such securities; or

4 (iii) from a sale pursuant to an order of a court having jurisdiction.

5 (2) Any shareholder of a domestic corporation shall have the right
6 to dissent with respect to any shares owned by him which are to be
7 acquired pursuant to section 14A:10-9.

8 (3) A shareholder may not dissent as to less than all of the shares
9 owned beneficially by him and with respect to which a right of dissent
10 exists. A nominee or fiduciary may not dissent on behalf of any
11 beneficial owner as to less than all of the shares of such owner with
12 respect to which the right of dissent exists.

13 (4) A corporation may provide in its certificate of incorporation
14 that holders of all its shares, or of a particular class or series thereof,
15 shall have the right to dissent from specified corporate actions in
16 addition to those enumerated in subsection 14A:11-1(1), in which case
17 the exercise of such right of dissent shall be governed by the
18 provisions of this Chapter.

19 (cf: P.L.1995, c.279, s.21)

20

21 3. This act shall take effect immediately.

STATEMENT TO

[First Reprint]

SENATE, No. 1232

with Senate Floor Amendments
(Proposed By Senator BENNETT)

ADOPTED: FEBRUARY 15, 2001

These floor amendments make clarifying amendments to the bill and amend N.J.S.14A:10-4.1 to put the provisions of the bill concerning the certificate of merger into that section.

[Second Reprint]

SENATE, No. 1232

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED MAY 11, 2000

Sponsored by:

Senator JOHN O. BENNETT

District 12 (Monmouth)

SYNOPSIS

Permits certain corporate mergers without shareholder approval or right of dissent.

CURRENT VERSION OF TEXT

As amended by the Senate on February 15, 2001.



1 AN ACT concerning certain corporate mergers and amending
2 N.J.S.14A:10-3 ², N.J.S.14A:10-4.1² and N.J.S.14A:11-1.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. N.J.S.14A:10-3 is amended to read as follows:
8 14A:10-3. Approval by shareholders.

9 (1) The board of each corporation, upon approving such plan of
10 merger or plan of consolidation, shall direct that the plan be submitted
11 to a vote at a meeting of shareholders. Written notice shall be given
12 not less than 20 nor more than 60 days before such meeting to each
13 shareholder of record, whether or not entitled to vote at such meeting,
14 in the manner provided in this act for the giving of notice of meetings
15 of shareholders. Such notice shall include, or shall be accompanied by

16 (a) A copy or a summary of the plan of merger or consolidation;
17 and

18 (b) A statement informing shareholders who, under Chapter 11 of
19 this act, are entitled to dissent, that they have the right to dissent and
20 to be paid the fair value of their shares and outlining briefly, with
21 particular reference to the time periods within which actions must be
22 taken, the procedures set forth in Chapter 11 of this act with which
23 they must comply in order to assert and enforce such right.

24 (2) At each such meeting, a vote of the shareholders shall be taken
25 on the proposed plan of merger or consolidation. Such plan shall be
26 approved upon receiving the affirmative vote of a majority of the votes
27 cast by the holders of shares of each such corporation entitled to vote
28 thereon, and, in addition, if any class or series is entitled to vote
29 thereon as a class, the affirmative vote of a majority of the votes cast
30 in each class vote; except that, in the case of a corporation organized
31 prior to January 1, 1969, the plan of merger or consolidation shall be
32 approved upon receiving the affirmative vote of two-thirds of the
33 votes so cast. Any class or series of shares of any such corporation
34 shall be entitled to vote as a class if the plan of merger or
35 consolidation, as the case may be, contains any provision which, if
36 contained in a proposed amendment to the certificate of incorporation,
37 would entitle such class or series of shares to vote as a class unless
38 such provision is one which could be adopted by the board without
39 shareholder approval as referred to in subsection 14A:9-2(2). The
40 voting requirements of this section shall be subject to such greater
41 requirements as are provided in this act for specific amendments or as

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SCM committee amendments adopted January 9, 2001.

² Senate floor amendments adopted February 15, 2001.

1 may be provided in the certificate of incorporation.

2 (3) Subject to the provisions of section 14A:5-12, a corporation
3 organized prior to January 1, 1969, may adopt the majority voting
4 requirements prescribed in subsection 14A:10-3(2) by an amendment
5 of its certificate of incorporation adopted by the affirmative vote of
6 two-thirds of the votes cast by the holders of shares entitled to vote
7 thereon.

8 (4) Notwithstanding the provisions set forth in subsections
9 14A:10-3(1) and 14A:10-3(2), the approval of the shareholders of a
10 surviving corporation shall not be required to authorize a merger
11 (unless its certificate of incorporation otherwise provides) if

12 (a) The plan of merger does not make an amendment of the
13 certificate of incorporation of the surviving corporation which is
14 required by the provisions of this act to be approved by the
15 shareholders;

16 (b) Each shareholder of the surviving corporation whose shares
17 were outstanding immediately before the effective date of the merger
18 will hold the same number of shares, with identical designations,
19 preferences, limitations, and rights, immediately after;

20 (c) The number of voting shares outstanding immediately after the
21 merger, plus the number of voting shares issuable on conversion of
22 other securities or on exercise of rights and warrants issued pursuant
23 to the merger, will not exceed by more than 40% the total number of
24 voting shares of the surviving corporation outstanding immediately
25 before the merger; and

26 (d) The number of participating shares outstanding immediately
27 after the merger, plus the number of participating shares issuable on
28 conversion of other securities or on exercise of rights and warrants
29 issued pursuant to the merger, will not exceed by more than 40% the
30 total number of participating shares of the surviving corporation
31 outstanding immediately before the merger.

32 (5) As used in subsection 14A:10-3(4):

33 (a) "Participating shares" means shares that entitle their holders to
34 participate without limitation in distributions.

35 (b) "Voting shares" means shares that entitle their holders to vote
36 unconditionally in elections of directors.

37 (6) Notwithstanding the ¹[requirements] provisions¹ set forth in
38 subsections ¹[(1) and (2) of N.J.S.14A:10A-3] 14A:10-3(1) and
39 14A:10-3(2)¹, the approval of the shareholders of a corporation shall
40 not be required to authorize a merger with or into a single ¹[direct
41 or]¹ indirect wholly-owned subsidiary of that corporation (unless its
42 certificate of incorporation otherwise provides) if:

43 (a) the corporation ¹[and] ¹²[the direct]² ¹[or] ²[wholly-owned
44 subsidiary of the corporation] the holding company² and the¹ indirect
45 wholly-owned subsidiary of the corporation are the only parties to the
46 merger; ²and²

1 (b) each shareholder of the corporation ²[whose shares were
2 outstanding immediately before the effective date of the merger] ² will
3 hold the same number of shares ²[in] of ² the holding company, with
4 identical designations, preferences, limitations and rights, immediately
5 after the effective date of the merger; ²and²

6 (c) the corporation, ²[its direct or] the ² indirect wholly-owned
7 subsidiary ²[.] and ² the holding company ²[and the surviving
8 corporation] ² are domestic corporations; ²and²

9 (d) the certificate of incorporation and by-laws of the holding
10 company immediately after the effective date of the merger contain
11 provisions identical to the certificate of incorporation and by-laws of
12 the corporation immediately before the effective date of the merger
13 ¹[.] . ¹ other than provisions, if any, regarding the ²[incorporator or]²
14 incorporators, the corporate name, the registered office and agent, the
15 initial board of directors ²[and] . ² the initial subscribers for shares and
16 the provisions ²[contained in any amendment to the certificate of
17 incorporation as were] ² necessary to effect a change, exchange,
18 reclassification or cancellation of shares, if such change, exchange,
19 reclassification or cancellation has become effective ²prior to the
20 effective date of the merger ² ¹ [.] ¹; ²and²

21 (e) ²[as a result of the merger,] ² the surviving corporation ¹[or its
22 successor corporation] ¹ ², as a result of the merger, ² remains or
23 becomes a direct or indirect wholly-owned subsidiary of the holding
24 company; ²and²

25 (f) the directors of the corporation remain or become the directors
26 of the holding company upon the effective date of the merger; ²and²

27 (g) the certificate of incorporation of the surviving corporation
28 immediately after the effective date of the merger is identical to the
29 certificate of incorporation of the corporation immediately before the
30 effective date of the merger ¹[.] . ¹ other than provisions, if any,
31 regarding the ²[incorporator or] ² incorporators, the corporate name,
32 the registered office and agent, the initial board of directors ²[and] . ²
33 the initial subscribers for shares and the provisions ²[contained in any
34 amendment to the certificate of incorporation as were] ² necessary to
35 effect a change, exchange, reclassification or cancellation of shares, if
36 such change, exchange, reclassification or cancellation has become
37 effective ²prior to the effective date of the merger ² ¹ [.] ¹; provided ²[,
38 however,] ² that: (i) the certificate of incorporation of the surviving
39 corporation shall ²[be amended in the merger to] ² contain a provision
40 requiring that any act or transaction by or involving the surviving
41 corporation that requires for its adoption under N.J.S.14A:1-1 et seq.,
42 or its certificate of incorporation, approval by the shareholders of the
43 surviving corporation, other than the election or removal of directors
44 of the surviving corporation, shall ²[, by specific reference to this
45 subsection,] ² require approval by the shareholders of the holding

1 company (or any successor by merger), by the same vote as is required
2 by N.J.S.14A:1-1 et seq. or by the certificate of incorporation of the
3 surviving corporation, until thereafter otherwise amended by approval
4 of the shareholders of the surviving corporation and the holding
5 company; and (ii) the certificate of incorporation of the surviving
6 corporation may be amended ²[in the merger]² to reduce the number
7 of classes and shares of capital stock that the surviving corporation is
8 authorized to issue; and

9 (h) the shareholders of the corporation do not recognize a gain or
10 loss for United States federal income tax purposes as determined by
11 the board of directors of the corporation.

12 (7) On and after the effective date of a merger authorized by action
13 of the board of directors of a corporation and without any vote of the
14 shareholders pursuant to subsection (6) of N.J.S.14A:10-3:

15 (a) to the extent that the restrictions of the "New Jersey
16 Shareholders' Protection Act," P.L.1986, c.74 (C.14A:10A-1 et seq.),
17 applied to the corporation and its shareholders at the effective date of
18 the merger, the restrictions shall apply to the holding company and its
19 shareholders immediately after the effective date of the merger ²in the
20 same manner² as ²[though] if² it were the corporation and all shares
21 of the holding company acquired in the merger shall for purposes of
22 the "New Jersey Shareholders' Protection Act," P.L.1986, c.74
23 (C.14A:10A-1 et seq.) be deemed to have been acquired at the time
24 that the shares of the corporation converted in the merger were
25 acquired, and provided further that any shareholder who, immediately
26 prior to the effective date of the merger, was not an interested
27 stockholder within the meaning of section 3 of the "New Jersey
28 Shareholders' Protection Act," P.L.1986, c.74 (C.14A:10A-3) shall not
29 solely by reason of the merger become an interested stockholder of the
30 holding company; and

31 (b) if the corporate name of the holding company immediately after
32 the effective date of the merger is the same as the corporate name of
33 the ¹[surviving]¹ corporation immediately prior to the effective date
34 of the merger, the shares of the holding company into which the shares
35 of the ¹[surviving]¹ corporation are converted in the merger shall be
36 represented by the stock certificates that previously represented shares
37 of the ¹[surviving]¹ corporation.

38 (8) ²[If a plan of merger is adopted by a corporation by action of
39 its board of directors and without any vote of shareholders pursuant
40 to subsection (6) of N.J.S.14A:10-3, the secretary or assistant
41 secretary of that corporation shall certify on the plan of merger that
42 the plan of merger has been adopted pursuant to that subsection and
43 that the conditions of paragraphs (a) through (h) of subsection (6) of
44 N.J.S.14A:10-3 have been satisfied.

45 (9)² As used in subsections (6) and (7) of N.J.S.14A:10-3 ¹[of
46 this section]¹, "holding company" means a corporation which, from its

1 incorporation until consummation of a merger governed by subsections
2 (6) ²[.] and² (7) ²[and (8)]² of N.J.S.14A:10-3, was at all times a
3 direct ¹[or indirect]¹ wholly-owned subsidiary of the corporation and
4 shares of which are issued in the merger ²; and "indirect wholly-owned
5 subsidiary of the corporation" means a corporation all the shares of
6 which are owned, directly or indirectly, by the holding company² .
7 (cf: P.L.1988, c.94, s.57)

8
9 ²2. N.J.S.14A:10-4.1 is amended to read as follows:
10 14A:10-4.1. Certificate of merger or consolidation.
11 (1) After approval of the plan of merger or consolidation, a
12 certificate of merger or a certificate of consolidation shall be executed
13 on behalf of each corporation. The certificate shall set forth
14 (a) The name of the surviving or new corporation or new other
15 business entity and the names of the merging or consolidating
16 corporations or other business entities;
17 (b) The plan of merger or the plan of consolidation;
18 (c) The date or dates of approval by the shareholders of each
19 corporation of the plan of merger or the plan of consolidation;
20 (d) As to each corporation whose shareholders are entitled to vote,
21 the number of shares entitled to vote thereon, and, if the shares of any
22 class or series are entitled to vote thereon as a class, the designation
23 and number of shares entitled to vote thereon of each class or series;
24 (e) As to each corporation whose shareholders are entitled to vote,
25 the number of shares voted for and against the plan, respectively, and,
26 if the shares of any class are entitled to vote as a class, the number of
27 shares of each class or series voted for and against the plan,
28 respectively; [and]
29 (f) In the case of a merger governed by subsection 14A:10-3 (4),
30 that the plan of merger was approved by the board of directors of the
31 surviving corporation and that no vote of the shareholders of the
32 surviving corporation was required because of the applicability of that
33 subsection; [and]
34 (g) If, pursuant to subsection 14A:10-4.1(2), the merger is to
35 become effective at a time subsequent to the date of filing with the
36 Secretary of State, the date when the merger is to become effective;
37 and
38 (h) In the case of a merger governed by subsection (6) of N.J.S.
39 14A:10-3, that the plan of merger was approved by the board of
40 directors of the surviving corporation, that no vote of the shareholders
41 of the surviving corporation was required because of the applicability
42 of that subsection, and that the conditions of paragraphs (a) through
43 (h) of that subsection have been satisfied.
44 (2) The executed original and a copy of the certificate shall be filed
45 in the office of the Secretary of State and the merger or consolidation
46 shall become effective upon the date of the filing or at a later time, not

1 to exceed 90 days after the date of filing, as may be set forth in the
2 certificate. The Secretary of State shall, upon filing, forward the copy
3 of the certificate to the Director of the Division of Taxation.²
4 (cf: P.L.1995, c.279, s.14)

5
6 ²[2.] 3.² N.J.S.14A:11-1 is amended to read as follows:

7 14A:11-1. Right of shareholders to dissent.

8 (1) Any shareholder of a domestic corporation shall have the right
9 to dissent from any of the following corporate actions

10 (a) Any plan of merger or consolidation to which the corporation
11 is a party, provided that, unless the certificate of incorporation
12 otherwise provides

13 (i) a shareholder shall not have the right to dissent from any plan
14 of merger or consolidation with respect to shares

15 (A) of a class or series which is listed on a national securities
16 exchange or is held of record by not less than 1,000 holders on the
17 record date fixed to determine the shareholders entitled to vote upon
18 the plan of merger or consolidation; or

19 (B) for which, pursuant to the plan of merger or consolidation, he
20 will receive (x) cash, (y) shares, obligations or other securities which,
21 upon consummation of the merger or consolidation, will either be
22 listed on a national securities exchange or held of record by not less
23 than 1,000 holders, or (z) cash and such securities;

24 (ii) a shareholder of a surviving corporation shall not have the right
25 to dissent from a plan of merger, if the merger did not require for its
26 approval the vote of such shareholders as provided in section
27 14A:10-5.1 or in subsection 14A:10-3(4), 14A:10-7(2) or
28 14A:10-7(4); [or]

29 (iii) a shareholder of a corporation shall not have the right to
30 dissent from a plan of merger, if the merger did not require, for its
31 approval, the vote of the shareholders as provided in subsection (6) of
32 N.J.S.14A:10-3; or

33 (b) Any sale, lease, exchange or other disposition of all or
34 substantially all of the assets of a corporation not in the usual or
35 regular course of business as conducted by such corporation, other
36 than a transfer pursuant to subsection (4) of N.J.S.14A:10-11,
37 provided that, unless the certificate of incorporation otherwise
38 provides, the shareholder shall not have the right to dissent

39 (i) with respect to shares of a class or series which, at the record
40 date fixed to determine the shareholders entitled to vote upon such
41 transaction, is listed on a national securities exchange or is held of
42 record by not less than 1,000 holders; or

43 (ii) from a transaction pursuant to a plan of dissolution of the
44 corporation which provides for distribution of substantially all of its
45 net assets to shareholders in accordance with their respective interests
46 within one year after the date of such transaction, where such
47 transaction is wholly for

48 (A) cash; or

1 (B) shares, obligations or other securities which, upon
2 consummation of the plan of dissolution will either be listed on a
3 national securities exchange or held of record by not less than 1,000
4 holders; or

5 (C) cash and such securities; or

6 (iii) from a sale pursuant to an order of a court having jurisdiction.

7 (2) Any shareholder of a domestic corporation shall have the right
8 to dissent with respect to any shares owned by him which are to be
9 acquired pursuant to section 14A:10-9.

10 (3) A shareholder may not dissent as to less than all of the shares
11 owned beneficially by him and with respect to which a right of dissent
12 exists. A nominee or fiduciary may not dissent on behalf of any
13 beneficial owner as to less than all of the shares of such owner with
14 respect to which the right of dissent exists.

15 (4) A corporation may provide in its certificate of incorporation
16 that holders of all its shares, or of a particular class or series thereof,
17 shall have the right to dissent from specified corporate actions in
18 addition to those enumerated in subsection 14A:11-1(1), in which case
19 the exercise of such right of dissent shall be governed by the
20 provisions of this Chapter.

21 (cf: P.L.1995, c.279, s.21)

22

23 ²[3.] 4.² This act shall take effect immediately.

P.L. 2001, CHAPTER 193, *approved July 31, 2001*

Assembly, No. 1980 (*First Reprint*)

1 AN ACT concerning certain corporate mergers and amending
2 N.J.S.14A:10-3 ¹, N.J.S.14A:10-4.1¹ and N.J.S.14A:11-1.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. N.J.S.14A:10-3 is amended to read as follows:

8 14A:10-3. Approval by shareholders.

9 (1) The board of each corporation, upon approving such plan of
10 merger or plan of consolidation, shall direct that the plan be submitted
11 to a vote at a meeting of shareholders. Written notice shall be given
12 not less than 20 nor more than 60 days before such meeting to each
13 shareholder of record, whether or not entitled to vote at such meeting,
14 in the manner provided in this act for the giving of notice of meetings
15 of shareholders. Such notice shall include, or shall be accompanied by

16 (a) A copy or a summary of the plan of merger or consolidation;
17 and

18 (b) A statement informing shareholders who, under Chapter 11 of
19 this act, are entitled to dissent, that they have the right to dissent and
20 to be paid the fair value of their shares and outlining briefly, with
21 particular reference to the time periods within which actions must be
22 taken, the procedures set forth in Chapter 11 of this act with which
23 they must comply in order to assert and enforce such right.

24 (2) At each such meeting, a vote of the shareholders shall be taken
25 on the proposed plan of merger or consolidation. Such plan shall be
26 approved upon receiving the affirmative vote of a majority of the votes
27 cast by the holders of shares of each such corporation entitled to vote
28 thereon, and, in addition, if any class or series is entitled to vote
29 thereon as a class, the affirmative vote of a majority of the votes cast
30 in each class vote; except that, in the case of a corporation organized
31 prior to January 1, 1969, the plan of merger or consolidation shall be
32 approved upon receiving the affirmative vote of two-thirds of the
33 votes so cast. Any class or series of shares of any such corporation
34 shall be entitled to vote as a class if the plan of merger or
35 consolidation, as the case may be, contains any provision which, if
36 contained in a proposed amendment to the certificate of incorporation,
37 would entitle such class or series of shares to vote as a class unless
38 such provision is one which could be adopted by the board without
39 shareholder approval as referred to in subsection 14A:9-2(2). The
40 voting requirements of this section shall be subject to such greater

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ACT committee amendments adopted March 1, 2001.

1 requirements as are provided in this act for specific amendments or as
2 may be provided in the certificate of incorporation.

3 (3) Subject to the provisions of section 14A:5-12, a corporation
4 organized prior to January 1, 1969, may adopt the majority voting
5 requirements prescribed in subsection 14A:10-3(2) by an amendment
6 of its certificate of incorporation adopted by the affirmative vote of
7 two-thirds of the votes cast by the holders of shares entitled to vote
8 thereon.

9 (4) Notwithstanding the provisions set forth in subsections
10 14A:10-3(1) and 14A:10-3(2), the approval of the shareholders of a
11 surviving corporation shall not be required to authorize a merger
12 (unless its certificate of incorporation otherwise provides) if

13 (a) The plan of merger does not make an amendment of the
14 certificate of incorporation of the surviving corporation which is
15 required by the provisions of this act to be approved by the
16 shareholders;

17 (b) Each shareholder of the surviving corporation whose shares
18 were outstanding immediately before the effective date of the merger
19 will hold the same number of shares, with identical designations,
20 preferences, limitations, and rights, immediately after;

21 (c) The number of voting shares outstanding immediately after the
22 merger, plus the number of voting shares issuable on conversion of
23 other securities or on exercise of rights and warrants issued pursuant
24 to the merger, will not exceed by more than 40% the total number of
25 voting shares of the surviving corporation outstanding immediately
26 before the merger; and

27 (d) The number of participating shares outstanding immediately
28 after the merger, plus the number of participating shares issuable on
29 conversion of other securities or on exercise of rights and warrants
30 issued pursuant to the merger, will not exceed by more than 40% the
31 total number of participating shares of the surviving corporation
32 outstanding immediately before the merger.

33 (5) As used in subsection 14A:10-3(4):

34 (a) "Participating shares" means shares that entitle their holders to
35 participate without limitation in distributions.

36 (b) "Voting shares" means shares that entitle their holders to vote
37 unconditionally in elections of directors.

38 (6) Notwithstanding the ¹[requirements] provisions¹ set forth in
39 subsections ¹[(1) and (2) of this section] 14A:10-3(1) and 14A:10-
40 3(2)¹, the approval of the shareholders of a corporation shall not be
41 required to authorize a merger with or into a single ¹[direct or]¹
42 indirect wholly-owned subsidiary of that corporation (unless its
43 certificate of incorporation otherwise provides) if:

44 (a) the corporation ¹[and the direct or], the holding company and
45 the¹ indirect wholly-owned subsidiary of the corporation are the only
46 parties to the merger; ¹and¹

1 **(b) each shareholder of the corporation** ¹**[whose shares were**
2 **outstanding immediately before the effective date of the merger]** ¹ **will**
3 **hold the same number of shares** ¹**[in] of** ¹ **the holding company, with**
4 **identical designations, preferences, limitations and rights, immediately**
5 **after the effective date of the merger;** ¹**and** ¹

6 **(c) the corporation,** ¹**[its direct or] the** ¹ **indirect wholly-owned**
7 **subsidiary** ¹**[.] and** ¹ **the holding company** ¹**[and the surviving**
8 **corporation]** ¹ **are domestic corporations;** ¹**and** ¹

9 **(d) the certificate of incorporation and by-laws of the holding**
10 **company immediately after the effective date of the merger contain**
11 **provisions identical to the certificate of incorporation and by-laws of**
12 **the corporation immediately before the effective date of the merger**
13 **[.] .** ¹ **other than provisions, if any, regarding the** ¹**[incorporator or]** ¹
14 **incorporators, the corporate name, the registered office and agent, the**
15 **initial board of directors** ¹**[and] .** ¹ **the initial subscribers for shares and**
16 **the provisions** ¹**[contained in any amendment to the certificate of**
17 **incorporation as were]** ¹ **necessary to effect a change, exchange,**
18 **reclassification or cancellation of shares, if such change, exchange,**
19 **reclassification or cancellation has become effective** ¹**[.]]** **prior to the**
20 **effective date of the merger** ¹; ¹**and** ¹

21 **(e) [as a result of the merger,]** ¹ **the surviving corporation** ¹ **[or its**
22 **successor corporation]** ¹ **, as a result of the merger,** ¹ **remains or**
23 **becomes a direct or indirect wholly-owned subsidiary of the holding**
24 **company;** ¹**and** ¹

25 **(f) the directors of the corporation remain or become the directors**
26 **of the holding company upon the effective date of the merger;** ¹**and** ¹

27 **(g) the certificate of incorporation of the surviving corporation**
28 **immediately after the effective date of the merger is identical to the**
29 **certificate of incorporation of the corporation immediately before the**
30 **effective date of the merger** ¹**[.] .** ¹ **other than provisions, if any,**
31 **regarding the** ¹**[incorporator or]** ¹ **incorporators, the corporate name,**
32 **the registered office and agent, the initial board of directors** ¹**[and] .** ¹
33 **the initial subscribers for shares and the provisions** ¹**[contained in any**
34 **amendment to the certificate of incorporation as were]** ¹ **necessary to**
35 **effect a change, exchange, reclassification or cancellation of shares, if**
36 **such change, exchange, reclassification or cancellation has become**
37 **effective** ¹**[.]]** **prior to the effective date of the merger** ¹; **provided** ¹**[,**
38 **however,]** ¹ **that: (i) the certificate of incorporation of the surviving**
39 **corporation shall** ¹**[be amended in the merger to]** ¹ **contain a provision**
40 **requiring that any act or transaction by or involving the surviving**
41 **corporation that requires for its adoption under N.J.S.14A:1-1 et seq.,**
42 **or its certificate of incorporation, approval by the shareholders of the**
43 **surviving corporation, other than the election or removal of directors**
44 **of the surviving corporation, shall** ¹**[, by specific reference to this**
45 **subsection,]** ¹ **require approval by the shareholders of the holding**

1 company (or any successor by merger), by the same vote as is required
2 by N.J.S.14A:1-1 et seq. or by the certificate of incorporation of the
3 surviving corporation, until thereafter otherwise amended by approval
4 of the shareholders of the surviving corporation and the holding
5 company; and (ii) the certificate of incorporation of the surviving
6 corporation may be amended¹ [in the merger]¹ to reduce the number
7 of classes and shares of capital stock that the surviving corporation is
8 authorized to issue; and

9 (h) the shareholders of the corporation do not recognize a gain or
10 loss for United States federal income tax purposes as determined by
11 the board of directors of the corporation.

12 (7) On and after the effective date of a merger authorized by action
13 of the board of directors of a corporation and without any vote of the
14 shareholders pursuant to subsection (6) of¹ [this section]
15 N.J.S.14A:10-3¹ :

16 (a) to the extent that the restrictions of the "New Jersey
17 Shareholders' Protection Act," P.L.1986, c.74 (C.14A:10A-1 et seq.),
18 applied to the corporation and its shareholders at the effective date of
19 the merger, the restrictions shall apply to the holding company and its
20 shareholders immediately after the effective date of the merger¹ in the
21 same manner¹ as¹ [though] if¹ it were the corporation and all shares
22 of the holding company acquired in the merger shall for purposes of
23 the "New Jersey Shareholders' Protection Act," P.L.1986, c.74
24 (C.14A:10A-1 et seq.) be deemed to have been acquired at the time
25 that the shares of the corporation converted in the merger were
26 acquired, and provided further that any shareholder who, immediately
27 prior to the effective date of the merger, was not an interested
28 stockholder within the meaning of section 3 of the "New Jersey
29 Shareholders' Protection Act," P.L.1986, c.74 (C.14A:10A-3) shall not
30 solely by reason of the merger become an interested stockholder of the
31 holding company; and

32 (b) if the corporate name of the holding company immediately after
33 the effective date of the merger is the same as the corporate name of
34 the¹ [surviving]¹ corporation immediately prior to the effective date
35 of the merger, the shares of the holding company into which the shares
36 of the¹ [surviving]¹ corporation are converted in the merger shall be
37 represented by the stock certificates that previously represented shares
38 of the¹ [surviving]¹ corporation.

39 (8)¹ [If a plan of merger is adopted by a corporation by action of
40 its board of directors and without any vote of shareholders pursuant
41 to subsection (6) of this section, the secretary or assistant secretary of
42 that corporation shall certify on the plan of merger that the plan of
43 merger has been adopted pursuant to that subsection and that the
44 conditions of paragraphs (a) through (h) of subsection (6) of
45 N.J.S.14A:10-3 have been satisfied.

46 (9)¹ As used in subsections (6)¹ [, (7) and (8) of this section] and

1 (7) of N.J.S.14A:10-3¹ , "holding company" means a corporation
2 which, from its incorporation until consummation of a merger
3 governed by subsections (6) ¹[.] and¹ (7) ¹[and (8)]¹ of
4 N.J.S.14A:10-3, was at all times a direct ¹[or indirect]¹ wholly-owned
5 subsidiary of the corporation and shares of which are issued in the
6 merger ¹; and "indirect wholly-owned subsidiary of the corporation"
7 means a corporation all the shares of which are owned, directly or
8 indirectly, by the holding company¹ .
9 (cf: P.L.1988, c.94, s.57 and N.J.S.14A:11-1)

10
11 ¹2. N.J.S.14A:10-4.1 is amended to read as follows:

12 14A:10-4.1. Certificate of merger or consolidation.

13 (1) After approval of the plan of merger or consolidation, a
14 certificate of merger or a certificate of consolidation shall be executed
15 on behalf of each corporation. The certificate shall set forth

16 (a) The name of the surviving or new corporation or new other
17 business entity and the names of the merging or consolidating
18 corporations or other business entities;

19 (b) The plan of merger or the plan of consolidation;

20 (c) The date or dates of approval by the shareholders of each
21 corporation of the plan of merger or the plan of consolidation;

22 (d) As to each corporation whose shareholders are entitled to vote,
23 the number of shares entitled to vote thereon, and, if the shares of any
24 class or series are entitled to vote thereon as a class, the designation
25 and number of shares entitled to vote thereon of each class or series;

26 (e) As to each corporation whose shareholders are entitled to vote,
27 the number of shares voted for and against the plan, respectively, and,
28 if the shares of any class are entitled to vote as a class, the number of
29 shares of each class or series voted for and against the plan,
30 respectively; [and]

31 (f) In the case of a merger governed by subsection 14A:10-3 (4),
32 that the plan of merger was approved by the board of directors of the
33 surviving corporation and that no vote of the shareholders of the
34 surviving corporation was required because of the applicability of that
35 subsection; [and]

36 (g) If, pursuant to subsection 14A:10-4.1(2), the merger is to
37 become effective at a time subsequent to the date of filing with the
38 Secretary of State, the date when the merger is to become effective;
39 and

40 (h) In the case of a merger governed by subsection (6) of N.J.S.
41 14A:10-3, that the plan of merger was approved by the board of
42 directors of the surviving corporation, that no vote of the shareholders
43 of the surviving corporation was required because of the applicability
44 of that subsection, and that the conditions of paragraphs (a) through
45 (h) of that subsection have been satisfied.

46 (2) The executed original and a copy of the certificate shall be filed

1 in the office of the Secretary of State and the merger or consolidation
2 shall become effective upon the date of the filing or at a later time, not
3 to exceed 90 days after the date of filing, as may be set forth in the
4 certificate. The Secretary of State shall, upon filing, forward the copy
5 of the certificate to the Director of the Division of Taxation.¹

6 (cf: P.L.1995, c.279, s.14)

7

8 ¹[2.] 3.¹ N.J.S.14A:11-1 is amended to read as follows:

9 14A:11-1. Right of shareholders to dissent.

10 (1) Any shareholder of a domestic corporation shall have the right
11 to dissent from any of the following corporate actions

12 (a) Any plan of merger or consolidation to which the corporation
13 is a party, provided that, unless the certificate of incorporation
14 otherwise provides

15 (i) a shareholder shall not have the right to dissent from any plan
16 of merger or consolidation with respect to shares

17 (A) of a class or series which is listed on a national securities
18 exchange or is held of record by not less than 1,000 holders on the
19 record date fixed to determine the shareholders entitled to vote upon
20 the plan of merger or consolidation; or

21 (B) for which, pursuant to the plan of merger or consolidation, he
22 will receive (x) cash, (y) shares, obligations or other securities which,
23 upon consummation of the merger or consolidation, will either be
24 listed on a national securities exchange or held of record by not less
25 than 1,000 holders, or (z) cash and such securities;

26 (ii) a shareholder of a surviving corporation shall not have the right
27 to dissent from a plan of merger, if the merger did not require for its
28 approval the vote of such shareholders as provided in section
29 14A:10-5.1 or in subsection 14A:10-3(4), 14A:10-7(2) or
30 14A:10-7(4); [or]

31 (iii) a shareholder of a corporation shall not have the right to
32 dissent from a plan of merger, if the merger did not require, for its
33 approval, the vote of the shareholders as provided in subsection (6) of
34 N.J.S.14A:10-3; or

35 (b) Any sale, lease, exchange or other disposition of all or
36 substantially all of the assets of a corporation not in the usual or
37 regular course of business as conducted by such corporation, other
38 than a transfer pursuant to subsection (4) of N.J.S.14A:10-11,
39 provided that, unless the certificate of incorporation otherwise
40 provides, the shareholder shall not have the right to dissent

41 (i) with respect to shares of a class or series which, at the record
42 date fixed to determine the shareholders entitled to vote upon such
43 transaction, is listed on a national securities exchange or is held of
44 record by not less than 1,000 holders; or

45 (ii) from a transaction pursuant to a plan of dissolution of the
46 corporation which provides for distribution of substantially all of its
47 net assets to shareholders in accordance with their respective interests

1 within one year after the date of such transaction, where such
2 transaction is wholly for

3 (A) cash; or

4 (B) shares, obligations or other securities which, upon
5 consummation of the plan of dissolution will either be listed on a
6 national securities exchange or held of record by not less than 1,000
7 holders; or

8 (C) cash and such securities; or

9 (iii) from a sale pursuant to an order of a court having jurisdiction.

10 (2) Any shareholder of a domestic corporation shall have the right
11 to dissent with respect to any shares owned by him which are to be
12 acquired pursuant to section 14A:10-9.

13 (3) A shareholder may not dissent as to less than all of the shares
14 owned beneficially by him and with respect to which a right of dissent
15 exists. A nominee or fiduciary may not dissent on behalf of any
16 beneficial owner as to less than all of the shares of such owner with
17 respect to which the right of dissent exists.

18 (4) A corporation may provide in its certificate of incorporation
19 that holders of all its shares, or of a particular class or series thereof,
20 shall have the right to dissent from specified corporate actions in
21 addition to those enumerated in subsection 14A:11-1(1), in which case
22 the exercise of such right of dissent shall be governed by the
23 provisions of this Chapter.

24 (cf: P.L.1995, c.279, s.21)

25

26 ¹[3.] 4.¹ This act shall take effect immediately.

27

28

29

30

31 _____
32 Permits certain corporate mergers without shareholder approval or
right of dissent.

CHAPTER 193

AN ACT concerning certain corporate mergers and amending N.J.S.14A:10-3, N.J.S.14A:10-4.1 and N.J.S.14A:11-1.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. N.J.S.14A:10-3 is amended to read as follows:

Approval by shareholders.

14A:10-3. Approval by shareholders.

(1) The board of each corporation, upon approving such plan of merger or plan of consolidation, shall direct that the plan be submitted to a vote at a meeting of shareholders. Written notice shall be given not less than 20 nor more than 60 days before such meeting to each shareholder of record, whether or not entitled to vote at such meeting, in the manner provided in this act for the giving of notice of meetings of shareholders. Such notice shall include, or shall be accompanied by

(a) A copy or a summary of the plan of merger or consolidation; and

(b) A statement informing shareholders who, under Chapter 11 of this act, are entitled to dissent, that they have the right to dissent and to be paid the fair value of their shares and outlining briefly, with particular reference to the time periods within which actions must be taken, the procedures set forth in Chapter 11 of this act with which they must comply in order to assert and enforce such right.

(2) At each such meeting, a vote of the shareholders shall be taken on the proposed plan of merger or consolidation. Such plan shall be approved upon receiving the affirmative vote of a majority of the votes cast by the holders of shares of each such corporation entitled to vote thereon, and, in addition, if any class or series is entitled to vote thereon as a class, the affirmative vote of a majority of the votes cast in each class vote; except that, in the case of a corporation organized prior to January 1, 1969, the plan of merger or consolidation shall be approved upon receiving the affirmative vote of two-thirds of the votes so cast. Any class or series of shares of any such corporation shall be entitled to vote as a class if the plan of merger or consolidation, as the case may be, contains any provision which, if contained in a proposed amendment to the certificate of incorporation, would entitle such class or series of shares to vote as a class unless such provision is one which could be adopted by the board without shareholder approval as referred to in subsection 14A:9-2(2). The voting requirements of this section shall be subject to such greater requirements as are provided in this act for specific amendments or as may be provided in the certificate of incorporation.

(3) Subject to the provisions of section 14A:5-12, a corporation organized prior to January 1, 1969, may adopt the majority voting requirements prescribed in subsection 14A:10-3(2) by an amendment of its certificate of incorporation adopted by the affirmative vote of two-thirds of the votes cast by the holders of shares entitled to vote thereon.

(4) Notwithstanding the provisions set forth in subsections 14A:10-3(1) and 14A:10-3(2), the approval of the shareholders of a surviving corporation shall not be required to authorize a merger (unless its certificate of incorporation otherwise provides) if

(a) The plan of merger does not make an amendment of the certificate of incorporation of the surviving corporation which is required by the provisions of this act to be approved by the shareholders;

(b) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and rights, immediately after;

(c) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable on conversion of other securities or on exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 40% the total number of voting shares of the surviving corporation outstanding immediately before the merger; and

(d) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable on conversion of other securities or on exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 40% the total number of participating shares of the surviving corporation outstanding immediately before the merger.

- (5) As used in subsection 14A:10-3(4):

(a) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(b) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(6) Notwithstanding the provisions set forth in subsections 14A:10-3(1) and 14A:10-3(2), the approval of the shareholders of a corporation shall not be required to authorize a merger with or into a single indirect wholly-owned subsidiary of that corporation (unless its certificate of incorporation otherwise provides) if:

(a) the corporation, the holding company and the indirect wholly-owned subsidiary of the corporation are the only parties to the merger; and

(b) each shareholder of the corporation will hold the same number of shares of the holding company, with identical designations, preferences, limitations and rights, immediately after the effective date of the merger; and

(c) the corporation, the indirect wholly-owned subsidiary and the holding company are domestic corporations; and

(d) the certificate of incorporation and bylaws of the holding company immediately after the effective date of the merger contain provisions identical to the certificate of incorporation and bylaws of the corporation immediately before the effective date of the merger, other than provisions, if any, regarding the incorporators, the corporate name, the registered office and agent, the initial board of directors, the initial subscribers for shares and the provisions necessary to effect a change, exchange, reclassification or cancellation of shares, if such change, exchange, reclassification or cancellation has become effective prior to the effective date of the merger; and

(e) the surviving corporation, as a result of the merger, remains or becomes a direct or indirect wholly-owned subsidiary of the holding company; and

(f) the directors of the corporation remain or become the directors of the holding company upon the effective date of the merger; and

(g) the certificate of incorporation of the surviving corporation immediately after the effective date of the merger is identical to the certificate of incorporation of the corporation immediately before the effective date of the merger, other than provisions, if any, regarding the incorporators, the corporate name, the registered office and agent, the initial board of directors, the initial subscribers for shares and the provisions necessary to effect a change, exchange, reclassification or cancellation of shares, if such change, exchange, reclassification or cancellation has become effective prior to the effective date of the merger; provided that: (i) the certificate of incorporation of the surviving corporation shall contain a provision requiring that any act or transaction by or involving the surviving corporation that requires for its adoption under N.J.S.14A:1-1 et seq., or its certificate of incorporation, approval by the shareholders of the surviving corporation, other than the election or removal of directors of the surviving corporation, shall require approval by the shareholders of the holding company (or any successor by merger), by the same vote as is required by N.J.S.14A:1-1 et seq. or by the certificate of incorporation of the surviving corporation, until thereafter otherwise amended by approval of the shareholders of the surviving corporation and the holding company; and (ii) the certificate of incorporation of the surviving corporation may be amended to reduce the number of classes and shares of capital stock that the surviving corporation is authorized to issue; and

(h) the shareholders of the corporation do not recognize a gain or loss for United States federal income tax purposes as determined by the board of directors of the corporation.

(7) On and after the effective date of a merger authorized by action of the board of directors of a corporation and without any vote of the shareholders pursuant to subsection (6) of N.J.S.14A:10-3:

(a) to the extent that the restrictions of the "New Jersey Shareholders' Protection Act," P.L.1986, c.74 (C.14A:10A-1 et seq.), applied to the corporation and its shareholders at the effective date of the merger, the restrictions shall apply to the holding company and its shareholders immediately after the effective date of the merger in the same manner as if it were the corporation and all shares of the holding company acquired in the merger shall for purposes of the "New Jersey Shareholders' Protection Act," P.L.1986, c.74 (C.14A:10A-1 et seq.) be deemed to have been acquired at the time that the shares of the corporation converted in the

merger were acquired, and provided further that any shareholder who, immediately prior to the effective date of the merger, was not an interested stockholder within the meaning of section 3 of the "New Jersey Shareholders' Protection Act," P.L.1986, c.74 (C.14A:10A-3) shall not solely by reason of the merger become an interested stockholder of the holding company; and

(b) if the corporate name of the holding company immediately after the effective date of the merger is the same as the corporate name of the corporation immediately prior to the effective date of the merger, the shares of the holding company into which the shares of the corporation are converted in the merger shall be represented by the stock certificates that previously represented shares of the corporation.

(8) As used in subsections (6) and (7) of N.J.S.14A:10-3, "holding company" means a corporation which, from its incorporation until consummation of a merger governed by subsections (6) and (7) of N.J.S.14A:10-3, was at all times a direct wholly-owned subsidiary of the corporation and shares of which are issued in the merger; and "indirect wholly-owned subsidiary of the corporation" means a corporation all the shares of which are owned, directly or indirectly, by the holding company.

2. N.J.S.14A:10-4.1 is amended to read as follows:

Certificate of merger or consolidation.

14A:10-4.1. Certificate of merger or consolidation.

(1) After approval of the plan of merger or consolidation, a certificate of merger or a certificate of consolidation shall be executed on behalf of each corporation. The certificate shall set forth

(a) The name of the surviving or new corporation or new other business entity and the names of the merging or consolidating corporations or other business entities;

(b) The plan of merger or the plan of consolidation;

(c) The date or dates of approval by the shareholders of each corporation of the plan of merger or the plan of consolidation;

(d) As to each corporation whose shareholders are entitled to vote, the number of shares entitled to vote thereon, and, if the shares of any class or series are entitled to vote thereon as a class, the designation and number of shares entitled to vote thereon of each class or series;

(e) As to each corporation whose shareholders are entitled to vote, the number of shares voted for and against the plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each class or series voted for and against the plan, respectively;

(f) In the case of a merger governed by subsection 14A:10-3 (4), that the plan of merger was approved by the board of directors of the surviving corporation and that no vote of the shareholders of the surviving corporation was required because of the applicability of that subsection;

(g) If, pursuant to subsection 14A:10-4.1(2), the merger is to become effective at a time subsequent to the date of filing with the Secretary of State, the date when the merger is to become effective; and

(h) In the case of a merger governed by subsection (6) of N.J.S.14A:10-3, that the plan of merger was approved by the board of directors of the surviving corporation, that no vote of the shareholders of the surviving corporation was required because of the applicability of that subsection, and that the conditions of paragraphs (a) through (h) of that subsection have been satisfied.

(2) The executed original and a copy of the certificate shall be filed in the office of the Secretary of State and the merger or consolidation shall become effective upon the date of the filing or at a later time, not to exceed 90 days after the date of filing, as may be set forth in the certificate. The Secretary of State shall, upon filing, forward the copy of the certificate to the Director of the Division of Taxation.

3. N.J.S.14A:11-1 is amended to read as follows:

Right of shareholders to dissent.

14A:11-1. Right of shareholders to dissent.

(1) Any shareholder of a domestic corporation shall have the right to dissent from any of the following corporate actions

(a) Any plan of merger or consolidation to which the corporation is a party, provided that, unless the certificate of incorporation otherwise provides

(i) a shareholder shall not have the right to dissent from any plan of merger or consolidation with respect to shares

(A) of a class or series which is listed on a national securities exchange or is held of record by not less than 1,000 holders on the record date fixed to determine the shareholders entitled to vote upon the plan of merger or consolidation; or

(B) for which, pursuant to the plan of merger or consolidation, he will receive (x) cash, (y) shares, obligations or other securities which, upon consummation of the merger or consolidation, will either be listed on a national securities exchange or held of record by not less than 1,000 holders, or (z) cash and such securities;

(ii) a shareholder of a surviving corporation shall not have the right to dissent from a plan of merger, if the merger did not require for its approval the vote of such shareholders as provided in section 14A:10-5.1 or in subsection 14A:10-3(4), 14A:10-7(2) or 14A:10-7(4);

(iii) a shareholder of a corporation shall not have the right to dissent from a plan of merger, if the merger did not require, for its approval, the vote of the shareholders as provided in subsection (6) of N.J.S.14A:10-3; or

(b) Any sale, lease, exchange or other disposition of all or substantially all of the assets of a corporation not in the usual or regular course of business as conducted by such corporation, other than a transfer pursuant to subsection (4) of N.J.S.14A:10-11, provided that, unless the certificate of incorporation otherwise provides, the shareholder shall not have the right to dissent

(i) with respect to shares of a class or series which, at the record date fixed to determine the shareholders entitled to vote upon such transaction, is listed on a national securities exchange or is held of record by not less than 1,000 holders; or

(ii) from a transaction pursuant to a plan of dissolution of the corporation which provides for distribution of substantially all of its net assets to shareholders in accordance with their respective interests within one year after the date of such transaction, where such transaction is wholly for

(A) cash; or

(B) shares, obligations or other securities which, upon consummation of the plan of dissolution will either be listed on a national securities exchange or held of record by not less than 1,000 holders; or

(C) cash and such securities; or

(iii) from a sale pursuant to an order of a court having jurisdiction.

(2) Any shareholder of a domestic corporation shall have the right to dissent with respect to any shares owned by him which are to be acquired pursuant to section 14A:10-9.

(3) A shareholder may not dissent as to less than all of the shares owned beneficially by him and with respect to which a right of dissent exists. A nominee or fiduciary may not dissent on behalf of any beneficial owner as to less than all of the shares of such owner with respect to which the right of dissent exists.

(4) A corporation may provide in its certificate of incorporation that holders of all its shares, or of a particular class or series thereof, shall have the right to dissent from specified corporate actions in addition to those enumerated in subsection 14A:11-1(1), in which case the exercise of such right of dissent shall be governed by the provisions of this Chapter.

4. This act shall take effect immediately.

Approved July 31, 2001.

Office of the Governor

PO BOX 004
TRENTON, NJ 08625

NEWS RELEASE

CONTACT: Rae Hutton
or Kristin Zebrowski
609-777-2600

RELEASE: August 2, 2001

Acting Governor Donald T. DiFrancesco has signed the following legislation:

S-1239, sponsored by Senators Joseph Palaia (R-Monmouth) and Jack Sinagra (R-Middlesex) and Assembly members Marion Crecco (R-Essex/Passaic) and Guy Talarico (R-Bergen), requires parental consent prior to tattooing or body piercing of minors. This bill makes it a disorderly offense for a person to knowingly tattoo or body pierce a minor under the age of 18 without prior consent of the parent or guardian.

S-232, sponsored by Senator Wayne Bryant (D-Camden/Gloucester) and Assemblymen Neil Cohen (D-Union), requires a child support order relating to health care coverage be enforced through National Medical Support Notice and indicate the party responsible for maintaining the coverage.

S-812, sponsored by Senators Joseph Kyrillos (R-Middlesex/Monmouth) and Bernard Kenny (D-Hudson) and Assemblyman Joseph Azzolina (R-Middlesex/Monmouth), provides that a municipal authority may allow certain employees to waive the SHBP coverage to which the employee is entitled by virtue of employment with the municipal authority.

S-1641, sponsored by Senators John Matheussen (R-Camden/Gloucester) and Norman Robertson (R-Essex/Passaic) and Assemblymen Kip Bateman (R-Morris/Somerset) and Charles Zisa (D-Bergen), directs certain juvenile justice records be available to law enforcement agencies and prosecutors on a 24-hour basis. Types of information which would be made available under this bill includes juvenile arrest information, juvenile disposition information, juvenile pretrial detention information and information concerning the probation status of a juvenile.

A-1980, sponsored by Senate Majority Leader John Bennett (R-Monmouth) and Assemblyman Neil Cohen (D-Union), permits a corporation to change from an operating corporation to a holding corporation without shareholder approval and without the need to transfer assets and liabilities.

A-3219, sponsored by Senators Gerald Cardinale (R-Bergen) and Garry Furnari (D-Bergen/Essex/Passaic) and Assemblymen Kip Bateman (R-Morris/Somerset) and Richard Merkt (R-Morris), limits the cost of a "Y2K" examination of a domestic fraternal benefit society to no more than one percent of the society's 1999 net premiums received. The balance for any such examination would be paid by the Department of Banking and Insurance.

A-314, sponsored by Senators Jack Sinagra (R-Middlesex) and John Adler (D-Camden) and Assembly members Charlotte Vandervalk (R-Bergen) and Neil Cohen (D-Union), establishes a permanent commission to be known as the "New Jersey Health Data Commission. The 33-

member Commission would collect and maintain health data from State government agencies or other entities.

The bill also appropriates \$94,000 and assumes that the cost to the State to operate the Commission will be partially offset by payments for Commission documents and receipt of grants.