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LAW/RWH

P.L.2011, CHAPTER 36, *approved March 1, 2011*
Assembly, No. 3253 (*First Reprint*)

1 AN ACT concerning the general powers of a corporation and
2 amending N.J.S.14A:3-1.

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:3-1 is amended to read as follows:
8 14A:3-1. General powers.

9 (1) Each corporation, subject to any limitations provided in this
10 act or any other statute of this State, or in its certificate of
11 incorporation, shall have power

12 (a) to have perpetual duration unless a limited period is stated in
13 its certificate of incorporation;

14 (b) to sue and be sued, complain and defend and participate as a
15 party or otherwise in any judicial, administrative, arbitative or
16 other proceeding, in its corporate name;

17 (c) to have a corporate seal which may be altered at pleasure,
18 and to use the same by causing it, or a facsimile thereof, to be
19 impressed or affixed or in any other manner reproduced;

20 (d) to purchase, lease or otherwise acquire, own, hold, improve,
21 use and otherwise deal in and with, real or personal property, or any
22 interest therein, wherever situated;

23 (e) to sell, convey, mortgage, create a security interest in, lease,
24 exchange, transfer and otherwise dispose of all or any part of its
25 property and assets;

26 (f) to purchase, subscribe for, or otherwise acquire, own, hold,
27 vote, use, employ, sell, exchange, mortgage, lend, create a security
28 interest in, or otherwise dispose of, and otherwise use and deal in
29 and with, shares or other interests in, or obligations of, other
30 domestic or foreign corporations, associations, partnerships or
31 individuals, or direct or indirect obligations of any domestic or
32 foreign government or instrumentality thereof;

33 (g) to make contracts and guarantees and incur liabilities,
34 borrow money, issue its bonds, and secure any of its obligations by
35 mortgage of or creation of a security interest in all or any of its
36 property, franchises and income;

37 (h) to lend money, invest and reinvest its funds, and take and
38 hold real and personal property as security for the payment of funds
39 so loaned or invested;

40 (i) to conduct its business, carry on its operations, and have
41 offices and exercise the powers granted by this act anywhere in the
42 universe;

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:

¹Assembly ABU committee amendments adopted December 13, 2010.

1 (j) to elect or appoint officers, employees and agents of the
2 corporation, and define their duties and fix their compensation;

3 (k) to make and alter by-laws for the administration and
4 regulation of the affairs of the corporation;

5 (l) to pay pensions and establish pension, profit-sharing, stock
6 option, stock purchase, incentive and deferred compensation plans,
7 and plans of similar nature for, and to furnish medical services, life,
8 sickness, accident, disability or unemployment insurance and
9 benefits, education, housing, social and recreational services and
10 other similar aids and services to, any or all of its directors,
11 officers, employees, and agents, their families, dependents or
12 beneficiaries;

13 (m) to participate with others in any corporation, partnership,
14 limited partnership, joint venture, or other association of any kind,
15 or in any transaction, undertaking or arrangement which the
16 participating corporation would have power to conduct by itself,
17 whether or not such participation involves sharing or delegation of
18 control with or to others;

19 (n) at the request of the United States government or of any of
20 its agencies, to transact any lawful business in time of war or other
21 national emergency, notwithstanding the purpose or purposes set
22 forth in its certificate of incorporation;

23 (o) to provide for its benefit life insurance and other insurance
24 with respect to the services of any or all of its directors, officers,
25 employees, and agents, or on the life of any shareholder for the
26 purpose of acquiring at his death shares of its stock owned by such
27 shareholder;

28 (p) to have and exercise all other powers necessary or
29 convenient to effect any or all of the purposes for which the
30 corporation is organized ;

31 (q) to renounce, in its certificate of incorporation or by action of
32 its board of directors, any interest or expectancy of the corporation
33 in, or in being offered an opportunity to participate in, specified
34 business opportunities or specified classes or categories of business
35 opportunities that are presented to the corporation or one or more of
36 its officers, directors or ¹ 【stockholders】 shareholders ¹ .

37 (2) It shall not be necessary to set forth in the certificate of
38 incorporation any corporate powers enumerated in this act.

39 (cf: P.L.1969, c.102, s.1)

40

41 2. This act shall take effect immediately.

42

43

44

45

46 Provides corporation with right to renounce corporate
47 opportunity doctrine.

ASSEMBLY, No. 3253

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED SEPTEMBER 30, 2010

Sponsored by:

Assemblyman PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

SYNOPSIS

Provides corporation with right to renounce corporate opportunity doctrine.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the general powers of a corporation and
2 amending N.J.S.14A:3-1.

3

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

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

8 14A:3-1. General powers.

9 (1) Each corporation, subject to any limitations provided in this
10 act or any other statute of this State, or in its certificate of
11 incorporation, shall have power

12 (a) to have perpetual duration unless a limited period is stated in
13 its certificate of incorporation;

14 (b) to sue and be sued, complain and defend and participate as a
15 party or otherwise in any judicial, administrative, arbitratve or
16 other proceeding, in its corporate name;

17 (c) to have a corporate seal which may be altered at pleasure,
18 and to use the same by causing it, or a facsimile thereof, to be
19 impressed or affixed or in any other manner reproduced;

20 (d) to purchase, lease or otherwise acquire, own, hold, improve,
21 use and otherwise deal in and with, real or personal property, or any
22 interest therein, wherever situated;

23 (e) to sell, convey, mortgage, create a security interest in, lease,
24 exchange, transfer and otherwise dispose of all or any part of its
25 property and assets;

26 (f) to purchase, subscribe for, or otherwise acquire, own, hold,
27 vote, use, employ, sell, exchange, mortgage, lend, create a security
28 interest in, or otherwise dispose of, and otherwise use and deal in
29 and with, shares or other interests in, or obligations of, other
30 domestic or foreign corporations, associations, partnerships or
31 individuals, or direct or indirect obligations of any domestic or
32 foreign government or instrumentality thereof;

33 (g) to make contracts and guarantees and incur liabilities,
34 borrow money, issue its bonds, and secure any of its obligations by
35 mortgage of or creation of a security interest in all or any of its
36 property, franchises and income;

37 (h) to lend money, invest and reinvest its funds, and take and
38 hold real and personal property as security for the payment of funds
39 so loaned or invested;

40 (i) to conduct its business, carry on its operations, and have
41 offices and exercise the powers granted by this act anywhere in the
42 universe;

43 (j) to elect or appoint officers, employees and agents of the
44 corporation, and define their duties and fix their compensation;

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 (k) to make and alter by-laws for the administration and
2 regulation of the affairs of the corporation;

3 (l) to pay pensions and establish pension, profit-sharing, stock
4 option, stock purchase, incentive and deferred compensation plans,
5 and plans of similar nature for, and to furnish medical services, life,
6 sickness, accident, disability or unemployment insurance and
7 benefits, education, housing, social and recreational services and
8 other similar aids and services to, any or all of its directors,
9 officers, employees, and agents, their families, dependents or
10 beneficiaries;

11 (m) to participate with others in any corporation, partnership,
12 limited partnership, joint venture, or other association of any kind,
13 or in any transaction, undertaking or arrangement which the
14 participating corporation would have power to conduct by itself,
15 whether or not such participation involves sharing or delegation of
16 control with or to others;

17 (n) at the request of the United States government or of any of
18 its agencies, to transact any lawful business in time of war or other
19 national emergency, notwithstanding the purpose or purposes set
20 forth in its certificate of incorporation;

21 (o) to provide for its benefit life insurance and other insurance
22 with respect to the services of any or all of its directors, officers,
23 employees, and agents, or on the life of any shareholder for the
24 purpose of acquiring at his death shares of its stock owned by such
25 shareholder;

26 (p) to have and exercise all other powers necessary or
27 convenient to effect any or all of the purposes for which the
28 corporation is organized ;

29 (q) to renounce, in its certificate of incorporation or by action of
30 its board of directors, any interest or expectancy of the corporation
31 in, or in being offered an opportunity to participate in, specified
32 business opportunities or specified classes or categories of business
33 opportunities that are presented to the corporation or one or more of
34 its officers, directors or stockholders.

35 (2) It shall not be necessary to set forth in the certificate of
36 incorporation any corporate powers enumerated in this act.

37 (cf: P.L.1969, c.102, s.1)

38

39 2. This act shall take effect immediately.

40

41

42

STATEMENT

43

44 The Corporate and Business Law Study Commission has found
45 that the corporate opportunity doctrine, which requires fiduciaries
46 to present business opportunities to their corporations before
47 pursuing those opportunities on their own, operates as a
48 disincentive and makes it difficult for New Jersey corporations to

A3253 DIEGNAN

1 attract and retain businesspersons as board members. The doctrine
2 also can lead to uncertainty within the board room as to the extent
3 to which boards must consider and reject specific opportunities
4 pursued by one or more of their members.

5 This bill provides that New Jersey corporations may renounce
6 the corporate opportunity doctrine, either generally in its certificate
7 of incorporation, generally in a board resolution or specifically in a
8 board resolution.

9 This bill is modeled after Section 122(17) of the Delaware
10 General Corporation Law, which allows corporations the flexibility
11 to retain, reject in part or reject in full the corporate opportunity
12 doctrine.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3253

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 16, 2010

The Assembly Budget Committee reports favorably Assembly Bill No. 3253, with committee amendments.

Assembly Bill No. 3253, as amended, allows New Jersey corporations to renounce the corporate opportunity doctrine.

The Corporate and Business Law Study Commission has found that the “corporate opportunity doctrine,” a policy which requires fiduciaries to present business opportunities to their corporations before pursuing those opportunities on their own, operates as a disincentive and makes it difficult for New Jersey corporations to attract and retain businesspersons as board members. The doctrine also can lead to uncertainty within the board room as to the extent to which boards must consider and reject specific opportunities pursued by one or more of their members.

This bill provides that a New Jersey corporation may renounce the corporate opportunity doctrine, either generally in its certificate of incorporation, generally in a board resolution, or specifically in a board resolution.

This bill is modeled after Section 122(17) of the Delaware General Corporation Law, which allows corporations the flexibility to retain, reject in part or reject in full the corporate opportunity doctrine.

FISCAL IMPACT:

This bill was not certified as requiring a fiscal note.

COMMITTEE AMENDMENTS:

The amendments replace the word “stockholders” with “shareholders,” the term used consistently in "New Jersey Business Corporation Act."

SENATE, No. 2492

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED DECEMBER 6, 2010

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen, Essex and Passaic)

Senator NIA H. GILL

District 34 (Essex and Passaic)

SYNOPSIS

Provides corporation with right to renounce corporate opportunity doctrine.

CURRENT VERSION OF TEXT

As introduced.



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2 amending N.J.S.14A:3-1.

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STATEMENT

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12 doctrine.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2492

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 16, 2010

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2492, with committee amendments.

As amended the bill allows New Jersey corporations to renounce the corporate opportunity doctrine.

The Corporate and Business Law Study Commission has found that the “corporate opportunity doctrine,” a policy which requires fiduciaries to present business opportunities to their corporations before pursuing those opportunities on their own, operates as a disincentive and makes it difficult for New Jersey corporations to attract and retain businesspersons as board members. The doctrine also can lead to uncertainty within the board room as to the extent to which boards must consider and reject specific opportunities pursued by one or more of their members.

This bill provides that a New Jersey corporation may renounce the corporate opportunity doctrine, either generally in its certificate of incorporation, generally in a board resolution, or specifically in a board resolution.

This bill is modeled after Section 122(17) of the Delaware General Corporation Law, which allows corporations the flexibility to retain, reject in part or reject in full the corporate opportunity doctrine.

COMMITTEE AMENDMENTS:

The amendments replace the word “stockholders” with “shareholders,” the term used consistently in "New Jersey Business Corporation Act."

FISCAL IMPACT:

This bill was not certified as requiring a fiscal note.