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RH/CL

P.L. 2017, CHAPTER 356, *approved January 16, 2018*
Assembly, No. 2162

1 AN ACT concerning corporate by-laws and amending N.J.S.14A:2-
2 9.

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:2-9 is amended to read as follows:

8 14A:2-9 (1) The initial by-laws of a corporation shall be adopted
9 by the board at its organization meeting. Thereafter, the board shall
10 have the power to make, alter and repeal by-laws unless such power
11 is reserved to the shareholders in the certificate of incorporation,
12 but by-laws made by the board may be altered or repealed, and new
13 by-laws made, by the shareholders. The shareholders may prescribe
14 in the by-laws that any by-law made by them shall not be altered or
15 repealed by the board.

16 (2) The initial by-laws of a corporation adopted by the board at
17 its organization meeting shall be deemed to have been adopted by
18 the shareholders for purposes of this act.

19 (3) Any provision which this act requires or permits to be set
20 forth in the by-laws may be set forth in the certificate of
21 incorporation with equal force and effect.

22 (4) The by-laws may contain any provision, not inconsistent
23 with law or the certificate of incorporation, relating to the business
24 of the corporation, the conduct of its affairs, and its rights or power
25 or the rights or power of its shareholders, directors, officers or
26 employees.

27 (5) (a) Without limiting subsection (4) of this section, the by-
28 laws may provide that the federal and State courts in New Jersey
29 shall be the sole and exclusive forum for:

30 (i) any derivative action or proceeding brought on behalf of the
31 corporation;

32 (ii) any action by one or more shareholders asserting a claim of
33 a breach of fiduciary duty owed by a director or officer, or former
34 director or officer, to the corporation or its shareholders, or a breach
35 of the certificate of incorporation or by-laws;

36 (iii) any action brought by one or more shareholders asserting a
37 claim against the corporation or its directors or officers, or former
38 directors or officers, arising under the certificate of incorporation or
39 the "New Jersey Business Corporation Act," N.J.S.14A:1-1 et seq.;

40 (iv) any other State law claim, including a class action asserting
41 a breach of a duty to disclose, or a similar claim, brought by one or
42 more shareholders against the corporation, its directors or officers,
43 or its former directors or officers; or

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 (v) any other claim brought by one or more shareholders which
2 is governed by the internal affairs or an analogous doctrine.
3 (b) The by-laws may provide that one or more shareholders who
4 file an action in breach of a forum selection requirement of the by-
5 laws shall be liable for all reasonable costs incurred in enforcing the
6 requirement, including, without limitation, reasonable attorney's
7 fees of the defendants. If the by-laws contain an exclusive forum
8 provision, the directors and officers, and former directors and
9 officers, shall be deemed to have consented to the personal
10 jurisdiction of that forum. If the provision is not contained in the
11 original by-laws but is adopted by an amendment, the provisions
12 and the personal jurisdiction over directors and officers, and former
13 directors and officers, shall apply only to actions brought by one or
14 more shareholders after the date of the amendment of the by-laws
15 and which assert claims arising after the date of the amendment.
16 (cf: N.J.S.14A:2-9)

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18 2. This act shall take effect immediately.

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23 Clarifies scope of corporate by-laws; provides that by-laws may
24 include forum selection clause.

ASSEMBLY, No. 2162

STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Assemblyman PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

Assemblyman GARY S. SCHAER

District 36 (Bergen and Passaic)

SYNOPSIS

Clarifies scope of corporate by-laws; provides that by-laws may include forum selection clause.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning corporate by-laws and amending N.J.S.14A:2-
2 9.

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:2-9 is amended to read as follows:

8 14A:2-9 (1) The initial by-laws of a corporation shall be adopted
9 by the board at its organization meeting. Thereafter, the board shall
10 have the power to make, alter and repeal by-laws unless such power
11 is reserved to the shareholders in the certificate of incorporation,
12 but by-laws made by the board may be altered or repealed, and new
13 by-laws made, by the shareholders. The shareholders may prescribe
14 in the by-laws that any by-law made by them shall not be altered or
15 repealed by the board.

16 (2) The initial by-laws of a corporation adopted by the board at
17 its organization meeting shall be deemed to have been adopted by
18 the shareholders for purposes of this act.

19 (3) Any provision which this act requires or permits to be set
20 forth in the by-laws may be set forth in the certificate of
21 incorporation with equal force and effect.

22 (4) The by-laws may contain any provision, not inconsistent
23 with law or the certificate of incorporation, relating to the business
24 of the corporation, the conduct of its affairs, and its rights or power
25 or the rights or power of its shareholders, directors, officers or
26 employees.

27 (5) (a) Without limiting subsection (4) of this section, the by-
28 laws may provide that the federal and State courts in New Jersey
29 shall be the sole and exclusive forum for:

30 (i) any derivative action or proceeding brought on behalf of the
31 corporation;

32 (ii) any action by one or more shareholders asserting a claim of
33 a breach of fiduciary duty owed by a director or officer, or former
34 director or officer, to the corporation or its shareholders, or a breach
35 of the certificate of incorporation or by-laws;

36 (iii) any action brought by one or more shareholders asserting a
37 claim against the corporation or its directors or officers, or former
38 directors or officers, arising under the certificate of incorporation or
39 the "New Jersey Business Corporation Act," N.J.S.14A:1-1 et seq.;

40 (iv) any other State law claim, including a class action asserting
41 a breach of a duty to disclose, or a similar claim, brought by one or
42 more shareholders against the corporation, its directors or officers,
43 or its former directors or officers; or

44 (v) any other claim brought by one or more shareholders which
45 is governed by the internal affairs or an analogous doctrine.

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.

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2162

STATE OF NEW JERSEY

DATED: NOVEMBER 30, 2017

The Assembly Commerce and Economic Development Committee reports favorably Assembly Bill No. 2162.

This bill concerns the scope of issues that may be addressed in the by-laws of a New Jersey corporation and provides that corporate by-laws may include a forum selection requirement.

The bill provides that the by-laws of a New Jersey corporation may contain any provision that is not inconsistent with law or the certificate of incorporation and is related to the business of the corporation, the conduct of its affairs, and its rights or power or the rights or power of its shareholders, directors, officers, or employees. This language is based upon a provision of Delaware law.

The bill specifically allows the by-laws of a New Jersey corporation to contain exclusive forum clauses to provide that the federal and State courts in New Jersey are the sole and exclusive forum for disputes related to the "internal affairs" of the corporation. This applies to the following types of actions:

- a derivative action or proceeding brought on behalf of the corporation;
- an action by one or more shareholders asserting a claim of a breach of fiduciary duty;
- an action brought by one or more shareholders asserting a claim against the corporation or its directors or officers, or former directors or officers, arising under the "New Jersey Business Corporation Act," or the certificate of incorporation;
- or
- any other State law claim or other claim brought by one or more shareholders which is governed by the internal affairs or an analogous doctrine.

The bill clarifies that the by-laws of a New Jersey corporation may provide that any shareholder who files an action in breach of a corporation's forum selection requirement would be liable for all reasonable costs incurred in enforcing the requirement. The bill also provides that if the by-laws contain an exclusive forum provision, certain directors and officers will be deemed to consent to the jurisdiction of the forum that is selected in the provision.

This bill was pre-filed for introduction in the 2016-2017 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

SENATE, No. 2234

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED MAY 23, 2016

Sponsored by:

Senator PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

SYNOPSIS

Clarifies scope of corporate by-laws; provides that by-laws may include forum selection clause.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning corporate by-laws and amending N.J.S.14A:2-
2 9.

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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:2-9 is amended to read as follows:

8 14A:2-9 (1) The initial by-laws of a corporation shall be
9 adopted by the board at its organization meeting. Thereafter, the
10 board shall have the power to make, alter and repeal by-laws unless
11 such power is reserved to the shareholders in the certificate of
12 incorporation, but by-laws made by the board may be altered or
13 repealed, and new by-laws made, by the shareholders. The
14 shareholders may prescribe in the by-laws that any by-law made by
15 them shall not be altered or repealed by the board.

16 (2) The initial by-laws of a corporation adopted by the board at
17 its organization meeting shall be deemed to have been adopted by
18 the shareholders for purposes of this act.

19 (3) Any provision which this act requires or permits to be set
20 forth in the by-laws may be set forth in the certificate of
21 incorporation with equal force and effect.

22 (4) The by-laws may contain any provision, not inconsistent
23 with law or the certificate of incorporation, relating to the business
24 of the corporation, the conduct of its affairs, and its rights or power
25 or the rights or power of its shareholders, directors, officers or
26 employees.

27 (5) (a) Without limiting subsection (4) of this section, the by-
28 laws may provide that the federal and State courts in New Jersey
29 shall be the sole and exclusive forum for:

30 (i) any derivative action or proceeding brought on behalf of the
31 corporation;

32 (ii) any action by one or more shareholders asserting a claim of
33 a breach of fiduciary duty owed by a director or officer, or former
34 director or officer, to the corporation or its shareholders, or a breach
35 of the certificate of incorporation or by-laws;

36 (iii) any action brought by one or more shareholders asserting a
37 claim against the corporation or its directors or officers, or former
38 directors or officers, arising under the certificate of incorporation or
39 the "New Jersey Business Corporation Act," N.J.S.14A:1-1 et seq.;

40 (iv) any other State law claim, including a class action asserting
41 a breach of a duty to disclose, or a similar claim, brought by one or
42 more shareholders against the corporation, its directors or officers,
43 or its former directors or officers; or

44 (v) any other claim brought by one or more shareholders which
45 is governed by the internal affairs or an analogous doctrine.

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 **(b) The by-laws may provide that one or more shareholders who**
2 **file an action in breach of a forum selection requirement of the by-**
3 **laws shall be liable for all reasonable costs incurred in enforcing the**
4 **requirement, including, without limitation, reasonable attorney's**
5 **fees of the defendants. If the by-laws contain an exclusive forum**
6 **provision, the directors and officers, and former directors and**
7 **officers, shall be deemed to have consented to the personal**
8 **jurisdiction of that forum. If the provision is not contained in the**
9 **original by-laws but is adopted by an amendment, the provisions**
10 **and the personal jurisdiction over directors and officers, and former**
11 **directors and officers, shall apply only to actions brought by one or**
12 **more shareholders after the date of the amendment of the by-laws**
13 **and which assert claims arising after the date of the amendment.**

14 (cf: N.J.S.14A:2-9)

15

16 2. This act shall take effect immediately.

17

18

19

STATEMENT

20

21 This bill clarifies the scope of corporate by-laws and provides
22 that corporate by-laws may include a forum selection requirement.
23 The bill provides that the by-laws of a corporation may contain any
24 provision that is not inconsistent with law or the certificate of
25 incorporation and is related to the business of the corporation, the
26 conduct of its affairs, and its rights or power or the rights or power
27 of its shareholders, directors, officers or employees.

28 Under the bill, the by-laws of a corporation may provide that the
29 federal and State courts in New Jersey shall be the sole and
30 exclusive forum for:

31 (1) any derivative action or proceeding brought on behalf of the
32 corporation;

33 (2) any action by one or more shareholders asserting a claim of
34 a breach of fiduciary duty;

35 (3) any action brought by one or more shareholders asserting a
36 claim against the corporation or its directors or officers, or former
37 directors or officers, arising under the "New Jersey Business
38 Corporation Act," or the certificate of incorporation; or

39 (4) any other State law claim or other claim brought by one or
40 more shareholders which is governed by the internal affairs or an
41 analogous doctrine.

42 The bill clarifies that the by-laws may provide that one or more
43 shareholders who file an action in breach of the forum selection
44 requirement of the by-laws are liable for all reasonable costs
45 incurred in enforcing the requirement. The bill also provides that
46 certain directors and officers submit to personal jurisdiction in the
47 forum that is selected in the forum selection requirement.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 2234

STATE OF NEW JERSEY

DATED: JUNE 19, 2017

The Senate Commerce Committee reports favorably Senate Bill No. 2234.

This bill clarifies the scope of corporate by-laws and provides that corporate by-laws may include a forum selection requirement. The bill provides that the by-laws of a corporation may contain any provision that is not inconsistent with law or the certificate of incorporation and is related to the business of the corporation, the conduct of its affairs, and its rights or power or the rights or power of its shareholders, directors, officers or employees.

Under the bill, the by-laws of a corporation may provide that the federal and State courts in New Jersey shall be the sole and exclusive forum for:

- (1) any derivative action or proceeding brought on behalf of the corporation;
- (2) any action by one or more shareholders asserting a claim of a breach of fiduciary duty;
- (3) any action brought by one or more shareholders asserting a claim against the corporation or its directors or officers, or former directors or officers, arising under the "New Jersey Business Corporation Act," or the certificate of incorporation; or
- (4) any other State law claim or other claim brought by one or more shareholders which is governed by the internal affairs or an analogous doctrine.

The bill clarifies that the by-laws may provide that one or more shareholders who file an action in breach of the forum selection requirement of the by-laws are liable for all reasonable costs incurred in enforcing the requirement. The bill also provides that certain directors and officers submit to personal jurisdiction in the forum that is selected in the forum selection requirement.