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RH/CL

P.L. 2017, CHAPTER 362, *approved January 16, 2018*  
Assembly, No. 2970

1 AN ACT concerning derivative proceedings and shareholder class  
2 actions and amending P.L.2013, c.42.

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

6  
7 1. Section 9 of P.L.2013, c.42 (C.14A:3-6.9) is amended to  
8 read as follows:

9 9. In any derivative proceeding or shareholder class action  
10 against a corporation organized under the provisions of the "New  
11 Jersey Business Corporation Act," N.J.S.14A:1-1 et seq.:

12 a. Except for sections 7 and 8 of P.L.2013, c.42 (C.14A:3-6.7  
13 and 6.8), which must be expressly made applicable by the  
14 corporation's certificate of incorporation, the provisions of  
15 P.L.2013, c.42 (C.14A:3-6.1 et seq.) shall apply to actions brought  
16 in state or federal court both within and outside of the State of New  
17 Jersey **[if the provisions of P.L.2013, c.42 (C.14A:3-6.1 et seq.) are**  
18 **made applicable to the corporation by the certificate of**  
19 **incorporation]**; and

20 b. The provisions of the corporation's certificate of  
21 incorporation may vary the applicability or effect of the provisions  
22 of P.L.2013, c.42 (C.14A:3-6.1 et seq.) on that corporation.  
23 (cf: P.L.2013, c.42, s.9)

24  
25 2. This act shall take effect immediately.

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27  
28 STATEMENT

29  
30 This bill revises the applicability of provisions of the "New  
31 Jersey Business Corporation Act" concerning derivative  
32 proceedings and shareholder class actions.

33 Under current law, the derivative proceeding and shareholder  
34 class action provisions of the "New Jersey Business Corporation  
35 Act" apply only if a corporation makes them applicable in its  
36 certificate of incorporation. This bill provides that the following  
37 provisions will apply to a corporation unless that corporation  
38 chooses to vary the applicability or effect of the provisions in its  
39 certificate of incorporation:

40 1) The conditions for commencing and maintaining a derivative  
41 proceeding;

**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       2) The actions that must be taken before a shareholder may  
2 commence a derivative proceeding;

3       3) The conditions for a court to order a stay of a derivative  
4 proceeding;

5       4) The conditions for dismissal of a derivative proceeding; and

6       5) The necessity of court approval for the discontinuation or  
7 settlement of a derivative proceeding or shareholder class action.

8       The bill also provides that the following provisions of current  
9 law will apply only if a corporation makes them applicable in its  
10 certificate of incorporation:

11       1) The rules governing how a court should allocate expenses  
12 following the termination of a derivative proceeding or shareholder  
13 class action; and

14       2) The allowance that a defendant corporation in a derivative  
15 proceeding and shareholder class action may require the plaintiff to  
16 provide security for reasonable expenses related to the proceeding  
17 or class action.

18       The New Jersey Corporate and Business Law Study Commission  
19 recommends the legislative reforms in this bill.

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24       Revises applicability of law concerning derivative proceedings  
25 and shareholder class actions.

# ASSEMBLY, No. 2970

## STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED FEBRUARY 16, 2016

**Sponsored by:**

**Assemblyman PATRICK J. DIEGNAN, JR.**

**District 18 (Middlesex)**

**Assemblywoman NANCY J. PINKIN**

**District 18 (Middlesex)**

**Assemblyman RAJ MUKHERJI**

**District 33 (Hudson)**

**Assemblyman ROBERT J. KARABINCHAK**

**District 18 (Middlesex)**

**SYNOPSIS**

Revises applicability of law concerning derivative proceedings and shareholder class actions.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 1/6/2018)

1 AN ACT concerning derivative proceedings and shareholder class  
2 actions and amending P.L.2013, c.42.

3

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

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7 1. Section 9 of P.L.2013, c.42 (C.14A:3-6.9) is amended to  
8 read as follows:

9 9. In any derivative proceeding or shareholder class action  
10 against a corporation organized under the provisions of the "New  
11 Jersey Business Corporation Act," N.J.S.14A:1-1 et seq.:

12 a. Except for sections 7 and 8 of P.L.2013, c.42 (C.14A:3-6.7  
13 and 6.8), which must be expressly made applicable by the  
14 corporation's certificate of incorporation, the provisions of  
15 P.L.2013, c.42 (C.14A:3-6.1 et seq.) shall apply to actions brought  
16 in state or federal court both within and outside of the State of New  
17 Jersey **[if the provisions of P.L.2013, c.42 (C.14A:3-6.1 et seq.) are**  
18 **made applicable to the corporation by the certificate of**  
19 **incorporation]**; and

20 b. The provisions of the corporation's certificate of  
21 incorporation may vary the applicability or effect of the provisions  
22 of P.L.2013, c.42 (C.14A:3-6.1 et seq.) on that corporation.

23 (cf: P.L.2013, c.42, s.9)

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32 proceedings and shareholder class actions.

33 Under current law, the derivative proceeding and shareholder  
34 class action provisions of the "New Jersey Business Corporation  
35 Act" apply only if a corporation makes them applicable in its  
36 certificate of incorporation. This bill provides that the following  
37 provisions will apply to a corporation unless that corporation  
38 chooses to vary the applicability or effect of the provisions in its  
39 certificate of incorporation:

40 1) The conditions for commencing and maintaining a derivative  
41 proceeding;

42 2) The actions that must be taken before a shareholder may  
43 commence a derivative proceeding;

44 3) The conditions for a court to order a stay of a derivative  
45 proceeding;

**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       4) The conditions for dismissal of a derivative proceeding; and  
2       5) The necessity of court approval for the discontinuation or  
3 settlement of a derivative proceeding or shareholder class action.

4       The bill also provides that the following provisions of current  
5 law will apply only if a corporation makes them applicable in its  
6 certificate of incorporation:

- 7       1) The rules governing how a court should allocate expenses  
8 following the termination of a derivative proceeding or shareholder  
9 class action; and  
10       2) The allowance that a defendant corporation in a derivative  
11 proceeding and shareholder class action may require the plaintiff to  
12 provide security for reasonable expenses related to the proceeding  
13 or class action.

14       The New Jersey Corporate and Business Law Study Commission  
15 recommends the legislative reforms in this bill.

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE  
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2970

**STATE OF NEW JERSEY**

DATED: FEBRUARY 27, 2017

The Assembly Financial Institutions and Insurance Committee reports favorably Assembly Bill No. 2970.

This bill revises the applicability of provisions of the "New Jersey Business Corporation Act" concerning derivative proceedings and shareholder class actions.

Under current law, the derivative proceeding and shareholder class action provisions of the "New Jersey Business Corporation Act" apply only if a corporation makes them applicable in its certificate of incorporation. This bill provides that the following provisions will apply to a corporation unless that corporation chooses to vary the applicability or effect of the provisions in its certificate of incorporation:

- 1) The conditions for commencing and maintaining a derivative proceeding;
- 2) The actions that must be taken before a shareholder may commence a derivative proceeding;
- 3) The conditions for a court to order a stay of a derivative proceeding;
- 4) The conditions for dismissal of a derivative proceeding; and
- 5) The necessity of court approval for the discontinuation or settlement of a derivative proceeding or shareholder class action.

The bill also provides that the following provisions of current law will apply only if a corporation makes them applicable in its certificate of incorporation:

- 1) The rules governing how a court should allocate expenses following the termination of a derivative proceeding or shareholder class action; and
- 2) The allowance that a defendant corporation in a derivative proceeding and shareholder class action may require the plaintiff to provide security for reasonable expenses related to the proceeding or class action.

The New Jersey Corporate and Business Law Study Commission recommends the legislative reforms in this bill.



SENATE COMMERCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2970

**STATE OF NEW JERSEY**

DATED: JUNE 19, 2017

The Senate Commerce Committee reports favorably Assembly Bill No. 2970.

This bill revises the applicability of provisions of the "New Jersey Business Corporation Act" concerning derivative proceedings and shareholder class actions.

Under current law, the derivative proceeding and shareholder class action provisions of the "New Jersey Business Corporation Act" apply only if a corporation makes them applicable in its certificate of incorporation. This bill provides that the following provisions will apply to a corporation unless that corporation chooses to vary the applicability or effect of the provisions in its certificate of incorporation:

- 1) The conditions for commencing and maintaining a derivative proceeding;
- 2) The actions that must be taken before a shareholder may commence a derivative proceeding;
- 3) The conditions for a court to order a stay of a derivative proceeding;
- 4) The conditions for dismissal of a derivative proceeding; and
- 5) The necessity of court approval for the discontinuation or settlement of a derivative proceeding or shareholder class action.

The bill also provides that the following provisions of current law will apply only if a corporation makes them applicable in its certificate of incorporation:

- 1) The rules governing how a court should allocate expenses following the termination of a derivative proceeding or shareholder class action; and
- 2) The allowance that a defendant corporation in a derivative proceeding and shareholder class action may require the plaintiff to provide security for reasonable expenses related to the proceeding or class action.

The New Jersey Corporate and Business Law Study Commission recommends the legislative reforms in this bill.

**SENATE, No. 2236**

**STATE OF NEW JERSEY**  
**217th LEGISLATURE**

INTRODUCED MAY 23, 2016

**Sponsored by:**

**Senator PATRICK J. DIEGNAN, JR.**

**District 18 (Middlesex)**

**SYNOPSIS**

Revises applicability of law concerning derivative proceedings and shareholder class actions.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning derivative proceedings and shareholder class  
2 actions and amending P.L.2013, c.42.

3

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7 1. Section 9 of P.L.2013, c.42 (C.14A:3-6.9) is amended to  
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12 a. Except for sections 7 and 8 of P.L.2013, c.42 (C.14A:3-6.7  
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20 b. The provisions of the corporation's certificate of  
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22 of P.L.2013, c.42 (C.14A:3-6.1 et seq.) on that corporation.

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41 proceeding;

42 2) The actions that must be taken before a shareholder may  
43 commence a derivative proceeding;

44 3) The conditions for a court to order a stay of a derivative  
45 proceeding;

**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.**

**S2236 DIEGNAN**

- 1       4) The conditions for dismissal of a derivative proceeding; and  
2       5) The necessity of court approval for the discontinuation or  
3 settlement of a derivative proceeding or shareholder class action.

4       The bill also provides that the following provisions of current  
5 law will apply only if a corporation makes them applicable in its  
6 certificate of incorporation:

- 7       1) The rules governing how a court should allocate expenses  
8 following the termination of a derivative proceeding or shareholder  
9 class action; and  
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11 proceeding and shareholder class action may require the plaintiff to  
12 provide security for reasonable expenses related to the proceeding  
13 or class action.

14       The New Jersey Corporate and Business Law Study Commission  
15 recommends the legislative reforms in this bill.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 2236

**STATE OF NEW JERSEY**

DATED: JUNE 19, 2017

The Senate Commerce Committee reports favorably Senate Bill No. 2236.

This bill revises the applicability of provisions of the "New Jersey Business Corporation Act" concerning derivative proceedings and shareholder class actions.

Under current law, the derivative proceeding and shareholder class action provisions of the "New Jersey Business Corporation Act" apply only if a corporation makes them applicable in its certificate of incorporation. This bill provides that the following provisions will apply to a corporation unless that corporation chooses to vary the applicability or effect of the provisions in its certificate of incorporation:

- 1) The conditions for commencing and maintaining a derivative proceeding;
- 2) The actions that must be taken before a shareholder may commence a derivative proceeding;
- 3) The conditions for a court to order a stay of a derivative proceeding;
- 4) The conditions for dismissal of a derivative proceeding; and
- 5) The necessity of court approval for the discontinuation or settlement of a derivative proceeding or shareholder class action.

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- 1) The rules governing how a court should allocate expenses following the termination of a derivative proceeding or shareholder class action; and
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The New Jersey Corporate and Business Law Study Commission recommends the legislative reforms in this bill.