

Memorandum in Support

NYSBA #8

April 28, 2015

A. 5781

By: M of A Kavanagh
Assembly Committee: Corporations, Authorities and
Commissions
Effective Date: Immediately

AN ACT to amend the business corporation law, in relation to attendance of a meeting of shareholders by remote communication

This legislation would facilitate the attendance of a meeting of shareholders by remote communication. The bill, which was developed by the Association's Business Law Section, addresses an important and timely issue and recognizes the swiftly evolving technological advances in electronic communications.

Namely the bill would: (1) give the board of directors of each New York corporation the discretion to decide whether to hold electronic shareholder meetings and/or electronic voting, (2) require that shareholders participating electronically can interact with those shareholders actually present at the meeting, and (3) require certain security measures to verify shareholders' identities.

Empowering corporations to hold electronic shareholder meetings is a timely issue that has been addressed by at least thirty-two other states. Electronic shareholder meetings can have many benefits, including increasing shareholder participation, transparency and voting.

This proposal would provide that the board of directors of each New York corporation has the discretion to consider the relevant facts and circumstances and determine whether electronic shareholder meetings are appropriate for the corporation. Each board of directors should have the ability to weigh the costs against the types of shareholders that own the corporation's stock (which can impact attendance rates for both physical and electronic shareholder meetings) and the overall goals of the corporation and of its shareholder meetings. In addition, each corporation should have the ability to decide whether to allow shareholders to participate in the shareholder meetings electronically but not vote, or whether to allow shareholders to vote electronically in addition to participating in the meetings. This bill provides for such ability to decide, by giving discretion to decide whether to allow electronic shareholder meetings, and electronic voting by shareholders, for their individual corporation.

Further, shareholders availing themselves of an electronic meeting must be able to not only witness (i.e., hear or read the proceedings of the meeting), but also participate in the meeting (i.e., be heard by the other participants), in each case, substantially contemporaneously with the live proceedings. Similar to the requirements of telephonic meetings of directors, an important component of counting a shareholder as having been present at a meeting is that shareholder's ability to be heard and participate in such meeting. Therefore, this bill provides that if remote participation is employed, then shareholders must have the ability to participate in electronic shareholder meetings.

Finally, if shareholders are allowed to vote electronically, the corporation must be able to ensure that each person voting is in fact a stockholder and that no stockholder is able to vote more than once. Therefore, the bill provides that corporations implement certain procedures to verify shareholders' identities prior to voting.

The New York State Bar Association **SUPPORTS** the enactment of this bill, which was developed as an affirmative legislative proposal of its Business Law Section.