

CHAPTER 14  
FORMERLY  
HOUSE BILL NO. 19

AN ACT TO AMEND TITLE 8 OF THE DELAWARE CODE RELATING TO THE GENERAL CORPORATION LAW.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Title 8, Delaware Code, by adding the following new Section 112:

“§ 112. Access to proxy solicitation materials.

The bylaws may provide that if the corporation solicits proxies with respect to an election of directors, it may be required, to the extent and subject to such procedures or conditions as may be provided in the bylaws, to include in its proxy solicitation materials (including any form of proxy it distributes), in addition to individuals nominated by the board of directors, one or more individuals nominated by a stockholder. Such procedures or conditions may include any of the following:

- (1) A provision requiring a minimum record or beneficial ownership, or duration of ownership, of shares of the corporation’s capital stock, by the nominating stockholder, and defining beneficial ownership to take into account options or other rights in respect of or related to such stock;
- (2) A provision requiring the nominating stockholder to submit specified information concerning the stockholder and the stockholder’s nominees, including information concerning ownership by such persons of shares of the corporation’s capital stock, or options or other rights in respect of or related to such stock;
- (3) A provision conditioning eligibility to require inclusion in the corporation’s proxy solicitation materials upon the number or proportion of directors nominated by stockholders or whether the stockholder previously sought to require such inclusion;
- (4) A provision precluding nominations by any person if such person, any nominee of such person, or any affiliate or associate of such person or nominee, has acquired or publicly proposed to acquire shares constituting a specified percentage of the voting power of the corporation’s outstanding voting stock within a specified period before the election of directors;
- (5) A provision requiring that the nominating stockholder undertake to indemnify the corporation in respect of any loss arising as a result of any false or misleading information or statement submitted by the nominating stockholder in connection with a nomination; and
- (6) Any other lawful condition.”

Section 2. Amend Title 8, Delaware Code, by adding the following new Section 113:

“§ 113. Proxy Expense Reimbursement.

(a) The bylaws may provide for the reimbursement by the corporation of expenses incurred by a stockholder in soliciting proxies in connection with an election of directors, subject to such procedures or conditions as the bylaws may prescribe, including:

- (1) Conditioning eligibility for reimbursement upon the number or proportion of persons nominated by the stockholder seeking reimbursement or whether such stockholder previously sought reimbursement for similar expenses;
- (2) Limitations on the amount of reimbursement based upon the proportion of votes cast in favor of one or more of the persons nominated by the stockholder seeking reimbursement, or upon the amount spent by the corporation in soliciting proxies in connection with the election;
- (3) Limitations concerning elections of directors by cumulative voting pursuant to § 214 of this title; or
- (4) Any other lawful condition.

(b) No bylaw so adopted shall apply to elections for which any record date precedes its adoption.”

Section 3. Amend § 145, Title 8, Delaware Code, by adding at the end of subsection (f) thereof the following new sentence:

“A right to indemnification or to advancement of expenses arising under a provision of the certificate of incorporation or a bylaw shall not be eliminated or impaired by an amendment to such provision after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such action or omission has occurred.”

Section 4. Amend § 211(c), Title 8, Delaware Code, by deleting from the final sentence thereof the phrase “the record date for determination of stockholders entitled to vote” and by substituting the phrase “the record date or dates for determination of stockholders entitled to notice of the meeting and to vote thereat” in lieu thereof.

Section 5. Amend § 213, Title 8, Delaware Code, by deleting subsection (a) in its entirety and by substituting in lieu thereof the following:

“(a) In order that the corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If the board of directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the board of directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the board of directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the foregoing provisions of this Section 213(a) at the adjourned meeting.”

Section 6. Amend § 219, Title 8, Delaware Code, by deleting subsection (a) in its entirety and by substituting in lieu thereof the following:

“(a) The officer who has charge of the stock ledger of a corporation shall prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting; provided, however, if the record date for determining the stockholders entitled to vote is less than 10 days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Nothing contained in this section shall require the corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to

ensure that such information is available only to stockholders of the corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then such list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.”

Section 7. Amend § 222, Title 8, Delaware Code, by deleting subsection (a) in its entirety and by substituting in lieu thereof the following:

“(a) Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.”

Section 8. Amend § 222(b), Title 8, Delaware Code, by adding the phrase “as of the record date for determining the stockholders entitled to notice of the meeting” before the period at the end of the first sentence thereof.

Section 9. Amend § 222(c), Title 8, Delaware Code, by deleting the text “or if after the adjournment a new record date is fixed for the adjourned meeting,” from the third sentence thereof and by adding the following sentence to the end of that subsection:

“If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the board of directors shall fix a new record date for notice of such adjourned meeting in accordance with Section 213(a) of this title, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.”

Section 10. Amend § 225, Title 8, Delaware Code, by adding the following new subsection (c):

“(c) If one or more directors has been convicted of a felony in connection with the duties of such director or directors to the corporation, or if there has been a prior judgment on the merits by a court of competent jurisdiction that one or more directors has committed a breach of the duty of loyalty in connection with the duties of such director or directors to that corporation, then, upon application by the corporation, or derivatively in the right of the corporation by any stockholder or any member of a nonstock corporation, in a subsequent action brought for such purpose, the Court of Chancery may remove from office such director or directors if the Court determines that the director or directors did not act in good faith in performing the acts resulting in the prior conviction or judgment and judicial removal is necessary to avoid irreparable harm to the corporation. In connection with such removal, the Court may make such orders as are necessary to effect such removal. In any such application, service of copies of the application upon the registered agent of the corporation shall be deemed to be service upon the corporation and upon the director or directors whose removal is sought; and the registered agent shall forward immediately a copy of the application to the corporation and to such director or directors, in a postpaid, sealed, registered letter addressed to such corporation and such director or directors at their post-office addresses last known to the registered agent or furnished to the registered agent by the applicant. The Court may make such order respecting further or other notice of such application as it deems proper under the circumstances.”

Section 11. Amend § 228(e), Title 8, Delaware Code, by deleting from the first sentence thereof the phrase “the record date for such meeting” and by substituting the phrase “the record date for notice of such meeting” in lieu thereof.

Section 12. Amend § 262(b), Title 8, Delaware Code, by deleting the phrase “and to vote at” from paragraph (1) thereof.

Section 13. Amend § 262(d), Title 8, Delaware Code, by deleting from the first sentence of paragraph (1) thereof the phrase “the record date for such meeting” and by substituting the phrase “the record date for notice of such meeting” in lieu thereof.

Section 14. Amend § 275(a), Title 8, Delaware Code, by deleting the phrase “to be mailed to each stockholder entitled to vote thereon” and by adding the phrase “to be mailed to each stockholder entitled to vote thereon as of the record date for determining the stockholders entitled to notice of the meeting” before the period at the end of that subsection.

Section 15. Sections 1 through 14 shall be effective on August 1, 2009.

Approved April 10, 2009