

## NJ Enacts New Human Trafficking Prevention Law

On May 6, 2013, Governor Christie signed a new law (P.L. 2013, c.51) The "Human Trafficking Prevention, Protection, and Treatment Act" that took effect as to Sections 1 and 2 on May 6, 2013 and the remaining sections took effect on July 1, 2013.

Section 1 creates a 15-member Commission on Human Trafficking in the Division of Criminal Justice of the Department of Law and Public Safety. The law directs the Commission to evaluate existing laws concerning human trafficking and the enforcement thereof, and to make recommendations for legislation, if appropriate. The Commission is also charged with reviewing existing victim assistance programs, facilitating a coordinated response by public and private resources for victims of human trafficking, raising public awareness of the national 24-hour toll-free hotline telephone service on human trafficking, and promoting the development of training materials and programs on human trafficking as required by the law.

Section 2 "The "Human Trafficking Survivor's Assistance Fund" establishes a separate, non-lapsing, dedicated fund in the General Fund known as the "Human Trafficking Survivor's Assistance Fund." The Attorney General is responsible for administering the fund, using the monies to provide services to victims of human trafficking; to promote awareness of human trafficking; and to develop, maintain, revise, and distribute materials related to the training courses on human trafficking as provided in the law. All expenditures from the fund will be made by the Attorney General, in consulta-

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## out of order

"The right to be heard does not automatically include the right to be taken seriously. "

- Hubert Humphrey

"Everybody gets so much common information all day long that they lose their common sense. "

- Gertrude Stein



# the Advocate

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## News Briefs

**Reported by NJToday** - "Of the more than 6,500 bridges in New Jersey, nearly 10 percent of them are structurally deficient. That's according to a national report by Transportation for America, a lobbying group."

**Reported by NJ Law Journal** - "The state Senate gives final legislative approval to a bill curtailing local governments' use of eminent domain for private redevelopment and creating an alternative to condemnation."

## Revised "NJ Business Corporation Act" Allows Remote Communications

On April 1, 2013, (P.L. 2013, c. 41) was signed into law which revises the "New Jersey Business Corporation Act" regarding participation by shareholders in meetings of shareholders, and the situations in which a shareholder may challenge a corporate action. The new law took effect on June 30, 2013.

Specifically, the law provides that a shareholder may participate in a meeting of shareholders by means of remote communication to the extent that the corporation's board of directors authorizes that participation, and that participation shall be subject to such guidelines and procedures as the board adopts. The law further provides that a shareholder participating in a meeting of shareholders by means of remote communication shall be deemed present and shall be entitled to vote at the meeting if the corporation has implemented reasonable measures to: (1) verify that each person participating remotely is a shareholder; and (2) provide each shareholder participating remotely with a reasonable opportunity to participate in the meeting, including an opportunity to vote on matters submitted to

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## Human Trafficking Prevention Law

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-tion with the Commission on Human Trafficking. Under the law, expenditures from the fund to providers of services for victims cannot be conditioned on the recipient's cooperation in law enforcement investigations or prosecutions, or lack thereof.

The offense of human trafficking remains a crime of the first degree. Section 3 amends the sentencing provision of N.J.S.A. 2C:13-8 to provide that a person who recklessly participates in the transportation of another in violation of the human trafficking law is subject to a term of imprisonment of either 20 years during which the actor is not eligible for parole, or a specific term between 20 years and life imprisonment, of which the actor must serve 20 years before being eligible for parole. The sentencing provision is also amended to provide that a sentence for a conviction for a crime of first degree human trafficking must include a fine of not less than \$25,000, which, upon being collected, must be deposited in the "Human Trafficking Survivor's Assistance Fund."

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## Revised Law Allows Remote Communications

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the shareholders, and to read or hear the proceedings of the meeting substantially concurrently with those proceedings. The law also provides that as to that class or series of remotely participating shareholders, the notice required to be given to shareholders about the meeting shall describe the means of remote communication to be used.

Finally, the law amends N.J.S.A. 14A:11-1 by adding paragraph (5), which provides that dissenter's rights are the exclusive remedy for dissatisfied shareholders in corporate mergers and corporate transactions as specified in subparagraphs (a) and (b) of paragraph (1) of N.J.S.A. 14A:11-1. According to the sponsors, this exclusivity provision follows section 13.02(d) the American Bar Association's Model Business Corporation Act and provisions enacted by several other states.

## New Tax Law Responds to IRS Ruling Regarding Trusts

On May 9, 2013 a new law was signed and took effect (P.L. 2013, c. 55) which is applicable to any trust created on or after that date. The new law addresses any trust for which the trust creator remains obligated to pay the income taxes on the trust's income, but the governing trust instrument provides the benefiting trustee with the discretion to use a portion of the trust's income or principal to cover such income tax obligations on behalf of the trust creator.

According to the sponsor, a trustee may accomplish this by: (1) directly paying the taxes on behalf of the trust creator; or (2) reimbursing the trust creator for any income tax obligations paid. Under the law, the use of the trust's income or principal, being employed at the sole discretion of the trustee, does not constitute a right by the trust creator to receive that income or principal. By expressly denying that any right to trust income or principal exists for the trust creator under such an arrangement, the law prevents a creditor of the trust creator from recognizing the arrangement as creating such right and thus being able to subject that right to a claim, potentially reaching the trust income or principal in fulfillment thereof.

According to the sponsors, the law responds to a Revenue Ruling by the Internal Revenue Service (Rev. Rul. 2004-64, 2004-2 C.B. 7). In the Ruling, the IRS indicated that the aforementioned discretionary tax payment arrangement, by itself, does not establish a retained right of the trust creator to trust income or principal and therefore does not cause the trust to be added to the trust creator's estate for federal estate tax purposes. However, a retained right to trust income or principal may be demonstrated by such arrangement, if combined with other factors, ultimately resulting in the addition of the trust to the trust creator's taxable estate. The Ruling provides that one possible added factor to showing the trust creator's retained right is a state law subjecting the trust assets (i.e., trust income or principal) to the claims of the trust creator's creditors.

