

By: Senator Ingram

"AN ACT TO AMEND TITLE 4, CHAPTER 28, SUBCHAPTER 2 OF THE ARKANSAS CODE OF 1987 TO PERMIT A VOTE BY PROXY IN NONPROFIT CORPORATIONS; TO AUTHORIZE CORPORATIONS TO ACCEPT SUCH VOTES; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Ark. Code 4-28-212 is hereby amended to read as follows:
"4-28-212. Voting.

(a) Each member shall be entitled to one (1) vote in the election of the board of directors. Where more than one membership is held by a single entity, the member shall be entitled to one vote for each such membership.

(b) On such other matters as may be subject to vote of the members, the voting right shall be as provided in the articles of incorporation or bylaws.

(c) In all matters as may be subject to the vote of the members, a member may vote in person or by proxy, unless the articles of incorporation or bylaws require such votes to be cast in person at a meeting of the membership held for such purposes.

(1) A member may appoint a proxy to vote or otherwise act for him by signing an appointment form, either personally or by his attorney-in-fact.

(2) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven (11) months unless the member expressly provides for a longer term in the appointment form.

(3) An appointment of a proxy is revocable by the member at any time by written notice regular on its face to the secretary or other officer or agent authorized to tabulate votes.

(4) Subject to Arkansas Code 4-28-224 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment."

SECTION 2. Title 4, Chapter 28, Subchapter 2 is hereby amended by adding a new section to read as follows:

"4-28-224. Corporation's acceptance of votes.

(a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation, if acting in good faith, is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.

(b) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of a member, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member if:

(1) The member is an entity and the name signed purports to be that of an officer or agent of the entity;

(2) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or

proxy appointment;

(3) The name signed purports to be that of an attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment; or

(4) Two (2) or more persons are the member as cotenants or fiduciaries and the name signed purports to be the name of at least one (1) of the coowners and the person signing appears to be acting on behalf of all the coowners.

(c) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the member for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise."

SECTION 3. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 4. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 5. Emergency. It is hereby found and determined by the General Assembly that proxy voting for nonprofit corporations and for-profit corporations is provided for differently by law; that proxy voting in the two types of corporations should be the same; that this Act provides equality of treatment between nonprofit corporations and for-profit corporations as to proxy voting; and that this Act should therefore be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

APPROVED: March 15, 1989
