

Stricken language would be deleted from and underlined language would be added to the law as it existed
prior to this session of the General Assembly.
Act 167 of the Regular Session

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

A Bill

SENATE BILL 80

5 By: Senator D. Johnson
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7

For An Act To Be Entitled

9 AN ACT TO AMEND VARIOUS PROVISIONS OF THE
10 ARKANSAS NONPROFIT CORPORATION ACT OF 1993; AND
11 FOR OTHER PURPOSES.
12

Subtitle

13 TO AMEND VARIOUS PROVISIONS OF THE
14 ARKANSAS NONPROFIT CORPORATION ACT OF
15 1993.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code § 4-33-704 is amended to read as follows:
22 4-33-704. Action by written consent.

23 (a)(1) Unless limited or prohibited by the articles or bylaws, action
24 required or permitted by this chapter to be approved by the members may be
25 approved without a meeting of members if the action is approved by members
26 holding at least eighty percent (80%) of the voting power.

27 (2) The action must be evidenced by one (1) or more written
28 consents describing the action taken, signed by those members representing at
29 least eighty percent (80%) of the voting power, and delivered to the
30 corporation for inclusion in the minutes or filing with the corporate
31 records.

32 (b) If not otherwise determined under § 4-33-703 or § 4-33-707, the
33 record date for determining members entitled to take action without a meeting
34 is the date the first member signs the consent under subsection (a) of this
35 section.



1 (c) A consent signed under this section has the effect of a meeting
2 vote and may be described as such in any document filed with the Secretary of
3 State.

4 (d)(1) Written notice of member approval pursuant to this section
5 shall be given to all members who have not signed the written consent.

6 (2) If written notice is required, member approval pursuant to
7 this section shall be effective ten (10) days after such written notice is
8 given.

9 (e)(1) The signature of a member may be affixed to a written consent
10 by any reasonable means, including without limitation facsimile signature or
11 electronic image.

12 (2) The written consent may be delivered to the corporation by
13 electronic communication, including without limitation facsimile transmission
14 or electronic mail.

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16 SECTION 2. Arkansas Code § 4-33-706 is amended to read as follows:
17 4-33-706. Waiver of notice.

18 (a)(1) A member may waive any notice required by this chapter, the
19 articles, or bylaws before or after the date and time stated in the notice.

20 (2) The waiver must be in writing, be signed by the member
21 entitled to the notice, and be delivered to the corporation for inclusion in
22 the minutes or filing with the corporate records.

23 (b) A member's attendance at a meeting:

24 (1) ~~waives~~ Waives objection to lack of notice or defective
25 notice of the meeting, unless the member at the beginning of the meeting
26 objects to holding the meeting or transacting business at the meeting; and

27 (2) ~~waives~~ Waives objection to consideration of a particular
28 matter at the meeting that is not within the purpose or purposes described in
29 the meeting notice, unless the member objects to considering the matter when
30 it is presented.

31 (c)(1) The signature of a member may be affixed to a waiver of notice
32 by any reasonable means, including without limitation facsimile signature or
33 electronic image.

34 (2) The waiver of notice may be delivered to the corporation by
35 electronic communication, including without limitation facsimile transmission
36 or electronic mail.

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2 SECTION 3. Arkansas Code § 4-33-708 is amended to read as follows:

3 4-33-708. Action by written ballot.

4 (a) Unless prohibited or limited by the articles or bylaws, any action
5 that may be taken at any annual, regular or special meeting of members may be
6 taken without a meeting if the corporation delivers a written ballot to every
7 member entitled to vote on the matter.

8 (b) A written ballot shall:

9 (1) ~~set~~ Set forth each proposed action; and

10 (2) ~~provide~~ Provide an opportunity to vote for or against each
11 proposed action.

12 (c) Approval by written ballot pursuant to this section shall be valid
13 only when the number of votes cast by ballot equals or exceeds the quorum
14 required to be present at a meeting authorizing the action, and the number of
15 approvals equals or exceeds the number of votes that would be required to
16 approve the matter at a meeting at which the total number of votes cast was
17 the same as the number of votes cast by ballot.

18 (d) All solicitations for votes by written ballot shall:

19 (1) ~~indicate~~ Indicate the number of responses needed to meet the
20 quorum requirements;

21 (2) ~~state~~ State the percentage of approvals necessary to approve
22 each matter other than election of directors; and

23 (3) ~~specify~~ Specify the time by which a ballot must be received
24 by the corporation in order to be counted.

25 (e) Except as otherwise provided in the articles or bylaws, a written
26 ballot may not be revoked.

27 (f)(1) The signature of a member may be affixed to a written ballot by
28 any reasonable means, including without limitation facsimile signature or
29 electronic image.

30 (2) The written ballot may be delivered to the corporation by
31 electronic communication, including without limitation facsimile transmission
32 or electronic mail.

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34 SECTION 4. Arkansas Code § 4-33-724 is amended to read as follows:

35 4-33-724. Proxies.

36 (a) Unless the articles or bylaws prohibit or limit proxy voting, a

1 member may appoint a proxy to vote or otherwise act for the member by signing
2 an appointment form either personally or by an attorney-in-fact.

3 (b)(1) An appointment of a proxy is effective when received by the
4 secretary or other officer or agent authorized to tabulate votes.

5 (2) An appointment is valid for eleven (11) months unless a
6 different period is expressly provided in the appointment form; provided
7 however that no proxy shall be valid for more than three (3) years from its
8 date of execution.

9 (c) An appointment of a proxy is revocable by the member.

10 (d) The death or incapacity of the member appointing a proxy does not
11 affect the right of the corporation to accept the proxy's authority unless
12 notice of the death or incapacity is received by the secretary or other
13 officer or agent authorized to tabulate votes before the proxy exercises
14 authority under the appointment.

15 (e) Appointment of a proxy is revoked by the person appointing the
16 proxy:

17 (1) ~~attending~~ Attending any meeting and voting in person; or

18 (2) ~~signing~~ Signing and delivering to the secretary or other
19 officer or agent authorized to tabulate proxy votes either a writing stating
20 that the appointment of the proxy is revoked or a subsequent appointment
21 form.

22 (f) Subject to § 4-33-727 and any express limitation on the proxy's
23 authority appearing on the face of the appointment form, a corporation is
24 entitled to accept the proxy's vote or other action as that of the member
25 making the appointment.

26 (g)(1) The signature of a member or the member's attorney-in-fact may
27 be affixed to a proxy appointment form, a proxy revocation, or a subsequent
28 appointment by any reasonable means, including without limitation facsimile
29 signature or electronic image.

30 (2) The written ballot may be delivered to the secretary or
31 other officer or agent authorized to tabulate votes by electronic
32 communication, including without limitation facsimile transmission or
33 electronic mail.

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35 SECTION 5. Arkansas Code § 4-33-821 is amended to read as follows:

36 4-33-821. Action without meeting.

1 (a)(1) Unless the articles or bylaws provide otherwise, action
2 required or permitted by this chapter to be taken at a board of directors'
3 meeting may be taken without a meeting if the action is taken by all members
4 of the board.

5 (2) The action must be evidenced by one (1) or more written
6 consents describing the action taken, signed by each director, and included
7 in the minutes filed with the corporate records reflecting the action taken.

8 (b) Action taken under this section is effective when the last
9 director signs the consent, unless the consent specifies a different
10 effective date.

11 (c) ~~A consent delivered by facsimile transmittal shall constitute a~~
12 ~~valid signed consent under this section~~ The written consent may be delivered
13 to the corporation by electronic communication, including without limitation
14 facsimile transmission or electronic mail.

15 (d) A consent signed under this section has the effect of a meeting
16 vote and may be described as such in any document.

17 (e) The signature of a director may be affixed to a written consent by
18 any reasonable means, including without limitation facsimile signature or
19 electronic image.

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21 SECTION 6. Arkansas Code § 4-33-823(a), concerning waivers of notice,
22 is amended to read as follows:

23 (a)(1) A director may at any time waive any notice required by this
24 chapter, the articles or bylaws.

25 (2) Except as provided in subsection (b) of this section, the
26 waiver must be in writing, signed by the director entitled to the notice, and
27 filed with the minutes of the corporate records.

28 (3) A signed waiver delivered by facsimile transmittal or other
29 electronic communication bearing an image of the signature shall constitute a
30 valid waiver of notice under this section.

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32 **APPROVED: 2/16/2009**