

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.

1 State of Arkansas  
2 87th General Assembly  
3 Regular Session, 2009  
4  
5 By: Senator D. Johnson  
6  
7

# A Bill

SENATE BILL 80

## 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.

## Subtitle

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14 TO AMEND VARIOUS PROVISIONS OF THE  
15 ARKANSAS NONPROFIT CORPORATION ACT OF  
16 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.

36 (c) A consent signed under this section has the effect of a meeting



1 vote and may be described as such in any document filed with the Secretary of  
2 State.

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

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

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

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

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

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

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

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

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

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

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

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

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1 SECTION 3. Arkansas Code § 4-33-708 is amended to read as follows:  
2 4-33-708. Action by written ballot.

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

7 (b) A written ballot shall:

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

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

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

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

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

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

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

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

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

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

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

35 (a) Unless the articles or bylaws prohibit or limit proxy voting, a  
36 member may appoint a proxy to vote or otherwise act for the member by signing

1 an appointment form either personally or by an attorney-in-fact.

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

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

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

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

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

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

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

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

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

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

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34 SECTION 5. Arkansas Code § 4-33-821 is amended to read as follows:  
35 4-33-821. Action without meeting.

36 (a)(1) Unless the articles or bylaws provide otherwise, action

1 required or permitted by this chapter to be taken at a board of directors'  
 2 meeting may be taken without a meeting if the action is taken by all members  
 3 of the board.

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

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

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

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

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

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

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

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

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

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