

February 13, 1998

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# ENGROSSED HOUSE BILL No. 1152

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DIGEST OF HB1152 (Updated February 10, 1998 11:52 am - DI 75)

**Citations Affected:** IC 23-1-30-3; IC 23-1-30-5.

**Synopsis:** Electronic authorization of proxies. Provides that a shareholder may appoint a proxy to vote or otherwise act for the shareholder by the following methods: (1) Executing a writing signed by the shareholder or a designated officer, director, employee, or agent of the shareholder or causing the signature of the shareholder, or the designated officer, director, employee, or agent of the shareholder to be affixed to the writing by any means, including facsimile signature. (2) Transmitting or authorizing the transmission of an electronic submission. (3) Using any other method allowed by law. Provides that  
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**Effective:** Upon passage.

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## **Bodiker, Wolkins, Fry, Ruppel**

(SENATE SPONSORS — MILLS, GERY, PAUL)

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January 8, 1998, read first time and referred to Committee on Insurance, Corporations and Small Business.

January 22, 1998, reported — Do Pass.

January 26, 1998, read second time, ordered engrossed.

January 29, 1998, engrossed.

February 3, 1998, read third time, passed. Yeas 98, nays 1.

### SENATE ACTION

February 9, 1998, read first time and referred to Committee on Commerce and Consumer Affairs.

February 12, 1998, reported favorably — Do Pass.

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EH 1152—LS 6811/DI 87+



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Digest Continued

a complete copy, facsimile telecommunication, or other reliable reproduction of an entire writing or electronic submission may be used instead of the original. Requires the inspectors or the persons determining the validity of proxies to specify the information upon which they rely in determining the validity of a proxy. Allows a corporation to reject a vote, consent, waiver, or proxy appointment if the person authorized to tabulate votes has a reasonable basis for doubt about the validity of an electronic submission or the submitter's authority to make the electronic submission.

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February 13, 1998

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

# ENGROSSED HOUSE BILL No. 1152

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 23-1-30-3 IS AMENDED TO READ AS  
 2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) A  
 3 shareholder may vote the shareholder's shares in person or by proxy.  
 4 (b) ~~A shareholder may appoint a proxy to vote or otherwise act for~~  
 5 ~~the shareholder by signing an appointment form, either personally or~~  
 6 ~~by the shareholder's attorney-in-fact. A shareholder may authorize a~~  
 7 ~~person or persons to act for the shareholder as proxy by any of the~~  
 8 ~~following:~~  
 9 (1) **A shareholder or the shareholder's designated officer,**  
 10 **director, employee, or agent may execute a writing by:**  
 11 (A) **signing it; or**  
 12 (B) **causing the shareholder's signature or the signature of**  
 13 **the designated officer, director, employee, or agent of the**  
 14 **shareholder to be affixed to the writing by any reasonable**  
 15 **means, including by facsimile signature.**

EH 1152—LS 6811/DI 87+



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1           **(2) A shareholder may transmit or authorize the transmission**  
 2           **of an electronic submission. The electronic submission:**

3           **(A) may be transmitted by any electronic means, including**  
 4           **data and voice telephonic communications and computer**  
 5           **network;**

6           **(B) may be transmitted to:**

7           **(i) the person who will be the holder of the proxy;**

8           **(ii) a proxy solicitation firm; or**

9           **(iii) a proxy support service organization or similar**  
 10           **agency authorized by the person who will be the holder**  
 11           **of the proxy to receive the electronic submission; and**

12           **(C) must either contain or be accompanied by information**  
 13           **from which it can be determined that the electronic**  
 14           **submission was transmitted by or authorized by the**  
 15           **shareholder.**

16           **(3) Any other method allowed by law.**

17           **(c) A copy, facsimile telecommunication, or other reliable**  
 18           **reproduction of the writing or electronic submission created under**  
 19           **subsection (b)(1) or (b)(2) may be used instead of the original**  
 20           **writing or electronic submission for all purposes for which the**  
 21           **original writing or electronic submission may be used if the copy,**  
 22           **facsimile telecommunication, or other reproduction is a complete**  
 23           **copy of the entire original writing or electronic submission.**

24           ~~(e)~~ **(d) An appointment of a proxy is effective when received by the**  
 25           **secretary or other officer or agent authorized to tabulate votes. An**  
 26           **appointment is valid for eleven (11) months unless a shorter or longer**  
 27           **period is expressly provided in the appointment. ~~form.~~**

28           ~~(d)~~ **(e) An appointment of a proxy is revocable by the shareholder**  
 29           **unless the appointment ~~form~~ conspicuously states that it is irrevocable**  
 30           **and the appointment is coupled with an interest. Appointments coupled**  
 31           **with an interest include the appointment of:**

32           **(1) a pledgee;**

33           **(2) a person who purchased or agreed to purchase the shares;**

34           **(3) a creditor of the corporation who extended it credit under**  
 35           **terms requiring the appointment;**

36           **(4) an employee of the corporation whose employment contract**  
 37           **requires the appointment; or**

38           **(5) a party to a voting agreement created under IC 23-1-31-2.**

39           ~~(e)~~ **(f) The death or incapacity of the shareholder appointing a proxy**  
 40           **does not affect the right of the corporation to accept the proxy's**  
 41           **authority unless notice of the death or incapacity is received by the**  
 42           **secretary or other officer or agent authorized to tabulate votes before**



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1 the proxy exercises the proxy's authority under the appointment.

2 ~~(f)~~ (g) An appointment made irrevocable under subsection ~~(d)~~ (e) is  
3 revoked when the interest with which it is coupled is extinguished.

4 ~~(g)~~ (h) A transferee for value of shares subject to an irrevocable  
5 appointment may revoke the appointment if the transferee did not know  
6 of its existence when the transferee acquired the shares and the  
7 existence of the irrevocable appointment was not noted conspicuously  
8 on the certificate representing the shares or on the information  
9 statement for shares without certificates.

10 ~~(h)~~ (i) Subject to section 5 of this chapter and to any express  
11 limitation on the proxy's authority ~~appearing on the face of the~~  
12 ~~appointment form~~, **contained in the writing or electronic submission**,  
13 a corporation is entitled to accept the proxy's vote or other action as  
14 that of the shareholder making the appointment.

15 SECTION 2. IC 23-1-30-5 IS AMENDED TO READ AS  
16 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) If the name  
17 signed on **or submitted with** a vote, consent, waiver, or proxy  
18 appointment corresponds to the name of a shareholder, the corporation  
19 if acting in good faith is entitled to accept the vote, consent, waiver, or  
20 proxy appointment and give it effect as the act of the shareholder.

21 (b) If the name signed on **or submitted with** a vote, consent,  
22 waiver, or proxy appointment does not correspond to the name of its  
23 shareholder, the corporation if acting in good faith is nevertheless  
24 entitled to accept the vote, consent, waiver, or proxy appointment and  
25 give it effect as the act of the shareholder if:

26 (1) the shareholder is an entity and the name ~~signed~~ purports to be  
27 that of an officer or agent of the entity;

28 (2) the name ~~signed~~ purports to be that of an administrator,  
29 executor, guardian, or conservator representing the shareholder  
30 and, if the corporation requests, evidence of fiduciary status  
31 acceptable to the corporation has been presented with respect to  
32 the vote, consent, waiver, or proxy appointment;

33 (3) the name ~~signed~~ purports to be that of a receiver or trustee in  
34 bankruptcy of the shareholder and, if the corporation requests,  
35 evidence of this status acceptable to the corporation has been  
36 presented with respect to the vote, consent, waiver, or proxy  
37 appointment;

38 (4) the name ~~signed~~ purports to be that of a pledgee, beneficial  
39 owner, or attorney-in-fact of the shareholder and, if the  
40 corporation requests, evidence acceptable to the corporation of  
41 the ~~signatory's~~ **person's** authority to ~~sign~~ **act** for the shareholder  
42 has been presented with respect to the vote, consent, waiver, or

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1 proxy appointment; or

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

6 (c) **The inspectors or the persons making a determination of the**  
 7 **validity of proxies shall specify the information upon which they**  
 8 **rely in determining the validity of a proxy.** The corporation is  
 9 entitled to reject a vote, consent, waiver, or proxy appointment if the  
 10 secretary or other officer or agent authorized to tabulate votes, acting  
 11 in good faith, has reasonable basis for doubt about:

12 (1) the validity of the signature on ~~it~~ **a writing** or about the  
 13 signatory's authority to sign for the shareholder; **or**

14 (2) **the validity of an electronic submission or the submitter's**  
 15 **authority to make the electronic transmission.**

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

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

23 **SECTION 3. An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, Corporations and Small Business, to which was referred House Bill 1152, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

FRY, Chair

Committee Vote: yeas 14, nays 0.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Commerce and Consumer Affairs, to which was referred House Bill 1152, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to House Bill 1152 as printed January 23, 1998.)

MILLS, Chairperson

Committee Vote: Yeas 6, Nays 0.

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