

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.

HOUSE ENROLLED ACT No. 1152

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

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

SECTION 1. IC 23-1-30-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) A shareholder may vote the shareholder's shares in person or by proxy.

(b) ~~A shareholder may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form, either personally or by the shareholder's attorney-in-fact. A shareholder may authorize a person or persons to act for the shareholder as proxy by any of the following:~~

(1) **A shareholder or the shareholder's designated officer, director, employee, or agent may execute a writing by:**

(A) **signing it; or**

(B) **causing the shareholder's signature or the signature of the designated officer, director, employee, or agent of the shareholder to be affixed to the writing by any reasonable means, including by facsimile signature.**

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

(A) **may be transmitted by any electronic means, including**

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data and voice telephonic communications and computer network;

(B) may be transmitted to:

- (i) the person who will be the holder of the proxy;**
- (ii) a proxy solicitation firm; or**
- (iii) a proxy support service organization or similar agency authorized by the person who will be the holder of the proxy to receive the electronic submission; and**

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

(3) Any other method allowed by law.

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

~~(c)~~ **(d)** 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 a shorter or longer period is expressly provided in the appointment. ~~form~~.

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

- (1) a pledgee;
- (2) a person who purchased or agreed to purchase the shares;
- (3) a creditor of the corporation who extended it credit under terms requiring the appointment;
- (4) an employee of the corporation whose employment contract requires the appointment; or
- (5) a party to a voting agreement created under IC 23-1-31-2.

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

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

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

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

SECTION 2. IC 23-1-30-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) If the name signed on **or submitted with** a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, 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 shareholder.

(b) If the name signed on **or submitted with** a vote, consent, waiver, or proxy appointment does not correspond to the name of its shareholder, 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 shareholder if:

- (1) the shareholder 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 shareholder 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 a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;
- (4) the name ~~signed~~ purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the ~~signatory's~~ **person's** authority to ~~sign~~ **act** for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment; or
- (5) two (2) or more persons are the shareholder as cotenants or fiduciaries and the name ~~signed~~ purports to be the name of at least

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one (1) of the coowners and the person ~~signing~~ **acting** appears to be acting on behalf of all the coowners.

(c) **The inspectors or the persons making a determination of the validity of proxies shall specify the information upon which they rely in determining the validity of a proxy.** 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:

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

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

(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in accordance with the standards of this section are not liable in damages to the shareholder 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. An emergency is declared for this act.

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