

1 **SHAREHOLDER ACTION WITHOUT MEETING**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Benjamin M. McAdams**

5 House Sponsor: Derek E. Brown

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Utah Revised Business Corporation Act to address actions taken
10 without a shareholder meeting.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ revises requirements related to when action may be taken without holding a
- 14 shareholder meeting, including timing, consent, and the type of actions that may be
- 15 taken; and
- 16 ▶ makes technical and conforming amendments.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 **AMENDS:**

23 **16-10a-704**, as last amended by Laws of Utah 2010, Chapter 378

24 **16-10a-705**, as last amended by Laws of Utah 2010, Chapters 324 and 378

26 *Be it enacted by the Legislature of the state of Utah:*

27 Section 1. Section **16-10a-704** is amended to read:

28 **16-10a-704. Action without meeting.**

29 (1) (a) Unless otherwise provided in the articles of incorporation [~~and Subsection (5)~~],

30 and subject to the limitations of Subsection 16-10a-1704(4), any action [~~which~~] that may be
31 taken at [~~any~~] an annual or special meeting of shareholders may be taken without a meeting and
32 without prior notice, if one or more consents in writing, setting forth the action so taken [~~shall~~
33 ~~be~~] are signed by the holders of outstanding shares having not less than the minimum number
34 of votes that would be necessary to authorize or take the action at a meeting at which all shares
35 entitled to vote [~~thereon~~] on the action were present and voted.

36 (b) A shareholder shall deliver written consent under this section to the corporation by
37 delivering the written consent to:

38 (i) the corporation's principal place of business; or

39 (ii) an officer or agent of the corporation having custody of the book in which a
40 proceeding of a meeting of shareholders is recorded.

41 (c) A written consent under this section shall bear the date of signature of each
42 shareholder who signs the consent.

43 (d) (i) Notwithstanding Subsection (1)(c), and unless otherwise provided by the
44 bylaws, a shareholder may deliver a written consent under this section by an electronic
45 transmission that provides the corporation with a complete copy of the written consent.

46 (ii) An electronic transmission consenting to an action under this section is considered
47 to be written, signed, and dated for purposes of this section if the electronic transmission is
48 delivered with information from which the corporation can determine:

49 (A) that the electronic transmission is transmitted by the shareholder, proxyholder, or
50 other person authorized to act for the shareholder or proxyholder; and

51 (B) the date on which the electronic transmission is transmitted.

52 (iii) The date on which an electronic transmission is transmitted is considered the date
53 on which a consent is signed.

54 (e) A consent signed pursuant to this section has the effect of a vote taken at a meeting
55 and may be described as such in a document.

56 (2) (a) [~~Unless~~] Except as provided in Subsection (3), unless the written consents of all
57 shareholders entitled to vote [~~have been~~] are obtained, written notice of [~~any~~] shareholder

58 approval of an action without a meeting shall be given at least 10 days before the
59 consummation of the transaction, action, or event authorized by the shareholder action to:

- 60 (i) those shareholders entitled to vote who have not consented in writing; and
- 61 (ii) those shareholders not entitled to vote and to whom this chapter requires that notice
62 of the proposed action be given.

63 (b) ~~[The notice]~~ Notice under this Subsection (2) shall contain or be accompanied by
64 the same material that, under this chapter, would have been required to be sent in a notice of
65 meeting at which the proposed action would have been submitted to the shareholders for
66 action.

67 (3) (a) A transaction, action, or event authorized by shareholder action under this
68 section may take effect in accordance with Subsection (5) notwithstanding that the written
69 consents of all shareholders entitled to vote are not obtained if the articles of incorporation or
70 bylaws of the corporation provide for notice under this Subsection (3).

71 (b) A corporation may provide in its articles of incorporation or bylaws that if the
72 written consents of all shareholders entitled to vote are not obtained, the corporation shall give
73 written notice of shareholder approval of an action without a meeting:

- 74 (i) not more than 10 days after the later of the day on which:
 - 75 (A) the written consents sufficient to take the action are delivered to the corporation; or
 - 76 (B) the tabulation of the written consents is completed in accordance with Subsection
77 (1); and

- 78 (ii) to a shareholder who:
 - 79 (A) would be entitled to notice of a meeting at which the action could be taken;
 - 80 (B) would be entitled to vote if the action were taken at a meeting; and
 - 81 (C) did not consent in writing to the action.

82 (c) Notice under this Subsection (3) shall contain or be accompanied by the same
83 material that, under this chapter, would have been required to be sent in a notice of meeting at
84 which the proposed action would have been submitted to the shareholders for action.

85 (d) The notice requirement in this Subsection (3) does not delay the effectiveness of an

86 action taken by written consent in accordance with Subsection (5). Failure to comply with the
87 notice requirement under this Subsection (3) by itself does not invalidate an action taken by
88 written consent, except this Subsection (3)(d) does not limit judicial power to fashion an
89 appropriate remedy in favor of a shareholder adversely affected by a failure to give notice
90 within the time period required under Subsection (3)(b).

91 ~~[(3) Any shareholder giving a written consent, or the shareholder's proxyholder, or a~~
92 ~~transferee of the shares or a personal representative of the shareholder or their respective~~
93 ~~proxyholder;]~~

94 (4) The following may revoke [the] a written consent under this section by a signed
95 writing describing the action and stating that [the] a shareholder's prior consent is revoked, if
96 the writing is received by the corporation [prior to] before the effectiveness of the action[-];

97 (a) the shareholder that gave the written consent;

98 (b) the proxyholder for the shareholder described in Subsection (4)(a);

99 (c) a transferee of the shares of the shareholder described in Subsection (4)(a);

100 (d) a personal representative of the shareholder described in Subsection (4)(a); or

101 (e) a proxyholder for a person described in this Subsection (4).

102 ~~[(4) A shareholder]~~ (5) (a) An action taken pursuant to this section is not effective
103 unless all written consents on which the corporation relies for [the] taking [of an] the action
104 pursuant to Subsection (1) are;

105 (i) received by the corporation [within a 60-day period and] by no later than 60 days
106 after the date the earliest written consent is delivered to the corporation as provided in
107 Subsection (1); and

108 (ii) not revoked pursuant to Subsection ~~[(3)]~~ (4). [Action]

109 (b) (i) Unless otherwise provided by this Subsection (5) and subject to Subsection (2),
110 an action taken by the shareholders pursuant to this section is effective as of the date the last
111 written consent necessary to effect the action is received by the corporation[- unless].

112 (ii) If all of the written consents necessary to effect [the] an action specify a later date
113 as the effective date of the action, [in which case] the later date [shall be] is the effective date

114 of the action.

115 (iii) If the corporation [~~has received~~] receives written consents as contemplated by
116 Subsection (1) signed by all shareholders entitled to vote with respect to [~~the~~] an action, the
117 effective date of the shareholder action may be any date that is specified in all the written
118 consents as the effective date of the shareholder action. [~~Unless otherwise provided by the~~
119 ~~bylaws, the writing may be received by the corporation by electronically transmitted facsimile~~
120 ~~or other form of communication providing the corporation with a complete copy thereof,~~
121 ~~including a copy of the signature thereto.~~]

122 [~~(5)~~] (6) Notwithstanding Subsection (1), directors may not be elected by written
123 consent except by unanimous written consent of all shares entitled to vote for the election of
124 directors.

125 [~~(6)~~] (7) If not otherwise determined under Sections 16-10a-703 or 16-10a-707, the
126 record date for determining shareholders entitled to take action without a meeting or entitled to
127 be given notice under Subsection (2) [~~of action so taken~~] or (3) is the date the first shareholder
128 delivers to the corporation a writing upon which the action is taken pursuant to Subsection (1).

129 [~~(7)~~] (8) Action taken under this section has the same effect as action taken at a
130 meeting of shareholders and may be so described in any document.

131 Section 2. Section **16-10a-705** is amended to read:

132 **16-10a-705. Notice of meeting.**

133 (1) A corporation shall give notice to shareholders of the date, time, and place of each
134 annual and special shareholders' meeting no fewer than 10 nor more than 60 days before the
135 meeting date. Unless this chapter or the articles of incorporation require otherwise, the
136 corporation is required to give notice only to shareholders entitled to vote at the meeting.

137 (2) Unless this chapter or the articles of incorporation require otherwise, notice of an
138 annual meeting need not include a description of the purpose or purposes for which the meeting
139 is called.

140 (3) Notice of a special meeting shall include a description of the purpose or purposes
141 for which the meeting is called.

142 (4) (a) Subject to Subsection (4)(b), unless the bylaws require otherwise, if an annual
143 or special shareholders' meeting is adjourned to a different date, time, or place, notice need not
144 be given of the new date, time, or place if the new date, time, or place is announced at the
145 meeting before adjournment.

146 (b) If the adjournment is for more than 30 days, or if after the adjournment a new
147 record date for the adjourned meeting is or shall be fixed under Section 16-10a-707, notice of
148 the adjourned meeting shall be given pursuant to the requirements of this section to
149 shareholders of record who are entitled to vote at the meeting.

150 (5) (a) Notwithstanding a requirement that notice be given under any provision of this
151 chapter, the articles of incorporation, or bylaws of any corporation, notice is not required to be
152 given to any shareholder to whom:

153 (i) a notice of two consecutive annual meetings, and all notices of meetings or of the
154 taking of action by written consent without a meeting during the period between the two
155 consecutive annual meetings, have been mailed, addressed to the shareholder at the
156 shareholder's address as shown on the records of the corporation, and have been returned
157 undeliverable; or

158 (ii) at least two payments, if sent by first class mail, of dividends or interest on
159 securities during a 12 month period, have been mailed, addressed to the shareholder at the
160 shareholder's address as shown on the records of the corporation, and have been returned
161 undeliverable.

162 (b) Any action taken [~~or~~] at a meeting held without notice to a shareholder to whom
163 notice is excused under Subsection (5) has the same force and effect as if notice had been duly
164 given. If a shareholder to whom notice is excused under Subsection (5) delivers to the
165 corporation a written notice setting forth the shareholder's current address, or if another address
166 for the shareholder is otherwise made known to the corporation, the requirement that notice be
167 given to the shareholder is reinstated. In the event that the action taken by the corporation
168 requires the filing of a certificate under any provision of this chapter, the certificate need not
169 state that notice was not given to shareholders to whom notice was not required pursuant to this

170 Subsection (5).