

**SHAREHOLDER ACTION WITHOUT MEETING**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Benjamin M. McAdams**

House Sponsor: Derek E. Brown

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

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

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

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

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

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

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

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

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

131 **16-10a-705. Notice of meeting.**

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

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

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

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

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

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

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

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

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

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**Legislative Review Note**  
**as of 11-18-10 3:03 PM**

**Office of Legislative Research and General Counsel**