

S.B. 218

NONPROFIT CORPORATION ACT AMENDMENTS

Senator Lyle W. Hillyard proposes the following amendments:

1. Page 22, Lines 675 through 678:

675 16-6a-807. Resignation of directors.

676 (1) A director may resign at any time by giving written notice of resignation to the

677 [nonprofit corporation] ~~{board of directors, the}~~ board's chair, ~~{or}~~ the nonprofit corporation's

678 secretary , or as otherwise provided in the bylaws .

2. Page 24, Line 737 through Page 26, Line 783:

737 16-6a-813. Action without meeting.

738 (1) (a) Unless otherwise provided in the bylaws, any action required or permitted by this

739 chapter to be taken at a board of directors' meeting may be taken without a meeting if ~~{each and~~

740 ~~every member}~~ all members of the board consent to the action in writing ~~{either:~~

741 ~~—— (a) votes for the action; or~~

742 ~~—— (b) (i) (A) votes against the action; or~~

743 ~~—— (B) abstains from voting; and~~

744 ~~—— (ii) waives the right to demand that action not be taken without a meeting} .~~

745 ~~{(2) Action is taken under this section only if the affirmative vote for the action equals~~

746 ~~or exceeds the minimum number of votes that would be necessary to take the action at a~~

747 ~~meeting at which all of the directors then in office were present and voted.~~

748 ~~—— (3) (a) An action taken pursuant to this section may not be effective unless the~~

749 ~~nonprofit corporation receives writings:~~

750 ~~—— (i) describing the action taken;~~

751 ~~—— (ii) otherwise satisfying the requirements of Subsection (1);~~

752 ~~—— (iii) signed by all directors; and~~

753 ~~—— (iv) not revoked pursuant to Subsection (4).~~

754 ~~—— [(b) Unless otherwise provided by the bylaws, a writing described in Subsection (3)(a)~~

755 ~~may be received by the nonprofit corporation by electronically transmitted facsimile or other~~

756 ~~form of wire or wireless communication providing the nonprofit corporation with a complete~~

757 ~~copy of the document, including a copy of the signature on the document.]~~

758 ~~—— (b) (i) Unless otherwise provided by the bylaws, a director may deliver a written~~

759 ~~consent under this section by an electronic transmission that provides the nonprofit corporation~~

760 ~~with a complete copy of the written consent.~~

761 ~~—— (ii) An electronic transmission consenting to an action under this section is considered~~

762 ~~to be written, signed, and dated for purposes of this section if the electronic transmission is~~
763 ~~delivered with information from which the corporation can determine:~~
764 ~~—— (A) that the electronic transmission is transmitted by the director; and~~
765 ~~—— (B) the date on which the electronic transmission is transmitted.~~
766 ~~—— (iii) The date on which an electronic transmission is transmitted is considered the date~~
767 ~~on which the consent is signed.~~
768 ~~—— (c) A director's right to demand that action not be taken without a meeting shall be~~
769 ~~considered to have been waived if the nonprofit corporation receives a writing satisfying the~~
770 ~~requirements of Subsection (1) that has been signed by the director and not revoked pursuant to~~
771 ~~Subsection (4).~~
772 ~~—— (d) Action taken pursuant to this section shall be effective when the last writing~~
773 ~~necessary to effect the action is received by the nonprofit corporation, unless the writings~~
774 ~~describing the action taken set forth a different effective date.~~
775 ~~—— (4) If the writing is received by the nonprofit corporation before the last writing~~
776 ~~necessary to effect the action is received by the nonprofit corporation, any director who has~~
777 ~~signed a writing pursuant to this section may revoke the writing by a writing signed and dated~~
778 ~~by the director:~~
779 ~~—— (a) describing the action; and~~
780 ~~—— (b) stating that the director's prior vote with respect to the writing is revoked.~~
781 ~~—— (5) Action taken pursuant to this section:~~
782 ~~—— (a) has the same effect as action taken at a meeting of directors; and~~
783 ~~—— (b) may be described as an action taken at a meeting of directors in any document. }~~

(b) Action is taken under Subsection (1)(a) at the time the last director signs a writing describing the action taken, unless, before that time, any director revokes a consent by a writing signed by the director and received by the secretary or any other person authorized by the bylaws or the board of directors to receive the revocation.

(c) Action under Subsection (1)(a) is effective at the time it is taken under Subsection (1)(a) unless the board of directors establishes a different effective date.

(2)(a) If provided in the bylaws, any action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if notice is transmitted in writing to each member of the board and each member of the board by the time stated in the notice:

(i)(A) signs a writing for such action; or

(B) signs a writing against such action, abstains in writing from voting, or fails to respond or vote; and

(ii) fails to demand in writing that action not be taken without a meeting.

(b) The notice required by Subsection (1) shall state:

(i) the action to be taken;

(ii) the time by which a director must respond to the notice;

(iii) that failure to respond by the time stated in the notice will have the same effect as:

(A) abstaining in writing by the time stated in the notice; and

(B) failing to demand in writing by the time stated in the notice that action not be taken without a

meeting; and

(iv) any other matters the nonprofit corporation determines to include.

(c) Action is taken under this Subsection (2) only if at the end of the time stated in the notice transmitted pursuant to Subsection (2)(a):

(i) the affirmative votes in writing for the action received by the nonprofit corporation and not revoked pursuant to Subsection (2)(e) equal or exceed the minimum number of votes that would be necessary to take such action at a meeting at which all of the directors then in office were present and voted; and

(ii) the nonprofit corporation has not received a written demand by a director that the action not be taken without a meeting other than a demand that has been revoked pursuant to Subsection (2)(e).

(d) A director's right to demand that action not be taken without a meeting shall be considered to have been waived unless the nonprofit corporation receives such demand from the director in writing by the time stated in the notice transmitted pursuant to Subsection (2)(a) and the demand has not been revoked pursuant to Subsection (2)(e).

(e) A director who in writing has voted, abstained, or demanded action not be taken without a meeting pursuant to this Subsection (2) may revoke the vote, abstention, or demand in writing received by the nonprofit corporation by the time stated in the notice transmitted pursuant to Subsection (2)(a).

(f) Unless the notice transmitted pursuant to Subsection (2)(a) states a different effective date, action taken pursuant to this Subsection (2) is effective at the end of the time stated in the notice transmitted pursuant to Subsection (2)(a).

(3)(a) Unless otherwise provided by the bylaws, a communication under this section may be delivered by an electronic transmission.

(b) An electronic transmission communicating a vote, abstention, demand, or revocation under Subsection (2) is considered to be written, signed, and dated for purposes of this section if the electronic transmission is delivered with information from which the nonprofit corporation can determine:

(i) that the electronic transmission is transmitted by the director; and

(ii) the date on which the electronic transmission is transmitted.

(c) The date on which an electronic transmission is transmitted is considered the date on which the vote, abstention, demand, or revocation is signed.

(d) For purposes of this section, communications to the nonprofit corporation are not effective until received.

(4) Action taken pursuant to this section:

(a) has the same effect as action taken at a meeting of directors; and

(b) may be described as an action taken at a meeting of directors in any document.

3. Page 29, Line 889 through Page 30, Line 904:

889 (1) As used in this section {+} , "conflicting {+} : {-

890 ~~(a) "Conflicting"~~ interest transaction" means a contract, transaction, or other financial

891 relationship between a nonprofit corporation and:

892 {+} (a) {+} {+} a director of the nonprofit corporation;

893 {+} (b) {+} ~~{(ii)}~~ a party related to a director; or
894 {+} (c) {+} ~~{(iii)}~~ an entity in which a director of the nonprofit corporation:
895 {+} (i) {+} ~~{(A)}~~ is a director or officer; or
896 {+} (ii) {+} ~~{(B)}~~ has a financial interest.
897 {(b) "Natural person related to a director or officer" means one of the following in
898 regards to a director or officer:
899 ~~— (i) a spouse;~~
900 ~~— (ii) a descendent;~~
901 ~~— (iii) an ancestor;~~
902 ~~— (iv) a sibling;~~
903 ~~— (v) the spouse or descendent of a sibling; or~~
904 ~~— (vi) the spouse of a descendent. }~~