

CHAPTER 107

CORPORATIONS AND ASSOCIATIONS

SENATE BILL 05-076

BY SENATOR(S) Wiens;
also REPRESENTATIVE(S) Marshall, Berens, Buescher, Coleman, Madden, Massey, Stengel, and White.

AN ACT

CONCERNING THE ABILITY OF CORPORATE SHAREHOLDERS TO CONSENT TO TAKE CORPORATE ACTION UNDER THE "COLORADO BUSINESS CORPORATION ACT".

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

SECTION 1. 7-107-104 (1), (2), (3), (4), and (7), Colorado Revised Statutes, are amended, and the said 7-107-104 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

7-107-104. Action without meeting. (1) Unless the articles of incorporation require that such action be taken at a shareholders' meeting, any action required or permitted by articles 101 to 117 of this title to be taken at a shareholders' meeting may be taken without a meeting if:

(a) All of the shareholders entitled to vote thereon consent to such action in writing; OR

(b) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (1.5) OF THIS SECTION AND IF EXPRESSLY PROVIDED FOR IN THE ARTICLES OF INCORPORATION, THE SHAREHOLDERS HOLDING SHARES HAVING NOT LESS THAN THE MINIMUM NUMBER OF VOTES THAT WOULD BE NECESSARY TO AUTHORIZE OR TAKE SUCH ACTION AT A MEETING AT WHICH ALL OF THE SHARES ENTITLED TO VOTE THEREON WERE PRESENT AND VOTED CONSENT TO SUCH ACTION IN WRITING.

(1.5) IF SHARES ARE ENTITLED TO BE VOTED CUMULATIVELY IN THE ELECTION OF DIRECTORS, SHAREHOLDERS MAY TAKE ACTION UNDER THIS SECTION TO ELECT OR REMOVE DIRECTORS ONLY IF:

(a) THE ARTICLES OF INCORPORATION DO NOT REQUIRE THAT SUCH ACTION BE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

TAKEN AT A SHAREHOLDERS' MEETING; AND

(b) ALL OF THE SHAREHOLDERS ENTITLED TO VOTE IN THE ELECTION OR REMOVAL SIGN WRITINGS DESCRIBING AND CONSENTING TO THE ELECTION OR REMOVAL OF THE SAME DIRECTORS AND THE WRITINGS ARE RECEIVED BY THE CORPORATION IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION.

(2) (a) No action taken pursuant to this section shall be effective unless, WITHIN SIXTY DAYS AFTER THE DATE THE CORPORATION FIRST RECEIVES A WRITING DESCRIBING AND CONSENTING TO THE ACTION AND SIGNED BY A SHAREHOLDER, the corporation has received writings that describe and consent to the action, signed by ~~all of the~~ shareholders HOLDING AT LEAST THE NUMBER OF SHARES entitled to vote on the action AS REQUIRED BY SUBSECTION (1) OR (1.5) OF THIS SECTION, AS THE CASE MAY BE, DISREGARDING ANY SUCH WRITING THAT HAS BEEN REVOKED PURSUANT TO SUBSECTION (3) OF THIS SECTION. ~~Unless otherwise provided by~~ The bylaws MAY PROVIDE FOR THE RECEIPT OF any such writing ~~may be received~~ by the corporation by electronically transmitted facsimile or other form of wire or wireless communication providing the corporation with a complete copy thereof, including a copy of the signature thereto.

(b) Action taken pursuant to this section shall be effective as of the date the corporation receives ~~writings describing and consenting to the action signed by all of the shareholders entitled to vote with respect to the action;~~ THE LAST WRITING NECESSARY TO EFFECT THE ACTION unless all of the writings NECESSARY TO EFFECT THE ACTION state another date as the effective date of the action, in which case such ~~other~~ STATED date shall be the effective date of the action.

(3) Any shareholder who has signed a writing describing and consenting to action taken pursuant to this section may revoke such consent by a writing signed and dated by the shareholder describing the action and stating that the shareholder's prior consent thereto is revoked, if such writing is received by the corporation prior to the ~~date the last writing necessary to effect~~ EFFECTIVENESS OF the action. ~~is received by the corporation:~~

(4) ~~Subject to~~ IF NOT OTHERWISE FIXED UNDER subsection (7) of this section OR SECTION 7-107-107, the record date for determining shareholders entitled to take action ~~without a meeting~~ PURSUANT TO THIS SECTION or entitled to be given notice UNDER SUBSECTION (5.5) OF THIS SECTION OF ACTION TAKEN PURSUANT TO THIS SECTION is the date THE CORPORATION FIRST RECEIVES a writing upon which the action is taken pursuant to ~~subsection (1) of this section. is first received by the corporation:~~

(5.5) IF ACTION IS TAKEN UNDER SUBSECTION (1) OF THIS SECTION WITH LESS THAN UNANIMOUS CONSENT OF ALL SHAREHOLDERS ENTITLED TO VOTE UPON THE ACTION, THE CORPORATION OR SHAREHOLDERS TAKING THE ACTION SHALL, UPON RECEIPT BY THE CORPORATION OF ALL WRITINGS NECESSARY TO EFFECT THE ACTION, GIVE NOTICE OF THE ACTION TO ALL SHAREHOLDERS WHO WERE ENTITLED TO VOTE UPON THE ACTION BUT WHO HAVE NOT CONSENTED TO THE ACTION IN THE MANNER PROVIDED IN SUBSECTION (1) OF THIS SECTION. THE NOTICE SHALL CONTAIN OR BE ACCOMPANIED BY THE SAME MATERIAL, IF ANY, THAT WOULD HAVE BEEN REQUIRED UNDER ARTICLES 101 TO 117 OF THIS TITLE TO BE GIVEN TO SHAREHOLDERS IN OR

WITH A NOTICE OF THE MEETING AT WHICH THE ACTION WOULD HAVE BEEN SUBMITTED TO THE SHAREHOLDERS.

(7) The district court for the county in this state in which the street address of the corporation's principal office is located or, if the corporation has no principal office in this state, the district court for the county in which the street address of its registered agent is located, or, if the corporation has no registered agent, the district court for the city and county of Denver may, upon application of the corporation or any shareholder who would be entitled to vote on the action at a shareholders' meeting, summarily ~~states~~ STATE a record date for determining shareholders entitled to sign writings consenting to an action under this section and may enter other orders necessary or appropriate to effect the purposes of this section.

SECTION 2. Applicability. This act shall apply to corporate actions taken on or after the effective date of this act.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 22, 2005