

CHAPTER 16

CORPORATIONS AND ASSOCIATIONS

HOUSE BILL 08-1089

BY REPRESENTATIVE(S) Balmer, Benefield, Borodkin, Gagliardi, Marostica, McGihon, Carroll M., Ferrandino, Gardner B., Kerr J., Labuda, Lundberg, Massey, Summers, and Todd;
also SENATOR(S) Veiga, Boyd, Harvey, Kester, and Morse.

AN ACT

CONCERNING THE AUTHORITY OF A NONPROFIT CORPORATION TO TAKE ACTION BY VOTES IN WRITING RATHER THAN AT A MEETING IN WHICH DECISION-MAKERS ARE PHYSICALLY PRESENT.

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

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Under current law, unless otherwise provided in the bylaws, a board of directors of a nonprofit corporation may take action without a meeting by less than unanimous written consent if every board member either votes in writing for or against the action in question, or in writing abstains and waives the right to demand that a meeting be held. The number of affirmative votes must at least equal the number of votes required had a meeting taken place at which all directors were present and voted.

(b) Under current law, unless otherwise provided in the bylaws, any such written vote may be received by a nonprofit corporation by electronically transmitted facsimile or other form of electronic communication providing the nonprofit corporation with a complete copy of the document, including a copy of the signature on the document.

(c) Because many nonprofit corporations have board members who are not readily available between board meetings, current requirements may delay certain board actions when prompt action by the board is required.

(2) The general assembly, therefore, determines that allowing a Colorado nonprofit corporation to provide in its bylaws that any action required or permitted

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

under the "Colorado Revised Nonprofit Corporation Act" to be taken at a board of directors' meeting may be taken without a meeting if certain procedural requirements are complied with.

SECTION 2. 7-128-202 (1), Colorado Revised Statutes, is amended to read:

7-128-202. Action without meeting. (1) Unless otherwise provided in the bylaws, any action required or permitted by articles 121 to 137 of this title to be taken at a board of directors' meeting may be taken without a meeting if A NOTICE STATING THE ACTION TO BE TAKEN AND THE TIME BY WHICH A DIRECTOR MUST RESPOND IS TRANSMITTED IN WRITING TO EACH MEMBER OF THE BOARD AND ~~each and every~~ member of the board, ~~in writing either~~ BY THE TIME STATED IN THE NOTICE:

(a) Votes IN WRITING for such action; or

(b) (I) Votes IN WRITING against such action, ~~or~~ abstains IN WRITING from voting, OR FAILS TO RESPOND OR VOTE; and

(II) ~~Waives the right~~ FAILS to demand that action not be taken without a meeting.

SECTION 3. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 6, 2008, if adjournment sine die is on May 7, 2008); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: March 13, 2008