

1
2 An act relating to corporations; amending s.
3 607.01401, F.S.; redefining the term
4 "electronic transmission" to include telegrams,
5 cablegrams, telephone transmissions, and
6 transmissions through the Internet for purposes
7 of proxy voting; amending s. 607.0722, F.S.;
8 specifying those persons who may vote on behalf
9 of a shareholder; authorizing the appointment
10 of a proxy by electronic transmission; deleting
11 provisions limiting the period during which an
12 appointment of proxy is irrevocable;
13 authorizing the use of certain copies or
14 reproductions in lieu of the original writing
15 or electronic transmission; authorizing a
16 corporation to adopt bylaws authorizing
17 additional procedures for shareholders to use
18 in exercising certain rights; amending s.
19 15.16, F.S.; authorizing the department to
20 discount a filing fee in an amount equal to the
21 convenience charge imposed for an electronic
22 record filing by way of a contractor; amending
23 s. 607.193, F.S.; waiving the charge for late
24 filings of supplemental corporate fees when the
25 business entity did not receive the uniform
26 business report prescribed by the department;
27 providing an effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:
30
31

1 Section 1. Subsection (9) of section 607.01401,
2 Florida Statutes, is amended to read:

3 607.01401 Definitions.--As used in this act, unless
4 the context otherwise requires, the term:

5 (9) "Electronic transmission" or "electronically
6 transmitted" means any process of communication not directly
7 involving the physical transfer of paper that is suitable for
8 the retention, retrieval, and reproduction of information by
9 the recipient. For purposes of proxy voting in accordance with
10 ss. 607.0721, 607.0722, and 607.0724, the term includes, but
11 is not limited to, telegrams, cablegrams, telephone
12 transmissions, and transmissions through the Internet.

13 Section 2. Section 607.0722, Florida Statutes, is
14 amended to read:

15 607.0722 Proxies.--

16 (1) A shareholder, other person entitled to vote on
17 behalf of a shareholder pursuant to s. 607.0721, or attorney
18 in fact for a shareholder may vote the shareholder's shares in
19 person or by proxy.

20 (2)(a) A shareholder, other person entitled to vote on
21 behalf of a shareholder pursuant to s. 607.0721, or attorney
22 in fact for a shareholder may appoint a proxy to vote or
23 otherwise act for the shareholder by signing an appointment
24 form or by electronic transmission, ~~either personally or by~~
25 ~~the shareholder's attorney in fact.~~ Any type of electronic
26 transmission appearing to have been, or containing or
27 accompanied by such information or obtained under such
28 procedures to reasonably ensure that the electronic
29 transmission was, transmitted by such person is a sufficient
30 appointment, subject to the verification requested by the
31 corporation under s. 607.0724. ~~An executed telegram or~~

1 ~~cablegram appearing to have been transmitted by such person,~~
2 ~~or a photographic, photostatic, or equivalent reproduction of~~
3 ~~an appointment form, is a sufficient appointment form.~~

4 (b) Without limiting the manner in which a
5 shareholder, other person entitled to vote on behalf of a
6 shareholder pursuant to s. 607.0721, or attorney in fact for a
7 shareholder may appoint a proxy to vote or otherwise act for
8 the shareholder pursuant to paragraph (a), a shareholder,
9 other person entitled to vote on behalf of a shareholder
10 pursuant to s. 607.0721, or attorney in fact for a shareholder
11 may make grant such an appointment authority by:

12 1. Signing an appointment form, with the signature
13 ~~affixed, or having such form signed by the shareholder's~~
14 ~~authorized officer, director, employee, or agent~~ by any
15 reasonable means including, but not limited to, facsimile or
16 electronic signature.

17 2. Transmitting or authorizing the transmission of an
18 ~~a telegram, cablegram, or other means of~~ electronic
19 transmission to the person who will be appointed as the proxy
20 or to a proxy solicitation firm, proxy support service
21 organization, registrar, or agent authorized by the person who
22 will be designated as the proxy to receive such transmission.
23 However, any ~~telegram, cablegram, or other means of~~ electronic
24 transmission must set forth or be submitted with information
25 from which it can be determined that the electronic
26 transmission was authorized by the shareholder, other person
27 entitled to vote on behalf of a shareholder pursuant to s.
28 607.0721, or attorney in fact for a shareholder. If it is
29 determined that the electronic transmission is valid, the
30 inspectors of election or, if there are no inspectors, such

31

1 other persons making that determination shall specify the
2 information upon which they relied.

3 (3) An appointment of a proxy is effective when
4 received by the secretary or other officer or agent authorized
5 to tabulate votes. An appointment is valid for up to 11
6 months unless a longer period is expressly provided in the
7 appointment ~~form~~.

8 (4) The death or incapacity of the shareholder
9 appointing a proxy does not affect the right of the
10 corporation to accept the proxy's authority unless notice of
11 the death or incapacity is received by the secretary or other
12 officer or agent authorized to tabulate votes before the proxy
13 exercises his or her authority under the appointment.

14 (5) An appointment of a proxy is revocable by the
15 shareholder unless the appointment form or electronic
16 transmission conspicuously states that it is irrevocable and
17 the appointment is coupled with an interest. Appointments
18 coupled with an interest include the appointment of:

19 (a) A pledgee;

20 (b) A person who purchased or agreed to purchase the
21 shares;

22 (c) A creditor of the corporation who extended credit
23 to the corporation under terms requiring the appointment;

24 (d) An employee of the corporation whose employment
25 contract requires the appointment; or

26 (e) A party to a voting agreement created under s.
27 607.0731.

28 (6) An appointment made irrevocable under subsection
29 (5) becomes revocable when the interest with which it is
30 coupled is extinguished ~~and, in a case provided for in~~
31 ~~paragraph (5)(c) or paragraph (5)(d), the proxy becomes~~

1 ~~revocable 3 years after the date of the proxy or at the end of~~
2 ~~the period, if any, specified therein, whichever is less,~~
3 ~~unless the period of irrevocability is renewed from time to~~
4 ~~time by the execution of a new irrevocable proxy as provided~~
5 ~~in this section. This does not affect the duration of a proxy~~
6 ~~under subsection (3).~~

7 (7) A transferee for value of shares subject to an
8 irrevocable appointment may revoke the appointment if the
9 transferee did not know of its existence when he or she
10 acquired the shares and the existence of the irrevocable
11 appointment was not noted conspicuously on the certificate
12 representing the shares or on the information statement for
13 shares without certificates.

14 (8) Subject to s. 607.0724 and to any express
15 limitation on the proxy's authority appearing on the face of
16 the appointment form or in the electronic transmission, a
17 corporation is entitled to accept the proxy's vote or other
18 action as that of the shareholder making the appointment.

19 (9) If an appointment form expressly provides, any
20 proxy holder may appoint, in writing, a substitute to act in
21 his or her place.

22 (10) Any copy, facsimile transmission, or other
23 reliable reproduction of the writing or electronic
24 transmission created under subsection (2) may be substituted
25 or used in lieu of the original writing or electronic
26 transmission for any purpose for which the original writing or
27 electronic transmission could be used if the copy, facsimile
28 transmission, or other reproduction is a complete reproduction
29 of the entire original writing or electronic transmission.
30
31

1 (11) A corporation may adopt bylaws authorizing
2 additional means or procedures for shareholders to use in
3 exercising rights granted by this section.
4 Section 3. Subsection (8) is added to section 15.16,
5 Florida Statutes, to read:
6 15.16 Reproduction of records; admissibility in
7 evidence; electronic receipt and transmission of records;
8 certification; acknowledgment.--
9 (8) The Department of State may use government or
10 private sector contractors in the promotion or provision of
11 any electronic filing services and may discount the filing fee
12 in an amount equal to the convenience charge for such
13 electronic filings.
14 Section 4. Paragraph (b) of subsection (2) of section
15 607.193, Florida Statutes, is amended to read:
16 607.193 Supplemental corporate fee.--
17 (2)
18 (b) In addition to the fees levied under ss. 607.0122,
19 608.452, and 620.182 and the supplemental corporate fee, a
20 late charge of \$400 shall be imposed if the supplemental
21 corporate fee is remitted after May 1 except in circumstances
22 in which a business entity did not receive the uniform
23 business report prescribed by the department.
24 Section 5. This act shall take effect July 1, 2001.
25
26
27
28
29
30
31