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HOUSE BILL NO. 2719

House Amendments in [] — February 1, 1999

A BILL to amend and reenact § 13.1-847 of the Code of Virginia, relating to corporations; proxies; electronic and other authorization.

Patron—Cantor

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That § 13.1-847 of the Code of Virginia is amended and reenacted as follows:

§ 13.1-847. Proxies.

A. A member entitled to vote may vote in person or, unless the articles of incorporation or bylaws otherwise provide, by proxy.

B. A member may appoint a proxy to vote or otherwise act for him by signing an appointment form, either personally or by his attorney-in-fact. Without limiting the manner in which a member may authorize another person or persons to act for him as proxy pursuant to subsection A of this section, the following shall constitute a valid means by which a member may grant such authority:

1. A member may execute a writing authorizing another person or persons to act for him as proxy. Execution may be accomplished by the member or his authorized officer, director, employee or agent signing such writing or causing his signature to be affixed to such writing by any reasonable means, including, but not limited to, by facsimile signature.

2. A member may authorize another person or persons to act for him as proxy by transmitting or authorizing the transmission of a telegram, cablegram or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which the inspectors of election can determine that the telegram, cablegram or other electronic transmission was authorized by the member. If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspectors, or if there are no inspectors, such other persons making that determination, shall specify the information upon which they relied.

3. Any copy, facsimile telecommunications or other reliable reproduction of the writing or transmission created pursuant to this subsection may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

C. An appointment of a proxy becomes effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a longer period is expressly provided in the appointment form.

D. An appointment of a proxy is revocable by the member unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

1. A creditor of the corporation who extended it credit under terms requiring the appointment; or

2. An employee of the corporation whose employment contract requires the appointment.

E. The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his authority under the appointment.

F. An appointment made irrevocable under subsection D of this section is revoked when the interest with which it is coupled is extinguished.

G. Subject to § 13.1-848 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

[H. Any fiduciary who is entitled to vote any shares may vote such shares by proxy.]

ENGROSSED

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