

By: Goolsby

H.B. No. 2578

Substitute the following for H.B. No. 2578:

By: Solomons

C.S.H.B. No. 2578

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the use of an electronic transmission by a corporation
3 for purposes of giving notice, voting, or participating in a
4 meeting.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section A, Article 1.02, Texas Business
7 Corporation Act, is amended by adding Subdivision (13-a) to read as
8 follows:

9 (13-a) "Electronic transmission" means a form of
10 communication that:

11 (a) does not directly involve the physical
12 transmission of paper;

13 (b) creates a record that may be retained, retrieved,
14 and reviewed by the recipient; and

15 (c) may be directly reproduced in paper form by the
16 recipient through an automated process.

17 SECTION 2. Article 2.24, Texas Business Corporation Act, is
18 amended by adding Section E to read as follows:

19 E. Unless the articles of incorporation or bylaws provide
20 otherwise, a shareholder may participate in a special or annual
21 meeting by means of conference telephone or similar communication
22 equipment by which all shareholders participating in the meeting
23 may hear each other. A shareholder participating in a meeting by
24 this means is deemed to be present in person at the meeting.

1 SECTION 3. Part 2, Texas Business Corporation Act, is
2 amended by adding Article 2.25-1 to read as follows:

3 Art. 2.25-1. NOTICE BY ELECTRONIC TRANSMISSION. A. On
4 consent of a shareholder, notice from a corporation under any
5 provision of this Act, the articles of incorporation, or the bylaws
6 may be given to the shareholder by electronic transmission. The
7 shareholder may specify the form of electronic transmission to be
8 used to communicate notice. The shareholder may revoke this
9 consent by written notice to the corporation. The shareholder's
10 consent is deemed to be revoked if the corporation is unable to
11 deliver by electronic transmission two consecutive notices, and the
12 secretary, assistant secretary, or transfer agent of the
13 corporation, or another person responsible for delivering notice on
14 behalf of the corporation knows that delivery of these two
15 electronic transmissions was unsuccessful. The inadvertent failure
16 to treat the unsuccessful transmissions as a revocation of
17 shareholder consent does not invalidate a meeting or other action.

18 B. Notice under this section is deemed given when the notice
19 is:

20 (1) transmitted to a facsimile number provided by the
21 shareholder for the purpose of receiving notice;

22 (2) transmitted to an electronic mail address provided
23 by the shareholder for the purpose of receiving notice;

24 (3) posted on an electronic network and a message is
25 sent to the shareholder at the address provided by the shareholder
26 for the purpose of alerting the shareholder of a posting; or

27 (4) communicated to the shareholder by any other form

1 of electronic transmission consented to by the shareholder.

2 C. An affidavit of the secretary, assistant secretary,
3 transfer agent, or other agent of the corporation that notice has
4 been given by electronic transmission is, in the absence of fraud,
5 prima facie evidence that the notice was given.

6 SECTION 4. Part 2, Texas Business Corporation Act, is
7 amended by adding Article 2.29-1 to read as follows:

8 Art. 2.29-1. ELECTRONIC VOTING. By a resolution of the
9 board of directors of a corporation, a shareholder or shareholder's
10 proxy entitled to vote may be authorized to vote by electronic
11 transmission. The electronic transmission must contain or be
12 submitted with information establishing that transmission was
13 authorized by the shareholder or the shareholder's proxy.

14 SECTION 5. Article 2.37, Texas Business Corporation Act, is
15 amended by adding Section C to read as follows:

16 C. On consent of a director, notice of the date, time, place
17 or purpose of a regular or special meeting of the board of directors
18 may be given to the director by electronic transmission. The
19 director may specify the form of electronic transmission to be used
20 to communicate notice. The director may revoke this consent by
21 written notice to the corporation. The director's consent is
22 deemed to be revoked if the corporation is unable to deliver by
23 electronic transmission two consecutive notices, and the secretary
24 of the corporation or other person responsible for delivering the
25 notice on behalf of the corporation knows that the delivery of these
26 two electronic transmissions was unsuccessful. The inadvertent
27 failure to treat the unsuccessful transmissions as a revocation of

1 the director's consent does not invalidate a meeting or other
2 action. An affidavit of the secretary or other agent of the
3 corporation that notice has been given by electronic transmission
4 is, in the absence of fraud, prima facie evidence that the notice
5 was given. Notice under this section is deemed given when the
6 notice is:

7 (1) transmitted to a facsimile number provided by the
8 director for the purpose of receiving notice;

9 (2) transmitted to an electronic mail address provided
10 by the director for the purpose of receiving notice;

11 (3) posted on an electronic network and a message is
12 sent to the director at the address provided by the director for the
13 purpose of alerting the director of a posting; or

14 (4) communicated to the director by any other form of
15 electronic transmission consented to by the director.

16 SECTION 6. This Act takes effect immediately if it receives
17 a vote of two-thirds of all the members elected to each house, as
18 provided by Section 39, Article III, Texas Constitution. If this
19 Act does not receive the vote necessary for immediate effect, this
20 Act takes effect September 1, 2003.