

LRBs0077

1999 DRAFTING REQUEST

Senate Substitute Amendment (SSA-AB60)

Received: 05/18/99

Received By: champra

Wanted: Soon

Identical to LRB:

For: Scott Jensen (608) 266-3387

By/Representing: Chad Taylor

This file may be shown to any legislator: NO

Drafter: champra

May Contact:

Alt. Drafters:

Subject: **Bus. Assn. - corporations**

Extra Copies:

Pre Topic:

No specific pre topic given

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Topic:

Appointment of a proxy by a shareholder in a business corporation

Instructions:

See Attached.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/1			kfollet 05/27/99	_____	lrb_docadmin 05/27/99	lrb_docadmin 05/27/99	
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FE Sent For:

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1?	champra	1-5-25-99 SIV	Kf 5/26	Kf/km 3/26			

FE Sent For:

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~~4/30/99~~
LRB-0676/
RAC:kmg:l
5/11/99

1999 ASSEMBLY BILL 60

January 21, 1999 - Introduced by Representatives JENSEN, PLALE and WARD.
Referred to Committee on Financial Institutions.

1 AN ACT *to renumber* 180.0724 (1); *to amend* 180.0722 (7) and 180.0722 (8) (a);
2 *to repeal and recreate* 180.0722 (2); and *to create* 180.0103 (7m) and
3 180.0724 (1e) of the statutes; **relating to:** the appointment of a proxy by a
4 shareholder in a business corporation.

Analysis by the Legislative Reference Bureau

Under current law, a shareholder in a business corporation may vote his or he shares in the corporation by proxy. To appoint a proxy, a shareholder or his or he attorney-in-fact must sign an appointment form.

This bill permits a shareholder to appoint a proxy either in writing or by transmitting or authorizing the transmission of an electronic transmission to the person who will be appointed as proxy. Under the bill, "electronic transmission" means internet transmission, touch-tone telephonic transmission, the transmission of a telegram or cablegram or any other similar form of reliable communication.

Review per changes in definitions.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 SECTION 1. 180.0103 (7m) of the statutes is created to read:

ASSEMBLY BILL 60

SECTION 1

electronic mail,

or datagram,

1 180.0103 (7m) "Electronic transmission" means internet transmission,
2 ~~teletype~~ telephonic transmission, transmission of a telegram or cablegram or any
3 other ~~similar~~ form of ~~reliable~~ communication

Insert 2-2

Insert 2-1

4 SECTION 2. 180.0722 (2) of the statutes is repealed and recreated to read:

5 180.0722 (2) (a) A shareholder entitled to vote at a meeting of shareholders, or
6 to express consent or dissent in writing to any corporate action without a meeting of ^f
7 shareholders, may authorize another person to act for the shareholder by appointing
8 the person as proxy. ^{Insert 2-3} ^{as a valid means to make such an appointment:}

9 (b) Without limiting the manner in which a shareholder may appoint a proxy
10 under par. (a), a shareholder or the shareholder's authorized officer, director,
11 employe, agent or attorney-in-fact may ^{use} do any of the following:

12 1. Appoint a proxy in writing by signing ~~the writing~~ or causing his or her ^{an appointment form}
13 ~~signature~~ ^{the shareholder's} to be affixed to ~~the writing~~ by any reasonable means, including, but not
14 limited to, by facsimile signature. ^{authorized by the person who will be}

15 2. Appoint a proxy by transmitting or authorizing the transmission of an
16 ^{of the appointment} electronic transmission to the person who will be appointed as proxy or to a proxy
17 solicitation firm, proxy support service organization or like agent ^{appointed as proxy}

18 ^{to receive the transmission} Every electronic transmission shall contain, or be
19 accompanied by, information that can be used to reasonably determine that the
20 shareholder transmitted or authorized the transmission of the electronic
21 transmission. Any person charged with determining whether a shareholder
22 transmitted or authorized the transmission of the electronic transmission shall
23 specify the information upon which the determination is made.

24 (c) Any copy, facsimile telecommunication or other reliable reproduction of the
25 information in the ~~writing~~ ^{appointment form} under par. (b) 1. or the electronic transmission under par. ^f

ASSEMBLY BILL 60

appointment form

1 (b) 2. may be substituted or used in lieu of the original writing or electronic
2 transmission for any purpose for which the original writing or electronic
3 transmission could be used, but only if the copy, facsimile telecommunication or other
4 reliable reproduction is a complete reproduction of the information in the original
5 writing or electronic transmission.

6 SECTION 3. 180.0722 (7) of the statutes is amended to read:

7 180.0722 (7) Subject to s. 180.0724 and to any express limitation on the proxy's
8 authority ^{stated} appearing on the face of the appointment form in ^{the} or on the form of
9 appointment, a corporation may accept the proxy's vote or other action as that of the
10 shareholder making the appointment.

11 SECTION 4. 180.0722 (8) (a) of the statutes is amended to read:

12 180.0722 (8) (a) Notwithstanding sub. (4), may be revoked at any time by
13 openly stating the revocation at a shareholder meeting or appointing a new proxy in
14 writing the manner provided under sub. (2) (b).

15 ~~SECTION 5. 180.0724 (1) of the statutes is renumbered 180.0724 (1r).~~

16 Replaced by
17 amended definition
18 in sec. C10.3(16)

16 SECTION 6. 180.0724 (1e) of the statutes is created to read:

17 180.0724 (1e) In this section, "signed" means the placing of the shareholder's
18 name or other authorization, by the shareholder or the shareholder's authorized
19 officer, director, employee, agent or attorney-in-fact, in or on the proxy appointment
20 form by manual signature or by electronic transmission in the manner provided
21 under s. 180.0722 (2).

(END)

22 , or the placing of a name not corresponding to the name of the shareholder under the circumstances provided for in sub. (2),

(whether by manual, facsimile, conformed or electronic signature, electronic transmission, or otherwise)

1999 Assembly Bill 60

Insert 2-1

not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient.

Insert 2-2

Section 2. 180.0103(16) of the statutes is amended to read:

180.0103(16) "Signed" or "signature" includes any manual, facsimile, conformed or electronic signature or any symbol executed or adopted by a party with present intention to authenticate a writing or electronic transmission.

Insert 2-3

An appointment of a proxy may be in durable form as provided in s. 243.07.

Changes to subsections 180.0722 (3) and (4) and 180.0724 (4) and (5) to be added to AB 60

Wisconsin Statutes Regarding Proxy Voting Prior to Changes Proposed in 1999 Assembly Bill 60 to Authorize Electronic Proxy Voting

a signed appointment form or an electronic transmission of the appointment is

180.0722 Proxies. (1) A shareholder may vote his or her shares in person or by proxy.

(2) A shareholder may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form, either personally or by his or her attorney-in-fact. An appointment of a proxy may be in durable form as provided in s. 243.07.

(3) An appointment of a proxy is effective when received by the secretary or other officer or agent of the corporation authorized to tabulate votes. An appointment is valid for 11 months from the date of its signing unless a different period is expressly provided in the appointment form.

(4) (a) An appointment of a proxy is revocable by the shareholder unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include, but are not limited to, the appointment of any of the following:

1. A pledgee.
2. A person who purchased or agreed to purchase the shares.
3. A creditor of the corporation who extended its credit under terms requiring the appointment.
4. An employe or officer of the corporation whose employment contract requires the appointment.
5. A party to a voting agreement created under s. 180.0731.

(b) An appointment made irrevocable under par. (a) is revoked when the interest with which it is coupled is extinguished.

(5) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless the secretary or other officer or agent of the corporation authorized to tabulate votes receives notice of the death or incapacity before the proxy exercises his or her authority under the appointment.

(6) Notwithstanding sub. (4), a transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when he or she acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or, if the shares are without certificates, on the information statement for the shares.

(7) Subject to s. 180.0724 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation may accept the proxy's vote or other action as that of the shareholder making the appointment.

(8) A proxy appointed in connection with a shareholder vote under s. 180.1150 (5):

(a) Notwithstanding sub. (4), may be revoked at any time by openly stating the revocation at a shareholder meeting or appointing a new proxy in writing.

(b) Shall be solicited and appointed apart from the sale of or offer to purchase shares of the resident domestic corporation, as defined in s. 180.1150 (1) (c).

(c) May not be solicited sooner than 30 days before the meeting called under s. 180.1150 (5), unless otherwise agreed in writing by the person acting under s. 180.1150 and the directors of the resident domestic corporation, as defined in s. 180.1150 (1) (c).

History: 1989 a. 303; 1997 a. 27.

180.0723 Shares held by nominees. (1) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(2) The procedure may set forth all of the following:

- (a) The types of nominees to which it applies.
- (b) The rights or privileges that the corporation recognizes in a beneficial owner.
- (c) The manner in which the nominee selects the procedure.
- (d) The information that must be provided when the procedure is selected.
- (e) The period for which selection of the procedure is effective.
- (f) Other aspects of the rights and duties created.

History: 1989 a. 303.

180.0724 Acceptance of instruments showing shareholder action. (1) If the name signed on a vote, consent, waiver or proxy appointment corresponds to the name of a shareholder, the corporation, if acting in good faith, may accept the vote, consent, waiver or proxy appointment and give it effect as the act of the shareholder.

(2) If the name signed on a vote, consent, waiver or proxy appointment does not correspond to the name of its shareholder, the corporation, if acting in good faith, may accept the vote, consent, waiver or proxy appointment and give it effect as the act of the shareholder if any of the following apply:

(a) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity.

(b) The name signed purports to be that of a personal representative, administrator, executor, guardian or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation is presented with respect to the vote, consent, waiver or proxy appointment.

(c) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation is presented with respect to the vote, consent, waiver or proxy appointment.

(d) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder is presented with respect to the vote, consent, waiver or proxy appointment.

(e) Two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coowners and the person signing appears to be acting on behalf of all coowners.

(3) The corporation may reject a vote, consent, waiver or proxy appointment if the secretary or other officer or agent of the corporation who is authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(4) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver or proxy appointment in good faith and in accordance with this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, waiver or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

History: 1989 a. 303.

or s. 180.0722 (2)

Quarles & Brady

May 11, 1999

RAC
/

To: Joseph D. Masterson
Catherine S. Powell

Copy: Anthony H. Driessen
Thomas J. Fonfara

From: Bruce C. Davidson

Re: Electronic Proxy Voting and Electronic Notice Legislation

Attached for your review are copies of:

1. The latest revised mark-up of 1999 Assembly Bill 60, the electronic proxy voting bill which is pending in the Legislature, on which I have marked certain additional changes in response to your comments on the version I circulated with my memo dated April 30, 1999. The proposed changes (i) indicate that the definition of "electronic transmission" also defines the term "electronically transmitted," which term is used in the proposed electronic notice provision, (ii) replace the proposed definition of "signed" in Section 180.0724 with an amendment to the definition of "signed" in Section 180.0103(16) to cover electronic signatures and electronic transmissions, based in part on the Model Act definition, (iii) make the language change in Section 180.0722(2)(b)2 suggested by Joe, and (iv) delete the words "from the date of its signing" from the proposed amended Section 180.0722(3), so that the affected sentence would provide, like the Model Act, that an appointment is valid for 11 months (unless a different period is expressly provided in the appointment), without indicating when the 11-month period begins to run.
2. The proposed electronic notice language from the State Bar that Tom faxed to me on May 4, 1999, on which I have indicated the changes suggested by Catherine, Joe and myself. The proposed changes are based largely on the changes to the Model Act notice provisions that were adopted along with the changes regarding electronic filings, a copy of which was attached to my memo dated April 30, 1999. In connection with the changes to Section 180.0141, the necessary companion amendment to the definition of "deliver" in Section 180.0103(6) would be made to give meaning to the use of the phrase "method of delivery" in the proposed amendment to Section 180.0141(3), which includes, among other things, delivery by

electronic transmission. The proposed changes also correct the numbering of the proposed amendment to Section 180.0141 to correspond with the current statutory numbering which appeared to have been inadvertently changed in the draft we received from Tom.

Tom and Tony, this memo and my memo dated April 30, 1999, along with the copies of the actions of the ABA Committee on Corporate Laws adopting the Model Act changes regarding electronic proxy voting and electronic notice to shareholders that were attached to my memo dated April 30, 1999, should hopefully give you what you need to explain the changes we are proposing to AB 60 and the proposed electronic notice language.

The State Bar Committee may also wish to give consideration, if it has not already, to the amendments to the official comments to the affected Model Act provisions that were adopted by the ABA Committee on Corporate Laws in connection with the changes to the Model Act provisions regarding electronic proxy appointments and electronic notice to shareholders.

Also attached, for the information of Tom and Tony, is the handout I used at the Garrett Corporate and Securities Law Institute in April entitled "State Statutes Allowing Appointment of a Proxy by Electronic Means," which consists of a collection of the operative provisions of the statutes of states which have provided for the appointment of a proxy by electronic transmission or other means than a signed writing, the Model Business Corporation Act provision and a chart which shows which states have statutes most closely resembling the Model Act or Delaware or neither. Somewhat surprisingly, most of the states that have amended their statutes to authorize electronic transmission of proxy appointments do not define electronic transmission. As noted on page 12 of the handout, Connecticut, Mississippi, Missouri and Wyoming have included such a definition in their statutes based on the Model Act definition. We have suggested that the definition of "electronic transmission" in AB 60 be revised to include language from the Model Act definition. This definition would then apply for purposes of both the appointment of a proxy by electronic transmission and the giving of notice by a corporation to its shareholders via electronic transmission.

Note, however, that the Model Act official comment to the definition of "electronic transmission," set out on page 12 of the handout, indicates that the phrase is not intended to include voice mail and other similar systems which do not automatically provide for the retrieval of data of printed or typewritten form. Accordingly, if this interpretation were to be adopted in Wisconsin, telephonic transmission of a proxy appointment by touchtone telephone would presumably be valid, but an appointment via a voice mail message might not be. However, the suggested changes to the Section 180.0141 notice provisions, based on the Model Act changes to the notice statute, would provide that the leaving of notice via voice mail was a valid means of giving notice. (As noted above, notice by electronic transmission is authorized by the revised proposed amendment to Section 180.0141(3) (as correctly numbered) by the language therein which permits notice to be communicated in person, by mail or "other method of delivery," since the companion amendment to the defined term "delivery" includes delivery by electronic transmission).

Memorandum

Please call if you have any questions or would like to discuss these matters.

Attachments

5/11/99

Amendment to s. 180.0141 to Provide For Electronic Notice to Shareholders

180.0141 Notice. (1) This section applies to notice that is required under this chapter and that is made subject to this section by express reference to this section.

(2) (a) A person shall give notice in writing except as provided in par. (b). For purposes of this section, notice by electronic transmission is written notice. (b) A person may give oral notice if oral notice is permitted by the articles of incorporation or bylaws and not otherwise prohibited by this chapter.

(3) Except as provided in s. 180.0721(4) or unless otherwise provided in the articles of incorporation or bylaws, notice may be communicated in person, by telephone, telegraph, teletype, facsimile or other form of wire or wireless communication, or by mail or private carrier, or by electronic transmission, and if these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television or other form of public broadcast communication. Mail or other method of delivery; or by telephone, answering machine or other electronic means. If

(4) (a) Written notice to a domestic corporation or a foreign corporation authorized to transact business in this state may be addressed to its registered agent at its registered office or to the domestic corporation or foreign corporation at its principal office. With respect to a foreign corporation that has not yet filed an annual report under s. 180.1622, the address of the foreign corporation's principal office may be determined from its application for a certificate of authority. (including voice mail, answering machine or answering device)

(5) (a) Except as provided in par. (b) and ss. 180.0807(2) and 180.0843(1), written notice is effective at that earliest of the following:

- (1) When received.
- (2) Five days after its deposit in the U.S. mail, if mailed postpaid and correctly addressed.
- (3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.
- (4) On the effective date specified in the articles of incorporation or bylaws. if mailed postpaid and

(i) (b) Written notice by a domestic corporation or foreign corporation to its shareholder is effective when mailed or when transmitted electronically and may be addressed to the shareholder's address, including the shareholder's electronic mail address when notice is communicated by electronic transmission, shown in the domestic corporation's or foreign corporation's current record of shareholders.

(c) Oral notice is effective when communicated. or (ii) when electronically transmitted to the shareholder in a manner authorized by the shareholder.

[Messages by voice mail, answering machine or answering device are deemed communicated when the message is left by the sender.]?

History

Section 180.0141 applies to notice required under the Wisconsin Business Corporation Law. The proposed amendments to s. 180.0141 would allow a corporation to provide notice to its shareholders by electronic transmission.

See attached companion amendment to § 180.0103 (b).

001.513285.1

Corporation amendment to § 180.0103(b)

1.22(c) Section 1.27 provides that the certificate is conclusive evidence only that the original document is on file. The limited effect of the certificate is consistent with the ministerial filing obligation imposed on the secretary of state under the Model Act. The certificate from the secretary of state, as well as the copy of the document, may be delivered by electronic transmission.

§ 1.29 PENALTY FOR SIGNING FALSE DOCUMENT

OFFICIAL COMMENT

[No change to black letter law]

Section 1.29 makes a criminal offense for any person to sign a document that he knows is false in any material respect with intent that the document be submitted for filing to the secretary of state. As provided in section 1.40(22A), "sign" includes any manual, facsimile, conformed, or electronic signature.

Section 1.29(b) is keyed to the classification of offenses provided by the Model Penal Code. If a state has not adopted this classification, the dollar amount of the fine should be substituted for the misdemeanor classification.

§ 1.40 ACT DEFINITIONS

(9) "Deliver" includes mail or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission.

(7A) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

(22A) "Sign" or "signature" includes any manual, facsimile, conformed or electronic signature.

[No change to paragraphs 1-4 and 6-26]

OFFICIAL COMMENT

Section 1.40 collects in a single section definitions of terms used throughout the Model Act. Subchapters and sections of the Act in a few instances contain specialized definitions applicable only to those subchapters or sections.

Most of the definitions of section 1.40 are drawn directly from earlier versions of the Model Act and are reasonably self-explanatory. A number of definitions, however, are new or deserve further explanation.

[No change to paragraphs 1-3]

"Electronic transmission" or "electronically transmitted" includes both communication systems which in the normal course produce paper, such as telegrams and facsimiles, as well as communication systems which transmit and permit the retention of data which is then subject to subsequent retrieval and reproduction in written form. Electronic transmission is intended to be broadly construed and include the evolving methods of electronic delivery, including electronic transmissions between computers via modem, as well as data stored and delivered on magnetic tapes or computer diskettes. The phrase is not intended to include voice mail and other similar systems which do not automatically provide for the retrieval of data in printed or typewritten form.

7. The definition of "sign" or "signature" includes manual, facsimile, conformed or electronic signatures. In this regard, it is intended that any manifestation of an intention to execute or authenticate a document will be accepted. Electronic signatures are expected to encompass any methodology approved by the secretary of state for purposes of verification of the authenticity of the document. This could include a typewritten conformed signature or other electronic entry in the form of a computer data compilation of any characters or series of characters comprising a name intended to evidence authorization and execution of a document.

[No change to existing paragraphs 4 through 9, except renumbering]

§ 1.41 NOTICE

(a) Notice under this Act must be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission is written notice.

(b) Notice may be communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier mail or other method of delivery, or by telephone, voice mail or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television, or other form of public broadcast communication.

(c) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective when mailed (i) upon deposit in the United States mail, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders, or (ii) when electronically transmitted to the shareholder in a manner authorized by the shareholder.

CLASSIFICATION OF STATUTES

<u>Very similar to Model Act*</u>	<u>Follows Delaware</u>	<u>Different</u>
Connecticut (adds three words)	Colorado	California
Mississippi (differs only in punctuation)	Illinois	Kentucky
Wyoming (adds "either manually or in facsimile")	Indiana	Maryland (see proposed amendment)
	Louisiana	Minnesota
	Michigan	New Jersey (but most close to Delaware)
	Missouri (but expressly includes telephonic transmission and tacks on the Model Act definition of "electronic transmission")	North Carolina
	Nevada	North Dakota
	New York (but uses a "reasonably determined" qualifier)	Ohio
	Oklahoma	Pennsylvania
	Rhode Island	
	Tennessee	Texas
	Virginia	Utah (most close to Delaware)

* None are identical to the Model Act.

**19TH ANNUAL RAY GARRETT, JR. CORPORATE
AND SECURITIES LAW INSTITUTE**

**April 22-23, 1999
Chicago, Illinois**

**PROXY VOTING AND THE INTERNET WORKSHOP
STATE STATUTES ALLOWING APPOINTMENT OF A
PROXY BY ELECTRONIC MEANS**

**Bruce C. Davidson
Quarles & Brady LLP
Milwaukee, Wisconsin**

Prepared with the assistance of Catherine S. Powell and Jennifer L. Jordan

PROXY VOTING AND THE INTERNET WORKSHOP
STATE STATUTES ALLOWING APPOINTMENT OF A
PROXY BY ELECTRONIC MEANS

The following is (i) a collection of the operative provisions of the statutes of states which have provided for the appointment of a proxy by electronic transmission or other means than a signed writing (which may, for brevity, be incomplete excerpts), (ii) the Model Business Corporation Act provision, and (iii) a chart showing which states have statutes most closely resembling the Model Act or Delaware or neither.

Statutes	3
Model Business Corporation Act	12
Classification of Statutes	13

STATUTES

California (Cal. Corp. Code § 178)

“Proxy means a written authorization signed or an electronic transmission authorized by a shareholder or the shareholder’s attorney in fact giving another person or persons power to vote with respect to the shares of such shareholder. “Signed” . . . means the placing of the shareholder’s name or other authorization on the proxy (whether by manual signature, typewriting, telegraphic, or electronic transmission or otherwise) by the shareholder or the shareholder’s attorney in fact.

A proxy may be transmitted by an oral telephonic transmission if it is submitted with information from which it may be determined that the proxy was authorized by the shareholder, or his or her attorney in fact.”

Colorado (Colo. Rev. Stat. § 7-107-203(2)(b))

“A shareholder may appoint a proxy by transmitting or authorizing the transmission of a telegram, teletype, or other electronic transmission providing a written statement of the appointment to the proxy, to a proxy solicitor, proxy support service organization, or other person duly authorized by the proxy to receive appointments as agent for the proxy, or to the corporation; except that the transmitted appointment shall set forth or be transmitted with written evidence from which it can be determined that the shareholder transmitted or authorized the transmission of the appointment.”

Comment: The legislative notes state that the roots of the revisions which added the electronic transmission provisions can be found in Delaware General Corporation Law § 212(c).

Connecticut (Conn. Gen. Stat. § 33-706(b))

“A shareholder or his agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission of the appointment. An electronic transmission must contain or be accompanied by information from which one can determine that the shareholder, the shareholder’s agent or the shareholder’s attorney-in-fact authorized the electronic transmission.”

Delaware (Gen. Corp. Law Title 8 § 212(c))

“Without limiting the manner in which a shareholder may authorize another person or persons to act for him as proxy pursuant to subsection (b) of this section, the following shall constitute a valid means by which a stockholder may grant such authority:

(2) A stockholder 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 it can be determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder.”

Illinois (Public Act 90-666 S.B. 1674; 805 Ill. Comp. Stat. 5/7.50(a))

“Without limiting the manner in which a shareholder may appoint such a proxy pursuant to this Section 7.50, the following shall constitute valid means by which a shareholder may make such an appointment:

(2) A shareholder may transmit or authorize the transmission of a telegram, cablegram, or other means of electronic transmission; provided that any such transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram, or other electronic transmission was authorized by the shareholder.”

Indiana (Ind. Code § 23-1-30-3(b)(2))

“A shareholder may transmit or authorize the transmission of an electronic submission. The electronic submission:

- (A) may be transmitted by any electronic means, including data and voice telephonic communications and computer network;
- (B) may be transmitted to:
 - (i) the person who will be the holder of the proxy;
 - (ii) a proxy solicitation firm; or
 - (iii) a proxy support service organization or similar agency authorized by the person who will be the holder of the proxy to receive the electronic submission; and
- (C) must either contain or be accompanied by information from which it can be determined that the electronic submission was transmitted by or authorized by the shareholder.”

Kentucky (Ky. Rev. Stat. § 271B.7-220(2))

“... a telegram or cablegram appearing to have been transmitted by the proper person, or a photographic, photostatic, or equivalent reproduction of a writing appointing a proxy shall be deemed to be a sufficient, signed appointment form.”

Comment: The commentary states that this language was added to make clear that proxies may be transmitted electronically and used Ohio Rev. Code Ann. § 1701.48(B) as its basis. Ohio uses essentially the same language as Kentucky for an allowable method of proxy appointment. North Carolina and Texas use similar language.

Pennsylvania takes a similar approach, providing for permissive or mandatory recognition of certain forms of proxy appointment depending upon the absence or presence of a confidential identification number unique to the shareholder.

See those states' statutes herein.

Louisiana (La. Rev. Stat. § 12:75(C)(6))

“Except as otherwise provided in the articles or bylaws; without limiting the manner in which a shareholder may authorize another person to act for him as proxy, pursuant to this Subsection, the following shall constitute a valid means by which a shareholder may grant such authority:

(b) A shareholder 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; however, any such telegram, cablegram, or other means of electronic transmission shall be submitted with information from which it can be determined that the telegram, cablegram, or other electronic transmission was authorized by the shareholder.”

Maryland

Md. Code § 2-507(c)(3) currently provides:

“A stockholder may authorize another person to act as proxy by transmitting, or authorizing the transmission of, a telegram, cablegram, datagram, or other means of electronic transmission to the person authorized to act as proxy or to a proxy solicitation firm, proxy support service organization, or other person authorized by the person who will act as proxy to receive the transmission.”

The proposed amendment(House Bill 776) to § 2-507(c) is:

“(3) (I) [A] SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, A stockholder may authorize another person to act as proxy by transmitting, or authorizing the transmission of, AN AUTHORIZATION FOR THE PERSON TO ACT AS PROXY TO:

1. THE PERSON AUTHORIZED TO ACT AS PROXY; OR
2. ANY OTHER PERSON AUTHORIZED TO RECEIVE THE PROXY AUTHORIZATION ON BEHALF OF THE PERSON AUTHORIZED TO ACT AS THE PROXY, INCLUDING A PROXY SOLICITATION FIRM OR PROXY SUPPORT SERVICE ORGANIZATION.

(II) THE AUTHORIZATION MAY BE TRANSMITTED BY a telegram, cablegram, datagram, ELECTRONIC MAIL, or ANY other ELECTRONIC OR TELEPHONIC means [of electronic transmission to the person authorized to act as proxy or to a proxy solicitation firm, proxy support service organization, or other person authorized by the person who will act as proxy to receive the transmission].

Michigan (Mich. Comp. Laws § 450.1421(3))

“Without limiting the manner in which a shareholder may authorize another person or persons to act for him or her as proxy pursuant to subsection (1), the following methods constitute a valid means by which a shareholder may grant authority to another person to act as proxy:

- (b) Transmitting or authorizing the transmission of a telegram, cablegram or other means of electronic transmission to the person who will hold the proxy or to a proxy solicitation firm, proxy support service organization or similar agent fully authorized by the person who will hold the proxy to receive that transmission. Any telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the shareholder.”

Minnesota (Minn Stat. § 302A.449(1)(a))

“ [A] shareholder of a publicly held corporation may cast or authorize the casting of a vote by a proxy by transmitting to the corporation or the corporation’s duly authorized agent before the meeting, an appointment of a proxy by means of a telegram, cablegram, or any other form of electronic transmission, including telephonic transmission, whether or not accompanied by written instructions of the shareholder. The electronic transmission must set forth or be submitted with information from which it can be determined that the appointment was authorized by the shareholder.”

Mississippi (Miss. Code Ann. § 79-4-7.22(b))

“A shareholder or his agent or attorney in fact may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by electronic transmission. An electronic transmission must contain or be accompanied by information from which one can determine that the shareholder, the shareholder’s agent or the shareholder’s attorney-in-fact authorized the electronic transmission.”

Missouri (Mo. Stat. § 351.245(5))

“Without limiting the manner in which a shareholder may authorize a person to act for the shareholder as proxy pursuant to this section, the following shall constitute a valid means by which a shareholder may grant such authority:

(2) “A shareholder may authorize another person to act for the shareholder as proxy by transmitting or authorizing the transmission of a telegram, cablegram, facsimile or other means of electronic transmission, or by telephone, 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, facsimile or other means of electronic transmission, or telephonic transmission shall either set forth or be submitted with information from which it can be determined that the telegram, cablegram or facsimile or other electronic transmission, or telephonic transmission was authorized by the shareholder. . . . Electronic transmission shall mean any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.”

Nevada (Nev. Rev. Stat. § 78.355(2)(b))

“A stockholder 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 firm which solicits proxies or like agent who is authorized by the person who will be the holder of the proxy to receive the transmission. Any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder.”

New Jersey (N.J. Stat. Ann. 14A:5-19(1))

“Every proxy shall be executed in writing by the shareholder or his agent, except that a proxy may be given by a shareholder or his agent by telegram, cable, telephonic transmission or

Oklahoma (Okl. Stat. Title 18 § 1057(C))

“Without limiting the manner in which a shareholder may authorize another person or persons to act as a proxy pursuant to subsection B of this section, the following shall constitute a valid means by which a shareholder may grant such authority:

- (2) A shareholder may authorize another person or persons to act for him or her 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 the transmission; provided, that any such telegram, cablegram or other means of electronic transmission must either set forth, or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the shareholder.”

Pennsylvania (Pa. Stat. Ann. Title 15 § 1759(b))

“A telegram, telex, cablegram, datagram or similar transmission from a shareholder or attorney-in-fact, or a photographic, facsimile or similar reproduction of a writing executed by a shareholder or attorney-in-fact:

- (1) may be treated as properly executed for purposes of this subsection; and
- (2) shall be so treated if it sets forth a confidential and unique identification number or other mark furnished by the corporation to the shareholder for the purposes of a particular meeting or transaction.”

Rhode Island (R.I. Gen. Laws § 7-1.1-31(c))

“Without limiting the manner in which a stockholder may authorize another person or persons to act for him or her as proxy pursuant to subsection (c) of this section, the following shall constitute a valid means by which a stockholder may grant such authority:

- (1)(B) A stockholder may authorize another person or persons to act for him or her 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 it can be determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder.”

(2) A shareholder 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 can determine that the telegram, cablegram or other electronic transmission was authorized by the shareholder.”

Wyoming (Wyo. Stat. Ann. §17-16-722(b))

“A shareholder or his agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the shareholder by signing, either manually or in facsimile, an appointment form or by an electronic transmission. An electronic transmission must contain or be accompanied by information from which one can determine that the shareholder, the shareholder’s agent, or the shareholder’s attorney-in-fact authorized the electronic transmission.”

MODEL BUSINESS CORPORATION ACT

§ 7.22(b) “A shareholder or his agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form, or by an electronic transmission. An electronic transmission must contain or be accompanied by information from which one can determine that the shareholder, the shareholder’s agent, or the shareholder’s attorney-in-fact authorized the transmission.”

§ 1.40(7A) “Electronic transmission” or “electronically transmitted” means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.”

Comment: Connecticut, Mississippi, Missouri and Wyoming have included a definition of “electronic transmission” in their statutes based on the Model Act definition. The Official Comment to Model Act Section 1.40(7A) was added to the Model Act in 1997 in connection with the adoption of amendments to the Model Act pertaining to the use of electronic means for transmitting and filing corporate documents with the secretary of state (not in connection with the earlier amendments to the Model Act adopted in 1996 to authorize the appointment of a proxy by an electronic transmission which first included a definition of “electronic transmission”). The Official Comment reads as follows:

“Electronic transmission” or “electronically transmitted” includes both communication systems which in the normal course produce paper, such as telegrams and facsimiles, as well as communication systems which transmit and permit the retention of data which is then subject to subsequent retrieval and reproduction in written form. Electronic transmission is intended to be broadly construed and include the evolving methods of electronic delivery, including electronic transmissions between computers via modem, as well as data stored and delivered on magnetic tapes or computer diskettes. The phrase is not intended to include voice mail and other similar systems which do not automatically provide for the retrieval of data in printed or typewritten form.”



LD-Note
State of Wisconsin
1999-2000 LEGISLATURE

Seon

LRB-067674

RAC:kmg/lp

LRB50077/1
RAC:kmg

SSA
to

1999 ASSEMBLY BILL 60

January 21, 1999 - Introduced by Representatives JENSEN, PLALE and WARD.
Referred to Committee on Financial Institutions.

Gen. Cat.

1 AN ACT to renumber 180.0724 (1); to amend 180.0722 (7) and 180.0722 (8) (a);
2 to repeal and recreate 180.0722 (2); and to create 180.0103 (7m) and
3 180.0724 (1e) of the statutes; relating to: the appointment of a proxy by a
4 shareholder in a business corporation.

Analysis by the Legislative Reference Bureau

~~Under current law, a shareholder in a business corporation may vote his or her shares in the corporation by proxy. To appoint a proxy, a shareholder or his or her attorney-in-fact must sign an appointment form.~~

~~This bill permits a shareholder to appoint a proxy either in writing or by transmitting or authorizing the transmission of an electronic transmission to the person who will be appointed as proxy. Under the bill, "electronic transmission" means internet transmission, touch-tone telephonic transmission, the transmission of a telegram or cablegram or any other similar form of reliable communication.~~

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 SECTION 1. 180.0103 (7m) of the statutes is created to read:

ASSEMBLY BILL 60

Insert 2-4

1 180.0103 (7m) "Electronic transmission" means internet transmission,
2 touch-tone telephonic transmission, transmission of a telegram or cablegram or any
3 other similar form of reliable communication.

4 SECTION 2. 180.0722 (2) of the statutes is repealed and recreated to read:

5 180.0722 (2) (a) A shareholder entitled to vote at a meeting of shareholders, or
6 to express consent or dissent in writing to any corporate action without a meeting of
7 shareholders, may authorize another person to act for the shareholder by appointing
8 the person as proxy.

Insert 2-8

9 (b) Without limiting the manner in which a shareholder may appoint a proxy
10 under par. (a), a shareholder or the shareholder's authorized officer, director,

11 employe, agent or attorney-in-fact may use any of the following as a valid means to make such an appointment

12 1. Appoint a proxy in writing by signing the writing or causing his or her
13 signature to be affixed to the writing by any reasonable means, including, but not
14 limited to, by facsimile signature. an appointment form

15 2. Appoint a proxy by transmitting or authorizing the transmission of an
16 electronic transmission to the person who will be appointed as proxy or to a proxy
17 solicitation firm, proxy support service organization or like agent appointed as proxy

18 to receive the transmission. Every electronic transmission shall contain, or be
19 accompanied by, information that can be used to reasonably determine that the
20 shareholder transmitted or authorized the transmission of the electronic
21 transmission. Any person charged with determining whether a shareholder
22 transmitted or authorized the transmission of the electronic transmission shall
23 specify the information upon which the determination is made.

24 (c) Any copy, facsimile telecommunication or other reliable reproduction of the
25 information in the writing under par. (b) 1. or the electronic transmission under par.

appointment form

use of voice system authorized to receive the transmission by the person who

ASSEMBLY BILL 60

appointment form

1 (b) 2. may be substituted or used in lieu of the original ~~writing~~ or electronic
 2 transmission for any purpose for which the original ~~writing~~ or electronic
 3 transmission could be used, but only if the copy, facsimile telecommunication or other
 4 reliable reproduction is a complete reproduction of the information in the original
 5 ~~writing~~ or electronic transmission.

6 SECTION 3. 180.0722 (7) of the statutes is amended to read:

7 ~~180.0722 (7) Subject to s. 180.0724 and to any express limitation on the proxy's
 8 authority appearing on the face of the appointment form in or on the form of
 9 appointment, a corporation may accept the proxy's vote or other action as that of the
 10 shareholder making the appointment.~~

11 SECTION 4. 180.0722 (8) (a) of the statutes is amended to read:

12 180.0722 (8) (a) Notwithstanding sub. (4), may be revoked at any time by
 13 openly stating the revocation at a shareholder meeting or appointing a new proxy in
 14 writing the manner provided under sub. (2) (b).

15 SECTION 5. 180.0724 (1) of the statutes is renumbered 180.0724 (1r).

16 SECTION 6. 180.0724 (1e) of the statutes is created to read:

17 ~~180.0724 (1e) In this section, "signed" means the placing of the shareholder's
 18 name or other authorization, by the shareholder or the shareholder's authorized
 19 officer, director, employe, agent or attorney in fact, in or on the proxy appointment
 20 form by manual signature or by electronic transmission in the manner provided
 21 under s. 180.0722 (2).~~

Insert 3-11

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs00777?ins

.....

1 **Insert 2-4:** ✓

2 180.0103 (7m) "Electronic transmission" means internet transmission,
3 telephonic transmission, electronic mail, transmission of a telegram, cablegram or
4 datagram or any other form or process of communication that does not directly
5 involve the physical transfer of paper and that is suitable for the retention, retrieval
6 and reproduction of information by the recipient.

7 **SECTION 1.** 180.0103 (16) of the statutes is amended to read:

8 180.0103 (16) "Signed" or "signature" includes any manual, facsimile,
9 conformed or electronic signature or any symbol executed or adopted by a party with
10 present intention to authenticate a writing or electronic transmission.

History: 1989 a. 303; 1991 a. 16, 221; 1993 a. 112; 1995 a. 27, 271.

11 **Insert 2-8:**

12 *NCB* An appointment of a proxy may be in durable form as provided in s. 243.07.

13 **Insert 3-11:** ✓

14 ~~**SECTION 2.** 180.0722 (7) of the statutes is amended to read:~~

15 180.0722 (7) Subject to s. 180.0724 and to any express limitation on the proxy's
16 authority ~~appearing on the face of~~ stated in the appointment form or electronic
17 transmission, a corporation may accept the proxy's vote or other action as that of the
18 shareholder making the appointment.

History: 1989 a. 303; 1997 a. 27

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0077/rdn

img

Because the phrase "electronically transmitted" is not used in ch. 180 there is no need to define the phrase in proposed s. 180.0103 (7m).

Rick Champagne
Legislative Attorney
Phone: (608) 266-9930
E-mail: Rick.Champagne@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0077/1dn
RAC:kmg:kjf

May 26, 1999

Because the phrase "electronically transmitted" is not used in ch. 180 there is no need to define the phrase in proposed s. 180.0103 (7m).

Rick Champagne
Legislative Attorney
Phone: (608) 266-9930
E-mail: Rick.Champagne@legis.state.wi.us

Memorandum**Quarles & Brady**

June 1, 1999

VIA FACSIMILE

To: Thomas J. Fonfara

Copy: Anthony H. Driessen
Conrad G. Goodkind
Joseph D. Masterson
Catherine S. Powell

From: Bruce C. Davidson

Re: Electronic Proxy Voting and Electronic Notice Legislation -- Draft of Modified AB-60

Rick:
Please call if
you have questions
or comments.
Chad Taylor
1-5643

A few comments with respect to the draft of modified AB-60 attached to your May 28, 1999 memorandum to Ted Jankowski at Johnson Controls:

1. With respect to Rick Champagne's drafting comment that there is no need to define the phrase "electronically transmitted" because it is not used in Chapter 180, that term would be used in the proposed companion amendment to Section 180.0141 to authorize electronic notice to shareholders. See the proposed amendment to Section 180.0141(5)(b)(ii) attached.
2. What happened to the companion changes to Sections 180.0722(3) and (4) and Sections 180.0724(4) and (5) which were attached to the mark-up of AB-60 attached to my memos dated April 30, 1999 (which discussed those changes in the first paragraph) and May 11, 1999? These changes, a copy of which is attached, conform to the other changes being made by AB-60 and parallel the changes made in the corresponding provisions of Model Business Corporation Act on which our statute is based.
3. Mr. Champagne's revised draft, designated Senate Substitute Amendment, to 1999 Assembly Bill 60, makes certain other minor language changes from what we had proposed, which I presume he has deemed to be appropriate.

Of course, when amending certain statutes, care has to be taken to make appropriate parallel amendments to other related statutes. The suggested mark-ups of the electronic proxy voting legislation and the proposed electronic notice to shareholders changes attached to my memo of May 11, 1999 were our attempt to dovetail the electronic proxy and notice provisions and conform them, as appropriate, to the corresponding provisions of the Model Business Corporation Act. If anyone suggests further changes, the effect of such changes on related provisions should be

Memorandum

considered. The discussions in my memos dated April 30, 1999 and May 11, 1999, and the attachments thereto, were intended to be helpful to anyone who is considering the proposed legislative changes in that they discuss the origin of and reasons for the proposed changes, the corresponding changes to the Model Business Corporation Act, and related matters.

Please let me know if you have any questions or if I can be of further assistance.

Attachments

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB:0007:leg
RAC:kmg:ajf

May 26, 1999

BCO
6/1/99

Because the phrase "electronically transmitted" is not used in ch. 180 there is no need to define the phrase in proposed s. 180.0103 (7m).

Rick Champagne
Legislative Attorney
Phone: (608) 266-9930
E-mail: Rick.Champagne@legis.state.wi.us

Would be used in the proposed amendments to § 180.0141 to authorize electronic notice to shareholders. See 180.0141(5)(b)(ii)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB:00771
RAC kmg k/f

BCD
6/1/99

SENATE SUBSTITUTE AMENDMENT,
TO 1999 ASSEMBLY BILL 60

Comparison

[Would be used in proposed amendments to §180.0141 to authorize electronic notice to shareholders. See proposed amendment to §180.0141 (5)(b)(ii) - copy attached

1 AN ACT to amend 180.0103 (16), 180.0722 (7) and 180.0722 (8)(a); to repeal and
2 recreate 180.0722 (2); and to create 180.0103 (7m) of the statutes; relating
3 to: the appointment of a proxy by a shareholder in a business corporation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

or "electronically transmitted"

4 SECTION 1. 180.0103 (7m) of the statutes is created to read:
5 180.0103 (7m) "Electronic transmission" means internet transmission,
6 telephonic transmission, electronic mail transmission, transmission of a telegram,
7 cablegram or datagram or any other form or process of communication that does not
8 directly involve the physical transfer of paper and that is suitable for the retention,
9 retrieval and reproduction of information by the recipient.

10 SECTION 2. 180.0103 (16) of the statutes is amended to read:

1 180.0103 (16) "Signed" or "signature" includes any manual, facsimile,
2 conformed or electronic signature or any symbol executed or adopted by a party with
3 present intention to authenticate a writing or electronic transmission.

4 SECTION 3. 180.0722 (2) of the statutes is repealed and recreated to read:

5 180.0722 (2) (a) A shareholder entitled to vote at a meeting of shareholders, or
6 to express consent or dissent in writing to any corporate action without a meeting of
7 shareholders, may authorize another person to act for the shareholder by appointing
8 the person as proxy. An appointment of a proxy may be in durable form as provided
9 in s. 243.07.

10 (b) Without limiting the manner in which a shareholder may appoint a proxy
11 under par. (a), a shareholder or the shareholder's authorized officer, director,
12 employe, agent or attorney-in-fact may use any of the following as a valid means to
13 make such an appointment:

14 1. Appointment of a proxy in writing by signing or causing the shareholder's
15 signature to be affixed to an appointment form by any reasonable means, including,
16 but not limited to, by facsimile signature..

17 2. Appointment of a proxy by transmitting or authorizing the transmission of
18 an electronic transmission of the appointment to the person who will be appointed
19 as proxy or to a proxy solicitation firm, proxy support service organization or like
20 agent authorized to receive the transmission by the person who will be appointed as
21 proxy. Every electronic transmission shall contain, or be accompanied by,
22 information that can be used to reasonably determine that the shareholder
23 transmitted or authorized the transmission of the electronic transmission. Any
24 person charged with determining whether a shareholder transmitted or authorized

1 the transmission of the electronic transmission shall specify the information upon
2 which the determination is made.

3 (c) Any copy, facsimile telecommunication or other reliable reproduction of the
4 information in the appointment form under par. (b) 1. or the electronic transmission
5 under par. (b) 2. may be substituted or used in lieu of the original appointment form
6 or electronic transmission for any purpose for which the original appointment form
7 or electronic transmission could be used, but only if the copy, facsimile
8 telecommunication or other reliable reproduction is a complete reproduction of the
9 information in the original appointment form or electronic transmission.

10 SECTION 4. 180.0722 (7) of the statutes is amended to read:

11 180.0722 (7) Subject to s. 180.0724 and to any express limitation on the proxy's
12 authority ~~appearing on the face of~~ stated in the appointment form or electronic
13 transmission, a corporation may accept the proxy's vote or other action as that of the
14 shareholder making the appointment.

15 SECTION 5. 180.0722 (8) (a) of the statutes is amended to read:

16 180.0722 (8) (a) Notwithstanding sub. (4), may be revoked at any time by
17 openly stating the revocation at a shareholder meeting or appointing a new proxy in
18 writing the manner provided under sub. (2) (b).

19 (END)

Comparison

*What happened to the changes to
180.0722 (3) and (4) and
180.0724 (4) and (5)? See attachment.*

Changes to subsections 180.0722 (3) and (4) and 180.0724 (4) and (5) to be added to AB 60

Wisconsin Statutes Regarding Proxy Voting Prior to Changes Proposed in 1999 Assembly Bill 60 to Authorize Electronic Proxy Voting

a signed appointment form or an electronic transmission of the appointment is

180.0722 Proxies. (1) A shareholder may vote his or her shares in person or by proxy.

(2) A shareholder may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form, either personally or by his or her attorney-in-fact. An appointment of a proxy may be in durable form as provided in s. 243.07.

(3) An appointment of a proxy is effective when received by the secretary or other officer or agent of the corporation authorized to tabulate votes. An appointment is valid for 11 months from the date of its signing unless a different period is expressly provided in the appointment form.

(4) (a) An appointment of a proxy is irrevocable unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include, but are not limited to, the appointment of any of the following:

- 1. A pledgee.
- 2. A person who purchased or agreed to purchase the shares.
- 3. A creditor of the corporation who extended it credit under terms requiring the appointment.
- 4. An employe or officer of the corporation whose employment contract requires the appointment.
- 5. A party to a voting agreement created under s. 180.0731.

(b) An appointment made irrevocable under par. (a) is revoked when the interest with which it is coupled is extinguished.

(5) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless the secretary or other officer or agent of the corporation authorized to tabulate votes receives notice of the death or incapacity before the proxy exercises his or her authority under the appointment.

(6) Notwithstanding sub. (4), a transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when he or she acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or, if the shares are without certificates, on the information statement for the shares.

(7) Subject to s. 180.0724 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation may accept the proxy's vote or other action as that of the shareholder making the appointment.

(8) A proxy appointed in connection with a shareholder vote under s. 180.1150 (5):

(a) Notwithstanding sub. (4), may be revoked at any time by openly stating the revocation at a shareholder meeting or appointing a new proxy in writing.

(b) Shall be solicited and appointed apart from the sale of or offer to purchase shares of the resident domestic corporation, as defined in s. 180.1150 (1) (c).

(c) May not be solicited sooner than 30 days before the meeting called under s. 180.1150 (5), unless otherwise agreed in writing by the person acting under s. 180.1150 and the directors of the resident domestic corporation, as defined in s. 180.1150 (1) (c).

History: 1989 a. 303; 1997 a. 27.

180.0723 Shares held by nominees. (1) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(2) The procedure may set forth all of the following:

- (a) The types of nominees to which it applies.
- (b) The rights or privileges that the corporation recognizes in a beneficial owner.
- (c) The manner in which the nominee selects the procedure.
- (d) The information that must be provided when the procedure is selected.
- (e) The period for which selection of the procedure is effective.
- (f) Other aspects of the rights and duties created.

History: 1989 a. 303.

180.0724 Acceptance of instruments showing shareholder action. (1) If the name signed on a vote, consent, waiver or proxy appointment corresponds to the name of a shareholder, the corporation, if acting in good faith, may accept the vote, consent, waiver or proxy appointment and give it effect as the act of the shareholder.

(2) If the name signed on a vote, consent, waiver or proxy appointment does not correspond to the name of its shareholder, the corporation, if acting in good faith, may accept the vote, consent, waiver or proxy appointment and give it effect as the act of the shareholder if any of the following apply:

- (a) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity.
- (b) The name signed purports to be that of a personal representative, administrator, executor, guardian or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation is presented with respect to the vote, consent, waiver or proxy appointment.
- (c) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation is presented with respect to the vote, consent, waiver or proxy appointment.
- (d) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder is presented with respect to the vote, consent, waiver or proxy appointment.
- (e) Two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coowners and the person signing appears to be acting on behalf of all coowners.

(3) The corporation may reject a vote, consent, waiver or proxy appointment if the secretary or other officer or agent of the corporation who is authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(4) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver or proxy appointment in good faith and in accordance with this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, waiver or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

History: 1989 a. 303.

the

the inspector of election

or electronic transmission

or s. 180.0722 (2)

Draft 4/5/99

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Amendment to s. 180.0141 to Provide For Electronic Notice to Shareholders

180.0141 Notice. (1) This section applies to notice that is required under this chapter and that is made subject to this section by express reference to this section.

(2) (a) A person shall give notice in writing ~~except as provided in par. (b).~~ *For purposes of this section,*

(b) ~~notice by electronic transmission is written notice.~~
A person may give oral notice if oral notice is permitted by the articles of incorporation or bylaws and not otherwise prohibited by this chapter.

(3) Except as provided in s. 180.0721(4) or unless otherwise provided in the articles of incorporation or bylaws, notice may be communicated in person, by telephone, telegraph, teletype, facsimile or other form of wire or wireless communication, or by mail or private carrier, or by electronic transmission. ~~Except if these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television or other form of public broadcast communication.~~ *Mail or other method of delivery; or by telephone, or by a other electronic means. If*

(4) Written notice to a domestic corporation or a foreign corporation authorized to transact business in this state may be addressed to its registered agent at its registered office or to the domestic corporation or foreign corporation at its principal office. With respect to a foreign corporation that has not yet filed an annual report under s. 180.1622, the address of the foreign corporation's principal office may be determined from its application for a certificate of authority. *(including voice mail, answering machine or answering service)*

(5) (a) Except as provided in par. (b) and ss. 180.0807(2) and 180.0843(1), written notice is effective at the earliest of the following:

- 1. When received.
- 2. Five days after its deposit in the U.S. mail, if mailed postpaid and correctly addressed.
- 3. On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.
- 4. On the effective date specified in the articles of incorporation or bylaws. *if mailed postpaid and*

(b) Written notice by a domestic corporation or foreign corporation to its shareholder is effective when mailed ~~or when transmitted electronically and may be addressed to the shareholder's address as shown in the domestic corporation's or foreign corporation's current record of shareholders.~~ *or (ii) when electronically transmitted to the shareholder in a manner authorized by the shareholder.*

(c) Oral notice is effective when communicated.

[Messages by voice mail, answering machine or answering service are deemed communicated when the message is left by the sender.]?

Section 180.0141 applies to notices required under the Wisconsin Business Corporation Law. The proposed amendments to s. 180.0141 would allow a corporation to provide notice to its shareholders by electronic transmission.

See attached companion amendment to § 180.0103 (b).

With respect to Ruth Champagne's drafting note.

"electronically transmitted" is used here, as it is in the Model Act. See MCA § 1.40 (7A).

Companion amendment to § 180.0103(b)

998 The Business Lawyer, Vol. 52, May 1997

1.22(c). Section 1.27 provides that the certificate is conclusive evidence only that the original document is on file. The limited effect of the certificate is consistent with the ministerial filing obligation imposed on the secretary of state under the Model Act. The certificate from the secretary of state, as well as the copy of the document, may be delivered by electronic transmission.

§ 1.29 PENALTY FOR SIGNING FALSE DOCUMENT

OFFICIAL COMMENT

[No change to black letter law]

Section 1.29 makes a criminal offense for any person to sign a document that he knows to be false in any material respect with intent that the document be submitted for filing to the secretary of state. As provided in section 1.40(22A), "sign" includes any manual, facsimile, conformed, or electronic signature.

Section 1.29(b) is keyed to the classification of offenses provided by the Model Penal Code. If a state has not adopted that classification, the dollar amount of the fine should be substituted for the misdemeanor classification.

§ 1.40 ACT DEFINITIONS

(b) "Deliver" includes mail, or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission.

(7A) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

(22A) "Sign" or "signature" includes any manual, facsimile, conformed, or electronic signature.

OFFICIAL COMMENT

Section 1.40 collects in a single section definitions of terms used throughout the Model Act. Subchapters and sections of the Act in a few instances contain specialized definitions applicable only to those subchapters or sections.

Most of the definitions of section 1.40 are drawn directly from earlier versions of the Model Act and are reasonably self-explanatory. A number of definitions, however, are new or deserve further explanation.

[No change in paragraphs 1-3]

"Electronic transmission" or "electronically transmitted" includes both communication systems which in the normal course produce papers, such as telegrams and facsimiles, as well as communication systems which transmit and permit the retention of data which is then subject to subsequent retrieval and reproduction in written form. Electronic transmission is intended to be broadly construed and include the evolving methods of electronic delivery, including electronic transmissions between computers via modem, as well as data stored and delivered on magnetic tapes or computer diskettes. The phrase is not intended to include voice mail and other similar systems which do not automatically provide for the retrieval of data in printed or typewritten form.

7. The definition of "sign" or "signature" includes manual, facsimile, conformed or electronic signatures. In this regard, it is intended that any manifestation of an intention to execute or authenticate a document will be accepted. Electronic signatures are expected to encompass any methodology approved by the secretary of state for purposes of verification of the authenticity of the document. This could include a typewritten conformed signature or other electronic entry in the form of a computer data compilation of any characters or series of characters comprising a name intended to evidence authorization and execution of a document.

[No change to existing paragraphs 4 through 9, except renumbering]

§ 1.41 NOTICE

(a) Notice under this Act must be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission is written notice.

(b) Notice may be communicated in person, by telephone, telegraph, teletype, or other forms of wire or wireless communication, or by email or private carrier mail or other method of delivery, or by telephone, voice mail or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television, or other form of public broadcast communication.

(c) Written notice by a domestic foreign corporation to its shareholders, if in a comparable form, is effective when mailed (or deposited in the United States mail, if mailed postpaid) and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders, or (ii) when electronically transmitted to the shareholder in a manner authorized by the shareholder.



soon

SENATE SUBSTITUTE AMENDMENT,
TO 1999 ASSEMBLY BILL 60

*and use of electronic
transmissions in business
corporate practices*

Sen. Cat.
1 AN ACT to amend 180.0103 (16), 180.0722 (7) and 180.0722 (8) (a); to repeal and
2 recreate 180.0722 (2); and to create 180.0103 (7m) of the statutes; relating
3 to: the appointment of a proxy by a shareholder in a business corporation.

Insert 1-4

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 SECTION 1. 180.0103 (7m) of the statutes is created to read:
5 180.0103 (7m) "Electronic transmission" means internet transmission,
6 telephonic transmission, electronic mail transmission, transmission of a telegram,
7 cablegram or datagram or any other form or process of communication that does not
8 directly involve the physical transfer of paper and that is suitable for the retention,
9 retrieval and reproduction of information by the recipient.

*or "electronically
transmitted"*

10 SECTION 2. 180.0103 (16) of the statutes is amended to read:

Insert 2-4

1 180.0103 (16) “Signed” or “signature” includes any manual, facsimile,
2 conformed or electronic signature or any symbol executed or adopted by a party with
3 present intention to authenticate a writing or electronic transmission.

4 SECTION 3. 180.0722 (2) of the statutes is repealed and recreated to read:

5 180.0722 (2) (a) A shareholder entitled to vote at a meeting of shareholders, or
6 to express consent or dissent in writing to any corporate action without a meeting of
7 shareholders, may authorize another person to act for the shareholder by appointing
8 the person as proxy. An appointment of a proxy may be in durable form as provided
9 in s. 243.07.

10 (b) Without limiting the manner in which a shareholder may appoint a proxy
11 under par. (a), a shareholder or the shareholder’s authorized officer, director,
12 employe, agent or attorney-in-fact may use any of the following as a valid means to
13 make such an appointment:

14 1. Appointment of a proxy in writing by signing or causing the shareholder’s
15 signature to be affixed to an appointment form by any reasonable means, including,
16 but not limited to, by facsimile signature.

17 2. Appointment of a proxy by transmitting or authorizing the transmission of
18 an electronic transmission of the appointment to the person who will be appointed
19 as proxy or to a proxy solicitation firm, proxy support service organization or like
20 agent authorized to receive the transmission by the person who will be appointed as
21 proxy. Every electronic transmission shall contain, or be accompanied by,
22 information that can be used to reasonably determine that the shareholder
23 transmitted or authorized the transmission of the electronic transmission. Any
24 person charged with determining whether a shareholder transmitted or authorized

1 the transmission of the electronic transmission shall specify the information upon
2 which the determination is made.

3 (c) Any copy, facsimile telecommunication or other reliable reproduction of the
4 information in the appointment form under par. (b) 1. or the electronic transmission
5 under par. (b) 2. may be substituted or used in lieu of the original appointment form
6 or electronic transmission for any purpose for which the original appointment form
7 or electronic transmission could be used, but only if the copy, facsimile
8 telecommunication or other reliable reproduction is a complete reproduction of the
9 information in the original appointment form or electronic transmission.

Insert 3-10

10 SECTION 4. 180.0722 (7) of the statutes is amended to read:

11 180.0722 (7) Subject to s. 180.0724 and to any express limitation on the proxy's
12 authority ~~appearing on the face of~~ stated in the appointment form or electronic
13 transmission, a corporation may accept the proxy's vote or other action as that of the
14 shareholder making the appointment.

15 SECTION 5. 180.0722 (8) (a) of the statutes is amended to read:

16 180.0722 (8) (a) Notwithstanding sub. (4), may be revoked at any time by
17 openly stating the revocation at a shareholder meeting or appointing a new proxy in
18 writing the manner provided under sub. (2) (b).

19 (END)

Insert
3-19

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0077/2ins
RAC::

Insert 1-4: ✓

SECTION 1. 180.0103 (6) of the statutes is repealed and recreated to read:

180.0103 (6) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery or electronic transmission.

Insert 2-4: ✓

SECTION 2. 180.0141 (2) (a) of the statutes is amended to read:

180.0141 (2) (a) A person shall give notice in writing, except as provided in par. (b). For purposes of this section, notice by electronic transmission is written notice.

History: 1989 a. 303

SECTION 3. 180.0141 (3) of the statutes is amended to read:

180.0141 (3) Except as provided in s. 180.0721 (4) or unless otherwise provided in the articles of incorporation or bylaws, notice may be communicated in person, by telephone, telegraph, teletype, facsimile or other form of wire or wireless communication, or by mail or private carrier, and, if mail or other method of delivery; by telephone, including voice mail, answering machine or answering service; or by any other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television or other form of public broadcast communication.

History: 1989 a. 303

SECTION 4. 180.0141 (5) (b) of the statutes is renumbered 180.0141 (5) (b) (intro.) and amended to read:

180.0141 (5) (b) (intro.) Written notice by a domestic corporation or foreign corporation to its shareholder is effective when under any of the following conditions:

1. When mailed and may be, but only if mailed postpaid and addressed to the shareholder's address shown in the domestic corporation's or foreign corporation's current record of shareholders.

History: 1989 a. 303.

SECTION 5. 180.0141 (5) (b) 2. of the statutes is created to read:

180.0141 (5) (b) 2. When electronically transmitted to the shareholder in a manner authorized by the shareholder.

Insert 3-10: ✓

SECTION 6. 180.0722 (3) of the statutes is amended to read:

180.0722 (3) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the secretary or other ~~the~~ inspector of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for 11 months ~~from the date of its signing~~ unless a different period is expressly provided in the appointment ~~form~~. ✓

History: 1989 a. 303; 1997 a. 27.

SECTION 7. 180.0722 (4) (a) (intro.) of the statutes is amended to read:

180.0722 (4) (a) (intro.) An appointment of a proxy is revocable by ~~the~~ shareholder unless the appointment ~~form~~ conspicuously or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include, but are not limited to, the appointment of any of the following:

History: 1989 a. 303; 1997 a. 27.

Insert 3-19: ✓

SECTION 8. 180.0724 (4) of the statutes is amended to read:

180.0724 (4) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver or proxy appointment in good faith and in accordance with this

section or s. 180.0722 (2) are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

History: 1989 a. 303.

SECTION 9. 180.0724 (5) of the statutes is amended to read:

180.0724 (5) Corporate action based on the acceptance or rejection of a vote, consent, waiver or proxy appointment under this section or s. 180.0722 (2) is valid unless a court of competent jurisdiction determines otherwise.

History: 1989 a. 303.

D-Note

Per your request, I referred to ^{the} "inspector of election^{tion}" in s. 180.0722(3). Please note that this is not a defined term in ch. 180.

RAC

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0077/2dn
RAC:kmg:mrc

June 8, 1999

Per your request, I referred to the "inspector of election" in s. 180.0722 (3). Please note that this is not a defined term in ch. 180.

Richard A. Champagne
Legislative Attorney
Phone: (608) 266-9930
E-mail: Rick.Champagne@legis.state.wi.us

Memorandum

Subject to the matters referred to in my memoranda dated April 30, 1999, May 11, 1999 and June 1, 1999, I have no further comments.

Please let me know if you have any questions or if I can be of further assistance.

Attachment

MODEL BUSINESS CORPORATION ACT ANNOTATED

authorized either generally or specifically in the corporation's bylaws. Alternate inspectors could also be designated to replace any inspector who fails to act. The requirement of a written report is to facilitate judicial review of determinations made by inspectors.

Section 7.29(b) specifies the duties of inspectors of election. If no challenge of a determination by the inspectors within the authority given them under this section is timely made, such determination shall be conclusive. In the event of a challenge of any determination by the inspectors in a court of competent jurisdiction, the court should give such weight to determinations of fact by the inspectors as it shall deem appropriate, taking into account the relationship of the inspectors, if any, to the management of the company and other persons interested in the outcome of the vote, the evidence available to inspectors, whether their determinations appear to be reasonable, and such other circumstances as the court shall regard as relevant. The court should review de novo all determinations of law made implicitly or explicitly by the inspectors.

Normally, in making the determinations contemplated by section 7.29(b), the only facts before the inspectors should be appointment forms and electronic transmissions (or written evidence thereof), envelopes submitted with appointment forms, ballots and the regular books and records of the corporation, including lists of holders obtained from depositories. However, inspectors may consider other reliable information for the limited purpose of reconciling appointment forms, electronic transmissions, and ballots submitted by or on behalf of banks, brokers, their nominees, and similar persons which represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the shareholder holds of record. If the inspectors do consider such other information, it should be specifically referred to in their written report, including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained, and the basis for the inspectors' belief that such information is accurate and reliable.

Section 7.29(c) provides that an inspector may be an officer or employee of the corporation. However, in the case of publicly held corporations, good corporate practice suggests that such in-

SECTION 7.29

spectors should be independent persons who are neither employees nor officers if there is a contested matter or a shareholder proposal to be considered. Not only will the issue of independent inspectors enhance investor perception as to the fairness of the voting process, but also the report of independent inspectors can be expected to be given greater evidentiary weight by any court reviewing a contested vote.

ANNOTATION

HISTORY

MODEL ACT DERIVATION

1984 Act § 7.29, added by amendment, proposed, 51 Bus. Law. 209 (1995), adopted, 52 Bus. Law. 225 (1996)

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