WEST virginia legislature

2021 regular session

Originating

House Bill 3081

By DelegateS Westfall, Hott, BARNHART,BATES, CRISS, ESPINOSA,GARCIA, LOVEJOY, REED, ROWE, AND WILLIAMS

[Originating in the Committee on Banking and Insurance; Reported on March 10, 2021]

A BILL to amend and reenact §31D-7-708 of the Code of West Virginia, 1931, as amended; and to amend and reenact §31E-7-708 of said code, all relating to remote communications for shareholder meetings; amending the West Virginia Business Corporation Act and the West Virginia Nonprofit Corporation Act; authorizing corporations to conduct shareholder meetings by remote communication; requiring shareholder meetings by remote communications be subject to guidelines and procedures; providing the board of directors the authority to set a shareholder meeting by remote communication; authorizing nonprofit corporations to conduct member meetings by remote communication; requiring member meetings by remote communications be subject to guidelines and procedures; and providing the board of directors the authority to set a member meeting by remote communication and making the amendments effective upon passage.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 31D. WEST VIRGINIA BUSINESS CORPORATION ACT**

**ARTICLE 7. SHAREHOLDERS**

**§ 31D-7-708. Conduct of the meeting**

(a) At each meeting of shareholders, a chair shall preside. The chair is to be appointed as provided in the bylaws or, in the absence of a provision in the bylaws, by the board of directors.

(b) The chair, unless the articles of incorporation or bylaws provide otherwise, shall determine the order of business and has the authority to establish rules for the conduct of the meeting.

(c) Any rules adopted for, and the conduct of, the meeting are to be fair to shareholders.

(d) The chair of the meeting shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls are to be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes nor any revocations or changes to a ballot, proxy or vote may be accepted.

(e) ~~If the articles of incorporation or bylaws authorize the use of electronic communication for shareholders’ meetings, any or all of the shareholders may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all shareholders may simultaneously hear each other during the meeting.~~Shareholders of any class or series of shares may participate in any meeting of shareholders by means of remote communication to the extent the board of directors authorizes such participation for such class or series. Participation as a shareholder by means of remote communication shall be subject to such guidelines and procedures as the board of directors adopts.

(f) Shareholders participating in a shareholders’ meeting by means of remote communication shall be deemed present and may vote at such a meeting if the corporation has implemented reasonable measures to:

(1) Verify that each person participating remotely as a shareholder is a shareholder or a shareholder’s proxy; and

(2) Provide such shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meetings, in a manner substantially concurrent with such proceedings.

(g) Unless expressly prohibited by the articles of incorporation or bylaws, the board of directors may determine that any meeting of shareholders shall not be held at any place and shall instead be held solely by means of remote communication in conformity with subsection (f).

(h) Amendments to this § 31D-7-708 passed during the regular session of the 2021 Legislative Session shall be effective upon passage and shall apply to all such shareholder meetings held on or after March 1, 2020.

**CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT**

**ARTICLE 7. MEMBERS – MEETINGS AND VOTING**

**§ 31E-7-708. Conduct of the meeting**

(a) At each meeting of members, a chair must preside. The chair is to be appointed as provided in the bylaws or, in the absence of a provision in the bylaws, by the board of directors.

(b) The chairperson, unless the articles of incorporation or bylaws provide otherwise, shall determine the order of business and has the authority to establish rules for the conduct of the meeting.

(c) Any rules adopted for, and the conduct of, the meeting are to be fair to members.

(d) The chair of the meeting shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls are to be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes, nor any revocations or changes to a ballot, proxy or vote, may be accepted.

(e) ~~If the articles of incorporation or bylaws authorize the use of electronic communication for members’ meetings, any or all of the members may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all members may simultaneously hear each other during the meeting.~~Any member may participate in any meeting of members by means of remote communication to the extent the board of directors authorizes such participation for members. Participation as a member by means of remote communication shall be subject to such guidelines and procedures as the board of directors adopts.

(f) Members participating in a members’ meeting by means of remote communication shall be deemed present and may vote at such a meeting if the corporation has implemented reasonable measures to:

(1) Verify that each person participating remotely as a member is a member or a member’s proxy; and

(2) Provide such members a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to read or hear the proceedings of the meetings, in a manner substantially concurrent with such proceedings.

(g) Unless expressly prohibited by the articles of incorporation or bylaws, the board of directors may determine that any meeting of members shall not be held at any place and shall instead be held solely by means of remote communication in conformity with subsection (f).

(h) Amendments to this § 31E-7-708 passed during the regular session of the 2021 Legislative Session shall be effective upon passage and shall apply to all such member meetings held on or after March 1, 2020.

NOTE: The purpose of this bill is to update the West Virginia Business Corporation Act and the West Virginia Nonprofit Corporation Act to allow corporations and nonprofit corporations to conduct shareholder meetings by means of remote communication.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.