

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Originating

House Bill 3081

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[Originating in the Committee on Banking and Insurance;

Reported on March 10, 2021]

1 A BILL to amend and reenact §31D-7-708 of the Code of West Virginia, 1931, as amended; and
2 to amend and reenact §31E-7-708 of said code, all relating to remote communications for
3 shareholder meetings; amending the West Virginia Business Corporation Act and the
4 West Virginia Nonprofit Corporation Act; authorizing corporations to conduct shareholder
5 meetings by remote communication; requiring shareholder meetings by remote
6 communications be subject to guidelines and procedures; providing the board of directors
7 the authority to set a shareholder meeting by remote communication; authorizing nonprofit
8 corporations to conduct member meetings by remote communication; requiring member
9 meetings by remote communications be subject to guidelines and procedures; and
10 providing the board of directors the authority to set a member meeting by remote
11 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

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

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

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

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

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

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

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

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

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

31 (h) Amendments to this § 31D-7-708 passed during the regular session of the 2021
32 Legislative Session shall be effective upon passage and shall apply to all such shareholder
33 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

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

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

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

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

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

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

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

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

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

30 (h) Amendments to this § 31E-7-708 passed during the regular session of the 2021
31 Legislative Session shall be effective upon passage and shall apply to all such member meetings
32 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.