WEST VIRGINIA CODE CHAPTER 31D ARTICLE 7

WV Legislature

PART 1. MEETINGS.

§31D-7-701. Annual meeting.

(a) A corporation must hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.

(b) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings are to be held at the corporation's principal office.

(c) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

WV Legislature

§31D-7-702. Special meeting.

(a) A corporation must hold a special meeting of shareholders:

(1) On call of its board of directors or the person or persons authorized by the articles of incorporation or bylaws; or

(2) If the holders of at least ten percent of all the votes entitled to be cast on an issue proposed to be considered at the proposed special meeting sign, date and deliver to the corporation one or more written demands for the meeting describing the purpose or purposes for which it is to be held: Provided, That the articles of incorporation may fix a lower percentage or a higher percentage not exceeding twenty-five percent of all the votes entitled to be cast on any issue proposed to be considered. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

(b) If not otherwise fixed under section seven hundred three or seven hundred seven of this article, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

(c) Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings are to be held at the corporation's principal office.

(d) Only business within the purpose or purposes described in the meeting notice required by subsection (c), section seven hundred five of this article may be conducted at a special shareholders' meeting.

WV Legislature

§31D-7-703. Court-ordered meeting.

(a) The circuit court may summarily order a meeting to be held:

(1) On application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting; or

(2) On application of a shareholder who signed a demand for a special meeting valid under section seven hundred two of this article, if:

(A) Notice of the special meeting was not given within thirty days after the date the demand was delivered to the corporation's secretary; or

(B) The special meeting was not held in accordance with the notice.

(b) The court may fix the time and place of the meeting; determine the shares entitled to participate in the meeting; specify a record date for determining shareholders entitled to notice of and to vote at the meeting; prescribe the form and content of the meeting notice; fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters; and enter other orders necessary to accomplish the purpose or purposes of the meeting.

WV Legislature

§31D-7-704. Action without meeting.

(a) Action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents bearing the date of signature and describing the action taken, signed by all the shareholders entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) If not otherwise fixed under section seven hundred three or seven hundred seven of this article, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (a) of this section. No written consent may be effective to take the corporate action referred to in the consent unless, within sixty days of the earliest date appearing on a consent delivered to the corporation in the manner required by this section, written consents signed by all shareholders entitled to vote on the action are received by the corporation. A written consent may be revoked by a writing to that effect received by the corporation prior to receipt by the corporation of unrevoked written consents sufficient in number to take corporate action.

(c) A consent signed under this section has the effect of a meeting vote and may be described as a meeting vote in any document.

(d) If this chapter requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the proposed action at least ten days before the action is taken. The notice must contain or be accompanied by the same material that, under this chapter, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

WV Legislature

§31D-7-705. Notice of meeting.

(a) A corporation is to notify shareholders of the date, time and place of each annual and special shareholders' meeting no fewer than ten nor more than sixty days before the meeting date. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(b) Unless this chapter, the articles of incorporation or bylaws require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(c) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(d) If not otherwise fixed under section seven hundred three or seven hundred seven of this article, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time or place, notice need not be given of the new date, time or place if the new date, time or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section seven hundred seven of this article, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

WV Legislature

§31D-7-706. Waiver of notice.

(a) A shareholder may waive any notice required by this chapter, the articles of incorporation or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A shareholder's attendance at a meeting:

(1) Waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(2) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

WV Legislature

§31D-7-707. Record date.

(a) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(b) A record date fixed under this section may not be more than seventy days before the meeting or action requiring a determination of shareholders.

(c) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than one hundred twenty days after the date fixed for the original meeting.

(d) If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

WV Legislature

§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) 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.

WV Legislature

PART 2. VOTING.

§31D-7-720. Shareholders' list for meeting.

(a) After fixing a record date for a meeting, a corporation must prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list must be arranged by voting group and, within each voting group, by class or series of shares and show the address of and number of shares held by each shareholder.

(b) The shareholders' list must be available for inspection by any shareholder, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, his or her agent or attorney is entitled on written demand to inspect and, subject to the requirements of subsection (c), section one thousand six hundred two, article sixteen of this chapter, to copy the list, during regular business hours and at his or her expense, during the period it is available for inspection.

(c) The corporation must make the shareholders' list available at the meeting and any shareholder, his or her agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a shareholder, his or her agent or attorney to inspect the shareholders' list before or at the meeting, or to copy the list as permitted by subsection (b) of this section, the circuit court, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(e) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

WV Legislature

§31D-7-721. Voting entitlement of shares.

(a) Except as provided in subsections (b) and (d) of this section or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(b) Absent special circumstances, the shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(c) Subsection (b) of this section does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(d) Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

WV Legislature

§31D-7-722. Proxies.

(a) Unless the articles of incorporation or bylaws provide otherwise, a shareholder may vote his or her shares in person or by proxy.

(b) A shareholder or his or her 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.

(c) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for eleven months unless a longer period is expressly provided in the appointment form.

(d) An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

(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 employee of the corporation whose employment contract requires the appointment; or

(5) A party to a voting agreement created under section seven hundred thirty-one of this article.

(e) 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 notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his or her authority under the appointment.

(f) An appointment made irrevocable under subsection (d) of this section is revoked when the interest with which it is coupled is extinguished.

(g) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if he or she 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 on the information statement for shares without certificates.

WV Legislature

(h) Subject to section seven hundred twenty-four of this article and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

WV Legislature

§31D-7-723. Shares held by nominees.

(a) 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.

(b) The procedure may set forth:

(1) The types of nominees to which it applies;

(2) The rights or privileges that the corporation recognizes in a beneficial owner;

(3) The manner in which the procedure is selected by the nominee;

(4) The information that must be provided when the procedure is selected;

(5) The period for which selection of the procedure is effective; and

(6) Other aspects of the rights and duties created.

WV Legislature

§31D-7-724. Corporation's acceptance of votes.

(a) 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 is entitled to accept the vote, consent, waiver or proxy appointment and give it effect as the act of the shareholder.

(b) 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 is entitled to accept the vote, consent, waiver or proxy appointment and give it effect as the act of the shareholder if:

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

(2) The name signed purports to be that of an administrator, executor, guardian or conservator representing the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy appointment;

(3) 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 has been presented with respect to the vote, consent, waiver or proxy appointment;

(4) 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 has been presented with respect to the vote, consent, waiver or proxy appointment; or

(5) 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 the coowners.

(c) The corporation is entitled to reject a vote, consent, waiver or proxy appointment if the secretary or other officer or agent 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.

(d) 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 the standards of this section or subsection (b), section seven hundred twenty-two of this article are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(e) 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.

WV Legislature

§31D-7-725. Quorum and voting requirements for voting groups.

(a) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this chapter provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(b) Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(c) If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action unless the articles of incorporation or this chapter require a greater number of affirmative votes.

(d) An amendment of articles of incorporation adding, changing or deleting a quorum or voting requirement for a voting group greater than specified in subsection (a) or (c) of this section is governed by section seven hundred twenty-seven of this article.

(e) The election of directors is governed by section seven hundred twenty-eight of this article.

WV Legislature

§31D-7-726. Action by single and multiple voting groups.

(a) If the articles of incorporation or this chapter provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in section seven hundred twenty-five of this article.

(b) If the articles of incorporation or this chapter provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in section seven hundred twenty-five of this article. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

WV Legislature

§31D-7-727. Greater quorum or voting requirements.

(a) The articles of incorporation may provide for a greater quorum or voting requirement for shareholders or voting groups of shareholders than is provided for by this chapter.

(b) An amendment to the articles of incorporation that adds, changes or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

WV Legislature

§31D-7-728. Voting for directors; cumulative voting.

(a) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(b) Each shareholder or designated voting group of shareholders holding shares having the right to vote for directors has a right to cumulate his or her votes for directors.

(c) A statement included in the articles of incorporation that "all or a designated voting group of shareholders are entitled to cumulate their votes for directors", or words of similar import, means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.

(d) Shares otherwise entitled to vote cumulatively may not be voted cumulatively at a particular meeting unless:

(1) The meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or

(2) A shareholder who has the right to cumulate his or her votes gives notice to the corporation not less than forty-eight hours before the time set for the meeting of his or her intent to cumulate his or her votes during the meeting and if one shareholder gives this notice all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

WV Legislature

§31D-7-729. Inspectors of election.

(a) A corporation having any shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association must, and any other corporation may, appoint one or more inspectors to act at a meeting of shareholders and make a written report of the inspectors' determinations. Each inspector shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of the inspector's ability.

(b) The inspectors shall:

(1) Ascertain the number of shares outstanding and the voting power of each;

(2) Determine the shares represented at a meeting;

(3) Determine the validity of proxies and ballots;

(4) Count all votes; and

(5) Determine the result.

(c) An inspector may be an officer or employee of the corporation.

WV Legislature

PART 3. VOTING TRUSTS AND AGREEMENTS.

§31D-7-730. Voting trusts.

(a) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, including, but not limited to, anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(b) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for not more than ten years after its effective date unless extended under subsection (c) of this section.

(c) All or some of the parties to a voting trust may extend it for additional terms of not more than ten years each by signing written consent to the extension. An extension is valid for ten years from the date the first shareholder signs the extension agreement. The voting trustee must deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.

WV Legislature

§31D-7-731. Voting agreements.

(a) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of section seven hundred thirty of this article.

(b) A voting agreement created under this section is specifically enforceable.

WV Legislature

§31D-7-732. Shareholder agreements.

(a) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this chapter in that it:

(1) Eliminates the board of directors or restricts the discretion or powers of the board of directors;

(2) Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in section six hundred forty, article six of this chapter;

(3) Establishes who are to be directors or officers of the corporation, or their terms of office or manner of selection or removal;

(4) Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(5) Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer or employee of the corporation or among any of them;

(6) Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;

(7) Requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency; or

(8) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors and the corporation, or among any of them, and is not contrary to public policy.

(b) An agreement authorized by this section must be:

(1) Set forth:

(A) In the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or

(B) In a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation;

WV Legislature

(2) Subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise; and

(3) Valid for ten years, unless the agreement provides otherwise.

(c) The existence of an agreement authorized by this section must be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by subsection (b), section six hundred twenty-six, article six of this chapter. If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation must recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement does not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement is entitled to rescission of the purchase. A purchaser is to be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of ninety days after discovery of the existence of the agreement or two years after the time of purchase of the shares.

(d) An agreement authorized by this section ceases to be effective when shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

(e) An agreement authorized by this section that limits the discretion or powers of the board of directors relieves the directors of, and imposes upon the person or persons in whom the discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(f) The existence or performance of an agreement authorized by this section is not a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(g) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

WV Legislature