WEST VIRGINIA CODE CHAPTER 31E ARTICLE 7

WV Legislature

PART 1. MEETINGS.

§31E-7-701. Annual meeting; regular meeting.

(a) A corporation that has members entitled to vote for the election of directors must hold a meeting of these members annually at a time stated in or fixed in accordance with the bylaws.

(b) Annual meetings of members 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) A corporation that has members entitled to vote may hold regular meetings of these members in or out of this state at the places and times stated in or fixed in accordance with the bylaws.

(d) The failure to hold an annual or regular 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

§31E-7-702. Special meeting.

(a) A corporation that has members entitled to vote must hold a special meeting of members entitled to vote at the meeting: (1) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or the bylaws; or (2) if the members holding at least five percent, or other number or proportion as is provided in the bylaws, of all the votes entitled to be cast on any 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. If a call for a special meeting is not issued within fifteen days after receipt of a members' request, members may call the meeting.

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

(c) Special meetings of members 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 meeting of members.

WV Legislature

§31E-7-703. Court-ordered meeting.

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

(1) On application of any member entitled to vote at 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 member 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 members entitled to vote at the meeting; specify a record date for determining members 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

§31E-7-704. Action without meeting; validity of actions at meetings not properly called.

(a) Any action which, under any provision of this chapter, may be taken at a meeting of members may be taken without a meeting if one or more members consents in writing, setting forth the action taken or to be taken, signed by all of the persons who would be entitled to vote upon the action at a meeting, or by their duly authorized attorneys which action for purposes of this subsection is to be referred to as "unanimous written consent". The secretary shall file the consent or consents, or certify the tabulation of the consents and file the articles, with the minutes of the meetings of the members. A unanimous written consent must have the same force and effect as a vote of the members at a meeting duly held, and may be stated as having the same force and effect as a vote of the members in any articles or document filed under this chapter.

(b) Where directors or officers are to be elected by members or any other action is to be voted upon by members, the articles of incorporation or bylaws may provide that the elections may be conducted and the actions voted upon by mail or electronic means in a manner provided in the articles of incorporation or bylaws. The vote of members, or of the members of any particular class, is to be determined from the total number of members who actually vote by mail, rather than from the total number of members entitled to vote, unless the articles of incorporation otherwise provide. A ballot signed under this section has the same force and effect as a vote of the member who signed it at a meeting duly held, and may be stated as having the same force and effect in any certificate or document filed under this chapter.

(c) If not otherwise fixed under section seven hundred three or seven hundred seven of this article, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent or ballot under subsection (a) or (b) of this section.

(d) The absence from the minutes of any indication that a member objected to holding the meeting prima facie establishes that no objection was made.

WV Legislature

§31E-7-705. Notice of meeting.

(a) A corporation is to notify members entitled to vote of the date, time and place of each annual, regular and special 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 members entitled to vote at the meeting.

(b) Unless this chapter, the articles of incorporation or bylaws require otherwise, notice of an annual or regular meeting need not include a description of the purpose or purposes for which the meeting is called, except that, unless stated in a written notice of the meeting: (1) No bylaw may be brought up for adoption, amendment or repeal; and (2) no matter, other than the election of directors at an annual meeting, may be brought up which expressly requires the vote of members.

(c) Notice of a special meeting of members 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 members entitled to notice of and to vote at an annual, regular or special meeting is the day before the first notice is delivered to members.

(e) Unless the bylaws require otherwise, if an annual, regular or special meeting of members 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 members entitled to vote as of the new record date.

(f) Unless the articles of incorporation or bylaws provide otherwise, any member may participate in a regular or special meeting by any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in a meeting by this means is deemed to be present in person at the meeting.

WV Legislature

§31E-7-706. Waiver of notice.

(a) A member 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 member entitled to the notice and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

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

(1) Waives objection to lack of notice or defective notice of the meeting, unless the member 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 member objects to considering the matter when it is presented.

WV Legislature

§31E-7-707. Record date.

(a) The bylaws may fix or provide the manner of fixing the record date for one or more classes of members in order to determine the members entitled to notice of a meeting of members, 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 members.

(c) A determination of members entitled to notice of or to vote at a meeting of members 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

§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) 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.

WV Legislature

PART 2. VOTING.

§31E-7-720. Members' 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 members who are entitled to notice of the meeting. The list must be arranged by classes of members, if any, and show the address of and number of votes to which each member is entitled.

(b) The members' list must be available for inspection by any member entitled to vote at the meeting, 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 member entitled to vote at the meeting or his or her agent or attorney is entitled on written demand to inspect and, subject to the requirements of section one thousand five hundred two, article fifteen 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 members' list available at the meeting, and any member entitled to vote at the meeting or 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 member entitled to vote at the meeting or his or her agent or attorney to inspect the members' list before or at the meeting, or copy the list as permitted by subsection (b) of this section, the circuit court, on application of the member, 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 members' list does not affect the validity of action taken at the meeting.

WV Legislature

§31E-7-721. Members' voting rights.

(a) Unless the articles of incorporation provide otherwise, each member, regardless of class, is entitled to one vote on each matter voted on at a meeting of members. Voting rights of members of any class may be increased, limited or denied by the articles of incorporation.

(b) Members otherwise entitled to vote, but disqualified from voting for any reason, may not be considered for the purpose of a quorum or of computing the voting power of the corporation or of members of any class.

(c) A corporate member's vote may be cast by the president of the member corporation or by any other officer of the corporation in the absence of express notice of the designation of some other person by the board of directors or bylaws of the member corporation.

WV Legislature

§31E-7-722. Proxies.

(a) Unless the articles of incorporation or bylaws provide otherwise, a member entitled to vote may vote in person or by proxy.

(b) A member entitled to vote by proxy or his or her agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the member 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 member, the member's agent or the member'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. A photographic or similar reproduction of an appointment, or a telegram, cablegram, facsimile transmission, wireless or similar transmission of an appointment received by the inspector of election or the officer or agent of the corporation authorized to tabulate votes is sufficient to effect an appointment. 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 by the member.

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

WV Legislature

§31E-7-723. Corporation's acceptance or rejection of votes.

(a) If the name signed on a vote, consent, waiver or proxy appointment corresponds to the name of a member, 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 member.

(b) If the name signed on a vote, consent, waiver or proxy appointment does not correspond to the name of a member, 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 member if:

(1) The member 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 attorney-in-fact, administrator, executor, guardian or conservator representing the member 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 member 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; or

(4) Two or more persons are comembers or fiduciaries and the name signed purports to be the name of at least one of the comembers or fiduciaries and the person signing appears to be acting on behalf of all of the comembers or fiduciaries.

(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 member.

(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 member 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 or subsection (b), section seven hundred twenty-two of this article is valid unless a court of competent jurisdiction determines otherwise.

WV Legislature

§31E-7-724. Quorum and voting requirements.

(a) Members entitled to vote on a matter may take action on the matter at a meeting only if a quorum of those members exists with respect to that matter. If there are no members entitled to vote as a separate class, unless this chapter, the articles of incorporation or bylaws provide otherwise, the members entitled to vote on the matter who are present at the meeting, either in person or by proxy, if voting by proxy is permitted pursuant to section seven hundred twenty-two of this article, constitute a quorum for action on the matter. If there are members entitled to vote on a matter as a separate class, the members entitled to vote as a separate class may take action on the matter at a meeting only if a quorum of that class exists with respect to that matter. Unless this chapter, the articles of incorporation or bylaws provide otherwise, the members of a class entitled to vote on the matter who are present at the meeting, either in person or by proxy, if voting by proxy is permitted pursuant to section seven hundred twenty-two of this article constitute a quorum of that class for action on that matter.

(b) Once a member is represented for any purpose at a meeting, the member 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) Where any of this chapter, requires for any purpose the vote of a designated proportion of the voting power of members entitled to vote on a matter, or of the members of any particular class entitled to vote on a matter as a class, if a quorum exists, action on the matter, other than the election of directors, by these members or by the members of a class, is approved if the votes cast favoring the action by the members voting or by the members of a class voting, are in a designated proportion of the total votes cast by the members or by the members of a class, unless the articles of incorporation require a greater vote.

(d) Where subsection (c) of this section is not applicable, if a quorum exists, action on a matter, other than the election of directors, by the members entitled to vote on the matter, or by the members of any particular class entitled to vote on the matter as a class, is approved if the votes cast by the members voting, or by the members of a class voting, favoring the action exceed the votes cast by the members, or by the members of a class, opposing the action, unless the articles of incorporation require a greater vote.

(e) An amendment of the articles of incorporation adding, changing or deleting a voting requirement is governed by section seven hundred twenty-six of this article. An amendment of the articles of incorporation or bylaws adding, changing or deleting a quorum requirement is governed by section seven hundred twenty-six of this article.

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

WV Legislature

§31E-7-725. Action by single and multiple classes of members.

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

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

WV Legislature

§31E-7-726. Other quorum or voting requirement.

(a) The articles of incorporation may provide for a greater voting requirement for members, or classes of members, than is provided by this chapter. The articles of incorporation or the bylaws may provide for a greater quorum requirement for members, or classes of members, than is provided by this chapter.

(b) The articles of incorporation may, except where expressly prohibited by this chapter, or where action is required by this chapter to be unanimous, provide for a lesser voting requirement, but unless expressly permitted by a particular section of this chapter, not less than a majority of the votes cast by the members, or by the members of a particular class, entitled to vote on the matter.

(c) 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 classes required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

WV Legislature

§31E-7-727. 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 members entitled to vote in the election at a meeting at which a quorum is present, or if voting by mail is permitted pursuant to section seven hundred four of this article in an election in which the total number of members who vote is not less than the number required for a quorum.

(b) Members do not have a right to cumulate their votes for directors unless this is provided for in the articles of incorporation.

(c) A statement included in the articles of incorporation that "all or a designated class of members are entitled to cumulate their votes for directors", or words of similar import, means that the members 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) Members otherwise entitled to vote cumulatively may not vote cumulatively at a particular meeting unless: (1) The meeting notice states conspicuously that cumulative voting is authorized; (2) a member 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 member gives this notice all other members in the same class participating in the election are entitled to cumulate their votes without giving further notice; or (3) if voting is to be by mail or electronic means pursuant to section seven hundred four of this article: (A) The bylaws specify how election of directors are to be conducted if members vote cumulatively by mail; (B) the notice of the meeting states conspicuously that cumulative voting is authorized and how the election is to be conducted; and (C) the mail ballot provides for cumulative voting.

WV Legislature

§31E-7-728. Inspectors of election.

(a) A corporation may appoint one or more inspectors to act at a meeting of members 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 members entitled to vote and the voting power of each; (2) determine the members 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