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Act 253 of the Regular Session

State of Arkansas

As Engrossed: S2/2/21

93rd General Assembly

A Bill

Regular Session, 2021

SENATE BILL 11

By: Senator D. Sullivan

By: Representative Gonzales

For An Act To Be Entitled

AN ACT TO ALLOW ARKANSAS CORPORATIONS AND ARKANSAS BANKS TO HOLD ANNUAL OR SPECIAL SHAREHOLDER MEETINGS REMOTELY; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO ALLOW ARKANSAS CORPORATIONS AND ARKANSAS BANKS TO HOLD ANNUAL OR SPECIAL SHAREHOLDER MEETINGS REMOTELY; AND TO DECLARE AN EMERGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 4-26-701(a), concerning shareholders' meetings, is amended to read as follows:

(a)(1) ~~Meetings~~ A meeting of shareholders may be held at such place, a physical location or solely or partially by means of remote communication, either within or without this state, or as ~~may be~~ provided in the bylaws. ~~In the absence of any such provision, all meetings shall be held at the registered office of the corporation.~~

(2)(A) A shareholders' meeting that is held solely by means of remote communication or through a combination of remote communication and an in-person meeting is permitted to the extent that:

(i) The corporation's board of directors authorizes and adopts guidelines and procedures governing a remote shareholders' meeting; and

(ii) Shareholders and proxy holders have the capability to participate through a method of remote communication.

(B) The guidelines and procedures governing a remote shareholders' meeting shall provide verified shareholders and proxy holders who are not physically present at a shareholders' meeting to:

(i) Have a reasonable opportunity to participate in the meeting;

(ii) Be deemed present at the meeting; and

(iii) Be permitted to vote on matters submitted at the meeting.

SECTION 2. Arkansas Code § 4-27-701(b) and (c), concerning the annual shareholders' meeting of a corporation, are amended to read as follows:

(b)(1) Annual shareholders' meetings may be held at a physical location or solely or partially by means of remote communication, in or out of this state, at ~~the~~ a place stated in or fixed ~~in accordance with~~ according to the bylaws of the corporation. ~~If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.~~

(2)(A) An annual shareholders' meeting held solely by means of remote communication or through a combination of remote communication and an in-person meeting is allowed to the extent that:

(i) The corporation's board of directors authorizes and adopts guidelines and procedures governing a remote annual shareholders' meeting; and

(ii) Shareholders and proxy holders have the capability to participate through a method of remote communication.

(B) The guidelines and procedures governing a remote meeting shall provide verified shareholders and proxy holders who are not physically present at a shareholders' meeting to:

(i) Have a reasonable opportunity to participate in the meeting;

(ii) Be deemed present at the meeting; and

(iii) Be permitted to vote on matters submitted at the meeting.

(c) The failure to hold an annual meeting at the time stated in or fixed ~~in accordance with~~ according to a corporation's bylaws, or solely or partially by means of remote communication, does not affect the validity of any corporate action.

SECTION 3. Arkansas Code § 4-27-702(c), concerning special shareholders' meetings, is amended to read as follows:

(c)(1) Special shareholders' meetings may be held at a physical location or solely or partially by means of remote communication, in or out of this state at ~~the~~ a place stated in or fixed ~~in accordance with~~ according to the bylaws of the corporation. ~~If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.~~

(2)(A) A meeting held solely by means of remote communication or through a combination of remote communication and an in-person meeting is allowed to the extent that:

(i) The corporation's board of directors authorizes and adopts guidelines and procedures governing a remote annual shareholders' meeting; and

(ii) Shareholders and proxy holders have the capability to participate through a method of remote communication.

(B) The guidelines and procedures governing a remote special shareholders' meeting shall provide verified shareholders and proxy holders who are not physically present at a shareholders meeting to:

(i) Have a reasonable opportunity to participate in the meeting;

(ii) Be deemed present at the meeting; and

(iii) Be permitted to vote on matters submitted at the meeting.

SECTION 4. Arkansas Code § 23-48-320(c) and (d), concerning voting at a shareholders' meeting of a state bank, are amended to read as follows:

(c)(1) A stockholder may vote in person, ~~or~~ by written proxy, or by means of remote communication according to subdivision (c)(3) of this section .

(2) ~~No proxy shall~~ A proxy shall not be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy, but a proxy may be of indefinite duration if coupled with an interest.

(3) A stockholder participating in a meeting of stockholders by means of remote communication as provided in § 23-48-326(c) shall be deemed present and is entitled to vote at the meeting if the state bank has implemented reasonable measures to:

(A) Verify that each person participating remotely is a stockholder; and

(B) Provide each stockholder participating remotely with a reasonable opportunity to participate in the meeting, including an opportunity to vote on matters submitted to the stockholders.

(d)(1) For a state bank chartered on or before May 30, 1997, the ~~shareholders~~ stockholders of the state bank shall have cumulative voting privileges in the election of directors unless the articles of incorporation of the state bank otherwise provide.

(2) For a state bank chartered after May 30, 1997, there shall be no cumulative voting privilege unless the state bank's articles of incorporation so provide.

SECTION 5. Arkansas Code § 23-48-326 is amended to read as follows:

23-48-326. Application of Arkansas Business Corporation Act.

(a) ~~All state banks and subsidiary trust companies shall be subject to current provisions of~~ A state bank and a subsidiary trust company are subject to the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq., to the extent that ~~those provisions are~~ it is not in conflict with the ~~provisions of the~~ Arkansas Banking Code of 1997.

(b) ~~In the event that any provision of~~ If the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq., is in conflict with any provision of the Arkansas Banking Code of 1997, then the provision of the Arkansas Banking Code of 1997 shall control.

(c) Annual or special shareholders' meetings may be held by corporations or banks solely or partially through remote communication if authorized by the corporation's or bank's board of directors.

SECTION 6. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the risk of exposure to coronavirus 2019 (COVID-19) or to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or any of its mutations is causing delays in conducting business due to the inability to hold in-person shareholders' meetings; that allowing *Arkansas corporations and banks* to conduct shareholders' meetings through remote communication, solely or partially, can reduce the *uncertainty for Arkansas corporations and banks and allow a corporation or bank to continue to* operate; and that this act is immediately necessary to provide Arkansas corporations and banks with the ability to conduct their corporate affairs without risk of exposure to coronavirus 2019 (COVID-19) or to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or any of its mutations. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

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