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AMENDMENTS TO NC BUSINESS CORPORATION ACT PERMANENTLY AUTHORIZE VIRTUAL-ONLY SHAREHOLDERS' MEETINGS

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In September 2021, the North Carolina General Assembly passed, and Governor Roy Cooper signed into law, **Session Law 2021-162 (House Bill 320)**, Part I of which includes amendments to the North Carolina Business Corporation Act (NCBCA) to authorize North Carolina corporations to conduct shareholders' meetings entirely by means of remote communication without any requirement that a meeting be held in a physical "place."^[1] The practical impact of these amendments is to provide North Carolina corporations with greater flexibility in how they conduct shareholders' meetings by better conforming the NCBCA with the Delaware General Corporation Law and the Model Business Corporation Act.

Especially as public companies enter the 2022 proxy season with the COVID-19 pandemic continuing, these revisions are welcome updates that will benefit North Carolina corporations and their shareholders. Practitioners who advise public and private North Carolina corporations that intend to conduct virtual-only meetings should ensure they comply with the requirements of House Bill 320.

The amendments to the NCBCA were drafted by the Business Corporations Committee of the Business Law Section (the "Committee") and approved as "Association-sponsored legislation" by the North Carolina Bar Association Board of Governors in January 2021. The North Carolina Bar Association is grateful for the endorsement and support of the North Carolina Chamber and thankful to the bill's primary sponsors, Senator Amy Galey and Representatives Destin Hall, John Bradford, Erin Paré, and Julia Howard, who ably shepherded the amendments to the NCBCA through the legislative process to enactment.

The NCBCA is based on the Model Business Corporation Act (the "Model Act"), which is the work of the Corporate Laws Committee of the ABA Business Law Section (the "ABA Committee"). The amendments were recommended by the North Carolina Bar Association to update the NCBCA based on changes made to the Model Act and to align the NCBCA with the laws of a number of other jurisdictions (including Delaware) that permit virtual-only meetings.

Summary of the Amendments to Part I of House Bill 320 **Applicability:** The amendments allow virtual-only meetings for both annual and special shareholders' meetings. **Requirements for conducting a virtual-only meeting:** Consistent with prior law relating to participation by remote communication in a shareholders' meeting (so-called "hybrid meetings"), the corporation must implement reasonable measures to: Verify each person participating remotely is a shareholder; and Provide each shareholder participating remotely a reasonable opportunity to participate in the meeting and vote on matters submitted to the shareholders. **Articles of incorporation/bylaws:** Unless the corporation's organizational documents prohibit conducting shareholders'

meetings solely by means of remote communication, the board has the authority to hold virtual-only shareholders' meetings. In contrast to the Model Act, the amendments purposely provide for a default position that virtual-only meetings are permissible, and therefore North Carolina corporations will generally not be required to update their articles or bylaws to take advantage of these amendments. **Shareholders' list:** The amendments make generally technical revisions to the shareholders' list requirements to facilitate making the corporation's shareholders' list available electronically and requiring that it be made available electronically during a virtual-only meeting. **Notice requirements for public corporations:** House Bill 320 differs from the Model Act by including a provision that allows publicly traded corporations to quickly switch to a virtual-only meeting under certain emergency circumstances. Specifically, publicly traded corporations that have previously provided a notice required by the NCBCA to shareholders of the date, time and place of a shareholders' meeting are not required to provide an additional NCBCA notice regarding a change to a virtual-only meeting if each of the following conditions apply: A governmental order restricting travel or group gatherings is in effect and is anticipated in good faith by the board of directors to be in effect at the date and time specified for the shareholders' meeting in the initial notification of the shareholders' meeting. The board of directors determines to proceed with a virtual-only meeting, which may be held either at the same date and time as the original meeting or at a different date and time. The public corporation (i) promptly issues a press release for national dissemination regarding the change to a virtual-only meeting and (ii) files the press release with the Securities and Exchange Commission and posts it on the corporation's website. Committee Members Involved in these NCBCA Amendments

The following are the Committee members who participated in drafting the proposed bill resulting in the Act and/or who represented the North Carolina Bar Association in various committee hearings in the North Carolina General Assembly regarding House Bill 320:

Heyward D. Armstrong – Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., Raleigh

David B. Clement – Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., Raleigh

Gregory S. Connor – Connor Law Group, Raleigh

Lisa Crandall – PLG Law, Charlotte

Carly Ginley – Mattel, Inc., El Segundo, CA

Amanda A. Hayes – Parker Poe Adams & Bernstein LLP, Raleigh

Seth M. Huffstetler – Robinson, Bradshaw & Hinson, P.A., Charlotte

Stephen M. Lynch – Robinson, Bradshaw & Hinson, P.A., Charlotte

Justin G. Truesdale – Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., Raleigh

[1] Session Law 2021-162 also authorizes North Carolina nonprofits to conduct all business electronically and authorizes each North Carolina nonprofit and mutual insurance companies to conduct member meetings entirely by means of remote communication.

This article was originally published on the [NCBA's Bar Blog, Business Law Section](#) on Jan. 20, 2022, and has been republished here with the consent of the NCBA.

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