

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 136

(Senators Waldstreicher and West)

Judicial Proceedings

Economic Matters

Corporations - Corporate Records and Electronic Transmission

This bill authorizes the records of a corporation to be maintained by means of any information storage device, method, or electronic network or database, including a distributed electronic network or database, if (1) the records can be converted within a reasonable time into clearly legible written form for visual inspection and (2) the records maintained on an electronic ledger or distributed electronic ledger can be used for specified purposes. Such records must be converted into a clearly legible written form on request of any person who is entitled to inspect the records. The converted written records are admissible as evidence and must be accepted for all other purposes to the same extent as original written records. The bill also makes a series of changes regarding the acceptance and use of electronic transmissions.

Fiscal Summary

State Effect: The bill does not directly affect State finances or operations.

Local Effect: The bill does not directly affect local finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill expands the definition of “electronic transmission” to include the use of or participation in one or more electronic networks or databases, including one or more distributed electronic networks or databases.

The bill also alters various provisions regarding stock ledgers; issuance of stock certificates; annual statements of corporate affairs; stockholder meeting notices; stockholder informal action; voting trusts; and stockholder rights of inspection to clarify or include electronic transmissions and records kept via an information storage device, method, or electronic network or database (including a distributed electronic network or database) in accordance with the bill's requirements.

Current Law:

Definition of "Electronic Transmission"

Under the Corporations and Associations Article, "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient of the communication and that may be reproduced directly in paper form by a recipient through an automated process. The definition includes electronic mail, facsimile, and Internet transmissions.

Corporate Books and Records

A corporation must keep correct and complete books and records of its accounts and transactions, as well as the minutes of specified proceedings. The books and records may be in written form or in any other form that can be converted within a reasonable time into written form for visual inspection. Minutes must be recorded in written form but may be maintained in a reproduced form.

Stock Ledgers

A corporation must maintain a stock ledger that has the name and address of each stockholder and the number of shares of stock of each class that the stockholder holds. The stock ledger may be in written form or in any other form that can be converted within a reasonable time into written form for visual inspection.

Issuance of Stock Certificates

For shares issued without certificates, a corporation must send a stockholder, upon request of the stockholder and without charge, a written statement of the information required on certificates in accordance with specified provisions of law.

Annual Statement of Affairs

The president or another executive officer of a corporation must annually prepare a statement of the affairs of the corporation, including a balance sheet and a financial statement of operations for the preceding fiscal year. The statement must be submitted at the stockholder annual meeting and, within 20 days of the meeting (or within 120 days after the end of the fiscal year, if there is no required annual meeting), placed on file or in any other form that may be converted within reasonable time into written form for visual inspection.

Stockholder Meeting Notice and Informal Action

The secretary of a corporation must give notice in writing or by electronic transmission of a stockholder meeting at least 10 days and up to 90 days before the meeting. If a corporation has received a request from a stockholder that such notice not be sent by electronic transmission, the corporation may not do so.

Any stockholder action required or permitted to be taken at a stockholder meeting may be taken without a meeting if a unanimous consent which sets forth the action is given in writing or by electronic transmission by each stockholder entitled to vote and is filed in paper or electronically with the meeting records. Stockholder action may also be taken with less than unanimous consent, under specified conditions.

A stockholder may deliver consent in paper form, by hand, by certified or registered mail, return receipt requested, or by electronic transmission.

A person, whether or not then a stockholder, may assent to an informal stockholder action through a consent that becomes effective up to 60 days after delivery of the consent to the corporation or its agent. The effective time of a consent may be determined on the occurrence of an event up to 60 days after the consent is delivered. Consent is considered to be given at the effective time if the person is a stockholder at that time and did not revoke the consent before then. The consent is revocable before the effective time, unless otherwise specified in the consent.

Voting Trusts

One or more stockholders may confer the right to vote or otherwise represent their stock to a trustee by entering into a written voting trust agreement that specifies terms and conditions, depositing an executed copy of the agreement with the corporation, and transferring their stock for purposes of the agreement to a trustee.

Stockholder Right of Inspection

Any stockholder may inspect and copy specified corporate records on written request. The corporation must make the records available within 7 days after proper presentment of such a request. A stockholder may also make a written request for a statement showing all stock and securities issued during a specified period. The corporation must make this statement available within 20 days after the request is made.

Specified stockholders may also make a written request to inspect and copy the corporation's books and stock ledger, a statement of the corporation's affairs, or a list of the corporation's stockholders. The corporation must make this information available within 20 days after the request is made.

Background: Blockchain is a distributed ledger database that records and shares every transaction that occurs in a network of users. Distributed networks and databases allow data to be shared and synchronized across multiple sites, countries, or institutions, without the need for a central administrator or centralized data storage location. As of July 2018, nine states have enacted legislation that authorizes blockchain transactions and three of those states, discussed below, have enacted legislation related specifically to corporations.

In 2017, Delaware enacted Chapter 86 (S.B. 69), which amended the Delaware General Corporation Law to explicitly authorize the use of distributed networks and databases in the administration of corporate records, including stock ledgers.

In 2018, Arizona enacted Chapter 122 (H.B. 2603), which establishes that blockchain technology applies to electronic transactions within the Arizona Corporations and Associations Law.

Also in 2018, Wyoming enacted Chapter 47 (H.B. 101), which (1) authorizes corporations to use electronic networks or databases for the creation or maintenance of corporate records; (2) authorizes the use of a network address to identify a corporation's shareholder; (3) authorizes corporations to accept shareholder votes if signed by a network signature that corresponds to a network address; and, (4) specifies requirements for use of electronic networks or databases.

Additional Information

Prior Introductions: SB 893 of 2018, a substantially similar bill, received a hearing in the Senate Judicial Proceedings Committee but no further action was taken. Its cross file, HB 1100, received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

Information Source(s): State Department of Assessments and Taxation; National Conference of State Legislatures; Department of Legislative Services

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