

# STATE OF NEW YORK

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3214

2021-2022 Regular Sessions

## IN SENATE

January 28, 2021

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Introduced by Sen. BENJAMIN -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the business corporation law, the not-for-profit corporation law and the religious corporations law, in relation to allowing corporations to conduct business and meetings electronically for a certain period of time

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph (b) of section 708 of the business corporation  
2 law, as amended by chapter 122 of the laws of 2020, is amended to read  
3 as follows:

4 (b) Unless otherwise restricted by the certificate of incorporation or  
5 the by-laws, any action required or permitted to be taken by the board  
6 or any committee thereof may be taken without a meeting if all members  
7 of the board or the committee consent in writing to the adoption of a  
8 resolution authorizing the action. The resolution and the written  
9 consents thereto by the members of the board or committee shall be filed  
10 with the minutes of the proceedings of the board or committee. For the  
11 duration of the state disaster emergency declared by executive order two  
12 hundred two that began on March seventh, two thousand twenty, or until  
13 December thirty-first, two thousand twenty-one, whichever is later,  
14 notwithstanding any provision of law to the contrary, the written  
15 consent of a member may be made electronically, where such consent is  
16 submitted via electronic mail along with information from which it can  
17 be reasonably determined that the transmission was authorized by such  
18 member.

19 § 2. Paragraph (a) of section 602 of the business corporation law, as  
20 amended by chapter 122 of the laws of 2020, is amended to read as  
21 follows:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 (a) Meetings of shareholders may be held at such place, within or  
2 without this state, as may be fixed by or under the by-laws, or if not  
3 so fixed, as determined by the board of directors. For the duration of  
4 the state disaster emergency declared by executive order two hundred two  
5 that began on March seventh, two thousand twenty, or until December  
6 thirty-first, two thousand twenty-one, whichever is later, if, pursuant  
7 to this paragraph or the by-laws of the corporation, the board of direc-  
8 tors is authorized to determine the place of a meeting of shareholders,  
9 the board of directors may, in its sole discretion, determine that the  
10 meeting be held solely by means of electronic communication, the  
11 platform/service of which shall be the place of the meeting for purpose  
12 of this article.

13 § 3. Paragraph (a) of section 603 of the not-for-profit corporation  
14 law, as amended by chapter 122 of the laws of 2020, is amended to read  
15 as follows:

16 (a) Meetings of members may be held at such place, within or without  
17 this state, as may be fixed by or under the by-laws or, if not so fixed,  
18 as determined by the board of directors. For the duration of the state  
19 disaster emergency declared by executive order two hundred two that  
20 began on March seventh, two thousand twenty, or until December thirty-  
21 first, two thousand twenty-one, whichever is later, the board of direc-  
22 tors may, in its sole discretion, determine that meetings of members be  
23 held partially or solely by means of electronic communication, the elec-  
24 tronic service and/or platform by which the meeting is held shall be the  
25 place of the meeting for purposes of this article if a meeting is held  
26 solely by means of electronic communication. Meetings conducted partial-  
27 ly or solely by means of electronic communications in reliance upon this  
28 paragraph and any member's electronic participation in such meetings  
29 shall be subject to those guidelines and procedures as the board adopts,  
30 provided the board shall implement reasonable measures to: (1) verify  
31 that each person participating electronically is a member or a proxy of  
32 a member; (2) provide each member participating electronically with a  
33 reasonable opportunity to participate in the meeting, including an  
34 opportunity to propose, object to, and vote upon a specific action to be  
35 taken by the members, and to see, read or hear the proceedings of the  
36 meeting substantially concurrently with those proceedings; and (3)  
37 record and maintain a record of any votes or other actions taken by  
38 electronic communication at the meeting.

39 § 4. Section 605 of the not-for-profit corporation law, as amended by  
40 chapter 122 of the laws of 2020, is amended to read as follows:

41 § 605. Notice of meeting of members.

42 (a) Whenever under the provisions of this chapter members are required  
43 or permitted to take any action at a meeting, written notice shall state  
44 the place, date and hour of the meeting, for the duration of the state  
45 disaster emergency declared by executive order two hundred two that  
46 began on March seventh, two thousand twenty, or until December thirty-  
47 first, two thousand twenty-one, whichever is later, the means of elec-  
48 tronic communication, if any, by which members may participate in the  
49 proceedings of the meeting pursuant to paragraph (a) of section six  
50 hundred three of this article and, unless it is an annual meeting, indi-  
51 cate that it is being issued by or at the direction of the person or  
52 persons calling the meeting. Notice of a special meeting shall also  
53 state the purpose or purposes for which the meeting is called. A copy of  
54 the notice of any meeting shall be given, personally, by mail, or by  
55 facsimile telecommunications or by electronic mail, to each member enti-  
56 tled to vote at such meeting. If the notice is given personally, by

1 first class mail or by facsimile telecommunications or by electronic  
2 mail, it shall be given not less than ten nor more than fifty days  
3 before the date of the meeting; if mailed by any other class of mail, it  
4 shall be given not less than thirty nor more than sixty days before such  
5 date. If mailed, such notice is given when deposited in the United  
6 States mail, with postage thereon prepaid, directed to the member at his  
7 address as it appears on the record of members, or, if he shall have  
8 filed with the secretary of the corporation a written request that  
9 notices to him be mailed to some other address, then directed to him at  
10 such other address. If sent by facsimile telecommunication or mailed  
11 electronically, such notice is given when directed to the member's fax  
12 number or electronic mail address as it appears on the record of  
13 members, or, to such fax number or other electronic mail address as  
14 filed with the secretary of the corporation. Notwithstanding the forego-  
15 ing, such notice shall not be deemed to have been given electronically  
16 (1) if the corporation is unable to deliver two consecutive notices to  
17 the member by facsimile telecommunication or electronic mail; or (2) the  
18 corporation otherwise becomes aware that notice cannot be delivered to  
19 the member by facsimile telecommunication or electronic mail. An affida-  
20 vit of the secretary or other person giving the notice or of a transfer  
21 agent of the corporation that the notice required by this section has  
22 been given shall, in the absence of fraud, be prima facie evidence of  
23 the facts therein stated. Whenever a corporation has more than five  
24 hundred members, the notice may be served by publication in a newspaper  
25 published in the county in the state in which the principal office of  
26 the corporation is located, once a week for three successive weeks next  
27 preceding the date of the meeting, provided that the corporation shall  
28 also prominently post notice of such meeting on the homepage of any  
29 website maintained by the corporation continuously from the date of  
30 publication through the date of the meeting. A corporation shall send  
31 notice of meetings by first class mail to any member who requests in  
32 writing that such notices be delivered by such method.

33 (b) When a meeting is adjourned to another time or place, it shall not  
34 be necessary, unless the by-laws require otherwise, to give any notice  
35 of the adjourned meeting if the time and place to which the meeting is  
36 adjourned and, for the duration of the state disaster emergency declared  
37 by executive order two hundred two that began on March seventh, two  
38 thousand twenty, or until December thirty-first, two thousand twenty-  
39 one, whichever is later, the means of electronic communications, if any,  
40 by which members may participate in the proceedings of the meeting  
41 pursuant to paragraph (a) of section six hundred three of this article  
42 are announced at the meeting at which the adjournment is taken, and at  
43 the adjourned meeting any business may be transacted that might have  
44 been transacted on the original date of the meeting. However, if after  
45 the adjournment the board fixes a new record date for the adjourned  
46 meeting, a notice of the adjourned meeting shall be given to each member  
47 of record on the new record date entitled to notice under paragraph (a)  
48 of this section.

49 (c) Nothing required in paragraphs (a) or (b) of this section shall  
50 limit, restrict or supersede other forms of voting and participation.

51 § 5. Section 28 of the religious corporations law, as added by chapter  
52 122 of the laws of 2020, is amended to read as follows:

53 § 28. Meetings for the duration of the state disaster emergency  
54 declared by executive order two hundred two that began on March seventh,  
55 two thousand twenty; electronic communication. For the duration of the  
56 state disaster emergency declared by executive order two hundred two

1 that began on March seventh, two thousand twenty, or until December  
2 thirty-first, two thousand twenty-one, whichever is later, notwithstand-  
3 ing any provision of law, certificate of incorporation or by-laws to the  
4 contrary, if the board of trustees of a religious corporation is author-  
5 ized to determine the place of trustee meetings or corporate meetings,  
6 the board of trustees may, in its sole discretion, determine that the  
7 meeting shall be held solely by means of electronic communication, the  
8 electronic service and/or platform through which the meeting is held  
9 shall be the place of the meeting for purposes of this chapter.

10 § 6. This act shall take effect immediately, provided, however, that:

11 a. the amendments to paragraph (b) of section 708 of the business  
12 corporation law made by section one of this act shall not affect the  
13 expiration of such paragraph and shall be deemed to expire therewith;

14 b. the amendments to paragraph (a) of section 602 of the business  
15 corporation law made by section two of this act shall not affect the  
16 expiration of such paragraph and shall be deemed to expire therewith;

17 c. the amendments to paragraph (a) of section 603 of the not-for-pro-  
18 fit corporation law made by section three of this act shall not affect  
19 the expiration of such paragraph and shall be deemed to expire there-  
20 with;

21 d. the amendments to section 605 of the not-for-profit corporation law  
22 made by section four of this act shall not affect the expiration of such  
23 section and shall be deemed to expire therewith; and

24 e. the amendments to section 28 of the religious corporations law made  
25 by section five of this act shall not affect the repeal of such section  
26 and shall be deemed repealed therewith.