

# STATE OF NEW YORK

8412

## IN SENATE

May 24, 2020

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 providing for the remote conduct of certain practices and procedures relating to board meetings; and providing for the repeal of such provisions upon the expiration thereof

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 296 of the laws of 1977, 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, notwith-  
13 standing any provision of law to the contrary, the written consent of a  
14 member may be made electronically, where such consent is submitted via  
15 electronic mail along with information from which it can be reasonably  
16 determined that the transmission was authorized by such member.

17 § 2. Paragraph (a) of section 602 of the business corporation law is  
18 amended to read as follows:

19 (a) Meetings of shareholders may be held at such place, within or  
20 without this state, as may be fixed by or under the by-laws, or if not  
21 so fixed, [~~at the office of the corporation in this state~~] as determined  
22 by the board of directors. For the duration of the state disaster emer-  
23 gency declared by executive order two hundred two that began on March  
24 seventh, two thousand twenty, if, pursuant to this paragraph or the

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

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1 by-laws of the corporation, the board of directors is authorized to  
2 determine the place of a meeting of shareholders, the board of directors  
3 may, in its sole discretion, determine that the meeting be held solely  
4 by means of electronic communication, the platform/service of which  
5 shall be the place of the meeting for purpose of this article.

6 § 3. Paragraph (a) of section 603 of the not-for-profit corporation  
7 law is amended to read as follows:

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

31 § 4. Section 605 of the not-for-profit corporation law, paragraph (a)  
32 as amended by chapter 549 of the laws of 2013, is amended to read as  
33 follows:

34 § 605. Notice of meeting of members.

35 (a) Whenever under the provisions of this chapter members are required  
36 or permitted to take any action at a meeting, written notice shall state  
37 the place, date and hour of the meeting, for the duration of the state  
38 disaster emergency declared by executive order two hundred two that  
39 began on March seventh, two thousand twenty, the means of electronic  
40 communication, if any, by which members may participate in the  
41 proceedings of the meeting pursuant to paragraph (a) of section six  
42 hundred three of this article and, unless it is an annual meeting, indi-  
43 cate that it is being issued by or at the direction of the person or  
44 persons calling the meeting. Notice of a special meeting shall also  
45 state the purpose or purposes for which the meeting is called. A copy of  
46 the notice of any meeting shall be given, personally, by mail, or by  
47 facsimile telecommunications or by electronic mail, to each member enti-  
48 tled to vote at such meeting. If the notice is given personally, by  
49 first class mail or by facsimile telecommunications or by electronic  
50 mail, it shall be given not less than ten nor more than fifty days  
51 before the date of the meeting; if mailed by any other class of mail, it  
52 shall be given not less than thirty nor more than sixty days before such  
53 date. If mailed, such notice is given when deposited in the United  
54 States mail, with postage thereon prepaid, directed to the member at his  
55 address as it appears on the record of members, or, if he shall have  
56 filed with the secretary of the corporation a written request that

1 notices to him be mailed to some other address, then directed to him at  
2 such other address. If sent by facsimile telecommunication or mailed  
3 electronically, such notice is given when directed to the member's fax  
4 number or electronic mail address as it appears on the record of  
5 members, or, to such fax number or other electronic mail address as  
6 filed with the secretary of the corporation. Notwithstanding the forego-  
7 ing, such notice shall not be deemed to have been given electronically  
8 (1) if the corporation is unable to deliver two consecutive notices to  
9 the member by facsimile telecommunication or electronic mail; or (2) the  
10 corporation otherwise becomes aware that notice cannot be delivered to  
11 the member by facsimile telecommunication or electronic mail. An affida-  
12 vit of the secretary or other person giving the notice or of a transfer  
13 agent of the corporation that the notice required by this section has  
14 been given shall, in the absence of fraud, be prima facie evidence of  
15 the facts therein stated. Whenever a corporation has more than five  
16 hundred members, the notice may be served by publication in a newspaper  
17 published in the county in the state in which the principal office of  
18 the corporation is located, once a week for three successive weeks next  
19 preceding the date of the meeting, provided that the corporation shall  
20 also prominently post notice of such meeting on the homepage of any  
21 website maintained by the corporation continuously from the date of  
22 publication through the date of the meeting. A corporation shall send  
23 notice of meetings by first class mail to any member who requests in  
24 writing that such notices be delivered by such method.

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

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

42 § 5. The religious corporations law is amended by adding a new section  
43 28 to read as follows:

44 § 28. Meetings for the duration of the state disaster emergency  
45 declared by executive order two hundred two that began on March seventh,  
46 two thousand twenty; electronic communication. For the duration of the  
47 state disaster emergency declared by executive order two hundred two  
48 that began on March seventh, two thousand twenty, notwithstanding any  
49 provision of law, certificate of incorporation or by-laws to the contra-  
50 ry, if the board of trustees of a religious corporation is authorized to  
51 determine the place of trustee meetings or corporate meetings, the board  
52 of trustees may, in its sole discretion, determine that the meeting  
53 shall be held solely by means of electronic communication, the electron-  
54 ic service and/or platform through which the meeting is held shall be  
55 the place of the meeting for purposes of this chapter.

1     § 6. This act shall take effect immediately and shall expire and be  
2 deemed repealed December 31, 2021.