

STATE OF NEW YORK

10498

IN ASSEMBLY

May 22, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Paulin) --
read once and referred to the Committee on Corporations, Authorities
and Commissions

AN ACT to amend the business corporation law, the not-for-profit corpo-
ration law, and the religious corporations law, in relation to provid-
ing for the remote conduct of certain practices and procedures relat-
ing to board meetings

The People of the State of New York, represented in Senate and Assem-
bly, 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. Notwith-
11 standing any provision of law to the contrary, the written consent of a
12 member may be made electronically, where such consent is submitted via
13 electronic mail along with information from which it can be reasonably
14 determined that the transmission was authorized by such member.

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

17 (a) Meetings of shareholders may be held at such place, within or
18 without this state, as may be fixed by or under the by-laws, or if not
19 so fixed, [~~at the office of the corporation in this state~~] as determined
20 by the board of directors. If, pursuant to this paragraph or the by-laws
21 of the corporation, the board of directors is authorized to determine
22 the place of a meeting of shareholders, the board of directors may, in
23 its sole discretion, determine that the meeting be held solely by means
24 of electronic communication, the platform/service of which shall be the
25 place of the meeting for purpose of this article.

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

LBD16465-01-0

§ 3. Paragraph (a) of section 603 of the not-for-profit corporation law is amended and a new paragraph (e) is added to read as follows:

(a) Meetings of members may be held at such place, within or without this state, as may be fixed by or under the by-laws or, if not so fixed, ~~[at the office of the corporation in this state]~~ as determined by the board of directors. In the event a membership meeting is held exclusively by electronic means as permitted by paragraph (e) of this section, the electronic service and/or platform by which the meeting is held shall be the place of the meeting for purposes of this article.

(e) One or more members may participate in a meeting by means of electronic communication to the extent the board authorizes such participation. A member participating in a meeting of members by means of electronic communications shall be deemed present in person and shall be entitled to vote at the meeting regardless of whether that meeting is held at a designated place or solely by means of electronic communication. Meetings conducted in part or solely by means of electronic communications in reliance upon this paragraph and any member's electronic participation in such meetings shall be subject to those guidelines and procedures as the board adopts, provided the corporation shall implement reasonable measures to: (1) verify that each person participating electronically is a member or a proxy of a member; (2) provide each member participating electronically with a reasonable opportunity to participate in the meeting, including an opportunity to propose, object to, and vote upon a specific action to be taken by the members, and to see, read or hear the proceedings of the meeting substantially concurrently with those proceedings; and (3) record and maintain a record of any votes or other actions taken by electronic communication at the meeting.

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

§ 605. Notice of meeting of members.

(a) Whenever under the provisions of this chapter members are required or permitted to take any action at a meeting, written notice shall state the place, date and hour of the meeting, the means of electronic communication, if any, by which members may participate in the proceedings of the meeting pursuant to paragraph (e) of section six hundred three of this article and, unless it is an annual meeting, indicate that it is being issued by or at the direction of the person or persons calling the meeting. Notice of a special meeting shall also state the purpose or purposes for which the meeting is called. A copy of the notice of any meeting shall be given, personally, by mail, or by facsimile telecommunications or by electronic mail, to each member entitled to vote at such meeting. If the notice is given personally, by first class mail or by facsimile telecommunications or by electronic mail, it shall be given not less than ten nor more than fifty days before the date of the meeting; if mailed by any other class of mail, it shall be given not less than thirty nor more than sixty days before such date. If mailed, such notice is given when deposited in the United States mail, with postage thereon prepaid, directed to the member at his address as it appears on the record of members, or, if he shall have filed with the secretary of the corporation a written request that notices to him be mailed to some other address, then directed to him at such other address. If sent by facsimile telecommunication or mailed electronically, such notice is given when directed to the member's fax number or electronic mail address as it appears on the record of members, or, to such fax number

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

21 (b) When a meeting is adjourned to another time or place, it shall not
22 be necessary, unless the by-laws require otherwise, to give any notice
23 of the adjourned meeting if the time and place to which the meeting is
24 adjourned and the means of electronic communications, if any, by which
25 members may participate in the proceedings of the meeting pursuant to
26 paragraph (e) of section six hundred three of this article are announced
27 at the meeting at which the adjournment is taken, and at the adjourned
28 meeting any business may be transacted that might have been transacted
29 on the original date of the meeting. However, if after the adjournment
30 the board fixes a new record date for the adjourned meeting, a notice of
31 the adjourned meeting shall be given to each member of record on the new
32 record date entitled to notice under paragraph (a) of this section.

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

35 § 5. The religious corporations law is amended by adding a new section
36 28 to read as follows:

37 § 28. Meeting; electronic communication. Notwithstanding any provision
38 of law, certificate of incorporation or by-laws to the contrary, if the
39 board of trustees of a religious corporation is authorized to determine
40 the place of trustee meetings or corporate meetings, the board of trus-
41 tees may, in its sole discretion, determine that the meeting shall be
42 held solely by means of electronic communication, the electronic service
43 and/or platform through which the meeting is held shall be the place of
44 the meeting for purposes of this chapter.

45 § 6. This act shall take effect immediately.