

STATE OF NEW YORK

10498--A

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 -- committee discharged, bill amended, ordered
reprinted as amended and recommitted to said committee

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; and providing for the repeal of such provisions
upon the expiration thereof

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. 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
25 by-laws of the corporation, the board of directors is authorized to
26 determine the place of a meeting of shareholders, the board of directors

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

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1 may, in its sole discretion, determine that the meeting be held solely
2 by means of electronic communication, the platform/service of which
3 shall be the place of the meeting for purpose of this article.

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

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

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

32 § 605. Notice of meeting of members.

33 (a) Whenever under the provisions of this chapter members are required
34 or permitted to take any action at a meeting, written notice shall state
35 the place, date and hour of the meeting, for the duration of the state
36 disaster emergency declared by executive order two hundred two that
37 began on March seventh, two thousand twenty, the means of electronic
38 communication, if any, by which members may participate in the
39 proceedings of the meeting pursuant to paragraph (a) of section six
40 hundred three of this article and, unless it is an annual meeting, indi-
41 cate that it is being issued by or at the direction of the person or
42 persons calling the meeting. Notice of a special meeting shall also
43 state the purpose or purposes for which the meeting is called. A copy of
44 the notice of any meeting shall be given, personally, by mail, or by
45 facsimile telecommunications or by electronic mail, to each member enti-
46 tled to vote at such meeting. If the notice is given personally, by
47 first class mail or by facsimile telecommunications or by electronic
48 mail, it shall be given not less than ten nor more than fifty days
49 before the date of the meeting; if mailed by any other class of mail, it
50 shall be given not less than thirty nor more than sixty days before such
51 date. If mailed, such notice is given when deposited in the United
52 States mail, with postage thereon prepaid, directed to the member at his
53 address as it appears on the record of members, or, if he shall have
54 filed with the secretary of the corporation a written request that
55 notices to him be mailed to some other address, then directed to him at
56 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 or other electronic mail address as filed with the secretary of the corporation. Notwithstanding the foregoing, such notice shall not be deemed to have been given electronically (1) if the corporation is unable to deliver two consecutive notices to the member by facsimile telecommunication or electronic mail; or (2) the corporation otherwise becomes aware that notice cannot be delivered to the member by facsimile telecommunication or electronic mail. An affidavit of the secretary or other person giving the notice or of a transfer agent of the corporation that the notice required by this section has been given shall, in the absence of fraud, be prima facie evidence of the facts therein stated. Whenever a corporation has more than five hundred members, the notice may be served by publication in a newspaper published in the county in the state in which the principal office of the corporation is located, once a week for three successive weeks next preceding the date of the meeting, provided that the corporation shall also prominently post notice of such meeting on the homepage of any website maintained by the corporation continuously from the date of publication through the date of the meeting. A corporation shall send notice of meetings by first class mail to any member who requests in writing that such notices be delivered by such method.

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

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

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

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

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