

# STATE OF NEW YORK

2362

2019-2020 Regular Sessions

## IN ASSEMBLY

January 22, 2019

Introduced by M. of A. DINOWITZ -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the business corporation law, in relation to shareholder meetings

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

1 Section 1. Section 602 of the business corporation law, paragraph (c)  
2 as amended by chapter 803 of the laws of 1965 and paragraph (d) as added  
3 by chapter 449 of the laws of 1997, is amended to read as follows:  
4 § 602. Meetings of shareholders.

5 (a) Meetings of shareholders may be held at such place, within or  
6 without this state, as may be fixed by or under the by-laws, or if not  
7 so fixed, [~~at the office of the corporation in this state~~] as determined  
8 by the board of directors. If, pursuant to this paragraph or the by-laws  
9 of the corporation, the board of directors is authorized to determine  
10 the place of a meeting of shareholders, the board of directors may, in  
11 its sole discretion, determine that the meeting shall not be held at any  
12 place, but may instead be held solely by means of remote communication  
13 as authorized by paragraph (b) of this section.

14 (b) If authorized by the board of directors in its sole discretion,  
15 and subject to such guidelines and procedures as the board of directors  
16 may adopt, shareholders and proxyholders not physically present at a  
17 meeting of shareholders may, by means of remote communication:

18 (i) Participate in a meeting of shareholders; and

19 (ii) Be deemed present in person and vote at a meeting of sharehold-  
20 ers, whether such meeting is to be held at a designated place or solely  
21 by means of remote communication, provided that: (1) the corporation  
22 shall implement reasonable measures to verify that each person deemed  
23 present and permitted to vote at the meeting by means of remote communi-  
24 cation is a shareholder or proxyholder; (2) the corporation shall imple-  
25 ment reasonable measures to provide such shareholders and proxyholders a

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

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reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and (3) if any shareholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

(c) A meeting of shareholders shall be held annually for the election of directors and the transaction of other business on a date fixed by or under the by-laws. A failure to hold the annual meeting on the date so fixed or to elect a sufficient number of directors to conduct the business of the corporation shall not work a forfeiture or give cause for dissolution of the corporation, except as provided in paragraph (c) of section 1104 (Petition in case of deadlock among directors or shareholders).

~~(c)~~ (d) Special meetings of the shareholders may be called by the board and by such person or persons as may be so authorized by the certificate of incorporation or the by-laws. At any such special meeting only such business may be transacted which is related to the purpose or purposes set forth in the notice required by section 605 (Notice of meetings of shareholders).

~~(d)~~ (e) Except as otherwise required by this chapter, the by-laws may designate reasonable procedures for the calling and conduct of a meeting of shareholders, including but not limited to specifying: (i) who may call and who may conduct the meeting, (ii) the means by which the order of business to be conducted shall be established, (iii) the procedures and requirements for the nomination of directors, (iv) the procedures with respect to the making of shareholder proposals, and (v) the procedures to be established for the adjournment of any meeting of shareholders. No amendment of the by-laws pertaining to the election of directors or the procedures for the calling and conduct of a meeting of shareholders shall affect the election of directors or the procedures for the calling or conduct in respect of any meeting of shareholders unless adequate notice thereof is given to the shareholders in a manner reasonably calculated to provide shareholders with sufficient time to respond thereto prior to such meeting.

§ 2. Section 605 of the business corporation law, as amended by chapter 746 of the laws of 1963 and paragraph (a) as amended by chapter 498 of the laws of 1998, is amended to read as follows:

§ 605. Notice of meetings of shareholders.

(a) Whenever under the provisions of this chapter shareholders are required or permitted to take any action at a meeting, notice shall be given stating the place, if any, date and hour of the meeting, the means of remote communication, if any, by which shareholders and proxyholders may be deemed to be present in person and vote at such meeting and, unless it is the annual meeting, indicating 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. Notice of any meeting of shareholders may be written or electronic. If, at any meeting, action is proposed to be taken which would, if taken, entitle shareholders fulfilling the requirements of section 623 (Procedure to enforce shareholder's right to receive payment for shares) to receive payment for their shares, the notice of such meeting shall include a statement of that purpose and to that effect and shall be accompanied by a copy of section 623 or an outline of its material terms. Notice of any meeting shall be given not

1 fewer than ten nor more than sixty days before the date of the meeting,  
2 provided, however, that such notice may be given by third class mail not  
3 fewer than twenty-four nor more than sixty days before the date of the  
4 meeting, to each shareholder entitled to vote at such meeting. If  
5 mailed, such notice is given when deposited in the United States mail,  
6 with postage thereon prepaid, directed to the shareholder at the share-  
7 holder's address as it appears on the record of shareholders, or, if the  
8 shareholder shall have filed with the secretary of the corporation a  
9 request that notices to the shareholder be mailed to some other address,  
10 then directed to him at such other address. If transmitted electron-  
11 ically, such notice is given when directed to the shareholder's elec-  
12 tronic mail address as supplied by the shareholder to the secretary of  
13 the corporation or as otherwise directed pursuant to the shareholder's  
14 authorization or instructions. An affidavit of the secretary or other  
15 person giving the notice or of a transfer agent of the corporation that  
16 the notice required by this section has been given shall, in the absence  
17 of fraud, be prima facie evidence of the facts therein stated.

18 (b) When a meeting is adjourned to another time or place, it shall not  
19 be necessary, unless the by-laws require otherwise, to give any notice  
20 of the adjourned meeting if the time and place, if any, to which the  
21 meeting is adjourned and the means of remote communication, if any, by  
22 which shareholders and proxyholders may be deemed to be present in  
23 person and vote at such adjourned meeting are announced at the meeting  
24 at which the adjournment is taken, and at the adjourned meeting any  
25 business may be transacted that might have been transacted on the  
26 original date of the meeting. However, if after the adjournment the  
27 board fixes a new record date for the adjourned meeting, a notice of the  
28 adjourned meeting shall be given to each shareholder of record on the  
29 new record date entitled to notice under paragraph (a) of this section.

30 § 3. Section 607 of the business corporation law, as amended by chap-  
31 ter 746 of the laws of 1963, is amended to read as follows:  
32 § 607. List of shareholders at meetings.

33 (a) A list of shareholders as of the record date, certified by the  
34 corporate officer responsible for its preparation or by a transfer  
35 agent, shall be produced at any meeting of shareholders upon the request  
36 thereat or prior thereto of any shareholder. If the meeting is to be  
37 held at a place, then a list of shareholders entitled to vote at the  
38 meeting shall be produced and kept at the time and place of the meeting  
39 during the whole time thereof and may be examined by any shareholder who  
40 is present. If the meeting is to be held solely by means of remote  
41 communication, then such list shall also be open to the examination of  
42 any shareholder during the whole time of the meeting on a reasonably  
43 accessible electronic network, and the information required to access  
44 such list shall be provided with the notice of the meeting. In the event  
45 that the corporation determines to make the list available on an elec-  
46 tronic network, the corporation may take reasonable steps to ensure that  
47 such information is only available to shareholders of the company.

48 (b) If the right to vote at any meeting is challenged, the inspectors  
49 of election, or person presiding thereat, shall require such list of  
50 shareholders to be produced as evidence of the right of the persons  
51 challenged to vote at such meeting, and all persons who appear from such  
52 list to be shareholders entitled to vote thereat may vote at such meet-  
53 ing.

54 § 4. Paragraph (b) of section 611 of the business corporation law, as  
55 added by chapter 449 of the laws of 1997, is amended to read as follows:

(b) In determining the validity and counting of proxies, ballots and consents, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies and consents, any information provided in accordance with section 609 (Proxies) or clauses 1 and 3 of subparagraph (ii) of paragraph (b) of section 602 (Meetings of shareholders), ballots and the regular books and records of the corporation, except that the inspectors may consider other reliable information for the limited purpose of reconciling proxies, ballots and consents submitted by or on behalf of banks, brokers, their nominees or similar persons which represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the stockholder holds of record. If the inspectors consider other reliable information for the limited purpose permitted herein, the inspectors at the time they make their certification pursuant to paragraph (a) of this section shall specify the precise information considered by them including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspectors' belief that such information is reliable.

§ 5. This act shall take effect immediately.