

# STATE OF NEW YORK

1237

2021-2022 Regular Sessions

## IN ASSEMBLY

January 7, 2021

Introduced by 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 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 to amend chapter 122 of the laws of 2020, amending the business corporation law, the not-for-profit corporation law, and the religious corporations law relating to providing for the remote conduct of certain practices and procedures relating to board meetings, in relation to the effectiveness 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 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, notwith-~~  
13 ~~standing~~] Notwithstanding any provision of law to the contrary, the  
14 written consent of a member may be made electronically, where such  
15 consent is submitted via electronic mail, text, or other secured plat-  
16 form for electronic communications, along with information from which it  
17 can be reasonably determined that the transmission was authorized by  
18 such member.

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

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

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

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

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

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

43 § 605. Notice of meeting of members.

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

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

34 (b) When a meeting is adjourned to another time or place, it shall not  
35 be necessary, unless the by-laws require otherwise, to give any notice  
36 of the adjourned meeting if the time and place to which the meeting is  
37 adjourned and[~~, for the duration of the state disaster emergency~~  
38 ~~declared by executive order two hundred two that began on March seventh,~~  
39 ~~two thousand twenty,~~] the means of electronic communications, if any, by  
40 which members may participate in the proceedings of the meeting pursuant  
41 to paragraph (a) of section six hundred three of this article are  
42 announced at the meeting at which the adjournment is taken, and at the  
43 adjourned meeting any business may be transacted that might have been  
44 transacted on the original date of the meeting. However, if after the  
45 adjournment the board fixes a new record date for the adjourned meeting,  
46 a notice of the adjourned meeting shall be given to each member of  
47 record on the new record date entitled to notice under paragraph (a) of  
48 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 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, notwithstanding~~ Elec-  
2 tronic meetings. Notwithstanding any provision of law, certificate of  
3 incorporation or by-laws to the contrary, if the board of trustees of a  
4 religious corporation is authorized to determine the place of trustee  
5 meetings [~~or~~], corporate meetings, congregant or membership 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. Section 6 of chapter 122 of the laws of 2020, amending the busi-  
11 ness corporation law, the not-for-profit corporation law, and the reli-  
12 gious corporations law relating to providing for the remote conduct of  
13 certain practices and procedures relating to board meetings, is amended  
14 to read as follows:

15 § 6. This act shall take effect immediately [~~and shall expire and be~~  
16 ~~deemed repealed December 31, 2021~~].

17 § 7. This act shall take effect immediately.