STATE OF NEW YORK

3214

2021-2022 Regular Sessions

IN SENATE

January 28, 2021

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 allowing corporations to conduct business and meetings electronically for a certain period of time

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

Section 1. Paragraph (b) of section 708 of the business corporation law, as amended by chapter 122 of the laws of 2020, is amended to read as follows:

(b) Unless otherwise restricted by the certificate of incorporation or the by-laws, any action required or permitted to be taken by the board or any committee thereof may be taken without a meeting if all members of the board or the committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of the board or committee shall be filed with the minutes of the proceedings of the board or committee. For the duration of the state disaster emergency declared by executive order two hundred two that began on March seventh, two thousand twenty, **or until December thirty-first, two thousand twenty-one, whichever is later,** notwithstanding any provision of law to the contrary, the written consent of a member may be made electronically, where such consent is submitted via electronic mail along with information from which it can be reasonably determined that the transmission was authorized by such member.

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

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

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(a) Meetings of shareholders 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, as determined by the board of directors. For the duration of the state disaster emergency declared by executive order two hundred two that began on March seventh, two thousand twenty, **or until December thirty-first, two thousand twenty-one, whichever is later,** if, pursuant to this paragraph or the by-laws of the corporation, the board of directors is authorized to determine the place of a meeting of shareholders, the board of directors may, in its sole discretion, determine that the meeting be held solely by means of electronic communication, the platform/service of which shall be the place of the meeting for purpose of this article.

§ 3. Paragraph (a) of section 603 of the not-for-profit corporation law, as amended by chapter 122 of the laws of 2020, is amended 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, as determined by the board of directors. For the duration of the state disaster emergency declared by executive order two hundred two that began on March seventh, two thousand twenty, **or until December thirty-first, two thousand twenty-one, whichever is later,** the board of directors may, in its sole discretion, determine that meetings of members be held partially or solely by means of electronic communication, the electronic service and/or platform by which the meeting is held shall be the place of the meeting for purposes of this article if a meeting is held solely by means of electronic communication. Meetings conducted partially 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 board 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, as amended by chapter 122 of the laws of 2020, 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, for the duration of the state disaster emergency declared by executive order two hundred two that began on March seventh, two thousand twenty, **or until December thirty-first, two thousand twenty-one, whichever is later,** the means of electronic communication, 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 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 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, **or until December thirty-first, two thousand twenty-one, whichever is later,** 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. Section 28 of the religious corporations law, as added by chapter 122 of the laws of 2020, is amended 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, **or until December thirty-first, two thousand twenty-one, whichever is later,** 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, provided, however, that:

a. the amendments to paragraph (b) of section 708 of the business corporation law made by section one of this act shall not affect the expiration of such paragraph and shall be deemed to expire therewith;

b. the amendments to paragraph (a) of section 602 of the business corporation law made by section two of this act shall not affect the expiration of such paragraph and shall be deemed to expire therewith;

c. the amendments to paragraph (a) of section 603 of the not-for-profit corporation law made by section three of this act shall not affect the expiration of such paragraph and shall be deemed to expire therewith;

d. the amendments to section 605 of the not-for-profit corporation law made by section four of this act shall not affect the expiration of such section and shall be deemed to expire therewith; and

e. the amendments to section 28 of the religious corporations law made by section five of this act shall not affect the repeal of such section and shall be deemed repealed therewith.