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### CORPORATIONS CODE - CORP

#### GENERAL PROVISIONS ( *General Provisions enacted by Stats. 1947, Ch. 1038.* )

**1.** This act shall be known as the Corporations Code.

*(Enacted by Stats. 1947, Ch. 1038.)*

**2.** The provisions of this code, insofar as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments.

*(Enacted by Stats. 1947, Ch. 1038.)*

**3.** All persons who, at the time this code goes into effect, hold office under any of the acts repealed by this code, which offices are continued by this code, continue to hold them according to their former tenure.

*(Enacted by Stats. 1947, Ch. 1038.)*

**4.** No action or proceeding commenced before this code takes effect, and no right accrued, is affected by the provisions of this code, but all procedure thereafter taken therein shall conform to the provisions of this code so far as possible.

*(Enacted by Stats. 1947, Ch. 1038.)*

**5.** Unless the provision or the context otherwise requires, these general provisions, rules of construction, and definitions govern the construction of this code.

*(Enacted by Stats. 1947, Ch. 1038.)*

**6.** Title, division, part, chapter, article, and section headings contained herein do not in any manner affect the scope, meaning, or intent of the provisions of this code.

*(Enacted by Stats. 1947, Ch. 1038.)*

**7.** Whenever, by the provisions of this code, a power is granted to, or a duty imposed upon, a public officer, the power may be exercised or the duty performed by a deputy of the officer or by a person authorized, pursuant to law, by the officer, unless this code expressly provides otherwise.

*(Enacted by Stats. 1947, Ch. 1038.)*

**8.** Writing includes any form of recorded message capable of comprehension by ordinary visual means; and when used to describe communications between a corporation, partnership, or limited liability company and its shareholders, members, partners, directors, or managers, writing shall include electronic transmissions by and to a corporation (Sections 20 and 21), electronic transmissions by and to a partnership (subdivisions (4) and (5) of Section 16101), and electronic transmissions by and to a limited liability company (paragraphs (1) and (2) of subdivision (o) of Section 17001). Whenever any notice, report, statement, or record is required or authorized by this code, it shall be made in writing in the English language.

Wherever any notice or other communication is required by this code to be mailed by registered mail by or to any person or corporation, the mailing of such notice or other communication by certified mail shall be deemed to be a sufficient compliance with the requirements of law.

*(Amended by Stats. 2004, Ch. 254, Sec. 2. Effective January 1, 2005.)*

**9.** Whenever reference is made to any portion of this code or of any other law of this State, the reference applies to all amendments and additions now or hereafter made.

*(Enacted by Stats. 1947, Ch. 1038.)*

**10.** "Section" means a section of this code unless some other statute is specifically mentioned. "Subdivision" means a subdivision of the section in which the term appears unless some other section is expressly mentioned.

*(Enacted by Stats. 1947, Ch. 1038.)*

**11.** The present tense includes the past and future tenses, and the future tense includes the present.

*(Enacted by Stats. 1947, Ch. 1038.)*

**12.** The masculine gender includes the feminine and neuter.

*(Enacted by Stats. 1947, Ch. 1038.)*

**12.2.** "Spouse" includes "registered domestic partner," as required by Section 297.5 of the Family Code.

*(Added by Stats. 2016, Ch. 50, Sec. 19. (SB 1005) Effective January 1, 2017.)*

**13.** The singular number includes the plural, and the plural number includes the singular.

*(Enacted by Stats. 1947, Ch. 1038.)*

**14.** "County" includes "city and county."

*(Enacted by Stats. 1947, Ch. 1038.)*

**15.** "Shall" is mandatory and "may" is permissive.

*(Enacted by Stats. 1947, Ch. 1038.)*

**16.** "Oath" includes affirmation.

*(Enacted by Stats. 1947, Ch. 1038.)*

**17.** "Signature" includes mark when the signer cannot write, such signer's name being written near the mark by a witness who writes his own name near the signer's name; but a signature by mark can be acknowledged or can serve as a signature to a sworn statement only when two witnesses so sign their own names thereto.

*(Enacted by Stats. 1947, Ch. 1038.)*

**17.1.** (a) In addition to the definition set forth in Section 17, the term "signature" includes a signature in a facsimile document filed pursuant to this code or pursuant to regulations adopted under this code, and presented to the Secretary of State.

(b) The terms "signed" and "executed," when used with respect to the documents filed pursuant to this code or pursuant to regulations adopted under this code, and presented to the Secretary of State, include a document bearing a signature under subdivision (a).

(c) The Secretary of State shall accept facsimile signatures on documents that are delivered by mail or by hand.

(d) A person on whose behalf a document bearing a facsimile signature is submitted for filing to the Secretary of State shall maintain the originally signed document for at least five years from the date of filing.

(e) The Secretary of State may adopt procedures permitting the direct electronic or facsimile presentation of the documents specified in subdivisions (a) and (b). However, the Secretary of State is not required to accept those direct electronic or facsimile filings until procedures are adopted.

*(Added by Stats. 2003, Ch. 273, Sec. 1. Effective January 1, 2004.)*

**18.** "Person" includes a corporation as well as a natural person.

*(Enacted by Stats. 1947, Ch. 1038.)*

**19.** If any provision of this code, or the application thereof to any person or circumstance, is held invalid, the remainder of the code, or the application of such provision to other persons or circumstances, shall not be affected

thereby.

*(Enacted by Stats. 1947, Ch. 1038.)*

**20.** "Electronic transmission by the corporation" means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, for that recipient on record with the corporation, (2) posting on an electronic message board or network which the corporation has designated for those communications, together with a separate notice to the recipient of the posting, which transmission shall be validly delivered upon the later of the posting or delivery of the separate notice thereof, or (3) other means of electronic communication, (b) to a recipient who has provided an unrevoked consent to the use of those means of transmission for communications under or pursuant to this code, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form. However, an electronic transmission under this code by a corporation to an individual shareholder or member of the corporation who is a natural person, and if an officer or director of the corporation, only if communicated to the recipient in that person's capacity as a shareholder or member, is not authorized unless, in addition to satisfying the requirements of this section, the consent to the transmission has been preceded by or includes a clear written statement to the recipient as to (a) any right of the recipient to have the record provided or made available on paper or in nonelectronic form, (b) whether the consent applies only to that transmission, to specified categories of communications, or to all communications from the corporation, and (c) the procedures the recipient must use to withdraw consent.

*(Amended by Stats. 2009, Ch. 96, Sec. 1. (AB 285) Effective January 1, 2010.)*

**21.** "Electronic transmission to the corporation" means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the corporation has provided from time to time to shareholders or members and directors for sending communications to the corporation, (2) posting on an electronic message board or network which the corporation has designated for those communications, and which transmission shall be validly delivered upon the posting, or (3) other means of electronic communication, (b) as to which the corporation has placed in effect reasonable measures to verify that the sender is the shareholder or member (in person or by proxy) or director purporting to send the transmission, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form.

*(Added by Stats. 2004, Ch. 254, Sec. 4. Effective January 1, 2005.)*

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**CORPORATIONS CODE - CORP****TITLE 1. CORPORATIONS [100 - 14631]** ( Title 1 enacted by Stats. 1947, Ch. 1038. )**DIVISION 1. GENERAL CORPORATION LAW [100 - 2319]** ( Division 1 repealed and added by Stats. 1975, Ch. 682. )**CHAPTER 1. General Provisions and Definitions [100 - 195]** ( Chapter 1 added by Stats. 1975, Ch. 682. )**100.** (a) This division shall be known and may be cited as the General Corporation Law.

(b) This title of the Corporations Code, or any division, part, chapter, article or section thereof, may at any time be amended or repealed.

(Repealed and added by Stats. 1975, Ch. 682.)

**101.** Unless the provision or the context otherwise requires, the general provisions and definitions set forth in this chapter govern the construction of this division.

(Repealed and added by Stats. 1975, Ch. 682.)

**102.** (a) Subject to Chapter 23 (commencing with Section 2300) (transition provisions), this division applies to corporations organized under this division and to domestic corporations that are not subject to Division 1.5 (commencing with Section 2500), and to domestic corporations that are not subject to Division 2 (commencing with Section 5000) or Part 1 (commencing with Section 12000), 2 (commencing with Section 12200), 3 (commencing with Section 13200), or 5 (commencing with Section 14000) of Division 3 on December 31, 1976, and that are not organized or existing under any statute of this state other than this code; this division applies to any other corporation only to the extent expressly included in a particular provision of this division.

(b) The existence of corporations formed or existing on the date of enactment or reenactment of this division shall not be affected by the enactment or reenactment of this division nor by any change in the requirements for the formation of corporations nor by the amendment or repeal of the laws under which they were formed or created.

(c) Neither the repeals effected by the enactment or reenactment of this division nor the enactment of this title nor the amendment thereof shall impair or take away any existing liability or cause of action against any corporation, its shareholders, directors, or officers incurred prior to the time of the enactment, reenactment, or amendment.

(Amended by Stats. 2011, Ch. 740, Sec. 1. (SB 201) Effective January 1, 2012.)

**103.** Every corporation organized under the laws of this state, any other state of the United States or the District of Columbia or under an act of the Congress of the United States, all of the capital stock of which is beneficially owned by the United States, an agency or instrumentality of the United States or any corporation the whole of the capital stock of which is owned by the United States or by an agency or instrumentality of the United States, is conclusively presumed to be an agency and instrumentality of the United States and is entitled to all privileges and immunities to which the holders of all of its stock are entitled as agencies of the United States.

(Repealed and added by Stats. 1975, Ch. 682.)

**104.** Unless otherwise expressly provided, whenever reference is made in this division to any other state or federal statute, such reference is to that statute as it may be amended from time to time, whether before or after the enactment of this division.

(Repealed and added by Stats. 1975, Ch. 682.)

**105.** A corporation or association may be sued as provided in the Code of Civil Procedure.

(Repealed and added by Stats. 1975, Ch. 682.)

**106.** Any corporation heretofore or hereafter formed under this division shall, as a condition of its existence as a corporation, be subject to the provisions of the Code of Civil Procedure authorizing the attachment of corporate property.

*(Repealed and added by Stats. 1975, Ch. 682.)*

**107.** No corporation, social purpose corporation, association, or individual shall issue or put in circulation, as money, anything but the lawful money of the United States.

*(Amended by Stats. 2014, Ch. 694, Sec. 1. (SB 1301) Effective January 1, 2015.)*

**108.** The fees of the Secretary of State for filing instruments by or on behalf of corporations are prescribed in Article 3 (commencing with Section 12180) of Chapter 3 of Part 2 of Division 3 of Title 2 of the Government Code.

*(Repealed and added by Stats. 1975, Ch. 682.)*

**109.** (a) Any agreement, certificate or other instrument relating to a domestic or foreign corporation filed pursuant to this division may be corrected with respect to any misstatement of fact contained therein, any defect in the execution thereof or any other error or defect contained therein, by filing a certificate of correction entitled "Certificate of Correction of \_\_\_\_ (insert here the title of the agreement, certificate or other instrument to be corrected and name(s) of corporation or corporations)"; provided, however, that no such certificate of correction shall alter the wording of any resolution or written consent which was in fact adopted by the board or the shareholders or effect a corrected amendment of articles which amendment as so corrected would not in all respects have complied with the requirements of this division at the time of filing of the agreement, certificate, or other instrument being corrected.

(b) If the certificate of correction corrects original articles, the certificate of correction shall be either an officers' certificate or a certificate signed and verified by the incorporators, or a majority of them. If the certificate of correction corrects an agreement of merger or an officers' certificate accompanying an agreement of merger, the certificate of correction shall be an officers' certificate of the surviving corporation only. In all other instances, the certificate of correction shall be either an officer's certificate or a certificate signed and verified as provided in this division with respect to the agreement, certificate or other instrument being corrected.

(c) A certificate of correction shall set forth the following:

(1) The name or names of the corporation or corporations.

(2) The date the agreement, certificate or other instrument being corrected was filed.

(3) The provision in the agreement, certificate or other instrument as corrected and, if the execution was defective, wherein it was defective.

(4) If applicable, that the certificate does not alter the wording of any resolution or written consent which was in fact adopted by the board or the shareholders.

(d) A provision of the articles, amended articles, restated articles, or certificate of determination being corrected by a certificate of correction shall be identified in the certificate of correction in accordance with subdivision (a) of Section 907.

(e) The filing of the certificate of correction shall not alter the effective time of the agreement, certificate or instrument being corrected, which shall remain as its original effective time, and such filing shall not affect any right or liability accrued or incurred before such filing, except that any right or liability accrued or incurred by reason of the error or defect being corrected shall be extinguished by such filing if the person having that right has not detrimentally relied on the original instrument.

*(Amended by Stats. 1988, Ch. 919, Sec. 1.)*

**109.5.** (a) Provisions of the articles described in paragraph (3) of subdivision (g) of Section 202 and subdivisions (a) and (b) of Section 204 may be made dependent upon facts ascertainable outside the articles, if the manner in which those facts shall operate upon those provisions is clearly and expressly set forth in the articles. Similarly, any of the terms of an agreement of merger pursuant to Section 1101 may be made dependent upon facts ascertainable outside that agreement, if the manner in which those facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger.

(b) Notwithstanding subdivision (a), when any provisions or terms of articles or an agreement of merger are made dependent upon facts ascertainable outside the filed instrument through a reference to an agreement or similar document, the corporation filing that instrument shall (1) maintain at its principal executive office a copy of any such agreement or document and all amendments and (2) provide to its shareholders, in the case of articles, or to

shareholders of any constituent corporation, in the case of an agreement of merger, a copy of them upon written request and without charge.

(c) If the reference to an agreement or contract is a reference to an agreement or contract to which the corporation is a party (a "referenced agreement" in this section), any amendment or revision of the referenced agreement requires shareholder approval, in addition to approvals otherwise required, in the following instances and no other:

(1) If the amendment or revision of the referenced agreement would result in a material change in the rights, preferences, privileges, or restrictions of a class or series of shares, the amendment or revision of the referenced agreement is required to be approved by the outstanding shares (Section 152) of that class or series.

(2) If the amendment or revision of the referenced agreement would result in a material change in the rights or liabilities of any class or series of shares with respect to the subject matter of paragraph (1), (2), (3), (5), or (9) of subdivision (a) of Section 204, the amendment or revision of the referenced agreement is required to be approved by the outstanding shares (Section 152) of that class or series.

(3) If the amendment or revision of the referenced agreement would result in a material change in the restrictions on transfer or hypothecation of any class or series of shares, the amendment or revision of the referenced agreement is required to be approved by the outstanding shares (Section 152) of that class or series.

(4) If the amendment or revision of the referenced agreement would result in a change of any of the principal terms of an agreement of merger, the amendment or revision of the referenced agreement is required to be approved in the same manner as required by Section 1104 for a change in the principal terms of an agreement of merger.

*(Amended by Stats. 2014, Ch. 834, Sec. 1. (SB 1041) Effective January 1, 2015.)*

**110.** (a) Upon receipt of any instrument by the Secretary of State for filing pursuant to this division, if it conforms to law, it shall be filed by, and in the office of, the Secretary of State and the date of filing endorsed thereon. Except for instruments filed pursuant to Section 1502, the date of filing shall be the date the instrument is received by the Secretary of State unless the instrument provides that it is to be withheld from filing until a future date or unless in the judgment of the Secretary of State the filing is intended to be coordinated with the filing of some other corporate document which cannot be filed. The Secretary of State shall file a document as of any requested future date not more than 90 days after its receipt, including a Saturday, Sunday, or legal holiday, if the document is received in the Secretary of State's office at least one business day prior to the requested date of filing. An instrument does not fail to conform to law because it is not accompanied by the full filing fee if the unpaid portion of the fee does not exceed the limits established by the policy of the Secretary of State for extending credit in these cases.

(b) If the Secretary of State determines that an instrument submitted for filing or otherwise submitted does not conform to law and returns it to the person submitting it, the instrument may be resubmitted accompanied by a written opinion of the member of the State Bar of California submitting the instrument, or representing the person submitting it, to the effect that the specific provision of the instrument objected to by the Secretary of State does conform to law and stating the points and authorities upon which the opinion is based. The Secretary of State shall rely, with respect to any disputed point of law (other than the application of Sections 201, 2101, and 2106), upon that written opinion in determining whether the instrument conforms to law. The date of filing in that case shall be the date the instrument is received on resubmission.

(c) Any instrument filed with respect to a corporation (other than original articles) may provide that it is to become effective not more than 90 days subsequent to its filing date. In case such a delayed effective date is specified, the instrument may be prevented from becoming effective by a certificate stating that by appropriate corporate action it has been revoked and is null and void, executed in the same manner as the original instrument and filed before the specified effective date. In the case of a merger agreement, the certificate revoking the earlier filing need only be executed on behalf of one of the constituent corporations. If no revocation certificate is filed, the instrument becomes effective on the date specified.

(d) Any instrument submitted to the Secretary of State for filing by a domestic corporation or a foreign corporation that is qualified to transact business in California under Section 2105 shall include the entity name and number as they exist on the Secretary of State's records.

*(Amended by Stats. 2020, Ch. 361, Sec. 1. (SB 522) Effective January 1, 2021.)*

**110.5.** The Secretary of State may cancel the filing of articles of a domestic corporation or the filing of a statement and designation by a foreign corporation if a check or other remittance accepted in payment of the filing fee or franchise tax is not paid upon presentation. Upon receiving written notification that the item presented for payment has not been honored for payment, the Secretary of State shall give written notice of the applicability of this

section and the cancellation date which shall be not less than 20 days from the date of mailing the written notice as certified by the Secretary of State, to the agent for service of process or to the person submitting the instrument. Thereafter, if the amount has not been paid by cashier's check or equivalent before the date of cancellation as stated in the written notice of cancellation, the cancellation shall thereupon be effective. The written notice shall be given 70 days or less after the original filing.

*(Amended by Stats. 1988, Ch. 508, Sec. 1.)*

**111.** All references in this division to the voting of shares include the voting of other securities given voting rights in the articles pursuant to subdivision (a)(7) of Section 204.

*(Repealed and added by Stats. 1975, Ch. 682.)*

**112.** If the articles provide for more or less than one vote for any share on any matter, the references in Sections 152, 153 and 602 to a majority or other proportion of shares means, as to such matter, a majority or other proportion of the votes entitled to be cast. Whenever in this division shares are disqualified from voting on any matter, they shall not be considered outstanding for the determination of a quorum at any meeting to act upon, or the required vote to approve action upon, that matter under any other provision of this division or the articles or bylaws.

*(Repealed and added by Stats. 1975, Ch. 682.)*

**113.** Any reference in this division to mailing means first-class mail, postage prepaid, unless registered or some other form of mail is specified or permitted. Registered mail includes certified mail.

*(Amended by Stats. 1978, Ch. 370.)*

**114.** All references in this division to financial statements, balance sheets, income statements, and statements of cashflows, and all references to assets, liabilities, earnings, retained earnings, and similar accounting items of a corporation mean those financial statements or comparable statements or items prepared or determined in conformity with generally accepted accounting principles then applicable, fairly presenting in conformity with generally accepted accounting principles the matters that they purport to present, subject to any specific accounting treatment required by a particular section of this division. Unless otherwise expressly stated, all references in this division to financial statements mean, in the case of a corporation that has subsidiaries, consolidated statements of the corporation and each of its subsidiaries as are required to be included in the consolidated statements under generally accepted accounting principles then applicable and all references to accounting items mean the items determined on a consolidated basis in accordance with the consolidated financial statements. Financial statements other than annual statements may be condensed or otherwise presented as permitted by authoritative accounting pronouncements.

*(Amended by Stats. 2006, Ch. 214, Sec. 1. Effective January 1, 2007.)*

**115.** As used in this division, independent accountant means a certified public accountant or public accountant who is independent of the corporation as determined in accordance with generally accepted auditing standards and who is engaged to audit financial statements of the corporation or perform other accounting services.

*(Amended by Stats. 1976, Ch. 641.)*

**116.** Nothing contained in this division modifies the provisions of subdivision (h) of Section 25102 or the conditions provided therein to the availability of an exemption under that subdivision.

*(Repealed and added by Stats. 1975, Ch. 682.)*

**117.** Any requirement in this division for a vote of each class of outstanding shares means such a vote regardless of limitations or restrictions upon the voting rights thereof, unless expressly limited to voting shares.

*(Added by Stats. 1976, Ch. 641.)*

**118.** Any reference in this division to the time a notice is given or sent means, unless otherwise expressly provided, any of the following:

(a) The time a written notice by mail is deposited in the United States mails, postage prepaid.

(b) The time any other written notice, including facsimile, telegram, or electronic mail message, is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by the person



giving the notice by electronic means, to the recipient.

(c) The time any oral notice is communicated, in person or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, or wireless, to the recipient, including the recipient's designated voice mailbox or address on the system, or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the recipient.

*(Amended by Stats. 2006, Ch. 538, Sec. 78. Effective January 1, 2007.)*

**149.** "Acknowledged" means that an instrument is either:

(a) Formally acknowledged as provided in Article 3 (commencing with Section 1180) of Chapter 4 of Title 4 of Part 4 of Division 2 of the Civil Code, or

(b) Accompanied by a declaration in writing signed by the persons executing the same that they are such persons and that the instrument is the act and deed of the person or persons executing the same.

Any certificate of acknowledgment taken without this state before a notary public or a judge or clerk of a court of record having an official seal need not be further authenticated.

*(Amended by Stats. 1976, Ch. 641.)*

**150.** A corporation is an "affiliate" of, or a corporation is "affiliated" with, another specified corporation if it directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the other specified corporation.

*(Added by Stats. 1975, Ch. 682.)*

**151.** "Approved by (or approval of) the board" means approved or ratified by the vote of the board or by the vote of a committee authorized to exercise the powers of the board, except as to matters not within the competence of the committee under Section 311.

*(Added by Stats. 1975, Ch. 682.)*

**152.** "Approved by (or approval of) the outstanding shares" means approved by the affirmative vote of a majority of the outstanding shares entitled to vote. Such approval shall include the affirmative vote of a majority of the outstanding shares of each class or series entitled, by any provision of the articles or of this division, to vote as a class or series on the subject matter being voted upon and shall also include the affirmative vote of such greater proportion (including all) of the outstanding shares of any class or series if such greater proportion is required by the articles or this division.

*(Amended by Stats. 1976, Ch. 641.)*

**153.** "Approved by (or approval of) the shareholders" means approved or ratified by the affirmative vote of a majority of the shares represented and voting at a duly held meeting at which a quorum is present (which shares voting affirmatively also constitute at least a majority of the required quorum) or by the written consent of shareholders (Section 603) or by the affirmative vote or written consent of such greater proportion (including all) of the shares of any class or series as may be provided in the articles or in this division for all or any specified shareholder action.

*(Amended by Stats. 1977, Ch. 235.)*

**154.** "Articles" includes the articles of incorporation, amendments thereto, amended articles, restated articles, certificate of incorporation and certificates of determination. All references in this division to a vote required by the "articles" include, in the case of a close corporation (Section 158), any vote required by a shareholders' agreement.

*(Amended by Stats. 1976, Ch. 641.)*

**155.** "Board" means the board of directors of the corporation.

*(Added by Stats. 1975, Ch. 682.)*

**156.** "Certificate of determination" means a certificate executed and filed pursuant to Section 401.

*(Added by Stats. 1975, Ch. 682.)*



**156.1.** "Certificated security" means a share (Section 184), as defined in paragraph (4) of subdivision (a) of Section 8102 of, or an obligation of the issuer as described in paragraph (15) of subdivision (a) of, the Commercial Code.

*(Amended by Stats. 1996, Ch. 497, Sec. 25. Effective January 1, 1997.)*

**156.5.** "Certificate of Redomestication" is the document by which the appropriate official of another state approves the redomestication of a California insurer.

*(Added by Stats. 1995, Ch. 702, Sec. 1. Effective January 1, 1996.)*

**156.6.** All references in this division to "chairperson of the board" shall be deemed to refer to all permissible titles for the chairperson of the board, as permitted by Section 312.

*(Added by Stats. 2015, Ch. 98, Sec. 1. (SB 351) Effective January 1, 2016.)*

**157.** "Chapter" refers to a chapter of this Division 1 of Title 1 of the Corporations Code, unless otherwise expressly stated.

*(Added by Stats. 1975, Ch. 682.)*

**158.** (a) "Close corporation" means a corporation, including a close social purpose corporation, whose articles contain, in addition to the provisions required by Section 202, a provision that all of the corporation's issued shares of all classes shall be held of record by not more than a specified number of persons, not exceeding 35, and a statement, "This corporation is a close corporation."

(b) The special provisions referred to in subdivision (a) may be included in the articles by amendment, but if such amendment is adopted after the issuance of shares only by the affirmative vote of all of the issued and outstanding shares of all classes.

(c) The special provisions referred to in subdivision (a) may be deleted from the articles by amendment, or the number of shareholders specified may be changed by amendment, but if such amendment is adopted after the issuance of shares, only by the affirmative vote of at least two-thirds of each class of the outstanding shares; provided, however, that the articles may provide for a lesser vote, but not less than a majority of the outstanding shares, or may deny a vote to any class, or both.

(d) In determining the number of shareholders for the purposes of the provision in the articles authorized by this section, spouses and the personal representative of either shall be counted as one regardless of how shares may be held by either or both of them, a trust or personal representative of a decedent holding shares shall be counted as one regardless of the number of trustees or beneficiaries, and a partnership or corporation or business association holding shares shall be counted as one (except that any such trust or entity the primary purpose of which was the acquisition or voting of the shares shall be counted according to the number of beneficial interests therein).

(e) A corporation shall cease to be a close corporation upon the filing of an amendment to its articles pursuant to subdivision (c) or, if it shall have more than the maximum number of holders of record of its shares specified in its articles as a result of an inter vivos transfer of shares which is not void under subdivision (d) of Section 418, the transfer of shares on distribution by will or pursuant to the laws of descent and distribution, the dissolution of a partnership or corporation or business association, or the termination of a trust which holds shares, by court decree upon dissolution of a marriage or otherwise by operation of law. Promptly upon acquiring more than the specified number of holders of record of its shares, a close corporation shall execute and file an amendment to its articles deleting the special provisions referred to in subdivision (a) and deleting any other provisions not permissible for a corporation which is not a close corporation, which amendment shall be promptly approved and filed by the board and need not be approved by the outstanding shares.

(f) Nothing contained in this section shall invalidate any agreement among the shareholders to vote for the deletion from the articles of the special provisions referred to in subdivision (a) upon the lapse of a specified period of time or upon the occurrence of a certain event or condition or otherwise.

(g) The following sections contain specific references to close corporations: Sections 186, 202, 204, 300, 418, 421, 1111, 1201, 1800, and 1904.

*(Amended by Stats. 2016, Ch. 50, Sec. 20. (SB 1005) Effective January 1, 2017.)*

**159.** "Common shares" means shares which have no preference over any other shares with respect to distribution of assets on liquidation or with respect to payment of dividends.

*(Added by Stats. 1975, Ch. 682.)*

**160.** (a) Except as provided in subdivision (b), "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a corporation.

(b) "Control" in Sections 181, 1001, and 1200 means the ownership directly or indirectly of shares or equity securities possessing more than 50 percent of the voting power of a domestic corporation, a foreign corporation, or an other business entity.

*(Amended by Stats. 1999, Ch. 437, Sec. 1. Effective January 1, 2000.)*

**161.** "Constituent corporation" means a corporation which is merged with or into one or more other corporations or one or more other business entities and includes a surviving corporation.

*(Amended by Stats. 1994, Ch. 1200, Sec. 9. Effective September 30, 1994.)*

**161.5.** "Constituent limited partnership" means a limited partnership which is merged with one or more corporations and includes the surviving limited partnership.

*(Added by Stats. 1993, Ch. 543, Sec. 2. Effective January 1, 1994.)*

**161.7.** "Constituent other business entity" means an other business entity that is merged with or into one or more corporations and includes the surviving other business entity.

*(Added by Stats. 1994, Ch. 1200, Sec. 10. Effective September 30, 1994.)*

**161.9.** "Conversion" means a conversion pursuant to Chapter 11.5 (commencing with Section 1150).

*(Added by Stats. 2002, Ch. 480, Sec. 1. Effective January 1, 2003.)*

**162.** "Corporation", unless otherwise expressly provided, refers only to a corporation organized under this division or a corporation subject to this division under the provisions of subdivision (a) of Section 102.

*(Amended by Stats. 1976, Ch. 641.)*

**163.** "Corporation subject to the Banking Law" (Division 1.1 (commencing with Section 1000) of the Financial Code) means:

(a) Any corporation which, with the approval of the Commissioner of Business Oversight, is incorporated for the purpose of engaging in, or which is authorized by the Commissioner of Business Oversight to engage in, the commercial banking business under Division 1.1 (commencing with Section 1000) of the Financial Code.

(b) Any corporation which, with the approval of the Commissioner of Business Oversight, is incorporated for the purpose of engaging in, or which is authorized by the Commissioner of Business Oversight to engage in, the industrial banking business under Division 1.1 (commencing with Section 1000) of the Financial Code.

(c) Any corporation (other than a corporation described in subdivision (d)) which, with the approval of the Commissioner of Business Oversight, is incorporated for the purpose of engaging in, or which is authorized by the Commissioner of Business Oversight to engage in, the trust business under Division 1.1 (commencing with Section 1000) of the Financial Code.

(d) Any corporation which is authorized by the Commissioner of Business Oversight and the Commissioner of Insurance to maintain a title insurance department to engage in title insurance business and a trust department to engage in trust business; or

(e) Any corporation which, with the approval of the Commissioner of Business Oversight, is incorporated for the purpose of engaging in, or which is authorized by the Commissioner of Business Oversight to engage in, business under Article 1 (commencing with Section 1850), Chapter 21, Division 1.1 of the Financial Code.

*(Amended by Stats. 2014, Ch. 401, Sec. 16. (AB 2763) Effective January 1, 2015.)*

**163.1.** For purposes of subdivision (b) of Section 500 and subdivision (b) of Section 506, "cumulative dividends in arrears" means only cumulative dividends that have not been paid as required on a scheduled payment date set forth in, or determined pursuant to, the articles of incorporation, regardless of whether those dividends had been declared prior to that scheduled payment date.

*(Amended by Stats. 2011, Ch. 203, Sec. 1. (AB 571) Effective January 1, 2012.)*

**164.** "Directors" means natural persons designated in the articles as such or elected by the incorporators and natural persons designated, elected or appointed by any other name or title to act as directors, and their

successors.

*(Amended by Stats. 1976, Ch. 641.)*

**165.** "Disappearing corporation" means a constituent corporation which is not the surviving corporation.

*(Added by Stats. 1975, Ch. 682.)*

**165.5.** "Disappearing limited partnership" means a constituent limited partnership which is not the surviving limited partnership.

*(Added by Stats. 1993, Ch. 543, Sec. 3. Effective January 1, 1994.)*

**166.** "Distribution to its shareholders" means the transfer of cash or property by a corporation to its shareholders without consideration, whether by way of dividend or otherwise, except a dividend in shares of the corporation, or the purchase or redemption of its shares for cash or property, including the transfer, purchase, or redemption by a subsidiary of the corporation. The time of any distribution by way of dividend shall be the date of declaration thereof and the time of any distribution by purchase or redemption of shares shall be the date cash or property is transferred by the corporation, whether or not pursuant to a contract of an earlier date; provided, that where a debt obligation that is a security (as defined in Section 8102 of the Commercial Code) is issued in exchange for shares the time of the distribution is the date when the corporation acquires the shares in the exchange. In the case of a sinking fund payment, cash or property is transferred within the meaning of this section at the time that it is delivered to a trustee for the holders of preferred shares to be used for the redemption of the shares or physically segregated by the corporation in trust for that purpose. "Distribution to its shareholders" shall not include (a) satisfaction of a final judgment of a court or tribunal of appropriate jurisdiction ordering the rescission of the issuance of shares, (b) the rescission by a corporation of the issuance of its shares, if the board determines (with any director who is, or would be, a party to the transaction not being entitled to vote) that (1) it is reasonably likely that the holder or holders of the shares in question could legally enforce a claim for the rescission, (2) that the rescission is in the best interests of the corporation, and (3) the corporation is likely to be able to meet its liabilities (except those for which payment is otherwise adequately provided) as they mature, or (c) the repurchase by a corporation of its shares issued by it pursuant to Section 408, if the board determines (with any director who is, or would be, a party to the transaction not being entitled to vote) that (1) the repurchase is in the best interests of the corporation and that (2) the corporation is likely to be able to meet its liabilities (except those for which payment is otherwise adequately provided) as they mature.

*(Amended by Stats. 1996, Ch. 497, Sec. 26. Effective January 1, 1997.)*

**167.** "Domestic corporation" means a corporation formed under the laws of this state.

*(Added by Stats. 1975, Ch. 682.)*

**167.3.** "Domestic limited liability company" means a limited liability company as defined in subdivision (t) of Section 17000.

*(Added by Stats. 1994, Ch. 1200, Sec. 11. Effective September 30, 1994.)*

**167.5.** "Domestic limited partnership" means any limited partnership formed under the laws of this state.

*(Amended by Stats. 2006, Ch. 495, Sec. 4. Effective January 1, 2007.)*

**167.7.** "Domestic other business entity" means an other business entity organized under the laws of this state.

*(Added by Stats. 1994, Ch. 1200, Sec. 12. Effective September 30, 1994.)*

**167.8.** "Disappearing other business entity" means a constituent other business entity that is not the surviving other business entity.

*(Added by Stats. 1994, Ch. 1200, Sec. 13. Effective September 30, 1994.)*

**168.** "Equity security" in Sections 181, 1001, 1113, 1200, and 1201 means any share or membership of a domestic or foreign corporation; any partnership interest, membership interest, or equivalent equity interest in an other business entity; and any security convertible with or without consideration into, or any warrant or right to subscribe to or purchase, any of the foregoing.

*(Amended by Stats. 1999, Ch. 437, Sec. 2. Effective January 1, 2000.)*

**169.** "Filed", unless otherwise expressly provided, means filed in the office of the Secretary of State.

*(Added by Stats. 1975, Ch. 682.)*

**170.** "Foreign association" means a business association organized as a trust under the laws of a foreign jurisdiction.

*(Added by Stats. 1975, Ch. 682.)*

**171.** "Foreign corporation" means any corporation other than a domestic corporation and, when used in Section 191, Section 201, Section 2203, Section 2258 and Section 2259 and Chapter 21, includes a foreign association, unless otherwise stated. "Foreign corporation" as used in Chapter 21 does not include a corporation or association chartered under the laws of the United States.

*(Amended by Stats. 1977, Ch. 235.)*

**171.03.** "Foreign limited liability company" means a foreign limited liability company as defined in subdivision (j) of Section 17701.02.

*(Amended by Stats. 2012, Ch. 419, Sec. 5. (SB 323) Effective January 1, 2013. Operative January 1, 2014, by Sec. 32 of Ch. 419.)*

**171.05.** "Foreign limited partnership" means any limited partnership, including a limited liability limited partnership, formed under the laws of any state other than this state or of the District of Columbia or under the laws of a foreign country.

*(Amended by Stats. 2006, Ch. 495, Sec. 5. Effective January 1, 2007.)*

**171.07.** "Foreign other business entity" means an other business entity organized under the laws of any state, other than this state, or of the District of Columbia or under the laws of a foreign country.

*(Added by Stats. 1994, Ch. 1200, Sec. 15. Effective September 30, 1994.)*

**171.08.** "Social purpose corporation" means any social purpose corporation formed under Division 1.5 (commencing with Section 2500).

*(Amended by Stats. 2014, Ch. 694, Sec. 3. (SB 1301) Effective January 1, 2015.)*

**171.1.** "Initial transaction statement" means a statement signed by or on behalf of the issuer sent to the new registered owner or registered pledgee, and "written statements," when used in connection with uncertificated securities, means the written statements that are periodically, or at the request of the registered owner or registered pledgee, sent by the issuer to the registered owner or registered pledgee describing the issue of which the uncertificated security is a part.

*(Amended by Stats. 1996, Ch. 497, Sec. 27. Effective January 1, 1997.)*

**171.3.** "Limited liability company" means a limited liability company as defined in subdivision (k) of Section 17701.02.

*(Amended by Stats. 2012, Ch. 419, Sec. 6. (SB 323) Effective January 1, 2013. Operative January 1, 2014, by Sec. 32 of Ch. 419.)*

**171.5.** "Limited partnership" means a partnership formed by two or more persons and having one or more general partners and one or more limited partners, or their equivalents under any name.

*(Added by Stats. 1993, Ch. 543, Sec. 6. Effective January 1, 1994.)*

**172.** "Liquidation price" or "liquidation preference" means amounts payable on shares of any class upon voluntary or involuntary dissolution, winding up or distribution of the entire assets of the corporation, including any cumulative dividends accrued and unpaid, in priority to shares of another class or classes.

*(Added by Stats. 1975, Ch. 682.)*

**173.** "Officers' certificate" means a certificate signed and verified by the chairperson of the board, the president or any vice president and by the secretary, the chief financial officer, the treasurer or any assistant secretary or assistant treasurer.

*(Amended by Stats. 2015, Ch. 98, Sec. 2. (SB 351) Effective January 1, 2016.)*

**174.** "On the certificate" means that a statement appears on the face of a share certificate or on the reverse thereof with a reference thereto on the face or, in the case of an uncertificated security, that the applicable provisions of subdivision (a) of Section 8202 and Section 8204 of the Commercial Code have been complied with.

*(Amended by Stats. 1996, Ch. 497, Sec. 28. Effective January 1, 1997.)*

**174.5.** "Other business entity" means a domestic or foreign limited liability company, limited partnership, general partnership, business trust, real estate investment trust, unincorporated association (other than a nonprofit association), or a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance as set forth in Article 16 (commencing with Section 1550) of Chapter 3 of Part 2 of Division 1 of the Insurance Code. As used herein, "general partnership" means a "partnership" as defined in subdivision (7) of Section 16101; "business trust" means a business organization formed as a trust; "real estate investment trust" means a "real estate investment trust" as defined in subsection (a) of Section 856 of the Internal Revenue Code of 1986, as amended; and "unincorporated association" has the meaning set forth in Section 18035.

*(Amended by Stats. 2004, Ch. 178, Sec. 4. Effective January 1, 2005.)*

**175.** Except as used in Sections 1001, 1101, and 1113, a "parent" of a specified corporation is an affiliate in control (Section 160(a)) of that corporation directly or indirectly through one or more intermediaries. In Sections 1001, 1101, and 1113, "parent" means a person in control (Section 160(b)) of a domestic corporation, a foreign corporation, or an other business entity.

*(Amended by Stats. 1999, Ch. 437, Sec. 4. Effective January 1, 2000.)*

**176.** "Preferred shares" means shares other than common shares.

*(Added by Stats. 1975, Ch. 682.)*

**177.** "Proper county" means the county where the principal executive office of the corporation is located or, if the principal executive office of the corporation is not located in this state, or the corporation has no such office, the County of Sacramento.

*(Added by Stats. 1975, Ch. 682.)*

**178.** "Proxy" means a written authorization signed or an electronic transmission authorized by a shareholder or the shareholder's attorney in fact giving another person or persons power to vote with respect to the shares of such shareholder. "Signed" for the purpose of this section means the placing of the shareholder's name or other authorization on the proxy (whether by manual signature, typewriting, telegraphic, or electronic transmission or otherwise) by the shareholder or the shareholder's attorney in fact.

A proxy may be transmitted by an oral telephonic transmission if it is submitted with information from which it may be determined that the proxy was authorized by the shareholder, or his or her attorney in fact.

*(Amended by Stats. 1991, Ch. 308, Sec. 1.)*

**179.** "Proxyholder" means the person or persons to whom a proxy is given.

*(Added by Stats. 1975, Ch. 682.)*

**180.** "Redemption price" means the amount or amounts (in cash, property or securities, or any combination thereof) payable on shares of any class or series upon the redemption of the shares. Unless otherwise expressly provided, the redemption price is payable in cash.

*(Added by Stats. 1975, Ch. 682.)*

**180.5.** "Redomestication" means the transfer of an insurer's place of incorporation from another state to this state or from this state to another state.

*(Added by Stats. 1995, Ch. 702, Sec. 2. Effective January 1, 1996.)*

**181.** "Reorganization" means either:

(a) A merger pursuant to Chapter 11 (commencing with Section 1100) other than a short-form merger (a "merger reorganization").

(b) The acquisition by one domestic corporation, foreign corporation, or other business entity in exchange, in whole or in part, for its equity securities (or the equity securities of a domestic corporation, a foreign corporation, or an other business entity which is in control of the acquiring entity) of equity securities of another domestic corporation, foreign corporation, or other business entity if, immediately after the acquisition, the acquiring entity has control of the other entity (an "exchange reorganization").

(c) The acquisition by one domestic corporation, foreign corporation, or other business entity in exchange in whole or in part for its equity securities (or the equity securities of a domestic corporation, a foreign corporation, or an other business entity which is in control of the acquiring entity) or for its debt securities (or debt securities of a domestic corporation, foreign corporation, or other business entity which is in control of the acquiring entity) which are not adequately secured and which have a maturity date in excess of five years after the consummation of the reorganization, or both, of all or substantially all of the assets of another domestic corporation, foreign corporation, or other business entity (a "sale-of-assets reorganization").

*(Amended by Stats. 1999, Ch. 437, Sec. 5. Effective January 1, 2000.)*

**182.** "Reverse stock split" means the pro rata combination of all the outstanding shares of a class into a smaller number of shares of the same class by an amendment to the articles stating the effect on outstanding shares.

*(Added by Stats. 1975, Ch. 682.)*

**183.** "Series" of shares means those shares within a class which have the same rights, preferences, privileges and restrictions but which differ in one or more rights, preferences, privileges or restrictions from other shares within the same class. Certificated securities and uncertificated securities do not constitute different series if the only difference is certificated and uncertificated status.

*(Amended by Stats. 1986, Ch. 766, Sec. 9.)*

**183.5.** "Share exchange tender offer" means any acquisition by one corporation in exchange in whole or in part for its equity securities (or the equity securities of a corporation which is in control of the acquiring corporation) of shares of another corporation, other than an exchange reorganization (subdivision (b) of Section 181).

*(Added by Stats. 1989, Ch. 1116, Sec. 4. Effective September 30, 1989.)*

**184.** "Shares" means the units into which the proprietary interests in a corporation are divided in the articles.

*(Added by Stats. 1975, Ch. 682.)*

**185.** "Shareholder" means one who is a holder of record of shares.

*(Added by Stats. 1975, Ch. 682.)*

**186.** "Shareholders' agreement" means a written agreement among all of the shareholders of a close corporation, or if a close corporation has only one shareholder between such shareholder and the corporation, as authorized by subdivision (b) of Section 300.

*(Amended by Stats. 1976, Ch. 641.)*

**187.** "Short-form merger" means a merger pursuant to Section 1110.

*(Added by Stats. 1975, Ch. 682.)*

**188.** "Stock split" means the pro rata division, otherwise than by a share dividend, of all the outstanding shares of a class into a greater number of shares of the same class by an amendment to the articles stating the effect on outstanding shares.

*(Added by Stats. 1975, Ch. 682.)*

**189.** (a) Except as provided in subdivision (b), "subsidiary" of a specified corporation means a corporation shares of which possessing more than 50 percent of the voting power are owned directly or indirectly through one or more subsidiaries by the specified corporation.

(b) For the purpose of Section 703, "subsidiary" of a specified corporation means a corporation shares of which possessing more than 25 percent of the voting power are owned directly or indirectly through one or more subsidiaries as defined in subdivision (a) by the specified corporation.

*(Amended by Stats. 1976, Ch. 641.)*

**190.** "Surviving corporation" means a corporation into which one or more other corporations or one or more other business entities are merged.

*(Amended by Stats. 1994, Ch. 1200, Sec. 18. Effective September 30, 1994.)*

**190.5.** "Surviving limited partnership" means a limited partnership into which one or more other limited partnerships or one or more corporations are merged.

*(Added by Stats. 1993, Ch. 543, Sec. 8. Effective January 1, 1994.)*

**190.7.** "Surviving other business entity" means an other business entity into which one or more other business entities or one or more corporations are merged.

*(Added by Stats. 1994, Ch. 1200, Sec. 19. Effective September 30, 1994.)*

**191.** (a) For the purposes of Chapter 21 (commencing with Section 2100), "transact intrastate business" means entering into repeated and successive transactions of its business in this state, other than interstate or foreign commerce.

(b) A foreign corporation shall not be considered to be transacting intrastate business merely because its subsidiary transacts intrastate business or merely because of its status as any one or more of the following:

- (1) A shareholder of a domestic corporation.
- (2) A shareholder of a foreign corporation transacting intrastate business.
- (3) A limited partner of a domestic limited partnership.
- (4) A limited partner of a foreign limited partnership transacting intrastate business.
- (5) A member or manager of a domestic limited liability company.
- (6) A member or manager of a foreign limited liability company transacting intrastate business.

(c) Without excluding other activities that may not constitute transacting intrastate business, a foreign corporation shall not be considered to be transacting intrastate business within the meaning of subdivision (a) solely by reason of carrying on in this state any one or more of the following activities:

- (1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.
- (2) Holding meetings of its board or shareholders or carrying on other activities concerning its internal affairs.
- (3) Maintaining bank accounts.
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of its securities or depositaries with relation to its securities.
- (5) Effecting sales through independent contractors.
- (6) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where those orders require acceptance outside this state before becoming binding contracts.
- (7) Creating evidences of debt or mortgages, liens or security interests on real or personal property.
- (8) Conducting an isolated transaction completed within a period of 180 days and not in the course of a number of repeated transactions of like nature.

(d) Without excluding other activities that may not constitute transacting intrastate business, any foreign lending institution, including, but not limited to: any foreign banking corporation, any foreign corporation all of the capital stock of which is owned by one or more foreign banking corporations, any foreign savings and loan association, any foreign insurance company or any foreign corporation or association authorized by its charter to invest in loans secured by real and personal property, whether organized under the laws of the United States or of any other state, district or territory of the United States, shall not be considered to be doing, transacting, or engaging in business in this state solely by reason of engaging in any or all of the following activities either on its own behalf or as a trustee of a pension plan, employee profit sharing or retirement plan, testamentary or inter vivos trust, or in any other fiduciary capacity:

- (1) The acquisition by purchase, by contract to purchase, by making of advance commitments to purchase or by assignment of loans, secured or unsecured, or any interest therein, if those activities are carried on from outside this state by the lending institution.
- (2) The making by an officer or employee of physical inspections and appraisals of real or personal property securing or proposed to secure any loan, if the officer or employee making any physical inspection or appraisal is



not a resident of and does not maintain a place of business for that purpose in this state.

(3) The ownership of any loans and the enforcement of any loans by trustee's sale, judicial process, or deed in lieu of foreclosure or otherwise.

(4) The modification, renewal, extension, transfer, or sale of loans or the acceptance of additional or substitute security therefor or the full or partial release of the security therefor or the acceptance of substitute or additional obligors thereon, if the activities are carried on from outside this state by the lending institution.

(5) The engaging by contractual arrangement of a corporation, firm, or association, qualified to do business in this state, that is not a subsidiary or parent of the lending institution and that is not under common management with the lending institution, to make collections and to service loans in any manner whatsoever, including the payment of ground rents, taxes, assessments, insurance, and the like and the making, on behalf of the lending institution, of physical inspections and appraisals of real or personal property securing any loans or proposed to secure any loans, and the performance of any such engagement.

(6) The acquisition of title to the real or personal property covered by any mortgage, deed of trust, or other security instrument by trustee's sale, judicial sale, foreclosure or deed in lieu of foreclosure, or for the purpose of transferring title to any federal agency or instrumentality as the insurer or guarantor of any loan, and the retention of title to any real or personal property so acquired pending the orderly sale or other disposition thereof.

(7) The engaging in activities necessary or appropriate to carry out any of the foregoing activities.

Nothing contained in this subdivision shall be construed to permit any foreign banking corporation to maintain an office in this state otherwise than as provided by the laws of this state or to limit the powers conferred upon any foreign banking corporation as set forth in the laws of this state or to permit any foreign lending institution to maintain an office in this state except as otherwise permitted under the laws of this state.

*(Amended by Stats. 2019, Ch. 143, Sec. 21. (SB 251) Effective January 1, 2020.)*

**191.1.** "Uncertificated security" means a share (Section 184), or an obligation of the issuer, described in paragraphs (15) and (18) of subdivision (a) of Section 8102 of the Commercial Code.

*(Amended by Stats. 1996, Ch. 497, Sec. 29. Effective January 1, 1997.)*

**192.** "Vacancy" when used with respect to the board means any authorized position of director which is not then filled by a duly elected director, whether caused by death, resignation, removal, change in the authorized number of directors (by the board or the shareholders) or otherwise.

*(Amended by Stats. 1976, Ch. 641.)*

**193.** "Verified" means that the statements contained in a certificate or other document are declared to be true of the own knowledge of the persons executing the same in either:

(a) An affidavit signed by them under oath before an officer authorized by the laws of this state or of the place where it is executed to administer oaths, or

(b) A declaration in writing executed by them "under penalty of perjury" and stating the date and place (whether within or without this state) of execution.

Any affidavit sworn to without this state before a notary public or a judge or clerk of a court of record having an official seal need not be further authenticated.

*(Added by Stats. 1975, Ch. 682.)*

**194.** "Vote" includes authorization by written consent, subject to the provisions of subdivision (b) of Section 307 and subdivision (d) of Section 603.

*(Repealed and added by Stats. 1993, Ch. 128, Sec. 3. Effective January 1, 1994.)*

**194.5.** "Voting power" means the power to vote for the election of directors at the time any determination of voting power is made and does not include the right to vote upon the happening of some condition or event which has not yet occurred. In any case where different classes of shares are entitled to vote as separate classes for different members of the board, the determination of percentage of voting power shall be made on the basis of the percentage of the total number of authorized directors which the shares in question (whether of one or more classes) have the power to elect in an election at which all shares then entitled to vote for the election of any directors are voted.

*(Added by Stats. 1976, Ch. 641.)*

**194.7.** "Voting shift" means a change, pursuant to or by operation of a provision of the articles, in the relative rights of the holders of one or more classes or series of shares, voting as one or more separate classes or series, to elect one or more directors.

*(Added by Stats. 1988, Ch. 495, Sec. 1.)*

**195.** "Written" or "in writing" includes facsimile, telegraphic, and other electronic communication when authorized by this code, including an electronic transmission by a corporation that satisfies the requirements of Section 20.

*(Amended by Stats. 2004, Ch. 254, Sec. 5. Effective January 1, 2005.)*

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**CORPORATIONS CODE - CORP****TITLE 1. CORPORATIONS [100 - 14631]** ( Title 1 enacted by Stats. 1947, Ch. 1038. )**DIVISION 1. GENERAL CORPORATION LAW [100 - 2319]** ( Division 1 repealed and added by Stats. 1975, Ch. 682. )**CHAPTER 2. Organization and Bylaws [200 - 213]** ( Chapter 2 added by Stats. 1975, Ch. 682. )

**200.** (a) One or more natural persons, partnerships, associations or corporations, domestic or foreign, may form a corporation under this division by executing and filing articles of incorporation.

(b) If initial directors are named in the articles, each director named in the articles shall sign and acknowledge the articles; if initial directors are not named in the articles, the articles shall be signed by one or more persons described in subdivision (a) who thereupon are the incorporators of the corporation.

(c) The corporate existence begins upon the filing of the articles and continues perpetually, unless otherwise expressly provided by law or in the articles.

(Amended by Stats. 1983, Ch. 1223, Sec. 1.)

**200.5.** (a) An existing business association organized as a trust under the laws of this state or of a foreign jurisdiction may incorporate under this division upon approval by its board of trustees or similar governing body and approval by the affirmative vote of a majority of the outstanding voting shares of beneficial interest (or such greater proportion of the outstanding shares of beneficial interest or the vote of such other classes of shares of beneficial interest as may be specifically required by its declaration of trust or bylaws) and the filing of articles of incorporation with certificate attached pursuant to this chapter.

(b) In addition to the matters required to be set forth in the articles pursuant to Section 202, the articles in the case of an incorporation authorized by subdivision (a) shall set forth that an existing unincorporated association, stating its name, is being incorporated by the filing of the articles.

(c) The articles filed pursuant to this section shall be signed by the president, or any vice president, and the secretary, or any assistant secretary, of the existing association and shall be accompanied by a certificate signed and verified by such officers signing the articles and stating that the incorporation of the association has been approved by the trustees and by the required vote of holders of shares of beneficial interest in accordance with subdivision (a).

(d) Upon the filing of articles of incorporation pursuant to this section, the corporation shall succeed automatically to all of the rights and property of the association being incorporated and shall be subject to all of its debts and liabilities in the same manner as if the corporation had itself incurred them. The incumbent trustees of the association shall constitute the initial directors of the corporation and shall continue in office until the next annual meeting of the shareholders, unless they die, resign or are removed prior thereto. All rights of creditors and all liens upon the property of the association shall be preserved unimpaired. Any action or proceeding pending by or against the association may be prosecuted to judgment, which shall bind the corporation, or the corporation may be proceeded against or substituted in its place.

(e) The filing for record in the office of the county recorder of any county in this state in which any of the real property of the association is located of a copy of the articles of incorporation filed pursuant to this section, certified by the Secretary of State, shall evidence record ownership in the corporation of all interests of the association in and to the real property located in that county.

(Added by Stats. 1978, Ch. 370.)

**201.** (a) The Secretary of State shall not file articles setting forth a name in which "bank," "trust," "trustee," or related words appear, unless the certificate of approval of the Commissioner of Business Oversight is attached

thereto. This subdivision does not apply to the articles of any corporation subject to the Banking Law on which is endorsed the approval of the Commissioner of Business Oversight.

(b) The name of a corporation shall not be a name that the Secretary of State determines is likely to mislead the public and shall be distinguishable in the records of the Secretary of State from all of the following:

- (1) The name of any corporation.
  - (2) The name of any foreign corporation authorized to transact intrastate business in this state.
  - (3) Each name that is under reservation pursuant to this title.
  - (4) The name of a foreign corporation that has registered its name pursuant to Section 2101.
  - (5) A name that a foreign corporation has assumed under subdivision (b) of Section 2106.
  - (6) A name that will become the record name of a domestic or foreign corporation upon a corporate instrument when there is a delayed effective or file date.
- (c) Subject to Section 2106, this section applies to a foreign corporation transacting business in this state or that has applied for a certificate of qualification.
- (d) The use by a corporation of a name in violation of this section may be enjoined notwithstanding the filing of its articles by the Secretary of State.
- (e) Any applicant may, upon payment of the fee prescribed therefor in Article 3 (commencing with Section 12180) of Chapter 3 of Part 2 of Division 3 of Title 2 of the Government Code, obtain from the Secretary of State a certificate of reservation of any name not prohibited by subdivision (b), and upon the issuance of the certificate the name stated therein shall be reserved for a period of 60 days. The Secretary of State shall not, however, issue certificates reserving the same name for two or more consecutive 60-day periods to the same applicant or for the use or benefit of the same person; nor shall consecutive reservations be made by or for the use or benefit of the same person; of names so similar as to fall within the prohibitions of subdivision (b).

*(Amended by Stats. 2020, Ch. 361, Sec. 2. (SB 522) Effective January 1, 2021.)*

**201.5.** The Secretary of State shall not file articles in which the business is to be an insurer unless the certificate of the Insurance Commissioner approving the corporate name is attached thereto.

*(Added by Stats. 1979, Ch. 737.)*

**201.6.** (a) (1) When an insurer has been approved by the Insurance Commissioner pursuant to Section 709.5 of the Insurance Code to redomesticate to this state, the redomesticating insurer shall file with the Secretary of State articles of incorporation that include a provision setting forth all of the following information:

- (A) The name and former jurisdiction of the redomesticating insurer.
- (B) The redomesticating insurer's Secretary of State file number.
- (C) A statement that the redomesticating insurer was authorized to effect the redomestication by the laws under which it formerly was organized.
- (D) A statement that the redomesticating insurer has approved a plan of redomestication or other instrument as may be required to effect the redomestication to this state pursuant to the laws under which the redomesticating insurer was organized.
- (E) A statement that the Insurance Commissioner has approved the redomestication of the insurer to this state.

(2) The Secretary of State shall not file articles of incorporation containing the information required by paragraph (1) unless a copy of the amended certificate of authority, evidencing the approval of the redomestication by the Insurance Commissioner, is attached thereto.

(b) If a redomesticating insurer is qualified to transact business in this state, by virtue of its filing of articles of incorporation in this state, the redomesticating insurer shall automatically surrender its right to transact intrastate business.

(c) (1) An insurer that has filed articles of incorporation in this state and has been approved by the Insurance Commissioner pursuant to Section 709.5 of the Insurance Code to redomesticate to another jurisdiction, shall file with the Secretary of State a statement of redomestication, on a form prescribed by the Secretary of State, containing all of the following information:

- (A) The name of the redomesticating insurer.
- (B) The redomesticating insurer's Secretary of State file number.

(C) The jurisdiction of the redomesticated insurer.

(D) The name and street address of the redomesticated insurer's agent for service of process.

(E) A statement that the redomesticating insurer is authorized to effect the redomestication under California law and the jurisdiction to which the insurer is redomesticating.

(F) A statement that the redomesticating insurer has complied with the requirements to redomesticate as required by California law and the jurisdiction to which the insurer is redomesticating.

(G) A statement that the Insurance Commissioner has approved the redomestication of the insurer.

(2) The Secretary of State shall not file the statement of redomestication required by paragraph (1) unless a copy of the amended certificate of authority, evidencing the approval of the redomestication by the Insurance Commissioner, is attached thereto.

*(Repealed and added by Stats. 2017, Ch. 417, Sec. 2. (AB 1696) Effective January 1, 2018.)*

**201.7.** Upon receipt of a certified copy of the commissioner's authorization issued pursuant to subdivision (a) of Section 11542 or subdivision (a) of Section 4097.11 of the Insurance Code and subject to subdivision (a) of Section 110 of the Corporations Code, the Secretary of State shall accept for filing the certificate of amendment of the articles of incorporation of the domestic mutual insurer certified by the secretary thereof.

Upon receipt of a certified copy of the commissioner's authorization to file articles of incorporation of a mutual holding company and a stock holding company authorized pursuant to conversion proceedings pursuant to subdivision (a) of Section 11542 or subdivision (a) of Section 4097.11 of the Insurance Code and subject to subdivision (a) of Section 110 of the Corporations Code, the Secretary of State shall accept for filing the articles of incorporation of the mutual holding company and stock holding company.

*(Amended by Stats. 1998, Ch. 421, Sec. 1. Effective January 1, 1999.)*

**202.** The articles of incorporation shall set forth:

(a) The name of the corporation; provided, however, that in order for the corporation to be subject to the provisions of this division applicable to a close corporation (Section 158), the name of the corporation must contain the word "corporation," "incorporated," or "limited" or an abbreviation of one of such words.

(b) (1) The applicable one of the following statements:

(A) The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code; or

(B) The purpose of the corporation is to engage in the profession of \_\_\_\_ (with the insertion of a profession permitted to be incorporated by the California Corporations Code) and any other lawful activities (other than the banking or trust company business) not prohibited to a corporation engaging in such profession by applicable laws and regulations.

(2) In case the corporation is a corporation subject to the Banking Law (Division 1.1 (commencing with Section 1000) of the Financial Code), the articles shall set forth a statement of purpose which is prescribed in the applicable provision of the Banking Law.

(3) In case the corporation is a corporation subject to the Insurance Code as an insurer, the articles shall additionally state that the business of the corporation is to be an insurer.

(4) If the corporation is intended to be a "professional corporation" within the meaning of the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3), the articles shall additionally contain the statement required by Section 13404.

The articles shall not set forth any further or additional statement with respect to the purposes or powers of the corporation, except by way of limitation or except as expressly required by any law of this state other than this division or any federal or other statute or regulation (including the Internal Revenue Code and regulations thereunder as a condition of acquiring or maintaining a particular status for tax purposes).

(c) The name and street address in this state of the corporation's initial agent for service of process in accordance with subdivision (b) of Section 1502.

(d) The initial street address of the corporation.

(e) The initial mailing address of the corporation, if different from the initial street address.

(f) If the corporation is authorized to issue only one class of shares, the total number of shares which the corporation is authorized to issue.

(g) If the corporation is authorized to issue more than one class of shares, or if any class of shares is to have two or more series:

(1) The total number of shares of each class the corporation is authorized to issue, and the total number of shares of each series which the corporation is authorized to issue or that the board is authorized to fix the number of shares of any such series;

(2) The designation of each class, and the designation of each series or that the board may determine the designation of any such series; and

(3) The rights, preferences, privileges, and restrictions granted to or imposed upon the respective classes or series of shares or the holders thereof, or that the board, within any limits and restrictions stated, may determine or alter the rights, preferences, privileges, and restrictions granted to or imposed upon any wholly unissued class of shares or any wholly unissued series of any class of shares. As to any series the number of shares of which is authorized to be fixed by the board, the articles may also authorize the board, within the limits and restrictions stated therein or stated in any resolution or resolutions of the board originally fixing the number of shares constituting any series, to increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any such series subsequent to the issue of shares of that series. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

*(Amended by Stats. 2014, Ch. 64, Sec. 3. (AB 2742) Effective January 1, 2015.)*

**203.** Except as specified in the articles or in any shareholders' agreement, no distinction shall exist between classes or series of shares or the holders thereof.

*(Added by Stats. 1975, Ch. 682.)*

**203.5.** (a) If the articles include the designation and number of shares of one or more series within a class, the stated number of shares for all series within the class shall not exceed, and may be less than, the stated number of shares for the class.

(b) If so authorized in the articles and if the articles state the number of shares of the class, the articles may be amended by approval of the board alone to increase or decrease (but not below the number of shares of the series then outstanding) the number of shares of a series.

(c) If the articles authorize a class of shares which is stated to be issuable in series, the articles shall include either the designation and number of shares for at least one series within that class or an authorization of common shares.

*(Added by Stats. 1988, Ch. 919, Sec. 2.)*

**204.** The articles of incorporation may set forth:

(a) Any or all of the following provisions, which shall not be effective unless expressly provided in the articles:

(1) Granting, with or without limitations, the power to levy assessments upon the shares or any class of shares.

(2) Granting to shareholders preemptive rights to subscribe to any or all issues of shares or securities.

(3) Special qualifications of persons who may be shareholders.

(4) A provision limiting the duration of the corporation's existence to a specified date.

(5) A provision requiring, for any or all corporate actions (except as provided in Section 303, subdivision (b) of Section 402.5, subdivision (c) of Section 708 and Section 1900) the vote of a larger proportion or of all of the shares of any class or series, or the vote or quorum for taking action of a larger proportion or of all of the directors, than is otherwise required by this division.

(6) A provision limiting or restricting the business in which the corporation may engage or the powers which the corporation may exercise or both.

(7) A provision conferring upon the holders of any evidences of indebtedness, issued or to be issued by the corporation, the right to vote in the election of directors and on any other matters on which shareholders may vote.

(8) A provision conferring upon shareholders the right to determine the consideration for which shares shall be issued.

(9) A provision requiring the approval of the shareholders (Section 153) or the approval of the outstanding shares (Section 152) for any corporate action, even though not otherwise required by this division.

(10) Provisions eliminating or limiting the personal liability of a director for monetary damages in an action brought by or in the right of the corporation for breach of a director's duties to the corporation and its shareholders, as set forth in Section 309, provided, however, that (A) such a provision may not eliminate or limit the liability of directors (i) for acts or omissions that involve intentional misconduct or a knowing and culpable violation of law, (ii) for acts or omissions that a director believes to be contrary to the best interests of the corporation or its shareholders or that involve the absence of good faith on the part of the director, (iii) for any transaction from which a director derived an improper personal benefit, (iv) for acts or omissions that show a reckless disregard for the director's duty to the corporation or its shareholders in circumstances in which the director was aware, or should have been aware, in the ordinary course of performing a director's duties, of a risk of serious injury to the corporation or its shareholders, (v) for acts or omissions that constitute an unexcused pattern of inattention that amounts to an abdication of the director's duty to the corporation or its shareholders, (vi) under Section 310, or (vii) under Section 316, (B) no such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision becomes effective, and (C) no such provision shall eliminate or limit the liability of an officer for any act or omission as an officer, notwithstanding that the officer is also a director or that his or her actions, if negligent or improper, have been ratified by the directors.

(11) A provision authorizing, whether by bylaw, agreement, or otherwise, the indemnification of agents (as defined in Section 317) in excess of that expressly permitted by Section 317 for those agents of the corporation for breach of duty to the corporation and its stockholders, provided, however, that the provision may not provide for indemnification of any agent for any acts or omissions or transactions from which a director may not be relieved of liability as set forth in the exception to paragraph (10) or as to circumstances in which indemnity is expressly prohibited by Section 317.

Notwithstanding this subdivision, in the case of a close corporation any of the provisions referred to above may be validly included in a shareholders' agreement. Notwithstanding this subdivision, bylaws may require for all or any actions by the board the affirmative vote of a majority of the authorized number of directors. Nothing contained in this subdivision shall affect the enforceability, as between the parties thereto, of any lawful agreement not otherwise contrary to public policy.

(12) (A) In the case of a corporation that does not have outstanding securities listed on the New York Stock Exchange, the NYSE Amex, the NASDAQ Global Market, or the NASDAQ Capital Market, a provision authorizing records administered by or on behalf of the corporation in which the names of all of the corporation's stockholders of record, the address and number of shares registered in the name of each of those stockholders, and all issuances and transfers of stock of the corporation to be recorded and kept on or by means of blockchain technology, provided that all of the following requirements are met:

(i) The encrypted information in the records can be decrypted and converted into a clearly readable format within a reasonable period of time.

(ii) The records can be used to prepare the list of shareholders.

(iii) The records can be used to record information required to be included on stock certificates.

(iv) The records can be used to record required transfers of stock.

(B) For purposes of this paragraph, "blockchain technology" means a mathematically secured, chronological, and decentralized consensus ledger or database.

(b) Reasonable restrictions upon the right to transfer or hypothecate shares of any class or classes or series, but no restriction shall be binding with respect to shares issued prior to the adoption of the restriction unless the holders of such shares voted in favor of the restriction.

(c) The names and addresses of the persons appointed to act as initial directors.

(d) Any other provision, not in conflict with law, for the management of the business and for the conduct of the affairs of the corporation, including any provision which is required or permitted by this division to be stated in the bylaws.

(e) This section shall remain in effect only until January 1, 2022, and as of that date is repealed.

*(Amended by Stats. 2018, Ch. 889, Sec. 1. (SB 838) Effective January 1, 2019. Repealed as of January 1, 2022, by its own provisions. See later operative version added by Stats. 2018, Ch. 889.)*

**204.** The articles of incorporation may set forth:

(a) Any or all of the following provisions, which shall not be effective unless expressly provided in the articles:



- (1) Granting, with or without limitations, the power to levy assessments upon the shares or any class of shares.
  - (2) Granting to shareholders preemptive rights to subscribe to any or all issues of shares or securities.
  - (3) Special qualifications of persons who may be shareholders.
  - (4) A provision limiting the duration of the corporation's existence to a specified date.
  - (5) A provision requiring, for any or all corporate actions, except as provided in Section 303, subdivision (b) of Section 402.5, subdivision (c) of Section 708, and Section 1900, the vote of a larger proportion or of all of the shares of any class or series, or the vote or quorum for taking action of a larger proportion or of all of the directors, than is otherwise required by this division.
  - (6) A provision limiting or restricting the business in which the corporation may engage or the powers which the corporation may exercise or both.
  - (7) A provision conferring upon the holders of any evidences of indebtedness, issued or to be issued by the corporation, the right to vote in the election of directors and on any other matters on which shareholders may vote.
  - (8) A provision conferring upon shareholders the right to determine the consideration for which shares shall be issued.
  - (9) A provision requiring the approval of the shareholders (Section 153) or the approval of the outstanding shares (Section 152) for any corporate action, even though not otherwise required by this division.
  - (10) Provisions eliminating or limiting the personal liability of a director for monetary damages in an action brought by or in the right of the corporation for breach of a director's duties to the corporation and its shareholders, as set forth in Section 309, provided, however, that (A) such a provision may not eliminate or limit the liability of directors (i) for acts or omissions that involve intentional misconduct or a knowing and culpable violation of law, (ii) for acts or omissions that a director believes to be contrary to the best interests of the corporation or its shareholders or that involve the absence of good faith on the part of the director, (iii) for any transaction from which a director derived an improper personal benefit, (iv) for acts or omissions that show a reckless disregard for the director's duty to the corporation or its shareholders in circumstances in which the director was aware, or should have been aware, in the ordinary course of performing a director's duties, of a risk of serious injury to the corporation or its shareholders, (v) for acts or omissions that constitute an unexcused pattern of inattention that amounts to an abdication of the director's duty to the corporation or its shareholders, (vi) under Section 310, or (vii) under Section 316, (B) no such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision becomes effective, and (C) no such provision shall eliminate or limit the liability of an officer for any act or omission as an officer, notwithstanding that the officer is also a director or that his or her actions, if negligent or improper, have been ratified by the directors.
  - (11) A provision authorizing, whether by bylaw, agreement, or otherwise, the indemnification of agents (as defined in Section 317) in excess of that expressly permitted by Section 317 for those agents of the corporation for breach of duty to the corporation and its stockholders, provided, however, that the provision may not provide for indemnification of any agent for any acts or omissions or transactions from which a director may not be relieved of liability as set forth in the exception to paragraph (10) or as to circumstances in which indemnity is expressly prohibited by Section 317.
- Notwithstanding this subdivision, in the case of a close corporation any of the provisions referred to above may be validly included in a shareholders' agreement. Notwithstanding this subdivision, bylaws may require for all or any actions by the board the affirmative vote of a majority of the authorized number of directors. Nothing contained in this subdivision shall affect the enforceability, as between the parties thereto, of any lawful agreement not otherwise contrary to public policy.
- (b) Reasonable restrictions upon the right to transfer or hypothecate shares of any class or classes or series, but no restriction shall be binding with respect to shares issued prior to the adoption of the restriction unless the holders of such shares voted in favor of the restriction.
  - (c) The names and addresses of the persons appointed to act as initial directors.
  - (d) Any other provision, not in conflict with law, for the management of the business and for the conduct of the affairs of the corporation, including any provision which is required or permitted by this division to be stated in the bylaws.
  - (e) This section shall become operative on January 1, 2022.

*(Repealed and added by Stats. 2018, Ch. 889, Sec. 2. (SB 838) Effective January 1, 2019. Section operative January 1, 2022, by its own provisions.)*

**204.5.** (a) If the articles of a corporation include a provision reading substantially as follows: "The liability of the directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible under California law"; the corporation shall be considered to have adopted a provision as authorized by paragraph (10) of subdivision (a) of Section 204 and more specific wording shall not be required.

(b) This section shall not be construed as setting forth the exclusive method of adopting an article provision as authorized by paragraph (10) of subdivision (a) of Section 204.

(c) This section shall not change the otherwise applicable standards or duties to make full and fair disclosure to shareholders when approval of such a provision is sought.

*(Added by Stats. 1987, Ch. 1203, Sec. 1.5. Effective September 27, 1987.)*

**205.** Solely for the purpose of any statute or regulation imposing any tax or fee based upon the capitalization of a corporation, all authorized shares of a corporation organized under this division shall be deemed to have a nominal or par value of one dollar (\$1) per share. If any federal or other statute or regulation applicable to a particular corporation requires that the shares of such corporation have a par value, such shares shall have the par value determined by the board in order to satisfy the requirements of such statute or regulation.

*(Added by Stats. 1975, Ch. 682.)*

**206.** Subject to any limitation contained in the articles and to compliance with any other applicable laws, any corporation other than a corporation subject to the Banking Law or a professional corporation may engage in any business activity; and a corporation subject to the Banking Law or a professional corporation may engage in any business activity not prohibited by the respective statutes and regulations to which it is subject.

*(Amended by Stats. 1978, Ch. 370.)*

**207.** Subject to any limitations contained in the articles and to compliance with other provisions of this division and any other applicable laws, a corporation shall have all of the powers of a natural person in carrying out its business activities, including, without limitation, the power to:

(a) Adopt, use, and at will alter a corporate seal, but failure to affix a seal does not affect the validity of any instrument.

(b) Adopt, amend, and repeal bylaws.

(c) Qualify to do business in any other state, territory, dependency, or foreign country.

(d) Subject to the provisions of Section 510, issue, purchase, redeem, receive, take or otherwise acquire, own, hold, sell, lend, exchange, transfer or otherwise dispose of, pledge, use, and otherwise deal in and with its own shares, bonds, debentures, and other securities.

(e) Make donations, regardless of specific corporate benefit, for the public welfare or for community fund, hospital, charitable, educational, scientific, civic, or similar purposes.

(f) Pay pensions, and establish and carry out pension, profit-sharing, share bonus, share purchase, share option, savings, thrift and other retirement, incentive, and benefit plans, trusts, and provisions for any or all of the directors, officers, and employees of the corporation or any of its subsidiary or affiliated corporations, and to indemnify and purchase and maintain insurance on behalf of any fiduciary of such plans, trusts, or provisions.

(g) Subject to the provisions of Section 315, assume obligations, enter into contracts, including contracts of guaranty or suretyship, incur liabilities, borrow and lend money, and otherwise use its credit, and secure any of its obligations, contracts, or liabilities by mortgage, pledge, or other encumbrance of all or any part of its property, franchises, and income.

(h) Participate with others in any partnership, joint venture or other association, transaction, or arrangement of any kind, whether or not such participation involves sharing or delegation of control with or to others.

(i) (1) In anticipation of or during an emergency, take either or both of the following actions necessary to conduct the corporation's ordinary business operations and affairs, unless emergency bylaws provide otherwise pursuant to subdivision (c) of Section 212:

(A) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent resulting from the emergency.

(B) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(2) During an emergency, take either or both of the following actions necessary to conduct the corporation's ordinary business operations and affairs, unless emergency bylaws provide otherwise pursuant to subdivision (c) of Section 212:

(A) Give notice to a director or directors in any practicable manner under the circumstances, including, but not limited to, by publication and radio, when notice of a meeting of the board cannot be given to that director or directors in the manner prescribed by the bylaws or Section 307.

(B) Deem that one or more officers of the corporation present at a board meeting is a director, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum for that meeting.

(3) In anticipation of or during an emergency, the board may not take any action that requires the vote of the shareholders or is not in the corporation's ordinary course of business, unless the required vote of the shareholders was obtained prior to the emergency.

(4) Any actions taken in good faith in anticipation of or during an emergency under this subdivision bind the corporation and may not be used to impose liability on a corporate director, officer, employee, or agent.

(5) For purposes of this subdivision, "emergency" means any of the following events or circumstances as a result of which, and only so long as, a quorum of the corporation's board of directors cannot be readily convened for action:

(A) A natural catastrophe, including, but not limited to, a hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought, or, regardless of cause, any fire, flood, or explosion.

(B) An attack on this state or nation by an enemy of the United States of America, or upon receipt by this state of a warning from the federal government indicating that an enemy attack is probable or imminent.

(C) An act of terrorism or other manmade disaster that results in extraordinary levels of casualties or damage or disruption severely affecting the infrastructure, environment, economy, government functions, or population, including, but not limited to, mass evacuations.

(D) A state of emergency proclaimed by a governor or by the President.

*(Amended by Stats. 2013, Ch. 255, Sec. 1. (AB 491) Effective January 1, 2014.)*

**208.** (a) No limitation upon the business, purposes or powers of the corporation or upon the powers of the shareholders, officers or directors, or the manner of exercise of such powers, contained in or implied by the articles or by Chapters 18, 19 and 20 or by any shareholders' agreement shall be asserted as between the corporation or any shareholder and any third person, except in a proceeding (1) by a shareholder or the state to enjoin the doing or continuation of unauthorized business by the corporation or its officers, or both, in cases where third parties have not acquired rights thereby, or (2) to dissolve the corporation or (3) by the corporation or by a shareholder suing in a representative suit against the officers or directors of the corporation for violation of their authority.

(b) Any contract or conveyance made in the name of a corporation which is authorized or ratified by the board, or is done within the scope of the authority, actual or apparent, conferred by the board or within the agency power of the officer executing it, except as the board's authority is limited by law other than this division, binds the corporation, and the corporation acquires rights thereunder, whether the contract is executed or wholly or in part executory.

(c) This section applies to contracts and conveyances made by foreign corporations in this state and to all conveyances by foreign corporations of real property situated in this state.

*(Added by Stats. 1975, Ch. 682.)*

**209.** For all purposes other than an action in the nature of quo warranto, a copy of the articles of a corporation duly certified by the Secretary of State is conclusive evidence of the formation of the corporation and prima facie evidence of its corporate existence.

*(Added by Stats. 1975, Ch. 682.)*

**210.** If initial directors have not been named in the articles, the incorporator or incorporators, until the directors are elected, may do whatever is necessary and proper to perfect the organization of the corporation, including the adoption and amendment of bylaws of the corporation and the election of directors and officers.

*(Added by Stats. 1975, Ch. 682.)*

**211.** Bylaws may be adopted, amended or repealed either by approval of the outstanding shares (Section 152) or by the approval of the board, except as provided in Section 212. Subject to subdivision (a)(5) of Section 204, the

articles or bylaws may restrict or eliminate the power of the board to adopt, amend or repeal any or all bylaws.

*(Added by Stats. 1975, Ch. 682.)*

**212.** (a) The bylaws shall set forth (unless such provision is contained in the articles, in which case it may only be changed by an amendment of the articles) the number of directors of the corporation; or that the number of directors shall be not less than a stated minimum nor more than a stated maximum (which in no case shall be greater than two times the stated minimum minus one), with the exact number of directors to be fixed, within the limits specified, by approval of the board or the shareholders (Section 153) in the manner provided in the bylaws, subject to paragraph (5) of subdivision (a) of Section 204. The number or minimum number of directors shall not be less than three; provided, however, that (1) before shares are issued, the number may be one, (2) before shares are issued, the number may be two, (3) so long as the corporation has only one shareholder, the number may be one, (4) so long as the corporation has only one shareholder, the number may be two, and (5) so long as the corporation has only two shareholders, the number may be two. After the issuance of shares, a bylaw specifying or changing a fixed number of directors or the maximum or minimum number or changing from a fixed to a variable board or vice versa may only be adopted by approval of the outstanding shares (Section 152); provided, however, that a bylaw or amendment of the articles reducing the fixed number or the minimum number of directors to a number less than five cannot be adopted if the votes cast against its adoption at a meeting or the shares not consenting in the case of action by written consent are equal to more than  $16\frac{2}{3}$  percent of the outstanding shares entitled to vote.

(b) The bylaws may contain any provision, not in conflict with law or the articles for the management of the business and for the conduct of the affairs of the corporation, including, but not limited to:

(1) Any provision referred to in subdivision (b), (c) or (d) of Section 204.

(2) The time, place, and manner of calling, conducting, and giving notice of shareholders', directors', and committee meetings.

(3) The manner of execution, revocation, and use of proxies.

(4) The qualifications, duties, and compensation of directors; the time of their annual election; and the requirements of a quorum for directors' and committee meetings.

(5) The appointment and authority of committees of the board.

(6) The appointment, duties, compensation, and tenure of officers.

(7) The mode of determination of holders of record of its shares.

(8) The making of annual reports and financial statements to the shareholders.

(c) (1) The bylaws may contain any provision, not in conflict with the articles, to manage and conduct the ordinary business affairs of the corporation effective only in an emergency as defined in Section 207, including, but not limited to, procedures for calling a board meeting, quorum requirements for a board meeting, and designation of additional or substitute directors.

(2) During an emergency, the board may not take any action that requires the vote of the shareholders or otherwise is not in the corporation's ordinary course of business, unless the required vote of the shareholders was obtained prior to the emergency.

(3) All provisions of the regular bylaws consistent with the emergency bylaws shall remain effective during the emergency, and the emergency bylaws shall not be effective after the emergency ends.

(4) Corporate action taken in good faith in accordance with the emergency bylaws binds the corporation, and may not be used to impose liability on a corporate director, officer, employee, or agent.

*(Amended by Stats. 2013, Ch. 255, Sec. 2. (AB 491) Effective January 1, 2014.)*

**213.** Every corporation shall keep at its principal executive office in this state, or if its principal executive office is not in this state at its principal business office in this state, the original or a copy of its bylaws as amended to date, which shall be open to inspection by the shareholders at all reasonable times during office hours. If the principal executive office of the corporation is outside this state and the corporation has no principal business office in this state, it shall upon the written request of any shareholder furnish to such shareholder a copy of the bylaws as amended to date.

*(Added by Stats. 1975, Ch. 682.)*



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**CORPORATIONS CODE - CORP****TITLE 1. CORPORATIONS [100 - 14631]** ( Title 1 enacted by Stats. 1947, Ch. 1038. )**DIVISION 1. GENERAL CORPORATION LAW [100 - 2319]** ( Division 1 repealed and added by Stats. 1975, Ch. 682. )**CHAPTER 3. Directors and Management [300 - 318]** ( Chapter 3 added by Stats. 1975, Ch. 682. )

**300.** (a) Subject to the provisions of this division and any limitations in the articles relating to action required to be approved by the shareholders (Section 153) or by the outstanding shares (Section 152), or by a less than majority vote of a class or series of preferred shares (Section 402.5), the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the board. The board may delegate the management of the day-to-day operation of the business of the corporation to a management company or other person provided that the business and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the board.

(b) Notwithstanding subdivision (a) or any other provision of this division, but subject to subdivision (c), no shareholders' agreement, which relates to any phase of the affairs of a close corporation, including but not limited to management of its business, division of its profits or distribution of its assets on liquidation, shall be invalid as between the parties thereto on the ground that it so relates to the conduct of the affairs of the corporation as to interfere with the discretion of the board or that it is an attempt to treat the corporation as if it were a partnership or to arrange their relationships in a manner that would be appropriate only between partners. A transferee of shares covered by such an agreement which is filed with the secretary of the corporation for inspection by any prospective purchaser of shares, who has actual knowledge thereof or notice thereof by a notation on the certificate pursuant to Section 418, is bound by its provisions and is a party thereto for the purposes of subdivision (d). Original issuance of shares by the corporation to a new shareholder who does not become a party to the agreement terminates the agreement, except that if the agreement so provides it shall continue to the extent it is enforceable apart from this subdivision. The agreement may not be modified, extended or revoked without the consent of such a transferee, subject to any provision of the agreement permitting modification, extension or revocation by less than unanimous agreement of the parties. A transferor of shares covered by such an agreement ceases to be a party thereto upon ceasing to be a shareholder of the corporation unless the transferor is a party thereto other than as a shareholder. An agreement made pursuant to this subdivision shall terminate when the corporation ceases to be a close corporation, except that if the agreement so provides it shall continue to the extent it is enforceable apart from this subdivision. This subdivision does not apply to an agreement authorized by subdivision (a) of Section 706.

(c) No agreement entered into pursuant to subdivision (b) may alter or waive any of the provisions of Sections 158, 417, 418, 500, 501, and 1111, subdivision (e) of Section 1201, Sections 2009, 2010, and 2011, or of Chapters 15 (commencing with Section 1500), 16 (commencing with Section 1600), 18 (commencing with Section 1800), and 22 (commencing with Section 2200). All other provisions of this division may be altered or waived as between the parties thereto in a shareholders' agreement, except the required filing of any document with the Secretary of State.

(d) An agreement of the type referred to in subdivision (b) shall, to the extent and so long as the discretion or powers of the board in its management of corporate affairs is controlled by such agreement, impose upon each shareholder who is a party thereto liability for managerial acts performed or omitted by such person pursuant thereto that is otherwise imposed by this division upon directors, and the directors shall be relieved to that extent from such liability.

(e) The failure of a close corporation to observe corporate formalities relating to meetings of directors or shareholders in connection with the management of its affairs, pursuant to an agreement authorized by subdivision

(b), shall not be considered a factor tending to establish that the shareholders have personal liability for corporate obligations.

*(Amended by Stats. 1983, Ch. 1223, Sec. 3.)*

**301.** (a) Except as provided in Section 301.5, at each annual meeting of shareholders, directors shall be elected to hold office until the next annual meeting. However, to effectuate a voting shift (Section 194.7) the articles may provide that directors hold office for a shorter term. The articles may provide for the election of one or more directors by the holders of the shares of any class or series voting as a class or series.

(b) Each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified.

*(Amended by Stats. 1989, Ch. 876, Sec. 1.)*

**301.3.** (a) No later than the close of the 2019 calendar year, a publicly held domestic or foreign corporation whose principal executive offices, according to the corporation's SEC 10-K form, are located in California shall have a minimum of one female director on its board. A corporation may increase the number of directors on its board to comply with this section.

(b) No later than the close of the 2021 calendar year, a publicly held domestic or foreign corporation whose principal executive offices, according to the corporation's SEC 10-K form, are located in California shall comply with the following:

(1) If its number of directors is six or more, the corporation shall have a minimum of three female directors.

(2) If its number of directors is five, the corporation shall have a minimum of two female directors.

(3) If its number of directors is four or fewer, the corporation shall have a minimum of one female director.

(c) No later than July 1, 2019, the Secretary of State shall publish a report on its internet website documenting the number of domestic and foreign corporations whose principal executive offices, according to the corporation's SEC 10-K form, are located in California and who have at least one female director.

(d) No later than March 1, 2020, and annually thereafter, the Secretary of State shall publish a report on its internet website regarding, at a minimum, information required by subdivision (c) of Section 301.4 and all of the following:

(1) The number of corporations subject to this section that were in compliance with the requirements of this section during at least one point during the preceding calendar year.

(2) The number of publicly held corporations that moved their United States headquarters to California from another state or out of California into another state during the preceding calendar year.

(3) The number of publicly held corporations that were subject to this section during the preceding year, but are no longer publicly traded.

(e) (1) The Secretary of State may adopt regulations to implement this section. The Secretary of State may impose fines for violations of this section as follows:

(A) For failure to timely file board member information with the Secretary of State pursuant to a regulation adopted pursuant to this paragraph, the amount of one hundred thousand dollars (\$100,000).

(B) For a first violation, the amount of one hundred thousand dollars (\$100,000).

(C) For a second or subsequent violation, the amount of three hundred thousand dollars (\$300,000).

(2) For the purposes of this subdivision, each director seat required by this section to be held by a female, which is not held by a female during at least a portion of a calendar year, shall count as a violation.

(3) For purposes of this subdivision, a female director having held a seat for at least a portion of the year shall not be a violation.

(4) Fines collected pursuant to this section shall be available, upon appropriation by the Legislature, for use by the Secretary of State to offset the cost of administering this section.

(f) For purposes of this section, the following definitions apply:

(1) "Female" means an individual who self-identifies her gender as a woman, without regard to the individual's designated sex at birth.

(2) "Publicly held corporation" means a corporation with outstanding shares listed on a major United States stock exchange.

*(Amended by Stats. 2020, Ch. 316, Sec. 2. (AB 979) Effective January 1, 2021.)*



**301.4.** (a) No later than the close of the 2021 calendar year, a publicly held domestic or foreign corporation whose principal executive offices, according to the corporation's SEC 10-K form, are located in California shall have a minimum of one director from an underrepresented community on its board. A corporation may increase the number of directors on its board to comply with this section.

(b) No later than the close of the 2022 calendar year, a publicly held domestic or foreign corporation whose principal executive offices, according to the corporation's SEC 10-K form, are located in California shall comply with the following:

(1) If its number of directors is nine or more, the corporation shall have a minimum of three directors from underrepresented communities.

(2) If its number of directors is more than four but fewer than nine, the corporation shall have a minimum of two directors from underrepresented communities.

(3) If its number of directors is four or fewer, the corporation shall have a minimum of one director from an underrepresented community.

(c) No later than March 1, 2022, and annually thereafter, the Secretary of State shall include in its report required by subdivision (d) of Section 301.3, at a minimum, all of the following:

(1) The number of corporations subject to this section that were in compliance with the requirements of this section during at least one point during the preceding calendar year.

(2) The number of publicly held corporations that moved their United States headquarters to California from another state or out of California into another state during the preceding calendar year.

(3) The number of publicly held corporations that were subject to this section during the preceding year, but are no longer publicly traded.

(d) (1) The Secretary of State may adopt regulations to implement this section. The Secretary of State may impose fines for violations of this section as follows:

(A) For failure to timely file board member information with the Secretary of State pursuant to a regulation adopted pursuant to this paragraph, the amount of one hundred thousand dollars (\$100,000).

(B) For a first violation, as described in paragraph (2), the amount of one hundred thousand dollars (\$100,000).

(C) For a second or subsequent violation, as described in paragraph (2), the amount of three hundred thousand dollars (\$300,000).

(2) For the purposes of this subdivision, both of the following apply:

(A) Each director seat required by this section to be held by a director from an underrepresented community, which is not held by a director from an underrepresented community during at least a portion of a calendar year, shall count as a violation.

(B) A director from an underrepresented community having held a seat for at least a portion of the year shall not be a violation.

(3) Fines collected pursuant to this section shall be available, upon appropriation by the Legislature, for use by the Secretary of State to offset the cost of administering this section.

(e) For purposes of this section, the following definitions apply:

(1) "Director from an underrepresented community" means an individual who self-identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or who self-identifies as gay, lesbian, bisexual, or transgender.

(2) "Publicly held corporation" means a corporation with outstanding shares listed on a major United States stock exchange.

*(Added by Stats. 2020, Ch. 316, Sec. 3. (AB 979) Effective January 1, 2021.)*

**301.5.** (a) A listed corporation may, by amendment of its articles or bylaws, adopt provisions to divide the board of directors into two or three classes to serve for terms of two or three years respectively, or to eliminate cumulative voting, or both. After the issuance of shares, a corporation that is not a listed corporation may, by amendment of its articles or bylaws, adopt provisions to be effective when the corporation becomes a listed corporation to divide the board of directors into two or three classes to serve for terms of two or three years respectively, or to eliminate cumulative voting, or both. An article or bylaw amendment providing for division of the board of directors into classes, or any change in the number of classes, or the elimination of cumulative voting may only be adopted by the approval of the board and the outstanding shares (Section 152) voting as a single class, notwithstanding Section 903.

(b) If the board of directors is divided into two classes pursuant to subdivision (a), the authorized number of directors shall be no less than six and one-half of the directors or as close an approximation as possible shall be elected at each annual meeting of shareholders. If the board of directors is divided into three classes, the authorized number of directors shall be no less than nine and one-third of the directors or as close an approximation as possible shall be elected at each annual meeting of shareholders. Directors of a listed corporation may be elected by classes at a meeting of shareholders at which an amendment to the articles or bylaws described in subdivision (a) is approved, but the extended terms for directors are contingent on that approval, and in the case of an amendment to the articles, the filing of any necessary amendment to the articles pursuant to Section 905 or 910.

(c) If directors for more than one class are to be elected by the shareholders at any one meeting of shareholders and the election is by cumulative voting pursuant to Section 708, votes may be cumulated only for directors to be elected within each class.

(d) For purposes of this section, a "listed corporation" means a corporation with outstanding shares listed on the New York Stock Exchange, the NYSE Amex, the NASDAQ Global Market, or the NASDAQ Capital Market.

(e) Subject to subdivision (h), if a listed corporation having a board of directors divided into classes pursuant to subdivision (a) ceases to be a listed corporation for any reason, unless the articles of incorporation or bylaws of the corporation provide for the elimination of classes of directors at an earlier date or dates, the board of directors of the corporation shall cease to be divided into classes as to each class of directors on the date of the expiration of the term of the directors in that class and the term of each director serving at the time the corporation ceases to be a listed corporation (and the term of each director elected to fill a vacancy resulting from the death, resignation, or removal of any of those directors) shall continue until its expiration as if the corporation had not ceased to be a listed corporation.

(f) Subject to subdivision (h), if a listed corporation having a provision in its articles or bylaws eliminating cumulative voting pursuant to subdivision (a) or permitting noncumulative voting in the election of directors pursuant to that subdivision, or both, ceases to be a listed corporation for any reason, the shareholders shall be entitled to cumulate their votes pursuant to Section 708 at any election of directors occurring while the corporation is not a listed corporation notwithstanding that provision in its articles of incorporation or bylaws.

(g) Subject to subdivision (i), if a corporation that is not a listed corporation adopts amendments to its articles of incorporation or bylaws to divide its board of directors into classes or to eliminate cumulative voting, or both, pursuant to subdivision (a) and then becomes a listed corporation, unless the articles of incorporation or bylaws provide for those provisions to become effective at some other time and, in cases where classes of directors are provided for, identify the directors who, or the directorships that, are to be in each class or the method by which those directors or directorships are to be identified, the provisions shall become effective for the next election of directors after the corporation becomes a listed corporation at which all directors are to be elected.

(h) If a corporation ceases to be a listed corporation on or after the record date for a meeting of shareholders and prior to the conclusion of the meeting, including the conclusion of the meeting after an adjournment or postponement that does not require or result in the setting of a new record date, then, solely for purposes of subdivisions (e) and (f), the corporation shall not be deemed to have ceased to be a listed corporation until the conclusion of the meeting of shareholders.

(i) If a corporation becomes a listed corporation on or after the record date for a meeting of shareholders and prior to the conclusion of the meeting, including the conclusion of the meeting after an adjournment or postponement that does not require or result in the setting of a new record date, then, solely for purposes of subdivision (g), the corporation shall not be deemed to have become a listed corporation until the conclusion of the meeting of shareholders.

(j) If an article amendment referred to in subdivision (a) is adopted by a listed corporation, the certificate of amendment shall include a statement of the facts showing that the corporation is a listed corporation within the meaning of subdivision (d). If an article or bylaw amendment referred to in subdivision (a) is adopted by a corporation which is not a listed corporation, the provision, as adopted, shall include the following statement or the substantial equivalent: "This provision shall become effective only when the corporation becomes a listed corporation within the meaning of Section 301.5 of the Corporations Code."

*(Amended by Stats. 2009, Ch. 131, Sec. 1. (AB 991) Effective January 1, 2010.)*

**301.7.** (a) A listed corporation engaged in business limited to the operation and maintenance of a recreation venture having golf and tennis facilities and ancillary dining and beverage services may, by amendment of its articles or bylaws, adopt provisions allowing division of its board of directors into two classes, with one-half of the directors or as close an approximation as possible to be elected at each annual meeting of shareholders, provided

that the corporation's bylaws or articles limit each holder of the securities to no more than five shares and require some of those holders to occupy dwellings immediately contiguous to the real property of the corporation. An article or bylaw amendment providing for division of the board of directors into classes may only be adopted by the approval of the board and the outstanding shares (Section 152) voting as a single class, notwithstanding Section 903. Directors of a listed corporation that meet these conditions may be elected by classes at a meeting of shareholders at which an amendment to the articles or bylaws described in this paragraph is approved, but the extended terms for directors are contingent on that approval, and in the case of an amendment to the articles, the filing of any necessary amendment to the articles pursuant to Section 905 or 910.

(b) For purposes of this section, a "listed corporation" means a corporation described in subdivision (d) of Section 301.5.

(c) If an article amendment referred to in subdivision (a) is adopted by a listed corporation, the certificate of amendment shall include a statement of the facts showing that the corporation is a listed corporation within the meaning of subdivision (b).

*(Amended by Stats. 2009, Ch. 131, Sec. 2. (AB 991) Effective January 1, 2010.)*

**301.9.** Notwithstanding Section 301, a mutual water company organized under this division may elect directors to serve staggered four-year terms if authorized in the corporation's articles of incorporation or bylaws. Upon the initial election of directors to staggered terms, the elected directors shall determine by lot who among them shall serve initial two-year terms and who among them shall serve four-year terms. Prior to any election in which the terms of elected directors shall be determined by lot, the mutual water company shall notify its shareholders that the terms of the directors elected shall be determined among those directors by lot.

*(Added by Stats. 2011, Ch. 89, Sec. 1. (SB 918) Effective January 1, 2012.)*

**302.** The board may declare vacant the office of a director who has been declared of unsound mind by an order of court or convicted of a felony.

*(Repealed and added by Stats. 1975, Ch. 682.)*

**303.** (a) Any or all of the directors may be removed without cause if the removal is approved by the outstanding shares (Section 152), subject to the following:

(1) Except for a corporation to which paragraph (3) is applicable, no director may be removed (unless the entire board is removed) when the votes cast against removal, or not consenting in writing to the removal, would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast (or, if the action is taken by written consent, all shares entitled to vote were voted) and the entire number of directors authorized at the time of the director's most recent election were then being elected.

(2) When by the provisions of the articles the holders of the shares of any class or series, voting as a class or series, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the holders of the shares of that class or series.

(3) A director of a corporation whose board of directors is classified pursuant to Section 301.5 may not be removed if the votes cast against removal of the director, or not consenting in writing to the removal, would be sufficient to elect the director if voted cumulatively (without regard to whether shares may otherwise be voted cumulatively) at an election at which the same total number of votes were cast (or, if the action is taken by written consent, all shares entitled to vote were voted) and either the number of directors elected at the most recent annual meeting of shareholders, or if greater, the number of directors for whom removal is being sought, were then being elected.

(b) Any reduction of the authorized number of directors or amendment reducing the number of classes of directors does not remove any director prior to the expiration of the director's term of office.

(c) Except as provided in this section and Sections 302 and 304, a director may not be removed prior to the expiration of the director's term of office.

*(Amended by Stats. 1989, Ch. 876, Sec. 3.)*

**304.** The superior court of the proper county may, at the suit of shareholders holding at least 10 percent of the number of outstanding shares of any class, remove from office any director in case of fraudulent or dishonest acts or gross abuse of authority or discretion with reference to the corporation and may bar from reelection any director so removed for a period prescribed by the court. The corporation shall be made a party to such action.

*(Repealed and added by Stats. 1975, Ch. 682.)*

**305.** (a) Unless otherwise provided in the articles or bylaws and except for a vacancy created by the removal of a director, vacancies on the board may be filled by approval of the board (Section 151) or, if the number of directors then in office is less than a quorum, by (1) the unanimous written consent of the directors then in office, (2) the affirmative vote of a majority of the directors then in office at a meeting held pursuant to notice or waivers of notice complying with Section 307 or (3) a sole remaining director. Unless the articles or a bylaw adopted by the shareholders provide that the board may fill vacancies occurring in the board by reason of the removal of directors, such vacancies may be filled only by approval of the shareholders (Section 153).

(b) The shareholders may elect a director at any time to fill any vacancy not filled by the directors. Any such election by written consent other than to fill a vacancy created by removal, which requires the unanimous consent of all shares entitled to vote for the election of directors, requires the consent of a majority of the outstanding shares entitled to vote.

(c) If, after the filling of any vacancy by the directors, the directors then in office who have been elected by the shareholders shall constitute less than a majority of the directors then in office, then both of the following shall be applicable:

(1) Any holder or holders of an aggregate of 5 percent or more of the total number of shares at the time outstanding having the right to vote for those directors may call a special meeting of shareholders, or

(2) The superior court of the proper county shall, upon application of such shareholder or shareholders, summarily order a special meeting of shareholders, to be held to elect the entire board. The term of office of any director shall terminate upon that election of a successor.

The hearing on any application filed pursuant to this subdivision shall be held on not less than 10 business days notice to the corporation. If the corporation intends to oppose the application, it shall file with the court a notice of opposition not later than five business days prior to the date set for the hearing. The application and any notice of opposition shall be supported by appropriate affidavits and the court's determination shall be made on the basis of the papers in the record; but, for good cause shown, the court may receive and consider at the hearing additional evidence, oral or documentary, and additional points and authorities. The hearing shall take precedence over all other matters not of a similar nature pending on the date set for the hearing.

(d) Any director may resign effective upon giving written notice to the chairperson of the board, the president, the secretary or the board of directors of the corporation, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be elected to take office when the resignation becomes effective.

*(Amended by Stats. 2015, Ch. 98, Sec. 3. (SB 351) Effective January 1, 2016.)*

**306.** If (a) a corporation has not issued shares and all the directors resign, die, or become incompetent, or (b) a corporation's initial directors have not been named in the articles, and all the incorporators resign, die, or become incompetent prior to the election of the initial directors, the superior court of any county may appoint directors of the corporation upon application by any party in interest.

*(Amended by Stats. 2000, Ch. 485, Sec. 6. Effective January 1, 2001.)*

**307.** (a) Unless otherwise provided in the articles or, subject to paragraph (5) of subdivision (a) of Section 204, in the bylaws, all of the following apply:

(1) Meetings of the board may be called by the chairperson of the board or the president or any vice president or the secretary or any two directors.

(2) Regular meetings of the board may be held without notice if the time and place of the meetings are fixed by the bylaws or the board. Special meetings of the board shall be held upon four days' notice by mail or 48 hours' notice delivered personally or by telephone, including a voice messaging system or by electronic transmission by the corporation (Section 20). The articles or bylaws may not dispense with notice of a special meeting. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board.

(3) Notice of a meeting need not be given to a director who provides a waiver of notice or a consent to holding the meeting or an approval of the minutes thereof in writing, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to that director. These waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

(4) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than 24 hours, notice of an adjournment to another time or

place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

(5) Meetings of the board may be held at a place within or without the state that has been designated in the notice of the meeting or, if not stated in the notice or there is no notice, designated in the bylaws or by resolution of the board.

(6) Members of the board may participate in a meeting through use of conference telephone, electronic video screen communication, or electronic transmission by and to the corporation (Sections 20 and 21). Participation in a meeting through use of conference telephone or electronic video screen communication pursuant to this subdivision constitutes presence in person at that meeting as long as all members participating in the meeting are able to hear one another. Participation in a meeting through electronic transmission by and to the corporation (other than conference telephone and electronic video screen communication), pursuant to this subdivision constitutes presence in person at that meeting if both of the following apply:

(A) Each member participating in the meeting can communicate with all of the other members concurrently.

(B) Each member is provided the means of participating in all matters before the board, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation.

(7) A majority of the authorized number of directors constitutes a quorum of the board for the transaction of business. The articles or bylaws may not provide that a quorum shall be less than one-third the authorized number of directors or less than two, whichever is larger, unless the authorized number of directors is one, in which case one director constitutes a quorum.

(8) An act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board, subject to the provisions of Section 310 and subdivision (e) of Section 317. The articles or bylaws may not provide that a lesser vote than a majority of the directors present at a meeting is the act of the board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

(b) An action required or permitted to be taken by the board may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to that action and if the number of members of the board serving at the time constitutes a quorum. The written consent or consents shall be filed with the minutes of the proceedings of the board. For purposes of this subdivision only, "all members of the board" shall include an "interested director" as described in subdivision (a) of Section 310 or a "common director" as described in subdivision (b) of Section 310 who abstains in writing from providing consent, where the disclosures required by Section 310 have been made to the noninterested or noncommon directors, as applicable, prior to their execution of the written consent or consents, the specified disclosures are conspicuously included in the written consent or consents executed by the noninterested or noncommon directors, and the noninterested or noncommon directors, as applicable, approve the action by a vote that is sufficient without counting the votes of the interested or common directors. If written consent is provided by the directors in accordance with the immediately preceding sentence and the disclosures made regarding the action that is the subject of the consent do not comply with the requirements of Section 310, the action that is the subject of the consent shall be deemed approved, but in any suit brought to challenge the action, the party asserting the validity of the action shall have the burden of proof in establishing that the action was just and reasonable to the corporation at the time it was approved.

(c) This section applies also to committees of the board and incorporators and action by those committees and incorporators, mutatis mutandis.

*(Amended by Stats. 2015, Ch. 98, Sec. 4. (SB 351) Effective January 1, 2016.)*

**308.** (a) If a corporation has an even number of directors who are equally divided and cannot agree as to the management of its affairs, so that its business can no longer be conducted to advantage or so that there is danger that its property and business will be impaired or lost, the superior court of the proper county may, notwithstanding any provisions of the articles or bylaws and whether or not an action is pending for an involuntary winding up or dissolution of the corporation, appoint a provisional director pursuant to this section. Action for such appointment may be brought by any director or by the holders of not less than  $33\frac{1}{3}$  percent of the voting power.

(b) If the shareholders of a corporation are deadlocked so that they cannot elect the directors to be elected at an annual meeting of shareholders, the superior court of the proper county may, notwithstanding any provisions of the articles or bylaws, upon petition of a shareholder or shareholders holding 50 percent of the voting power, appoint a provisional director or directors pursuant to this section or order such other equitable relief as the court deems appropriate.

(c) A provisional director shall be an impartial person, who is neither a shareholder nor a creditor of the corporation, nor related by consanguinity or affinity within the third degree according to the common law to any of the other directors of the corporation or to any judge of the court by which such provisional director is appointed. A provisional director shall have all the rights and powers of a director until the deadlock in the board or among shareholders is broken or until such provisional director is removed by order of the court or by approval of the outstanding shares (Section 152). Such person shall be entitled to such compensation as shall be fixed by the court unless otherwise agreed with the corporation.

(d) This section does not apply to corporations subject to the Public Utilities Act (Part 1 (commencing with Section 201) of Division 1 of the Public Utilities Code).

*(Amended by Stats. 1995, Ch. 154, Sec. 3. Effective January 1, 1996.)*

**309.** (a) A director shall perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner such director believes to be in the best interests of the corporation and its shareholders and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

(b) In performing the duties of a director, a director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

(1) One or more officers or employees of the corporation whom the director believes to be reliable and competent in the matters presented.

(2) Counsel, independent accountants or other persons as to matters which the director believes to be within such person's professional or expert competence.

(3) A committee of the board upon which the director does not serve, as to matters within its designated authority, which committee the director believes to merit confidence,

so long as, in any such case, the director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

(c) A person who performs the duties of a director in accordance with subdivisions (a) and (b) shall have no liability based upon any alleged failure to discharge the person's obligations as a director. In addition, the liability of a director for monetary damages may be eliminated or limited in a corporation's articles to the extent provided in paragraph (10) of subdivision (a) of Section 204.

*(Amended by Stats. 1987, Ch. 1203, Sec. 2. Effective September 27, 1987.)*

**310.** (a) No contract or other transaction between a corporation and one or more of its directors, or between a corporation and any corporation, firm or association in which one or more of its directors has a material financial interest, is either void or voidable because such director or directors or such other corporation, firm or association are parties or because such director or directors are present at the meeting of the board or a committee thereof which authorizes, approves or ratifies the contract or transaction, if

(1) The material facts as to the transaction and as to such director's interest are fully disclosed or known to the shareholders and such contract or transaction is approved by the shareholders (Section 153) in good faith, with the shares owned by the interested director or directors not being entitled to vote thereon, or

(2) The material facts as to the transaction and as to such director's interest are fully disclosed or known to the board or committee, and the board or committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient without counting the vote of the interested director or directors and the contract or transaction is just and reasonable as to the corporation at the time it is authorized, approved or ratified, or

(3) As to contracts or transactions not approved as provided in paragraph (1) or (2) of this subdivision, the person asserting the validity of the contract or transaction sustains the burden of proving that the contract or transaction was just and reasonable as to the corporation at the time it was authorized, approved or ratified.

A mere common directorship does not constitute a material financial interest within the meaning of this subdivision. A director is not interested within the meaning of this subdivision in a resolution fixing the compensation of another director as a director, officer or employee of the corporation, notwithstanding the fact that the first director is also receiving compensation from the corporation.

(b) No contract or other transaction between a corporation and any corporation or association of which one or more of its directors are directors is either void or voidable because such director or directors are present at the meeting



of the board or a committee thereof which authorizes, approves or ratifies the contract or transaction, if

(1) The material facts as to the transaction and as to such director's other directorship are fully disclosed or known to the board or committee, and the board or committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient without counting the vote of the common director or directors or the contract or transaction is approved by the shareholders (Section 153) in good faith, or

(2) As to contracts or transactions not approved as provided in paragraph (1) of this subdivision, the contract or transaction is just and reasonable as to the corporation at the time it is authorized, approved or ratified.

This subdivision does not apply to contracts or transactions covered by subdivision (a).

(c) Interested or common directors may be counted in determining the presence of a quorum at a meeting of the board or a committee thereof which authorizes, approves or ratifies a contract or transaction.

*(Amended by Stats. 1976, Ch. 641.)*

**311.** The board may, by resolution adopted by a majority of the authorized number of directors, designate one or more committees, each consisting of two or more directors, to serve at the pleasure of the board. The board may designate one or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. The appointment of members or alternate members of a committee requires the vote of a majority of the authorized number of directors. Any such committee, to the extent provided in the resolution of the board or in the bylaws, shall have all the authority of the board, except with respect to:

(a) The approval of any action for which this division also requires shareholders' approval (Section 153) or approval of the outstanding shares (Section 152).

(b) The filling of vacancies on the board or in any committee.

(c) The fixing of compensation of the directors for serving on the board or on any committee.

(d) The amendment or repeal of bylaws or the adoption of new bylaws.

(e) The amendment or repeal of any resolution of the board which by its express terms is not so amendable or repealable.

(f) A distribution (Section 166), except at a rate, in a periodic amount or within a price range set forth in the articles or determined by the board.

(g) The appointment of other committees of the board or the members thereof.

*(Amended by Stats. 1983, Ch. 1223, Sec. 4.)*

**312.** (a) A corporation shall have (1) a chairperson of the board, who may be given the title of chair of the board, chairperson of the board, chairman of the board, or chairwoman of the board, or a president or both, (2) a secretary, (3) a chief financial officer, and (4) such other officers with such titles and duties as shall be stated in the bylaws or determined by the board and as may be necessary to enable it to sign instruments and share certificates. The president, or if there is no president the chairperson of the board, is the general manager and chief executive officer of the corporation, unless otherwise provided in the articles or bylaws. Any number of offices may be held by the same person unless the articles or bylaws provide otherwise.

(b) Except as otherwise provided by the articles or bylaws, officers shall be chosen by the board and serve at the pleasure of the board, subject to the rights, if any, of an officer under any contract of employment. Any officer may resign at any time upon written notice to the corporation without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

*(Amended by Stats. 2015, Ch. 98, Sec. 5. (SB 351) Effective January 1, 2016.)*

**313.** Subject to the provisions of subdivision (a) of Section 208, any note, mortgage, evidence of indebtedness, contract, share certificate, initial transaction statement or written statement, conveyance, or other instrument in writing, and any assignment or endorsement thereof, executed or entered into between any corporation and any other person, when signed by the chairperson of the board, the president or any vice president and the secretary, any assistant secretary, the chief financial officer or any assistant treasurer of such corporation, is not invalidated as to the corporation by any lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the same.

*(Amended by Stats. 2015, Ch. 98, Sec. 6. (SB 351) Effective January 1, 2016.)*

**314.** The original or a copy in writing or in any other form capable of being converted into clearly legible tangible form of the bylaws or of the minutes of any incorporators', shareholders', directors', committee or other meeting or



of any resolution adopted by the board or a committee thereof, or shareholders, certified to be a true copy by a person purporting to be the secretary or an assistant secretary of the corporation, is prima facie evidence of the adoption of such bylaws or resolution or of the due holding of such meeting and of the matters stated therein.

*(Amended by Stats. 2004, Ch. 254, Sec. 7. Effective January 1, 2005.)*

**315.** (a) A corporation shall not make any loan of money or property to, or guarantee the obligation of, any director or officer of the corporation or of its parent, unless the transaction, or an employee benefit plan authorizing the loans or guaranties after disclosure of the right under such a plan to include officers or directors, is approved by a majority of the shareholders entitled to act thereon.

(b) Notwithstanding subdivision (a), if the corporation has outstanding shares held of record by 100 or more persons (determined as provided in Section 605) on the date of approval by the board, and has a bylaw approved by the outstanding shares (Section 152) authorizing the board alone to approve such a loan or guaranty to an officer, whether or not a director, or an employee benefit plan authorizing such a loan or guaranty to an officer, such a loan or guaranty or employee benefit plan may be approved by the board alone by a vote sufficient without counting the vote of any interested director or directors if the board determines that such a loan or guaranty or plan may reasonably be expected to benefit the corporation.

(c) A corporation shall not make any loan of money or property to, or guarantee the obligation of, any person upon the security of shares of the corporation or of its parent if the corporation's recourse in the event of default is limited to the security for the loan or guaranty, unless the loan or guaranty is adequately secured without considering these shares, or the loan or guaranty is approved by a majority of the shareholders entitled to act thereon.

(d) Notwithstanding subdivision (a), a corporation may advance money to a director or officer of the corporation or of its parent for any expenses reasonably anticipated to be incurred in the performance of the duties of the director or officer, provided that in the absence of the advance the director or officer would be entitled to be reimbursed for the expenses by the corporation, its parent, or any subsidiary.

(e) The provisions of subdivision (a) do not apply to the payment of premiums in whole or in part by a corporation on a life insurance policy on the life of a director or officer so long as repayment to the corporation of the amount paid by it is secured by the proceeds of the policy and its cash surrender value.

(f) This section does not apply to any of the following:

(1) Any transaction, plan, or agreement permitted under Section 408.

(2) Any depository institution, as defined in Section 202 of the Depository Institutions Management Interlocks Act (12 U.S.C. Sec. 3201).

(3) Any loan or guaranty made by a corporation that makes loans or guaranties in the ordinary course of its business if statutes or regulations pertaining to the corporation expressly regulate the making by the corporation of loans to its officers or directors or the undertaking of guaranties of the obligations of its officers or directors.

(g) For the purposes of subdivisions (a) and (c), "approval by a majority of the shareholders entitled to act" means either (1) written consent of a majority of the outstanding shares without counting as outstanding or as consenting any shares owned by any officer or director eligible to participate in the plan or transaction that is subject to this approval, (2) the affirmative vote of a majority of the shares present and voting at a duly held meeting at which a quorum is otherwise present, without counting for purposes of the vote as either present or voting any shares owned by any officer or director eligible to participate in the plan or transaction that is subject to the approval, or (3) the unanimous vote or written consent of the shareholders. In the case of a corporation which has more than one class or series of shares outstanding, the "shareholders entitled to act" within the meaning of this section includes only holders of those classes or series entitled under the articles to vote on all matters before the shareholders or to vote on the subject matter of this section, and includes a requirement for separate class or series voting, or for more or less than one vote per share, only to the extent required by the articles.

*(Amended by Stats. 1984, Ch. 812, Sec. 1.)*

**316.** (a) Subject to the provisions of Section 309, directors of a corporation who approve any of the following corporate actions shall be jointly and severally liable to the corporation for the benefit of all of the creditors or shareholders entitled to institute an action under subdivision (c):

(1) The making of any distribution to its shareholders to the extent that it is contrary to the provisions of Sections 500 to 503, inclusive.

(2) The distribution of assets to shareholders after institution of dissolution proceedings of the corporation, without paying or adequately providing for all known liabilities of the corporation, excluding any claims not filed by creditors

within the time limit set by the court in a notice given to creditors under Chapters 18 (commencing with Section 1800), 19 (commencing with Section 1900) and 20 (commencing with Section 2000).

(3) The making of any loan or guaranty contrary to Section 315.

(b) A director who is present at a meeting of the board, or any committee thereof, at which action specified in subdivision (a) is taken and who abstains from voting shall be considered to have approved the action.

(c) Suit may be brought in the name of the corporation to enforce the liability (1) under paragraph (1) of subdivision (a) against any or all directors liable by the persons entitled to sue under subdivision (b) of Section 506, (2) under paragraph (2) or (3) of subdivision (a) against any or all directors liable by any one or more creditors of the corporation whose debts or claims arose prior to the time of any of the corporate actions specified in paragraph (2) or (3) of subdivision (a) and who have not consented to the corporate action, whether or not they have reduced their claims to judgment, or (3) under paragraph (3) of subdivision (a) against any or all directors liable by any one or more holders of shares outstanding at the time of any corporate action specified in paragraph (3) of subdivision (a) who have not consented to the corporate action, without regard to the provisions of Section 800.

(d) The damages recoverable from a director under this section shall be the amount of the illegal distribution (or if the illegal distribution consists of property, the fair market value of that property at the time of the illegal distribution) plus interest thereon from the date of the distribution at the legal rate on judgments until paid, together with all reasonably incurred costs of appraisal or other valuation, if any, of that property or loss suffered by the corporation as a result of the illegal loan or guaranty, as the case may be, but not exceeding the liabilities of the corporation owed to nonconsenting creditors at the time of the violation and the injury suffered by nonconsenting shareholders, as the case may be.

(e) Any director sued under this section may implead all other directors liable and may compel contribution, either in that action or in an independent action against directors not joined in that action.

(f) Directors liable under this section shall also be entitled to be subrogated to the rights of the corporation:

(1) With respect to paragraph (1) of subdivision (a), against shareholders who received the distribution.

(2) With respect to paragraph (2) of subdivision (a), against shareholders who received the distribution of assets.

(3) With respect to paragraph (3) of subdivision (a), against the person who received the loan or guaranty. Any director sued under this section may file a cross-complaint against the person or persons who are liable to the director as a result of the subrogation provided for in this subdivision or may proceed against them in an independent action.

*(Amended by Stats. 1994, Ch. 1064, Sec. 1. Effective January 1, 1995.)*

**317.** (a) For the purposes of this section, "agent" means any person who is or was a director, officer, employee or other agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, or was a director, officer, employee or agent of a foreign or domestic corporation which was a predecessor corporation of the corporation or of another enterprise at the request of the predecessor corporation; "proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative; and "expenses" includes without limitation attorneys' fees and any expenses of establishing a right to indemnification under subdivision (d) or paragraph (4) of subdivision (e).

(b) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the corporation to procure a judgment in its favor) by reason of the fact that the person is or was an agent of the corporation, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with the proceeding if that person acted in good faith and in a manner the person reasonably believed to be in the best interests of the corporation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of the person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of the corporation or that the person had reasonable cause to believe that the person's conduct was unlawful.

(c) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was an agent of the corporation, against expenses actually and reasonably incurred by that person in connection with the defense or settlement of the action if the person acted in good faith, in a manner the person believed to be in the best interests of the corporation and its shareholders.

No indemnification shall be made under this subdivision for any of the following:

(1) In respect of any claim, issue or matter as to which the person shall have been adjudged to be liable to the corporation in the performance of that person's duty to the corporation and its shareholders, unless and only to the extent that the court in which the proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for expenses and then only to the extent that the court shall determine.

(2) Of amounts paid in settling or otherwise disposing of a pending action without court approval.

(3) Of expenses incurred in defending a pending action which is settled or otherwise disposed of without court approval.

(d) To the extent that an agent of a corporation has been successful on the merits in defense of any proceeding referred to in subdivision (b) or (c) or in defense of any claim, issue, or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

(e) Except as provided in subdivision (d), any indemnification under this section shall be made by the corporation only if authorized in the specific case, upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in subdivision (b) or (c), by any of the following:

(1) A majority vote of a quorum consisting of directors who are not parties to such proceeding.

(2) If such a quorum of directors is not obtainable, by independent legal counsel in a written opinion.

(3) Approval of the shareholders (Section 153), with the shares owned by the person to be indemnified not being entitled to vote thereon.

(4) The court in which the proceeding is or was pending upon application made by the corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not the application by the agent, attorney or other person is opposed by the corporation.

(f) Expenses incurred in defending any proceeding may be advanced by the corporation prior to the final disposition of the proceeding upon receipt of an undertaking by or on behalf of the agent to repay that amount if it shall be determined ultimately that the agent is not entitled to be indemnified as authorized in this section. The provisions of subdivision (a) of Section 315 do not apply to advances made pursuant to this subdivision.

(g) The indemnification authorized by this section shall not be deemed exclusive of any additional rights to indemnification for breach of duty to the corporation and its shareholders while acting in the capacity of a director or officer of the corporation to the extent the additional rights to indemnification are authorized in an article provision adopted pursuant to paragraph (11) of subdivision (a) of Section 204. The indemnification provided by this section for acts, omissions, or transactions while acting in the capacity of, or while serving as, a director or officer of the corporation but not involving breach of duty to the corporation and its shareholders shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, to the extent the additional rights to indemnification are authorized in the articles of the corporation. An article provision authorizing indemnification "in excess of that otherwise permitted by Section 317" or "to the fullest extent permissible under California law" or the substantial equivalent thereof shall be construed to be both a provision for additional indemnification for breach of duty to the corporation and its shareholders as referred to in, and with the limitations required by, paragraph (11) of subdivision (a) of Section 204 and a provision for additional indemnification as referred to in the second sentence of this subdivision. The rights to indemnity hereunder shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of the person. Nothing contained in this section shall affect any right to indemnification to which persons other than the directors and officers may be entitled by contract or otherwise.

(h) No indemnification or advance shall be made under this section, except as provided in subdivision (d) or paragraph (4) of subdivision (e), in any circumstance where it appears:

(1) That it would be inconsistent with a provision of the articles, bylaws, a resolution of the shareholders, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification.

(2) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

(i) A corporation shall have power to purchase and maintain insurance on behalf of any agent of the corporation against any liability asserted against or incurred by the agent in that capacity or arising out of the agent's status as such whether or not the corporation would have the power to indemnify the agent against that liability under this section. The fact that a corporation owns all or a portion of the shares of the company issuing a policy of insurance

shall not render this subdivision inapplicable if either of the following conditions are satisfied: (1) if the articles authorize indemnification in excess of that authorized in this section and the insurance provided by this subdivision is limited as indemnification is required to be limited by paragraph (11) of subdivision (a) of Section 204; or (2) (A) the company issuing the insurance policy is organized, licensed, and operated in a manner that complies with the insurance laws and regulations applicable to its jurisdiction of organization, (B) the company issuing the policy provides procedures for processing claims that do not permit that company to be subject to the direct control of the corporation that purchased that policy, and (C) the policy issued provides for some manner of risk sharing between the issuer and purchaser of the policy, on one hand, and some unaffiliated person or persons, on the other, such as by providing for more than one unaffiliated owner of the company issuing the policy or by providing that a portion of the coverage furnished will be obtained from some unaffiliated insurer or reinsurer.

(j) This section does not apply to any proceeding against any trustee, investment manager, or other fiduciary of an employee benefit plan in that person's capacity as such, even though the person may also be an agent as defined in subdivision (a) of the employer corporation. A corporation shall have power to indemnify such a trustee, investment manager, or other fiduciary to the extent permitted by subdivision (f) of Section 207.

*(Amended by Stats. 1995, Ch. 154, Sec. 4. Effective January 1, 1996.)*

**318.** (a) The Secretary of State shall develop and maintain a registry of distinguished women and minorities who are available to serve on corporate boards of directors. As used in this section, "minority" means an ethnic person of color including American Indians, Asians (including, but not limited to, Chinese, Japanese, Koreans, Pacific Islanders, Samoans, and Southeast Asians), Blacks, Filipinos, and Hispanics.

(b) For each woman or minority who participates in the registry, the Secretary of State shall maintain information on his or her educational, professional, community service, and corporate governance background. That information may include, but is not limited to:

- (1) Paid or volunteer employment.
- (2) Service in elected public office or on public boards or commissions.
- (3) Directorships, officerships, and trusteeships of business and nonprofit entities, including committee experience.
- (4) Professional, academic, or community awards or honors.
- (5) Publications.
- (6) Government relations experience.
- (7) Experience with corporate constituents.
- (8) Any other areas of special expertise.

(c) In addition to the information subdivision (b) requires, each woman or minority who participates in the registry may disclose any number of personal attributes that may contribute to board diversity. Those attributes may include, but are not limited to, gender, physical disability, race, or ethnic origin.

(d) In addition to the information subdivision (b) requires, each woman or minority who participates in the registry may indicate characteristics of corporations for which he or she would consider, or is especially interested in, serving as a director. These characteristics may include, but are not limited to, company size, industry, geographic location, board meeting frequency, director time commitments, director compensation, director insurance or indemnification, or social policy concerns.

(e) Any woman or minority may nominate himself or herself to the registry by filing with the Secretary of State the information required by subdivision (b) on a form the secretary prescribes. Any registrant may attach a copy of his or her resume and up to two letters of recommendation to his or her registration form. Each registrant's registration form, together with any attached resume or letters of recommendation, shall constitute his or her registry transcript.

(f) The Secretary of State shall make appropriate rules requiring registrants to renew or update their filings with the registry, as necessary to ensure continued accuracy of registry information.

(g) The Secretary of State shall assign each registrant a file number, then enter the information described in subdivisions (b), (c), and (d) into a data base, using the registrant's file number to identify him or her. The registry data base shall not disclose any registrant's name or street address, but may list the city, county, or ZIP Code of his or her business or residence address. The secretary shall make data base information available to those persons described in subdivisions (i) and (j). The secretary may provide that access either by permitting direct data base searches or by performing data base searches on written request.

(h) The Secretary of State may also make information contained in the registry data base available to any person or entity qualified to transact business in California that regularly engages in the business of providing data base

access or search services; provided, that data base access will not be construed to entitle the user to access to any registrant's transcript.

(i) The Secretary of State shall make information contained in a reasonable number of registrants' transcripts available to any corporation or its representative. A "representative," for purposes of this subdivision, may be an attorney, an accountant, or a retained executive recruiter. A "retained executive recruiter," for purposes of this subdivision, is an individual or business entity engaged in the executive search business that is regularly retained to locate qualified candidates for appointment or election as corporate directors or executive officers.

(j) The Secretary of State may also grant access to a reasonable number of registrants' transcripts to any other person who demonstrates to the secretary's satisfaction that the person does both of the following:

(1) Seeks access to the registry in connection with an actual search for a corporate director.

(2) Intends to use any information obtained from the registry only for the purpose of finding qualified candidates for an open position on a corporate board of directors.

(k) The Secretary of State may employ reasonable means to verify that any party seeking access to registry transcript information is one of those specified in subdivision (i) or (j). To that end, the secretary may require a representative to identify its principal, but may not disclose that principal's identity to any other person.

(l) Upon written request specifying the registrant's file number, the Secretary of State shall provide any party entitled to access to registry transcripts with a copy of any registrant's transcript. The secretary may by rule or regulation specify other reasonable means by which persons entitled thereto may order copies of registrants' transcripts.

(m) Notwithstanding any other law, a person shall not be entitled to access to information the registry contains, except as this section specifically provides.

(n) The Secretary of State shall charge fees for registering with the registry, obtaining access to the registry data base, and obtaining copies of registrants' transcripts. The Secretary of State, in consultation with the Senate Commission on Corporate Governance, Shareholder Rights, and Securities Transactions, shall fix those fees by regulation. Fees shall be fixed so that the aggregate amount of all fees collected shall be sufficient to cover the total cost of administering the registry program. Registration fees shall be fixed so as to encourage qualified women and minorities to participate. Fees shall be deposited into the Secretary of State's Business Fee Fund.

(o) The Secretary of State may make any rule, regulation, guideline, or agreement the secretary deems necessary to carry out the purposes and provisions of this section.

(p) The Secretary of State may cooperate with the Commission on the Status of Women and Girls, the California Council to Promote Business Ownership by Women, the Senate Commission on Corporate Governance, Shareholder Rights, and Securities Transactions, women's organizations, minority organizations, business and professional organizations, and any other individual or entity the secretary deems appropriate, for any of the following purposes:

(1) Promoting corporate use of the registry.

(2) Locating qualified women and minorities and encouraging them to participate in the registry.

(3) Educating interested parties on the purpose and most effective use of the registry.

The secretary may also prepare and distribute publications designed to promote informed use of the registry.

(q) The Secretary of State may seek registrants' consent to be listed in a published directory of women and minorities eligible to serve as corporate directors, which will contain a summary of each listed registrant's qualifications. The secretary may periodically publish, or cause to be published, such a directory. Only those registrants who so consent in writing may be included in the directory. The printed directory shall be provided to any person upon payment of a fee, which the Secretary of State will determine by regulation, in consultation with the Senate Commission on Corporate Governance, Shareholder Rights, and Securities Transactions.

(r) The Secretary of State shall implement this section no later than January 1, 1995.

(s) At least once in each three-year period during which the registry is available for corporate use, the Secretary of State, in consultation with the Senate Commission on Corporate Governance, Shareholder Rights, and Securities Transactions, shall report to the Legislature on the extent to which the registry has helped women and minorities progress toward achieving parity in corporate board appointments or elections.

(t) The Secretary of State shall notify each University of California campus and each California State University campus of the opportunity to maintain the registry created pursuant to this section. If more than one campus of the university or state university expresses interest in maintaining the registry, the Secretary of State shall select a campus based on a competitive selection process. If a campus is selected, the Secretary of State shall transfer the

information contained in the registry, free of cost, to that campus. Any University of California or California State University campus selected to maintain the registry shall do so in a manner consistent with this section. Funds deposited in the Secretary of State's Business Fees Fund pursuant to this section shall be transferred to the university selected to maintain the registry, and shall be used to administer the registry program. The Secretary of State shall maintain the registry until a University of California or California State University campus agrees to do so.

*(Amended by Stats. 2012, Ch. 46, Sec. 2. (SB 1038) Effective June 27, 2012.)*

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**CORPORATIONS CODE - CORP****TITLE 1. CORPORATIONS [100 - 14631]** ( Title 1 enacted by Stats. 1947, Ch. 1038. )**DIVISION 1. GENERAL CORPORATION LAW [100 - 2319]** ( Division 1 repealed and added by Stats. 1975, Ch. 682. )**CHAPTER 4. Shares and Share Certificates [400 - 423]** ( Chapter 4 added by Stats. 1975, Ch. 682. )

**400.** (a) A corporation may issue one or more classes or series of shares or both, with full, limited or no voting rights and with such other rights, preferences, privileges and restrictions as are stated or authorized in its articles. No denial or limitation of voting rights shall be effective unless at the time one or more classes or series of outstanding shares or debt securities, singly or in the aggregate, are entitled to full voting rights; and no denial or limitation of dividend or liquidation rights shall be effective unless at the time one or more classes or series of outstanding shares, singly or in the aggregate, are entitled to unlimited dividend and liquidation rights.

(b) All shares of any one class shall have the same voting, conversion and redemption rights and other rights, preferences, privileges and restrictions, unless the class is divided into series. If a class is divided into series, all the shares of any one series shall have the same voting, conversion and redemption rights and other rights, preferences, privileges and restrictions.

(Amended by Stats. 1976, Ch. 641.)

**401.** (a) Before any corporation issues any shares of any class or series of which the rights, preferences, privileges, and restrictions, or any of them, or the number of shares constituting any series or the designation of the series, are not set forth in its articles but are fixed in a resolution adopted by the board pursuant to authority given by its articles, an officers' certificate shall be executed and filed, setting forth: (1) a copy of the resolution; (2) the number of shares of the class or series; and (3) that none of the shares of the class or series has been issued.

(b) After any certificate of determination has been filed, but before the corporation issues any shares of the class or series covered thereby, the board may alter or revoke any right, preference, privilege, or restriction fixed or determined by the resolution set forth therein by the adoption of another resolution appropriate for that purpose and the execution and filing of an officers' certificate setting forth a copy of the resolution, and stating that none of the shares of the class or the series affected has been issued.

(c) After any certificate of determination has been filed, the board may, if authorized in the articles pursuant to subdivision (e) of Section 202, increase or decrease the number of shares constituting any series, by the adoption of another resolution appropriate for that purpose and the execution and filing of an officers' certificate setting forth a copy of the resolution, the number of shares of the series then outstanding and the increase or decrease in the number of shares constituting the series. If any certificate of determination has been incorporated in restated articles filed pursuant to Section 910, the action authorized by this subdivision may, notwithstanding Section 902, be accomplished by an amendment of the articles approved by the board alone.

(d) After shares of a class or series have been issued, the provisions of the resolution set forth in a certificate of determination may be amended only by the adoption and approval of an amendment in accordance with Section 902, 903, or 904 and the filing of a certificate of amendment in accordance with Sections 905 and 908. Notwithstanding the preceding sentence, a certificate to increase or decrease the number of shares of a series also may be filed as permitted by subdivision (c).

(e) A provision in a certificate of determination being amended pursuant to subdivision (b), (c), or (d) shall be identified in the amendment in accordance with subdivision (a) of Section 907.

(f) If a certificate is filed pursuant to subdivision (c) to decrease the number of shares of a series to zero, the certificate of determination whereby the series was established is thereupon no longer in force and the series is no longer an authorized series of the corporation.



(g) If the rights, preferences, privileges, and restrictions of the class or series contain a supermajority vote provision, as defined in subdivision (b) of Section 710, subject to Section 710, the officers' certificate shall also state that the provision has been approved by the shareholders in accordance with subdivision (c) of Section 710.

*(Amended by Stats. 1993, Ch. 128, Sec. 4. Effective January 1, 1994.)*

**402.** (a) A corporation may provide in its articles for one or more classes or series of shares which are redeemable, in whole or in part, (1) at the option of the corporation or (2) to the extent and upon the happening of one or more specified events, and not otherwise except as herein provided. A corporation may provide in its articles for one or more classes or series of preferred shares which are redeemable, in whole or in part, (1) as specified above, (2) at the option of the holder, or (3) upon the vote of at least a majority of the outstanding shares of the class or series to be redeemed. An open end investment company registered under the United States Investment Company Act of 1940 may, if its articles so provide, issue shares which are redeemable at the option of the holder at a price approximately equal to the shares' proportionate interest in the net assets of the corporation and a shareholder may compel redemption of such shares in accordance with their terms.

(b) Any such redemption shall be effected at such price or prices, within such time and upon such terms and conditions as are stated in the articles. When the articles permit partial redemption of a class or series of shares, the articles shall prescribe the method of selecting the shares to be redeemed, which may be pro rata, by lot, at the discretion of, or in a manner approved by, the board or upon such other terms as are specified in the articles.

(c) No redeemable common shares, other than (1) shares issued by an open end investment company registered under the United States Investment Company Act of 1940, (2) shares of a corporation which has a license or franchise from a governmental agency to conduct its business or is a member corporation of a national securities exchange registered under the United States Securities Exchange Act of 1934, which license, franchise or membership is conditioned upon some or all of the holders of its stock possessing prescribed qualifications, to the extent necessary to prevent the loss of such license, franchise or membership or to reinstate it, or (3) shares of a professional corporation, as defined in Part 4 (commencing with Section 13400) of Division 3 of Title 1, shall be issued or redeemed unless the corporation at the time has outstanding a class of common shares that is not subject to redemption.

(d) Any redemption by a corporation of its shares shall be subject to the provisions of Chapter 5 (commencing with Section 500). Nothing in this section shall prevent a corporation from creating a sinking fund or similar provision for, or entering into an agreement for, the redemption or purchase of its shares to the extent permitted by Chapter 5, but unless such purchase or redemption is permitted under Chapter 5, the holder of shares to be so purchased or redeemed shall not become a creditor of the corporation.

*(Amended by Stats. 1983, Ch. 1223, Sec. 5.)*

**402.5.** The rights, preferences, privileges, and restrictions granted to or imposed upon a class or series of preferred shares (Section 176), the designation of which includes either the word "preferred" or the word "preference," may:

(a) Notwithstanding paragraph (9) of subdivision (a) of Section 204, include a provision requiring a vote of a specified percentage or proportion of the outstanding shares of the class or series that is less than a majority of the class or series to approve any corporate action, except where the vote of a majority or greater proportion of the class or series is required by this division, regardless of restrictions or limitations on the voting rights thereof.

(b) Notwithstanding paragraph (5) of subdivision (a) of Section 204, provide that in addition to the requirement of subdivision (a) of Section 1900 the corporation may voluntarily wind up and dissolve only upon the vote of a specified percentage (which shall not exceed  $66\frac{2}{3}$  percent) of such class or series.

(c) Notwithstanding subdivision (a) of Section 500, provide that a distribution may be made without regard to the preferential dividends arrears amount, or any preferential rights amount, or both, as described in paragraphs (1) and (2) of subdivision (a) of Section 500.

*(Amended by Stats. 2014, Ch. 71, Sec. 22. (SB 1304) Effective January 1, 2015.)*

**403.** (a) When so provided in the articles, a corporation may issue shares convertible within the time or upon the happening of one or more specified events and upon the terms and conditions that are stated in the articles if any of the following conditions apply:

(1) At the option of the holder or automatically upon either the vote of at least a majority of the outstanding shares of the class or series to be converted or upon the happening of one or more specified events, into shares of any class or series.

(2) If it is a corporation which has a license or franchise from a governmental agency to conduct its business or a member corporation of a national securities exchange registered under the United States Securities Exchange Act of 1934, the license, franchise or membership of which is conditioned upon some or all of the holders of its stock possessing prescribed qualifications, to the extent necessary to prevent the loss of such license, franchise or membership or to reinstate it, at the option of the corporation, into shares of any class or series or into any other security of the corporation.

(3) If the corporation is a "listed corporation" as defined in subdivision (d) of Section 301.5, both at the time of the original issuance of the convertible shares and at the time of the conversion, at the option of the corporation into shares of any class or series or into any other security of the corporation, provided that any such securities received upon conversion are listed or qualified for trading on a stock exchange or market system defined in subdivision (d) of Section 301.5.

(b) Unless otherwise provided in the articles, a corporation may issue its debt securities convertible into other debt securities or into shares of the corporation within such time or upon the happening of one or more specified events and upon such terms and conditions as are fixed by the board.

*(Amended by Stats. 1996, Ch. 477, Sec. 1. Effective January 1, 1997.)*

**404.** Either in connection with the issue, subscription or sale of any of its shares, bonds, debentures, notes or other securities or independently thereof, a corporation may grant options to purchase or subscribe for shares of any class or series upon such terms and conditions as may be deemed expedient. Option rights may be transferable or nontransferable and separable or inseparable from other securities of the corporation.

*(Added by Stats. 1975, Ch. 682.)*

**405.** (a) If at the time of granting option or conversion rights or at any later time the corporation is not authorized by its articles to issue all the shares required for the satisfaction of the rights, if and when exercised, the additional number of shares required to be issued upon the exercise of such option or conversion rights shall be authorized by an amendment to the articles.

(b) If a corporation has obtained approval of the outstanding shares (Section 152) for the issue of options to purchase shares or of securities convertible into shares of the corporation, the board may, without further approval of the outstanding shares (Section 152), amend the articles to increase the authorized shares of any class or series to such number as will be sufficient from time to time, when added to the previously authorized but unissued shares of such class or series, to satisfy any such option or conversion rights.

*(Added by Stats. 1975, Ch. 682.)*

**406.** Unless the articles provide otherwise, the board may issue shares, options or securities having conversion or option rights without first offering them to shareholders of any class.

*(Added by Stats. 1975, Ch. 682.)*

**407.** A corporation may, but is not required to, issue fractions of a share originally or upon transfer. If it does not issue fractions of a share, it shall in connection with any original issuance of shares (a) arrange for the disposition of fractional interests by those entitled thereto, (b) pay in cash the fair value of fractions of a share as of the time when those entitled to receive those fractions are determined or (c) issue scrip or warrants in registered form, as certificated securities or uncertificated securities, or bearer form as certificated securities, which shall entitle the holder to receive a certificate for a full share upon the surrender of the scrip or warrants aggregating a full share; provided, however, that if the fraction of a share that any person would otherwise be entitled to receive in a merger, conversion, or reorganization is less than one-half of 1 percent of the total shares that person is entitled to receive, a merger, conversion, or reorganization agreement may provide that fractions of a share will be disregarded or that shares issuable in the merger or conversion will be rounded off to the nearest whole share; and provided, further, that a corporation may not pay cash for fractional shares if that action would result in the cancellation of more than 10 percent of the outstanding shares of any class. A determination by the board of the fair value of fractions of a share shall be conclusive in the absence of fraud. A certificate for a fractional share shall, but scrip or warrants shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon and to participate in any of the assets of the corporation in the event of liquidation. The board may cause scrip or warrants to be issued subject to the condition that they shall become void if not exchanged for full shares before a specified date or that the shares for which scrip or warrants are exchangeable may be sold by the corporation and the proceeds thereof distributed to the holder of the scrip or warrants or any other condition that the board may impose.

*(Amended by Stats. 2002, Ch. 480, Sec. 2. Effective January 1, 2003.)*

**408.** (a) A corporation may adopt and carry out a stock purchase plan or agreement or stock option plan or agreement providing for the issue and sale for such consideration as may be fixed of its unissued shares, or of issued shares acquired or to be acquired, to one or more of the employees or directors of the corporation or of a subsidiary or parent thereof or to a trustee on their behalf and for the payment for such shares in installments or at one time, and may provide for aiding any such persons in paying for such shares by compensation for services rendered, promissory notes or otherwise.

(b) A stock purchase plan or agreement or stock option plan or agreement may include, among other features, the fixing of eligibility for participation therein, the class and price of shares to be issued or sold under the plan or agreement, the number of shares which may be subscribed for, the method of payment therefor, the reservation of title until full payment therefor, the effect of the termination of employment, an option or obligation on the part of the corporation to repurchase the shares upon termination of employment, subject to the provisions of Chapter 5, restrictions upon transfer of the shares and the time limits of and termination of the plan.

(c) Sections 406 and 407 of the Labor Code shall not apply to shares issued by any foreign or domestic corporation to the following persons:

(1) Any employee of the corporation or of any parent or subsidiary thereof, pursuant to a stock purchase plan or agreement or stock option plan or agreement provided for in subdivision (a).

(2) In any transaction in connection with securing employment, to a person who is or is about to become an officer of the corporation or of any parent or subsidiary thereof.

*(Amended by Stats. 1982, Ch. 266, Sec. 1.)*

**409.** (a) Shares may be issued:

(1) For such consideration as is determined from time to time by the board, or by the shareholders if the articles so provide, consisting of any or all of the following: money paid; labor done; services actually rendered to the corporation or for its benefit or in its formation or reorganization; debts or securities canceled; and tangible or intangible property actually received either by the issuing corporation or by a wholly owned subsidiary; but neither promissory notes of the purchaser (unless adequately secured by collateral other than the shares acquired or unless permitted by Section 408) nor future services shall constitute payment or part payment for shares of the corporation; or

(2) As a share dividend or upon a stock split, reverse stock split, reclassification of outstanding shares into shares of another class, conversion of outstanding shares into shares of another class, exchange of outstanding shares for shares of another class or other change affecting outstanding shares.

(b) Except as provided in subdivision (d), shares issued as provided in this section or Section 408 shall be declared and taken to be fully paid stock and not liable to any further call nor shall the holder thereof be liable for any further payments under the provisions of this division. In the absence of fraud in the transaction, the judgment of the directors as to the value of the consideration for shares shall be conclusive.

(c) If the articles reserve to the shareholders the right to determine the consideration for the issue of any shares, such determination shall be made by approval of the outstanding shares (Section 152).

(d) A corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. On the certificate issued to represent any such partly paid shares or, for uncertificated securities, on the initial transaction statement for such partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

(e) The board shall state by resolution its determination of the fair value to the corporation in monetary terms of any consideration other than money for which shares are issued. This subdivision does not affect the accounting treatment of any transaction, which shall be in conformity with generally accepted accounting principles.

*(Amended by Stats. 1986, Ch. 766, Sec. 13.)*

**410.** (a) Every subscriber to shares and every person to whom shares are originally issued is liable to the corporation for the full consideration agreed to be paid for the shares.

(b) The full agreed consideration for shares shall be paid prior to or concurrently with the issuance thereof, unless the shares are issued as partly paid pursuant to subdivision (d) of Section 409, in which case the consideration shall be paid in accordance with the agreement of subscription or purchase.

*(Added by Stats. 1975, Ch. 682.)*

**411.** A transferee of shares for which the full agreed consideration has not been paid to the issuing corporation, who acquired them in good faith, without knowledge that they were not paid in full or to the extent stated on the certificate representing them or, in the case of uncertificated securities, on the applicable initial transaction statement, is liable only for the amount shown by the certificate or statement to be unpaid on the shares represented thereby, until the transferee transfers the shares to one who becomes liable therefor; provided that the transferor shall remain personally liable if so provided on the certificate or statement or agreed upon in writing. The liability of any holder of such shares who derives title through such a transferee and who is not a party to any fraud affecting the issue of the shares is the same as that of the transferee through whom title is derived.

*(Amended by Stats. 1986, Ch. 766, Sec. 14.)*

**412.** Every transferee of partly paid shares who acquired them under a certificate or initial transaction statement showing the fact of part payment, and every transferee of such shares (other than a transferee who derives title through a holder in good faith without knowledge and who is not a party to any fraud affecting the issue of such shares) who acquired them with actual knowledge that the full agreed consideration had not been paid to the extent stated on the certificate or initial transaction statement, is personally liable to the corporation for installments of the amount unpaid becoming due until the shares are transferred to one who becomes liable therefor; provided that the transferor shall remain personally liable if so provided on the certificate, initial transaction statement, or written statement, or agreed upon in writing.

*(Amended by Stats. 1986, Ch. 766, Sec. 15.)*

**413.** A person holding shares as pledgee, executor, administrator, guardian, conservator, trustee, receiver or in any representative or fiduciary capacity is not personally liable for any unpaid balance of the subscription price of the shares because the shares are so held but the estate and funds in the hands of such fiduciary or representative are liable and the shares are subject to sale therefor.

*(Amended by Stats. 1979, Ch. 730.)*

**414.** (a) No action shall be brought by or on behalf of any creditor to reach and apply the liability, if any, of a shareholder to the corporation to pay the amount due on such shareholder's shares unless final judgment has been rendered in favor of the creditor against the corporation and execution has been returned unsatisfied in whole or in part or unless such proceedings would be useless.

(b) All creditors of the corporation, with or without reducing their claims to judgment, may intervene in any such creditor's action to reach and apply unpaid subscriptions and any or all shareholders who hold partly paid shares may be joined in such action. Several judgments may be rendered for and against the parties to the action or in favor of a receiver for the benefit of the respective parties thereto.

(c) All amounts paid by any shareholder in any such action shall be credited on the unpaid balance due the corporation upon such shareholder's shares.

*(Added by Stats. 1975, Ch. 682.)*

**415.** Nothing in this division shall be construed as a derogation of any rights or remedies which any creditor or shareholder may have against any promoter, shareholder, director, officer or the corporation because of participation in any fraud or illegality practiced upon such creditor or shareholder by any such person or by the corporation in connection with the issue or sale of shares or other securities or in derogation of any rights which the corporation may have by rescission, cancellation or otherwise because of any fraud or illegality practiced on it by any such person in connection with the issue or sale of shares or other securities.

*(Added by Stats. 1975, Ch. 682.)*

**416.** (a) Every holder of shares in a corporation shall be entitled to have a certificate signed in the name of the corporation by the chairperson or vice chairperson of the board or the president or a vice president and by the chief financial officer or an assistant treasurer or the secretary or any assistant secretary, certifying the number of shares and the class or series of shares owned by the shareholder. Any or all of the signatures on the certificate may be facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if such person were an officer, transfer agent or registrar at the date of issue.

(b) Notwithstanding subdivision (a), a corporation may adopt a system of issuance, recordation and transfer of its shares by electronic or other means not involving any issuance of certificates, including provisions for notice to purchasers in substitution for the required statements on certificates under Sections 417, 418, and 1302, and as may be required by the commissioner in administering the Corporate Securities Law of 1968, which system (1) has been approved by the United States Securities and Exchange Commission, (2) is authorized in any statute of the United States, or (3) is in accordance with Division 8 (commencing with Section 8101) of the Commercial Code. Any system so adopted shall not become effective as to issued and outstanding certificated securities until the certificates therefor have been surrendered to the corporation.

*(Amended by Stats. 2015, Ch. 98, Sec. 7. (SB 351) Effective January 1, 2016.)*

**417.** If the shares of the corporation are classified or if any class of shares has two or more series, there shall appear on the certificate or, in the case of uncertificated securities, the initial transaction statement and written statements, one of the following:

(a) A statement of the rights, preferences, privileges and restrictions granted to or imposed upon each class or series of shares authorized to be issued and upon the holders thereof.

(b) A summary of such rights, preferences, privileges and restrictions with reference to the provisions of the articles and any certificates of determination establishing the same.

(c) A statement setting forth the office or agency of the corporation from which shareholders may obtain, upon request and without charge, a copy of the statement referred to in subdivision (a).

*(Amended by Stats. 1986, Ch. 766, Sec. 17.)*

**418.** (a) There shall also appear on the certificate, the initial transaction statement, and written statements (unless stated or summarized under subdivision (a) or (b) of Section 417) the statements required by all of the following clauses to the extent applicable:

(1) The fact that the shares are subject to restrictions upon transfer.

(2) If the shares are assessable or are not fully paid, a statement that they are assessable or the statements required by subdivision (d) of Section 409 if they are not fully paid.

(3) The fact that the shares are subject to a voting agreement under subdivision (a) of Section 706 or an irrevocable proxy under subdivision (e) of Section 705 or restrictions upon voting rights contractually imposed by the corporation.

(4) The fact that the shares are redeemable.

(5) The fact that the shares are convertible and the period for conversion.

Any such statement or reference thereto (Section 174) on the face of the certificate, the initial transaction statement, and written statements required by paragraph (1) or (2) shall be conspicuous.

(b) Unless stated on the certificate, the initial transaction statement, and written statements as required by subdivision (a), no restriction upon transfer, no right of redemption and no voting agreement under subdivision (a) of Section 706, no irrevocable proxy under subdivision (e) of Section 705, and no voting restriction imposed by the corporation shall be enforceable against a transferee of the shares without actual knowledge of such restriction, right, agreement or proxy. With regard only to liability to assessment or for the unpaid portion of the subscription price, unless stated on the certificate as required by subdivision (a), that liability shall not be enforceable against a transferee of the shares. For the purpose of this subdivision, "transferee" includes a purchaser from the corporation.

(c) All certificates representing shares of a close corporation shall contain in addition to any other statements required by this section, the following conspicuous legend on the face thereof: "This corporation is a close corporation. The number of holders of record of its shares of all classes cannot exceed \_\_\_\_ [a number not in excess of 35]. Any attempted voluntary inter vivos transfer which would violate this requirement is void. Refer to the articles, bylaws and any agreements on file with the secretary of the corporation for further restrictions."

(d) Any attempted voluntary inter vivos transfer of the shares of a close corporation which would result in the number of holders of record of its shares exceeding the maximum number specified in its articles is void if the certificate contains the legend required by subdivision (c).

*(Amended by Stats. 1986, Ch. 766, Sec. 18.)*

**419.** (a) A domestic or foreign corporation may issue a new share certificate or a new certificate for any other security in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and

the corporation may require the owner of the lost, stolen or destroyed certificate or the owner's legal representative to give the corporation a bond (or other adequate security) sufficient to indemnify it against any claim that may be made against it (including any expense or liability) on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

(b) If a corporation refuses to issue a new share certificate or other certificate in place of one theretofore issued by it, or by any corporation of which it is the lawful successor, alleged to have been lost, stolen or destroyed, the owner of the lost, stolen or destroyed certificate or the owner's legal representative may bring an action in the superior court of the proper county for an order requiring the corporation to issue a new certificate in place of the one lost, stolen or destroyed.

(c) If the court is satisfied that the plaintiff is the lawful owner of the number of shares or other securities, or any part thereof, described in the complaint and that the certificate therefor has been lost, stolen or destroyed, and no sufficient cause has been shown why a new certificate should not be issued in place thereof, it shall make an order requiring the corporation to issue and deliver to the plaintiff a new certificate for such shares or other securities. In its order the court shall direct that, prior to the issuance and delivery to the plaintiff of such new certificate, the plaintiff give the corporation a bond (or other adequate security) as to the court appears sufficient to indemnify the corporation against any claim that may be made against it (including any expense or liability) on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

*(Added by Stats. 1975, Ch. 682.)*

**420.** Neither a domestic nor foreign corporation nor its transfer agent or registrar is liable:

(a) For transferring or causing to be transferred on the books of the corporation to the surviving joint tenant or tenants any share or shares or other securities issued to two or more persons in joint tenancy, whether or not the transfer is made with actual or constructive knowledge of the existence of any understanding, agreement, condition or evidence that the shares or securities were held other than in joint tenancy or of a breach of trust by any joint tenant.

(b) To a minor or incompetent person in whose name shares or other securities are of record on its books or to any transferee of or transferor to either for transferring the shares or other securities on its books at the instance of or to the minor or incompetent or for the recognition of or dealing with the minor or incompetent as a shareholder or security holder, whether or not the corporation, transfer agent or registrar had notice, actual or constructive, of the nonage or incompetency, unless a guardian or conservator of the property of the minor or incompetent has been appointed and the corporation, transfer agent or registrar has received written notice thereof.

(c) To any married person or to any transferee of such person for transferring shares or other securities on its books at the instance of the person in whose name they are registered, without the signature of such person's spouse and regardless of whether the registration indicates that the shares or other securities are community property, in the same manner as if such person were unmarried.

(d) For transferring or causing to be transferred on the books of the corporation shares or other securities pursuant to a judgment or order of a court which has been set aside, modified or reversed unless, prior to the registration of the transfer on the books of the corporation, written notice is served upon the corporation or its transfer agent in the manner provided by law for the service of a summons in a civil action, stating that an appeal or other further court proceeding has been or is to be taken from or with regard to such judgment or order. After the service of such notice neither the corporation nor its transfer agent has any duty to register the requested transfer until the corporation or its transfer agent has received a certificate of the clerk of the court in which the judgment or order was entered or made, showing that the judgment or order has become final.

(e) The Commercial Code shall not affect the limitations of liability set forth in this section. Section 1100 of the Family Code shall be subject to the provisions of this section and shall not be construed to prevent transfers, or result in liability to the corporation, transfer agent or registrar permitting or effecting transfers, which comply with this section.

*(Amended by Stats. 2002, Ch. 784, Sec. 89. Effective January 1, 2003.)*

**421.** Each holder of shares of a close corporation, whether original or subsequent, by accepting the certificates for the shares which contain the legend required by subdivision (c) of Section 418 agrees and consents that such holder cannot make any transfer of shares which would violate the provisions of subdivision (d) of Section 418 and waives any right which such holder might otherwise have under any other law to sell such shares to a greater number of purchasers or to demand any registration thereof under the Securities Act of 1933, as now or hereafter amended, or as provided in any statute adopted in substitution therefor, or otherwise, so long as the corporation is a close corporation.



*(Added by Stats. 1975, Ch. 682.)*

**422.** (a) When the articles are amended in any way affecting the statements contained in the certificates for outstanding shares, or it becomes desirable for any reason, in the discretion of the board, to cancel any outstanding certificate for shares and issue a new certificate therefor conforming to the rights of the holder, the board may order any holders of outstanding certificates for shares to surrender and exchange them for new certificates within a reasonable time to be fixed by the board.

(b) The order may provide that a holder of any certificates so ordered to be surrendered is not entitled to vote or to receive dividends or exercise any of the other rights of shareholders until the holder has complied with the order, but such order operates to suspend such rights only after notice and until compliance. The duty of surrender of any outstanding certificates may also be enforced by civil action.

(c) When the articles are amended in any way affecting the statements contained in the initial transaction statement or other written statements for outstanding uncertificated securities, or it becomes desirable for any reason, in the discretion of the board, to amend, revise, or supersede outstanding initial transaction statements or written statements, the board may order the issuance and delivery to holders of record of amended, revised, or superseding initial transaction statements or written statements.

*(Amended by Stats. 1986, Ch. 766, Sec. 19.)*

**423.** (a) Shares are not assessable except as provided in this section or as otherwise provided by a statute other than this division. If the articles expressly confer such authority upon the corporation or the board, and subject to any limitations therein contained, the board may in its discretion levy and collect assessments upon all shares of any or all classes made subject to assessment by the articles. This authority is in addition to the right of the corporation to recover the unpaid subscription price of shares or the remainder of the consideration to be paid therefor.

(b) Every levy of an assessment shall: specify the amount thereof and to whom and where it is payable; fix, or if proceedings or filings with any governmental or other agency for any qualification, permit, registration or exemption therefrom are required as a condition precedent to the levy or payment of an assessment provide for the establishment of, a date on which the assessment is payable; fix a date, not less than 30 nor more than 60 days from the date on which the assessment is payable, on which such assessment becomes delinquent if not paid; and fix a date, not less than 15 nor more than 60 days from the date on which the unpaid assessment becomes delinquent, for the sale of delinquent shares. The levy also shall fix the hour and place of sale, which place shall be in the county where the corporation is required to keep a copy of its bylaws pursuant to Section 213, or if there is no such county, in Sacramento.

(c) On or before the date an assessment is payable, the secretary of the corporation shall give notice thereof in substantially the following form:

(Name of corporation in full. Location of principal executive office.)

Notice is hereby given that the board of directors on (date) has levied an assessment of (amount) per share upon the (name or designation of class or series of shares) of the corporation payable (to whom and where). Any shares upon which this assessment remains unpaid on (date fixed) will be delinquent. Unless payment is made prior to delinquency, the said shares, or as many of them as may be necessary, will be sold at (particular place) on (date) at (hour) of such date, to pay the delinquent assessment, together with a penalty of 5 percent of the amount of the assessment on such shares, or be forfeited to the corporation. (Name of secretary with location of office.)

(d) The notice shall be served personally upon each holder of record of shares assessed; provided, however, that in lieu of personal service the notice may be mailed to each such shareholder addressed to the last address of the shareholder appearing on the books of the corporation or given by the shareholder to the corporation for the purpose of notice, or if no such address appears or is given, at the place where the principal executive office of the corporation is located, and published once in some newspaper of general circulation in the county in which the principal executive office of the corporation is located. If there is no such newspaper in such county, the publication shall be made in some newspaper of general circulation in an adjoining county.

(e) The assessment is a lien upon the shares assessed from the time of personal service or the publication of the notice of assessment, unless the articles provide for such lien from the time of the levy. Unless otherwise provided by law, a transfer of the shares on the books of the corporation after the lien of an assessment has attached is a waiver of the lien unless a conspicuous legend is placed on the face of any certificate issued upon such transfer or, in the case of uncertificated securities, on the initial transaction statement, setting forth the information contained in the notice required by subdivision (c). Such legend shall be removed if the assessment on the shares evidenced by the certificate is paid or if the shares are sold to pay the assessment or forfeited for nonpayment.



(f) The date of sale of delinquent shares fixed in any levy of an assessment may be extended from time to time for not more than 30 days at a time by order of the board entered on the records of the corporation, or when the sale is restrained by order of a court. Notice of such extension shall be given by announcement by the secretary, or other person authorized to conduct the sale, made at the time and place of sale last theretofore fixed.

If a date of sale of delinquent shares is extended for more than five days the corporation shall cause a notice to be mailed to the shareholder or shareholders whose shares are to be the subject of such sale setting forth the date and time to which the date of sale has been extended.

(g) If payment is made after delinquency and before the sale, the shareholder shall pay a penalty of 5 percent of the amount of the assessment on the shares in addition to the assessment.

(h) At the place and time appointed in the notice of levy any officer or an agent of the corporation, shall, unless otherwise ordered by the board, sell or cause to be sold to the highest bidder for cash as many shares of each delinquent holder of the assessed shares as may be necessary to pay the assessment and charges thereon according to the notice.

The person offering at the sale to pay the assessment and penalty for the smallest number of shares is the highest bidder. The shares purchased shall be transferred to the highest bidder on the share register of the corporation on the payment of the assessment and penalty and a new certificate or initial transaction statement therefor issued to such highest bidder.

A corporation is not required to accept an offer for a fraction of a share.

(i) If no bidder offers to pay the amount due on the shares, together with the penalty of 5 percent thereof, the shares shall be forfeited to the corporation in satisfaction of the assessment and penalty thereon.

(j) After a sale or forfeiture of shares for nonpayment of an assessment, the holder or owner of delinquent shares shall, if they are certificated securities, surrender the certificate for such shares to the corporation for cancellation or, if they are uncertificated securities, have no further rights with respect to such shares. This duty may be enforced by order or decree of court and such holder or owner shall be liable for damages to the corporation for failure to surrender the certificate for cancellation upon demand without good cause or excuse.

Any certificate not so surrendered forthwith becomes null and void and ceases to be evidence of the right or title of the holder or any transferee to the shares purporting to be represented thereby, and neither the corporation nor the purchaser of such shares incurs any liability thereon to any such transferee.

The purchaser of any shares, at a sale for delinquent assessments thereon, whenever made, is entitled to the issue of a new certificate representing the shares so purchased.

(k) The certificate of the secretary or assistant secretary of the corporation is prima facie evidence of the time and place of sale and any postponement thereof, of the quantity and particular description of the shares sold, to whom, for what price, and of the fact of payment of the purchase money. The certificate shall be filed in the office of the corporation, and copies of the certificate, certified by the secretary or an assistant secretary of the corporation, are prima facie evidence of the facts therein stated.

(l) An assessment is not invalidated by a failure to publish the notice of assessment, nor by the nonperformance of any act required in order to enforce the payment of the assessment; but in case of any substantial error or omission in the course of proceedings for collection of an assessment on any shares, all previous proceedings, except the levy of the assessment, are void as to such shares, and shall be taken anew.

(m) No action shall be maintained to recover shares sold for delinquent assessments, upon the ground of irregularity in the assessment, irregularity or defect of the notice of sale, or defect or irregularity in the sale, unless the party seeking to maintain the action first pays or tenders to the corporation, or the party holding the shares sold, the sum for which the shares were sold, together with all subsequent assessments which may have been paid thereon and interest on such sums from the time they were paid. No such action shall be maintained unless it is commenced by the filing of a complaint and the issuing of a summons thereon within six months after the sale was made.

(n) The only remedy for the collection of an assessment on fully paid shares is sale or forfeiture of the shares unless (1) remedy by action is expressly authorized in the original articles or by an amendment of the articles adopted before August 21, 1933, or by an amendment adopted on or after August 21, 1933, by unanimous consent of the shareholders, and (2) unless a statement of such remedy appears on the face of any share certificate issued on or after August 21, 1933.

*(Amended by Stats. 1986, Ch. 766, Sec. 20.)*


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### CORPORATIONS CODE - CORP

**TITLE 1. CORPORATIONS [100 - 14631]** ( Title 1 enacted by Stats. 1947, Ch. 1038. )

**DIVISION 1. GENERAL CORPORATION LAW [100 - 2319]** ( Division 1 repealed and added by Stats. 1975, Ch. 682. )

### CHAPTER 5. Dividends and Reacquisitions of Shares [500 - 511]

( Chapter 5 added by Stats. 1975, Ch. 682. )

**500.** (a) Neither a corporation nor any of its subsidiaries shall make any distribution to the corporation's shareholders (Section 166) unless the board of directors has determined in good faith either of the following:

(1) The amount of retained earnings of the corporation immediately prior to the distribution equals or exceeds the sum of (A) the amount of the proposed distribution plus (B) the preferential dividends arrears amount.

(2) Immediately after the distribution, the value of the corporation's assets would equal or exceed the sum of its total liabilities plus the preferential rights amount.

(b) For the purpose of applying paragraph (1) of subdivision (a) to a distribution by a corporation, "preferential dividends arrears amount" means the amount, if any, of cumulative dividends in arrears on all shares having a preference with respect to payment of dividends over the class or series to which the applicable distribution is being made, provided that if the articles of incorporation provide that a distribution can be made without regard to preferential dividends arrears amount, then the preferential dividends arrears amount shall be zero. For the purpose of applying paragraph (2) of subdivision (a) to a distribution by a corporation, "preferential rights amount" means the amount that would be needed if the corporation were to be dissolved at the time of the distribution to satisfy the preferential rights, including accrued but unpaid dividends, of other shareholders upon dissolution that are superior to the rights of the shareholders receiving the distribution, provided that if the articles of incorporation provide that a distribution can be made without regard to any preferential rights, then the preferential rights amount shall be zero. In the case of a distribution of cash or property in payment by the corporation in connection with the purchase of its shares, (1) there shall be added to retained earnings all amounts that had been previously deducted therefrom with respect to obligations incurred in connection with the corporation's repurchase of its shares and reflected on the corporation's balance sheet, but not in excess of the principal of the obligations that remain unpaid immediately prior to the distribution and (2) there shall be deducted from liabilities all amounts that had been previously added thereto with respect to the obligations incurred in connection with the corporation's repurchase of its shares and reflected on the corporation's balance sheet, but not in excess of the principal of the obligations that will remain unpaid after the distribution, provided that no addition to retained earnings or deduction from liabilities under this subdivision shall occur on account of any obligation that is a distribution to the corporation's shareholders (Section 166) at the time the obligation is incurred.

(c) The board of directors may base a determination that a distribution is not prohibited under subdivision (a) or under Section 501 on any of the following:

(1) Financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances.

(2) A fair valuation.

(3) Any other method that is reasonable under the circumstances.

(d) The effect of a distribution under paragraph (1) or (2) of subdivision (a) is measured as of the date the distribution is authorized if the payment occurs within 120 days after the date of authorization.

(e) (1) If terms of indebtedness provide that payment of principal and interest is to be made only if, and to the extent that, payment of a distribution to shareholders could then be made under this section, indebtedness of a corporation, including indebtedness issued as a distribution, is not a liability for purposes of determinations made under paragraph (2) of subdivision (a).

(2) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness shall be treated as a distribution, the effect of which is measured on the date the payment of the indebtedness is actually made.

(f) This section does not apply to a corporation licensed as a broker-dealer under Chapter 2 (commencing with Section 25210) of Part 3 of Division 1 of Title 4, if immediately after giving effect to any distribution the corporation is in compliance with the net capital rules of the Commissioner of Business Oversight and the Securities and Exchange Commission.

*(Amended by Stats. 2019, Ch. 143, Sec. 22. (SB 251) Effective January 1, 2020.)*

**501.** Neither a corporation nor any of its subsidiaries shall make any distribution to the corporation's shareholders (Section 166) if the corporation or the subsidiary making the distribution is, or as a result thereof would be, likely to be unable to meet its liabilities (except those whose payment is otherwise adequately provided for) as they mature.

*(Repealed and added by Stats. 1975, Ch. 682.)*

**503.** (a) The provisions of Sections 500 and 501 shall not apply to a purchase or redemption of shares of a deceased shareholder from the proceeds of insurance on the life of that shareholder in excess of the total amount of all premiums paid by the corporation for that insurance, in order to carry out the provisions of an agreement between the corporation and that shareholder to purchase or redeem those shares upon the death of the shareholder.

(b) The provisions of Sections 500 and 501 shall not apply to the purchase or redemption of shares of a disabled shareholder from the proceeds of disability insurance applicable to the disabled shareholder in excess of the total amount of all premiums paid by the corporation for the insurance, in order to carry out the provisions of an agreement between the corporation and the shareholder to purchase or redeem shares upon the disability of the shareholder as defined within that policy. For the purposes of this subdivision, "disability insurance" means an agreement of indemnification against the insured's loss of the ability to work due to accident or illness.

*(Repealed and added by Stats. 2011, Ch. 203, Sec. 5. (AB 571) Effective January 1, 2012.)*

**504.** (a) The provisions of Section 500 do not apply to a dividend declared by either of the following:

(1) A regulated investment company, as defined in the federal Internal Revenue Code, as amended, to the extent that the dividend is necessary to maintain the status of the corporation as a regulated investment company under the provisions of that code.

(2) A real estate investment trust, as defined in Part II of Subchapter M of Chapter 1 of Subtitle A of the federal Internal Revenue Code, as amended, to the extent that the dividend is necessary to maintain the status of the corporation as a real estate investment trust under the provisions of that code.

(b) The provisions of this chapter do not apply to any purchase or redemption of shares redeemable at the option of the holder by a registered open-end investment company under the United States Investment Company Act of 1940, so long as the right of redemption remains unsuspended under the provisions of that statute and the articles and bylaws of the corporation.

*(Amended by Stats. 2000, Ch. 112, Sec. 1. Effective January 1, 2001.)*

**505.** Nothing in this chapter prohibits additional restrictions upon the declaration of dividends or the purchase or redemption of a corporation's own shares by provision in the articles or bylaws or in any indenture or other agreement entered into by the corporation.

*(Added by Stats. 1975, Ch. 682.)*

**506.** (a) Any shareholder who receives any distribution prohibited by this chapter with knowledge of facts indicating the impropriety thereof is liable to the corporation for the benefit of all of the creditors or shareholders entitled to institute an action under subdivision (b) for the amount so received by the shareholder with interest thereon at the legal rate on judgments until paid, but not exceeding the liabilities of the corporation owed to nonconsenting creditors at the time of the violation and the injury suffered by nonconsenting shareholders, as the case may be. For purposes of determining the value of any noncash property received in a distribution described in the preceding sentence, the shareholder receiving that illegal distribution shall be liable to the corporation for an amount equal to the fair market value of the property at the time of the illegal distribution plus interest thereon from the date of the distribution at the legal rate on judgments until paid, together with all reasonably incurred costs of appraisal or

other valuation, if any, of that property, but not exceeding the liabilities of the corporation owed to nonconsenting creditors at the time of the violation and the injury suffered by nonconsenting shareholders, as the case may be.

(b) Suit may be brought in the name of the corporation to enforce the liability (1) to creditors arising under subdivision (a) for a violation of Section 500 or 501 against any or all shareholders liable by any one or more creditors of the corporation whose debts or claims arose prior to the time of the distribution to shareholders and who have not consented thereto, whether or not they have reduced their claims to judgment, or (2) to shareholders arising under subdivision (a) for a violation of Section 500 against any or all shareholders liable by one or more holders of shares having preferential rights with respect to cumulative dividends in arrears, in the case of a violation of paragraph (1) of subdivision (a) of Section 500, or upon dissolution, in the case of a violation of paragraph (2) of subdivision (a) of Section 500, in each case who have not consented to the applicable distribution, without regard to the provisions in Section 800, and in each case to the extent the applicable shares with preferential rights were outstanding at the time of the distribution; provided that holders of shares of preferential rights shall not have the right to bring suit in the name of the corporation under this subdivision unless the preferential dividends arrears amount, in the case of a violation of paragraph (1) of subdivision (a) of Section 500, or the preferential rights amount, in the case of a violation of paragraph (2) of subdivision (a) of Section 500, was greater than zero. A cause of action with respect to an obligation to return a distribution pursuant to this section shall be extinguished unless the action is brought within four years after the date the distribution is made.

(c) Any shareholder sued under this section may implead all other shareholders liable under this section and may compel contribution, either in that action or in an independent action against shareholders not joined in that action.

(d) Nothing contained in this section affects any liability which any shareholder may have under Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code.

*(Amended by Stats. 2011, Ch. 203, Sec. 8. (AB 571) Effective January 1, 2012.)*

**508.** This chapter does not apply in connection with any proceeding for winding up and dissolution under Chapter 18 or 19.

*(Added by Stats. 1975, Ch. 682.)*

**509.** (a) A corporation may redeem any or all shares which are redeemable at its option by (1) giving notice of redemption as provided in subdivisions (b) and (c) or as otherwise provided in its articles of incorporation, and (2) payment or deposit of the redemption price of the shares as provided in its articles or deposit of the redemption price pursuant to subdivision (d).

(b) Subject to any provisions in the articles with respect to the notice required for redemption of shares, the corporation may give notice of the redemption of any or all shares subject to redemption by causing a notice of redemption to be published in a newspaper of general circulation in the county in which the principal executive office of the corporation is located at least once a week for two successive weeks, in each instance on any day of the week, commencing not earlier than 60 nor later than 20 days before the date fixed for redemption. The notice of redemption shall set forth all of the following:

(1) The class or series of shares or part of any class or series of shares to be redeemed.

(2) The date fixed for redemption.

(3) The redemption price.

(4) If the shares are certificated securities, the place at which the shareholders may obtain payment of the redemption price upon surrender of their share certificates.

(c) If the corporation gives notice of redemption pursuant to subdivision (b), it shall also mail a copy of the notice of redemption to each holder of record of shares to be redeemed as of the date of mailing or record date fixed in accordance with Section 701, addressed to the holder at the address of such holder appearing on the books of the corporation or given by the holder to the corporation for the purpose of notice, or if no such address appears or is given at the place where the principal executive office of the corporation is located, not earlier than 60 nor later than 20 days before the date fixed for redemption. Failure to comply with this subdivision does not invalidate the redemption of the shares.

(d) If, on or prior to any date fixed for redemption of redeemable shares, the corporation deposits with any bank or trust company in this state as a trust fund, (1) a sum sufficient to redeem, on the date fixed for redemption thereof, the shares called for redemption, (2) in the case of the redemption of any uncertificated securities, an officer's certificate setting forth the holders thereof registered on the books of the corporation and the number of shares held by each, and (3) irrevocable instructions and authority to the bank or trust company to publish the notice of redemption thereof (or to complete publication if theretofore commenced) and to pay, on and after the

date fixed for redemption or prior thereto, the redemption price of the shares to their respective holders upon the surrender of their share certificates, in the case of certificated securities, or the delivery of the officer's certificate in the case of uncertificated securities, then from and after the date of the deposit (although prior to the date fixed for redemption) the shares called shall be redeemed and the dividends on those shares shall cease to accrue after the date fixed for redemption. The deposit shall constitute full payment of the shares to their holders and from and after the date of the deposit the shares shall no longer be outstanding and the holders thereof shall cease to be shareholders with respect to the shares and shall have no rights with respect thereto except the right to receive from the bank or trust company payment of the redemption price of the shares without interest, upon surrender of their certificates therefor, in the case of certificated securities, and any right to convert the shares which may exist and then continue for any period fixed by its terms.

In determining the holders of uncertificated securities, the bank or trust company shall be entitled to rely on any officer's certificate deposited with it in accordance with this subdivision.

*(Amended by Stats. 2011, Ch. 203, Sec. 10. (AB 571) Effective January 1, 2012.)*

**510.** (a) When a corporation reacquires its own shares, those shares are restored to the status of authorized but unissued shares, unless the articles prohibit the reissuance thereof.

(b) When a corporation reacquires authorized shares of a class or series and the articles prohibit the reissuance of those shares:

(1) If all of the authorized shares of that class or series, as the case may be, are reacquired, then (A) that class or series is automatically eliminated, (B) in the case of reacquisition of all of the authorized shares of a series, the authorized number of shares of the class to which the shares belonged is reduced by the number of shares so reacquired, and (C) the articles shall be amended to eliminate any statement of rights, preferences, privileges, and restrictions relating solely to that class or series.

(2) If less than all of the authorized shares but all of the issued and outstanding shares of that class or series, as the case may be, are reacquired, the authorized number of shares of the class or series is automatically reduced by the number of shares so reacquired, and the board shall determine either (A) to eliminate that class or series, whereupon the articles shall be amended to eliminate any statement of rights, preferences, privileges, and restrictions relating solely to that class or series, or (B) not to eliminate that class or series, whereupon the articles shall be amended to reflect that reduction of the number of authorized shares of that class or series by the shares so reacquired.

(3) If less than all of the authorized shares and less than all of the issued and outstanding shares of a class or series, as the case may be, are reacquired, the authorized number of shares of that class or series shall be automatically reduced by the number of shares reacquired, and the articles shall be amended to reflect that reduction.

(c) When a corporation reacquires authorized shares of a series of shares and the articles only prohibit the reissuance of those shares as shares of the same series:

(1) If all of the authorized shares of that series are reacquired, then that series is automatically eliminated, the articles shall be amended to eliminate any statement of rights, preferences, privileges, and restrictions relating solely to that series, and the board shall determine either (A) to return those shares to the status of authorized but undesignated shares of the class to which they belong or (B) to eliminate those shares entirely, whereupon the articles in either case shall be amended to reflect the reduction in the authorized shares of that series and the effect, if any, on the class to which that series belongs.

(2) If all of the issued and outstanding shares of that series (but less than all of the authorized shares of that series) are reacquired, the board shall determine either (A) to eliminate that series, whereupon the articles shall be amended to eliminate any statement of rights, preferences, privileges, and restrictions relating solely to that series, or (B) not to eliminate that series, whereupon the articles shall be amended to reflect the return of the reacquired shares to the status of authorized but undesignated shares of the class to which they belong.

(3) If less than all of the issued and outstanding shares of that series are reacquired, the authorized number of shares of that series shall be automatically reduced by the number of shares reacquired, and the board shall determine either (A) to return those shares to the status of authorized but undesignated shares of the class to which they belong, or (B) to eliminate those shares entirely, whereupon the articles in either case shall be amended to reflect the reduction in the authorized shares of that series and the effect, if any, on the class to which that series belongs.

(d) "Reacquires" as used in this section means that a corporation purchases, redeems, acquires by way of conversion to another class or series, or otherwise acquires its own shares or that issued and outstanding shares cease to be outstanding.

(e) The provisions of this section are subject to any contrary or inconsistent provision in the articles.

(f) A certificate of amendment shall be filed in accordance with the requirements of Chapter 9 (commencing with Section 900) reflecting any elimination or reduction of authorized shares set forth in subdivisions (b) and (c), and any related elimination from the articles of the designation and the rights, preferences, privileges, and restrictions of any series or class of stock that is eliminated, except that approval by the outstanding shares (Section 152) shall not be required to adopt any such amendment. Nothing contained in this section is intended to alter or otherwise affect the powers of the board to amend the articles as contemplated in Sections 202 and 401.

*(Amended by Stats. 1995, Ch. 154, Sec. 5. Effective January 1, 1996.)*

**511.** Notwithstanding the provisions of this chapter, a negotiable instrument issued by a corporation for the purchase or redemption of shares shall be enforceable by a holder in due course (Section 3302 of the Commercial Code) without notice that it was issued for that purpose or by a person who acquired the instrument through such a holder.

*(Added by Stats. 1978, Ch. 370.)*

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**CORPORATIONS CODE - CORP****TITLE 1. CORPORATIONS [100 - 14631]** ( Title 1 enacted by Stats. 1947, Ch. 1038. )**DIVISION 1. GENERAL CORPORATION LAW [100 - 2319]** ( Division 1 repealed and added by Stats. 1975, Ch. 682. )**CHAPTER 6. Shareholders' Meetings and Consents [600 - 605]** ( Chapter 6 added by Stats. 1975, Ch. 682. )

**600.** (a) Meetings of shareholders may be held at any place within or without this state as may be stated in or fixed in accordance with the bylaws. If no other place is stated or so fixed, shareholder meetings shall be held at the principal executive office of the corporation. Unless prohibited by the bylaws of the corporation, if authorized by the board of directors in its sole discretion, and subject to the requirement of consent in clause (b) of Section 20 and those guidelines and procedures as the board of directors may adopt, shareholders not physically present in person or by proxy at a meeting of shareholders may, by electronic transmission by and to the corporation (Sections 20 and 21) or by electronic video screen communication, participate in a meeting of shareholders, be deemed present in person or by proxy, and vote at a meeting of shareholders whether that meeting is to be held at a designated place or in whole or in part by means of electronic transmission by and to the corporation or by electronic video screen communication, in accordance with subdivision (e).

(b) An annual meeting of shareholders shall be held for the election of directors on a date and at a time stated in or fixed in accordance with the bylaws. However, if the corporation is a regulated management company, a meeting of shareholders shall be held as required by the Federal Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1, et seq.). Any other proper business may be transacted at the annual meeting. For purposes of this subdivision, "regulated management company" means a regulated investment company as defined in Section 851 of the federal Internal Revenue Code.

(c) If there is a failure to hold the annual meeting for a period of 60 days after the date designated therefor or, if no date has been designated, for a period of 15 months after the organization of the corporation or after its last annual meeting, the superior court of the proper county may summarily order a meeting to be held upon the application of any shareholder after notice to the corporation giving it an opportunity to be heard. The shares represented at the meeting, either in person or by proxy, and entitled to vote thereat shall constitute a quorum for the purpose of the meeting, notwithstanding any provision of the articles or bylaws or in this division to the contrary. The court may issue any orders as may be appropriate, including, without limitation, orders designating the time and place of the meeting, the record date for determination of shareholders entitled to vote, and the form of notice of the meeting.

(d) Special meetings of the shareholders may be called by the board, the chairperson of the board, the president, the holders of shares entitled to cast not less than 10 percent of the votes at the meeting, or any additional persons as may be provided in the articles or bylaws.

(e) A meeting of the shareholders may be conducted, in whole or in part, by electronic transmission by and to the corporation or by electronic video screen communication (1) if the corporation implements reasonable measures to provide shareholders (in person or by proxy) a 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 concurrently with those proceedings, and (2) if any shareholder votes or takes other action at the meeting by means of electronic transmission to the corporation or electronic video screen communication, a record of that vote or action is maintained by the corporation. Any request by a corporation to a shareholder pursuant to clause (b) of Section 20 for consent to conduct a meeting of shareholders by electronic transmission by and to the corporation shall include a notice that, absent consent of the shareholder pursuant to clause (b) of Section 20, the meeting shall be held at a physical location in accordance with subdivision (a).

(Amended by Stats. 2006, Ch. 214, Sec. 2. Effective January 1, 2007.)



**601.** (a) Whenever shareholders are required or permitted to take any action at a meeting a written notice of the meeting shall be given not less than 10 (or, if sent by third-class mail, 30) nor more than 60 days before the date of the meeting to each shareholder entitled to vote thereat. That notice shall state the place, date and hour of the meeting, the means of electronic transmission by and to the corporation (Sections 20 and 21) or electronic video screen communication, if any, by which shareholders may participate in that meeting, and (1) in the case of a special meeting, the general nature of the business to be transacted, and no other business may be transacted, or (2) in the case of the annual meeting, those matters that the board, at the time of the mailing of the notice, intends to present for action by the shareholders, but subject to the provisions of subdivision (f) any proper matter may be presented at the meeting for that action. The notice of any meeting at which directors are to be elected shall include the names of nominees intended at the time of the notice to be presented by the board for election.

(b) Notice of a shareholders' meeting or any report shall be given personally, by electronic transmission by the corporation, or by first-class mail, or, in the case of a corporation with outstanding shares held of record by 500 or more persons (determined as provided in Section 605) on the record date for the shareholders' meeting, notice may also be sent third-class mail, or other means of written communication, addressed to the shareholder at the address of that shareholder appearing on the books of the corporation or given by the shareholder to the corporation for the purpose of notice; or if no address appears or is given, at the place where the principal executive office of the corporation is located or by publication at least once in a newspaper of general circulation in the county in which the principal executive office is located. The notice or report shall be deemed to have been given at the time when delivered personally, sent by electronic transmission by the corporation, deposited in the mail, or sent by other means of written communication. An affidavit of mailing or electronic transmission by the corporation of any notice or report in accordance with the provisions of this division, executed by the secretary, assistant secretary or any transfer agent, shall be prima facie evidence of the giving of the notice or report.

If any notice or report addressed to the shareholder at the address of that shareholder appearing on the books of the corporation is returned to the corporation by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver the notice or report to the shareholder at that address, all future notices or reports shall be deemed to have been duly given without further mailing if the same shall be available for the shareholder upon written demand of the shareholder at the principal executive office of the corporation for a period of one year from the date of the giving of the notice or report to all other shareholders.

Notice given by electronic transmission by the corporation under this subdivision shall be valid only if it complies with Section 20. Notwithstanding the foregoing, notice shall not be given by electronic transmission by the corporation under this subdivision after either of the following:

- (1) The corporation is unable to deliver two consecutive notices to the shareholder by that means.
- (2) The inability to so deliver the notices to the shareholder becomes known to the secretary, any assistant secretary, the transfer agent, or other person responsible for the giving of the notice.

(c) Upon request in writing to the corporation addressed to the attention of the chairperson of the board, president, vice president or secretary by any person (other than the board) entitled to call a special meeting of shareholders, the officer forthwith shall cause notice to be given to the shareholders entitled to vote that a meeting will be held at a time requested by the person or persons calling the meeting, not less than 35 nor more than 60 days after the receipt of the request. If the notice is not given within 20 days after receipt of the request, the persons entitled to call the meeting may give the notice or the superior court of the proper county shall summarily order the giving of the notice, after notice to the corporation giving it an opportunity to be heard. The procedure provided in subdivision (c) of Section 305 shall apply to that application. The court may issue orders as may be appropriate, including, without limitation, orders designating the time and place of the meeting, the record date for determination of shareholders entitled to vote and the form of notice.

(d) When a shareholders' meeting is adjourned to another time or place, unless the bylaws otherwise require and except as provided in this subdivision, notice need not be given of the adjourned meeting if the time and place thereof (or the means of electronic transmission by and to the corporation or electronic video screen communication, if any, by which the shareholders may participate) are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than 45 days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record entitled to vote at the meeting.

(e) The transactions of any meeting of shareholders, however called and noticed, and wherever held, are as valid as though had at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the persons entitled to vote, not present in person or by proxy, provides a waiver of notice or consent to the holding of the meeting or an approval of the minutes thereof in writing. All those waivers, consents and approvals shall be filed with the corporate records or made a part of the

minutes of the meeting. Attendance of a person at a meeting shall constitute a waiver of notice of and presence at the meeting, except when the person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters required by this division to be included in the notice but not so included, if the objection is expressly made at the meeting. Neither the business to be transacted at nor the purpose of any regular or special meeting of shareholders need be specified in any written waiver of notice, consent to the holding of the meeting or approval of the minutes thereof, unless otherwise provided in the articles or bylaws, except as provided in subdivision (f).

(f) Any shareholder approval at a meeting, other than unanimous approval by those entitled to vote, pursuant to Section 310, 902, 1152, 1201, 1900 or 2007 shall be valid only if the general nature of the proposal so approved was stated in the notice of meeting or in any written waiver of notice.

*(Amended by Stats. 2004, Ch. 254, Sec. 9. Effective January 1, 2005.)*

**602.** (a) Unless otherwise provided in the articles, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of the shareholders, but in no event shall a quorum consist of less than one-third (or, in the case of a mutual water company, 20 percent) of the shares entitled to vote at the meeting or, except in the case of a close corporation, of more than a majority of the shares entitled to vote at the meeting. Except as provided in subdivision (b), the affirmative vote of a majority of the shares represented and voting at a duly held meeting at which a quorum is present (which shares voting affirmatively also constitute at least a majority of the required quorum) shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by this division or the articles.

(b) The shareholders present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough shareholders to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the shares required to constitute a quorum or, if required by this division or the articles, the vote of a greater number or voting by classes.

(c) In the absence of a quorum, any meeting of shareholders may be adjourned from time to time by the vote of a majority of the shares represented either in person or by proxy, but no other business may be transacted, except as provided in subdivision (b).

*(Amended by Stats. 2000, Ch. 485, Sec. 8. Effective January 1, 2001.)*

**603.** (a) Unless otherwise provided in the articles, any action that may be taken at any annual or special meeting of shareholders may be taken without a meeting and without prior notice, if a consent in writing, as specified in Section 195, setting forth the action so taken, shall be provided by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take that action at a meeting at which all shares entitled to vote thereon were present and voted.

(b) Unless the consents of all shareholders entitled to vote have been solicited in writing, both of the following shall apply:

(1) Notice of any shareholder approval pursuant to Section 310, 317, 1152, 1201 (except for a reorganization as to which shareholders have the right, pursuant to Chapter 13 (commencing with Section 1300) to demand payment of cash for their shares), or 2007 without a meeting by less than unanimous written consent shall be given at least 10 days before the consummation of the action authorized by that approval. Notice shall be given as provided in subdivision (b) of Section 601.

(2) Prompt notice shall be given of the taking of any other corporate action approved by shareholders without a meeting by less than unanimous written consent, to those shareholders entitled to vote who have not consented in writing. Notice shall be given as provided in subdivision (b) of Section 601.

(c) Any shareholder giving a written consent, or the shareholder's proxyholders, or a transferee of the shares or a personal representative of the shareholder or their respective proxyholders, may revoke the consent personally or by proxy by a writing received by the corporation prior to the time that written consents of the number of shares required to authorize the proposed action have been filed with the secretary of the corporation, but may not do so thereafter. The revocation is effective upon its receipt by the secretary of the corporation.

(d) Notwithstanding subdivision (a), directors may not be elected by written consent except by unanimous written consent of all shares entitled to vote for the election of directors; provided that the shareholders may elect a director to fill a vacancy, other than a vacancy created by removal, by the written consent of a majority of the outstanding shares entitled to vote.

*(Amended by Stats. 2013, Ch. 109, Sec. 1. (AB 457) Effective January 1, 2014.)*

**604.** (a) Any form of proxy or written consent distributed to 10 or more shareholders of a corporation with outstanding shares held of record by 100 or more persons shall afford an opportunity on the proxy or form of written consent to specify a choice between approval and disapproval of each matter or group of related matters intended to be acted upon at the meeting for which the proxy is solicited or by such written consent, other than elections to office, and shall provide, subject to reasonable specified conditions, that where the person solicited specifies a choice with respect to any such matter the shares will be voted in accordance therewith.

(b) In any election of directors, any form of proxy in which the directors to be voted upon are named therein as candidates and which is marked by a shareholder "withhold" or otherwise marked in a manner indicating that the authority to vote for the election of directors is withheld shall not be voted for the election of a director.

(c) Failure to comply with this section shall not invalidate any corporate action taken, but may be the basis for challenging any proxy at a meeting and the superior court may compel compliance therewith at the suit of any shareholder.

(d) This section does not apply to any corporation with an outstanding class of securities registered under Section 12 of the Securities Exchange Act of 1934 or whose securities are exempted from such registration by Section 12(g)(2) of that act.

*(Amended by Stats. 1980, Ch. 501.)*

**605.** (a) For the purpose of determining whether a corporation has outstanding shares held of record by 100 or more persons, shares shall be deemed to be "held of record" by each person who is identified as the owner of such shares on the record of shareholders maintained by or on behalf of the corporation, subject to the following:

(1) In any case where the record of shareholders has not been maintained in accordance with accepted practice, any additional person who would be identified as such an owner on such record if it had been maintained in accordance with accepted practice shall be included as a holder of record.

(2) Shares identified as held of record by a corporation, a partnership, a limited liability company, a trust, whether or not the trustees are named, or other organization shall be included as so held by one person.

(3) Shares identified as held of record by one or more persons as trustees, executors, guardians, conservators, custodians or in other fiduciary capacities with respect to a single trust, estate or account shall be included as held of record by one person.

(4) Shares held by two or more persons as coowners shall be included as held by one person.

(5) Shares registered in substantially similar names, where the corporation (or other person soliciting proxies) has reason to believe because of the address or other indications that such names represent the same person, may be included as held of record by one person.

(b) Notwithstanding subdivision (a):

(1) Shares held, to the knowledge of the corporation (or other person soliciting proxies), subject to a voting trust, deposit agreement or similar arrangement shall be included as held of record by the recordholders of the voting trust certificates, certificates of deposit, receipts or similar evidences of interest in such securities; provided, however, that the corporation (or other person soliciting proxies) may rely in good faith on such information as is received in response to its request from a nonaffiliated issuer of the certificates or evidences of interest.

(2) If the corporation (or other person soliciting proxies) knows or has reason to know that the form of holding shares of record is used primarily to circumvent the provisions of this section, the beneficial owners of such shares shall be deemed to be the record owners thereof.

*(Amended by Stats. 1994, Ch. 1010, Sec. 65. Effective January 1, 1995.)*

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**CORPORATIONS CODE - CORP****TITLE 1. CORPORATIONS [100 - 14631]** ( Title 1 enacted by Stats. 1947, Ch. 1038. )**DIVISION 1. GENERAL CORPORATION LAW [100 - 2319]** ( Division 1 repealed and added by Stats. 1975, Ch. 682. )**CHAPTER 7. Voting of Shares [700 - 711]** ( Chapter 7 added by Stats. 1975, Ch. 682. )

**700.** (a) Except as provided in Section 708 and except as may be otherwise provided in the articles, each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote of shareholders.

(b) Any holder of shares entitled to vote on any matter may vote part of the shares in favor of the proposal and refrain from voting the remaining shares or vote them against the proposal, other than elections to office, but, if the shareholder fails to specify the number of shares such shareholder is voting affirmatively, it will be conclusively presumed that the shareholder's approving vote is with respect to all shares such shareholder is entitled to vote.

(Added by Stats. 1975, Ch. 682.)

**701.** (a) In order that the corporation may determine the shareholders entitled to notice of any meeting or to vote or entitled to receive payment of any dividend or other distribution or allotment of any rights or entitled to exercise any rights in respect of any other lawful action, the board may fix, in advance, a record date, which shall not be more than 60 nor less than 10 days prior to the date of such meeting nor more than 60 days prior to any other action.

(b) If no record date is fixed:

(1) The record date for determining shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the business day next preceding the day on which notice is given or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held.

(2) The record date for determining shareholders entitled to give consent to corporate action in writing without a meeting, when no prior action by the board has been taken, shall be the day on which the first written consent is given.

(3) The record date for determining shareholders for any other purpose shall be at the close of business on the day on which the board adopts the resolution relating thereto, or the 60th day prior to the date of such other action, whichever is later.

(c) A determination of shareholders of record entitled to notice of or to vote at a meeting of shareholders shall apply to any adjournment of the meeting unless the board fixes a new record date for the adjourned meeting, but the board shall fix a new record date if the meeting is adjourned for more than 45 days from the date set for the original meeting.

(d) Shareholders at the close of business on the record date are entitled to notice and to vote or to receive the dividend, distribution or allotment of rights or to exercise the rights, as the case may be, notwithstanding any transfer of any shares on the books of the corporation after the record date, except as otherwise provided in the articles or by agreement or in this division.

(Amended by Stats. 1977, Ch. 235.)

**702.** (a) Subject to subdivision (c) of Section 703, shares held by an administrator, executor, guardian, conservator or custodian may be voted by such holder either in person or by proxy, without a transfer of such shares into the holder's name; and shares standing in the name of a trustee may be voted by the trustee, either in person or by proxy, but no trustee shall be entitled to vote shares held by such trustee without a transfer of such shares into the trustee's name.

(b) Shares standing in the name of a receiver may be voted by such receiver; and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into the receiver's name if authority to do so is contained in the order of the court by which such receiver was appointed.

(c) Subject to the provisions of Section 705 and except where otherwise agreed in writing between the parties, a shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

(d) Shares standing in the name of a minor may be voted and the corporation may treat all rights incident thereto as exercisable by the minor, in person or by proxy, whether or not the corporation has notice, actual or constructive, of the nonage, unless a guardian of the minor's property has been appointed and written notice of such appointment given to the corporation.

(e) If authorized to vote the shares by the power of attorney by which the attorney in fact was appointed, shares held by or under the control of an attorney in fact may be voted and the corporation may treat all rights incident thereto as exercisable by the attorney in fact, in person or by proxy, without the transfer of the shares into the name of the attorney in fact.

*(Amended by Stats. 1985, Ch. 403, Sec. 13.)*

**703.** (a) Shares standing in the name of another corporation, domestic or foreign, may be voted by an officer, agent, or proxyholder as the bylaws of the other corporation may prescribe or, in the absence of such provision, as the board of the other corporation may determine or, in the absence of that determination, by the chairperson of the board, president or any vice president of the other corporation, or by any other person authorized to do so by the chairperson of the board, president, or any vice president of the other corporation. Shares which are purported to be voted or any proxy purported to be executed in the name of a corporation (whether or not any title of the person signing is indicated) shall be presumed to be voted or the proxy executed in accordance with the provisions of this subdivision, unless the contrary is shown.

(b) Shares of a corporation owned by its subsidiary shall not be entitled to vote on any matter.

(c) Shares held by the issuing corporation in a fiduciary capacity, and shares of an issuing corporation held in a fiduciary capacity by its subsidiary, shall not be entitled to vote on any matter, except as follows:

(1) To the extent that the settlor or beneficial owner possesses and exercises a right to vote or to give the corporation binding instructions as to how to vote such shares.

(2) Where there are one or more cotrustees who are not affected by the prohibition of this subdivision, in which case the shares may be voted by the cotrustees as if it or they are the sole trustee.

*(Amended by Stats. 2015, Ch. 98, Sec. 8. (SB 351) Effective January 1, 2016.)*

**704.** (a) If shares stand of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, spouses as community property, tenants by the entirety, voting trustees, persons entitled to vote under a shareholder voting agreement or otherwise, or if two or more persons (including proxyholders) have the same fiduciary relationship respecting the same shares, unless the secretary of the corporation is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect:

(1) If only one votes, such act binds all.

(2) If more than one vote, the act of the majority so voting binds all.

(3) If more than one vote, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionately.

(b) If the instrument so filed or the registration of the shares shows that any such tenancy is held in unequal interests, a majority or even split for the purpose of this section shall be a majority or even split in interest.

*(Amended by Stats. 2016, Ch. 50, Sec. 21. (SB 1005) Effective January 1, 2017.)*

**705.** (a) Every person entitled to vote shares may authorize another person or persons to act by proxy with respect to such shares. Any proxy purporting to be executed in accordance with the provisions of this division shall be presumptively valid.

(b) No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy continues in full force and effect until revoked by the person executing it prior to the vote pursuant thereto, except as otherwise provided in this section. Such revocation may be effected by a writing

delivered to the corporation stating that the proxy is revoked or by a subsequent proxy executed by the person executing the prior proxy and presented to the meeting, or as to any meeting by attendance at such meeting and voting in person by the person executing the proxy. The dates contained on the forms of proxy presumptively determine the order of execution, regardless of the postmark dates on the envelopes in which they are mailed.

(c) A proxy is not revoked by the death or incapacity of the maker unless, before the vote is counted, written notice of such death or incapacity is received by the corporation.

(d) Except when other provision shall have been made by written agreement between the parties, the recordholder of shares which such person holds as pledgee or otherwise as security or which belong to another shall issue to the pledgor or to the owner of such shares, upon demand therefor and payment of necessary expenses thereof, a proxy to vote or take other action thereon.

(e) A proxy which states that it is irrevocable is irrevocable for the period specified therein (notwithstanding subdivision (c)) when it is held by any of the following or a nominee of any of the following:

(1) A pledgee.

(2) A person who has purchased or agreed to purchase or holds an option to purchase the shares or a person who has sold a portion of such person's shares in the corporation to the maker of the proxy.

(3) A creditor or creditors of the corporation or the shareholder who extended or continued credit to the corporation or the shareholder in consideration of the proxy if the proxy states that it was given in consideration of such extension or continuation of credit and the name of the person extending or continuing credit.

(4) A person who has contracted to perform services as an employee of the corporation, if a proxy is required by the contract of employment and if the proxy states that it was given in consideration of such contract of employment, the name of the employee and the period of employment contracted for.

(5) A person designated by or under an agreement under Section 706.

(6) A beneficiary of a trust with respect to shares held by the trust.

Notwithstanding the period of irrevocability specified, the proxy becomes revocable when the pledge is redeemed, the option or agreement to purchase is terminated or the seller no longer owns any shares of the corporation or dies, the debt of the corporation or the shareholder is paid, the period of employment provided for in the contract of employment has terminated, the agreement under Section 706 has terminated, or the person ceases to be a beneficiary of the trust. In addition to the foregoing clauses (1) through (5), a proxy may be made irrevocable (notwithstanding subdivision (c)) if it is given to secure the performance of a duty or to protect a title, either legal or equitable, until the happening of events which, by its terms, discharge the obligations secured by it.

(f) A proxy may be revoked, notwithstanding a provision making it irrevocable, by a transferee of shares without knowledge of the existence of the provision unless the existence of the proxy and its irrevocability appears, in the case of certificated securities, on the certificate representing such shares, or in the case of uncertificated securities, on the initial transaction statement and written statements.

*(Amended by Stats. 1986, Ch. 766, Sec. 22.)*

**706.** (a) Notwithstanding any other provision of this division, an agreement between two or more shareholders of a corporation, if in writing and signed by the parties thereto, may provide that in exercising any voting rights the shares held by them shall be voted as provided by the agreement, or as the parties may agree or as determined in accordance with a procedure agreed upon by them, and the parties may but need not transfer the shares covered by such an agreement to a third party or parties with authority to vote them in accordance with the terms of the agreement. Such an agreement shall not be denied specific performance by a court on the ground that the remedy at law is adequate or on other grounds relating to the jurisdiction of a court of equity.

(b) Shares in any corporation may be transferred by written agreement to trustees in order to confer upon them the right to vote and otherwise represent the shares for such period of time, not exceeding 10 years, as may be specified in the agreement. The validity of a voting trust agreement, otherwise lawful, shall not be affected during a period of 10 years from the date when it was created or last extended as hereinafter provided by the fact that under its terms it will or may last beyond such 10-year period. At any time within two years prior to the time of expiration of any voting trust agreement as originally fixed or as last extended as provided in this subdivision, one or more beneficiaries under the voting trust agreement may, by written agreement and with the written consent of the voting trustee or trustees, extend the duration of the voting trust agreement with respect to their shares for an additional period not exceeding 10 years from the expiration date of the trust as originally fixed or as last extended as provided in this subdivision. A duplicate of the voting trust agreement and any extension thereof shall be filed with the secretary of the corporation and shall be open to inspection by a shareholder, a holder of a voting trust



certificate or the agent of either, upon the same terms as the record of shareholders of the corporation is open to inspection.

(c) No agreement made pursuant to subdivision (a) shall be held to be invalid or unenforceable on the ground that it is a voting trust that does not comply with subdivision (b) or that it is a proxy that does not comply with Section 705.

(d) This section shall not invalidate any voting or other agreement among shareholders or any irrevocable proxy complying with subdivision (e) of Section 705, which agreement or proxy is not otherwise illegal.

*(Amended by Stats. 1997, Ch. 136, Sec. 3. Effective January 1, 1998.)*

**707.** (a) In advance of any meeting of shareholders the board may appoint inspectors of election to act at the meeting and any adjournment thereof. If inspectors of election are not so appointed, or if any persons so appointed fail to appear or refuse to act, the chairman of any meeting of shareholders may, and on the request of any shareholder or a shareholder's proxy shall, appoint inspectors of election (or persons to replace those who so fail or refuse) at the meeting. The number of inspectors shall be either one or three. If appointed at a meeting on the request of one or more shareholders or proxies, the majority of shares represented in person or by proxy shall determine whether one or three inspectors are to be appointed.

(b) The inspectors of election shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum and the authenticity, validity and effect of proxies, receive votes, ballots or consents, hear and determine all challenges and questions in any way arising in connection with the right to vote, count and tabulate all votes or consents, determine when the polls shall close, determine the result and do such acts as may be proper to conduct the election or vote with fairness to all shareholders.

(c) The inspectors of election shall perform their duties impartially, in good faith, to the best of their ability and as expeditiously as is practical. If there are three inspectors of election, the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all. Any report or certificate made by the inspectors of election is prima facie evidence of the facts stated therein.

*(Added by Stats. 1975, Ch. 682.)*

**708.** (a) Except as provided in Sections 301.5 and 708.5, every shareholder complying with subdivision (b) and entitled to vote at any election of directors may cumulate such shareholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which the shareholder's shares are normally entitled, or distribute the shareholder's votes on the same principle among as many candidates as the shareholder thinks fit.

(b) No shareholder shall be entitled to cumulate votes (i.e., cast for any candidate a number of votes greater than the number of votes that the shareholder normally is entitled to cast) unless the candidate or candidates' names have been placed in nomination prior to the voting and the shareholder has given notice at the meeting prior to the voting of the shareholder's intention to cumulate the shareholder's votes. If any one shareholder has given that notice, all shareholders may cumulate their votes for candidates in nomination.

(c) Except as provided in Section 708.5, in any election of directors, the candidates receiving the highest number of affirmative votes of the shares entitled to be voted for them up to the number of directors to be elected by those shares are elected; votes against the director and votes withheld shall have no legal effect.

(d) Subdivision (a) applies to the shareholders of any mutual water company organized or existing for the purpose of delivering water to its shareholders at cost on lands located within the boundaries of one or more reclamation districts now or hereafter legally existing in this state and created by or formed under the provisions of any statute of this state, but does not otherwise apply to the shareholders of mutual water companies unless their articles or bylaws so provide.

(e) Elections for directors need not be by ballot unless a shareholder demands election by ballot at the meeting and before the voting begins or unless the bylaws so require.

*(Amended by Stats. 2006, Ch. 871, Sec. 1. Effective January 1, 2007.)*

**708.5.** (a) For purposes of this section, the following definitions shall apply:

(1) "Uncontested election" means an election of directors in which, at the expiration of the time fixed under the articles of incorporation or bylaws requiring advance notification of director candidates or, absent such a provision in the articles of incorporation or bylaws, at a time fixed by the board of directors that is not more than 14 days before notice is given of the meeting at which the election is to occur, the number of candidates for election does not exceed the number of directors to be elected by the shareholders at that election.



(2) "Listed corporation" means a domestic corporation that qualifies as a listed corporation under subdivision (d) of Section 301.5.

(b) Notwithstanding paragraph (5) of subdivision (a) of Section 204, a listed corporation that has eliminated cumulative voting pursuant to subdivision (a) of Section 301.5 may amend its articles of incorporation or bylaws to provide that, in an uncontested election, approval of the shareholders, as specified in Section 153, shall be required to elect a director.

(c) Notwithstanding subdivision (b) of Section 301, if an incumbent director fails to be elected by approval of the shareholders (Section 153) in an uncontested election of a listed corporation that has amended its articles of incorporation or bylaws pursuant to subdivision (b), then, unless the incumbent director has earlier resigned, the term of the incumbent director shall end on the date that is the earlier of 90 days after the date on which the voting results are determined pursuant to Section 707 or the date on which the board of directors selects a person to fill the office held by that director pursuant to subdivision (d).

(d) Any vacancy on the board of directors resulting from any failure of a candidate to be elected by approval of the shareholders (Section 153) in an uncontested election of a listed corporation that has amended its articles of incorporation or bylaws pursuant to subdivision (b) shall be filled in accordance with the procedures set forth in Section 305.

*(Added by Stats. 2006, Ch. 871, Sec. 2. Effective January 1, 2007.)*

**709.** (a) Upon the filing of an action therefor by any shareholder or by any person who claims to have been denied the right to vote, the superior court of the proper county shall try and determine the validity of any election or appointment of any director of any domestic corporation, or of any foreign corporation if the election was held or the appointment was made in this state. In the case of a foreign corporation the action may be brought at the option of the plaintiff in the county in which the corporation has its principal office in this state or in the county in which the election was held or the appointment was made.

(b) Upon the filing of the complaint, and before any further proceedings are had, the court shall enter an order fixing a date for the hearing, which shall be within five days unless for good cause shown a later date is fixed, and requiring notice of the date for the hearing and a copy of the complaint to be served upon the corporation and upon the person whose purported election or appointment is questioned and upon any person (other than the plaintiff) whom the plaintiff alleges to have been elected or appointed, in the manner in which a summons is required to be served, or, if the court so directs, by registered mail; and the court may make such further requirements as to notice as appear to be proper under the circumstances.

(c) The court may determine the person entitled to the office of director or may order a new election to be held or appointment to be made, may determine the validity, effectiveness and construction of voting agreements and voting trusts, the validity of the issuance of shares and the right of persons to vote and may direct such other relief as may be just and proper.

*(Added by Stats. 1975, Ch. 682.)*

**710.** (a) This section applies to a corporation with outstanding shares held of record by 100 or more persons (determined as provided in Section 605) that files an amendment of articles or certificate of determination containing a "supermajority vote" provision on or after January 1, 1989. This section shall not apply to a corporation that files an amendment of articles or certificate of determination on or after January 1, 1994, if, at the time of filing, the corporation has (1) outstanding shares of more than one class or series of stock, (2) no class of equity securities registered under Section 12(b) or 12(g) of the Securities Exchange Act of 1934, and (3) outstanding shares held of record by fewer than 300 persons determined as provided by Section 605.

(b) A "supermajority vote" is a requirement set forth in the articles or in a certificate of determination authorized under any provision of this division that specified corporate action or actions be approved by a larger proportion of the outstanding shares than a majority, or by a larger proportion of the outstanding shares of a class or series than a majority, but no supermajority vote that is subject to this section shall require a vote in excess of  $66\frac{2}{3}$  percent of the outstanding shares or  $66\frac{2}{3}$  percent of the outstanding shares of any class or series of those shares.

(c) An amendment of the articles or a certificate of determination that includes a supermajority vote requirement shall be approved by at least as large a proportion of the outstanding shares (Section 152) as is required pursuant to that amendment or certificate of determination for the approval of the specified corporate action or actions.

(d) The amendments made to this section by the act amending this section in the 2001–02 Regular Session shall not affect the rights of minority shareholders existing under law.

*(Amended by Stats. 2006, Ch. 57, Sec. 2. Effective January 1, 2007.)*

711. (a) The Legislature finds and declares that:

Many of the residents of this state are the legal and beneficial owners or otherwise the ultimate beneficiaries of shares of stock of domestic and foreign corporations, title to which may be held by a variety of intermediate owners as defined in subdivision (b). The informed and active involvement of such beneficial owners and beneficiaries in holding legal owners and, through them, management, accountable in their exercise of corporate power is essential to the interest of those beneficiaries and beneficial owners and to the economy and well-being of this state.

The purpose of this section is to serve the public interest by ensuring that voting records are maintained and disclosed as provided in this section. In the event that by statute or regulation pursuant to the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001 et seq.), there are imposed upon investment managers as defined in Sec. 2(38) thereof, duties substantially the same as those set forth in this section, compliance with those statutory or regulatory requirements by persons subject to this section shall be deemed to fulfill the obligations contained in this section.

This section shall be construed liberally to achieve that purpose.

(b) For purposes of this section, a person on whose behalf shares are voted includes, but is not limited to:

(1) A participant or beneficiary of an employee benefit plan with regard to shares held for the benefit of the participant or beneficiary.

(2) A shareholder, beneficiary, or contract owner of any entity (or of any portfolio of any entity) as defined in Section 3(a) of the federal Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), as amended, to the extent the entity (or portfolio) holds the shares for which the record is requested.

(c) For the purposes of this section, a person on whose behalf shares are voted does not include:

(1) A person who possesses the right to terminate or withdraw from the shareholder, contract owner, participant, or beneficiary relationship with any entity (or any portfolio of any entity) defined in subdivision (b). This exclusion does not apply in the event the right of termination or withdrawal cannot be exercised without automatic imposition of a tax penalty. The right to substitute a relationship with an entity or portfolio, the shares of which are voted by or subject to the direction of the investment adviser (as defined in Section 2 of the federal Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), as amended), of the prior entity or portfolio, or an affiliate of the investment adviser, shall not be deemed to be a right of termination or withdrawal within the meaning of this subdivision.

(2) A person entitled to receive information about a trust pursuant to Section 16061 of the Probate Code.

(3) A beneficiary, participant, contract owner, or shareholder whose interest is funded through the general assets of a life insurance company authorized to conduct business in this state.

(d) Every person possessing the power to vote shares of stock on behalf of another shall maintain a record of the manner in which the shares were voted. The record shall be maintained for a period of 12 consecutive months from the effective date of the vote.

(e) Upon a reasonable written request, the person possessing the power to vote shares of stock on behalf of another, or a designated agent, shall disclose the voting record with respect to any matter involving a specific security or securities in accordance with the following procedures:

(1) Except as set forth in paragraph (2), disclosure shall be made to the person making the request. The person making the disclosure may require identification sufficient to identify the person making the request as a person on whose behalf the shares were voted. A request for identification, if made, shall be reasonable, shall be made promptly, and may include a request for the person's social security number.

(2) If the person possessing the power to vote shares on behalf of another holds that power pursuant to an agreement entered into with a party other than the person making the request for disclosure, the person maintaining and disclosing the record pursuant to this section may, instead, make the requested disclosure to that party. Disclosure to that party shall be deemed compliance with the disclosure requirement of this section. If disclosure is made to that party and not to the person making the request, subdivision (i) shall not apply. However, nothing herein shall prohibit that party and the person possessing the power to vote on shares from entering into an agreement between themselves for the payment or assessment of a reasonable charge to defray expenses of disclosing the record.

(f) Where the entity subject to the requirements of this section is organized as a unit investment trust as defined in Section 4(2) of the federal Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), the open-ended investment companies underlying the unit investment trust shall promptly make available their proxy voting records to the unit investment trust upon evidence of a bona fide request for voting record information pursuant to subdivision (e).

(g) Signing a proxy on another's behalf and forwarding it for disposition or receiving voting instructions does not constitute the power to vote. A person forwarding proxies or receiving voting instructions shall disclose the identity of the person having the power to vote shares upon reasonable written request by a person entitled to request a voting record under subdivision (c).

(h) For purposes of this section, if one or more persons has the power to vote shares on behalf of another, unless a governing instrument provides otherwise, the person or persons may designate an agent who shall maintain and disclose the record in accordance with subdivisions (b) and (c).

(i) Except as provided in paragraph (2) of subdivision (e), or as otherwise provided by law or a governing instrument, a person maintaining and disclosing a record pursuant to this section may assess a reasonable charge to the requesting person in order to defray expenses of disclosing the record in accordance with subdivision (e). Disclosure shall be made within a reasonable period after payment is received.

(j) Upon the petition of any person who successfully brings an action pursuant to or to enforce this section, the court may award costs and reasonable attorney's fees if the court finds that the defendant willfully violated this section.

(k) The obligation to maintain and disclose a voting record in accordance with subdivisions (b) and (c) shall commence January 1, 1990.

*(Added by Stats. 1988, Ch. 1360, Sec. 1.)*

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**CORPORATIONS CODE - CORP****TITLE 1. CORPORATIONS [100 - 14631]** ( Title 1 enacted by Stats. 1947, Ch. 1038. )**DIVISION 1. GENERAL CORPORATION LAW [100 - 2319]** ( Division 1 repealed and added by Stats. 1975, Ch. 682. )**CHAPTER 8. Shareholder Derivative Actions [800- 800.]** ( Chapter 8 added by Stats. 1975, Ch. 682. )

**800.** (a) As used in this section, "corporation" includes an unincorporated association; "board" includes the managing body of an unincorporated association; "shareholder" includes a member of an unincorporated association; and "shares" includes memberships in an unincorporated association.

(b) No action may be instituted or maintained in right of any domestic or foreign corporation by any holder of shares or of voting trust certificates of the corporation unless both of the following conditions exist:

(1) The plaintiff alleges in the complaint that plaintiff was a shareholder, of record or beneficially, or the holder of voting trust certificates at the time of the transaction or any part thereof of which plaintiff complains or that plaintiff's shares or voting trust certificates thereafter devolved upon plaintiff by operation of law from a holder who was a holder at the time of the transaction or any part thereof complained of; provided, that any shareholder who does not meet these requirements may nevertheless be allowed in the discretion of the court to maintain the action on a preliminary showing to and determination by the court, by motion and after a hearing, at which the court shall consider such evidence, by affidavit or testimony, as it deems material, that (i) there is a strong prima facie case in favor of the claim asserted on behalf of the corporation, (ii) no other similar action has been or is likely to be instituted, (iii) the plaintiff acquired the shares before there was disclosure to the public or to the plaintiff of the wrongdoing of which plaintiff complains, (iv) unless the action can be maintained the defendant may retain a gain derived from defendant's willful breach of a fiduciary duty, and (v) the requested relief will not result in unjust enrichment of the corporation or any shareholder of the corporation; and

(2) The plaintiff alleges in the complaint with particularity plaintiff's efforts to secure from the board such action as plaintiff desires, or the reasons for not making such effort, and alleges further that plaintiff has either informed the corporation or the board in writing of the ultimate facts of each cause of action against each defendant or delivered to the corporation or the board a true copy of the complaint which plaintiff proposes to file.

(c) In any action referred to in subdivision (b), at any time within 30 days after service of summons upon the corporation or upon any defendant who is an officer or director of the corporation, or held such office at the time of the acts complained of, the corporation or the defendant may move the court for an order, upon notice and hearing, requiring the plaintiff to furnish a bond as hereinafter provided. The motion shall be based upon one or both of the following grounds:

(1) That there is no reasonable possibility that the prosecution of the cause of action alleged in the complaint against the moving party will benefit the corporation or its shareholders.

(2) That the moving party, if other than the corporation, did not participate in the transaction complained of in any capacity.

The court on application of the corporation or any defendant may, for good cause shown, extend the 30-day period for an additional period or periods not exceeding 60 days.

(d) At the hearing upon any motion pursuant to subdivision (c), the court shall consider such evidence, written or oral, by witnesses or affidavit, as may be material (1) to the ground or grounds upon which the motion is based, or (2) to a determination of the probable reasonable expenses, including attorneys' fees, of the corporation and the moving party which will be incurred in the defense of the action. If the court determines, after hearing the evidence adduced by the parties, that the moving party has established a probability in support of any of the grounds upon which the motion is based, the court shall fix the amount of the bond, not to exceed fifty thousand dollars (\$50,000), to be furnished by the plaintiff for reasonable expenses, including attorneys' fees, which may be

incurred by the moving party and the corporation in connection with the action, including expenses for which the corporation may become liable pursuant to Section 317. A ruling by the court on the motion shall not be a determination of any issue in the action or of the merits thereof. If the court, upon the motion, makes a determination that a bond shall be furnished by the plaintiff as to any one or more defendants, the action shall be dismissed as to the defendant or defendants, unless the bond required by the court has been furnished within such reasonable time as may be fixed by the court.

(e) If the plaintiff shall, either before or after a motion is made pursuant to subdivision (c), or any order or determination pursuant to the motion, furnish a bond in the aggregate amount of fifty thousand dollars (\$50,000) to secure the reasonable expenses of the parties entitled to make the motion, the plaintiff has complied with the requirements of this section and with any order for a bond theretofore made, and any such motion then pending shall be dismissed and no further or additional bond shall be required.

(f) If a motion is filed pursuant to subdivision (c), no pleadings need be filed by the corporation or any other defendant and the prosecution of the action shall be stayed until 10 days after the motion has been disposed of.

*(Amended by Stats. 1982, Ch. 517, Sec. 186.)*

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**CORPORATIONS CODE - CORP****TITLE 1. CORPORATIONS [100 - 14631]** ( Title 1 enacted by Stats. 1947, Ch. 1038. )**DIVISION 1. GENERAL CORPORATION LAW [100 - 2319]** ( Division 1 repealed and added by Stats. 1975, Ch. 682. )**CHAPTER 9. Amendment of Articles [900 - 911]** ( Chapter 9 added by Stats. 1975, Ch. 682. )

**900.** (a) By complying with the provisions of this chapter, a corporation may amend its articles from time to time, in any and as many respects as may be desired, so long as its articles as amended contain only such provisions as it would be lawful to insert in original articles filed at the time of the filing of the amendment and, if a change in shares or the rights of shareholders or an exchange, reclassification or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification or cancellation. It is the intent of the Legislature in adopting this section to exercise to the fullest extent the reserve power of the state over corporations and to authorize any amendment of the articles covered by the preceding sentence regardless of whether any provision contained in the amendment was permissible at the time of the original incorporation of the corporation.

(b) A corporation shall not amend its articles to add any statement or to alter any statement that may appear in the original articles of the initial street address and initial mailing address of the corporation, the names and addresses of the first directors, or the name and address of the initial agent, except to correct an error in the statement or to delete the information after the corporation has filed a statement under Section 1502.

(Amended by Stats. 2012, Ch. 494, Sec. 5. (SB 1532) Effective January 1, 2013.)

**901.** Before any shares have been issued, any amendment of the articles may be adopted by a writing signed by a majority of the incorporators, if directors were not named in the original articles and have not been elected, or, if directors were named in the original articles or have been elected, by a majority of the directors.

(Added by Stats. 1975, Ch. 682.)

**902.** (a) After any shares have been issued, amendments may be adopted if approved by the board and approved by the outstanding shares (Section 152), either before or after the approval by the board.

(b) Notwithstanding subdivision (a), an amendment extending the corporate existence or making the corporate existence perpetual may be adopted by a corporation organized prior to August 14, 1929, with approval by the board alone.

(c) Notwithstanding subdivision (a), unless the corporation has more than one class of shares outstanding, an amendment effecting only a stock split (including an increase in the authorized number of shares in proportion thereto) may be adopted with approval by the board alone.

(d) Notwithstanding subdivision (a), an amendment deleting the initial street address and initial mailing address of the corporation, the names and addresses of the first directors, or the name and address of the initial agent may be adopted with approval by the board alone.

(e) Whenever the articles require for corporate action the vote of a larger proportion or of all of the shares of any class or series, or of a larger proportion or of all of the directors, than is otherwise required by this division, the provision in the articles requiring such greater vote shall not be altered, amended or repealed except by such greater vote unless otherwise provided in the articles.

(f) Notwithstanding subdivision (a), any amendment reducing the vote required for an amendment pursuant to subdivision (c) of Section 158 may not be adopted unless approved by the affirmative vote of at least two-thirds of each class of outstanding shares or such other vote as may then be specified by the articles of the corporation.

(Amended by Stats. 2012, Ch. 494, Sec. 6. (SB 1532) Effective January 1, 2013.)

**903.** (a) A proposed amendment must be approved by the outstanding shares (Section 152) of a class, whether or not such class is entitled to vote thereon by the provisions of the articles, if the amendment would:

(1) Increase or decrease the aggregate number of authorized shares of such class, other than an increase as provided in either subdivision (b) of Section 405 or subdivision (c) of Section 902.

(2) Effect an exchange, reclassification, or cancellation of all or part of the shares of such class, including a reverse stock split but excluding a stock split.

(3) Effect an exchange, or create a right of exchange, of all or part of the shares of another class into the shares of such class.

(4) Change the rights, preferences, privileges or restrictions of the shares of such class.

(5) Create a new class of shares having rights, preferences or privileges prior to the shares of such class, or increase the rights, preferences or privileges or the number of authorized shares of any class having rights, preferences or privileges prior to the shares of such class.

(6) In the case of preferred shares, divide the shares of any class into series having different rights, preferences, privileges or restrictions or authorize the board to do so.

(7) Cancel or otherwise affect dividends on the shares of such class which have accrued but have not been paid.

(b) Different series of the same class shall not constitute different classes for the purpose of voting by classes except when a series is adversely affected by an amendment in a different manner than other shares of the same class.

(c) In addition to approval by a class as provided in subdivision (a), a proposed amendment must also be approved by the outstanding voting shares (Section 152).

*(Amended by Stats. 1997, Ch. 136, Sec. 4. Effective January 1, 1998.)*

**904.** (a) Except as provided in subdivision (b), if any amendment of the articles would make shares assessable or would authorize remedy by action for the collection of an assessment on fully paid shares, it shall be approved by all of the outstanding shares affected regardless of limitations or restrictions on the voting rights thereof.

(b) If a corporation is a mutual water company within the meaning of Section 2705 of the Public Utilities Code, an amendment of the articles to make the shares assessable or to amend prior article provisions authorizing assessment of shares shall be approved by the holders of at least two-thirds of the outstanding shares of any class affected by the amendment regardless of limitations or restrictions on the voting rights thereof. However, if the amendment would authorize remedy by action for the collection of an assessment on fully paid shares, the amendment shall be approved pursuant to subdivision (a).

*(Amended by Stats. 1990, Ch. 677, Sec. 1.)*

**905.** In the case of amendments adopted after the corporation has issued any shares, the corporation shall file a certificate of amendment, which shall consist of an officers' certificate stating:

(a) The wording of the amendment or amended articles in accordance with Section 907;

(b) That the amendment has been approved by the board;

(c) If the amendment is one for which the approval of the outstanding shares (Section 152) is required, that the amendment was approved by the required vote of shareholders in accordance with Section 902, 903 or 904; the total number of outstanding shares of each class entitled to vote with respect to the amendment; and that the number of shares of each class voting in favor of the amendment equaled or exceeded the vote required, specifying the percentage vote required of each class entitled to vote; and

(d) If the amendment is one which may be adopted with approval by the board alone, a statement of the facts entitling the board alone to adopt the amendment.

In the event of an amendment of the articles pursuant to a merger, the filing of the officers' certificate and agreement pursuant to Section 1103 or a certificate of ownership pursuant to subdivision (d) of Section 1110 shall be in lieu of any filing required under this chapter.

*(Amended by Stats. 1976, Ch. 641.)*

**906.** In the case of amendments adopted by the incorporators or the board under Section 901, the corporation shall file a certificate of amendment signed and verified by a majority of the incorporators or of the board, as the case may be, which shall state that the signers thereof constitute at least a majority of the incorporators or of the board, that the corporation has issued no shares and that they adopt the amendment or amendments therein set



forth. In the case of amendments adopted by the incorporators, the certificate shall also state that directors were not named in the original articles and have not been elected.

In the case of amendments adopted by the board under Section 901, the corporation may file a certificate of amendment pursuant to Section 905 in lieu of a certificate of amendment pursuant to this section.

*(Amended by Stats. 1978, Ch. 370.)*

**907.** (a) The certificate of amendment shall establish the wording of the amendment or amended articles by one or more of the following means:

(1) By stating that the articles shall be amended to read as therein set forth in full.

(2) By stating that any provision of the articles, which shall be identified by the numerical or other designation given it in the articles or by stating the wording thereof, shall be stricken from the articles or shall be amended to read as set forth in the certificate.

(3) By stating that the provisions set forth therein shall be added to the articles.

(b) If the purpose of the amendment is to effect a stock split or reverse stock split or to reclassify, cancel, exchange, or otherwise change outstanding shares, the amended articles shall state the effect thereof on outstanding shares.

(c) In the event of an amendment to change the statement of authorized shares from a single class of shares to two classes, the shares outstanding immediately prior to the amendment are automatically considered to be the same number of shares of the common stock class. If the designation of only one of the two classes includes "common," that class is the common stock class. If the designation of both classes or of neither class includes "common" but one of the two classes has limited or no voting rights, the class whose voting rights are not limited is the common stock class for the purpose of this subdivision. This subdivision has no application if the amendment of articles includes a statement of the effect of the amendment on outstanding shares pursuant to subdivision (b).

(d) An amendment which adds or eliminates a stated par value or changes the stated par value and which does not also state the effect of the amendment on outstanding shares is not thereby subject to subdivision (b).

*(Amended by Stats. 1985, Ch. 764, Sec. 1.)*

**908.** Upon the filing of the certificate of amendment, the articles shall be amended in accordance with the certificate and any stock split, reverse stock split, reclassification, cancellation, exchange or other change in shares shall be effected, and a copy of the certificate, certified by the Secretary of State, is prima facie evidence of the performance of the conditions necessary to the adoption of the amendment.

*(Amended by Stats. 1979, Ch. 711.)*

**909.** A corporation formed for a limited period may at any time subsequent to the expiration of the term of its corporate existence, if it has continuously acted as a corporation and done business as such, extend the term of its existence by an amendment to its articles removing any provision limiting the term of its existence and providing for perpetual existence. If the filing of the certificate of amendment providing for perpetual existence would be prohibited if it were original articles by the provisions of Section 201, the Secretary of State shall not file such certificate unless by the same or a concurrently filed certificate of amendment the articles of such corporation are amended to adopt a new available name. For the purpose of the adoption of any such amendment, persons who have been functioning as directors of such corporation shall be considered to have been validly elected even though their election may have occurred after the expiration of the original term of the corporate existence. The certificate of amendment shall set forth that the corporation continuously acted as a corporation and did business as such from the expiration of its term of corporate existence to the date of the amendment.

*(Added by Stats. 1975, Ch. 682.)*

**910.** (a) A corporation may restate in a single certificate the entire text of its articles as amended by filing an officers' certificate or, in circumstances where incorporators or the board may amend a corporation's articles pursuant to Sections 901 and 906, a certificate signed and verified by a majority of the incorporators or the board, as applicable, entitled "Restated Articles of Incorporation of (insert name of corporation)" which shall set forth the articles as amended to the date of the filing of the certificate, except that the signatures and acknowledgments of the articles by the incorporators and any statements regarding the effect of any prior amendment upon outstanding shares and any provisions of agreements of merger (other than amendments to the articles of the surviving corporation) and the initial street address and initial mailing address of the corporation and the names and addresses of the first directors and of the initial agent for service of process shall be omitted (except that the initial

street address and initial mailing address of the corporation, the names and addresses of the initial agent for service of process and, if previously set forth in the articles, the initial directors, shall not be omitted prior to the time that the corporation has filed a statement under Section 1502). Such omissions are not alterations or amendments of the articles. The certificate may also itself alter or amend the articles in any respect, in which case the certificate must comply with Section 905 or 906, as the case may be, and Section 907.

(b) If the certificate does not itself alter or amend the articles in any respect, it shall be approved by the board or, prior to the issuance of any shares and the naming and election of directors, by a majority of the incorporators, and shall be subject to the provisions of this chapter relating to an amendment of the articles not requiring any approval of the outstanding shares (Section 152). If the certificate does itself alter or amend the articles, it shall be subject to the provisions of this chapter relating to the amendment or amendments so made and, except for certificates approved by a majority of the incorporators, the certificate shall also state that the board has approved the restated articles.

(c) Certificates of determination are a part of the articles within the meaning of this section. The provisions of such a certificate shall be given an article designation in the restated articles.

(d) Restated articles of incorporation filed pursuant to this section shall supersede for all purposes the original articles and all amendments and certificates of determination filed prior thereto.

*(Amended by Stats. 2012, Ch. 494, Sec. 7. (SB 1532) Effective January 1, 2013.)*

**911.** (a) A corporation may, by amendment of its articles pursuant to this section, change its status to that of a social purpose corporation, nonprofit public benefit corporation, nonprofit mutual benefit corporation, nonprofit religious corporation, or cooperative corporation.

(b) The amendment of the articles to change status to a nonprofit corporation shall revise the statement of purpose, delete the authorization for shares and any other provisions relating to authorized or issued shares, make such other changes as may be necessary or desired, and, if any shares have been issued, provide either for the cancellation of those shares or for the conversion of those shares to memberships of the nonprofit corporation. The amendment of the articles to change status to a cooperative corporation shall revise the statement of purpose, make such other changes as may be necessary or desired, and, if any shares have been issued, provide for the cancellation of those shares or for the conversion of those shares to memberships of the cooperative corporation, if necessary.

(c) If shares have been issued, an amendment to change status to a nonprofit corporation shall be approved by all of the outstanding shares of all classes regardless of limitations or restrictions on the voting rights thereof and an amendment to change status to a cooperative corporation shall be approved by the outstanding shares (Section 152) of each class regardless of limitations or restrictions on the voting rights thereof.

(d) In the case of a change of status to a social purpose corporation:

(1) The corporation shall modify the name of the corporation, revise the statement of purpose, include the statement required by subparagraph (B) of paragraph (3) of subdivision (b) of Section 2602, and make such other conforming changes as may be necessary or desired.

(2) The amendment shall be approved by the affirmative vote of at least two-thirds of each class, or a greater vote if required in the articles, of outstanding shares (Section 152) of that changing corporation.

(e) If an amendment pursuant to this section is included in a merger agreement, the provisions of this section apply, except that any provision for cancellation or conversion of shares shall be in the merger agreement rather than in the amendment of the articles.

(f) Notwithstanding subdivision (c), if a corporation is a mutual water company within the meaning of Section 2705 of the Public Utilities Code and under the terms of the status change each outstanding share is converted to a membership of a nonprofit mutual benefit corporation, an amendment to change status to a nonprofit mutual benefit corporation shall be approved by the outstanding shares (Section 152) of each class regardless of limitations or restrictions on the voting rights thereof.

*(Amended by Stats. 2014, Ch. 694, Sec. 4. (SB 1301) Effective January 1, 2015.)*

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**CORPORATIONS CODE - CORP****TITLE 1. CORPORATIONS [100 - 14631]** ( Title 1 enacted by Stats. 1947, Ch. 1038. )**DIVISION 1. GENERAL CORPORATION LAW [100 - 2319]** ( Division 1 repealed and added by Stats. 1975, Ch. 682. )**CHAPTER 10. Sales of Assets [1000 - 1002]** ( Chapter 10 added by Stats. 1975, Ch. 682. )

**1000.** Any mortgage, deed of trust, pledge or other hypothecation of all or any part of the corporation's property, real or personal, for the purpose of securing the payment or performance of any contract or obligation may be approved by the board. Unless the articles otherwise provide, no approval of shareholders (Section 153) or of the outstanding shares (Section 152) shall be necessary for such action.

(Added by Stats. 1975, Ch. 682.)

**1001.** (a) A corporation may sell, lease, convey, exchange, transfer, or otherwise dispose of all or substantially all of its assets when the principal terms are approved by the board, and, unless the transaction is in the usual and regular course of its business, approved by the outstanding shares (Section 152), either before or after approval by the board and before or after the transaction. A transaction constituting a reorganization (Section 181) is subject to the provisions of Chapter 12 (commencing with Section 1200) and not this section (other than subdivision (d)). A transaction constituting a conversion (Section 161.9) is subject to the provisions of Chapter 11.5 (commencing with Section 1150) and not this section.

(b) Notwithstanding approval of the outstanding shares (Section 152), the board may abandon the proposed transaction without further action by the shareholders, subject to the contractual rights, if any, of third parties.

(c) The sale, lease, conveyance, exchange, transfer, or other disposition may be made upon those terms and conditions and for that consideration as the board may deem in the best interests of the corporation. The consideration may be money, securities, or other property.

(d) If the acquiring party in a transaction pursuant to subdivision (a) of this section or subdivision (g) of Section 2001 is in control of or under common control with the disposing corporation, the principal terms of the sale must be approved by at least 90 percent of the voting power of the disposing corporation unless the disposition is to a domestic or foreign corporation or other business entity in consideration of the nonredeemable common shares or nonredeemable equity securities of the acquiring party or its parent.

(e) Subdivision (d) does not apply to any transaction if the Commissioner of Business Oversight, the Insurance Commissioner, or the Public Utilities Commission has approved the terms and conditions of the transaction and the fairness of those terms and conditions pursuant to Section 25142, Section 696.5 of the Financial Code, Section 838.5 of the Insurance Code, or Section 822 of the Public Utilities Code.

(Amended by Stats. 2019, Ch. 143, Sec. 23. (SB 251) Effective January 1, 2020.)

**1002.** Any deed or instrument conveying or otherwise transferring any assets of a corporation may have annexed to it the certificate of the secretary or an assistant secretary of the corporation, setting forth that the transaction has been validly approved by the board and (a) stating that the property described in said deed or instrument is less than substantially all of the assets of the corporation or that the transfer is in the usual and regular course of the business of the corporation, if such be the case, or (b) if such property constitutes all or substantially all of the assets of the corporation and the transfer is not in the usual and regular course of the business of the corporation, stating the fact of approval thereof by the outstanding shares (Section 152) pursuant to this chapter or Chapter 12, as the case may be, or that such approval is not required by Chapter 12. Such certificate is prima facie evidence of the existence of the facts authorizing such conveyance or other transfer of the assets and conclusive evidence in favor of any innocent purchaser or encumbrancer for value.

(Added by Stats. 1975, Ch. 682.)



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**CORPORATIONS CODE - CORP****TITLE 1. CORPORATIONS [100 - 14631]** ( Title 1 enacted by Stats. 1947, Ch. 1038. )**DIVISION 1. GENERAL CORPORATION LAW [100 - 2319]** ( Division 1 repealed and added by Stats. 1975, Ch. 682. )**CHAPTER 11. Merger [1100 - 1113]** ( Chapter 11 added by Stats. 1975, Ch. 682. )

**1100.** Any two or more corporations may be merged into one of those corporations. A corporation may merge with one or more domestic corporations (Section 167), social purpose corporations (Section 171.08), foreign corporations (Section 171), or other business entities (Section 174.5) pursuant to this chapter. Mergers in which a foreign corporation but no other business entity is a constituent party are governed by Section 1108, mergers in which a social purpose corporation but no other business entity is a constituent party are governed by Section 1112.5, and mergers in which an other business entity is a constituent party are governed by Section 1113.

(Amended by Stats. 2014, Ch. 694, Sec. 5. (SB 1301) Effective January 1, 2015.)

**1101.** The board of each corporation which desires to merge shall approve an agreement of merger. The constituent corporations shall be parties to the agreement of merger and other persons, including a parent party (Section 1200), may be parties to the agreement of merger. The agreement shall state all of the following:

(a) The terms and conditions of the merger.

(b) The amendments, subject to Sections 900 and 907, to the articles of the surviving corporation to be effected by the merger, if any. If any amendment changes the name of the surviving corporation the new name may be the same as or similar to the name of a disappearing domestic or foreign corporation, subject to subdivision (b) of Section 201.

(c) The name and place of incorporation of each constituent corporation and which of the constituent corporations is the surviving corporation.

(d) The manner of converting the shares of each of the constituent corporations into shares or other securities of the surviving corporation and, if any shares of any of the constituent corporations are not to be converted solely into shares or other securities of the surviving corporation, the cash, rights, securities, or other property which the holders of those shares are to receive in exchange for the shares, which cash, rights, securities, or other property may be in addition to or in lieu of shares or other securities of the surviving corporation, or that the shares are canceled without consideration.

(e) Other details or provisions as are desired, if any, including, without limitation, a provision for the payment of cash in lieu of fractional shares or for any other arrangement with respect thereto consistent with the provisions of Section 407.

Each share of the same class or series of any constituent corporation (other than the cancellation of shares held by a constituent corporation or its parent or a wholly owned subsidiary of either in another constituent corporation) shall, unless all shareholders of the class or series consent and except as provided in Section 407, be treated equally with respect to any distribution of cash, rights, securities, or other property. Notwithstanding subdivision (d), except in a short-form merger, and in the merger of a corporation into its subsidiary in which it owns at least 90 percent of the outstanding shares of each class, the nonredeemable common shares or nonredeemable equity securities of a constituent corporation may be converted only into nonredeemable common shares of the surviving party or a parent party if a constituent corporation or its parent owns, directly or indirectly, prior to the merger shares of another constituent corporation representing more than 50 percent of the voting power of the other constituent corporation prior to the merger, unless all of the shareholders of the class consent and except as provided in Section 407.

(Amended by Stats. 1999, Ch. 437, Sec. 8. Effective January 1, 2000.)

**1101.1.** Subdivision (c) of Section 1113 and subdivision (b) of Section 1101 do not apply to any transaction if the Commissioner of Business Oversight, the Insurance Commissioner, or the Public Utilities Commission has approved the terms and conditions of the transaction and the fairness of those terms and conditions pursuant to Section 25142 or Section 1209, 5750, or 5802 of the Financial Code, Section 838.5 of the Insurance Code, or Section 822 of the Public Utilities Code.

*(Amended by Stats. 2015, Ch. 190, Sec. 7. (AB 1517) Effective January 1, 2016.)*

**1102.** Each corporation shall sign the agreement by its chairperson of the board, president or a vice president and secretary or an assistant secretary acting on behalf of their respective corporations.

*(Amended by Stats. 2015, Ch. 98, Sec. 9. (SB 351) Effective January 1, 2016.)*

**1103.** After approval of a merger by the board and any approval of the outstanding shares (Section 152) required by Chapter 12 (commencing with Section 1200), the surviving corporation shall file a copy of the agreement of merger with an officers' certificate of each constituent corporation attached stating the total number of outstanding shares of each class entitled to vote on the merger, that the principal terms of the agreement in the form attached were approved by that corporation by a vote of a number of shares of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, or that the merger agreement was entitled to be and was approved by the board alone under the provisions of Section 1201. If equity securities of a parent of a constituent corporation are to be issued in the merger, the officers' certificate of that constituent corporation shall state either that no vote of the shareholders of the parent was required or that the required vote was obtained. The merger and any amendment of the articles of the surviving corporation contained in the merger agreement shall thereupon be effective (subject to subdivision (c) of Section 110 and subject to the provisions of Section 1108) and the several parties thereto shall be one corporation. The Secretary of State may certify a copy of the merger agreement separate from the officers' certificates attached thereto.

*(Amended by Stats. 2006, Ch. 773, Sec. 1. Effective September 29, 2006.)*

**1104.** Any amendment to the agreement may be adopted and the agreement so amended may be approved by the board and, if it changes any of the principal terms of the agreement, by the outstanding shares (Section 152) (if required by Chapter 12) of any constituent corporation in the same manner as the original agreement. If the agreement so amended is approved by the board and the outstanding shares (if required) of each of the corporations, the agreement so amended shall then constitute the agreement of merger.

*(Amended by Stats. 1979, Ch. 711.)*

**1105.** The board may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other constituent corporations, without further approval by the outstanding shares (Section 152), at any time before the merger is effective.

*(Repealed and added by Stats. 1975, Ch. 682.)*

**1106.** A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving corporation and the performance of the conditions necessary to the adoption of any amendment to the articles contained in the agreement of merger.

*(Amended by Stats. 1976, Ch. 641.)*

**1107.** (a) Upon merger pursuant to this chapter the separate existence of the disappearing corporations ceases and the surviving corporation shall succeed, without other transfer, to all the rights and property of each of the disappearing corporations and shall be subject to all the debts and liabilities of each in the same manner as if the surviving corporation had itself incurred them.

(b) For purposes of subdivision (a), a surviving corporation may succeed without the payment of any local agency transfer fee to all licenses, permits, registrations, and other privileges granted by any local agency provided the merger does not result in a change of ownership. Examples of mergers that do not result in a change of ownership are mergers between any of the following: (1) a corporation and its wholly owned subsidiary; (2) a corporation and the wholly owned subsidiary of that corporation's wholly owned subsidiary; or (3) two wholly owned subsidiaries of the same parent corporation. The surviving corporation shall be subject to the same duties and obligations in connection with the license, permit, registration, or other privileges acquired from the disappearing corporations.

(c) All rights of creditors and all liens upon the property of each of the constituent corporations shall be preserved unimpaired, provided that any liens upon property of a disappearing corporation shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(d) Any action or proceeding pending by or against any disappearing corporation may be prosecuted to judgment, which shall bind the surviving corporation, or the surviving corporation may be proceeded against or substituted in its place.

(e) Nothing in subdivision (b) shall limit or restrict a tax assessor from reassessing real property upon transfer of title. Privileges granted by any local agency do not include property tax assessments.

(f) Nothing in subdivision (b) shall limit or restrict a local agency from reevaluating privileges received by a successor corporation from disappearing corporations if the local agency determines in its sole discretion that the reevaluation is necessary for public health, safety, or welfare purposes.

(g) For purposes of this section, "local agency" means a county, city, city and county, political subdivision, district, or municipal corporation.

*(Amended by Stats. 1998, Ch. 381, Sec. 1. Effective January 1, 1999.)*

**1107.5.** (a) Upon merger pursuant to this chapter, a surviving domestic or foreign corporation or other business entity shall be deemed to have assumed the liability of each disappearing domestic or foreign corporation or other business entity that is taxed under Part 10 (commencing with Section 17001) of, or under Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code for the following:

(1) To prepare and file, or to cause to be prepared and filed, tax and information returns otherwise required of that disappearing entity as specified in Chapter 2 (commencing with Section 18501) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(2) To pay any tax liability determined to be due.

(b) If the surviving entity is a domestic limited liability company, domestic corporation, or registered limited liability partnership or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified to do business in California, the Secretary of State shall notify the Franchise Tax Board of the merger.

*(Amended by Stats. 2006, Ch. 773, Sec. 2. Effective September 29, 2006.)*

**1108.** (a) The merger of any number of domestic corporations with any number of foreign corporations may be effected if the foreign corporations are authorized by the laws under which they are formed to effect the merger. The surviving corporation may be any one of the constituent corporations and shall continue to exist under the laws of the state or place of its incorporation.

(b) If the surviving corporation is a domestic corporation, the merger proceedings with respect to that corporation and any domestic disappearing corporation shall conform to the provisions of this chapter governing the merger of domestic corporations, but if the surviving corporation is a foreign corporation, then, subject to the requirements of subdivision (d) and of Section 407 and Chapters 12 (commencing with Section 1200) and 13 (commencing with Section 1300) (with respect to any domestic constituent corporations), the merger proceedings may be in accordance with the laws of the state or place of incorporation of the surviving corporation.

(c) If the surviving corporation is a domestic corporation, the agreement and the officers' certificate of each domestic or foreign constituent corporation shall be filed as provided in Section 1103, or the certificate of ownership shall be filed as provided in Section 1110, and thereupon, subject to subdivision (c) of Section 110, the merger shall be effective as to each domestic constituent corporation; and each foreign disappearing corporation that is qualified for the transaction of intrastate business shall by virtue of the filing, subject to subdivision (c) of Section 110, automatically surrender its right to transact intrastate business.

(d) If the surviving corporation is a foreign corporation, the merger shall become effective in accordance with the law of the jurisdiction in which it is organized, but, except as provided in subdivision (e), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state as required by this subdivision. There shall be filed as to the domestic disappearing corporation or corporations the documents described in any one of the following paragraphs:

(1) A copy of the agreement, certificate or other document filed by the surviving foreign corporation in the state or place of its incorporation for the purpose of effecting the merger, which copy shall be certified by the public officer having official custody of the original.



(2) An executed counterpart of the agreement, certificate or other document filed by the surviving foreign corporation in the state or place of its incorporation for the purpose of effecting the merger.

(3) A copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent domestic corporation attached, which officers' certificates shall conform to the requirements of Section 1103.

(4) A certificate of ownership pursuant to Section 1110.

(e) If the date of the filing in this state pursuant to subdivision (d) is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of the domestic corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation or corporations as of the date of filing in this state. Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall, by virtue of the filing pursuant to subdivision (d), automatically surrender its right to transact intrastate business as of the date of filing in this state regardless of the time of effectiveness as to a domestic disappearing corporation.

(f) The provisions of the last two sentences of Section 1101 and Chapter 12 (commencing with Section 1200) and Chapter 13 (commencing with Section 1300) apply to the rights of the shareholders of any of the constituent corporations that are domestic corporations and of any domestic corporation that is a parent party of any foreign constituent corporation.

*(Amended by Stats. 2006, Ch. 773, Sec. 3. Effective September 29, 2006.)*

**1109.** Whenever a domestic or foreign corporation or domestic or foreign other business entity having any real property in this state merges or consolidates with another domestic or foreign corporation or other business entity pursuant to the laws of this state or of the state or place in which any constituent party to the merger was incorporated or organized, and the laws of the state or place of incorporation or organization (including this state) of any disappearing party to the merger provide substantially that the making and filing of the agreement of merger or consolidation or certificate of ownership or certificate of merger vests in the surviving or consolidated party to the merger all the real property of any disappearing party to the merger, the filing for record in the office of the county recorder of any county in this state in which any of the real property of that disappearing party to the merger is located of a copy of the agreement of merger or consolidation or certificate of ownership or certificate of merger, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the merger or consolidation is effected, shall evidence record ownership in the surviving or consolidated party to the merger, of all interest of the disappearing party to the merger in and to the real property located in that county.

*(Amended by Stats. 1999, Ch. 437, Sec. 9.5. Effective January 1, 2000.)*

**1110.** (a) If a domestic corporation owns all the outstanding shares, or owns less than all the outstanding shares but at least 90 percent of the outstanding shares of each class, of a corporation or corporations, domestic or foreign, the merger of the subsidiary corporation or corporations into the parent corporation or the merger into the subsidiary corporation of the parent corporation and any other subsidiary corporation or corporations, may be effected by a resolution or plan of merger adopted and approved by the board of the parent corporation and the filing of a certificate of ownership as provided in subdivision (e). The resolution or plan of merger shall provide for the merger and shall provide that the surviving corporation assumes all the liabilities of each disappearing corporation and shall include any other provisions required by this section.

(b) If the parent corporation owns less than all the outstanding shares but at least 90 percent of the outstanding shares of each class of the subsidiary corporation that is a party to the merger, the resolution or plan of merger also shall set forth the securities, cash, property, or rights to be issued, paid, delivered, or granted upon surrender of each outstanding share of the subsidiary corporation not owned by the parent corporation and the entire resolution or plan of merger as well as the consideration to be received for each share of the subsidiary corporation not owned by the parent corporation, shall be approved by the board of that subsidiary corporation.

(c) If the parent corporation is to be merged into one of its subsidiary corporations, the resolution or plan of merger also shall provide for the pro rata conversion of the outstanding shares of the parent corporation into shares of the surviving subsidiary corporation. In this case, the entire resolution or plan of merger shall be approved by the board of the surviving subsidiary corporation and, if the merger, but for the operation of this section, would be a merger reorganization (Section 181) the principal terms of which would be required to be approved by the outstanding shares (Section 152) of any class of the parent corporation pursuant to subdivision (d) of Section 1201, the principal terms of the resolution or plan of merger shall be approved by the outstanding shares (Section 152) of that same class of the parent corporation.

(d) In any merger pursuant to this section, the resolution or plan of merger may provide for the amendment of the articles of the surviving corporation to change its name, subject to Section 201, regardless of whether the name so adopted is the same as or similar to that of one of the disappearing corporations. The provision shall establish the wording of the amendment pursuant to paragraph (2) of subdivision (a) of Section 907 and the resolution or plan of merger shall not provide for the amendment of the articles of the surviving corporation other than to change its name.

(e) After the required approval or approvals of the resolution or plan of merger, a certificate of ownership consisting of an officers' certificate of the parent corporation shall be filed, and a copy thereof for each domestic subsidiary corporation and qualified foreign disappearing subsidiary corporation which is a party to the merger shall also be filed. The certificate of ownership shall:

(1) Identify the parent and subsidiary corporation or corporations.

(2) Set forth the share ownership by the parent corporation of each subsidiary corporation as 100 percent of the outstanding shares or as at least 90 percent of the outstanding shares of each class, as the case may be.

(3) Set forth the resolution or plan of merger.

(4) Set forth approval of the resolution or plan of merger by the board of the parent corporation.

(5) Set forth other approvals of the resolution or plan of merger as required under subdivision (b) or (c), if applicable.

(f) Upon the filing of the certificate of ownership, the merger shall be effective and any amendment of the articles of the surviving corporation set forth in the certificate shall be effective.

(g) A merger pursuant to this section may be effected if the parent corporation is a foreign corporation and if at least one subsidiary corporation is a domestic corporation but in such a case the certificate of ownership prepared as in subdivision (e) or the document required by subdivision (d) of Section 1108 shall be filed as to each domestic and qualified foreign subsidiary corporation, but no filing shall be made as to the foreign parent corporation. No merger into or with a foreign corporation may be effected as provided by this section unless the laws of the state or place of its incorporation permit that action.

(h) In the event all of the outstanding shares of a subsidiary domestic corporation party to a merger effected under this section are not owned by the parent corporation immediately prior to the merger, the parent corporation shall, at least 20 days before the effective date of the merger, give notice to each shareholder of such subsidiary corporation that the merger will become effective on or after a specified date. The notice shall contain a copy of the resolution or plan of merger and the information required by subdivision (a) of Section 1301. The notice shall be sent by mail addressed to the shareholder at the address of the shareholder as it appears on the records of the corporation. The shareholder shall have the right to demand payment of cash for the shares of the shareholder pursuant to Chapter 13 (commencing with Section 1300).

(i) If an agreement of merger is entered into between a parent corporation and one or more of its subsidiary corporations and the share ownership requirements of subdivision (a) are met, the agreement of merger may be filed as a plan of merger with a certificate of ownership in accordance with the requirements of this section, in which case Sections 1101, 1102, 1103, 1200, 1201, and 1202 shall not apply; or the agreement of merger may be filed pursuant to Section 1103, in which case this section shall not apply.

*(Amended by Stats. 2006, Ch. 773, Sec. 4. Effective September 29, 2006.)*

**1111.** If any disappearing corporation in a merger is a close corporation and the surviving corporation is not a close corporation, the merger shall be approved by the affirmative vote of at least two-thirds of each class of the outstanding shares of such disappearing corporation; provided, however, that the articles may provide for a lesser vote, but not less than a majority of the outstanding shares of each class.

*(Amended by Stats. 1976, Ch. 641.)*

**1112.** If a disappearing corporation in a merger is a corporation governed by this division and the surviving corporation is a nonprofit public benefit corporation, a nonprofit mutual benefit corporation, or a nonprofit religious corporation, the merger shall be approved by all of the outstanding shares of all classes of the disappearing corporation, regardless of limitations or restrictions on the voting rights thereof, notwithstanding any provision of Chapter 12 (commencing with Section 1200).

*(Added by Stats. 1979, Ch. 711.)*

**1112.5.** If a disappearing corporation in a merger is a corporation governed by this division and the surviving corporation is a social purpose corporation, both of the following shall apply:

(a) The merger shall be approved by the affirmative vote of at least two-thirds of each class, or a greater vote if required in the articles, of the outstanding shares (Section 152) of the disappearing corporation, notwithstanding any provision of Chapter 12 (commencing with Section 1200).

(b) The shareholders of the disappearing corporation shall have all of the rights under Chapter 13 (commencing with Section 1300) of the shareholders of a corporation involved in a reorganization requiring the approval of its outstanding shares (Section 152), and the disappearing corporation shall have all of the obligations under Chapter 13 (commencing with Section 1300) of a corporation involved in the reorganization.

*(Amended by Stats. 2014, Ch. 694, Sec. 6. (SB 1301) Effective January 1, 2015.)*

**1113.** (a) Any one or more corporations may merge with one or more other business entities (Section 174.5). One or more domestic corporations (Section 167) not organized under this division and one or more foreign corporations (Section 171) may be parties to the merger. Notwithstanding the provisions of this section, the merger of any number of corporations with any number of other business entities may be effected only if:

(1) In a merger in which a domestic corporation not organized under this division or a domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each corporation and each other party that desires to merge shall approve, and shall be a party to, an agreement of merger. Other persons, including a parent party (Section 1200), may be parties to the agreement of merger. The board of each corporation that desires to merge and, if required, the shareholders shall approve the agreement of merger. The agreement of merger shall be approved on behalf of each party by those persons required to approve the merger by the laws under which it is organized. The agreement of merger shall state:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each party to the merger and the identity of the surviving party.

(3) The amendments, if any, subject to Sections 900 and 907, to the articles of the surviving corporation, if applicable, to be effected by the merger. If any amendment changes the name of the surviving corporation, if applicable, the new name may be, subject to subdivision (b) of Section 201, the same as or similar to the name of a disappearing party to the merger.

(4) The manner of converting the shares of each constituent corporation into shares, interests, or other securities of the surviving party. If any shares of any constituent corporation are not to be converted solely into shares, interests, or other securities of the surviving party, the agreement of merger shall state (A) the cash, rights, securities, or other property which the holders of those shares are to receive in exchange for the shares, which cash, rights, securities, or other property may be in addition to or in lieu of shares, interests, or other securities of the surviving party, or (B) that the shares are canceled without consideration.

(5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a public benefit corporation or a religious corporation is a party to the merger, Section 6019.1, or, if a mutual benefit corporation is a party to the merger, Section 8019.1, or, if a consumer cooperative corporation is a party to the merger, Section 12540.1, or if an unincorporated association is a party to the merger, Section 18370, or, if a domestic limited partnership is a party to the merger, Section 15911.12, or, if a domestic partnership is a party to the merger, Section 16911, or, if a domestic limited liability company is a party to the merger, Section 17710.12.

(6) Any other details or provisions as are desired, including, without limitation, a provision for the payment of cash in lieu of fractional shares or for any other arrangement with respect thereto consistent with the provisions of Section 407.

(c) Each share of the same class or series of any constituent corporation (other than the cancellation of shares held by a party to the merger or its parent, or a wholly owned subsidiary of either, in another constituent corporation) shall, unless all shareholders of the class or series consent and except as provided in Section 407, be treated equally with respect to any distribution of cash, rights, securities, or other property. Notwithstanding paragraph (4) of subdivision (b), the unredeemable common shares of a constituent corporation may be converted only into unredeemable common shares of a surviving corporation or a parent party (Section 1200) or unredeemable equity securities of a surviving party other than a corporation if another party to the merger or its parent owns, directly or

indirectly, prior to the merger shares of that corporation representing more than 50 percent of the voting power of that corporation, unless all of the shareholders of the class consent and except as provided in Section 407.

(d) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger or the certificate of merger, as is applicable, if the amendment is approved by the board of each constituent corporation and, if the amendment changes any of the principal terms of the agreement, by the outstanding shares (Section 152), if required by Chapter 12 (commencing with Section 1200), in the same manner as the original agreement of merger. If the agreement of merger as so amended and approved is also approved by each of the other parties to the agreement of merger, the agreement of merger as so amended shall then constitute the agreement of merger.

(e) The board of a constituent corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other parties to the agreement of merger, without further approval by the outstanding shares (Section 152), at any time before the merger is effective.

(f) Each constituent corporation shall sign the agreement of merger by its chairperson of the board, president or a vice president, and also by its secretary or an assistant secretary acting on behalf of their respective corporations.

(g) (1) If the surviving party is a corporation or a foreign corporation, or if a social purpose corporation (Section 171.08), a public benefit corporation (Section 5060), a mutual benefit corporation (Section 5059), a religious corporation (Section 5061), or a corporation organized under the Consumer Cooperative Corporation Law (Section 12200) is a party to the merger, after required approvals of the merger by each constituent corporation through approval of the board (Section 151) and any approval of the outstanding shares (Section 152) required by Chapter 12 (commencing with Section 1200) and by the other parties to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic and foreign corporation attached stating the total number of outstanding shares or membership interests of each class entitled to vote on the merger (and identifying any other person or persons whose approval is required), that the agreement of merger in the form attached or its principal terms, as required, were approved by that corporation by a vote of a number of shares or membership interests of each class that equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class and, if applicable, by that other person or persons whose approval is required, or that the merger agreement was entitled to be and was approved by the board alone (as provided in Section 1201, in the case of corporations subject to that section). If equity securities of a parent party (Section 1200) are to be issued in the merger, the officers' certificate of that controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed those officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for that party the provision of law or other basis for the authority of the signing persons. The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of the constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the agreement of merger in the form attached or its principal terms, as required, were approved by a vote of the number of interests of each class that equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15911.14, if a domestic partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17710.04. The certificate of merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other business entity is authorized by the laws under which it is organized to effect the merger. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall be effective upon filing of the agreement of merger with an officer's certificate of each constituent domestic and foreign corporation and a certificate of merger for each constituent other business entity, subject to

subdivision (c) of Section 110 and subject to the provisions of subdivision (j), and the several parties thereto shall be one entity. If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code. The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(2) If the surviving entity is an other business entity, and no public benefit corporation (Section 5060), mutual benefit corporation (Section 5059), religious corporation (Section 5061), or corporation organized under the Consumer Cooperative Corporation Law (Section 12200) is a party to the merger, after required approvals of the merger by each constituent corporation through approval of the board (Section 151) and any approval of the outstanding shares (Section 152) required by Chapter 12 (commencing with Section 1200) and by the other parties to the merger, the parties to the merger shall file a certificate of merger in the office of, and on a form prescribed by, the Secretary of State. The certificate of merger shall be executed and acknowledged by each constituent domestic and foreign corporation by its chairperson of the board, president or a vice president, and also by its secretary or an assistant secretary and by each domestic constituent limited liability company by all managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed those officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact. The certificate of merger shall be signed by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for that party the provision of law or other basis for the authority of the signing persons. The certificate of merger shall set forth all of the following:

(A) The name, place of incorporation or organization, and the Secretary of State's file number, if any, of each party to the merger, separately identifying the disappearing parties and the surviving party.

(B) If the approval of the outstanding shares of a constituent corporation was required by Chapter 12 (commencing with Section 1200), a statement setting forth the total number of outstanding shares of each class entitled to vote on the merger and that the principal terms of the agreement of merger were approved by a vote of the number of shares of each class entitled to vote and the percentage vote required of each class.

(C) The future effective date or time, not more than 90 days subsequent to the date of filing of the merger, if the merger is not to be effective upon the filing of the certificate of merger with the office of the Secretary of State.

(D) A statement, by each party to the merger which is a domestic corporation not organized under this division, a foreign corporation, or an other business entity, of the statutory or other basis under which that party is authorized by the laws under which it is organized to effect the merger.

(E) Any other information required to be stated in the certificate of merger by the laws under which each party to the merger is organized, including, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17710.14, if a domestic partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15911.14.

(F) Any other details or provisions that may be desired.

Unless a future effective date or time is provided in a certificate of merger, in which event the merger shall be effective at that future effective date or time, a merger shall be effective upon the filing of the certificate of merger in the office of the Secretary of State and the several parties thereto shall be one entity. The surviving other business entity shall keep a copy of the agreement of merger at its principal place of business which, for purposes of this subdivision, shall be the office referred to in Section 17710.13 if a domestic limited liability company, at the business address specified in paragraph (5) of subdivision (a) of Section 17710.14 if a foreign limited liability company, at the office referred to in subdivision (a) of Section 16403 if a domestic general partnership, at the business address specified in subdivision (f) of Section 16911 if a foreign partnership, at the office referred to in subdivision (a) of Section 15901.14 if a domestic limited partnership, or at the business address specified in paragraph (3) of subdivision (a) of Section 15909.02 if a foreign limited partnership. Upon the request of a holder of equity securities of a party to the merger, a person with authority to do so on behalf of the surviving other business entity shall promptly deliver to that holder, a copy of the agreement of merger. A waiver by that holder of the rights provided in the foregoing sentence shall be unenforceable. If a domestic reciprocal insurer organized

after 1974 to provide medical malpractice insurance is a party to the merger the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger in accordance with Section 1555 of the Insurance Code.

(h) (1) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving party to the merger, and the performance of the conditions necessary to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger.

(2) For all purposes for a merger in which the surviving entity is a domestic other business entity and the filing of a certificate of merger is required by paragraph (2) of subdivision (g), a copy of the certificate of merger duly certified by the Secretary of State is conclusive evidence of the merger of the constituent corporations, either by themselves or together with the other parties to the merger, into the surviving other business entity.

(i) (1) Upon a merger pursuant to this section, the separate existences of the disappearing parties to the merger cease and the surviving party to the merger shall succeed, without other transfer, to all the rights and property of each of the disappearing parties to the merger and shall be subject to all the debts and liabilities of each in the same manner as if the surviving party to the merger had itself incurred them.

(2) All rights of creditors and all liens upon the property of each of the constituent corporations and other parties to the merger shall be preserved unimpaired, provided that those liens upon property of a disappearing party shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(3) Any action or proceeding pending by or against any disappearing corporation or disappearing party to the merger may be prosecuted to judgment, which shall bind the surviving party, or the surviving party may be proceeded against or substituted in its place.

(4) If a limited partnership or a general partnership is a party to the merger, nothing in this section is intended to affect the liability a general partner of a disappearing limited partnership or general partnership may have in connection with the debts and liabilities of the disappearing limited partnership or general partnership existing prior to the time the merger is effective.

(j) (1) The merger of domestic corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivision (a) and this subdivision.

(2) If the surviving party is a domestic corporation or domestic other business entity, the merger proceedings with respect to that party and any domestic disappearing corporation shall conform to the provisions of this section. If the surviving party is a foreign corporation or foreign other business entity, then, subject to the requirements of subdivision (c), and of Section 407 and Chapter 12 (commencing with Section 1200) and Chapter 13 (commencing with Section 1300), and, if applicable, corresponding provisions of the Nonprofit Corporation Law or the Consumer Cooperative Corporation Law, with respect to any domestic constituent corporations, Article 11 (commencing with Section 17711.01) of Title 2.6 with respect to any domestic constituent limited liability companies, Article 6 (commencing with Section 16601) of Chapter 5 of Title 2 with respect to any domestic constituent general partnerships, and Article 11.5 (commencing with Section 15911.20) of Chapter 5.5 of Title 2 with respect to any domestic constituent limited partnerships, the merger proceedings may be in accordance with the laws of the state or place of incorporation or organization of the surviving party.

(3) If the surviving party is a domestic corporation or domestic other business entity, the certificate of merger or the agreement of merger with attachments shall be filed as provided in subdivision (g) and thereupon, subject to subdivision (c) of Section 110 or paragraph (2) of subdivision (g), as is applicable, the merger shall be effective as to each domestic constituent corporation and domestic constituent other business entity.

(4) If the surviving party is a foreign corporation or foreign other business entity, the merger shall become effective in accordance with the law of the jurisdiction in which the surviving party is organized, but, except as provided in paragraph (5), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of each constituent foreign and domestic corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of paragraph (1) of subdivision (g). If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which that domestic other business entity is organized, including subdivision (a) of Section 15911.14, subdivision (b) of Section 16915, or subdivision (a) of Section 17710.14, as is applicable, shall also be filed at the same time as the filing of the agreement of merger.

(5) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing corporation are suspended at

the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

(6) In a merger described in paragraph (3) or (4), each foreign disappearing corporation that is qualified for the transaction of intrastate business shall by virtue of the filing pursuant to this subdivision, subject to subdivision (c) of Section 110, automatically surrender its right to transact intrastate business in this state. The filing of the agreement of merger or certificate of merger, as is applicable, pursuant to this subdivision, by a disappearing foreign other business entity registered for the transaction of intrastate business in this state shall, by virtue of that filing, subject to subdivision (c) of Section 110, automatically cancels the registration for that foreign other business entity, without the necessity of the filing of a certificate of cancellation.

*(Amended by Stats. 2014, Ch. 694, Sec. 7. (SB 1301) Effective January 1, 2015.)*




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### CORPORATIONS CODE - CORP

**TITLE 1. CORPORATIONS [100 - 14631]** ( Title 1 enacted by Stats. 1947, Ch. 1038. )

**DIVISION 1. GENERAL CORPORATION LAW [100 - 2319]** ( Division 1 repealed and added by Stats. 1975, Ch. 682. )

### CHAPTER 11.5. Conversions [1150 - 1160]

( Chapter 11.5 added by Stats. 2002, Ch. 480, Sec. 6. )

**1150.** For purposes of this chapter, the following definitions shall apply:

- (a) "Converted corporation" means a corporation that results from a conversion of an other business entity or a foreign other business entity or a foreign corporation pursuant to Section 1157.
- (b) "Converted entity" means a domestic other business entity that results from a conversion of a corporation under this chapter.
- (c) "Converting corporation" means a corporation that converts into a domestic other business entity pursuant to this chapter.
- (d) "Converting entity" means an other business entity or a foreign other business entity or foreign corporation that converts into a corporation pursuant to Section 1157.
- (e) "Domestic other business entity" has the meaning provided in Section 167.7.
- (f) "Foreign other business entity" has the meaning provided in Section 171.07.
- (g) "Other business entity" has the meaning provided in Section 174.5.

(Added by Stats. 2002, Ch. 480, Sec. 6. Effective January 1, 2003.)

**1151.** (a) A corporation may be converted into a domestic other business entity, including, but not limited to, a limited liability company or a partnership, pursuant to this chapter if, pursuant to the proposed conversion, (1) each share of the same class or series of the converting corporation shall, unless all the shareholders of the class or series consent, be treated equally with respect to any cash, rights, securities, or other property to be received by, or any obligations or restrictions to be imposed on, the holder of that share, and (2) nonredeemable common shares of the converting corporation shall be converted only into nonredeemable equity securities of the converted entity unless all of the shareholders of the class consent; provided, however, that clause (1) shall not restrict the ability of the shareholders of a converting corporation to appoint one or more managers, if the converted entity is a limited liability company, or one or more general partners, if the converted entity is a limited partnership, in the plan of conversion or in the converted entity's governing documents.

(b) Notwithstanding this section, the conversion of a corporation into a domestic other business entity, including, but not limited to, a limited liability company or a partnership, may be effected only if both of the following conditions are complied with:

- (1) The law under which the converted entity will exist expressly permits the formation of that entity pursuant to a conversion.
- (2) The corporation complies with any and all other requirements of any other law that applies to conversion to the converted entity.

(Amended by Stats. 2014, Ch. 694, Sec. 8. (SB 1301) Effective January 1, 2015.)

**1152.** (a) A corporation that desires to convert to a domestic other business entity shall approve a plan of conversion. The plan of conversion shall state all of the following:

- (1) The terms and conditions of the conversion.

(2) The jurisdiction of the organization of the converted entity and of the converting corporation and the name of the converted entity after conversion.

(3) The manner of converting the shares of each of the shareholders of the converting corporation into securities of, or interests in, the converted entity.

(4) The provisions of the governing documents for the converted entity, including the partnership agreement or limited liability company articles of organization and operating agreement, to which the holders of interests in the converted entity are to be bound.

(5) Any other details or provisions that are required by the laws under which the converted entity is organized, or that are desired by the converting corporation.

(b) The plan of conversion shall be approved by the board of the converting corporation (Section 151), and the principal terms of the plan of the conversion shall be approved by the outstanding shares (Section 152) of each class of the converting corporation. The approval of the outstanding shares may be given before or after approval by the board. Notwithstanding the foregoing, if a converting corporation is a close corporation, the conversion shall be approved by the affirmative vote of at least two-thirds of each class, or a greater vote if required in the articles, of outstanding shares (Section 152) of that converting corporation; provided, however, that the articles may provide for a lesser vote, but not less than a majority of the outstanding shares of each class.

(c) If the corporation is converting into a general or limited partnership or into a limited liability company, then in addition to the approval of the shareholders set forth in subdivision (b), the plan of conversion shall be approved by each shareholder who will become a general partner or manager, as applicable, of the converted entity pursuant to the plan of conversion unless the shareholders have dissenters' rights pursuant to Section 1159 and Chapter 13 (commencing with Section 1300).

(d) Upon the effectiveness of the conversion, all shareholders of the converting corporation, except those that exercise dissenters' rights as provided in Section 1159 and Chapter 13 (commencing with Section 1300), shall be deemed parties to any agreement or agreements constituting the governing documents for the converted entity adopted as part of the plan of conversion, irrespective of whether or not a shareholder has executed the plan of conversion or those governing documents for the converted entity. Any adoption of governing documents made pursuant thereto shall be effective at the effective time or date of the conversion.

(e) Notwithstanding its prior approval by the board and the outstanding shares or either of them, a plan of conversion may be amended before the conversion takes effect if the amendment is approved by the board and, if it changes any of the principal terms of the plan of conversion, by the shareholders of the converting corporation in the same manner and to the same extent as was required for approval of the original plan of conversion.

(f) A plan of conversion may be abandoned by the board of a converting corporation, or by the shareholders of a converting corporation if the abandonment is approved by the outstanding shares, in each case in the same manner as required for approval of the plan of conversion, subject to the contractual rights of third parties, at any time before the conversion is effective.

(g) The converted entity shall keep the plan of conversion at (1) the principal place of business of the converted entity if the converted entity is a domestic partnership or (2) at the office at which records are to be kept under Section 15901.11 if the converted entity is a domestic limited partnership or at the office at which records are to be kept under Section 17701.13 if the converted entity is a domestic limited liability company. Upon the request of a shareholder of a converting corporation, the authorized person on behalf of the converted entity shall promptly deliver to the shareholder, at the expense of the converted entity, a copy of the plan of conversion. A waiver by a shareholder of the rights provided in this subdivision shall be unenforceable.

*(Amended by Stats. 2014, Ch. 694, Sec. 9. (SB 1301) Effective January 1, 2015.)*

**1153.** (a) After the approval, as provided in Section 1152, of a plan of conversion by the board and the outstanding shares of a corporation converting into a domestic other business entity, the converting corporation shall cause the filing of all documents required by law to effect the conversion and create the converted entity, which documents shall include a certificate of conversion or a statement of conversion as required by Section 1155, and the conversion shall thereupon be effective.

(b) A copy of the statement of partnership authority, certificate of limited partnership, or articles of organization complying with Section 1155, duly certified by the Secretary of State on or after the effective date, is conclusive evidence of the conversion of the corporation.

*(Added by Stats. 2002, Ch. 480, Sec. 6. Effective January 1, 2003.)*

**1155.** (a) To convert a corporation:

(1) If the corporation is converting into a domestic limited partnership, a statement of conversion shall be completed on the certificate of limited partnership for the converted entity.

(2) If the corporation is converting into a domestic partnership, a statement of conversion shall be completed on the statement of partnership authority for the converted entity, or if no statement of partnership authority is filed then a certificate of conversion shall be filed separately.

(3) If the corporation is converting into a domestic limited liability company, a statement of conversion shall be completed on the articles of organization for the converted entity.

(b) Any statement or certificate of conversion of a converting corporation shall be executed and acknowledged by those officers of the converting corporation as would be required to sign an officers' certificate (Section 173), and shall set forth all of the following:

(1) The name of the converting corporation and the Secretary of State's file number of the converting corporation.

(2) A statement of the total number of outstanding shares of each class entitled to vote on the conversion, that the principal terms of the plan of conversion were approved by a vote of the number of shares of each class which equaled or exceeded the vote required under Section 1152, specifying each class entitled to vote and the percentage vote required of each class.

(3) The name, form, and jurisdiction of organization of the converted entity.

(4) The name, mailing address, and street address of the converted entity's agent for service of process. If a corporation qualified under Section 1505 is designated as the agent, no address for it shall be set forth.

(c) For the purposes of this chapter, the certificate of conversion shall be on a form prescribed by the Secretary of State.

(d) The filing with the Secretary of State of a statement of conversion on an organizational document or a certificate of conversion as set forth in subdivision (a) shall have the effect of the filing of a certificate of dissolution by the converting corporation and no converting corporation that has made the filing is required to file a certificate of election under Section 1901 or a certificate of dissolution under Section 1905 as a result of that conversion.

(e) Upon the effectiveness of a conversion pursuant to this chapter, a converted entity that is a domestic partnership, domestic limited partnership, or domestic limited liability company shall be deemed to have assumed the liability of the converting corporation (1) to prepare and file or cause to be prepared and filed all tax and information returns otherwise required of the converting corporation under the Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code) and (2) to pay any tax liability determined to be due pursuant to that law.

*(Amended by Stats. 2015, Ch. 189, Sec. 2. (AB 1471) Effective January 1, 2016.)*

**1156.** (a) Whenever a corporation or other business entity having any real property in this state converts into a corporation or an other business entity pursuant to the laws of this state or of the state or place in which the corporation or other business entity was organized, and the laws of the state or place of organization, including this state, of the converting corporation or other converting entity provide substantially that the conversion vests in the converted corporation or other converted entity all the real property of the converting corporation or other converting entity, the filing for record in the office of the county recorder of any county in this state in which any of the real property of the converting corporation or other converting entity is located of either (1) a certificate of conversion or a statement of partnership authority, certificate of limited partnership or articles of organization containing a statement of conversion complying with Section 1155 and certified on or after the effective date of the conversion by the Secretary of State or (2) a copy of a certificate of conversion or a statement of partnership authority, certificate of limited partnership, articles of organization, articles of incorporation, or other comparable organizing document evidencing the creation of a foreign other business entity or foreign corporation, containing a statement of conversion, meeting the requirements of subdivision (b) and certified on or after the effective date of the conversion by the Secretary of State or any other authorized public official of the state or place pursuant to the laws of which the converted entity is organized, shall evidence record ownership in the converted corporation or other converted entity of all interest of the converting corporation or other converting entity in and to the real property located in that county.

(b) A filed and, if appropriate, recorded certificate of conversion or a statement of partnership authority, certificate of limited partnership, articles of organization, articles of incorporation, or other comparable organizing document evidencing the formation of a foreign other business entity or a foreign corporation referred to in clause (2) of subdivision (a) above which contains a statement of conversion, stating the name of the converting corporation or other converting entity in whose name property was held before the conversion and the name of the converted

entity or converted corporation, but not containing all of the other information required by Section 1155, operates with respect to the converted entity named to the extent provided in subdivision (a).

(c) Recording of a certificate of conversion or a statement of partnership authority, certificate of limited partnership, articles of organization, articles of incorporation, or other comparable organizing document evidencing the creation of an other business entity or a corporation, containing a statement of conversion, in accordance with subdivision (a), shall create, in favor of bona fide purchasers or encumbrances for value, a conclusive presumption that the conversion was validly completed.

*(Added by Stats. 2002, Ch. 480, Sec. 6. Effective January 1, 2003.)*

**1157.** (a) An other business entity or a foreign other business entity or a foreign corporation may be converted into a corporation pursuant to this chapter only if the converting entity is authorized by the laws under which it is organized to effect the conversion.

(b) An other business entity or a foreign other business entity or a foreign corporation that desires to convert into a corporation shall approve a plan of conversion or other instrument as is required to be approved to effect the conversion pursuant to the laws under which that entity is organized.

(c) The conversion of an other business entity or a foreign other business entity or a foreign corporation shall be approved by the number or percentage of the partners, members, shareholders, or other holders of interest of the converting entity that is required by the laws under which that entity is organized, or a greater or lesser percentage as may be set forth in the converting entity's partnership agreement, articles of organization, operating agreement, articles of incorporation, or other governing document in accordance with applicable laws.

(d) The conversion by an other business entity or a foreign other business entity or a foreign corporation shall be effective under this chapter upon the filing with the Secretary of State of the articles of incorporation of the converted corporation, containing a statement of conversion that complies with subdivision (e).

(e) A statement of conversion of an entity converting into a corporation pursuant to this chapter shall set forth all of the following:

(1) The name, form, and jurisdiction of organization of the converting entity.

(2) The Secretary of State's file number, if any, of the converting entity.

(3) If the converting entity is a foreign other business entity or a foreign corporation, the statement of conversion shall contain the following:

(A) A statement that the converting entity is authorized to effect the conversion by the laws under which it is organized.

(B) A statement that the converting entity has approved a plan of conversion or other instrument as is required to be approved to effect the conversion pursuant to the laws under which the converting entity is organized.

(C) A statement that the conversion has been approved by the number or percentage of the partners, members, shareholders, or other holders of interest of the converting entity that is required by the laws under which that entity is organized, or a greater or lesser percentage as may be set forth in the converting entity's partnership agreement, articles of organization, operating agreement, articles of incorporation, or other governing document in accordance with applicable laws.

(f) The filing with the Secretary of State of articles of incorporation containing a statement pursuant to subdivision (e) shall have the effect of the filing of a certificate of cancellation by a converting foreign limited liability company or foreign limited partnership, and no converting foreign limited liability company or foreign limited partnership that has made the filing is required to file a certificate of cancellation under Section 15909.07 or 17708.06 as a result of that conversion. If a converting entity is a foreign corporation qualified to transact business in this state, the foreign corporation shall, by virtue of the filing, automatically surrender its right to transact intrastate business.

*(Amended by Stats. 2012, Ch. 419, Sec. 9. (SB 323) Effective January 1, 2013. Operative January 1, 2014, by Sec. 32 of Ch. 419.)*

**1158.** (a) An entity that converts into another entity pursuant to this chapter is for all purposes other than for the purposes of Part 10 (commencing with Section 17001) of, Part 10.20 (commencing with Section 18401) of, and Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code, the same entity that existed before the conversion.

(b) Upon a conversion taking effect, all of the following apply:

(1) All the rights and property, whether real, personal, or mixed, of the converting entity or converting corporation are vested in the converted entity or converted corporation.

(2) All debts, liabilities, and obligations of the converting entity or converting corporation continue as debts, liabilities, and obligations of the converted entity or converted corporation.

(3) All rights of creditors and liens upon the property of the converting entity or converting corporation shall be preserved unimpaired and remain enforceable against the converted entity or converted corporation to the same extent as against the converting entity or converting corporation as if the conversion had not occurred.

(4) Any action or proceeding pending by or against the converting entity or converting corporation may be continued against the converted entity or converted corporation as if the conversion had not occurred.

(c) A shareholder of a converting corporation is liable for:

(1) All obligations of the converting corporation for which the shareholder was personally liable before the conversion, but only to the extent that the shareholder was personally liable for the obligations of the converting corporation before the conversion.

(2) All obligations of the converted entity incurred after the conversion takes effect if (A) the shareholder becomes a general partner of a converted entity that is a general or limited partnership and, as a general partner, has liability under the laws under which the converted entity is organized or under the converted entity's governing documents or (B) the shareholder becomes a holder of other interests in the converted entity and, as a holder, has liability under the laws under which the converted entity is organized or under the converted entity's governing documents.

(d) A shareholder of a converted corporation remains liable for any and all obligations of the converting entity for which the shareholder was personally liable before the conversion, but only to the extent that the shareholder was personally liable for the obligations of the converting entity prior to the conversion.

(e) If a party to a transaction with a converted corporation that converted from a partnership reasonably believes when entering into the transaction that a shareholder of the converted corporation continues to be a general partner of the converting entity after the conversion is effective, and the shareholder was a general partner of the partnership that converted into the converted corporation, the shareholder is liable for an obligation incurred by the converted corporation within 90 days after the conversion takes effect. The shareholder's liability for all other obligations of the converted corporation incurred after the conversion takes effect is that of a shareholder of a corporation.

(f) The converted entity shall cause written notice of the conversion to be given by mail within 90 days after the effective date of the conversion to all known creditors and claimants whose addresses appear on the records of the converting entity. Failure to comply with this subdivision shall not affect the validity of the conversion, extend the 90-day period set forth in subdivision (e), or otherwise affect the rights of a creditor or claimant under this section.

*(Added by Stats. 2002, Ch. 480, Sec. 6. Effective January 1, 2003.)*

**1159.** The shareholders of a converting corporation shall have all of the rights under Chapter 13 (commencing with Section 1300) of the shareholders of a corporation involved in a reorganization requiring the approval of its outstanding shares (Section 152), and the converting corporation shall have all of the obligations under Chapter 13 (commencing with Section 1300) of a corporation involved in the reorganization. Solely for purposes of applying the provisions of Chapter 13 (and not for purposes of Chapter 12), a conversion pursuant to Section 1151 or 1157 shall be deemed to constitute a reorganization.

*(Added by Stats. 2002, Ch. 480, Sec. 6. Effective January 1, 2003.)*

**1160.** (a) Notwithstanding any other provision of law, the Secretary of State shall charge an entity a fee not to exceed one hundred fifty dollars (\$150) for its conversion made under this chapter.

(b) This section shall become operative on January 1, 2005.

*(Repealed and added by Stats. 2002, Ch. 480, Sec. 6 (second text). Effective January 1, 2003. Section operative January 1, 2005, by its own provisions.)*

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**CORPORATIONS CODE - CORP****TITLE 1. CORPORATIONS [100 - 14631]** ( Title 1 enacted by Stats. 1947, Ch. 1038. )**DIVISION 1. GENERAL CORPORATION LAW [100 - 2319]** ( Division 1 repealed and added by Stats. 1975, Ch. 682. )**CHAPTER 12. Reorganizations [1200 - 1203]** ( Chapter 12 added by Stats. 1975, Ch. 682. )

**1200.** A reorganization (Section 181) or a share exchange tender offer (Section 183.5) shall be approved by the board of:

- (a) Each constituent corporation in a merger reorganization;
- (b) The acquiring corporation in an exchange reorganization;
- (c) The acquiring corporation and the corporation whose property and assets are acquired in a sale-of-assets reorganization;
- (d) The acquiring corporation in a share exchange tender offer (Section 183.5); and
- (e) The corporation in control of any constituent or acquiring domestic or foreign corporation or other business entity under subdivision (a), (b) or (c) and whose equity securities are issued, transferred, or exchanged in the reorganization (a "parent party").

(Amended by Stats. 1999, Ch. 437, Sec. 11. Effective January 1, 2000.)

**1201.** (a) The principal terms of a reorganization shall be approved by the outstanding shares (Section 152) of each class of each corporation the approval of whose board is required under Section 1200, except as provided in subdivision (b) and except that (unless otherwise provided in the articles) no approval of any class of outstanding preferred shares of the surviving or acquiring corporation or parent party shall be required if the rights, preferences, privileges, and restrictions granted to or imposed upon that class of shares remain unchanged (subject to the provisions of subdivision (c)). For the purpose of this subdivision, two classes of common shares differing only as to voting rights shall be considered as a single class of shares.

(b) No approval of the outstanding shares (Section 152) is required by subdivision (a) in the case of any corporation if that corporation, or its shareholders immediately before the reorganization, or both, shall own (immediately after the reorganization) equity securities, other than any warrant or right to subscribe to or purchase those equity securities, of the surviving or acquiring corporation or a parent party (subdivision (d) of Section 1200) possessing more than five-sixths of the voting power of the surviving or acquiring corporation or parent party. In making the determination of ownership by the shareholders of a corporation, immediately after the reorganization, of equity securities pursuant to the preceding sentence, equity securities which they owned immediately before the reorganization as shareholders of another party to the transaction shall be disregarded. For the purpose of this section only, the voting power of a corporation shall be calculated by assuming the conversion of all equity securities convertible (immediately or at some future time) into shares entitled to vote but not assuming the exercise of any warrant or right to subscribe to or purchase those shares.

(c) Notwithstanding subdivision (b), the principal terms of a reorganization shall be approved by the outstanding shares (Section 152) of the surviving corporation in a merger reorganization if any amendment is made to its articles that would otherwise require that approval.

(d) Notwithstanding subdivision (b), the principal terms of a reorganization shall be approved by the outstanding shares (Section 152) of any class of a corporation that is a party to a merger or sale-of-assets reorganization if holders of shares of that class receive shares of the surviving or acquiring corporation or parent party having different rights, preferences, privileges, or restrictions than those surrendered. Shares in a foreign corporation received in exchange for shares in a domestic corporation have different rights, preferences, privileges, and restrictions within the meaning of the preceding sentence.



(e) Notwithstanding subdivisions (a) and (b), the principal terms of a reorganization shall be approved by the affirmative vote of at least two-thirds of each class, or a greater vote if required in the articles, of the outstanding shares (Section 152) of any close corporation if the reorganization would result in their receiving shares of a corporation that is not a close corporation. However, the articles may provide for a lesser vote, but not less than a majority of the outstanding shares of each class.

(f) Notwithstanding subdivisions (a) and (b), the principal terms of a reorganization shall be approved by at least two-thirds of each class, or a greater vote if required in the articles, of the outstanding shares (Section 152) of a corporation that is a party to a merger reorganization if holders of shares receive shares of a surviving social purpose corporation in the merger.

(g) Notwithstanding subdivisions (a) and (b), the principal terms of a reorganization shall be approved by the outstanding shares (Section 152) of any class of a corporation that is a party to a merger reorganization if holders of shares of that class receive interests of a surviving other business entity in the merger.

(h) Notwithstanding subdivisions (a) and (b), the principal terms of a reorganization shall be approved by all shareholders of any class or series if, as a result of the reorganization, the holders of that class or series become personally liable for any obligations of a party to the reorganization, unless all holders of that class or series have the dissenters' rights provided in Chapter 13 (commencing with Section 1300).

(i) Any approval required by this section may be given before or after the approval by the board. Notwithstanding approval required by this section, the board may abandon the proposed reorganization without further action by the shareholders, subject to the contractual rights, if any, of third parties.

*(Amended by Stats. 2014, Ch. 694, Sec. 11. (SB 1301) Effective January 1, 2015.)*

**1201.5.** (a) The principal terms of a share exchange tender offer (Section 183. 5) shall be approved by the outstanding shares (Section 152) of each class of the corporation making the tender offer or whose shares are to be used in the tender offer, except as provided in subdivision (b) and except that (unless otherwise provided in the articles) no approval of any class of outstanding preferred shares of either corporation shall be required, if the rights, preferences, privileges, and restrictions granted to or imposed upon that class of shares remain unchanged. For the purpose of this subdivision, two classes of common shares differing only as to voting rights shall be considered as a single class of shares.

(b) No approval of the outstanding shares (Section 152) is required by subdivision (a) in the case of any corporation if the corporation, or its shareholders immediately before the tender offer, or both, shall own (immediately after the completion of the share exchange proposed in the tender offer) equity securities, (other than any warrant or right to subscribe to or purchase the equity securities), of the corporation making the tender offer or of the corporation whose shares were used in the tender offer, possessing more than five-sixths of the voting power of either corporation. In making the determination of ownership by the shareholders of a corporation, immediately after the tender offer, of equity securities pursuant to the preceding sentence, equity securities which they owned immediately before the tender offer as shareholders of another party to the transaction shall be disregarded. For the purpose of this section only, the voting power of a corporation shall be calculated by assuming the conversion of all equity securities convertible (immediately or at some future time) into shares entitled to vote but not assuming the exercise of any warrant or right to subscribe to, or purchase, shares.

*(Amended by Stats. 1990, Ch. 616, Sec. 2.)*

**1202.** (a) In addition to the requirements of Section 1201, the principal terms of a merger reorganization shall be approved by all the outstanding shares of a corporation if the agreement of merger provides that all the outstanding shares of that corporation are canceled without consideration in the merger.

(b) In addition to the requirements of Section 1201, if the terms of a merger reorganization or sale-of-assets reorganization provide that a class or series of preferred shares is to have distributed to it a lesser amount than would be required by applicable article provisions, the principal terms of the reorganization shall be approved by the same percentage of outstanding shares of that class or series which would be required to approve an amendment of the article provisions to provide for the distribution of that lesser amount.

(c) If a parent party within the meaning of Section 1200 is a foreign corporation (other than a foreign corporation to which subdivision (a) of Section 2115 is applicable), any requirement or lack of a requirement for approval by the outstanding shares of the foreign corporation shall be based, not on the application of Sections 1200 and 1201, but on the application of the laws of the state or place of incorporation of the foreign corporation.

*(Added by Stats. 1988, Ch. 919, Sec. 7.)*



**1203.** (a) If a tender offer, including a share exchange tender offer (Section 183.5), or a written proposal for approval of a reorganization subject to Section 1200 or for a sale of assets subject to subdivision (a) of Section 1001 is made to some or all of a corporation's shareholders by an interested party (herein referred to as an "Interested Party Proposal"), an affirmative opinion in writing as to the fairness of the consideration to the shareholders of that corporation shall be delivered as follows:

- (1) If no shareholder approval or acceptance is required for the consummation of the transaction, the opinion shall be delivered to the corporation's board of directors not later than the time that consummation of the transaction is authorized and approved by the board of directors.
- (2) If a tender offer is made to the corporation's shareholders, the opinion shall be delivered to the shareholders at the time that the tender offer is first made in writing to the shareholders. However, if the tender offer is commenced by publication and tender offer materials are subsequently mailed or otherwise distributed to the shareholders, the opinion may be omitted in that publication if the opinion is included in the materials distributed to the shareholders.
- (3) If a shareholders' meeting is to be held to vote on approval of the transaction, the opinion shall be delivered to the shareholders with the notice of the meeting (Section 601).
- (4) If consents of all shareholders entitled to vote are solicited in writing (Section 603), the opinion shall be delivered at the same time as that solicitation.
- (5) If the consents of all shareholders are not solicited in writing, the opinion shall be delivered to each shareholder whose consent is solicited prior to that shareholder's consent being given, and to all other shareholders at the time they are given the notice required by subdivision (b) of Section 603.

For purposes of this section, the term "interested party" means a person who is a party to the transaction and (A) directly or indirectly controls the corporation that is the subject of the tender offer or proposal, (B) is, or is directly or indirectly controlled by, an officer or director of the subject corporation, or (C) is an entity in which a material financial interest (subdivision (a) of Section 310) is held by any director or executive officer of the subject corporation. For purposes of the preceding sentence, "any executive officer" means the president, any vice president in charge of a principal business unit, division, or function such as sales, administration, research, development, or finance, and any other officer or other person who performs a policymaking function or has the same duties as those of a president or vice president. The opinion required by this subdivision shall be provided by a person who is not affiliated with the offeror and who, for compensation, engages in the business of advising others as to the value of properties, businesses, or securities. The fact that the opining person previously has provided services to the offeror or a related entity or is simultaneously engaged in providing advice or assistance with respect to the proposed transaction in a manner which makes its compensation contingent on the success of the proposed transaction shall not, for those reasons, be deemed to affiliate the opining person with the offeror. Nothing in this subdivision shall limit the applicability of the standards of review of the transaction in the event of a challenge thereto under Section 310 or subdivision (c) of Section 1312.

This subdivision shall not apply to an Interested Party Proposal if the corporation that is the subject thereof does not have shares held of record by 100 or more persons (determined as provided in Section 605), or if the transaction has been qualified under Section 25113 or 25121 and no order under Section 25140 or subdivision (a) of Section 25143 is in effect with respect to that qualification.

(b) If a tender of shares or a vote or written consent is being sought pursuant to an Interested Party Proposal and a later tender offer or written proposal for a reorganization subject to Section 1200 or sale of assets subject to subdivision (a) of Section 1001 that would require a vote or written consent of shareholders is made to the corporation or its shareholders (herein referred to as a "Later Proposal") by any other person at least 10 days prior to the date for acceptance of the tendered shares or the vote or notice of shareholder approval on the Interested Party Proposal, then each of the following shall apply:

- (1) The shareholders shall be informed of the Later Proposal and any written material provided for this purpose by the later offeror shall be forwarded to the shareholders at that offeror's expense.
- (2) The shareholders shall be afforded a reasonable opportunity to withdraw any vote, consent, or proxy previously given before the vote or written consent on the Interested Party Proposal becomes effective, or a reasonable time to withdraw any tendered shares before the purchase of the shares pursuant to the Interested Party Proposal. For purposes of this subdivision, a delay of 10 days from the notice or publication of the Later Proposal shall be deemed to provide a reasonable opportunity or time to effect that withdrawal.

*(Amended by Stats. 1990, Ch. 216, Sec. 9.)*

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**CORPORATIONS CODE - CORP****TITLE 1. CORPORATIONS [100 - 14631]** ( Title 1 enacted by Stats. 1947, Ch. 1038. )**DIVISION 1. GENERAL CORPORATION LAW [100 - 2319]** ( Division 1 repealed and added by Stats. 1975, Ch. 682. )**CHAPTER 13. Dissenters' Rights [1300 - 1313]** ( Chapter 13 added by Stats. 1975, Ch. 682. )

**1300.** (a) If the approval of the outstanding shares (Section 152) of a corporation is required for a reorganization under subdivisions (a) and (b) or subdivision (e) or (f) of Section 1201, each shareholder of the corporation entitled to vote on the transaction and each shareholder of a subsidiary corporation in a short-form merger may, by complying with this chapter, require the corporation in which the shareholder holds shares to purchase for cash at their fair market value the shares owned by the shareholder which are dissenting shares as defined in subdivision (b). The fair market value shall be determined as of the day of, and immediately prior to, the first announcement of the terms of the proposed reorganization or short-form merger, excluding any appreciation or depreciation in consequence of the proposed reorganization or short-form merger, as adjusted for any stock split, reverse stock split, or share dividend that becomes effective thereafter.

(b) As used in this chapter, "dissenting shares" means shares to which all of the following apply:

(1) That were not, immediately prior to the reorganization or short-form merger, listed on any national securities exchange certified by the Commissioner of Business Oversight under subdivision (o) of Section 25100, and the notice of meeting of shareholders to act upon the reorganization summarizes this section and Sections 1301, 1302, 1303, and 1304; provided, however, that this provision does not apply to any shares with respect to which there exists any restriction on transfer imposed by the corporation or by any law or regulation; and provided, further, that this provision does not apply to any shares where the holder of those shares is required, by the terms of the reorganization or short-form merger, to accept for the shares anything except: (A) shares of any other corporation, which shares, at the time the reorganization or short-form merger is effective, are listed on any national securities exchange certified by the Commissioner of Business Oversight under subdivision (o) of Section 25100; (B) cash in lieu of fractional shares described in the foregoing subparagraph (A); or (C) any combination of the shares and cash in lieu of fractional shares described in the foregoing subparagraphs (A) and (B).

(2) That were outstanding on the date for the determination of shareholders entitled to vote on the reorganization and (A) were not voted in favor of the reorganization or, (B) if described in paragraph (1), were voted against the reorganization, or were held of record on the effective date of a short-form merger; provided, however, that subparagraph (A) rather than subparagraph (B) of this paragraph applies in any case where the approval required by Section 1201 is sought by written consent rather than at a meeting.

(3) That the dissenting shareholder has demanded that the corporation purchase at their fair market value, in accordance with Section 1301.

(4) That the dissenting shareholder has submitted for endorsement, in accordance with Section 1302.

(c) As used in this chapter, "dissenting shareholder" means the recordholder of dissenting shares and includes a transferee of record.

(Amended by Stats. 2019, Ch. 143, Sec. 24. (SB 251) Effective January 1, 2020.)

**1301.** (a) If, in the case of a reorganization, any shareholders of a corporation have a right under Section 1300, subject to compliance with paragraphs (3) and (4) of subdivision (b) thereof, to require the corporation to purchase their shares for cash, that corporation shall mail to each of those shareholders a notice of the approval of the reorganization by its outstanding shares (Section 152) within 10 days after the date of that approval, accompanied by a copy of Sections 1300, 1302, 1303, and 1304 and this section, a statement of the price determined by the corporation to represent the fair market value of the dissenting shares, and a brief description of the procedure to

be followed if the shareholder desires to exercise the shareholder's right under those sections. The statement of price constitutes an offer by the corporation to purchase at the price stated any dissenting shares as defined in subdivision (b) of Section 1300, unless they lose their status as dissenting shares under Section 1309.

(b) Any shareholder who has a right to require the corporation to purchase the shareholder's shares for cash under Section 1300, subject to compliance with paragraphs (3) and (4) of subdivision (b) thereof, and who desires the corporation to purchase shares shall make written demand upon the corporation for the purchase of those shares and payment to the shareholder in cash of their fair market value. The demand is not effective for any purpose unless it is received by the corporation or any transfer agent thereof (1) in the case of shares described in subdivision (b) of Section 1300, not later than the date of the shareholders' meeting to vote upon the reorganization, or (2) in any other case, within 30 days after the date on which the notice of the approval by the outstanding shares pursuant to subdivision (a) or the notice pursuant to subdivision (h) of Section 1110 was mailed to the shareholder.

(c) The demand shall state the number and class of the shares held of record by the shareholder which the shareholder demands that the corporation purchase and shall contain a statement of what the shareholder claims to be the fair market value of those shares as determined pursuant to subdivision (a) of Section 1300. The statement of fair market value constitutes an offer by the shareholder to sell the shares at that price.

*(Amended by Stats. 2012, Ch. 473, Sec. 2. (AB 1680) Effective January 1, 2013.)*

**1302.** Within 30 days after the date on which notice of the approval by the outstanding shares or the notice pursuant to subdivision (h) of Section 1110 was mailed to the shareholder, the shareholder shall submit to the corporation at its principal office or at the office of any transfer agent thereof, (a) if the shares are certificated securities, the shareholder's certificates representing any shares which the shareholder demands that the corporation purchase, to be stamped or endorsed with a statement that the shares are dissenting shares or to be exchanged for certificates of appropriate denomination so stamped or endorsed or (b) if the shares are uncertificated securities, written notice of the number of shares which the shareholder demands that the corporation purchase. Upon subsequent transfers of the dissenting shares on the books of the corporation, the new certificates, initial transaction statement, and other written statements issued therefor shall bear a like statement, together with the name of the original dissenting holder of the shares.

*(Amended by Stats. 2012, Ch. 473, Sec. 3. (AB 1680) Effective January 1, 2013.)*

**1303.** (a) If the corporation and the shareholder agree that the shares are dissenting shares and agree upon the price of the shares, the dissenting shareholder is entitled to the agreed price with interest thereon at the legal rate on judgments from the date of the agreement. Any agreements fixing the fair market value of any dissenting shares as between the corporation and the holders thereof shall be filed with the secretary of the corporation.

(b) Subject to the provisions of Section 1306, payment of the fair market value of dissenting shares shall be made within 30 days after the amount thereof has been agreed or within 30 days after any statutory or contractual conditions to the reorganization are satisfied, whichever is later, and in the case of certificated securities, subject to surrender of the certificates therefor, unless provided otherwise by agreement.

*(Amended by Stats. 1986, Ch. 766, Sec. 24.)*

**1304.** (a) If the corporation denies that the shares are dissenting shares, or the corporation and the shareholder fail to agree upon the fair market value of the shares, then the shareholder demanding purchase of such shares as dissenting shares or any interested corporation, within six months after the date on which notice of the approval by the outstanding shares (Section 152) or notice pursuant to subdivision (h) of Section 1110 was mailed to the shareholder, but not thereafter, may file a complaint in the superior court of the proper county praying the court to determine whether the shares are dissenting shares or the fair market value of the dissenting shares or both or may intervene in any action pending on such a complaint.

(b) Two or more dissenting shareholders may join as plaintiffs or be joined as defendants in any such action and two or more such actions may be consolidated.

(c) On the trial of the action, the court shall determine the issues. If the status of the shares as dissenting shares is in issue, the court shall first determine that issue. If the fair market value of the dissenting shares is in issue, the court shall determine, or shall appoint one or more impartial appraisers to determine, the fair market value of the shares.

*(Amended by Stats. 2012, Ch. 473, Sec. 4. (AB 1680) Effective January 1, 2013.)*

**1305.** (a) If the court appoints an appraiser or appraisers, they shall proceed forthwith to determine the fair market value per share. Within the time fixed by the court, the appraisers, or a majority of them, shall make and file a report in the office of the clerk of the court. Thereupon, on the motion of any party, the report shall be submitted to the court and considered on such evidence as the court considers relevant. If the court finds the report reasonable, the court may confirm it.

(b) If a majority of the appraisers appointed fail to make and file a report within 10 days from the date of their appointment or within such further time as may be allowed by the court or the report is not confirmed by the court, the court shall determine the fair market value of the dissenting shares.

(c) Subject to the provisions of Section 1306, judgment shall be rendered against the corporation for payment of an amount equal to the fair market value of each dissenting share multiplied by the number of dissenting shares which any dissenting shareholder who is a party, or who has intervened, is entitled to require the corporation to purchase, with interest thereon at the legal rate from the date on which judgment was entered.

(d) Any such judgment shall be payable forthwith with respect to uncertificated securities and, with respect to certificated securities, only upon the endorsement and delivery to the corporation of the certificates for the shares described in the judgment. Any party may appeal from the judgment.

(e) The costs of the action, including reasonable compensation to the appraisers to be fixed by the court, shall be assessed or apportioned as the court considers equitable, but, if the appraisal exceeds the price offered by the corporation, the corporation shall pay the costs (including in the discretion of the court attorneys' fees, fees of expert witnesses and interest at the legal rate on judgments from the date of compliance with Sections 1300, 1301 and 1302 if the value awarded by the court for the shares is more than 125 percent of the price offered by the corporation under subdivision (a) of Section 1301).

*(Amended by Stats. 1986, Ch. 766, Sec. 25.)*

**1306.** To the extent that the provisions of Chapter 5 prevent the payment to any holders of dissenting shares of their fair market value, they shall become creditors of the corporation for the amount thereof together with interest at the legal rate on judgments until the date of payment, but subordinate to all other creditors in any liquidation proceeding, such debt to be payable when permissible under the provisions of Chapter 5.

*(Repealed and added by Stats. 1975, Ch. 682.)*

**1307.** Cash dividends declared and paid by the corporation upon the dissenting shares after the date of approval of the reorganization by the outstanding shares (Section 152) and prior to payment for the shares by the corporation shall be credited against the total amount to be paid by the corporation therefor.

*(Repealed and added by Stats. 1975, Ch. 682.)*

**1308.** Except as expressly limited in this chapter, holders of dissenting shares continue to have all the rights and privileges incident to their shares, until the fair market value of their shares is agreed upon or determined. A dissenting shareholder may not withdraw a demand for payment unless the corporation consents thereto.

*(Repealed and added by Stats. 1975, Ch. 682.)*

**1309.** Dissenting shares lose their status as dissenting shares and the holders thereof cease to be dissenting shareholders and cease to be entitled to require the corporation to purchase their shares upon the happening of any of the following:

(a) The corporation abandons the reorganization. Upon abandonment of the reorganization, the corporation shall pay on demand to any dissenting shareholder who has initiated proceedings in good faith under this chapter all necessary expenses incurred in such proceedings and reasonable attorneys' fees.

(b) The shares are transferred prior to their submission for endorsement in accordance with Section 1302 or are surrendered for conversion into shares of another class in accordance with the articles.

(c) The dissenting shareholder and the corporation do not agree upon the status of the shares as dissenting shares or upon the purchase price of the shares, and neither files a complaint or intervenes in a pending action as provided in Section 1304, within six months after the date on which notice of the approval by the outstanding shares or notice pursuant to subdivision (h) of Section 1110 was mailed to the shareholder.

(d) The dissenting shareholder, with the consent of the corporation, withdraws the shareholder's demand for purchase of the dissenting shares.

*(Amended by Stats. 2012, Ch. 473, Sec. 5. (AB 1680) Effective January 1, 2013.)*

**1310.** If litigation is instituted to test the sufficiency or regularity of the votes of the shareholders in authorizing a reorganization, any proceedings under Sections 1304 and 1305 shall be suspended until final determination of such litigation.

*(Repealed and added by Stats. 1975, Ch. 682.)*

**1311.** This chapter, except Section 1312, does not apply to classes of shares whose terms and provisions specifically set forth the amount to be paid in respect to such shares in the event of a reorganization or merger.

*(Amended by Stats. 1988, Ch. 919, Sec. 8.)*

**1312.** (a) No shareholder of a corporation who has a right under this chapter to demand payment of cash for the shares held by the shareholder shall have any right at law or in equity to attack the validity of the reorganization or short-form merger, or to have the reorganization or short-form merger set aside or rescinded, except in an action to test whether the number of shares required to authorize or approve the reorganization have been legally voted in favor thereof; but any holder of shares of a class whose terms and provisions specifically set forth the amount to be paid in respect to them in the event of a reorganization or short-form merger is entitled to payment in accordance with those terms and provisions or, if the principal terms of the reorganization are approved pursuant to subdivision (b) of Section 1202, is entitled to payment in accordance with the terms and provisions of the approved reorganization.

(b) If one of the parties to a reorganization or short-form merger is directly or indirectly controlled by, or under common control with, another party to the reorganization or short-form merger, subdivision (a) shall not apply to any shareholder of such party who has not demanded payment of cash for such shareholder's shares pursuant to this chapter; but if the shareholder institutes any action to attack the validity of the reorganization or short-form merger or to have the reorganization or short-form merger set aside or rescinded, the shareholder shall not thereafter have any right to demand payment of cash for the shareholder's shares pursuant to this chapter. The court in any action attacking the validity of the reorganization or short-form merger or to have the reorganization or short-form merger set aside or rescinded shall not restrain or enjoin the consummation of the transaction except upon 10 days' prior notice to the corporation and upon a determination by the court that clearly no other remedy will adequately protect the complaining shareholder or the class of shareholders of which such shareholder is a member.

(c) If one of the parties to a reorganization or short-form merger is directly or indirectly controlled by, or under common control with, another party to the reorganization or short-form merger, in any action to attack the validity of the reorganization or short-form merger or to have the reorganization or short-form merger set aside or rescinded, (1) a party to a reorganization or short-form merger which controls another party to the reorganization or short-form merger shall have the burden of proving that the transaction is just and reasonable as to the shareholders of the controlled party, and (2) a person who controls two or more parties to a reorganization shall have the burden of proving that the transaction is just and reasonable as to the shareholders of any party so controlled.

*(Amended by Stats. 1988, Ch. 919, Sec. 9.)*

**1313.** A conversion pursuant to Chapter 11.5 (commencing with Section 1150) shall be deemed to constitute a reorganization for purposes of applying the provisions of this chapter, in accordance with and to the extent provided in Section 1159.

*(Added by Stats. 2002, Ch. 480, Sec. 7. Effective January 1, 2003.)*

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**CORPORATIONS CODE - CORP****TITLE 1. CORPORATIONS [100 - 14631]** ( Title 1 enacted by Stats. 1947, Ch. 1038. )**DIVISION 1. GENERAL CORPORATION LAW [100 - 2319]** ( Division 1 repealed and added by Stats. 1975, Ch. 682. )**CHAPTER 14. Bankruptcy Reorganizations and Arrangements [1400 - 1403]** ( Chapter 14 added by Stats. 1975, Ch. 682. )

**1400.** (a) Any domestic corporation with respect to which a proceeding has been initiated under any applicable statute of the United States, as now existing or hereafter enacted, relating to reorganizations of corporations, has full power and authority to put into effect and carry out any plan of reorganization and the orders of the court or judge entered in such proceeding and may take any proceeding and do any act provided in the plan or directed by such orders, without further action by its board or shareholders. Such power and authority may be exercised and such proceedings and acts may be taken, as may be directed by such orders, by the trustee or trustees of such corporation appointed in the reorganization proceeding (or a majority thereof), or if none is appointed and acting, by officers of the corporation designated or a master or other representative appointed by the court or judge, with like effect as if exercised and taken by unanimous action of the board and shareholders of the corporation.

(b) Such corporation may, in the manner provided in subdivision (a), but without limiting the generality or effect of subdivision (a), alter, amend or repeal its bylaws; constitute or reconstitute its board and name, constitute or appoint directors and officers in place of or in addition to all or some of the directors or officers then in office; amend its articles; make any change in its capital stock; make any other amendment, change, alteration or provision authorized by this division; be dissolved, transfer all or part of its assets or merge as permitted by this division, in which case, however, no shareholder shall have any statutory dissenter's rights; change the location of its principal executive office or remove or appoint an agent to receive service of process; authorize and fix the terms, manner and conditions of the issuance of bonds, debentures or other obligations, whether or not convertible into shares of any class or bearing warrants or rights to purchase or subscribe to shares of any class; or lease its property and franchises to any corporation, if permitted by law.

(Amended by Stats. 2009, Ch. 500, Sec. 15. (AB 1059) Effective January 1, 2010.)

**1401.** (a) A certificate of any amendment, change or alteration or of dissolution or any agreement of merger made by a corporation pursuant to Section 1400 and executed as provided in subdivision (b), shall be filed and shall thereupon become effective in accordance with its terms and the provisions of this chapter.

(b) The certificate, agreement of merger, or other instrument shall be signed and verified, as may be directed by the orders of the court or judge, by the trustee or trustees appointed in the reorganization proceeding (or a majority thereof) or, if none is appointed and acting, by officers of the corporation designated or by a master or other representative appointed by the court or judge, and shall state that provision for the making of that certificate, agreement of merger, or instrument is contained in an order, identifying the same, of a court or judge having jurisdiction of a proceeding under a statute of the United States for the reorganization of that corporation.

(c) Notwithstanding subdivision (b), a trustee, liquidating agent, responsible officer, or other representative appointed by the court for a corporation, with respect to which a proceeding has been initiated under any applicable statute of the United States as described in subdivision (a) of Section 1401.5 may execute and file a certificate of dissolution as provided in subdivision (b) of Section 1401.5.

(Amended by Stats. 2017, Ch. 267, Sec. 1. (SB 340) Effective January 1, 2018.)

**1401.5.** (a) A trustee, liquidating agent, responsible officer, or other representative appointed by the court for a corporation subject to an order for relief entered in a case under Chapter 11 (commencing with Section 1101) of



Title 11 of the United States Code may sign and verify a certificate of dissolution when the corporation has been completely wound up.

(b) The certificate of dissolution shall state the following:

(1) The name of the corporation.

(2) That an order for relief was entered in a case under Chapter 11 (commencing with Section 1101) of Title 11 of the United States Code with respect to the corporation.

(3) The identification of the court in which the order for relief was entered and the court's file number for the matter.

(4) That an order confirming a reorganization plan has been entered in that case.

(5) That the undersigned has been appointed by the court as a trustee, liquidating agent, responsible officer, or other representative of the corporation.

(6) That the shares of the corporation have been canceled pursuant to the terms of that plan.

(7) That the assets of the corporation have been distributed pursuant to the terms of that plan.

(8) That the corporation is dissolved.

*(Amended by Stats. 2018, Ch. 92, Sec. 47. (SB 1289) Effective January 1, 2019.)*

**1402.** The provisions of this chapter shall cease to apply to a corporation upon the entry of a final decree in the reorganization proceeding closing the case and discharging the trustee or trustees, if any, whether or not jurisdiction may be retained thereafter by the court for limited purposes which do not relate to the consummation of the plan.

*(Amended by Stats. 2009, Ch. 500, Sec. 17. (AB 1059) Effective January 1, 2010.)*

**1403.** For filing any certificate, agreement or other paper pursuant to this chapter there shall be paid to the Secretary of State the same fees as are payable by corporations not in reorganization proceedings upon the filing of like certificates, agreements or other papers.

*(Amended by Stats. 2009, Ch. 500, Sec. 18. (AB 1059) Effective January 1, 2010.)*



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**CORPORATIONS CODE - CORP****TITLE 1. CORPORATIONS [100 - 14631]** ( Title 1 enacted by Stats. 1947, Ch. 1038. )**DIVISION 1. GENERAL CORPORATION LAW [100 - 2319]** ( Division 1 repealed and added by Stats. 1975, Ch. 682. )**CHAPTER 15. Records and Reports [1500 - 1512]** ( Chapter 15 added by Stats. 1975, Ch. 682. )

**1500.** Each corporation shall keep adequate and correct books and records of account and shall keep minutes of the proceedings of its shareholders, board and committees of the board and shall keep at its principal executive office, or at the office of its transfer agent or registrar, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of shares held by each. Those minutes and other books and records shall be kept either in written form or in another form capable of being converted into clearly legible tangible form or in any combination of the foregoing. When minutes and other books and records are kept in a form capable of being converted into clearly legible paper form, the clearly legible paper form into which those minutes and other books and records are converted shall be admissible in evidence, and accepted for all other purposes, to the same extent as an original paper record of the same information would have been, provided that the paper form accurately portrays the record.

(Amended by Stats. 2004, Ch. 254, Sec. 11. Effective January 1, 2005.)

**1501.** (a) (1) The board shall cause an annual report to be sent to the shareholders not later than 120 days after the close of the fiscal year, unless in the case of a corporation with less than 100 holders of record of its shares (determined as provided in Section 605) this requirement is expressly waived in the bylaws. Unless otherwise provided by the articles or bylaws and if approved by the board of directors, that report and any accompanying material sent pursuant to this section may be sent by electronic transmission by the corporation (Section 20). This report shall contain a balance sheet as of the end of that fiscal year and an income statement and a statement of cashflows for that fiscal year, accompanied by any report thereon of independent accountants or, if there is no report, the certificate of an authorized officer of the corporation that the statements were prepared without audit from the books and records of the corporation.

(2) Unless so waived, the report specified in paragraph (1) shall be sent to the shareholders at least 15 (or, if sent by third-class mail, 35) days prior to the annual meeting of shareholders to be held during the next fiscal year, but this requirement shall not limit the requirement for holding an annual meeting as required by Section 600.

(3) Notwithstanding Section 114, the financial statements of any corporation with fewer than 100 holders of record of its shares (determined as provided in Section 605) required to be furnished by this subdivision and subdivision (c) are not required to be prepared in conformity with generally accepted accounting principles if they reasonably set forth the assets and liabilities and the income and expense of the corporation and disclose the accounting basis used in their preparation.

(4) The requirements described in paragraphs (1) and (2) shall be satisfied if a corporation with an outstanding class of securities registered under Section 12 of the Securities Exchange Act of 1934 complies with Section 240.14a-16 of Title 17 of the Code of Federal Regulations, as it may be amended from time to time, with respect to the obligation of a corporation to furnish an annual report to shareholders pursuant to Section 240.14a-3(b) of Title 17 of the Code of Federal Regulations.

(b) In addition to the financial statements required by subdivision (a), the annual report of any corporation having 100 or more holders of record of its shares (determined as provided in Section 605) either not subject to the reporting requirements of Section 13 of the Securities Exchange Act of 1934, or exempted from those reporting requirements by Section 12(g)(2) of that act, shall also describe briefly both of the following:

(1) Any transaction (excluding compensation of officers and directors) during the previous fiscal year involving an amount in excess of forty thousand dollars (\$40,000) (other than contracts let at competitive bid or services

rendered at prices regulated by law) to which the corporation or its parent or subsidiary was a party and in which any director or officer of the corporation or of a subsidiary or (if known to the corporation or its parent or subsidiary) any holder of more than 10 percent of the outstanding voting shares of the corporation had a direct or indirect material interest, naming the person and stating the person's relationship to the corporation, the nature of the person's interest in the transaction and, where practicable, the amount of the interest; provided that in the case of a transaction with a partnership of which the person is a partner, only the interest of the partnership need be stated; and provided further that no report need be made in the case of any transaction approved by the shareholders (Section 153).

(2) The amount and circumstances of any indemnification or advances aggregating more than ten thousand dollars (\$10,000) paid during the fiscal year to any officer or director of the corporation pursuant to Section 317; provided that no report need be made in the case of indemnification approved by the shareholders (Section 153) under paragraph (2) of subdivision (e) of Section 317.

(c) If no annual report for the last fiscal year has been sent to shareholders, the corporation shall, upon the written request of any shareholder made more than 120 days after the close of that fiscal year, deliver or mail to the person making the request within 30 days thereafter the financial statements required by subdivision (a) for that year. A shareholder or shareholders holding at least 5 percent of the outstanding shares of any class of a corporation may make a written request to the corporation for an income statement of the corporation for the three-month, six-month, or nine-month period of the current fiscal year ended more than 30 days prior to the date of the request and a balance sheet of the corporation as of the end of the period and, in addition, if no annual report for the last fiscal year has been sent to shareholders, the statements referred to in subdivision (a) for the last fiscal year. The statements shall be delivered or mailed to the person making the request within 30 days thereafter. A copy of the statements shall be kept on file in the principal office of the corporation for 12 months and it shall be exhibited at all reasonable times to any shareholder demanding an examination of the statements or a copy shall be mailed to the shareholder.

(d) The quarterly income statements and balance sheets referred to in this section shall be accompanied by the report thereon, if any, of any independent accountants engaged by the corporation or the certificate of an authorized officer of the corporation that the financial statements were prepared without audit from the books and records of the corporation.

(e) In addition to the penalties provided for in Section 2200, the superior court of the proper county shall enforce the duty of making and mailing or delivering the information and financial statements required by this section and, for good cause shown, may extend the time therefor.

(f) In any action or proceeding under this section, if the court finds the failure of the corporation to comply with the requirements of this section to have been without justification, the court may award an amount sufficient to reimburse the shareholder for the reasonable expenses incurred by the shareholder, including attorney's fees, in connection with the action or proceeding.

(g) This section applies to any domestic corporation and also to a foreign corporation having its principal executive office in this state or customarily holding meetings of its board in this state.

*(Amended by Stats. 2008, Ch. 177, Sec. 1. Effective July 22, 2008.)*

**1502.** (a) Every corporation shall file, within 90 days after the filing of its original articles and annually thereafter during the applicable filing period, on a form prescribed by the Secretary of State, a statement containing all of the following:

- (1) The name of the corporation and the Secretary of State's file number.
- (2) The names and complete business or residence addresses of its incumbent directors.
- (3) The number of vacancies on the board, if any.
- (4) The names and complete business or residence addresses of its chief executive officer, secretary, and chief financial officer.
- (5) The street address of its principal executive office.
- (6) The mailing address of the corporation, if different from the street address of its principal executive office.
- (7) If the address of its principal executive office is not in this state, the street address of its principal business office in this state, if any.
- (8) If the corporation chooses to receive renewal notices and any other notifications from the Secretary of State by electronic mail instead of by United States mail, the corporation shall include a valid electronic mail address for the corporation or for the corporation's designee to receive those notices.

(9) A statement of the general type of business that constitutes the principal business activity of the corporation, such as, for example, manufacturer of aircraft, wholesale liquor distributor, or retail department store.

(b) The statement required by subdivision (a) shall also designate, as the agent of the corporation for the purpose of service of process, a natural person residing in this state or a corporation that has complied with Section 1505 and whose capacity to act as an agent has not terminated. If a natural person is designated, the statement shall set forth that person's complete business or residence street address. If a corporate agent is designated, no address for it shall be set forth.

(c) If there has been no change in the information in the last filed statement of the corporation on file in the Secretary of State's office, the corporation may, in lieu of filing the statement required by subdivisions (a) and (b), advise the Secretary of State, on a form prescribed by the Secretary of State, that no changes in the required information have occurred during the applicable filing period.

(d) For the purposes of this section, the applicable filing period for a corporation shall be the calendar month during which its original articles were filed and the immediately preceding five calendar months. The Secretary of State shall provide a notice to each corporation to comply with this section approximately three months prior to the close of the applicable filing period. The notice shall state the due date for compliance and shall be sent to the last address of the corporation according to the records of the Secretary of State or to the last electronic mail address according to the records of the Secretary of State if the corporation has elected to receive notices from the Secretary of State by electronic mail. The failure of the corporation to receive the notice is not an excuse for failure to comply with this section.

(e) Whenever any of the information required by subdivision (a) is changed, the corporation may file a current statement containing all the information required by subdivisions (a) and (b). In order to change its agent for service of process or the address of the agent, the corporation must file a current statement containing all the information required by subdivisions (a) and (b). Whenever any statement is filed pursuant to this section, it supersedes any previously filed statement and the statement in the articles as to the agent for service of process and the address of the agent.

(f) The Secretary of State may destroy or otherwise dispose of any statement filed pursuant to this section after it has been superseded by the filing of a new statement.

(g) This section shall not be construed to place any person dealing with the corporation on notice of, or under any duty to inquire about, the existence or content of a statement filed pursuant to this section.

(h) The statement required by subdivision (a) shall be available and open to the public for inspection. The Secretary of State shall provide access to all information contained in this statement by means of an online database.

(i) In addition to any other fees required, a corporation shall pay a five-dollar (\$5) disclosure fee when filing the statement required by subdivision (a). One-half of the fee shall, notwithstanding Section 12176 of the Government Code, be deposited into the Business Programs Modernization Fund established in subdivision (k), and one-half shall be deposited into the Victims of Corporate Fraud Compensation Fund established in Section 2280.

(j) A corporation shall certify that the information it provides pursuant to subdivisions (a) and (b) is true and correct. No claim may be made against the state for inaccurate information contained in the statements.

(k) There is hereby established the Business Programs Modernization Fund in the State Treasury. Moneys deposited into the fund shall, upon appropriation by the Legislature, be available to the Secretary of State to further the purposes of this section, including the development and maintenance of the online database required by subdivision (h), and by subdivision (c) of Section 2117.

(l) (1) This section shall remain in effect only until January 1, 2022, or upon certification by the Secretary of State that California Business Connect is implemented, whichever date is earlier, and as of that date is repealed.

(2) If the Secretary of State certifies California Business Connect is implemented prior to January 1, 2022, the Secretary of State shall post notice of the certification on the homepage of its internet website and send notice of the certification to the Legislative Counsel.

*(Amended by Stats. 2020, Ch. 357, Sec. 1. (AB 3075) Effective January 1, 2021. Conditionally repealed on or before January 1, 2022, by its own provisions. See later operative version added by Sec. 2 of Stats. 2020, Ch. 357.)*

**1502.** (a) Every corporation shall file, within 90 days after the filing of its original articles and annually thereafter during the applicable filing period, on a form prescribed by the Secretary of State, a statement containing all of the following:

(1) The name of the corporation and the Secretary of State's file number.

- (2) The names and complete business or residence addresses of its incumbent directors.
  - (3) The number of vacancies on the board, if any.
  - (4) The names and complete business or residence addresses of its chief executive officer, secretary, and chief financial officer.
  - (5) The street address of its principal executive office.
  - (6) The mailing address of the corporation, if different from the street address of its principal executive office.
  - (7) If the address of its principal executive office is not in this state, the street address of its principal business office in this state, if any.
  - (8) If the corporation chooses to receive renewal notices and any other notifications from the Secretary of State by electronic mail instead of by United States mail, the corporation shall include a valid electronic mail address for the corporation or for the corporation's designee to receive those notices.
  - (9) A statement of the general type of business that constitutes the principal business activity of the corporation, such as, for example, manufacturer of aircraft, wholesale liquor distributor, or retail department store.
  - (10) A statement indicating whether any officer or any director has an outstanding final judgment issued by the Division of Labor Standards Enforcement or a court of law, for which no appeal therefrom is pending, for the violation of any wage order or provision of the Labor Code.
- (b) The statement required by subdivision (a) shall also designate, as the agent of the corporation for the purpose of service of process, a natural person residing in this state or a corporation that has complied with Section 1505 and whose capacity to act as an agent has not terminated. If a natural person is designated, the statement shall set forth that person's complete business or residence street address. If a corporate agent is designated, no address for it shall be set forth.
- (c) If there has been no change in the information in the last filed statement of the corporation on file in the Secretary of State's office, the corporation may, in lieu of filing the statement required by subdivisions (a) and (b), advise the Secretary of State, on a form prescribed by the Secretary of State, that no changes in the required information have occurred during the applicable filing period.
- (d) For the purposes of this section, the applicable filing period for a corporation shall be the calendar month during which its original articles were filed and the immediately preceding five calendar months. The Secretary of State shall provide a notice to each corporation to comply with this section approximately three months prior to the close of the applicable filing period. The notice shall state the due date for compliance and shall be sent to the last address of the corporation according to the records of the Secretary of State or to the last electronic mail address according to the records of the Secretary of State if the corporation has elected to receive notices from the Secretary of State by electronic mail. The failure of the corporation to receive the notice is not an excuse for failure to comply with this section.
- (e) Whenever any of the information required by subdivision (a) is changed, the corporation may file a current statement containing all the information required by subdivisions (a) and (b). In order to change its agent for service of process or the address of the agent, the corporation must file a current statement containing all the information required by subdivisions (a) and (b). Whenever any statement is filed pursuant to this section, it supersedes any previously filed statement and the statement in the articles as to the agent for service of process and the address of the agent.
- (f) The Secretary of State may destroy or otherwise dispose of any statement filed pursuant to this section after it has been superseded by the filing of a new statement.
- (g) This section shall not be construed to place any person dealing with the corporation on notice of, or under any duty to inquire about, the existence or content of a statement filed pursuant to this section.
- (h) The statement required by subdivision (a) shall be available and open to the public for inspection. The Secretary of State shall provide access to all information contained in this statement by means of an online database.
- (i) In addition to any other fees required, a corporation shall pay a five-dollar (\$5) disclosure fee when filing the statement required by subdivision (a). One-half of the fee shall, notwithstanding Section 12176 of the Government Code, be deposited into the Business Programs Modernization Fund established in subdivision (k), and one-half shall be deposited into the Victims of Corporate Fraud Compensation Fund established in Section 2280.
- (j) A corporation shall certify that the information it provides pursuant to subdivisions (a) and (b) is true and correct. No claim may be made against the state for inaccurate information contained in the statements.

(k) There is hereby established the Business Programs Modernization Fund in the State Treasury. Moneys deposited into the fund shall, upon appropriation by the Legislature, be available to the Secretary of State to further the purposes of this section, including the development and maintenance of the online database required by subdivision (h), and by subdivision (c) of Section 2117.

(l) (1) This section shall become operative on January 1, 2022, or upon certification by the Secretary of State that California Business Connect is implemented, whichever date is earlier.

(2) If the Secretary of State certifies California Business Connect is implemented prior to January 1, 2022, the Secretary of State shall post notice of the certification on the homepage of its internet website and send notice of the certification to the Legislative Counsel.

*(Repealed (in Sec. 1) and added by Stats. 2020, Ch. 357, Sec. 2. (AB 3075) Effective January 1, 2021. Conditionally operative on or before January 1, 2022, by its own provisions.)*

**1502.1.** (a) In addition to the statement required pursuant to Section 1502, every publicly traded corporation shall file annually, within 150 days after the end of its fiscal year, a statement, on a form prescribed by the Secretary of State, that includes all of the following information:

(1) The name of the independent auditor that prepared the most recent auditor's report on the corporation's annual financial statements.

(2) A description of other services, if any, performed for the corporation during its two most recent fiscal years and the period between the end of its most recent fiscal year and the date of the statement by the foregoing independent auditor, by its parent corporation, or by a subsidiary or corporate affiliate of the independent auditor or its parent corporation.

(3) The name of the independent auditor employed by the corporation on the date of the statement, if different from the independent auditor listed pursuant to paragraph (1).

(4) The compensation for the most recent fiscal year of the corporation paid to each member of the board of directors and paid to each of the five most highly compensated executive officers of the corporation who are not members of the board of directors, including the number of any shares issued, options for shares granted, and similar equity-based compensation granted to each of those persons. If the chief executive officer is not among the five most highly compensated executive officers of the corporation, the compensation paid to the chief executive officer shall also be included.

(5) A description of any loan, including the amount and terms of the loan, made to any member of the board of directors by the corporation during the corporation's two most recent fiscal years at an interest rate lower than the interest rate available from unaffiliated commercial lenders generally to a similarly-situated borrower.

(6) A statement indicating whether an order for relief has been entered in a bankruptcy case with respect to the corporation, its executive officers, or members of the board of directors of the corporation during the 10 years preceding the date of the statement.

(7) A statement indicating whether any member of the board of directors or executive officer of the corporation was convicted of fraud during the 10 years preceding the date of the statement, if the conviction has not been overturned or expunged.

(8) A description of any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the corporation or any of its subsidiaries is a party or of which any of their property is the subject, as specified by Item 103 of Regulation S-K of the Securities and Exchange Commission (Section 229.103 of Title 12 of the Code of Federal Regulations). A description of any material legal proceeding during which the corporation was found legally liable by entry of a final judgment or final order that was not overturned on appeal during the five years preceding the date of the statement.

(b) For purposes of this section, the following definitions apply:

(1) "Publicly traded corporation" means a corporation, as defined in Section 162, that is an issuer as defined in Section 3 of the Securities Exchange Act of 1934, as amended (15 U.S.C. Sec. 78c), and has at least one class of securities listed or admitted for trading on a national securities exchange, on the OTC Bulletin Board, or on the electronic service operated by OTC Markets Group Inc.

(2) "Executive officer" means the chief executive officer, president, any vice president in charge of a principal business unit, division, or function, any other officer of the corporation who performs a policymaking function, or any other person who performs similar policymaking functions for the corporation.

(3) "Compensation" as used in paragraph (4) of subdivision (a) means all plan and nonplan compensation awarded to, earned by, or paid to the person for all services rendered in all capacities to the corporation and to its

subsidiaries, as the compensation is specified by Item 402 of Regulation S-K of the Securities and Exchange Commission (Section 229.402 of Title 17 of the Code of Federal Regulations).

(4) "Loan" as used in paragraph (5) of subdivision (a) excludes an advance for expenses permitted under subdivision (d) of Section 315, the corporation's payment of life insurance premiums permitted under subdivision (e) of Section 315, and an advance of expenses permitted under Section 317.

(c) This statement shall be available and open to the public for inspection. The Secretary of State shall provide access to all information contained in this statement by means of an online database.

(d) A corporation shall certify that the information it provides pursuant to this section is true and correct. No claim may be made against the state for inaccurate information contained in statements filed under this section with the Secretary of State.

*(Amended by Stats. 2019, Ch. 143, Sec. 25. (SB 251) Effective January 1, 2020.)*

**1503.** (a) An agent designated for service of process pursuant to Section 202, 1502, 2105, or 2117 may deliver to the Secretary of State, on a form prescribed by the Secretary of State for filing, a signed and acknowledged written statement of resignation as an agent for service of process. The form shall contain the name of the corporation, the Secretary of State's file number of the corporation, the name of the resigning agent for service of process, and a statement that the agent is resigning. Thereupon the authority of the agent to act in such capacity shall cease and the Secretary of State forthwith shall mail or otherwise provide written notice of the filing of the statement of resignation to the corporation at its principal executive office.

(b) The resignation of an agent may be effective if, on a form prescribed by the Secretary of State containing the name of the corporation, the Secretary of State's file number for the corporation, and the name of the resigning agent for service of process, the agent disclaims having been properly appointed as the agent. Similarly, a person named as an officer or director may indicate that the person was never properly appointed as the officer or director.

(c) The Secretary of State may destroy or otherwise dispose of any resignation filed pursuant to this section after a new form is filed pursuant to Section 1502 or 2117 replacing the agent for service of process that has resigned.

*(Amended by Stats. 2014, Ch. 834, Sec. 3. (SB 1041) Effective January 1, 2015.)*

**1504.** If a natural person who has been designated agent for service of process pursuant to Section 202, 1502, 2105, or 2117 dies or resigns or no longer resides in the state or if the corporate agent for such purpose resigns, dissolves, withdraws from the state, forfeits its right to transact intrastate business, has its corporate rights, powers and privileges suspended or ceases to exist, the corporation shall forthwith file a designation of a new agent conforming to the requirements of Section 1502 or 2117.

*(Amended by Stats. 1985, Ch. 764, Sec. 2. Operative July 1, 1986, by Sec. 11 of Ch. 764.)*

**1505.** (a) Any domestic or foreign corporation, before it may be designated as the agent for the purpose of service of process of any entity pursuant to any law which refers to this section, shall file a certificate executed in the name of the corporation by an officer thereof stating all of the following:

(1) The complete street address of its office or offices in this state, wherein any entity designating it as such agent may be served with process.

(2) The name of each person employed by it at each such office to whom it authorizes the delivery of a copy of any such process.

(3) Its consent that delivery thereof to any such person at the office where the person is employed shall constitute delivery of any such copy to it, as such agent.

(b) Any corporation which has filed the certificate provided for in subdivision (a) may file any number of supplemental certificates containing all the statements provided for in subdivision (a), which, upon the filing thereof, shall supersede the statements contained in the original or in any supplemental certificate previously filed.

(c) No domestic or foreign corporation may file a certificate pursuant to this section unless it is currently authorized to engage in business in this state and is in good standing on the records of the Secretary of State.

*(Amended by Stats. 2012, Ch. 494, Sec. 8. (SB 1532) Effective January 1, 2013.)*

**1506.** Upon request of an assessor, a domestic or foreign corporation owning, claiming, possessing or controlling property in this state subject to local assessment shall make available at the corporation's principal office in



California or at a place mutually acceptable to the assessor and the corporation a true copy of business records relevant to the amount, cost and value of all property that it owns, claims, possesses or controls within the county.  
(Repealed and added by Stats. 1975, Ch. 682.)

**1507.** Any officers, directors, employees or agents of a corporation who do any of the following are liable jointly and severally for all the damages resulting therefrom to the corporation or any person injured thereby who relied thereon or to both:

(a) Make, issue, deliver or publish any prospectus, report, circular, certificate, financial statement, balance sheet, public notice or document respecting the corporation or its shares, assets, liabilities, capital, dividends, business, earnings or accounts which is false in any material respect, knowing it to be false, or participate in the making, issuance, delivery or publication thereof with knowledge that the same is false in a material respect.

(b) Make or cause to be made in the books, minutes, records or accounts of a corporation any entry which is false in any material particular knowing such entry is false.

(c) Remove, erase, alter or cancel any entry in any books or records of the corporation, with intent to deceive.

(Repealed and added by Stats. 1975, Ch. 682.)

**1508.** The Attorney General, upon complaint that a foreign or domestic corporation is failing to comply with the provisions of this chapter or Chapter 6 (commencing with Section 600), 7 (commencing with Section 700) or 16 (commencing with Section 1600), may in the name of the people of the State of California send to the principal executive office of such corporation notice of the complaint. If the answer is not satisfactory, the Attorney General may institute, maintain or intervene in such suits, actions or proceedings of any type in any court or tribunal of competent jurisdiction or before any administrative agency for such relief by way of injunction, the dissolution of entities, the appointment of receivers or any other temporary, preliminary, provisional or final remedies as may be appropriate to protect the rights of shareholders or to undo the consequences of failure to comply with such requirements. In any such action, suit or proceeding there may be joined as parties all persons and entities responsible for or affected by such activity.

(Amended by Stats. 1976, Ch. 641.)

**1509.** For a period of 60 days following the conclusion of an annual, regular, or special meeting of shareholders, a corporation shall, upon written request from a shareholder, forthwith inform the shareholder of the result of any particular vote of shareholders taken at the meeting, including the number of shares voting for, the number of shares voting against, and the number of shares abstaining or withheld from voting. If the matter voted on was the election of directors, the corporation shall report the number of shares (or votes if voted cumulatively) cast for each nominee for director. If more than one class or series of shares voted, the report shall state the appropriate numbers by class and series of shares.

(Added by Stats. 1987, Ch. 408, Sec. 1.)

**1510.** (a) Any foreign corporation qualified to transact intrastate business in this state shall provide the information specified in Section 1509, at the request of a shareholder resident in this state.

(b) Any of the following shall be considered to be a shareholder resident in this state:

(1) A natural person residing in this state.

(2) A bank organized under Division 1 (commencing with Section 99) of the Financial Code, whether acting for itself, acting as a sole fiduciary, or acting with one or more other persons as a fiduciary.

(3) A national bank having its head office in this state whether acting for itself, acting as a sole fiduciary, or acting with one or more other persons as a fiduciary.

(4) Any retirement fund for public employees established or authorized by any law of this state.

(Added by Stats. 1987, Ch. 408, Sec. 2.)

**1511.** Any foreign corporation which is not qualified to transact intrastate business in this state but has one or more subsidiaries which are domestic corporations or foreign corporations qualified to transact intrastate business in this state shall provide the information specified in Section 1509, at the request of a shareholder resident in this state, as defined by subdivision (b) of Section 1510.

(Added by Stats. 1987, Ch. 408, Sec. 3.)



**1512.** (a) For the purposes of Sections 1509, 1510, and 1511, a shareholder includes (1) any person named in a share certificate as a shareholder or (2) any person named as a shareholder on the records of a central depository, bank, or broker-dealer with respect to shares which are subject to the control of the central depository, bank, or broker-dealer.

(b) A beneficiary of a trust, a beneficiary of the estate of a decedent, or an employee with respect to a pension, retirement, or health care trust or fund is not a shareholder of any shares standing in the name of the trust, the fund, the decedent, or the estate of the decedent.

(c) A person who is a shareholder by reason of paragraph (2) of subdivision (a) shall provide the corporation with a photocopy of a receipt of a statement from the central depository, bank, or broker-dealer showing the person to be a shareholder and the corporation shall accept the photocopy as sufficient evidence thereof.

*(Added by Stats. 1987, Ch. 408, Sec. 4.)*

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**CORPORATIONS CODE - CORP****TITLE 1. CORPORATIONS [100 - 14631]** ( Title 1 enacted by Stats. 1947, Ch. 1038. )**DIVISION 1. GENERAL CORPORATION LAW [100 - 2319]** ( Division 1 repealed and added by Stats. 1975, Ch. 682. )**CHAPTER 16. Rights of Inspection [1600 - 1605]** ( Chapter 16 added by Stats. 1975, Ch. 682. )

**1600.** (a) A shareholder or shareholders holding at least 5 percent in the aggregate of the outstanding voting shares of a corporation or who hold at least 1 percent of those voting shares and have filed a Schedule 14A with the United States Securities and Exchange Commission (or in case the corporation is a bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act, have filed a Form F-6 with the appropriate federal bank regulatory agency) shall have an absolute right to do either or both of the following: (1) inspect and copy the record of shareholders' names and addresses and shareholdings during usual business hours upon five business days' prior written demand upon the corporation, or (2) obtain from the transfer agent for the corporation, upon written demand and upon the tender of its usual charges for such a list (the amount of which charges shall be stated to the shareholder by the transfer agent upon request), a list of the shareholders' names and addresses, who are entitled to vote for the election of directors, and their shareholdings, as of the most recent record date for which it has been compiled or as of a date specified by the shareholder subsequent to the date of demand. The list shall be made available on or before the later of five business days after the demand is received or the date specified therein as the date as of which the list is to be compiled. A corporation shall have the responsibility to cause its transfer agent to comply with this subdivision.

(b) Any delay by the corporation or the transfer agent in complying with a demand under subdivision (a) beyond the time limits specified therein shall give the shareholder or shareholders properly making the demand a right to obtain from the superior court, upon the filing of a verified complaint in the proper county and after a hearing, notice of which shall be given to such persons and in such manner as the court may direct, an order postponing any shareholders' meeting previously noticed for a period equal to the period of such delay. Such right shall be in addition to any other legal or equitable remedies to which the shareholder may be entitled.

(c) The record of shareholders shall also be open to inspection and copying by any shareholder or holder of a voting trust certificate at any time during usual business hours upon written demand on the corporation, for a purpose reasonably related to such holder's interests as a shareholder or holder of a voting trust certificate.

(d) Any inspection and copying under this section may be made in person or by agent or attorney. The rights provided in this section may not be limited by the articles or bylaws. This section applies to any domestic corporation and to any foreign corporation having its principal executive office in this state or customarily holding meetings of its board in this state.

(Amended by Stats. 1995, Ch. 154, Sec. 8. Effective January 1, 1996.)

**1601.** (a) (1) The accounting books, records, and minutes of proceedings of the shareholders and the board and committees of the board of any domestic corporation, and of any foreign corporation keeping any records in this state or having its principal executive office in this state, or a true and accurate copy thereof if the original has been lost, destroyed, or is not normally physically located within this state shall be open to inspection at the corporation's principal office in this state, or if none, at the physical location for the corporation's registered agent for service of process in this state, upon the written demand on the corporation of any shareholder or holder of a voting trust certificate at any reasonable time during usual business hours, for a purpose reasonably related to the holder's interests as a shareholder or as the holder of a voting trust certificate.

(2) As an alternative to the procedure in subdivision (a), the shareholder or holder of a voting trust certificate may elect to request that the corporation produce the books, records, and minutes by mail or electronically, if the

shareholder or holder of a voting trust certificate pays for the reasonable costs for copying or converting the requested documents to electronic format.

(3) The right of inspection created by this subdivision shall extend to the records of each subsidiary of a corporation subject to this subdivision.

(b) The inspection by a shareholder or holder of a voting trust certificate may be made in person or by agent or attorney, and the right of inspection includes the right to copy and make extracts. The right of the shareholders to inspect the corporate records may not be limited by the articles or bylaws.

*(Amended by Stats. 2018, Ch. 76, Sec. 1. (AB 2237) Effective January 1, 2019.)*

**1602.** Every director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the corporation of which such person is a director and also of its subsidiary corporations, domestic or foreign. Such inspection by a director may be made in person or by agent or attorney and the right of inspection includes the right to copy and make extracts. This section applies to a director of any foreign corporation having its principal executive office in this state or customarily holding meetings of its board in this state.

*(Amended by Stats. 1976, Ch. 641.)*

**1603.** (a) Upon refusal of a lawful demand for inspection, the superior court of the proper county, may enforce the right of inspection with just and proper conditions or may, for good cause shown, appoint one or more competent inspectors or accountants to audit the books and records kept in this state and investigate the property, funds and affairs of any domestic corporation or any foreign corporation keeping records in this state and of any subsidiary corporation thereof, domestic or foreign, keeping records in this state and to report thereon in such manner as the court may direct.

(b) All officers and agents of the corporation shall produce to the inspectors or accountants so appointed all books and documents in their custody or power, under penalty of punishment for contempt of court.

(c) All expenses of the investigation or audit shall be defrayed by the applicant unless the court orders them to be paid or shared by the corporation.

*(Amended by Stats. 1976, Ch. 641.)*

**1604.** In any action or proceeding under Section 1600 or Section 1601, if the court finds the failure of the corporation to comply with a proper demand thereunder was without justification, the court may award an amount sufficient to reimburse the shareholder or holder of a voting trust certificate for the reasonable expenses incurred by such holder, including attorneys' fees, in connection with such action or proceeding.

*(Added by Stats. 1975, Ch. 682.)*

**1605.** If any record subject to inspection pursuant to this chapter is not maintained in written form, a request for inspection is not complied with unless and until the corporation at its expense makes such record available in written form.

*(Added by Stats. 1975, Ch. 682.)*

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**CORPORATIONS CODE - CORP****TITLE 1. CORPORATIONS [100 - 14631]** ( Title 1 enacted by Stats. 1947, Ch. 1038. )**DIVISION 1. GENERAL CORPORATION LAW [100 - 2319]** ( Division 1 repealed and added by Stats. 1975, Ch. 682. )**CHAPTER 17. Service of Process [1700 - 1702]** ( Chapter 17 added by Stats. 1975, Ch. 682. )

**1700.** In addition to the provisions of Chapter 4 (commencing with Section 413. 10) of Title 5 of Part 2 of the Code of Civil Procedure, process may be served upon domestic corporations as provided in this chapter.

(Repealed and added by Stats. 1975, Ch. 682.)

**1701.** Delivery by hand of a copy of any process against the corporation (a) to any natural person designated by it as agent or (b), if a corporate agent has been designated, to any person named in the latest certificate of the corporate agent filed pursuant to Section 1505 at the office of such corporate agent shall constitute valid service on the corporation.

(Repealed and added by Stats. 1975, Ch. 682.)

**1702.** (a) If an agent for the purpose of service of process has resigned and has not been replaced or if the agent designated cannot with reasonable diligence be found at the address designated for personally delivering the process, or if no agent has been designated, and it is shown by affidavit to the satisfaction of the court that process against a domestic corporation cannot be served with reasonable diligence upon the designated agent by hand in the manner provided in Section 415.10, subdivision (a) of Section 415.20 or subdivision (a) of Section 415.30 of the Code of Civil Procedure or upon the corporation in the manner provided in subdivision (a), (b) or (c) of Section 416.10 or subdivision (a) of Section 416.20 of the Code of Civil Procedure, the court may make an order that the service be made upon the corporation by delivering by hand to the Secretary of State, or to any person employed in the Secretary of State's office in the capacity of assistant or deputy, one copy of the process for each defendant to be served, together with a copy of the order authorizing such service. Service in this manner is deemed complete on the 10th day after delivery of the process to the Secretary of State.

(b) Upon the receipt of any such copy of process and the fee therefor, the Secretary of State shall give notice of the service of the process to the corporation at its principal executive office, by forwarding to such office, by registered mail with request for return receipt, the copy of the process or, if the records of the Secretary of State do not disclose an address for its principal executive office, by forwarding such copy in the same manner to the last designated agent for service of process who has not resigned. If the agent for service of process has resigned and has not been replaced and the records of the Secretary of State do not disclose an address for its principal executive office, no action need be taken by the Secretary of State.

(c) The Secretary of State shall keep a record of all process served upon the Secretary of State under this chapter and shall record therein the time of service and the Secretary of State's action with reference thereto. The certificate of the Secretary of State, under the Secretary of State's official seal, certifying to the receipt of process, the giving of notice thereof to the corporation and the forwarding of such process pursuant to this section, shall be competent and prima facie evidence of the matters stated therein.

(d) The court order pursuant to subdivision (a) that service of process be made upon the corporation by delivery to the Secretary of State may be a court order of a court of another state, or of any federal court if the suit, action, or proceeding has been filed in that court.

(Amended by Stats. 1989, Ch. 438, Sec. 1.)

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**CORPORATIONS CODE - CORP****TITLE 1. CORPORATIONS [100 - 14631]** ( Title 1 enacted by Stats. 1947, Ch. 1038. )**DIVISION 1. GENERAL CORPORATION LAW [100 - 2319]** ( Division 1 repealed and added by Stats. 1975, Ch. 682. )**CHAPTER 18. Involuntary Dissolution [1800 - 1809]** ( Chapter 18 added by Stats. 1975, Ch. 682. )

**1800.** (a) A verified complaint for involuntary dissolution of a corporation on any one or more of the grounds specified in subdivision (b) may be filed in the superior court of the proper county by any of the following persons:

(1) One-half or more of the directors in office.

(2) A shareholder or shareholders who hold shares representing not less than  $33\frac{1}{3}$  percent of (i) the total number of outstanding shares (assuming conversion of any preferred shares convertible into common shares) or (ii) the outstanding common shares or (iii) the equity of the corporation, exclusive in each case of shares owned by persons who have personally participated in any of the transactions enumerated in paragraph (4) of subdivision (b), or any shareholder or shareholders of a close corporation.

(3) Any shareholder if the ground for dissolution is that the period for which the corporation was formed has terminated without extension thereof.

(4) Any other person expressly authorized to do so in the articles.

(b) The grounds for involuntary dissolution are that:

(1) The corporation has abandoned its business for more than one year.

(2) The corporation has an even number of directors who are equally divided and cannot agree as to the management of its affairs, so that its business can no longer be conducted to advantage or so that there is danger that its property and business will be impaired or lost, and the holders of the voting shares of the corporation are so divided into factions that they cannot elect a board consisting of an uneven number.

(3) There is internal dissension and two or more factions of shareholders in the corporation are so deadlocked that its business can no longer be conducted with advantage to its shareholders or the shareholders have failed at two consecutive annual meetings at which all voting power was exercised, to elect successors to directors whose terms have expired or would have expired upon election of their successors.

(4) Those in control of the corporation have been guilty of or have knowingly countenanced persistent and pervasive fraud, mismanagement or abuse of authority or persistent unfairness toward any shareholders or its property is being misapplied or wasted by its directors or officers.

(5) In the case of any corporation with 35 or fewer shareholders (determined as provided in Section 605), liquidation is reasonably necessary for the protection of the rights or interests of the complaining shareholder or shareholders.

(6) The period for which the corporation was formed has terminated without extension of such period.

(c) At any time prior to the trial of the action any shareholder or creditor may intervene therein.

(d) This section does not apply to any corporation subject to the Banking Law (Division 1.1 (commencing with Section 1000) of the Financial Code), the Public Utilities Act (Part 1 (commencing with 201) of Division 1 of the Public Utilities Code), the Savings Association Law (Division 2 (commencing with Section 5000) of the Financial Code) or Article 14 (commencing with Section 1010) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

(e) For the purposes of this section, "shareholder" includes a beneficial owner of shares who has entered into an agreement under Section 300 or 706.

(Amended by Stats. 2014, Ch. 64, Sec. 4. (AB 2742) Effective January 1, 2015.)

**1801.** (a) The Attorney General may bring an action against any domestic corporation or purported domestic corporation in the name of the people of this state, upon the Attorney General's own information or upon complaint of a private party, to procure a judgment dissolving the corporation and annulling, vacating or forfeiting its corporate existence upon any of the following grounds:

(1) The corporation has seriously offended against any provision of the statutes regulating corporations.

(2) The corporation has fraudulently abused or usurped corporate privileges or powers.

(3) The corporation has violated any provision of law by any act or default which under the law is a ground for forfeiture of corporate existence.

(4) The corporation has failed to pay to the Franchise Tax Board for a period of five years any tax imposed upon it by the Bank and Corporation Tax Law.

(b) If the ground of the action is a matter or act which the corporation has done or omitted to do that can be corrected by amendment of its articles or by other corporate action, such suit shall not be maintained unless (1) the Attorney General, at least 30 days prior to the institution of suit, has given the corporation written notice of the matter or act done or omitted to be done and (2) the corporation has failed to institute proceedings to correct it within the 30-day period or thereafter fails to prosecute such proceedings.

(c) In any such action the court may order dissolution or such other or partial relief as it deems just and expedient. The court also may appoint a receiver for winding up the affairs of the corporation or may order that the corporation be wound up by its board subject to the supervision of the court.

(d) Service of process on the corporation may be made pursuant to Chapter 17 or by written notice to the president or secretary of the corporation at the address indicated in the corporation's last tax return filed pursuant to the Bank and Corporation Tax Law. The Attorney General shall also publish one time in a newspaper of general circulation in the proper county a notice to the shareholders of the corporation.

*(Added by Stats. 1975, Ch. 682.)*

**1802.** If the ground for the complaint for involuntary dissolution of the corporation is a deadlock in the board as set forth in subdivision (b)(2) of Section 1800, the court may appoint a provisional director. The provisions of subdivision (c) of Section 308 apply to any such provisional director so appointed.

*(Amended by Stats. 1977, Ch. 235.)*

**1803.** If, at the time of the filing of a complaint for involuntary dissolution or at any time thereafter, the court has reasonable grounds to believe that unless a receiver of the corporation is appointed the interests of the corporation and its shareholders will suffer pending the hearing and determination of the complaint, upon the application of the plaintiff, and after a hearing upon such notice to the corporation as the court may direct and upon the giving of security pursuant to Sections 566 and 567 of the Code of Civil Procedure, the court may appoint a receiver to take over and manage the business and affairs of the corporation and to preserve its property pending the hearing and determination of the complaint for dissolution.

*(Added by Stats. 1975, Ch. 682.)*

**1804.** After hearing the court may decree a winding up and dissolution of the corporation if cause therefor is shown or, with or without winding up and dissolution, may make such orders and decrees and issue such injunctions in the case as justice and equity require.

*(Added by Stats. 1975, Ch. 682.)*

**1805.** (a) Involuntary proceedings for winding up a corporation commence when the order for winding up is entered under Section 1804.

(b) When an involuntary proceeding for winding up has commenced, the board shall conduct the winding up of the affairs of the corporation, subject to the supervision of the court, unless other persons are appointed by the court, on good cause shown, to conduct the winding up. The directors or such other persons may, subject to any restrictions imposed by the court, exercise all their powers through the executive officers without any order of court.

(c) When an involuntary proceeding for winding up has commenced, the corporation shall cease to carry on business except to the extent necessary for the beneficial winding up thereof and except during such period as the board may deem necessary to preserve the corporation's goodwill or going-concern value pending a sale of its business or assets, or both, in whole or in part. The directors shall cause written notice of the commencement of the proceeding for involuntary winding up to be given by mail to all shareholders and to all known creditors and

claimants whose addresses appear on the records of the corporation, unless the order for winding up has been stayed by appeal therefrom or otherwise or the proceeding or the execution of the order has been enjoined.

*(Added by Stats. 1975, Ch. 682.)*

**1806.** When an involuntary proceeding for winding up has been commenced, the jurisdiction of the court includes:

- (a) The requirement of the proof of all claims and demands against the corporation, whether due or not yet due, contingent, unliquidated or sounding only in damages, and the barring from participation of creditors and claimants failing to make and present claims and proof as required by any order.
- (b) The determination or compromise of all claims of every nature against the corporation or any of its property, and the determination of the amount of money or assets required to be retained to pay or provide for the payment of claims.
- (c) The determination of the rights of shareholders and of all classes of shareholders in and to the assets of the corporation.
- (d) The presentation and filing of intermediate and final accounts of the directors or other persons appointed to conduct the winding up and hearing thereon, the allowance, disallowance or settlement thereof and the discharge of the directors or such other persons from their duties and liabilities.
- (e) The appointment of a commissioner to hear and determine any or all matters, with such power or authority as the court may deem proper.
- (f) The filling of any vacancies on the board which the directors or shareholders are unable to fill.
- (g) The removal of any director if it appears that the director has been guilty of dishonesty, misconduct, neglect or abuse of trust in conducting the winding up or if the director is unable to act. The court may order an election to fill the vacancy so caused, and may enjoin, for such time as it considers proper, the reelection of the director so removed; or the court, in lieu of ordering an election, may appoint a director to fill the vacancy caused by such removal. Any director so appointed by the court shall serve until the next annual meeting of shareholders or until a successor is elected or appointed.
- (h) Staying the prosecution of any suit, proceeding or action against the corporation and requiring the parties to present and prove their claims in the manner required of other creditors.
- (i) The determination of whether adequate provision has been made for payment or satisfaction of all debts and liabilities not actually paid.
- (j) The making of orders for the withdrawal or termination of proceedings to wind up and dissolve, subject to conditions for the protection of shareholders and creditors.
- (k) The making of an order, upon the allowance or settlement of the final accounts of the directors or such other persons, that the corporation has been duly wound up and is dissolved. Upon the making of such order, the corporate existence shall cease except for purposes of further winding up if needed.
- (l) The making of orders for the bringing in of new parties as the court deems proper for the determination of all questions and matters.

*(Added by Stats. 1975, Ch. 682.)*

**1807.** (a) All creditors and claimants may be barred from participation in any distribution of the general assets if they fail to make and present claims and proofs within such time as the court may direct, which shall not be less than four nor more than six months after the first publication of notice to creditors unless it appears by affidavit that there are no claims, in which case the time limit may be three months. If it is shown that a claimant did not receive notice because of absence from the state or other cause, the court may allow a claim to be filed or presented at any time before distribution is completed.

(b) Such notice to creditors shall be published not less than once a week for three consecutive weeks in a newspaper of general circulation published in the county in which the proceeding is pending or, if there is no such newspaper published in that county, in such newspaper as may be designated by the court, directing creditors and claimants to make and present claims and proofs to the person, at the place and within the time specified in the notice. A copy of the notice shall be mailed to each person shown as a creditor or claimant on the books of the corporation, at such person's last known address.

(c) Holders of secured claims may prove for the whole debt in order to realize any deficiency. If such creditors fail to present their claims they shall be barred only as to any right to claim against the general assets for any deficiency in the amount realized on their security.



(d) Before any distribution is made the amount of any unmatured, contingent or disputed claim against the corporation which has been presented and has not been disallowed, or such part of any such claim as the holder would be entitled to if the claim were due, established or absolute, shall be paid into court and there remain to be paid over to the party when the party becomes entitled thereto or, if the party fails to establish a claim, to be paid over or distributed with the other assets of the corporation to those entitled thereto; or such other provision for the full payment of such claim, if and when established, shall be made as the court may deem adequate. A creditor whose claim has been allowed but is not yet due shall be entitled to its present value upon distribution.

(e) Suits against the corporation on claims which have been rejected shall be commenced within 30 days after written notice of rejection thereof is given to the claimant.

*(Added by Stats. 1975, Ch. 682.)*

**1808.** (a) Upon the final settlement of the accounts of the directors or other persons appointed pursuant to Section 1805 and the determination that the corporation's affairs are in condition for it to be dissolved, the court may make an order declaring the corporation duly wound up and dissolved. The order shall declare:

(1) That the corporation has been duly wound up, that a final franchise tax return, as described by Section 23332 of the Revenue and Taxation Code, has been filed with the Franchise Tax Board as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code, and that its known debts and liabilities have been paid or adequately provided for, or that those debts and liabilities have been paid as far as its assets permitted, as the case may be. If there are known debts or liabilities for payment of which adequate provision has been made, the order shall state what provision has been made, setting forth the name and address of the corporation, person or governmental agency that has assumed or guaranteed the payment, or the name and address of the depository with which deposit has been made or such other information as may be necessary to enable the creditor or other person to whom payment is to be made to appear and claim payment of the debt or liability.

(2) That its known assets have been distributed to the persons entitled thereto or that it acquired no known assets, as the case may be.

(3) That the accounts of directors or such other persons have been settled and that they are discharged from their duties and liabilities to creditors and shareholders.

(4) That the corporation is dissolved.

The court may make such additional orders and grant such further relief as it deems proper upon the evidence submitted.

(b) Upon the making of the order declaring the corporation dissolved, corporate existence shall cease except for the purposes of further winding up if needed; and the directors or such other persons shall be discharged from their duties and liabilities, except in respect to completion of the winding up.

*(Amended by Stats. 2006, Ch. 773, Sec. 7. Effective September 29, 2006.)*

**1809.** Whenever a corporation is dissolved or its existence forfeited by order, decree or judgment of a court, a copy of the order, decree or judgment, certified by the clerk of court, shall forthwith be filed in the office of the Secretary of State. The Secretary of State shall notify the Franchise Tax Board of the dissolution.

*(Amended by Stats. 2006, Ch. 773, Sec. 8. Effective September 29, 2006.)*

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**CORPORATIONS CODE - CORP****TITLE 1. CORPORATIONS [100 - 14631]** ( Title 1 enacted by Stats. 1947, Ch. 1038. )**DIVISION 1. GENERAL CORPORATION LAW [100 - 2319]** ( Division 1 repealed and added by Stats. 1975, Ch. 682. )**CHAPTER 19. Voluntary Dissolution [1900 - 1907]** ( Chapter 19 added by Stats. 1975, Ch. 682. )

**1900.** (a) Any corporation may elect voluntarily to wind up and dissolve by the vote of shareholders holding shares representing 50 percent or more of the voting power.

(b) Any corporation which comes within one of the following descriptions may elect by approval by the board to wind up and dissolve:

- (1) A corporation as to which an order for relief has been entered under Chapter 7 of the federal bankruptcy law.
- (2) A corporation which has disposed of all of its assets and has not conducted any business for a period of five years immediately preceding the adoption of the resolution electing to dissolve the corporation.
- (3) A corporation which has issued no shares.

(Amended by Stats. 1980, Ch. 501.)

**1900.5.** (a) Notwithstanding any other provision of this division, when a corporation has not issued shares, a majority of the directors, or, if no directors have been named in the articles or been elected, the incorporator or a majority of the incorporators may sign and verify a certificate of dissolution stating the following:

- (1) That the certificate of dissolution is being filed within 12 months from the date the articles of incorporation were filed.
- (2) That the corporation does not have any debts or other liabilities, except as provided in paragraph (3).
- (3) That the tax liability will be satisfied on a taxes paid basis or that a person or corporation or other business entity assumes the tax liability, if any, of the dissolving corporation and is responsible for additional corporate taxes, if any, that are assessed and that become due after the date of the assumption of the tax liability.
- (4) That a final franchise tax return, as described by Section 23332 of the Revenue and Taxation Code, has been or will be filed with the Franchise Tax Board as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code.
- (5) That the corporation has not conducted any business from the time of the filing of the articles of incorporation.
- (6) That the known assets of the corporation remaining after payment of, or adequately providing for, known debts and liabilities have been distributed to the persons entitled thereto or that the corporation acquired no known assets, as the case may be.
- (7) That a majority of the directors, or, if no directors have been named in the articles or been elected, the incorporator or a majority of the incorporators authorized the dissolution and elected to dissolve the corporation.
- (8) That the corporation has not issued any shares, and if the corporation has received payments for shares from investors, those payments have been returned to those investors.
- (9) That the corporation is dissolved.

(b) A certificate of dissolution signed and verified pursuant to subdivision (a) shall be filed with the Secretary of State. The Secretary of State shall notify the Franchise Tax Board of the dissolution.

(c) Upon filing a certificate of dissolution pursuant to subdivision (b), a corporation shall be dissolved and its powers, rights, and privileges shall cease.

(Amended by Stats. 2006, Ch. 773, Sec. 9. Effective September 29, 2006.)

**1901.** (a) Whenever a corporation has elected to wind up and dissolve a certificate evidencing such election shall forthwith be filed.

(b) The certificate shall be an officers' certificate or shall be signed and verified by at least a majority of the directors then in office or by one or more shareholders authorized to do so by shareholders holding shares representing 50 percent or more of the voting power and shall set forth:

(1) That the corporation has elected to wind up and dissolve.

(2) If the election was made by the vote of shareholders, the number of shares voting for the election and that the election was made by shareholders representing at least 50 percent of the voting power.

(3) If the certificate is executed by a shareholder or shareholders, that the subscribing shareholder or shareholders were authorized to execute the certificate by shareholders holding shares representing at least 50 percent of the voting power.

(4) If the election was made by the board pursuant to subdivision (b) of Section 1900, the certificate shall also set forth the circumstances showing the corporation to be within one of the categories described in said subdivision.

(c) If an election to dissolve made pursuant to subdivision (a) of Section 1900 is made by the vote of all the outstanding shares and a statement to that effect is added to the certificate of dissolution pursuant to Section 1905, the separate filing of the certificate of election pursuant to this section is not required.

*(Amended by Stats. 1991, Ch. 280, Sec. 1.)*

**1902.** (a) A voluntary election to wind up and dissolve may be revoked prior to distribution of any assets by the vote of shareholders holding shares representing a majority of the voting power, or by approval by the board if the election was by the board pursuant to subdivision (b) of Section 1900. Thereupon a certificate evidencing the revocation shall be signed, verified and filed in the manner prescribed by Section 1901.

(b) The certificate shall set forth:

(1) That the corporation has revoked its election to wind up and dissolve.

(2) That no assets have been distributed pursuant to the election.

(3) If the revocation was made by the vote of shareholders, the number of shares voting for the revocation and the total number of outstanding shares the holders of which were entitled to vote on the revocation.

(4) If the election and revocation was by the board, that shall be stated.

*(Amended by Stats. 1976, Ch. 641.)*

**1903.** (a) Voluntary proceedings for winding up the corporation commence upon the adoption of the resolution of shareholders or directors of the corporation electing to wind up and dissolve, or upon the filing with the corporation of a written consent of shareholders thereto.

(b) When a voluntary proceeding for winding up has commenced, the board shall continue to act as a board and shall have full powers to wind up and settle its affairs, both before and after the filing of the certificate of dissolution.

(c) When a voluntary proceeding for winding up has commenced, the corporation shall cease to carry on business except to the extent necessary for the beneficial winding up thereof and except during such period as the board may deem necessary to preserve the corporation's goodwill or going-concern value pending a sale of its business or assets, or both, in whole or in part. The board shall cause written notice of the commencement of the proceeding for voluntary winding up to be given by mail to all shareholders (except no notice need be given to the shareholders who voted in favor of winding up and dissolving the corporation) and to all known creditors and claimants whose addresses appear on the records of the corporation.

*(Repealed and added by Stats. 1975, Ch. 682.)*

**1904.** If a corporation is in the process of voluntary winding up, the superior court of the proper county, upon the petition of (a) the corporation, or (b) a shareholder or shareholders who hold shares representing 5 percent or more of the total number of any class of outstanding shares, or (c) any shareholder or shareholders of a close corporation, or (d) three or more creditors, and upon such notice to the corporation and to other persons interested in the corporation as shareholders and creditors as the court may order, may take jurisdiction over such voluntary winding up proceeding if that appears necessary for the protection of any parties in interest. The court, if it assumes jurisdiction, may make such orders as to any and all matters concerning the winding up of the affairs of the corporation and for the protection of its shareholders and creditors as justice and equity may require. The

provisions of Chapter 18 (commencing with Section 1800) (except Sections 1800 and 1801) shall apply to such court proceedings.

*(Amended by Stats. 1976, Ch. 641.)*

**1905.** (a) When a corporation has been completely wound up without court proceedings therefor, a majority of the directors then in office shall sign and verify a certificate of dissolution stating:

(1) That the corporation has been completely wound up.

(2) That its known debts and liabilities have been actually paid, or adequately provided for, or paid or adequately provided for as far as its assets permitted, or that it has incurred no known debts or liabilities, as the case may be. If there are known debts or liabilities for payment of which adequate provision has been made, the certificate shall state what provision has been made, setting forth the name and address of the corporation, person or governmental agency that has assumed or guaranteed the payment, or the name and address of the depository with which deposit has been made or any other information that may be necessary to enable the creditor or other person to whom payment is to be made to appear and claim payment of the debt or liability.

(3) That its known assets have been distributed to the persons entitled thereto or that it acquired no known assets, as the case may be.

(4) That the corporation is dissolved.

(5) If no certificate of election is to be filed pursuant to subdivision (c) of Section 1901, that the election to dissolve was made by the vote of all the outstanding shares.

(6) That a final franchise tax return, as described by Section 23332 of the Revenue and Taxation Code, has been or will be filed with the Franchise Tax Board, as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code.

(b) The certificate of dissolution shall be filed with the Secretary of State and thereupon the corporate powers, rights, and privileges of the corporation shall cease. The Secretary of State shall notify the Franchise Tax Board of the dissolution.

*(Amended by Stats. 2006, Ch. 773, Sec. 10. Effective September 29, 2006.)*

**1905.1.** If a corporation has filed a certificate of dissolution with the Secretary of State on or after January 1, 1992, and before the effective date of the act adding this section, pursuant to Section 1905, prior to its amendment by the act adding this section, and the Franchise Tax Board has not, as of that effective date, made the determination required by subdivision (c) of Section 1905, prior to its amendment by the act adding this section, then the corporation shall be dissolved as of the date of filing the certificate of dissolution and thereupon its corporate existence shall cease.

*(Added by Stats. 2006, Ch. 773, Sec. 11. Effective September 29, 2006.)*

**1906.** Except as otherwise provided by law, if the term of existence for which any corporation was organized expires without renewal or extension thereof, the board shall terminate its business and wind up its affairs; and when the business and affairs of the corporation have been wound up a majority of the directors shall execute and file a certificate conforming to the requirements of Section 1905.

*(Repealed and added by Stats. 1975, Ch. 682.)*

**1907.** (a) The board, in lieu of filing the certificate of dissolution, may petition the superior court of the proper county for an order declaring the corporation duly wound up and dissolved. Such petition shall be filed in the name of the corporation.

(b) Upon the filing of the petition, the court shall make an order requiring all persons interested to show cause why an order should not be made declaring the corporation duly wound up and dissolved and shall direct that the order be served by notice to all creditors, claimants and shareholders in the same manner as the notice given under subdivision (b) of Section 1807.

(c) Any person claiming to be interested as shareholder, creditor or otherwise may appear in the proceeding at any time before the expiration of 30 days from the completion of publication of the order to show cause and contest the petition, and upon failure to appear such person's claim shall be barred.

(d) Thereafter an order shall be entered and filed and have the effect as prescribed in Sections 1808 and 1809.

*(Repealed and added by Stats. 1975, Ch. 682.)*



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**CORPORATIONS CODE - CORP****TITLE 1. CORPORATIONS [100 - 14631]** ( Title 1 enacted by Stats. 1947, Ch. 1038. )**DIVISION 1. GENERAL CORPORATION LAW [100 - 2319]** ( Division 1 repealed and added by Stats. 1975, Ch. 682. )**CHAPTER 20. General Provisions Relating to Dissolution [2000 - 2011]** ( Chapter 20 added by Stats. 1975, Ch. 682. )

**2000.** (a) Subject to any contrary provision in the articles, which may include a reference to a separate written agreement between two or more shareholders pertaining to the purchase of shares:

In any suit for involuntary dissolution, or in any proceeding for voluntary dissolution initiated by the vote of shareholders representing only 50 percent of the voting power, the corporation or, if it does not elect to purchase, the holders of 50 percent or more of the voting power of the corporation (the "purchasing parties") may avoid the dissolution of the corporation and the appointment of any receiver by purchasing for cash the shares owned by the plaintiffs or by the shareholders so initiating the proceeding (the "moving parties") at their fair value.

The fair value shall be determined on the basis of the liquidation value as of the valuation date but taking into account the possibility, if any, of sale of the entire business as a going concern in a liquidation. In fixing the value, the amount of any damages resulting if the initiation of the dissolution is a breach by any moving party or parties of an agreement with the purchasing party or parties may be deducted from the amount payable to the moving party or parties, unless the ground for dissolution is that specified in paragraph (4) of subdivision (b) of Section 1800. The election of the corporation to purchase may be made by the approval of the outstanding shares (Section 152) excluding shares held by the moving parties.

(b) If the purchasing parties (1) elect to purchase the shares owned by the moving parties, and (2) are unable to agree with the moving parties upon the fair value of those shares, and (3) give bond with sufficient security to pay the estimated reasonable expenses (including attorneys' fees) of the moving parties if those expenses are recoverable under subdivision (c), the court upon application of the purchasing parties, either in the pending action or in a proceeding initiated in the superior court of the proper county by the purchasing parties in the case of a voluntary election to wind up and dissolve, shall stay the winding up and dissolution proceeding and shall proceed to ascertain and fix the fair value of the shares owned by the moving parties.

(c) The court shall appoint three disinterested appraisers to appraise the fair value of the shares owned by the moving parties, and shall make an order referring the matter to the appraisers so appointed for the purpose of ascertaining the value. The order shall prescribe the time and manner of producing evidence, if evidence is required. The award of the appraisers or of a majority of them, when confirmed by the court, shall be final and conclusive upon all parties. The court shall enter a decree, which shall provide in the alternative for winding up and dissolution of the corporation unless payment is made for the shares within the time specified by the decree. If the purchasing parties do not make payment for the shares within the time specified, judgment shall be entered against them and the surety or sureties on the bond for the amount of the expenses (including attorneys' fees) of the moving parties. Any shareholder aggrieved by the action of the court may appeal the court's decision.

(d) If the purchasing parties desire to prevent the winding up and dissolution, they shall pay to the moving parties the value of their shares ascertained and decreed within the time specified pursuant to this section, or, in case of an appeal, as fixed on appeal. On receiving payment or the tender thereof, the moving parties shall transfer their shares to the purchasing parties.

(e) For the purposes of this section, "shareholder" includes a beneficial owner of shares who has entered into an agreement under Section 300 or 706.

(f) For the purposes of this section, the valuation date shall be (1) in the case of a suit for involuntary dissolution under Section 1800, the date upon which that action was commenced, or (2) in the case of a proceeding for voluntary dissolution initiated by the vote of shareholders representing only 50 percent of the voting power, the

date upon which that proceeding was initiated. However, in either case the court may, upon the hearing of a motion by any party, and for good cause shown, designate some other date as the valuation date.

*(Amended by Stats. 2017, Ch. 721, Sec. 1. (AB 1535) Effective January 1, 2018.)*

**2001.** The powers and duties of the directors (or other persons appointed by the court pursuant to Section 1805) and officers after commencement of a dissolution proceeding include, but are not limited to, the following acts in the name and on behalf of the corporation:

- (a) To elect officers and to employ agents and attorneys to liquidate or wind up its affairs.
- (b) To continue the conduct of the business insofar as necessary for the disposal or winding up thereof.
- (c) To carry out contracts and collect, pay, compromise and settle debts and claims for or against the corporation.
- (d) To defend suits brought against the corporation.
- (e) To sue, in the name of the corporation, for all sums due or owing to the corporation or to recover any of its property.
- (f) To collect any amounts remaining unpaid on subscriptions to shares or to recover unlawful distributions.
- (g) To sell at public or private sale, exchange, convey or otherwise dispose of all or any part of the assets of the corporation for cash in an amount deemed reasonable by the board without compliance with the provisions of Section 1001 (except subdivision (d) thereof), or (subject to compliance with the provisions of Sections 1001, 1200 and 1201, but Chapter 13 (commencing with Section 1300) shall not be applicable thereto) upon such other terms and conditions and for such other considerations as the board deems reasonable or expedient; and to execute bills of sale and deeds of conveyance in the name of the corporation.
- (h) In general, to make contracts and to do any and all things in the name of the corporation which may be proper or convenient for the purposes of winding up, settling and liquidating the affairs of the corporation.

*(Amended by Stats. 1976, Ch. 641.)*

**2002.** A vacancy on the board may be filled during a winding up proceeding in the manner provided in Section 305.

*(Added by Stats. 1975, Ch. 682.)*

**2003.** When the identity of the directors or their right to hold office is in doubt, or if they are dead or unable to act, or they fail or refuse to act or their whereabouts cannot be ascertained, any interested person may petition the superior court of the proper county to determine the identity of the directors or, if there are no directors, to appoint directors to wind up the affairs of the corporation, after hearing upon such notice to such persons as the court may direct.

*(Added by Stats. 1975, Ch. 682.)*

**2004.** After determining that all the known debts and liabilities of a corporation in the process of winding up have been paid or adequately provided for, the board shall distribute all the remaining corporate assets among the shareholders according to their respective rights and preferences or, if there are no shareholders, to the persons entitled thereto. If the winding up is by court proceeding or subject to court supervision, the distribution shall not be made until after the expiration of any period for the presentation of claims which has been prescribed by order of the court.

*(Amended by Stats. 1976, Ch. 641.)*

**2005.** The payment of a debt or liability, whether the whereabouts of the creditor is known or unknown, has been adequately provided for if the payment has been provided for by either of the following means:

- (a) Payment thereof has been assumed or guaranteed in good faith by one or more financially responsible corporations or other persons or by the United States government or any agency thereof, and the provision (including the financial responsibility of such corporations or other persons) was determined in good faith and with reasonable care by the board to be adequate at the time of any distribution of the assets by the board pursuant to this chapter.
- (b) The amount of the debt or liability has been deposited as provided in Section 2008.

This section does not prescribe the exclusive means of making adequate provision for debts and liabilities.

*(Added by Stats. 1975, Ch. 682.)*



**2006.** Distribution may be made either in money or in property or securities and either in installments from time to time or as a whole, if this can be done fairly and ratably and in conformity with the provisions of the articles and the rights of the shareholders, and shall be made as soon as reasonably consistent with the beneficial liquidation of the corporate assets.

*(Added by Stats. 1975, Ch. 682.)*

**2007.** (a) If the corporation in process of winding up has both preferred and common shares outstanding, a plan of distribution of the shares, obligations or securities of any other corporation, domestic or foreign, or assets other than money which is not in accordance with the liquidation rights of the preferred shares as specified in the articles may nevertheless be adopted if approved by (1) the board and (2) by approval of the outstanding shares (Section 152) of each class. The plan may provide that such distribution is in complete or partial satisfaction of the rights of any of such shareholders upon distribution and liquidation of the assets.

(b) A plan of distribution so approved shall be binding upon all the shareholders except as provided in subdivision

(c). The board shall cause notice of the adoption of the plan to be given by mail within 20 days after its adoption to all holders of shares having a liquidation preference.

(c) Shareholders having a liquidation preference who dissent from the plan of distribution are entitled to be paid the amount of their liquidation preference in cash if they file written demand for payment with the corporation within 30 days after the date of mailing of the notice of the adoption of the plan of distribution, unless the plan of distribution is abandoned. The demand shall state the number and class of the shares held of record by the shareholder in respect of which the shareholder claims payment.

(d) If any such demand for cash payment is filed, the board in its discretion may abandon the plan without further approval by the outstanding shares (Section 152), and all shareholders shall then be entitled to distribution according to their rights and liquidation preferences in the process of winding up.

(e) This section shall not apply to a distribution in accordance with a reorganization the principal terms of which have been approved pursuant to subdivision (b) of Section 1202.

*(Amended by Stats. 1988, Ch. 919, Sec. 10.)*

**2008.** (a) If any shareholders or creditors are unknown or fail or refuse to accept their payment, dividend, or distribution in cash or property or their whereabouts cannot be ascertained after diligent inquiry, or the existence or amount of a claim of a creditor or shareholder is contingent, contested, or not determined, or if the ownership of any shares of stock is in dispute, the corporation may deposit any such payment, dividend, distribution, or the maximum amount of the claim with the Controller in trust for the benefit of those lawfully entitled to the payment, dividend, distribution, or the amount of the claim. The payment, dividend, or distribution shall be paid over by the depositary to the lawful owners, their representatives or assigns, upon satisfactory proof of title.

(b) For the purpose of providing for the transmittal, receipt, accounting for, claiming, management, and investment of all money or other property deposited with the Controller under subdivision (a), the money or other property shall be deemed to be paid or delivered for deposit with the Controller under Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure, and may be recovered in the manner prescribed in that chapter.

*(Amended by Stats. 1996, Ch. 860, Sec. 1. Effective January 1, 1997.)*

**2009.** (a) Whenever in the process of winding up a corporation any distribution of assets has been made, otherwise than under an order of court, without prior payment or adequate provision for payment of any of the debts and liabilities of the corporation, any amount so improperly distributed to any shareholder may be recovered by the corporation. Any of such shareholders may be joined as defendants in the same action or brought in on the motion of any other defendant.

(b) Suit may be brought in the name of the corporation to enforce the liability under subdivision (a) against any or all shareholders receiving the distribution by any one or more creditors of the corporation, whether or not they have reduced their claims to judgment.

(c) Shareholders who satisfy any liability under this section shall have the right of ratable contribution from other distributees similarly liable. Any shareholder who has been compelled to return to the corporation more than the shareholder's ratable share of the amount needed to pay the debts and liabilities of the corporation may require that the corporation recover from any or all of the other distributees such proportion of the amounts received by them upon the improper distribution as to give contribution to those held liable under this section and make the distribution of the assets fair and ratable, according to the respective rights and preferences of the shares, after payment or adequate provision for payment of all the debts and liabilities of the corporation.

(d) As used in this section, "process of winding up" includes proceedings under Chapters 18 and 19 and also any other distribution of assets to shareholders made in contemplation of termination or abandonment of the corporate business.

*(Added by Stats. 1975, Ch. 682.)*

**2010.** (a) A corporation which is dissolved nevertheless continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it and enabling it to collect and discharge obligations, dispose of and convey its property and collect and divide its assets, but not for the purpose of continuing business except so far as necessary for the winding up thereof.

(b) No action or proceeding to which a corporation is a party abates by the dissolution of the corporation or by reason of proceedings for winding up and dissolution thereof.

(c) Any assets inadvertently or otherwise omitted from the winding up continue in the dissolved corporation for the benefit of the persons entitled thereto upon dissolution of the corporation and on realization shall be distributed accordingly.

*(Amended by Stats. 2006, Ch. 773, Sec. 12. Effective September 29, 2006.)*

**2011.** (a) (1) Causes of action against a dissolved corporation, whether arising before or after the dissolution of the corporation, may be enforced against any of the following:

(A) Against the dissolved corporation, to the extent of its undistributed assets, including, without limitation, any insurance assets held by the corporation that may be available to satisfy claims.

(B) If any of the assets of the dissolved corporation have been distributed to shareholders, against shareholders of the dissolved corporation to the extent of their pro rata share of the claim or to the extent of the corporate assets distributed to them upon dissolution of the corporation, whichever is less.

A shareholder's total liability under this section may not exceed the total amount of assets of the dissolved corporation distributed to the shareholder upon dissolution of the corporation.

(2) Except as set forth in subdivision (c), all causes of action against a shareholder of a dissolved corporation arising under this section are extinguished unless the claimant commences a proceeding to enforce the cause of action against that shareholder of a dissolved corporation prior to the earlier of the following:

(A) The expiration of the statute of limitations applicable to the cause of action.

(B) Four years after the effective date of the dissolution of the corporation.

(3) As a matter of procedure only, and not for purposes of determining liability, shareholders of the dissolved corporation may be sued in the corporate name of the corporation upon any cause of action against the corporation. This section does not affect the rights of the corporation or its creditors under Section 2009, or the rights, if any, of creditors under the Uniform Voidable Transactions Act, which may arise against the shareholders of a corporation.

(4) This subdivision applies to corporations dissolved on and after January 1, 1992. Corporations dissolved prior to that date are subject to the law in effect prior to that date.

(b) Summons or other process against such a corporation may be served by delivering a copy thereof to an officer, director, or person having charge of its assets or, if no such person can be found, to any agent upon whom process might be served at the time of dissolution. If none of those persons can be found with due diligence and it is so shown by affidavit to the satisfaction of the court, then the court may make an order that summons or other process be served upon the dissolved corporation by personally delivering a copy thereof, together with a copy of the order, to the Secretary of State or an assistant or deputy secretary of state. Service in this manner is deemed complete on the 10th day after delivery of the process to the Secretary of State.

(c) Every such corporation shall survive and continue to exist indefinitely for the purpose of being sued in any quiet title action. Any judgment rendered in any such action shall bind each and all of its shareholders or other persons having any equity or other interest in that corporation, to the extent of their interest therein, and that action shall have the same force and effect as an action brought under the provisions of Sections 410.50 and 410.60 of the Code of Civil Procedure. Service of summons or other process in any such action may be made as provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure or as provided in subdivision (b).

(d) Upon receipt of that process and the fee therefor, the Secretary of State forthwith shall give notice to the corporation as provided in Section 1702.

(e) For purposes of Article 4 (commencing with Section 19071) of Chapter 4 of Part 10.2 of Division 2 of the Revenue and Taxation Code, the liability described in this section shall be considered a liability at law with respect to a dissolved corporation.

*(Amended by Stats. 2019, Ch. 143, Sec. 26. (SB 251) Effective January 1, 2020.)*

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**2100.** This chapter applies only to foreign corporations transacting intrastate business, except as otherwise expressly provided.

(Added by Stats. 1975, Ch. 682.)

**2101.** (a) Any foreign corporation (other than a foreign association) not transacting intrastate business may register its corporate name with the Secretary of State, provided its corporate name would be available pursuant to Section 201 to a new corporation organized under this division at the time of such registration.

(b) Such registration may be made by filing (1) an application for registration signed by a corporate officer stating the name of the corporation, the state or place under the laws of which it is incorporated, the date of its incorporation, and that it desires to register its name under this section; and (2) a certificate of an authorized public official of the state or place in which it is organized stating that such corporation is in good standing under those laws. Such registration shall be effective until the close of the calendar year in which the application for registration is filed.

(c) A corporation that has in effect a registration of its corporate name may renew such registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration between the first day of October and the 31st day of December in each year. Such renewal application shall extend the registration for the following calendar year.

(d) A corporation that has in effect a registration of its corporate name may cancel the registration by delivering to the Secretary of State, on a form prescribed by the Secretary of State for filing, a certificate of cancellation of foreign name registration signed by a corporate officer containing the name of the corporation and the Secretary of State's file number of the corporation.

(Amended by Stats. 2014, Ch. 834, Sec. 4. (SB 1041) Effective January 1, 2015.)

**2102.** A foreign corporation which has filed a designation of an agent for the service of process, pursuant to the requirements of any law relating to the qualification of foreign corporations in force at the time of the filing, need not file the statement provided for in Section 2105, but shall file an amended statement and designation when required by Section 2107.

(Added by Stats. 1975, Ch. 682.)

**2103.** Nothing in this chapter repeals, alters or amends the provisions of Sections 1600 to 1607, inclusive, of the Insurance Code or prevents any foreign insurance company from carrying out contracts made before the surrender of its right to engage in intrastate business or contracts made with citizens of other states who subsequently become citizens of or residents in this state.

(Added by Stats. 1975, Ch. 682.)

**2104.** Any foreign lending institution which has not qualified to do business in this state and which engages in any of the activities set forth in subdivision (d) of Section 191 shall be considered by such activities to have appointed the Secretary of State as its agent for service of process for any action arising out of any such activities, and, on or

before June 30th of each year, shall file a statement showing the address to which any notice or process may be sent in the manner and with the effect provided in Section 2111.

No foreign lending institution solely by reason of engaging in any one or more of the activities set forth in subdivision (d) of Section 191 shall be required to qualify to do business in this state nor be subject to (a) any of the provisions of the Bank and Corporation Tax Law (commencing with Section 23001) of the Revenue and Taxation Code or (b) any of the provisions of this code or the Financial Code or Insurance Code relating to qualifications for doing or transacting business in this state or to requirements pertaining thereto or to the effects or results of failure to qualify to do business in this state.

*(Amended by Stats. 1976, Ch. 641.)*

**2105.** (a) A foreign corporation shall not transact intrastate business without having first obtained from the Secretary of State a certificate of qualification. To obtain that certificate it shall file, on a form prescribed by the Secretary of State, a statement and designation signed by a corporate officer or, in the case of a foreign association that has no officers, signed by a trustee stating:

- (1) Its name and the state or place of its incorporation or organization.
- (2) The street address of its principal executive office.
- (3) The street address of its principal office within this state, if any.
- (4) The mailing address of its principal executive office, if different from the addresses specified pursuant to paragraphs (2) and (3).
- (5) The name of an agent upon whom process directed to the corporation may be served within this state. The designation shall comply with subdivision (b) of Section 1502.
- (6) (A) Its irrevocable consent to service of process directed to it upon the agent designated and to service of process on the Secretary of State if the agent designated or the agent's successor is no longer authorized to act or cannot be found at the address given.
- (B) Consent under this paragraph extends to service of process directed to the foreign corporation's agent in this state for a search warrant issued pursuant to Section 1524.2 of the Penal Code, or for any other validly issued and properly served search warrant, for records or documents that are in the possession of the foreign corporation and are located inside or outside of this state. This subparagraph shall apply to a foreign corporation that is a party or a nonparty to the matter for which the search warrant is sought. For purposes of this subparagraph, "properly served" means delivered by hand, or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service, or facsimile to a person or entity listed in Section 2110, or any other means specified by the foreign corporation, including, but not limited to, email or submission via an Internet Web portal that the foreign corporation has designated for the purpose of service of process.
- (7) If it is a corporation that will be subject to the Insurance Code as an insurer, it shall state that fact.
- (b) Annexed to the statement and designation shall be a certificate by an authorized public official of the state or place of incorporation of the corporation to the effect that the corporation is an existing corporation in good standing in that state or place or, in the case of an association, an officers' certificate stating that it is a validly organized and existing business association under the laws of a specified foreign jurisdiction.
- (c) Before it may be designated by a foreign corporation as its agent for service of process, a corporate agent must comply with Section 1505.

*(Amended by Stats. 2016, Ch. 86, Sec. 47. (SB 1171) Effective January 1, 2017.)*

**2106.** (a) Subject to the provisions of subdivision (b), upon payment of the fees required by law the Secretary of State shall file the statement and designation prescribed in Section 2105 and shall issue to the corporation a certificate of qualification stating the date of filing of said statement and designation and that the corporation is qualified to transact intrastate business, subject, however, to any licensing requirements otherwise imposed by the laws of this state.

(b) No foreign corporation having a name which would not be available pursuant to subdivision (b) of Section 201 to a new corporation organized under this division shall transact intrastate business in this state or qualify to do so under this chapter or file an amended statement and designation containing such name unless either: (1) it obtains and files an order from a court of competent jurisdiction permanently enjoining the other corporation having a conflicting name from doing business in this state under that name; or (2) the Secretary of State finds, upon proof by affidavit or otherwise as the Secretary of State may determine, that the business to be conducted in this state by the foreign corporation is not the same as or similar to the business being conducted by the corporation (or to

be conducted by the proposed corporation) with whose name it may conflict and that the public is not likely to be deceived, and the foreign corporation agrees that it will transact business in this state under an assumed name disclosed to the Secretary of State and that it will use such assumed name in all of its dealings with the Secretary of State and in the conduct of its affairs in this state. Such assumed name may be its name with the addition of some distinguishing word or words acceptable to the Secretary of State or a name available for the name of a domestic corporation pursuant to subdivision (b) of Section 201. A corporation which has made such an agreement with the Secretary of State shall not do business in this state except under the name agreed upon, so long as the agreement remains in effect.

This subdivision shall not apply to any corporation which is subject to the Insurance Code as an insurer unless the insurer has first obtained from the Insurance Commissioner a certificate approving the assumed name.

*(Amended by Stats. 1979, Ch. 737.)*

**2106.5.** The Secretary of State shall not file any statement and designation pursuant to Section 2106 or any amended statement and designation pursuant to Section 2107, where it appears that the business is that of an insurer subject to the Insurance Code unless a certificate of the Insurance Commissioner approving the corporate name is attached thereto.

*(Added by Stats. 1979, Ch. 737.)*

**2107.** (a) If any foreign corporation (but not a foreign association) qualified to transact intrastate business shall change its name or make a change affecting an assumed name under Section 2106, it shall file, on a form prescribed by the Secretary of State, an amended statement signed by a corporate officer setting forth the change made. The amended statement shall set forth the name relinquished as well as the new name assumed and there shall be annexed to the amended statement a certificate of an authorized public official of its state or place of incorporation that the change of name was made in accordance with the laws of that state or place. Upon the filing of the amended statement, the Secretary of State shall issue a new certificate of qualification.

(b) If any foreign association qualified to transact intrastate business shall change its name, the address of its principal office in this state, the address of its principal executive office or its agent for the service of process, or if the stated address of any natural person designated as agent is changed, it shall file, on a form prescribed by the Secretary of State, an amended statement and designation signed by an officer or, in the case of a foreign association that has no officers, signed by a trustee setting forth the change or changes made. In the case of a change of name, the amended statement and designation shall set forth the name relinquished as well as the new name assumed and there shall be annexed to the amended statement and designation an officer's certificate, or trustee's certificate, if applicable, stating that such change of name was made in accordance with its declaration of trust. If the change includes a change of name, or a change affecting an assumed name pursuant to Section 2106, upon the filing of the amended statement, the Secretary of State shall issue a new certificate of qualification.

(c) If the change includes a change of name of an insurer subject to the Insurance Code, the form shall include a statement that the corporation is such an insurer if it does not already so appear.

(d) If a foreign corporation qualified to transact business in this state shall change the address of its principal office in this state, the address of its principal executive office, or its agent for the service of process, or if the stated address of any natural person designated as agent is changed, the filing of a statement pursuant to Section 2117 shall supersede the statement and designation with respect thereto.

*(Amended by Stats. 2014, Ch. 834, Sec. 6. (SB 1041) Effective January 1, 2015.)*

**2110.** Delivery by hand of a copy of any process against a foreign corporation (a) to any officer of the corporation or its general manager in this state, or if the corporation is a bank to a cashier or an assistant cashier, (b) to any natural person designated by it as agent for the service of process, or (c), if the corporation has designated a corporate agent, to any person named in the latest certificate of the corporate agent filed pursuant to Section 1505 shall constitute valid service on the corporation. A copy of the statement and designation, or a copy of the latest statement filed pursuant to Section 2117, certified by the Secretary of State, is sufficient evidence of the appointment of an agent for the service of process.

*(Amended by Stats. 1989, Ch. 438, Sec. 2.)*

**2110.1.** In addition to the provisions of Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure, process may be served upon a foreign corporation as provided in this chapter.

*(Added by Stats. 1977, Ch. 235.)*

**2111.** (a) If the agent designated for the service of process is a natural person and cannot be found with due diligence at the address stated in the designation or if the agent is a corporation and no person can be found with due diligence to whom the delivery authorized by Section 2110 may be made for the purpose of delivery to the corporate agent, or if the agent designated is no longer authorized to act, or if no agent has been designated and if no one of the officers or agents of the corporation specified in Section 2110 can be found after diligent search and it is so shown by affidavit to the satisfaction of the court, then the court may make an order that service be made by personal delivery to the Secretary of State or to an assistant or deputy secretary of state of two copies of the process together with two copies of the order, except that if the corporation to be served has not filed the statement required to be filed by Section 2105 then only one copy of the process and order need be delivered but the order shall include and set forth an address to which the process shall be sent by the Secretary of State. Service in this manner is deemed complete on the 10th day after delivery of the process to the Secretary of State.

(b) Upon receipt of the process and order and the fee therefor the Secretary of State forthwith shall give notice to the corporation of the service of the process by forwarding by registered or certified mail, with request for return receipt, a copy of the process and order to the address specified in the order if the corporation has not filed the statement required by Section 2105 or to the two stated addresses of the corporation set forth in the latest statement filed pursuant to Section 2105 or 2117, or if only one address is set forth in the latest statement, to the sole stated address of the corporation.

(c) The Secretary of State shall keep a record of all process served upon the Secretary of State and shall record therein the time of service and the Secretary of State's action with respect thereto. The certificate of the Secretary of State, under the Secretary of State's official seal, certifying to the receipt of process, the giving of notice thereof to the corporation, and the forwarding of the process pursuant to this section, shall be competent and prima facie evidence of the matters stated therein.

*(Amended by Stats. 1989, Ch. 438, Sec. 3.)*

**2112.** (a) Subject to Section 2113, a foreign corporation which has qualified to transact intrastate business may surrender its right to engage in that business within this state by filing a certificate of surrender signed by a corporate officer or, in the case of a foreign association that has no officers, signed by a trustee stating:

(1) The name of the corporation as shown on the records of the Secretary of State, and the state or place of incorporation or organization.

(2) That it revokes its designation of agent for service of process.

(3) That it surrenders its authority to transact intrastate business.

(4) That it consents that process against it in any action upon any liability or obligation incurred within this state prior to the filing of the certificate of withdrawal may be served upon the Secretary of State.

(5) A post office address to which the Secretary of State may mail a copy of any process against the corporation that is served upon the Secretary of State, which address or the name to which the process should be sent may be changed from time to time by filing a statement signed by a corporate officer or, in the case of a foreign association that has no officers, signed by a trustee stating the new address or name or both.

(6) Except in the case of a foreign association, that a final franchise tax return, as described by Section 23332 of the Revenue and Taxation Code, has been or will be filed with the Franchise Tax Board, as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code.

(b) The Secretary of State shall notify the Franchise Tax Board of the surrender.

*(Amended by Stats. 2014, Ch. 834, Sec. 7. (SB 1041) Effective January 1, 2015.)*

**2113.** (a) The filing of an agreement of merger of a foreign disappearing corporation qualified to transact intrastate business in this state pursuant to Section 1103, or the filing pursuant to subdivision (d) of Section 1108 of an agreement, certificate, or other document as to a merger that includes a disappearing foreign corporation qualified to transact intrastate business, or the filing of a certificate of ownership as to a foreign subsidiary corporation qualified to transact intrastate business in this state pursuant to Section 1110, or the filing by a foreign corporation qualified to transact intrastate business in this state of an organizational document containing a statement of conversion pursuant to Section 15911.08, 16908, or 17710.08, constitutes the surrender by the foreign corporation of its right to engage in intrastate business within this state.

(b) With respect to corporations for which documents have not been filed as provided in subdivision (a), a certificate of surrender as prescribed by Section 2112 shall be filed by a foreign corporation qualified to transact intrastate business upon its merger into another foreign corporation.



(c) In lieu of a signature as prescribed by Section 2112, a certificate of surrender pursuant to subdivision (b) for a merged foreign corporation may be signed in the name of the surviving corporation by an officer thereof. In that case, the certificate of surrender shall be accompanied by a certificate of an authorized public official of the state or place of incorporation of the merged foreign corporation stating that the corporation has been merged into another foreign corporation and setting forth the name and state or place of incorporation of the surviving foreign corporation.

*(Amended by Stats. 2012, Ch. 419, Sec. 10. (SB 323) Effective January 1, 2013. Operative January 1, 2014, by Sec. 32 of Ch. 419.)*

**2114.** (a) A foreign corporation that has transacted intrastate business and has thereafter withdrawn from business in this state may be served with process in the manner provided in this chapter in any action brought in this state arising out of that business, whether or not it has ever complied with the requirements of this chapter.

(b) A foreign corporation that has surrendered its right to transact intrastate business pursuant to Section 2112 or 2113 may be served with process in any action upon a liability or obligation incurred within this state prior to that surrender by delivery of the process to the Secretary of State, or an assistant or a deputy to the Secretary of State pursuant to this chapter and no court order authorizing this service shall be required. The process shall be mailed in the manner prescribed in this chapter except that it shall be sent to the address to which process is authorized to be sent in the certificate of surrender or to the address of the surviving domestic corporation in the case of a surrender under Section 2113.

(c) If a foreign corporation that is qualified to transact intrastate business has its right to transact such business forfeited by the Franchise Tax Board pursuant to the Bank and Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code), service of process on that corporation may be effected in the manner set forth in Sections 2110 and 2111, as if the right to transact intrastate business had not been forfeited.

(d) The fact that a corporation ceases to transact intrastate business without filing a certificate of surrender does not revoke the appointment of any agent for the service of process.

*(Amended by Stats. 1997, Ch. 187, Sec. 5. Effective January 1, 1998.)*

**2115.** (a) A foreign corporation (other than a foreign association or foreign nonprofit corporation but including a foreign parent corporation even though it does not itself transact intrastate business) is subject to the requirements of subdivision (b) commencing on the date specified in subdivision (d) and continuing until the date specified in subdivision (e) if:

(1) The average of the property factor, the payroll factor, and the sales factor (as defined in Sections 25129, 25132, and 25134 of the Revenue and Taxation Code) with respect to it is more than 50 percent during its latest full income year and

(2) more than one-half of its outstanding voting securities are held of record by persons having addresses in this state appearing on the books of the corporation on the record date for the latest meeting of shareholders held during its latest full income year or, if no meeting was held during that year, on the last day of the latest full income year. The property factor, payroll factor, and sales factor shall be those used in computing the portion of its income allocable to this state in its franchise tax return or, with respect to corporations the allocation of whose income is governed by special formulas or that are not required to file separate or any tax returns, which would have been so used if they were governed by this three-factor formula. The determination of these factors with respect to any parent corporation shall be made on a consolidated basis, including in a unitary computation (after elimination of intercompany transactions) the property, payroll, and sales of the parent and all of its subsidiaries in which it owns directly or indirectly more than 50 percent of the outstanding shares entitled to vote for the election of directors, but deducting a percentage of the property, payroll, and sales of any subsidiary equal to the percentage minority ownership, if any, in the subsidiary. For the purpose of this subdivision, any securities held to the knowledge of the issuer in the names of broker-dealers, nominees for broker-dealers (including clearing corporations), or banks, associations, or other entities holding securities in a nominee name or otherwise on behalf of a beneficial owner (collectively "nominee holders"), shall not be considered outstanding. However, if the foreign corporation requests all nominee holders to certify, with respect to all beneficial owners for whom securities are held, the number of shares held for those beneficial owners having addresses (as shown on the records of the nominee holder) in this state and outside of this state, then all shares so certified shall be considered outstanding and held of record by persons having addresses either in this state or outside of this state as so certified, provided that the certification so provided shall be retained with the record of shareholders and made available for inspection and copying in the same manner as is provided in Section 1600 with respect to that record. A current list of beneficial owners of a foreign corporation's securities provided to the corporation by one or more nominee holders

or their agent pursuant to the requirements of Rule 14b-1(b)(3) or 14b-2(b)(3) as adopted on January 6, 1992, promulgated under the Securities Exchange Act of 1934, shall constitute an acceptable certification with respect to beneficial owners for the purposes of this subdivision.

(b) Except as provided in subdivision (c), the following chapters and sections of this division shall apply to a foreign corporation as defined in subdivision (a) (to the exclusion of the law of the jurisdiction in which it is incorporated):

Chapter 1 (general provisions and definitions), to the extent applicable to the following provisions;

Section 301 (annual election of directors);

Section 303 (removal of directors without cause);

Section 304 (removal of directors by court proceedings);

Section 305, subdivision (c) (filling of director vacancies where less than a majority in office elected by shareholders);

Section 309 (directors' standard of care);

Section 316 (excluding paragraph (3) of subdivision (a) and paragraph (3) of subdivision (f)) (liability of directors for unlawful distributions);

Section 317 (indemnification of directors, officers, and others);

Sections 500 to 505, inclusive (limitations on corporate distributions in cash or property);

Section 506 (liability of shareholder who receives unlawful distribution);

Section 600, subdivisions (b) and (c) (requirement for annual shareholders' meeting and remedy if same not timely held);

Section 708, subdivisions (a), (b), and (c) (shareholder's right to cumulate votes at any election of directors);

Section 710 (supermajority vote requirement);

Section 1001, subdivision (d) (limitations on sale of assets);

Section 1101 (provisions following subdivision (e)) (limitations on mergers);

Section 1151 (first sentence only) (limitations on conversions);

Section 1152 (requirements of conversions);

Chapter 12 (commencing with Section 1200) (reorganizations);

Chapter 13 (commencing with Section 1300) (dissenters' rights);

Sections 1500 and 1501 (records and reports);

Section 1508 (action by Attorney General);

Chapter 16 (commencing with Section 1600) (rights of inspection).

(c) This section does not apply to any corporation (1) with outstanding securities listed on the New York Stock Exchange, the NYSE Amex, the NASDAQ Global Market, or the NASDAQ Capital Market, or (2) if all of its voting shares (other than directors' qualifying shares) are owned directly or indirectly by a corporation or corporations not subject to this section.

(d) For purposes of subdivision (a), the requirements of subdivision (b) shall become applicable to a foreign corporation only upon the first day of the first income year of the corporation (1) commencing on or after the 135th day of the income year immediately following the latest income year with respect to which the tests referred to in subdivision (a) have been met or (2) commencing on or after the entry of a final order by a court of competent jurisdiction declaring that those tests have been met.

(e) For purposes of subdivision (a), the requirements of subdivision (b) shall cease to be applicable to a foreign corporation (1) at the end of the first income year of the corporation immediately following the latest income year with respect to which at least one of the tests referred to in subdivision (a) is not met or (2) at the end of the income year of the corporation during which a final order has been entered by a court of competent jurisdiction declaring that one of those tests is not met, provided that a contrary order has not been entered before the end of the income year.

(f) Any foreign corporation that is subject to the requirements of subdivision (b) shall advise any shareholder of record, any officer, director, employee, or other agent (within the meaning of Section 317) and any creditor of the corporation in writing, within 30 days of receipt of written request for that information, whether or not it is subject to subdivision (b) at the time the request is received. Any party who obtains a final determination by a court of competent jurisdiction that the corporation failed to provide to the party information required to be provided by this

subdivision or provided the party information of the kind required to be provided by this subdivision that was incorrect, then the court, in its discretion, shall have the power to include in its judgment recovery by the party from the corporation of all court costs and reasonable attorneys' fees incurred in that legal proceeding to the extent they relate to obtaining that final determination.

*(Amended by Stats. 2009, Ch. 131, Sec. 6. (AB 991) Effective January 1, 2010.)*

**2115.5.** (a) Section 301.3 shall apply to a foreign corporation that is a publicly held corporation to the exclusion of the law of the jurisdiction in which the foreign corporation is incorporated.

(b) For purposes of this section, a "publicly held corporation" means a foreign corporation with outstanding shares listed on a major United States stock exchange.

*(Added by Stats. 2018, Ch. 954, Sec. 3. (SB 826) Effective January 1, 2019.)*

**2115.6.** (a) Section 301.4 shall apply to a foreign corporation that is a publicly held corporation to the exclusion of the law of the jurisdiction in which the foreign corporation is incorporated.

(b) For purposes of this section, a "publicly held corporation" means a foreign corporation with outstanding shares listed on a major United States stock exchange.

*(Added by Stats. 2020, Ch. 316, Sec. 4. (AB 979) Effective January 1, 2021.)*

**2116.** The directors of a foreign corporation transacting intrastate business are liable to the corporation, its shareholders, creditors, receiver, liquidator or trustee in bankruptcy for the making of unauthorized dividends, purchase of shares or distribution of assets or false certificates, reports or public notices or other violation of official duty according to any applicable laws of the state or place of incorporation or organization, whether committed or done in this state or elsewhere. Such liability may be enforced in the courts of this state.

*(Added by Stats. 1975, Ch. 682.)*

**2117.** (a) Every foreign corporation (other than a foreign association) qualified to transact intrastate business shall file, within 90 days after the filing of its original statement and designation of foreign corporation and annually thereafter during the applicable filing period, on a form prescribed by the Secretary of State, a statement containing all of the following:

(1) The name of the corporation as registered in California and the California Secretary of State's file number.

(2) The names and complete business or residence addresses of its chief executive officer, secretary, and chief financial officer.

(3) The street address of its principal executive office.

(4) The mailing address of the corporation, if different from the street address of its principal executive office.

(5) The street address of its principal business office in this state, if any.

(6) If the corporation chooses to receive renewal notices and any other notifications from the Secretary of State by electronic mail instead of by United States mail, the corporation shall include a valid electronic mail address for the corporation or for the corporation's designee to receive those notices.

(7) A statement of the general type of business that constitutes the principal business activity of the corporation, such as, for example, manufacturer of aircraft, wholesale liquor distributor, or retail department store.

(b) The statement required by subdivision (a) shall also designate, as the agent of the corporation for the purpose of service of process, a natural person residing in this state or a corporation that has complied with Section 1505 and whose capacity to act as the agent has not terminated. If a natural person is designated, the statement shall set forth the person's complete business or residence street address. If a corporate agent is designated, no address for it shall be set forth.

(c) The statement required by subdivision (a) shall be available and open to the public for inspection. The Secretary of State shall provide access to all information contained in the statement by means of an online database.

(d) In addition to any other fees required, a foreign corporation shall pay a five-dollar (\$5) disclosure fee upon filing the statement required by subdivision (a). One-half of the fee shall, notwithstanding Section 12176 of the Government Code, be deposited into the Business Programs Modernization Fund established in subdivision (k) of Section 1502, and one-half shall be deposited into the Victims of Corporate Fraud Compensation Fund established in Section 2280.

(e) Whenever any of the information required by subdivision (a) is changed, the corporation may file a current statement containing all the information required by subdivisions (a) and (b). In order to change its agent for service of process or the address of the agent, the corporation shall file a current statement containing all the information required by subdivisions (a) and (b). Whenever any statement is filed pursuant to this section, it supersedes any previously filed statement and the statement in the filing pursuant to Section 2105.

(f) Subdivisions (c), (d), (f), and (g) of Section 1502 apply to statements filed pursuant to this section, except that "articles" shall mean the filing pursuant to Section 2105, and "corporation" shall mean a foreign corporation.

(g) (1) This section shall remain in effect only until January 1, 2022, or upon certification by the Secretary of State that California Business Connect is implemented, whichever date is earlier, and as of that date is repealed.

(2) If the Secretary of State certifies California Business Connect is implemented prior to January 1, 2022, the Secretary of State shall post notice of the certification on the homepage of its internet website and send notice of the certification to the Legislative Counsel.

*(Amended by Stats. 2020, Ch. 357, Sec. 3. (AB 3075) Effective January 1, 2021. Conditionally repealed on or before January 1, 2022, by its own provisions. See later operative version added by Sec. 4 of Stats. 2020, Ch. 357.)*

**2117.** (a) Every foreign corporation (other than a foreign association) qualified to transact intrastate business shall file, within 90 days after the filing of its original statement and designation of foreign corporation and annually thereafter during the applicable filing period, on a form prescribed by the Secretary of State, a statement containing all of the following:

(1) The name of the corporation as registered in California and the California Secretary of State's file number.

(2) The names and complete business or residence addresses of its chief executive officer, secretary, and chief financial officer.

(3) The street address of its principal executive office.

(4) The mailing address of the corporation, if different from the street address of its principal executive office.

(5) The street address of its principal business office in this state, if any.

(6) If the corporation chooses to receive renewal notices and any other notifications from the Secretary of State by electronic mail instead of by United States mail, the corporation shall include a valid electronic mail address for the corporation or for the corporation's designee to receive those notices.

(7) A statement of the general type of business that constitutes the principal business activity of the corporation, such as, for example, manufacturer of aircraft, wholesale liquor distributor, or retail department store.

(8) A statement indicating whether any officer or any director has an outstanding final judgment issued by the Division of Labor Standards Enforcement or a court of law, for which no appeal therefrom is pending, for the violation of any wage order or provision of the Labor Code.

(b) The statement required by subdivision (a) shall also designate, as the agent of the corporation for the purpose of service of process, a natural person residing in this state or a corporation that has complied with Section 1505 and whose capacity to act as the agent has not terminated. If a natural person is designated, the statement shall set forth the person's complete business or residence street address. If a corporate agent is designated, no address for it shall be set forth.

(c) The statement required by subdivision (a) shall be available and open to the public for inspection. The Secretary of State shall provide access to all information contained in the statement by means of an online database.

(d) In addition to any other fees required, a foreign corporation shall pay a five-dollar (\$5) disclosure fee upon filing the statement required by subdivision (a). One-half of the fee shall, notwithstanding Section 12176 of the Government Code, be deposited into the Business Programs Modernization Fund established in subdivision (k) of Section 1502, and one-half shall be deposited into the Victims of Corporate Fraud Compensation Fund established in Section 2280.

(e) Whenever any of the information required by subdivision (a) is changed, the corporation may file a current statement containing all the information required by subdivisions (a) and (b). In order to change its agent for service of process or the address of the agent, the corporation shall file a current statement containing all the information required by subdivisions (a) and (b). Whenever any statement is filed pursuant to this section, it supersedes any previously filed statement and the statement in the filing pursuant to Section 2105.

(f) Subdivisions (c), (d), (f), and (g) of Section 1502 apply to statements filed pursuant to this section, except that "articles" shall mean the filing pursuant to Section 2105, and "corporation" shall mean a foreign corporation.

(g) (1) This section shall become operative on January 1, 2022, or upon certification by the Secretary of State that California Business Connect is implemented, whichever date is earlier.

(2) If the Secretary of State certifies California Business Connect is implemented prior to January 1, 2022, the Secretary of State shall post notice of the certification on the homepage of its internet website and send notice of the certification to the Legislative Counsel.

*(Repealed (in Sec. 3) and added by Stats. 2020, Ch. 357, Sec. 4. (AB 3075) Effective January 1, 2021. Conditionally operative on or before January 1, 2022, by its own provisions.)*

**2117.1.** (a) In addition to the statement required pursuant to Section 2117, every publicly traded foreign corporation shall file annually, within 150 days after the end of its fiscal year, on a form prescribed by the Secretary of State, a statement that includes all of the following information:

(1) The name of the independent auditor that prepared the most recent auditor's report on the publicly traded foreign corporation's annual financial statements.

(2) A description of other services, if any, performed for the publicly traded foreign corporation during its two most recent fiscal years and the period between the end of its most recent fiscal year and the date of the statement by the foregoing independent auditor, by its parent corporation, or by a subsidiary or corporate affiliate of the independent auditor or its parent corporation.

(3) The name of the independent auditor employed by the foreign corporation on the date of the statement, if different from the independent auditor listed pursuant to paragraph (1).

(4) The compensation for the most recent fiscal year of the publicly traded foreign corporation paid to each member of the board of directors and paid to each of the five most highly compensated executive officers of the foreign corporation who are not members of the board of directors, including the number of any shares issued, options for shares granted, and similar equity-based compensation granted to each of those persons. If the chief executive officer is not among the five most highly compensated executive officers of the corporation, the compensation paid to the chief executive officer shall also be included.

(5) A description of any loan, including the amount and terms of the loans, made to any member of the board of directors by the publicly traded foreign corporation during the foreign corporation's two most recent fiscal years at an interest rate lower than the interest rate available from unaffiliated commercial lenders generally to a similarly situated borrower.

(6) A statement indicating whether an order for relief has been entered in a bankruptcy case with respect to the foreign corporation, its executive officers, or members of the board of directors of the foreign corporation during the 10 years preceding the date of the statement.

(7) A statement indicating whether any member of the board of directors or executive officer of the publicly traded foreign corporation was convicted of fraud during the 10 years preceding the date of the statement, which conviction has not been overturned or expunged.

(8) A description of any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the corporation or any of its subsidiaries is a party or of which any of their property is the subject, as specified by Item 103 of Regulation S-K of the Securities and Exchange Commission (Section 229.103 of Title 12 of the Code of Federal Regulations). A description of any material legal proceeding during which the corporation was found legally liable by entry of a final judgment or final order that was not overturned on appeal during the five years preceding the date of the statement.

(b) For purposes of this section, the following definitions apply:

(1) "Publicly traded foreign corporation" means a foreign corporation, as defined in Section 171, that is an issuer as defined in Section 3 of the Securities Exchange Act of 1934, as amended (15 U.S.C. Sec. 78c), and has at least one class of securities listed or admitted for trading on a national securities exchange, on the OTC Bulletin Board, or on the electronic service operated by OTC Markets Group Inc.

(2) "Executive officer" means the chief executive officer, president, any vice president in charge of a principal business unit, division, or function, any other officer of the corporation who performs a policymaking function, or any other person who performs similar policymaking functions for the corporation.

(3) "Compensation" as used in paragraph (4) of subdivision (a) means all plan and nonplan compensation awarded to, earned by, or paid to the person for all services rendered in all capacities to the corporation and to its subsidiaries, as the compensation is specified by Item 402 of Regulation S-K of the Securities and Exchange Commission (Section 229.402 of Title 17 of the Code of Federal Regulations).

(4) "Loan" as used in paragraph (5) of subdivision (a) excludes an advance for expenses, the foreign corporation's payment of life insurance premiums, and an advance of litigation expenses, in each instance as permitted according to the applicable law of the state or place of incorporation or organization of the foreign corporation.

(c) This statement shall be available and open to the public for inspection. The Secretary of State shall provide access to all information contained in this statement by means of an online database.

(d) A foreign corporation shall certify that the information it provides pursuant to this section is true and correct. No claim may be made against the state for inaccurate information contained in statements filed under this section with the Secretary of State.

*(Amended by Stats. 2019, Ch. 143, Sec. 27. (SB 251) Effective January 1, 2020.)*

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**CORPORATIONS CODE - CORP****TITLE 1. CORPORATIONS [100 - 14631]** ( Title 1 enacted by Stats. 1947, Ch. 1038. )**DIVISION 1. GENERAL CORPORATION LAW [100 - 2319]** ( Division 1 repealed and added by Stats. 1975, Ch. 682. )**CHAPTER 22. Crimes and Penalties [2200 - 2260]** ( Chapter 22 added by Stats. 1975, Ch. 682. )

**2200.** Every corporation that neglects, fails, or refuses: (a) to keep or cause to be kept or maintained the record of shareholders or books of account required by this division to be kept or maintained, (b) to prepare or cause to be prepared or submitted the financial statements required by this division to be prepared or submitted, or (c) to give any shareholder of record the advice required by subdivision (f) of Section 2115, is subject to penalty as provided in this section.

The penalty shall be twenty-five dollars (\$25) for each day that the failure or refusal continues, up to a maximum of one thousand five hundred dollars (\$1,500), beginning 30 days after receipt of the written request that the duty be performed from one entitled to make the request, except that, in the case of a failure to give advice required by subdivision (f) of Section 2115, the 30-day period shall run from the date of receipt of the request made pursuant to subdivision (f) of Section 2115, and no additional request is required by this section.

The penalty shall be paid to the shareholder or shareholders jointly making the request for performance of the duty, and damaged by the neglect, failure, or refusal, if suit therefor is commenced within 90 days after the written request is made, including any request made pursuant to subdivision (f) of Section 2115; but the maximum daily penalty because of failure to comply with any number of separate requests made on any one day or for the same act shall be two hundred fifty dollars (\$250).

(Amended by Stats. 2001, Ch. 159, Sec. 44. Effective January 1, 2002.)

**2201.** Any officer of a corporation charged with the duty of entering a transfer of shares upon the books of the corporation and issuing a share certificate or, with respect to uncertificated securities, an initial transaction statement or written statements, who unreasonably neglects, fails or refuses to perform such duty after written request by any person entitled thereto is subject to a penalty of one hundred dollars (\$100) and the further penalty of ten dollars (\$10) for each day that such default continues, beginning five days after receipt of the request, up to a maximum of five hundred dollars (\$500). The penalty shall be paid to each person aggrieved. It may be enforced by action and shall be in addition to all other remedies.

Every director or other officer unreasonably causing such neglect, failure or refusal to make such entries upon the books of the corporation or to issue a certificate or, with respect to uncertificated securities, an initial transaction statement or written statements, for shares to a person entitled thereto is subject to a like penalty.

(Amended by Stats. 1986, Ch. 766, Sec. 27.)

**2202.** Any penalty prescribed by Section 2200 or Section 2201 shall be in addition to any remedy by injunction or action for damages or by writ of mandate for the nonperformance of acts and duties enjoined by law upon the corporation or its directors or officers.

The court in which an action for any such penalty is brought may reduce, remit or suspend the penalty on such terms and conditions as it may deem reasonable when it is made to appear that the neglect, failure or refusal was inadvertent or excusable.

(Repealed and added by Stats. 1975, Ch. 682.)

**2203.** (a) Any foreign corporation which transacts intrastate business and which does not hold a valid certificate from the Secretary of State may be subject to a penalty of twenty dollars (\$20) for each day that unauthorized



intrastate business is transacted; and the foreign corporation, by transacting unauthorized intrastate business, shall be deemed to consent to the jurisdiction of the courts of California in any civil action arising in this state in which the corporation is named a party defendant.

(b) The penalty established by subdivision (a) of this section shall be assessed according to the number of days it is found that the corporation has been willfully doing unauthorized intrastate business. Prosecution under this section may be brought, and the money penalty recovered thereby shall be paid, in the manner provided by Section 2258 for a prosecution brought under that section. The amount of the penalty assessed shall be determined by the court based upon the circumstances, including the size of the corporation and the willfulness of the violation.

(c) A foreign corporation subject to the provisions of Chapter 21 (commencing with Section 2100) which transacts intrastate business without complying with Section 2105 shall not maintain any action or proceeding upon any intrastate business so transacted in any court of this state, commenced prior to compliance with Section 2105, until it has complied with the provisions thereof and has paid to the Secretary of State a penalty of two hundred fifty dollars (\$250) in addition to the fees due for filing the statement and designation required by Section 2105 and has filed with the clerk of the court in which the action is pending receipts showing the payment of the fees and penalty and all franchise taxes and any other taxes on business or property in this state that should have been paid for the period during which it transacted intrastate business.

*(Amended by Stats. 1990, Ch. 926, Sec. 1.)*

**2204.** (a) Upon the failure of a corporation to file the statement required by Section 1502, the Secretary of State shall provide a notice of that delinquency to the corporation. The notice shall also contain information concerning the application of this section, advise the corporation of the penalty imposed by Section 19141 of the Revenue and Taxation Code for failure to timely file the required statement after notice of the delinquency has been provided by the Secretary of State, and shall advise the corporation of its right to request relief from the Secretary of State because of reasonable cause or unusual circumstances that justify the failure to file. If, within 60 days of providing notice of the delinquency, a statement pursuant to Section 1502 has not been filed by the corporation, the Secretary of State shall certify the name of the corporation to the Franchise Tax Board.

(b) Upon certification pursuant to subdivision (a), the Franchise Tax Board shall assess against the corporation the penalty provided in Section 19141 of the Revenue and Taxation Code.

(c) The penalty herein provided shall not apply to a corporation that on or prior to the date of certification pursuant to subdivision (a) has dissolved, has converted to another type of business entity, or has been merged into another corporation or other business entity.

(d) The penalty herein provided shall not apply and the Secretary of State need not provide a notice of the delinquency to a corporation if the corporate powers, rights, and privileges have been suspended by the Franchise Tax Board pursuant to Section 23301, 23301.5, or 23775 of the Revenue and Taxation Code on or prior to, and remain suspended on, the last day of the filing period pursuant to Section 1502. The Secretary of State need not provide notice of the filing requirement pursuant to Section 1502 to a corporation if the corporate powers, rights, and privileges have been so suspended by the Franchise Tax Board on or prior to, and remain suspended on, the day the Secretary of State prepares the notice for sending.

(e) If, after certification pursuant to subdivision (a), the Secretary of State finds (1) the required statement was filed before the expiration of the 60-day period after providing notice of the delinquency, or (2) the failure to provide notice of delinquency was due to an error of the Secretary of State, the Secretary of State shall promptly decertify the name of the corporation to the Franchise Tax Board. The Franchise Tax Board shall then promptly abate any penalty assessed against the corporation pursuant to Section 19141 of the Revenue and Taxation Code.

(f) If the Secretary of State determines that the failure of a corporation to file the statement required by Section 1502 is excusable because of reasonable cause or unusual circumstances that justify the failure, the Secretary of State may waive the penalty imposed by this section and by Section 19141 of the Revenue and Taxation Code, in which case the Secretary of State shall not certify the name of the corporation to the Franchise Tax Board, or if already certified, the Secretary of State shall promptly decertify the name of the corporation.

*(Amended by Stats. 2014, Ch. 834, Sec. 8. (SB 1041) Effective January 1, 2015.)*

**2205.** (a) A corporation that (1) fails to file a statement pursuant to Section 1502 for an applicable filing period, (2) has not filed a statement pursuant to Section 1502 during the preceding 24 months, and (3) was certified for penalty pursuant to Section 2204 for the same filing period, is subject to suspension pursuant to this section rather than to penalty pursuant to Section 2204.

(b) When subdivision (a) is applicable, the Secretary of State shall provide a notice to the corporation informing the corporation that its corporate powers, rights, and privileges will be suspended after 60 days if it fails to file a

statement pursuant to Section 1502.

(c) After the expiration of the 60-day period without any statement filed pursuant to Section 1502, the Secretary of State shall notify the Franchise Tax Board of the suspension and provide a notice of the suspension to the corporation, and thereupon, the corporate powers, rights, and privileges of the corporation are suspended, except for the purpose of filing an application for exempt status or amending the articles of incorporation as necessary either to perfect that application or to set forth a new name.

(d) A statement pursuant to Section 1502 may be filed notwithstanding suspension of the corporate powers, rights, and privileges pursuant to this section or Section 23301, 23301.5, or 23775 of the Revenue and Taxation Code. Upon the filing of a statement pursuant to Section 1502 by a corporation that has suffered suspension pursuant to this section, the Secretary of State shall certify that fact to the Franchise Tax Board and the corporation may thereupon be relieved from suspension unless the corporation is held in suspension by the Franchise Tax Board by reason of Section 23301, 23301.5, or 23775 of the Revenue and Taxation Code.

*(Amended by Stats. 2011, Ch. 204, Sec. 6. (AB 657) Effective January 1, 2012.)*

**2205.5.** (a) A domestic corporation, as defined in Section 167, may be subject to administrative dissolution pursuant to this section if, as of January 1, 2019, or at any time thereafter, the corporation's corporate powers, rights, and privileges are, and have been, suspended by the Franchise Tax Board pursuant to Article 7 (commencing with Section 23301) of Chapter 2 of Part 11 of Division 2 of the Revenue and Taxation Code for a period of not less than 60 continuous months.

(b) Prior to administrative dissolution of the corporation, the corporation shall be notified of the pending administrative dissolution as follows:

(1) The Franchise Tax Board shall mail written notice to the last known address of the corporation.

(2) If the corporation does not have a valid address in the records of the Franchise Tax Board, the notice provided in subdivision (d) shall be deemed sufficient notice prior to administrative dissolution.

(c) The Franchise Tax Board shall transmit to the Secretary of State the names and Secretary of State file numbers of the corporations subject to administrative dissolution pursuant to this section.

(d) The Secretary of State shall provide 60 days' notice of the pending administrative dissolution on its Internet Web site by listing the corporation's name and the Secretary of State's file number. The Secretary of State shall also, in conjunction with the information above, provide instructions for a corporation to submit a written objection of the pending administrative dissolution to the Franchise Tax Board, before the expiration of the 60 day's notice.

(e) (1) A corporation may provide the Franchise Tax Board with a written objection to the administrative dissolution.

(2) The Franchise Tax Board shall notify the Secretary of State if a written objection has been received.

(f) If a written objection to the administrative dissolution is not received by the Franchise Tax Board during the 60-day period described in subdivision (d), the corporation shall be administratively dissolved pursuant to this section. The certificate of dissolution of the Secretary of State shall be prima facie evidence of the administrative dissolution.

(g) (1) If the written objection of a corporation to the administrative dissolution has been received by the Franchise Tax Board before the expiration of the 60-day period described in subdivision (d), that corporation shall have an additional 90 days from the date the written objection is received by the Franchise Tax Board to file returns, pay or otherwise satisfy all accrued taxes, penalties, and interest, file a current Statement of Information with the Secretary of State, fulfill any other requirements to be eligible, and apply for revivor.

(2) (A) If the conditions in paragraph (1) are satisfied, the administrative dissolution shall be canceled.

(B) If the conditions in paragraph (1) are not satisfied, the corporation shall be administratively dissolved pursuant to this section as of the later of the date that is 90 days after the receipt of the written objection or after the period in paragraph (3), if so extended.

(3) The Franchise Tax Board may extend the 90-day period in paragraph (1), but for no more than one period of 90 days.

(h) Upon administrative dissolution pursuant to this section, the corporation's liabilities for qualified taxes, interest, and penalties, as defined in paragraph (2) of subdivision (b) of Section 23310 of the Revenue and Taxation Code, if any, shall be abated. Any actions taken by the Franchise Tax Board to collect the abated liability shall be released, withdrawn, or otherwise terminated by the Franchise Tax Board and no subsequent administrative or civil action shall be taken or brought to collect all or part of that amount.

(i) If the corporation is administratively dissolved pursuant to this section, the liability to creditors, if any, is not discharged. The liability of the directors, shareholders, transferees, or other persons related to the administratively dissolved corporation is not discharged.

(j) The administrative dissolution of a corporation pursuant to this section shall not diminish or adversely affect the ability of the Attorney General to enforce liabilities as otherwise provided by law.

(k) No administrative appeal, writ, or other judicial action may be taken based on the Franchise Tax Board's or the Secretary of State's actions pursuant to this section, except pursuant to subdivision (h) if related to repayment of amounts erroneously received after administrative dissolution has occurred.

(l) Upon administrative dissolution, the corporate rights, powers, and privileges of the corporation shall cease.

*(Added by Stats. 2018, Ch. 679, Sec. 1. (AB 2503) Effective January 1, 2019.)*

**2206.** (a) Sections 2204 and 2205 apply to foreign corporations with respect to the statements required to be filed by Section 2117. For this purpose, the suspension of the corporate powers, rights, and privileges of a domestic corporation shall mean the forfeiture of the exercise of the corporate powers, rights, and privileges of a foreign corporation in this state.

(b) A foreign nonprofit corporation which has suffered the forfeiture of the exercise of the corporate powers, rights, and privileges in this state may nevertheless file an application for exempt status as specified in Section 23301 of the Revenue and Taxation Code.

(c) The forfeiture of the exercise of the corporate powers, rights, and privileges of a foreign corporation in this state as used in subdivision (a) does not prohibit the transaction of business in this state by a foreign corporation if the business transacted subsequent to the forfeiture would not, considered as an entirety, require the foreign corporation to obtain a certificate of qualification pursuant to Sections 191 and 2105.

*(Added by Stats. 1985, Ch. 764, Sec. 8. Operative July 1, 1986, by Sec. 11 of Ch. 764.)*

**2207.** (a) A corporation is liable for a civil penalty in an amount not exceeding one million dollars (\$1,000,000) if the corporation does both of the following:

(1) Has actual knowledge that an officer, director, manager, or agent of the corporation does any of the following:

(A) Makes, publishes, or posts, or has made, published, or posted, either generally or privately to the shareholders or other persons, either of the following:

(i) An oral, written, or electronically transmitted report, exhibit, notice, or statement of its affairs or pecuniary condition that includes a material statement or omission that is false and intended to give the shares of stock in the corporation a materially greater or a materially less apparent market value than they really possess.

(ii) An oral, written, or electronically transmitted report, prospectus, account, or statement of operations, values, business, profits, or expenditures, that includes a material false statement or omission intended to give the shares of stock in the corporation a materially greater or a materially less apparent market value than they really possess.

(B) Refuses, or has refused to make, any book entry or post any notice required by law in the manner required by law.

(C) Misstates or conceals, or has misstated or concealed, from a regulatory body a material fact in order to deceive a regulatory body to avoid a statutory or regulatory duty, or to avoid a statutory or regulatory limit or prohibition.

(2) Within 30 days after actual knowledge is acquired of the actions described in paragraph (1), the corporation knowingly fails to do both of the following:

(A) Notify the Attorney General or appropriate government agency in writing, unless the corporation has actual knowledge that the Attorney General or appropriate government agency has been notified.

(B) Notify its shareholders in writing, unless the corporation has actual knowledge that the shareholders have been notified.

(b) The requirement for notification under this section does not apply if the action taken or about to be taken by the corporation, or by an officer, director, manager, or agent of the corporation under paragraph (1) of subdivision (a), is abated within the time prescribed for reporting, unless the appropriate government agency requires disclosure by regulation.

(c) If the action reported to the Attorney General pursuant to this section implicates the government authority of an agency other than the Attorney General, the Attorney General shall promptly forward the written notice to that agency.

(d) If the Attorney General was not notified pursuant to subparagraph (A) of paragraph (2) of subdivision (a), but the corporation reasonably and in good faith believed that it had complied with the notification requirements of this section by notifying a government agency listed in paragraph (5) of subdivision (e), no penalties shall apply.

(e) For purposes of this section:

(1) "Manager" means a person having both of the following:

(A) Management authority over a business entity.

(B) Significant responsibility for an aspect of a business that includes actual authority for the financial operations or financial transactions of the business.

(2) "Agent" means a person or entity authorized by the corporation to make representations to the public about the corporation's financial condition and who is acting within the scope of the agency when the representations are made.

(3) "Shareholder" means a person or entity that is a shareholder of the corporation at the time the disclosure is required pursuant to subparagraph (B) of paragraph (2) of subdivision (a).

(4) "Notify its shareholders" means to give sufficient description of an action taken or about to be taken that would constitute acts or omissions as described in paragraph (1) of subdivision (a). A notice or report filed by a corporation with the United States Securities and Exchange Commission that relates to the facts and circumstances giving rise to an obligation under paragraph (1) of subdivision (a) shall satisfy all notice requirements arising under paragraph (2) of subdivision (a), but is not the exclusive means of satisfying the notice requirements, if the Attorney General or appropriate agency is informed in writing that the filing has been made together with a copy of the filing or an electronic link where it is available online without charge.

(5) "Appropriate government agency" means an agency on the following list that has regulatory authority with respect to the financial operations of a corporation:

(A) Department of Business Oversight.

(B) Department of Insurance.

(C) Department of Managed Health Care.

(D) United States Securities and Exchange Commission.

(6) "Actual knowledge of the corporation" means the knowledge an officer or director of a corporation actually possesses or does not consciously avoid possessing, based on an evaluation of information provided pursuant to the corporation's disclosure controls and procedures.

(7) "Refuse to make a book entry" means the intentional decision not to record an accounting transaction when all of the following conditions are satisfied:

(A) The independent auditors required recordation of an accounting transaction during the course of an audit.

(B) The corporation's audit committee has not approved the independent auditor's recommendation.

(C) The decision is made for the primary purpose of rendering the financial statements materially false or misleading.

(8) "Refuse to post any notice required by law" means an intentional decision not to post a notice required by law when all of the following conditions exist:

(A) The decision not to post the notice has not been approved by the corporation's audit committee.

(B) The decision is intended to give the shares of stock in the corporation a materially greater or a materially less apparent market value than they really possess.

(9) "Misstate or conceal material facts from a regulatory body" means an intentional decision not to disclose material facts when all of the following conditions exist:

(A) The decision not to disclose material facts has not been approved by the corporation's audit committee.

(B) The decision is intended to give the shares of stock in the corporation a materially greater or a materially less apparent market value than they really possess.

(10) "Material false statement or omission" means an untrue statement of material fact or an omission to state a material fact necessary in order to make the statements made under the circumstances under which they were made not misleading.

(11) "Officer" means any person as set forth in Rule 16a-1 promulgated under the Securities Exchange Act of 1934 or any successor regulation thereto, except an officer of a subsidiary corporation who is not also an officer of the parent corporation.

(f) This section only applies to corporations that are issuers, as defined in Section 2 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. Sec. 7201 et seq.).

(g) An action to enforce this section may only be brought by the Attorney General or a district attorney or city attorney in the name of the people of the state.

*(Amended by Stats. 2016, Ch. 86, Sec. 48. (SB 1171) Effective January 1, 2017.)*

**2251.** Any promoter, director or officer of a corporation who knowingly and willfully issues or consents to the issuance of certificates for certificated securities, or initial transaction statements or written statements for uncertificated securities, in violation of this division with intent to defraud present or future shareholders, subscribers, purchasers of shares or creditors is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000) or imprisonment for not more than one year or both.

*(Amended by Stats. 1986, Ch. 766, Sec. 28.)*

**2252.** Every person (a) who signs the name of a fictitious person to any subscription for or agreement to take stock in any domestic or foreign corporation, existing or proposed, or (b) who signs to any subscription or agreement the name of any person, knowing that the person has no means or does not intend in good faith to comply with all the terms thereof or that there is any understanding or agreement that the terms of the subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor.

*(Added by Stats. 1975, Ch. 682.)*

**2253.** Any director of a stock corporation, domestic or foreign, who concurs in any vote or act of the directors of the corporation or any of them, knowingly and with dishonest or fraudulent purpose, to make any dividend or distribution of assets except in the cases and in the manner allowed by law, either with the design of defrauding creditors or shareholders or of giving a false appearance to the value of the stock and thereby defrauding subscribers or purchasers, is guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000) or imprisonment for not more than one year or both.

*(Added by Stats. 1975, Ch. 682.)*

**2254.** Every director, officer or agent of any corporation, domestic or foreign, is guilty of a felony (a) who knowingly concurs in making, publishing or posting either generally or privately to the shareholders or other persons (1) any written report, exhibit, statement of its affairs or pecuniary condition or notice containing any material statement which is false, or (2) any untrue or willfully or fraudulently exaggerated report, prospectus, account, statement of operations, values, business, profits, expenditures or prospects, or (3) any other paper or document intended to produce or give, or having a tendency to produce or give, the shares of stock in such corporation a greater value or a less apparent or market value than they really possess, or (b) who refuses to make any book entry or post any notice required by law in the manner required by law.

*(Added by Stats. 1975, Ch. 682.)*

**2255.** (a) Every director, officer or agent of any corporation, domestic or foreign, who knowingly receives or acquires possession of any property of the corporation, otherwise than in payment of a just demand, and, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of the corporation is guilty of a public offense.

(b) Every director, officer, agent or shareholder of any corporation, domestic or foreign, who, with intent to defraud, destroys, alters, mutilates or falsifies any of the books, papers, writings or securities belonging to the corporation or makes or concurs in omitting to make any material entry in any book of accounts or other record or document kept by the corporation is guilty of a public offense.

(c) Each public offense specified in this section is punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by imprisonment in a county jail not exceeding one year, or a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.

*(Amended by Stats. 2011, Ch. 15, Sec. 38. (AB 109) Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)*

**2256.** Every officer, agent or clerk of any corporation, domestic or foreign, or any person proposing to organize such a corporation or to increase the capital stock of any such corporation, who knowingly exhibits any false, forged or altered book, paper, voucher, security or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation or to investigate its affairs or to allow an increase of its

capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by imprisonment in a county jail for not exceeding one year.

*(Amended by Stats. 2011, Ch. 15, Sec. 39. (AB 109) Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)*

**2257.** Every person who, without being authorized so to do, subscribes the name of another to or inserts the name of another in any prospectus, circular or other advertisement or announcement of any corporation, domestic or foreign, whether existing or intended to be formed, with intent to permit the document to be published and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, shareholder or promoter of such corporation, when in fact no such relationship exists to the knowledge of such person, is guilty of a misdemeanor.

*(Added by Stats. 1975, Ch. 682.)*

**2258.** Any foreign corporation subject to the provisions of Chapter 21 which transacts intrastate business without complying therewith is guilty of a misdemeanor, punishable by fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000), to be recovered in any court of competent jurisdiction.

Prosecution under this section may be brought by the Attorney General or by any district attorney. If brought by the latter, one-half of the fine collected shall be paid to the treasurer of the county in which the conviction was had and one-half to the State Treasurer. If brought by the Attorney General the entire amount of fine collected shall be paid to the State Treasurer to the credit of the General Fund of the state.

*(Added by Stats. 1975, Ch. 682.)*

**2259.** Any person who transacts intrastate business on behalf of a foreign corporation which is not authorized to transact such business in this state, knowing that it is not so authorized, is guilty of a misdemeanor punishable by fine of not less than fifty dollars (\$50) nor more than six hundred dollars (\$600).

*(Amended by Stats. 1983, Ch. 1092, Sec. 75. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)*

**2260.** In a prosecution for a violation of Section 2252, 2253, 2254, 2255, 2256 or 2257, the fact that the corporation was a foreign corporation is not a defense, if it was carrying on business or keeping an office therefor within this state.

*(Amended by Stats. 1976, Ch. 641.)*

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**CORPORATIONS CODE - CORP****TITLE 1. CORPORATIONS [100 - 14631]** ( Title 1 enacted by Stats. 1947, Ch. 1038. )**DIVISION 1. GENERAL CORPORATION LAW [100 - 2319]** ( Division 1 repealed and added by Stats. 1975, Ch. 682. )**CHAPTER 22.5. Victims of Corporate Fraud Compensation Fund [2280 - 2296]** ( Chapter 22.5 added by Stats. 2012, Ch. 564, Sec. 4. )

**2280.** The Victims of Corporate Fraud Compensation Fund is hereby established in the State Treasury. The fund shall be administered by the Secretary of State for the sole purpose of providing restitution to the victims of a corporate fraud. The Secretary of State shall adopt regulations in furtherance of the administration of this chapter. Notwithstanding Section 13340 of the Government Code, the money in the fund is continuously appropriated to the Secretary of State for the purposes authorized by this chapter.

(Added by Stats. 2012, Ch. 564, Sec. 4. (SB 1058) Effective January 1, 2013.)

**2281.** As used in this chapter:

- (a) "Agent" means a person who was an officer or director of a corporation, as defined in subdivision (e), at the time the fraudulent acts occurred, was named in a final criminal restitution order in connection with the fraudulent acts, and was acting in the person's capacity as the corporation's officer or director when committing the fraudulent acts.
- (b) "Application" means a request for payment from the fund submitted to the Secretary of State pursuant to this chapter.
- (c) "Claimant" means an aggrieved person who resides in the state at the time of the fraud and who submits an application pursuant to this chapter.
- (d) "Complaint," for the purpose of an application based on a criminal restitution order, means the facts of the underlying transaction or transactions upon which the criminal restitution order is based.
- (e) "Corporation" means a domestic corporation as defined by Section 162 or 2509 or a foreign corporation that is qualified to transact business in California pursuant to Section 2105.
- (f) "Court of competent jurisdiction" means a state or federal court situated in California.
- (g) "Final judgment" means a judgment, arbitration award, or criminal restitution order for which appeals have been exhausted or for which the period for appeal has expired, enforcement of which is not barred by the order of any court or by any statutory provision, which has not been nullified or rendered void by any court order or statutory provision, and for which the claimant has not otherwise been fully reimbursed. The following are examples of final judgments:
  - (1) A civil judgment that has been entered against a corporation for fraud, misrepresentation, or deceit, with the intent to defraud, and includes findings of facts and conclusions of law.
  - (2) If the matter was submitted to arbitration, a copy of the arbitration decision and any other documentation supporting the arbitration award. An arbitration award against a corporation for conduct constituting fraud, misrepresentation, or deceit, with the intent to defraud, that includes findings of fact and conclusions of law rendered in accordance with the rules established by the American Arbitration Association or another recognized arbitration body, and in accordance with Sections 1280 to 1294.2, inclusive, of the Code of Civil Procedure where applicable, and where the arbitration award has been confirmed and reduced to judgment pursuant to Section 1287.4 of the Code of Civil Procedure.
  - (3) A criminal restitution order issued by a court of competent jurisdiction against a corporation, or an agent of the corporation, for fraud, misrepresentation, or deceit, with the intent to defraud, pursuant to subdivision (f) of



Section 1202.4 of the Penal Code or Section 3663 of Title 18 of the United States Code. An application for payment from the fund that is based on a criminal restitution order shall comply with all of the requirements of this chapter.

(h) "Fund" means the Victims of Corporate Fraud Compensation Fund created by Section 2280.

(i) "Judgment debtor" means a corporation or agent against which a judgment, arbitration award, or criminal restitution order has been entered for conduct constituting intentional fraud.

*(Amended by Stats. 2016, Ch. 390, Sec. 1. (AB 2759) Effective January 1, 2017.)*

**2282.** (a) When an aggrieved person obtains a final judgment in a court of competent jurisdiction against a corporation based upon the corporation's fraud, misrepresentation, or deceit, made with intent to defraud, or obtains a criminal restitution order against an agent based upon the agent's fraud, misrepresentation, or deceit, made with intent to defraud while acting in the agent's capacity as the corporation's officer or director, the aggrieved person may, upon the judgment becoming final and after diligent collection efforts are made, file an application with the Secretary of State for payment from the fund, within the limitations specified in Section 2289, for the amount unpaid on the judgment that represents the awarded actual and direct loss, any awarded compensatory damages, and awarded costs to the claimant in the final judgment, excluding punitive damages.

(b) The application shall be delivered in person or by certified mail to the Secretary of State not later than 18 months after the judgment has become final.

(c) The application shall be made on a form prescribed by the Secretary of State and shall include each of the following:

(1) The name and address of the claimant.

(2) If the claimant is represented by an attorney for the application, the name, business address, and telephone number of the attorney. If the claimant is not represented by an attorney for the application, a telephone number where the claimant can be reached during regular business hours shall be included.

(3) The name and address of the corporation and the agent, if any.

(4) The identification of the final judgment, the amount of the claim that remains unreimbursed from any source, and an explanation of the claim's computation.

(5) A copy of a final judgment and a copy of the civil complaint and any amendments thereto upon which the judgment finding fraud, misrepresentation, or deceit, made with the intent to defraud, was made shall be deemed to satisfy compliance with the requirements prescribed in this paragraph. The claimant may also provide any additional documentation that he or she believes may help the Secretary of State in evaluating the application, including, but not limited to, evidence submitted to the court in the underlying judgment or a detailed narrative statement of facts in explanation of the allegations of the complaint upon which the underlying judgment is based.

(6) If the final judgment is a criminal restitution order, the claimant shall provide the charging document and the restitution order, and if the defendant is an agent, documentation showing the defendant named in the restitution order is an agent as defined in this chapter.

(7) A description of searches and inquiries conducted by or on behalf of the claimant with respect to the judgment debtor's assets liable to be sold or applied to satisfaction of the judgment. A court's determination or finding of the judgment debtor's insolvency or lack of assets to pay the claimant shall be deemed to satisfy the requirements prescribed in this paragraph.

(8) Each of the following representations by the claimant:

(A) That the claimant is not a spouse, registered domestic partner, or an immediate family member of an employee, officer, director, managing agent, or other principal of the corporation nor a personal representative of the spouse, registered domestic partner, or an immediate family member of an employee, officer, director, managing agent, or other principal of the corporation.

(B) That the claimant has complied with all of the requirements of this section.

(C) That the judgment underlying the claim meets the requirements of subdivisions (a) and (b), including all of the following:

(i) That the judgment was for fraud, misrepresentation, or deceit by the corporation or the agent of the corporation, with the intent to defraud.

(ii) That the judgment is unpaid in part or in whole.

(iii) That the underlying judgment and debt have not been discharged in bankruptcy, or the underlying judgment is statutorily nondischargeable, or, in the case of a bankruptcy proceeding that is open at or after the time of the filing of the application, that the judgment and debt have been declared to be nondischargeable by the judge or

stipulated as nondischargeable by the parties in the proceeding and that the claimant has been granted permission by the bankruptcy court to proceed with collection or otherwise proceed with the claimant's claims against the judgment debtor or debtors.

(D) That the claimant does not have a pending claim and has not collected on the final judgment from any other restitution fund. If the claimant has a pending claim or has collected from another fund, a description of the nature of the pending claim and the recovery amounts from any restitution fund.

(d) (1) Except as provided in paragraphs (2), (3), and (4) the Secretary of State shall not condition an award of payment from the fund upon a claimant providing any additional information or documents other than those prescribed in subdivision (c).

(2) If the final judgment in favor of the claimant was by default, stipulated, a consent judgment, or pursuant to Section 594 of the Code of Civil Procedure or if the action against the corporation or its agent was defended by a trustee in bankruptcy, the Secretary of State may request additional documents and information from the claimant to determine whether the claim is valid.

(3) If the final judgment does not expressly set forth the amount of damages that were awarded for actual loss and compensatory damages that are payable from the fund pursuant to Section 2289, the Secretary of State may ask the claimant to provide copies of documentation pertaining to the amount of the actual and direct loss and the awarded compensatory damages or both of those findings. For purposes of this section, "sufficient proof of money damages" may include any of the following: copies of bank account statements showing or confirming particular transactions, copies of the front and back of checks made payable to the corporation that have been negotiated, credit card statements showing or confirming particular transactions, or similar documentation demonstrating financial loss directly resulting from the fraudulent acts by the corporation or its agent and the amount of compensatory damages awarded by the court.

(4) If there is no court determination or finding of the insolvency of the judgment debtor or lack of assets to pay the claimant, the Secretary of State may request additional information and documentation from the claimant to determine what assets, if any, are available to satisfy the final judgment.

(e) The Secretary of State shall include with the application form a notice to the claimant of his or her obligation to protect the underlying judgment from discharge in bankruptcy, to be appended to the application.

(f) If a claimant is a spouse, registered domestic partner, or an immediate family member of an employee, officer, director, managing agent, or other principal of the corporation, or is a personal representative of the spouse, registered domestic partner, or an immediate family member of an employee, officer, director, managing agent, or other principal of the corporation, the claimant shall not be precluded for that reason alone from receiving an award where the claimant can otherwise meet the requirements of this section.

*(Amended by Stats. 2017, Ch. 561, Sec. 25. (AB 1516) Effective January 1, 2018.)*

**2282.1.** (a) The Secretary of State shall provide notice to the corporation and all agents named in the application that a claimant has submitted an application for payment from the fund and shall also provide within that notice, as prescribed by the Secretary of State, the method to contest the payment from the fund.

(b) The notice to the corporation shall be provided by certified mail addressed to the corporation's last designated agent for service of process of record with the Secretary of State and notice shall be deemed complete five calendar days after the notice is mailed.

(c) If the corporation or its agent wishes to contest payment of an application by the Secretary of State, the corporation or agent shall mail or deliver a written response addressed to the Secretary of State within 30 calendar days of the notice of the application, and shall mail or deliver a copy of the response to the claimant. The written response of the corporation or agent shall not be directed to issues and facts conclusively established by the underlying judgment. If the corporation fails to mail or deliver a timely response, the corporation shall have waived the corporation's right to present objections to payment of the application, and shall not thereafter be entitled to notice of any action taken or proposed to be taken by the Secretary of State with respect to the application.

*(Amended by Stats. 2016, Ch. 390, Sec. 3. (AB 2759) Effective January 1, 2017.)*

**2282.2.** (a) The response by the corporation shall be by an officer or director and shall contain proof of service showing that a copy of the response was sent to the claimant, or if the claimant is represented by an attorney for purposes of the application, to the claimant's attorney, at the address specified in the application for the claimant or the claimant's attorney, respectively.

(b) If the corporation is not represented by an attorney in objecting to payment of the application, the response shall contain the name, title, and address of the officer, director, managing agent, or other responsible person

authorized to represent the corporation and the address at which the corporation wishes to receive correspondence and notices relating to the application, and a telephone number at which the corporation's representative can be reached during regular business hours. If the corporation is represented by an attorney in objecting to the application, the response shall contain the name, business address, and telephone number of the attorney.

*(Added by Stats. 2012, Ch. 564, Sec. 4. (SB 1058) Effective January 1, 2013.)*

**2283.** (a) If the Secretary of State determines that the application, as submitted by the claimant, fails to comply with the requirements of Section 2282, the Secretary of State shall, within 21 calendar days after receipt of the application by a single claimant or within 40 calendar days after receipt of the application by multiple claimants, mail an itemized list of deficiencies to the claimant.

(b) The time within which the Secretary of State is required to act under Section 2284 shall be measured from the date of receipt by the Secretary of State of a completed application. In the event of an irreconcilable dispute between the claimant and the Secretary of State on the question of whether the application is complete, the claimant may immediately file the claim with the court pursuant to Section 2287.

(c) If the Secretary of State has mailed one or more itemized lists of deficiencies to a claimant, and, if after 30 calendar days the Secretary of State has not received a response to the latest list of deficiencies, the Secretary of State shall notify the claimant that, unless the claimant responds to the deficiencies within a specified period of time of not less than 15 calendar days, the application will be denied.

*(Added by Stats. 2012, Ch. 564, Sec. 4. (SB 1058) Effective January 1, 2013.)*

**2284.** (a) The Secretary of State shall render a final written decision on the application within 90 calendar days after a completed application has been received unless the claimant agrees in writing to extend the time within which the Secretary of State may render a decision.

(b) The Secretary of State may deny or grant the application or may enter into a compromise with the claimant to pay less in settlement than the full amount of the claim. If the claimant refuses to accept a settlement of the claim offered by the Secretary of State, the written decision of the Secretary of State shall be to deny the claim. Evidence of settlement offers and discussions between the Secretary of State and the claimant shall not be competent evidence in judicial proceedings undertaken by the claimant pursuant to Section 2287.

(c) Upon issuance of a proposed decision to award payment or an offer to compromise, the claimant shall have 60 calendar days from the date of service of the proposed award or offer to compromise to accept the proposed award or offer to compromise. If the claimant fails to accept the proposed award or offer to compromise within the specified time, the application shall be deemed denied.

*(Added by Stats. 2012, Ch. 564, Sec. 4. (SB 1058) Effective January 1, 2013.)*

**2285.** The Secretary of State shall give written notice, as prescribed by the Secretary of State, of a decision rendered with respect to the application to the claimant.

*(Added by Stats. 2012, Ch. 564, Sec. 4. (SB 1058) Effective January 1, 2013.)*

**2286.** The Secretary of State shall give notice, as prescribed by the Secretary of State, to the corporation and all agents named in the application that the Secretary of State has made a decision to award funds to the claimant and shall provide a copy of the decision to the corporation and all agents named in the application.

*(Amended by Stats. 2016, Ch. 390, Sec. 4. (AB 2759) Effective January 1, 2017.)*

**2287.** (a) A claimant against whom the Secretary of State has rendered a decision denying an application may, within six months after the mailing of the notice of the denial, file a verified petition in superior court for an Order Directing Payment Out of the Victims of Corporate Fraud Compensation Fund based upon the grounds set forth in the application to the Secretary of State. If the underlying judgment is a California state court judgment, the petition shall be filed in the court in which the underlying judgment was entered. If the underlying judgment is not a California state court judgment or is a federal court judgment, the petition shall be filed in the superior court of any county within California that would have been a proper venue if the underlying lawsuit had been filed in a California state court, or in the Superior Court of the County of Sacramento.

(b) A copy of the petition shall be served upon the Secretary of State by the claimant. A certificate or affidavit of service shall be filed by the claimant with the court. Service on the Secretary of State may be made by mail addressed to the Secretary of State's office.

(c) The Secretary of State shall have 30 calendar days after being served with the petition in which to file a written response. The court shall thereafter set the matter for hearing upon the request of the claimant. The court shall grant a request of the Secretary of State for one continuance of as much as 30 calendar days and may, upon a showing of good cause by any party, continue the hearing as the court deems appropriate.

(d) The claimant shall have the burden of proving compliance with the requirements of Section 2282 by competent evidence at an evidentiary hearing. The claimant shall be entitled to a de novo review of the merits of the application as contained in the administrative record.

(e) At any time during the court proceedings, the petition may be compromised or settled by the Secretary of State and the court shall, upon joint petition of the claimant and the Secretary of State, issue an order directing payment out of the fund.

*(Added by Stats. 2012, Ch. 564, Sec. 4. (SB 1058) Effective January 1, 2013.)*

**2288.** (a) Whenever the court proceeds upon a petition under Section 2287, it shall order payment out of the fund only upon a determination that the aggrieved party has a valid cause of action within the purview of Section 2282, and has complied with Section 2287.

(b) (1) The Secretary of State may defend any action on behalf of the fund and shall have recourse to all appropriate means of defense and review, including examination of witnesses and the right to relitigate any issues that are material and relevant in the proceeding against the fund. The claimant's judgment shall create a rebuttable presumption of the fraud, misrepresentation, or deceit by the corporation, which presumption shall affect the burden of producing evidence.

(2) If the civil judgment, arbitration award, or criminal restitution order in the underlying action on which the final judgment in favor of the petitioner was by default, stipulation, consent, or pursuant to Section 594 of the Code of Civil Procedure, or if the action against the corporation or its agent was defended by a trustee in bankruptcy, the petitioner shall have the burden of proving that the cause of action against the corporation or its agent was for fraud, misrepresentation, or deceit.

(c) If the final judgment is a criminal restitution order against an agent, the petitioner shall have the burden of proving that the defendant named in the criminal restitution order qualifies as an agent as defined in this chapter. An active corporation, that has submitted a response to the application pursuant to Section 2282.2, may be permitted by the court to appear in the action regarding the sole issue of whether the defendant named in the criminal restitution order qualifies as its agent as defined in this chapter.

(d) The Secretary of State may move the court at any time to dismiss the petition when it appears there are no triable issues and the petition is without merit. The motion may be supported by affidavit of any person or persons having knowledge of the facts, and may be made on the basis that the petition, and the judgment referred to therein, does not form the basis for a meritorious recovery claim within the purview of Section 2282; provided, however, the Secretary of State shall give written notice at least 10 calendar days before hearing on the motion to the claimant.

*(Amended by Stats. 2016, Ch. 390, Sec. 5. (AB 2759) Effective January 1, 2017.)*

**2289.** (a) Notwithstanding any other provision of this chapter and regardless of the number of persons aggrieved in an instance of corporate fraud, or misrepresentation or deceit resulting in a judgment meeting the requirements of Section 2282, or the number of judgments against a corporation or its agent, the liability of the fund shall not exceed fifty thousand dollars (\$50,000) for any one claimant per single judgment finding fraud, misrepresentation, or deceit, made with the intent to defraud.

(b) When multiple corporations or their agents are involved in the same event or series of events that are the basis of the claimant's final judgment and the conduct of two or more of the corporations or their agents results in a judgment meeting the requirements of Section 2282, the claimant may seek recovery from the fund based on the judgment against any one of the corporations or their agents, subject to the limitations of subdivision (a).

(c) When multiple claimants are involved in a corporate fraud, or in misrepresentation or deceit by a corporation or its agents, resulting in a judgment meeting the requirements of Section 2282, each claimant may seek recovery from the fund individually, subject to the limitations of subdivision (a).

(d) Claimants who are spouses, registered domestic partners, or persons other than natural persons, that have obtained an eligible final judgment shall be considered one claimant.

*(Amended by Stats. 2016, Ch. 390, Sec. 6. (AB 2759) Effective January 1, 2017.)*

**2290.** If, at any time, the money deposited in the fund is insufficient to satisfy any duly authorized award or offer of settlement, the Secretary of State shall, when sufficient money has been deposited in the fund, satisfy the unpaid awards or offer of settlement, in the order that the awards or offers of settlement were originally filed.

*(Amended by Stats. 2016, Ch. 390, Sec. 7. (AB 2759) Effective January 1, 2017.)*

**2291.** Any sums received by the Secretary of State pursuant to any provisions of this chapter shall be deposited in the State Treasury and credited to the fund.

*(Added by Stats. 2012, Ch. 564, Sec. 4. (SB 1058) Effective January 1, 2013.)*

**2292.** It shall be unlawful for any person or the agent of any person to file with the Secretary of State any notice, statement, or other document required under the provisions of this chapter that is false or untrue or contains any willful, material misstatement of fact. That conduct shall constitute a public offense punishable by imprisonment in a county jail for a period of not more than one year or a fine of not more than one thousand dollars (\$1,000), or both.

*(Added by Stats. 2012, Ch. 564, Sec. 4. (SB 1058) Effective January 1, 2013.)*

**2293.** When the Secretary of State has paid from the fund any sum to the claimant, the Secretary of State shall be subrogated to all of the rights of the claimant and the claimant shall assign all of his or her right, title, and interest in the judgment to the Secretary of State and any amount and interest so recovered by the Secretary of State on the judgment shall be deposited in the fund.

*(Added by Stats. 2012, Ch. 564, Sec. 4. (SB 1058) Effective January 1, 2013.)*

**2293.1.** If the Secretary of State pays from the fund any amount in settlement of a claim or toward satisfaction of a final judgment against a corporation or its agent, the corporation or its agent shall be required to pay to the fund the amount paid plus interest at the prevailing legal rate applicable to a judgment rendered in any court of this state, within 30 calendar days of the date that the Secretary of State provided notice of the payment of the award or compromise. If the corporation or its agent fails to make the required payment to the fund within the required time, the corporation shall be suspended until the payment is made. A discharge in bankruptcy shall not relieve a corporation or its agent from the penalties and disabilities provided in this chapter.

*(Amended by Stats. 2016, Ch. 390, Sec. 8. (AB 2759) Effective January 1, 2017.)*

**2294.** The Secretary of State shall not make any award to a claimant from the fund if the claimant has received payment from any other restitution funds or for the portions of the judgment that the claimant has collected from the corporation or its agent or any other defendant in the underlying judgment.

*(Amended by Stats. 2016, Ch. 390, Sec. 9. (AB 2759) Effective January 1, 2017.)*

**2295.** The failure of an aggrieved person to comply with all of the provisions of this chapter shall constitute a waiver of any rights hereunder.

*(Added by Stats. 2012, Ch. 564, Sec. 4. (SB 1058) Effective January 1, 2013.)*

**2296.** This chapter shall apply to applications submitted to the Secretary of State on or after January 1, 2013.

*(Added by Stats. 2012, Ch. 564, Sec. 4. (SB 1058) Effective January 1, 2013.)*

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### CORPORATIONS CODE - CORP

**TITLE 1. CORPORATIONS [100 - 14631]** ( Title 1 enacted by Stats. 1947, Ch. 1038. )

**DIVISION 1. GENERAL CORPORATION LAW [100 - 2319]** ( Division 1 repealed and added by Stats. 1975, Ch. 682. )

### CHAPTER 23. Transition Provisions [2300 - 2319]

( Chapter 23 added by Stats. 1975, Ch. 682. )

**2300.** As used in this chapter, the term "new law" means this division of the Corporations Code as amended by act of the California Legislature, 1975–76 Regular Session, effective January 1, 1977, and as in effect on that date; the term "prior law" means the applicable law as in effect prior to January 1, 1977; and the term "effective date" means January 1, 1977.

(Added by Stats. 1975, Ch. 682.)

**2301.** (a) Except as otherwise expressly provided in this chapter, the provisions of the new law apply on and after the effective date to all corporations referred to in Section 162 existing on the effective date and to all actions taken by the directors or shareholders of such corporations on and after the effective date.

(b) Except as otherwise expressly provided in this chapter, all of the sections of the new law governing acts, contracts or other transactions by a corporation or its directors or shareholders apply only to such acts, contracts or transactions occurring on or after the effective date and the prior law governs such acts, contracts or transactions occurring prior thereto.

(c) Except as otherwise expressly provided in this chapter, any vote or consent by the directors or shareholders of a corporation prior to the effective date in accordance with the prior law shall be effective in accordance with the prior law and if any certificate or document is required to be filed in any public office of this state relating to such action, it may be filed after the effective date in accordance with the prior law.

(Added by Stats. 1975, Ch. 682.)

**2302.** The provisions of Sections 202, 204 (other than subdivision (a) thereof) and 205 of the new law relating to the contents of articles do not apply to corporations existing on the effective date unless and until an amendment of the articles is filed stating that the corporation elects to be governed by all of the provisions of the new law not otherwise applicable to it under this chapter. Such amendment may be adopted by approval of the board alone, except that, if any such amendment makes any change in the articles other than conforming the statement of purposes and powers to subdivision (b) of Section 202 and the deletion of any references to par value and location of principal office and deleting any statement regarding the number of directors or conforming any such statement to Section 212 (subject to Section 2304), it shall also be approved by the outstanding shares (Section 152) if such approval is otherwise required for the changes made. The amendment shall not name the corporation's initial agent for service of process if a report required by Section 1502 has been filed.

(Amended by Stats. 1977, Ch. 235.)

**2302.1.** The provisions of subdivision (a) of Section 204, insofar as they require the inclusion of certain provisions in the articles, do not apply to the provisions of bylaws in effect on the effective date and valid under the prior law, unless and until an amendment is filed pursuant to Section 2302.

(Added by Stats. 1977, Ch. 235.)

**2302.5.** The absence of any reference to par value in the articles of a corporation which is subject to the prior law relating to the contents of articles as specified in Section 2302 is equivalent to a statement that the shares of stock are to be without par value.



*(Added by Stats. 1985, Ch. 764, Sec. 8.5.)*

**2303.** Sections 206 and 207 of the new law apply to corporations existing on the effective date, but any statement in the articles of such corporation, prior to an amendment thereof pursuant to Section 2302, relating to the purposes or powers of the corporation shall not be construed as a limitation unless it is expressly stated as such.

*(Added by Stats. 1975, Ch. 682.)*

**2304.** The effect of a difference between the articles and bylaws in the statement of the number of directors shall not be governed by subdivision (a) of Section 212 of the new law for a corporation existing on the effective date, which shall continue to be governed by the prior law, unless and until an amendment of its articles is filed pursuant to Section 2302. If such amendment makes any change in the number of directors or the maximum or minimum number of directors or makes a change from a fixed to a variable board or vice versa, it shall also be approved by the outstanding shares (Section 152).

*(Amended by Stats. 1988, Ch. 919, Sec. 11.)*

**2305.** Subdivision (a) of Section 312 of the new law applies to a corporation existing on the effective date, but the "treasurer" of such corporation shall be deemed to be the "chief financial officer."

*(Amended by Stats. 1976, Ch. 641.)*

**2306.** Section 317 of the new law governs any proposed indemnification by a corporation after the effective date, whether the events upon which the indemnification is based occurred before or after the effective date. Any statement relating to indemnification contained in the articles or bylaws of a corporation on the effective date shall not be construed as limiting the indemnification permitted by Section 317 unless it is expressly stated as so intended.

*(Added by Stats. 1975, Ch. 682.)*

**2307.** Sections 417 and 418 of the new law relating to required statements on certificates representing shares apply to certificates representing shares of corporations existing on the effective date only if the shares are originally issued after the effective date, and the prior law shall continue to govern the certificates representing shares originally issued prior to the effective date, unless and until an amendment of the articles is filed pursuant to Section 2302, and the certificate is presented for transfer.

*(Amended by Stats. 1977, Ch. 235.)*

**2308.** Chapter 5 of the new law applies to any distribution to its shareholders made after the effective date by a corporation existing on the effective date, except that any such distribution effected pursuant to a contract for the purchase or redemption of shares entered into by the corporation prior to the effective date may be made if permissible under Chapter 5 or under the prior law in effect at the time the contract was entered into.

*(Added by Stats. 1975, Ch. 682.)*

**2309.** Subdivision (a) of Section 510 of the new law applies only to shares acquired after the effective date.

*(Added by Stats. 1975, Ch. 682.)*

**2310.** The provisions of Chapter 6 (commencing with Section 600) and Chapter 7 (commencing with Section 700) (other than Section 706) of the new law apply to any meeting of shareholders held after the effective date and to any action by shareholders pursuant to written consent which becomes effective after the effective date and to any vote cast at such a meeting or consent given for such action (whether or not a proxy or consent was executed by the shareholder prior to the effective date); provided, however, that the prior law shall apply to any such meeting of shareholders and to any vote cast at such a meeting if such meeting was initially called for a date prior to the effective date and notice thereof was given to shareholders entitled to vote thereat.

*(Amended by Stats. 1976, Ch. 641.)*

**2311.** Section 706 of the new law applies to agreements and voting trusts entered into after the effective date and prior law governs such agreements or trusts entered into prior thereto unless the agreement or trust is amended or extended thereafter, in which event the new law applies.

*(Added by Stats. 1975, Ch. 682.)*



**2312.** Section 800 of the new law applies to actions commenced after the effective date and prior law governs actions pending on the effective date.

*(Added by Stats. 1975, Ch. 682.)*

**2313.** Chapters 10 (commencing with Section 1000), 11 (commencing with Section 1100), 12 (commencing with Section 1200) and 13 (commencing with Section 1300) of the new law apply to transactions consummated after the effective date, unless a required approval of the outstanding shares (Section 152) has been given prior to the effective date or has been given after the effective date but at a meeting of shareholders initially called for a date prior to the effective date, in which case the transaction shall be governed by the prior law.

*(Amended by Stats. 1976, Ch. 641.)*

**2314.** Chapters 18 (commencing with Section 1800) and 20 (commencing with Section 2000) of the new law apply to actions for involuntary dissolution commenced after the effective date, but the prior law governs any such action pending on the effective date.

*(Amended by Stats. 1976, Ch. 641.)*

**2315.** Chapters 19 (commencing with Section 1900) and 20 (commencing with Section 2000) of the new law apply to any voluntary dissolution proceeding initiated by the filing of an election after the effective date, but the prior law governs any such proceeding so initiated prior to the effective date.

*(Amended by Stats. 1976, Ch. 641.)*

**2316.** A foreign association which has transacted intrastate business in this state prior to the effective date and which is required by Section 2105 of the new law to obtain a certificate of qualification from the Secretary of State shall not be subject to any direct or indirect penalty as a result of failure to obtain such certificate of qualification if the certificate of qualification is obtained no later than four months after the effective date.

*(Added by Stats. 1975, Ch. 682.)*

**2317.** When any corporate agent for service of process has been designated prior to the effective date and such designation of agent included a name of a city, town or village wherein the corporate agent maintained an office, service on such agent may be effected at any office of the agent set forth in the certificate of the corporate agent filed pursuant to Section 1505 of the new law or filed pursuant to Section 3301.5, 3301.6, 6403.5 or 6403.6 of the prior law, whether or not such office is in said city, town or village.

*(Amended by Stats. 1976, Ch. 641.)*

**2318.** Any corporation existing on the first day of January, 1873, formed under the laws of this state, and still existing, which has not already elected to continue its existence under the prior law, may, at any time, elect to continue its existence under the provisions of this code applicable thereto by the unanimous vote of all its directors, or such election may be made at any annual meeting of the shareholders, or at any meeting called by the directors especially for considering the subject, if voted by shareholders representing a majority of the voting power, or may be made by the directors upon the written consent of that number of the shareholders.

A certificate of the action of the directors, signed by them and their secretary, when the election is made by their unanimous vote, or upon the written consent of the shareholders, or a certificate of the proceedings of the meeting of the shareholders, when the election is made at any such meeting, signed by the chairman and secretary of the meeting and a majority of the directors, shall be filed in the office of the Secretary of State, and thereafter the corporation continues its existence under the provisions of this code which are applicable thereto, and possesses all the rights, and powers, and is subject to all the obligations, restrictions, and limitations prescribed thereby.

*(Added by Stats. 1975, Ch. 682.)*

**2319.** If the corporate rights, privileges and powers of a corporation have been suspended and are still suspended immediately prior to the effective date pursuant to Sections 5700 through 5908 of the old law and provisions of law there referred to, said sections and provisions continue to apply to such a corporation until restoration by the Controller pursuant to said sections.

*(Added by Stats. 1975, Ch. 682.)*