

Introduced by Senator Alarcon

February 21, 2003

An act to amend Section 309 of the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 917, as introduced, Alarcon. Corporations: director duties.

The General Corporation Law imposes a specified duty of care upon a director of a corporation when he or she serves as a member of any committee of the board of directors of the corporation. Existing law shields a director from liability based upon an alleged failure to discharge his or her obligations as a director if the director performs his or her duties in accordance with the duty of care.

This bill would prohibit a director from performing his or her duties at the expense of the environment, human rights, the public health and safety, the communities in which the corporation operates, or the dignity of the corporation's employees. The bill would, on and after January 1, 2017, make a corporation and, under certain conditions, a director liable for damages caused by a violation of these provisions. The bill would, on and after January 1, 2017, authorize the Attorney General to bring an action to enjoin a violation of these provisions or to pursue a civil penalty.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 309 of the Corporations Code is
2 amended to read:

1 309. (a) A director shall perform the duties of a director,
2 including duties as a member of any committee of the board upon
3 which the director may serve, in good faith, in a manner such
4 director believes to be in the best interests of the corporation and
5 its shareholders and with such care, including reasonable inquiry,
6 as an ordinarily prudent person in a like position would use under
7 similar circumstances. *However, a director shall not perform these*
8 *duties at the expense of the environment, human rights, the public*
9 *health and safety, the communities in which the corporation*
10 *operates, or the dignity of the employees of the corporation.*

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

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

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

21 (3) A committee of the board upon which the director does not
22 serve, as to matters within its designated authority, which
23 committee the director believes to merit confidence, so long as, in
24 any such case, the director acts in good faith, after reasonable
25 inquiry when the need therefor is indicated by the circumstances
26 and without knowledge that would cause such reliance to be
27 unwarranted.

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

35 (d) *If any corporation formed pursuant to the provisions of this*
36 *code violates any local, state, or federal law designed to protect*
37 *the environment, violates human rights, adversely affects the*
38 *public health or safety, damages the welfare of the communities in*
39 *which the corporation operates, or violates the dignity of its*
40 *employees, any person damaged by the action, may either in law*



1 or in equity, in a court of competent jurisdiction, sue the
2 corporation or any person who was a director of the corporation
3 either at the time the damage occurred or at the time the board of
4 directors approved the corporate action that led directly to the
5 damage.

6 (e) Notwithstanding any other provision of this code, no
7 director shall be liable as provided under this section if the director
8 can prove either of the following:

9 (1) The damage complained of was the direct result of an action
10 approved by the corporation's board of directors that the director
11 had voted against.

12 (2) The damage complained of was the direct result of an action
13 approved by the corporation and the approval occurred prior to
14 the director becoming a member of the board.

15 This subdivision shall not apply to corporations or its directors
16 if the consolidated annual revenues of the corporation, as
17 calculated in accordance with generally accepted accounting
18 principles, are less than fifteen million dollars (\$15,000,000).

19 (f) Any suit brought under subdivision (d) may be to recover
20 damages that represent the greater of the actual damage caused to
21 the plaintiff or three times the savings that accrued to the
22 corporation as the result of failing to safeguard the environment,
23 human rights, the public health or safety, the communities in which
24 the corporation operates, or the dignity of employees as required
25 by subdivision (a). The trier of fact may award punitive damages
26 against a defendant for violation of subdivision (a) if the plaintiff
27 has established by clear and convincing evidence that the
28 defendant knowingly, intentionally, or recklessly caused damage
29 to the environment or injury to any person or community other than
30 shareholders protected by subdivision (a) and an award is
31 necessary to punish the defendant for the conduct or to deter the
32 defendant from similar conduct in similar circumstances.

33 (g) Any director against whom a claim is asserted under
34 subdivision (d), and who is held liable pursuant to those
35 provisions, is entitled to contribution from the other directors who
36 are also liable or any other director who, if sued separately, would
37 have been liable to make the same payment.

38 (h) No action shall be maintained to enforce any liability under
39 subdivision (d) unless the action is brought within two years after
40 the discovery of the damage caused. In no event shall any action



1 *be brought to enforce liability created under subdivision (d) more*
2 *than six years after the time of the action of the corporation that*
3 *created the liability. No action shall be brought to enforce any*
4 *liability under subdivision (d) that accrues prior to January 1,*
5 *2017.*

6 *(i) Every person who, by or through stock ownership, agency*
7 *or otherwise, or who, pursuant to, or in connection with, an*
8 *agreement with one or more other persons, by or through stock*
9 *ownership, agency or otherwise, controls any person liable under*
10 *subdivision (d), shall also be jointly and severally liable to the*
11 *same extent as the controlled person to any person to whom the*
12 *controlled person is liable, unless the controlling person had no*
13 *knowledge of, or reasonable grounds to believe in, the existence of*
14 *the facts by reason of which the liability of the controlled person*
15 *is alleged to exist. For purposes of this subdivision, the term*
16 *“control,” including the terms “controls,” “controlled,” and*
17 *“controlling,” means the possession, direct or indirect, of the*
18 *power to direct or cause the direction of the management and*
19 *policies of a person, whether through the ownership of voting*
20 *securities, by contract, or otherwise.*

21 *(j) (1) Whenever it shall appear to the Attorney General that*
22 *any corporation is engaged, or about to engage in, any acts or*
23 *practices that constitute, or will constitute, a violation of the*
24 *provisions of subdivision (a) protecting the environment, human*
25 *rights, the public health and safety, the communities in which the*
26 *corporation operates, or the dignity of the employees of the*
27 *corporation, the Attorney General may in his or her discretion*
28 *bring an action to enjoin the acts or practices, and upon proper*
29 *showing, a permanent or temporary injunction or restraining*
30 *order shall be granted without bond.*

31 *(2) Whenever it shall appear to the Attorney General that any*
32 *corporation or person has violated the provisions of subdivision*
33 *(a) established to protect the environment, human rights, the*
34 *public health and safety, the communities in which the corporation*
35 *operates, or the employees of the corporation, the Attorney*
36 *General may bring an action and the court shall have jurisdiction*
37 *to impose, upon a proper showing, a civil penalty by the person*
38 *who committed the violation. Any penalty imposed pursuant to this*
39 *subdivision shall be payable to the State of California. The*



1 *provisions of this subdivision shall not become effective until*
2 *January 1, 2017.*

3 *(k) Upon motion, a court may award attorneys' fees to a*
4 *successful party against one or more defendants in any action that*
5 *has resulted in the enforcement of subdivision (a) against a*
6 *corporation or a director of the corporation if a significant benefit,*
7 *whether pecuniary or nonpecuniary, has been conferred on the*
8 *general public or a large class of persons other than shareholders,*
9 *the necessity and financial burden of private enforcement make the*
10 *award appropriate, and the fees should not in the interest of justice*
11 *be paid out of recovery, if any.*

