ASSEMBLY BILL No. 1233

Introduced by Assembly Member Silva

February 27, 2009

An act to amend Sections 5047, 5047.5, 5062, 5063.5, 5132, 5150, 5151, 5211, 5212, 5213, 5220, 5222, 5231, 6610, 7132, 7150, 7151, 7211, 7212, 7213, 7220, 7222, 7231, 8610, 9132, 9151, 9211, 9212, 9213, 9220, 9222, 9241, 9680, 9916, 12233, 12241, 12242.5, 12330, 12331, 12351, 12352, 12353, 12360, 12362, 12371, 12630, 12694, 18360, and 24001.5 of, to add Sections 5039.5 and 12228.5 to, and to add Article 6 (commencing with Section 9260) to Chapter 2 of Part 4 of Division 2 of Title 1, the Corporations Code, relating to corporations.

legislative counsel's digest

AB 1233, as introduced, Silva. Nonprofit and consumer cooperative corporations: nonprofit medical associations.

(1) Existing law, the Nonprofit Corporation Law, regulates the organization and operation of nonprofit public benefit corporations, nonprofit mutual benefit corporations, and nonprofit religious corporations. Existing law, the Consumer Cooperative Corporation Law, regulates the organization and operation of consumer cooperatives.

Under those laws, the term "director" is defined as a natural person, designated in the articles or bylaws or elected by the incorporators, as well as natural persons designated, elected or appointed by any other name or title to act as members of the governing body of the corporation.

This bill would specify that a person who does not have authority to act as a member of that governing body is not a director, but if the articles or bylaws provide that a natural person is a director or a member of the governing body because he or she occupies a certain position, then that person is a director for all purposes.

Existing law authorizes the article of incorporation and bylaws of nonprofit corporations and consumer cooperatives to contain certain provisions, including, but not limited to, a provision requiring that an amendment or repeal of those articles or bylaws be approved in writing by a specified person or persons other than the board. Existing law also authorizes the articles or bylaws to provide for the designation or selection of directors by a specified person or persons rather than by election by a member or members and similarly to authorize a specified person or persons to remove a designated or selected director.

This bill would specify that these approval requirements and designation and selection, and removal entitlements are inapplicable in those circumstances when the specified person or persons have died or ceased to exist, the office or status that created the right or entitlement ceased to exist, or when the corporation has attempted and failed to obtain approval from the specified person or persons.

Under existing law, a majority of the number of directors, authorized in the articles or bylaws, constitutes a quorum for the transaction of business of a nonprofit corporation or a consumer cooperative.

This bill would, subject to certain limitations, authorize the articles or bylaws to require the presence of one or more specified directors in order to constitute a quorum of the board to transact business.

Existing law authorizes a board of a nonprofit corporation or a consumer cooperative to form one or more committees consisting of 2 or more directors to serve at the pleasure of the board and provides that these committees have the authority of the board.

This bill would prohibit a committee exercising the authority of the board from including, as members, persons who are not directors; however, the bill would authorize the board to create other committees with nondirectors that do not exercise the authority of the board.

Existing law requires a nonprofit corporation or consumer cooperative to have a chairman or a president or both, a secretary, a chief financial officer, and other officers as provided in the bylaws or determined by the board.

This bill would require such a corporation to have a chair, as defined, or a president or both, a secretary, a treasurer or a chief financial officer or both, and other officers as provided in the bylaws or determined by the board. The bill would also specify that if there is no chief financial officer, the treasurer is the chief financial officer.

Existing law authorizes a nonprofit corporation or consumer cooperative to elect to voluntarily wind up and dissolve by approval of a majority of the members, as defined, or by approval of the board and approval of the members, as defined.

This bill would authorize such a corporation meeting certain requirements, including the lack of a quorum, to elect to voluntarily wind up and dissolve, as specified.

Under existing law, certain public benefit corporations deemed to be private foundations, as defined, are subject to Federal Internal Revenue Code requirements.

This bill would make those requirements applicable to nonprofit religious corporations deemed to be a private foundation.

(2) Existing law prohibits a cause of action for monetary damages from arising against any director or officer of a nonprofit corporation or a nonprofit medical association, who serves without compensation, on account of any specified negligent act or omission if the nonprofit corporation or nonprofit medical association has a general liability insurance policy in a specified amount that is in force both at the time of the injury and at the time the claim is made.

This bill would instead prohibit those causes of action if these corporations or associations maintain a liability insurance policy that is applicable to the claim.

(3) Existing law regulates unincorporated associations. Existing law authorizes an unincorporated association to merge into a specified corporation, limited partnership, general partnership, or limited liability company.

This bill would authorize an unincorporated association to merge with one of these entities.

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

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

SECTION 1. Section 5039.5 is added to the Corporations Code, to read:

5039.5. The term “chair” includes “chairperson,” “chairman,” and “chairwoman.” All references in this division to “chairman” shall be deemed to refer to “chair.”

SEC. 2. Section 5047 of the Corporations Code is amended to read:

5047. Except where otherwise expressly provided, "directors" means natural persons, designated in the articles or bylaws or elected by the incorporators, and their successors and natural persons designated, elected or appointed by any other name or title to act as members of the governing body of the corporation. *A person who does not have authority to act as a member of the governing body of the corporation, including through voting rights as a member of the governing body, is not a director as that term is used in this division regardless of title. However, if the articles or bylaws designate that a natural person is a director or a member of the governing body of the corporation by reason of occupying a specified position within or outside the corporation, that person shall be a director for all purposes and shall have the same rights and obligations, including voting rights, as the other directors.*

SEC. 3. Section 5047.5 of the Corporations Code is amended to read:

5047.5. (a) The Legislature finds and declares that the services of directors and officers of nonprofit corporations who serve without compensation are critical to the efficient conduct and management of the public service and charitable affairs of the people of California. The willingness of volunteers to offer their services has been deterred by a perception that their personal assets are at risk for these activities. The unavailability and unaffordability of appropriate liability insurance makes it difficult for these corporations to protect the personal assets of their volunteer decisionmakers with adequate insurance. It is the public policy of this state to provide incentive and protection to the individuals who perform these important functions.

(b) Except as provided in this section, no cause of action for monetary damages shall arise against any person serving without compensation as a director or officer of a nonprofit corporation subject to Part 2 (commencing with Section 5110), Part 3 (commencing with Section 7110), or Part 4 (commencing with Section 9110) of this division on account of any negligent act or omission occurring (1) within the scope of that person's duties as a director acting as a board member, or within the scope of that person's duties as an officer acting in an official capacity; (2) in good faith; (3) in a manner that the person believes to be in the best interest of the corporation; and (4) is in the exercise of his or her policymaking judgment.

(c) This section shall not limit the liability of a director or officer for any of the following:

(1) Self-dealing transactions, as described in Sections 5233 and 9243.

(2) Conflicts of interest, as described in Section 7233.

(3) Actions described in Sections 5237, 7236, and 9245.

(4) In the case of a charitable trust, an action or proceeding against a trustee brought by a beneficiary of that trust.

(5) Any action or proceeding brought by the Attorney General.

(6) Intentional, wanton, or reckless acts, gross negligence, or an action based on fraud, oppression, or malice.

(7) Any action brought under Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code.

(d) This section only applies to nonprofit corporations organized to provide religious, charitable, literary, educational, scientific, social, or other forms of public service that are exempt from federal income taxation under Section 501(c)(3) or 501(c)(6) of the Internal Revenue Code.

(e) This section applies only if the nonprofit corporation maintains a ~~general~~ liability insurance policy with an amount of coverage of at least the following amounts:

(1) If the corporation's annual budget is less than fifty thousand dollars ($50,000), the minimum required amount is five hundred thousand dollars ($500,000).

(2) If the corporation's annual budget equals or exceeds fifty thousand dollars ($50,000), the minimum required amount is one million dollars ($1,000,000).

This section applies only if the claim against the director or officer ~~may~~ *can* also be made directly against the corporation and a ~~general~~ liability insurance policy ~~is in force both at the time of injury and at the time the claim against the corporation is made, so that a policy~~ is applicable to the claim. If ~~a general liability~~ *that* policy is found to cover the damages caused by the director or officer, no cause of action as provided in this section shall be maintained against the director or officer.

(f) For the purposes of this section, the payment of actual expenses incurred in attending meetings or otherwise in the execution of the duties of a director or officer shall not constitute compensation.

(g) Nothing in this section shall be construed to limit the liability of a nonprofit corporation for any negligent act or omission of a director, officer, employee, agent, or servant occurring within the scope of his or her duties.

(h) This section does not apply to any corporation that unlawfully restricts membership, services, or benefits conferred on the basis of political affiliation, age, or any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code.

(i) This section does not apply to any volunteer director or officer who receives compensation from the corporation in any other capacity, including, but not limited to, as an employee.

SEC. 4. Section 5062 of the Corporations Code is amended to read:

5062. "Officer's certificate" means a certificate signed and verified by the ~~chairman~~ *chair* 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.

SEC. 5. Section 5063.5 of the Corporations Code is amended to read:

5063.5. "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)~~ *(9)* 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.

SEC. 6. Section 5132 of the Corporations Code is amended to read:

5132. (a) The articles of incorporation may set forth any or all of the following provisions, which shall not be effective unless expressly provided in the articles:

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

(2) In the case of a subordinate corporation instituted or created under the authority of a head organization, a provision setting forth either or both of the following:

(i) That the subordinate corporation shall dissolve whenever its charter is surrendered to, taken away by, or revoked by the head organization granting it.

(ii) That in the event of its dissolution pursuant to an article provision allowed by subdivision (a), paragraph (2), clause (i), of this section, or, in the event of its dissolution for any reason, any assets of the corporation after compliance with the applicable provisions of Chapters 15 (commencing with Section 6510), 16 (commencing with Section 6610) and 17 (commencing with Section 6710) shall be distributed to the head organization.

(b) Nothing contained in subdivision (a) shall affect the enforceability, as between the parties thereto, of any lawful agreement not otherwise contrary to public policy.

(c) The articles of incorporation may set forth any or all of the following provisions:

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

(2) The classes of members, if any, and if there are two or more classes, the rights, privileges, preferences, restrictions and conditions attaching to each class.

(3) A provision ~~which~~ *that* would allow any member to have more or less than one vote in any election or other matter presented to the members for a vote.

(4) A provision that requires an amendment to the articles, as provided in subdivision ~~(c)~~ *(a)* of Section 5812, or to the bylaws, and any amendment or repeal of that amendment, to be approved in writing by a specified person or persons other than the board or the members. *However, this approval requirement, unless the articles specify otherwise, shall not apply if any of the following circumstances exist:*

(A) The specified person or persons have died or ceased to exist.

(B) If the right of the specified person or persons to approve is in the capacity of an officer, trustee, or other status and the office, trust, or status has ceased to exist.

(C) If the corporation has a specific proposal for amendment or repeal, and the corporation has provided written notice of that proposal, including a copy of the proposal, to the specified person

or persons at the most recent address for each of them, based on the corporation's records, and the corporation has not received written approval or nonapproval within the period specified in the notice, which shall not be less than 10 nor more than 30 days commencing at least 20 days after the notice has been provided.

(5) Any other provision, not in conflict with law, for the management of the activities and for the conduct of the affairs of the corporation, including any provision ~~which~~ *that* is required or permitted by this part to be stated in the bylaws.

SEC. 7. Section 5150 of the Corporations Code is amended to read:

5150. (a) Except as provided in subdivision (c), and Sections 5151, 5220, 5224, 5512, 5613, and 5616, bylaws may be adopted, amended or repealed by the board unless the action would materially and adversely affect the rights of members as to voting or transfer.

(b) Bylaws may be adopted, amended or repealed by approval of members (Section 5034); provided, however, that such adoption, amendment or repeal also requires approval by the members of a class if ~~such~~ *that* action would materially and adversely affect the rights of that class as to voting or transfer in a manner different than ~~such~~ *that* action affects another class.

(c) The articles or bylaws may restrict or eliminate the power of the board to adopt, amend or repeal any or all bylaws, subject to subdivision (e) of Section 5151.

(d) Bylaws may also provide that repeal or amendment of those bylaws, or the repeal or amendment of specified portions of those bylaws, may occur only with the approval in writing of a specified person or persons other than the board or members. *However, this approval requirement, unless the bylaws specify otherwise, shall not apply if any of the following circumstances exist:*

(1) The specified person or persons have died or ceased to exist.

(2) If the right of the specified person or persons to approve is in the capacity of an officer, trustee, or other status and the office, trust, or status has ceased to exist.

(3) If the corporation has a specific proposal for amendment or repeal, and the corporation has provided written notice of that proposal, including a copy of the proposal, to the specified person or persons at the most recent address for each of them, based on the corporation's records, and the corporation has not received

written approval or nonapproval within the period specified in the notice, which shall not be less than 10 nor more than 30 days commencing at least 20 days after the notice has been provided.

SEC. 8. Section 5151 of the Corporations Code is amended to read:

5151. (a) The bylaws shall set forth (unless ~~such~~ *that* 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 the method of determining 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 with the exact number of directors to be fixed, within the limits specified, by approval of the board or the members (Section 5034), in the manner provided in the bylaws, subject to subdivision (e) ~~of Section 5151~~. The number or minimum number of directors may be one or more.

(b) Once members have been admitted, 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 members (Section 5034).

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

(1) Any provision referred to in subdivision (c) of Section 5132.

(2) The time, place and manner of calling, conducting and giving notice of members', directors' and committee meetings, or of conducting mail ballots.

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

(4) The appointment and authority of committees.

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

(6) The mode of determination of members of record.

(7) The making of reports and financial statements to members.

(8) Setting, imposing and collecting dues, assessments and admission fees.

(d) The bylaws may provide for the manner of admission, withdrawal, suspension, and expulsion of members, consistent with the requirements of Section 5341.

(e) The bylaws may require, for any or all corporate actions (except as provided in paragraphs (1) and (2) of subdivision (a) of Section 5222, subdivision (c) of Section 5616, and Section 6610), the vote of a larger proportion of, or all of, the members or the members of any class, unit, or grouping of members, or the vote of a larger proportion of, or all of, the directors, than is otherwise required by this part. Such a provision in the bylaws requiring such greater vote shall not be altered, amended or repealed except by such greater vote, unless otherwise provided in the bylaws.

(f) The bylaws may contain a provision limiting the number of members, in total or of any class, which the corporation is authorized to admit.

SEC. 9. Section 5211 of the Corporations Code is amended to read:

5211. (a) Unless otherwise provided in the articles or in the bylaws, all of the following apply:

(1) Meetings of the board may be called by the chair 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 first-class 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 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 meetings.

(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 use of 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 number of directors authorized in *or pursuant to* the articles or bylaws constitutes a quorum of the board for the transaction of business. *The articles or bylaws may require the presence of one or more specified directors in order to constitute a quorum of the board to transact business, as long as the death of a director or the death or nonexistence of the person or persons otherwise authorized to appoint or designate that director does not prevent the corporation from transacting business in the normal course of events.* The articles or bylaws may not provide that a quorum shall be less than one-fifth the number of directors authorized in *or pursuant to* the articles or bylaws, or less than two, whichever is larger, unless the number of directors authorized in *or pursuant to* the articles or bylaws is one, in which case one director constitutes a quorum.

(8) Subject to the provisions of Sections 5212, 5233, 5234, 5235, and subdivision (e) of Section 5238, 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. 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, or a greater number required by this division, the articles or *the* bylaws.

(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. The written consent or consents shall be filed with the minutes of the proceedings of the board. The action by written consent shall have the same force and effect as a unanimous vote of the directors. For purposes of this subdivision only, "all members of the board" does not include an "interested director" as defined in Section 5233.

(c) Each director present and voting at a meeting shall have one vote on each matter presented to the board of directors for action at that meeting. No director may vote at any meeting by proxy.

~~(c)~~

(d) The provisions of this section apply also to incorporators, to committees of the board, and to action by those incorporators or committees mutatis mutandis.

SEC. 10. Section 5212 of the Corporations Code is amended to read:

5212. (a) The board may, by resolution adopted by a majority of the number of directors then in office, provided that a quorum is present, create one or more committees, each consisting of two or more directors, to serve at the pleasure of the board. Appointments to ~~such~~ committees shall be by a majority vote of the directors then in office, unless the articles or bylaws require a majority vote of the number of directors authorized in *or pursuant to* the articles or bylaws. The bylaws may authorize one or more committees, each consisting of two or more directors, and may provide that a specified officer or officers who are also directors of the corporation shall be a member or members of ~~such~~ *a* committee or committees. The board may appoint one or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. 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:

(1) The approval of any action for which this part also requires approval of the members (Section 5034) or approval of a majority of all members (Section 5033)*, regardless of whether the corporation has members*.

(2) The filling of vacancies on the board or in any committee which has the authority of the board.

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

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

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

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

(7) The expenditure of corporate funds to support a nominee for director after there are more people nominated for director than can be elected.

(8) The approval of any self-dealing transaction except as provided in paragraph (3) of subdivision (d) of Section 5233.

(b) ~~Subdivision (a) shall not apply to any committee which does not exercise the authority of the board.~~ *A committee exercising the authority of the board shall not include as members persons who are not directors. However, the board may create other committees that do not exercise the authority of the board and these other committees may include persons who are not directors.*

(c) Unless the bylaws otherwise provide, the board may delegate to any committee powers as authorized by Section 5210, but may not delegate the powers set forth in paragraphs (1)~~ through~~ *to* (8), *inclusive,* of subdivision (a)~~ of this section~~.

SEC. 11. Section 5213 of the Corporations Code is amended to read:

5213. (a) A corporation shall have a~~ chairman~~ *chair* of~~ the~~ *its* board*, who may be given the title chair of the board, chairperson of the board, chairman of the board, or chairwoman of the board,* or a president or both, a secretary, a *treasurer or a* chief financial officer *or both,* and ~~such~~ *any* other officers with ~~such~~ *any* 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. The president, or if there is no president the ~~chairman~~ *chair* of the board, is the general manager and chief executive officer of the corporation, unless otherwise provided in the articles or bylaws. *Unless otherwise specified in the articles or the bylaws, if there is no chief financial officer, the treasurer is the chief financial officer of the corporation.* Any number of offices may be held by the same person unless the articles or bylaws provide otherwise, except that ~~neither~~ the secretary ~~nor~~*, the treasurer, or* the chief financial officer may *not* serve concurrently as the president or ~~chairman~~ *chair* of the board.

(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.

(c) If the articles or bylaws provide for the election of any officers by the members, the term of office of the elected officer shall be one year unless the articles or bylaws provide for a different term which shall not exceed three years.

SEC. 12. Section 5220 of the Corporations Code is amended to read:

5220. (a) Except as provided in subdivision (d), directors shall be elected for the terms, not longer than four years, as are fixed in the articles or bylaws. However, the terms of directors of a corporation without members may be up to six years. In the absence of any provision in the articles or bylaws, the term shall be one year. The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups of one or more directors. The terms of office of the several groups and the number of directors in each group need not be uniform. No amendment of the articles or bylaws may extend the term of a director beyond that for which the director was elected, nor may any bylaw provision increasing the terms of directors be adopted without approval of the members (Section 5034).

(b) Unless the articles or bylaws otherwise provide, 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*, unless the director has been removed from office*.

(c) The articles or bylaws may provide for the election of one or more directors by the members of any class voting as a class.

(d) Subdivisions (a) through (c) notwithstanding, all or any portion of the directors authorized in the articles or bylaws of a corporation may hold office by virtue of designation or selection as provided by the articles or bylaws rather than by election by a member or members *or the board*. Those directors shall continue in office for the term prescribed by the governing article or bylaw provision, or, if there is no term prescribed, until the governing article or bylaw provision is duly amended or repealed, except as provided in subdivision (e) of Section 5222. A bylaw provision authorized by this subdivision may be adopted, amended, or repealed only by approval of the members (Section 5034), subject, if so provided in the bylaws, to the consent of the person or persons entitled to designate or select the director or directors. *Unless otherwise provided in the articles or bylaws, the entitlement to designate or select the director or directors shall not apply if any of the following circumstances exist:*

(1) The specified person or persons have died or ceased to exist.

(2) If the entitlement of the person or persons to designate is in the capacity of an officer, trustee, or other status and the office, trust, or status has ceased to exist. After this cessation, the members or, if there are no members, the board shall succeed to this entitlement to designate or select the director or directors.

(e) If a corporation has not issued memberships and (1) all the directors resign, die, or become incompetent, or (2) a corporation's initial directors have not been named in the articles and all incorporators resign, die, or become incompetent before 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.

SEC. 13. Section 5222 of the Corporations Code is amended to read:

5222. (a) Subject to subdivisions (b) and (f), any or all directors may be removed without cause if:

(1) In a corporation with fewer than 50 members, the removal is approved by a majority of all members (Section 5033).

(2) In a corporation with 50 or more members, the removal is approved by the members (Section 5034).

(3) In a corporation with no members, the removal is approved by a majority of the directors then in office.

(b) Except for a corporation having no members pursuant to Section 5310:

(1) In a corporation in which the articles or bylaws authorize members to cumulate their votes pursuant to subdivision (a) of Section 5616, no director may be removed (unless the entire board is removed) if 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 ballot, all memberships 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) If by the provisions of the articles or bylaws the members of any class, voting as a class, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members of that class.

(3) If by the provisions of the articles or bylaws the members within a chapter or other organizational unit, or region or other geographic grouping, voting as such, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members within the organizational unit or geographic grouping.

(c) Any reduction of the authorized number of directors or any amendment reducing the number of classes of directors does not remove any director prior to the expiration of the director's term of office *unless the reduction or any amendment also provides for the removal of one or more specified directors*.

(d) Except as provided in this section and Sections 5221 and 5223, a director may not be removed prior to the expiration of the director's term of office.

(e) If a director removed under this section or Section 5221 or 5223 was chosen by designation pursuant to subdivision (d) of Section 5220, then:

(1) If a different person may be designated pursuant to a governing article or bylaw provision, the new designation shall be made.

(2) If the governing article or bylaw provision contains no provision under which a different person may be designated, the governing article or bylaw provision shall be deemed repealed.

(f) If by the provisions of the articles or bylaws a person or persons are entitled to designate one or more directors, then:

(1) Unless otherwise provided in the articles or bylaws at the time of designation, any director so designated may be removed without cause by the designating person or persons.

(2) Any director so designated may only be removed under subdivision (a) with the written consent of the designating person or persons.

(3) Unless otherwise provided in the articles or bylaws, the right to remove shall not apply if any of the following circumstances exist:

(A) The person or persons entitled to that right have died or ceased to exist.

(B) If that right to remove is in the capacity of an officer, trustee, or other status, and the office, trust, or status has ceased to exist. After this cessation, the members or, if there are no members, the board shall succeed to this right to remove.

SEC. 14. Section 5231 of the Corporations Code is amended to read:

5231. (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~~ *that* director believes to be in the best interests of the corporation 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:

(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~~ *that* person's professional or expert competence; or

(3) A committee ~~of the board~~ upon which the director does not serve *that is composed exclusively of any or any combination of directors, persons described in paragraph (1), or persons described in paragraph (2)*, as to matters within ~~its~~ *the committee's* 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~~ *that* reliance to be unwarranted.

(c) Except as provided in Section 5233, 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, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat a public or charitable purpose to which a corporation, or assets held by it, are dedicated.

SEC. 15. Section 6610 of the Corporations Code is amended to read:

6610. (a) Any corporation may elect voluntarily to wind up and dissolve (1) by approval of a majority of all members (Section 5033) or (2) by approval of the board and approval of the members (Section 5034).

(b) Any corporation which comes within one of the following descriptions may elect by approval of the board to wind up and dissolve:

(1) A corporation which has been adjudicated a bankrupt.

(2) A corporation which has disposed of all of its assets and has not conducted any activity for a period of five years immediately preceding the adoption of the resolution electing to dissolve the corporation.

(3) A corporation which has no members.

(4) A corporation which is required to dissolve under provisions of its articles adopted pursuant to subdivision (a), paragraph (2), clause (i), of Section 5132.

(c) If a corporation comes within one of the descriptions in subdivision (b) and the number of directors then in office is less

than a quorum, the corporation may elect to voluntarily wind up and dissolve by any of the following:

(1) The unanimous 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 waiver of notice by those directors complying with subdivision (a) of Section 5211.

(3) The vote of a sole remaining director.

(d) If a corporation elects to voluntarily wind up and dissolve pursuant to subdivision (c), references to the board in this chapter and Chapter 17 (commencing with Section 6710) shall be deemed to be to a board consisting solely of those directors or that sole director and action by the board shall require at least the same consent or vote as would be required under subdivision (c) for an election to wind up and dissolve.

SEC. 16. Section 7132 of the Corporations Code is amended to read:

7132. (a) The articles of incorporation may set forth any or all of the following provisions, which shall not be effective unless expressly provided in the articles:

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

(2) A provision conferring upon the holders of any evidences of indebtedness, issued or to be issued by a corporation the right to vote in the election of directors and on any other matters on which members may vote under this part even if the corporation does not have members.

(3) A provision conferring upon members the right to determine the consideration for which memberships shall be issued.

(4) In the case of a subordinate corporation instituted or created under the authority of a head organization, a provision setting forth either or both of the following:

(i) That the subordinate corporation shall dissolve whenever its charter is surrendered to, taken away by, or revoked by the head organization granting it.

(ii) That in the event of its dissolution pursuant to an article provision allowed by subdivision (a), paragraph (4), clause (i), of this section, or, in the event of its dissolution for any reason, any assets of the corporation after compliance with the applicable provisions of Chapters 15 (commencing with Section 8510), 16 (commencing with Section 8610), and 17 (commencing with Section 8710) shall be distributed to the head organization.

(b) Nothing contained in subdivision (a) shall affect the enforceability, as between the parties thereto, of any lawful agreement not otherwise contrary to public policy.

(c) The articles of incorporation may set forth any or all of the following provisions:

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

(2) Provisions concerning the transfer of memberships, in accordance with Section 7320.

(3) The classes of members, if any, and if there are two or more classes, the rights, privileges, preferences, restrictions and conditions attaching to each class.

(4) A provision which would allow any member to have more or less than one vote in any election or other matter presented to the members for a vote.

(5) A provision that requires an amendment to the articles, *as provided in subdivision (a) of Section 7812,* or to the bylaws, and any amendment or repeal of that amendment, to be approved in writing by a specified person or persons other than the board or the members. *However, this approval requirement, unless the articles specify otherwise, shall not apply if any of the following circumstances exist:*

(A) The specified person or persons have died or ceased to exist.

(B) If the right of the specified person or persons to approve is in the capacity of an officer, trustee, or other status and the office, trust, or status has ceased to exist.

(C) If the corporation has a specific proposal for amendment or repeal, and the corporation has provided written notice of that proposal, including a copy of the proposal, to the specified person or persons at the most recent address for each of them, based on the corporation's records, and the corporation has not received written approval or nonapproval within the period specified in the notice, which shall not be less than 10 nor more than 30 days commencing at least 20 days after the notice has been provided.

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

SEC. 17. Section 7150 of the Corporations Code is amended to read:

7150. (a) Except as provided in subdivision (c) and Sections 7151, 7220, 7224, 7512, 7613, and 7615, bylaws may be adopted, amended or repealed by the board unless the action would:

(1) Materially and adversely affect the rights of members as to voting, dissolution, redemption, or transfer;

(2) Increase or decrease the number of members authorized in total or for any class;

(3) Effect an exchange, reclassification or cancellation of all or part of the memberships; or

(4) Authorize a new class of membership.

(b) Bylaws may be adopted, amended or repealed by approval of the members (Section 5034); provided, however, that such adoption, amendment or repeal also requires approval by the members of a class if such action would:

(1) Materially and adversely affect the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption, or transfer in a manner different than such action affects another class;

(2) Materially and adversely affect such class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions or conditions of another class;

(3) Increase or decrease the number of memberships authorized for such class;

(4) Increase the number of memberships authorized for another class;

(5) Effect an exchange, reclassification or cancellation of all or part of the memberships of such class; or

(6) Authorize a new class of memberships.

(c) The articles or bylaws may restrict or eliminate the power of the board to adopt, amend or repeal any or all bylaws, subject to subdivision (e) of Section 7151.

(d) Bylaws may also provide that the repeal or amendment of those bylaws, or the repeal or amendment of specified portions of those bylaws, may occur only with the approval in writing of a specified person or persons other than the board or members. *However, this approval requirement, unless the bylaws specify otherwise, shall not apply if any of the following circumstances exist:*

(1) The specified person or persons have died or ceased to exist.

(2) If the right of the specified person or persons to approve is in the capacity of an officer, trustee, or other status and the office, trust, or status has ceased to exist.

(3) If the corporation has a specific proposal for amendment or repeal, and the corporation has provided written notice of that proposal, including a copy of the proposal, to the specified person or persons at the most recent address for each of them, based on the corporation's records, and the corporation has not received written approval or nonapproval within the period specified in the notice, which shall not be less than 10 nor more than 30 days commencing at least 20 days after the notice has been provided.

SEC. 18. Section 7151 of the Corporations Code is amended to read:

7151. (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 the method of determining 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 with the exact number of directors to be fixed, within the limits specified, by approval of the board or the members (Section 5034), in the manner provided in the bylaws, subject to subdivision (e)~~ of Section 7151~~. The number or minimum number of directors may be one or more.

(b) Once members have been admitted, 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 members (Section 5034).

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

(1) Any provision referred to in subdivision (c) of Section 7132.

(2) The time, place and manner of calling, conducting and giving notice of members', directors' and committee meetings, or of conducting mail ballots.

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

(4) The appointment of committees, composed of directors or nondirectors or both, by the board or any officer and the authority of any such committees.

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

(6) The mode of determination of members of record.

(7) The making of reports and financial statements to members.

(8) Setting, imposing and collecting dues, assessments, and admission and transfer fees.

(d) The bylaws may provide for the manner of admission, withdrawal, suspension, and expulsion of members, consistent with the requirements of Section 7341.

(e) The bylaws may require, for any or all corporate actions (except as provided in paragraphs (1) and (2) of subdivision (a) of Section 7222, subdivision (c) of Section 7615, and Section 8610) the vote of a larger proportion of, or all of, the members or the members of any class, unit, or grouping of members or the vote of a larger proportion of, or all of, the directors, than is otherwise required by this part. Such a provision in the bylaws requiring such greater vote shall not be altered, amended or repealed except by such greater vote, unless otherwise provided in the bylaws.

(f) The bylaws may contain a provision limiting the number of members, in total or of any class, which the corporation is authorized to admit.

SEC. 19. Section 7211 of the Corporations Code is amended to read:

7211. (a) Unless otherwise provided in the articles or in the bylaws, all of the following apply:

(1) Meetings of the board may be called by the chair 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 first-class 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 provided a waiver of notice or 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 meetings.

(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 if 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 use of 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 number of directors authorized in *or pursuant to* the articles or bylaws constitutes a quorum of the board for the transaction of business. *The articles or bylaws may require the presence of one or more specified directors in order to constitute a quorum of the board to transact business, as long as*

the death of a director or the death or nonexistence of the person or persons otherwise authorized to appoint or designate that director does not prevent the corporation from transacting business in the normal course of events. The articles or bylaws may not provide that a quorum shall be less than one-fifth the number of directors authorized in *or pursuant to* the articles or bylaws, or less than two, whichever is larger, unless the number of directors authorized in *or pursuant to* the articles or bylaws is one, in which case one director constitutes a quorum.

(8) Subject to the provisions of Sections 7212, 7233, 7234, and subdivision (e) of Section 7237 and Section 5233, insofar as it is made applicable pursuant to Section 7238, 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. 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, or a greater number required by this division, the articles or *the* bylaws.

(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. The written consent or consents shall be filed with the minutes of the proceedings of the board. The action by written consent shall have the same force and effect as a unanimous vote of the directors. For purposes of this subdivision only, "all members of the board" does not include an "interested director" as defined in Section 5233, insofar as it is made applicable pursuant to Section 7238.

(c) Each director present and voting at a meeting shall have one vote on each matter presented to the board of directors for action at that meeting. No director may vote at any meeting by proxy.

~~(c)~~

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

SEC. 20. Section 7212 of the Corporations Code is amended to read:

7212. (a) The board may, by resolution adopted by a majority of the number of directors then in office, provided that a quorum is present, create one or more committees, each consisting of two or more directors, to serve at the pleasure of the board. Appointments to ~~such~~ committees shall be by a majority vote of the directors then in office, unless the articles or bylaws require a majority vote of the number of directors authorized in *or pursuant to* the articles or bylaws. The bylaws may authorize one or more committees, each consisting of two or more directors, and may provide that a specified officer or officers who are also directors of the corporation shall be a member or members of ~~such~~ *a* committee or committees. The board may appoint one or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. 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:

(1) The approval of any action for which this part also requires approval of the members (Section 5034) or approval of a majority of all members (Section 5033)*, regardless of whether the corporation has members*.

(2) The filling of vacancies on the board or in any committee which has the authority of the board.

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

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

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

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

(7) The expenditure of corporate funds to support a nominee for director after there are more people nominated for director than can be elected.

(8) With respect to any assets held in charitable trust, the approval of any self-dealing transaction except as provided in paragraph (3) of subdivision (d) of Section 5233.

(b) ~~Subdivision (a) shall not apply to any committee which does not exercise the authority of the board.~~ *A committee exercising the authority of the board shall not include as members persons who* *are not directors. However, the board may create other committees that do not exercise the authority of the board and these other committees may include persons who are not directors.*

(c) Unless the bylaws otherwise provide, the board may delegate to any committee, appointed pursuant to paragraph (4) of subdivision (c) of Section 7151 or otherwise, powers as authorized by Section 7210, but may not delegate the powers set forth in paragraphs (1) ~~through~~ *to* (8), *inclusive,* of subdivision (a) ~~of this section~~.

SEC. 21. Section 7213 of the Corporations Code is amended to read:

7213. (a) A corporation shall have a ~~chairman~~ *chair* of ~~the~~ *its* board, *who may be given the title chair of the board, chairperson of the board, chairman of the board, or chairwoman of the board,* or a president or both, a secretary, a *treasurer or a* chief financial officer and ~~such~~ *any* other officers with ~~such~~ *any* 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. The president, or if there is no president the ~~chairman~~ *chair* of the board, is the general manager and chief executive officer of the corporation, unless otherwise provided in the articles or bylaws. *Unless otherwise specified in the articles or the bylaws, if there is no chief financial officer, the treasurer is the chief financial officer of the corporation.* 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.

SEC. 22. Section 7220 of the Corporations Code is amended to read:

7220. (a) Except as provided in subdivision (d), directors shall be elected for such terms, not longer than four years, as are fixed in the articles or bylaws. However, the terms of directors of a corporation without members may be up to six years. In the absence of any provision in the articles or bylaws, the term shall be one year. The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups of one or more directors. The terms of office of the several groups and the number of directors in each group need not be uniform. No amendment of the articles or bylaws may extend the term of a director beyond that for which the director was elected, nor may any bylaw provision increasing the terms of directors be adopted without approval of the members (Section 5034).

(b) Unless the articles or bylaws otherwise provide, 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*, unless the director has been removed from office*.

(c) The articles or bylaws may provide for the election of one or more directors by the members of any class voting as a class.

(d) Subdivisions (a) through (c) notwithstanding, all or any portion of the directors authorized in the articles or bylaws of a corporation may hold office by virtue of designation or selection as provided by the articles or bylaws rather than by election by a member or members *or the board*. Such directors shall continue in office for the term prescribed by the governing article or bylaw provision, or, if there is no term prescribed, until the governing article or bylaw provision is duly amended or repealed, except as provided in subdivision (e) of Section 7222. A bylaw provision authorized by this subdivision may be adopted, amended, or repealed only by approval of the members (Section 5034). *Unless otherwise provided in the articles or bylaws, the entitlement to designate or select the director or directors shall not apply if any of the following circumstances exist:*

(1) The specified person or persons have died or ceased to exist.

(2) If the entitlement of the person or persons to designate is in the capacity of an officer, trustee, or other status and the office, trust, or status has ceased to exist. After this cessation, the members or, if there are no members, the board shall succeed to this entitlement to designate or select the director or directors.

(e) If a corporation has not issued memberships and (1) all the directors resign, die, or become incompetent, or (2) a corporation's initial directors have not been named in the articles and all incorporators resign, die, or become incompetent before 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.

SEC. 23. Section 7222 of the Corporations Code is amended to read:

7222. (a) Subject to subdivisions (b) and (f)~~ of this section~~, any or all directors may be removed without cause if:

(1) In a corporation with fewer than 50 members, the removal is approved by a majority of all members (Section 5033).

(2) In a corporation with 50 or more members, the removal is approved by the members (Section 5034).

(3) In a corporation with no members, the removal is approved by a majority of the directors then in office.

(b) Except for a corporation having no members, pursuant to Section 7310:

(1) In a corporation in which the articles or bylaws authorize members to cumulate their votes pursuant to subdivision (a) of Section 7615, 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 ballot, all memberships 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 or bylaws the members of any class, voting as a class, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members of that class.

(3) When by the provisions of the articles or bylaws the members within a chapter or other organizational unit, or region or other geographic grouping, voting as such, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members within the organizational unit or geographic grouping.

(c) Any reduction of the authorized number of directors or any amendment reducing the number of classes of directors does not remove any director prior to the expiration of the director's term of office *unless the reduction or amendment also provides for the removal of one or more specified directors*.

(d) Except as provided in this section and Sections 7221 and 7223, a director may not be removed prior to the expiration of the director's term of office.

(e) Where a director removed under this section or Section 7221 or 7223 was chosen by designation pursuant to subdivision (d) of Section 7220, then:

(1) Where a different person may be designated pursuant to the governing article or bylaw provision, the new designation shall be made.

(2) Where the governing article or bylaw provision contains no provision under which a different person may be designated, the governing article or bylaw provision shall be deemed repealed.

(f) When by the provisions of the articles or bylaws a person or persons are entitled to designate one or more directors, then:

(1) Unless otherwise provided in the articles or bylaws at the time of designation, any director so designated may be removed without cause by the designating person or persons.

(2) Any director so designated may only be removed under subdivision (a) with the written consent of the designating person or persons.

(3) Unless otherwise provided in the articles or bylaws, the right to remove shall not apply if any of the following circumstances exist:

(A) The person or persons entitled to that right have died or ceased to exist.

(B) If that right to remove is in the capacity of an officer, trustee, or other status, and the office, trust, or status has ceased to exist. After this cessation, the members or, if there are no members, the board shall succeed to this right to remove.

SEC. 24. Section 7231 of the Corporations Code is amended to read:

7231. (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 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:

(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; or

(3) A committee ~~of the board~~ upon which the director does not serve *that is composed exclusively of any or any combination of directors, persons described in paragraph (1), or persons described in paragraph (2),* as to matters within ~~its~~ *the committee's* 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, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat a public or charitable purpose to which assets held by a corporation are dedicated.

SEC. 25. Section 8610 of the Corporations Code is amended to read:

8610. (a) Any corporation may elect voluntarily to wind up and dissolve (1) by approval of a majority of all members (Section 5033), or (2) by approval of the board and approval of the members (Section 5034).

(b) Any corporation which comes within one of the following descriptions may elect by approval of the board to wind up and dissolve:

(1) A corporation which has been adjudicated as bankrupt.

(2) A corporation which has disposed of all of its assets and has not conducted any activity for a period of five years immediately preceding the adoption of the resolution electing to dissolve the corporation.

(3) A corporation which has no members.

(4) A corporation which is required to dissolve under provisions of its articles adopted pursuant to subdivision (a), paragraph (4), clause (i) of Section 7132.

(c) If a corporation comes within one of the descriptions in subdivision (b) and if the number of directors then in office is less than a quorum, it may elect to voluntarily wind up and dissolve by any of the following:

(1) The unanimous 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 waiver of notice by those directors complying with paragraph (3) of subdivision (a) of Section 7211.

(3) The vote of a sole remaining director.

(d) If a corporation elects to voluntarily wind up and dissolve pursuant to subdivision (c), references to the board in this chapter and Chapter 17 (commencing with Section 8710) shall be deemed to be to a board consisting solely of those directors or that sole director and action by the board shall require at least the same consent or vote as would be required under subdivision (c) for an election to wind up and dissolve.

SEC. 26. Section 9132 of the Corporations Code is amended to read:

9132. (a) The articles of incorporation may set forth any or all of the following provisions, which shall not be effective unless expressly provided in the articles:

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

(2) In the case of a subordinate corporation instituted or created under the authority of a head organization, a provision setting forth either or both of the following:

(i) That the subordinate corporation shall dissolve whenever its charter is surrendered to, taken away by, or revoked by the head organization granting it.

(ii) That in the event of its dissolution pursuant to an article provision allowed by subdivision (a), paragraph (2), clause (i), of this section, or, in the event of its dissolution for any reason, any assets of the corporation after compliance with the applicable provisions of Chapters 16 (commencing with Section 6610) and 17 (commencing with Section 6710) (made applicable pursuant to Section 9680) shall be distributed to the head organization.

(b) Nothing contained in subdivision (a) shall affect the enforceability, as between the parties thereto, of any lawful agreement not otherwise contrary to public policy.

(c) The articles of incorporation may set forth any or all of the following provisions:

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

(2) The classes of members, if any, and if there are two or more classes, the rights, privileges, preferences, restrictions and conditions attaching to each class.

(3) A provision which would allow any member to have more or less than one vote in any election or other matter presented to the members for a vote.

(4) A provision that requires an amendment to the articles or to the bylaws, and any amendment or repeal of that amendment, to be approved in writing by a specified person or persons other than the board or the members. *However, this approval requirement, unless the articles or the bylaws specify otherwise, shall not apply if any of the following circumstances exist:*

(A) The specified person or persons have died or ceased to exist.

(B) If the right of the specified person or persons to approve is in the capacity of an officer, trustee, or other status and the office, trust, or status has ceased to exist.

(C) If the corporation has a specific proposal for amendment or repeal, and the corporation has provided written notice of that proposal, including a copy of the proposal, to the specified person or persons at the most recent address for each of them, based on the corporation's records, and the corporation has not received written approval or nonapproval within the period specified in the notice, which shall not be less than 10 nor more than 30 days commencing at least 20 days after the notice has been provided.

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

SEC. 27. Section 9151 of the Corporations Code is amended to read:

9151. (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 the method of determining 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 with the exact number of directors to be fixed, within the limits specified, by approval of the board or the members (Section 5034), in the manner provided in the bylaws, subject to subdivision (e) of Section 9151. The number or minimum number of directors may be one or more.

(b) Except as otherwise provided in the articles or bylaws, once members have been admitted, 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 members (Section 5034).

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

(1) Any provision referred to in subdivision (c) of Section 9132.

(2) The time, place and manner of calling, conducting and giving notice of members', directors' and committee meetings, or of conducting mail ballots.

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

(4) The appointment of committees, composed of directors or nondirectors or both, by the board or any officer and the authority of any such committees.

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

(6) The mode of determination of members of record.

(7) The making of reports and financial statements to members.

(8) Setting, imposing and collecting dues, assessments, and admissions and transfer fees.

(d) The bylaws may provide for the manner of admission, withdrawal, suspension, and expulsion of members.

(e) The bylaws may require, for any or all corporate actions (except as provided in Section 9222 and subdivision (b) of Section 9680), the vote of a larger proportion of, or all of, the members or the members of any class, unit, or grouping of members, or the vote of a larger proportion of, or all of, the directors than is otherwise required by this part. Such a provision in the bylaws requiring such greater vote shall not be altered, amended or repealed except by such greater vote, unless otherwise provided in the bylaws.

(f) The bylaws may contain a provision limiting the number of members, in total or of any class, which the corporation is authorized to admit.

SEC. 28. Section 9211 of the Corporations Code is amended to read:

9211. (a) Unless otherwise provided in the articles or in the bylaws, all of the following apply:

(1) Meetings of the board may be called by the chair 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 first-class mail or 48 hours' notice delivered personally or by telephone, including a voice messaging system or by electronic transmission by a 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 provided a waiver of notice or 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 meetings.

(4) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place.

(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. 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 use of 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 number of directors authorized in *or pursuant to* the articles or bylaws constitutes a quorum of the board for the transaction of business.

The articles or bylaws may require the presence of one or more specified directors to constitute a quorum of the board to transact business, as long as the death of a director or the death or nonexistence of the person or persons otherwise authorized to appoint or designate that director does not prevent the corporation from transacting business in the normal course of events.

(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. 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, or a greater number as is required by this division, the articles or bylaws.

(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. The written consent or consents shall be filed with the minutes of the proceedings of the board. The action by written consent shall have the same force and effect as a unanimous vote of the directors.

(c) Each director present and voting at a meeting shall have one vote on each matter presented to the board of directors for action at that meeting. No director may vote at any meeting by proxy.

~~(c)~~

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

SEC. 29. Section 9212 of the Corporations Code is amended to read:

9212. (a) Subject to any provision in the articles or bylaws: (i) the board may, by resolution adopted by a majority of the number of directors then in office, provided that a quorum is present, create one or more committees, each consisting of two or more directors, to serve at the pleasure of the board; and (ii) appointments to ~~such~~ *those* committees shall be by a majority vote of the directors then in office. The bylaws may authorize one or more committees, each consisting of two or more directors, and may provide that a specified officer or officers who are also directors of the corporation shall be a member or members of ~~such~~ *that* committee or committees. The board may appoint one or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. 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:

(1) The approval of any action for which this part also requires approval of the members (Section 5034) or approval of a majority of all members (Section 5033) *regardless of whether the corporation has members*.

(2) The filling of vacancies on the board or in any committee which has the authority of the board.

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

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

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

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

(b) ~~Subdivision (a) shall not apply to any committee which does not exercise the authority of the board.~~ *A committee exercising the authority of the board shall not include as members persons who are not directors. However, the board may create other committees that do not exercise the authority of the board and these other committees may include persons who are not directors.*

(c) Unless the bylaws otherwise provide, the board may delegate to any committee powers as authorized by Section 9210, but may not delegate the powers set forth in paragraphs (1) ~~through~~ *to* (6), *inclusive,* of subdivision (a) ~~of this section~~.

SEC. 30. Section 9213 of the Corporations Code is amended to read:

9213. (a) A corporation shall have a ~~chairman~~ *chair* of the board*, who may be given the title chair of the board, chairman of the board, or chairwoman of the board,* or a president or both, a secretary, a *treasurer or a* chief financial officer and 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. The president, or if there is no president, the ~~chairman~~ *chair* of the board, is the general manager and chief executive officer of the corporation, unless otherwise provided in the articles or bylaws. *If there is no chief financial officer, the treasurer is the chief financial 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, except that ~~neither~~ the secretary ~~nor~~, *the treasurer, or* the chief financial officer may serve concurrently as the president or ~~chairman~~ *chair* of the board.

(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.

SEC. 31. Section 9220 of the Corporations Code is amended to read:

9220. (a) The articles or bylaws may provide for the tenure, election, selection, designation, removal, and resignation of directors.

(b) In the absence of any provision in the articles or bylaws, the term of directors shall be one year.

(c) Unless the articles or bylaws otherwise provide, 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*, unless the director has been removed from office*.

(d) If a corporation has not issued memberships and (1) all the directors resign, die, or become incompetent, or (2) a corporation's initial directors have not been named in the articles and all incorporators resign, die, or become incompetent before 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.

SEC. 32. Section 9222 of the Corporations Code is amended to read:

9222. (a) Except as provided in the articles or bylaws and subject to subdivision (b) of this section, any or all directors may be removed without cause if the removal is approved by the members (Section 5034).

(b) Except for a corporation having no members pursuant to Section 9310:

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

(2) When by the provisions of the articles or bylaws the members within a chapter or other organizational unit, or region or other geographic grouping, voting as such, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members within the organizational unit or geographic grouping.

(c) Any reduction of the authorized number of directors or any amendment reducing the number of classes of directors does not remove any director prior to the expiration of the director's term of office*, unless the reduction or the amendment also provides for the removal of one or more specified directors*.

SEC. 33. Section 9241 of the Corporations Code is amended to read:

9241. (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 with such care, including reasonable inquiry, as is appropriate under the 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:

(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~~ *that* person's professional or expert competence;

(3) A committee ~~of the board~~ upon which the director does not serve *that is composed exclusively of any or any combination of directors, persons described in paragraph (1), or persons described in paragraph (2)*, as to matters within ~~its~~ *the committee's* designated authority, which committee the director believes to merit confidence; or

(4) Religious authorities and ministers, priests, rabbis, or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented, 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~~ *that* reliance to be unwarranted.

(c) The provisions of this section, and not Section 9243, shall govern any action or omission of a director in regard to the compensation of directors, as directors or officers, or any loan of money or property to or guaranty of the obligation of any director or officer. No obligation, otherwise valid, shall be voidable merely because directors who benefited by a board resolution to pay such compensation or to make such loan or guaranty participated in making such board resolution.

(d) Except as provided in Section 9243, 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 his or her obligations as a director, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat any purpose to which the corporation, or assets held by it, may be dedicated.

SEC. 34. Article 6 (commencing with Section 9260) is added to Chapter 2 of Part 4 of Division 2 of Title 1 of the Corporations Code, to read:

Article 6. Compliance with Internal Revenue Code

9260. Any other provision of law notwithstanding, every corporation, during any period or periods that corporation is deemed to be a "private foundation" as defined in Section 509 of the Internal Revenue Code of 1954 as amended by Section 101 of the Tax Reform Act of 1969, shall be subject to the requirements of Section 5260.

SEC. 35. Section 9680 of the Corporations Code is amended to read:

9680. (a) Chapters 16 (commencing with Section 6610) and 17 (commencing with Section 6710) of Part 2 apply to religious corporations except for Sections 6610, 6614, 6710, 6711 and 6716.

(b) (1) Any corporation may elect voluntarily to wind up and dissolve (A) by approval of a majority of all the members (Section 5033) or (B) by approval of the board and approval of the members (Section 5034).

(2) Any corporation which comes within one of the following descriptions may elect by approval of the board to wind up and dissolve:

(A) A corporation which has been adjudicated a bankrupt.

(B) A corporation which has disposed of all its assets and has not conducted any activity for a period of five years immediately preceding the adoption of the resolution electing to dissolve the corporation.

(C) A corporation which has no members.

(D) A corporation which is required to dissolve under provisions of its articles adopted pursuant to subparagraph (i) of paragraph (2) of subdivision (a) of Section 9132.

(3) If a corporation comes within one of the descriptions in paragraph (2) and if the number of directors then in office is less

than a quorum, it may elect to voluntarily wind up and dissolve by any of the following:

(A) The unanimous consent of the directors then in office.

(B) The affirmative vote of a majority of the directors then in office at a meeting held pursuant to waiver of notice by those directors complying with paragraph (3) of subdivision (a) of Section 9211.

(C) The vote of a sole remaining director.

(4) If a corporation elects to voluntarily wind up and dissolve pursuant to paragraph (3), references to the board in this chapter shall be deemed to be to a board consisting solely of those directors or that sole director and action by the board shall require at least the same consent or vote as would be required under paragraph (3) for an election to wind up and dissolve.

(c) If a corporation is in the process of voluntary winding up, the superior court of the proper county, upon the petition of (1) the corporation, or (2) the authorized number (Section 5036), or (3) the Attorney General, or (4) three or more creditors, and upon such notice to the corporation and members and creditors as the court may order, may take jurisdiction over the voluntary winding up proceeding if that appears necessary for the protection of the assets of the corporation. 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 the protection of its creditors and its assets as justice and equity may require. Chapter 15 (commencing with Section 6510) (except Sections 6510 and 6511) shall apply to those court proceedings.

(d) The powers and duties of the directors (or other persons appointed by the court pursuant to Section 6515) 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:

(1) To elect officers and to employ agents and attorneys to liquidate or wind up its affairs.

(2) To continue the conduct of the affairs of the corporation insofar as necessary for the disposal or winding up thereof.

(3) To carry out contracts and collect, pay, compromise, and settle debts and claims for or against the corporation.

(4) To defend suits brought against the corporation.

(5) To sue, in the name of the corporation, for all sums due or owing to the corporation or to recover any of its property.

(6) To collect any amounts remaining unpaid on memberships or to recover unlawful distributions.

(7) Subject to the provisions of Section 9142, to sell at public or private sale, exchange, convey, or otherwise dispose of all or any part of the assets of the corporation in an amount deemed reasonable by the board without compliance with Section 9631, and to execute bills of sale and deeds of conveyance in the name of the corporation.

(8) 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.

(e) After complying with Section 6713:

(1) Except as provided in Section 6715, all of a corporation's assets shall be disposed of on dissolution in conformity with its articles or bylaws subject to complying with the provisions of any trust under which such assets are held.

(2) Except as provided in subdivision (3), the disposition required in subdivision (1) shall be made by decree of the superior court of the proper county. The decree shall be made upon petition therefor, upon 30 days' notice to the Attorney General, by any person concerned in the dissolution.

(3) The disposition required in subdivision (1) may be made without the decree of the superior court, subject to the rights of persons concerned in the dissolution, if the Attorney General makes a written waiver of objections to the disposition.

(f) A vacancy on the board may be filled during a winding up proceeding in the manner provided in Section 9224.

(g) Chapter 15 (commencing with Section 6510) does not apply to religious corporations except to the extent its provisions apply under subdivision (d) of Section 6617, subdivision (c) of Section 6719, or subdivision (c) or (d) of this section.

SEC. 36. Section 9916 of the Corporations Code is amended to read:

9916. Subdivision (a) of Section 5213 of the new public benefit corporation law applies to subject corporations governed by the public benefit corporation law, subdivision (a) of Section 7213 of the new mutual benefit corporation law apply to subject corporations governed by the mutual benefit corporation law, and subdivision (a) of Section 9213 of the new religious corporation law applies to subject corporations governed by the religious corporation law; but the "treasurer" of ~~such~~ *those* corporations shall be deemed to be the "chief financial ~~officer."~~ *officer," unless otherwise provided in the articles or bylaws.*

SEC. 37. Section 12228.5 is added to the Corporations Code, to read:

12228.5. The term "chair" includes "chairperson," "chairman," and "chairwoman." For the purposes of this part, all references to "chairman" shall be deemed to refer to "chair."

SEC. 38. Section 12233 of the Corporations Code is amended to read:

12233. "Directors" means natural persons, designated in the articles or bylaws or elected by the incorporators, and their successors and natural persons designated, elected, or appointed by any other name or title to act as members of the governing body of the corporation. "Directors" also means alternate directors described in Section 12331. *A person who does not have authority to act as a member of the governing body of the corporation, including through voting rights as a member of the governing body, is not a director as that term is used in this part regardless of title. However, if the articles or bylaws designate that a natural person is a director or a member of the governing body of the corporation by reason of occupying a specified position within or outside the corporation, that person shall be a director for all purposes and shall have the same rights and obligations, including voting rights, as the other directors.*

SEC. 39. Section 12241 of the Corporations Code is amended to read:

12241. "Officers' certificate" means a certificate signed and verified by the ~~chairman~~ *chair* 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.

SEC. 40. Section 12242.5 of the Corporations Code is amended to read:

12242.5. "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)~~ *(9)* 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.

SEC. 41. Section 12330 of the Corporations Code is amended to read:

12330. (a) Except as provided in subdivision (c) and Sections 12331, 12360, 12364, 12462, and 12484, bylaws may be adopted, amended, or repealed by the board unless the action would:

(1) Materially and adversely affect the rights or obligations of members as to voting, dissolution, redemption, transfer, distributions, patronage distributions, patronage, property rights, or rights to repayment of contributed capital;

(2) Increase or decrease the number or members authorized in total or for any class;

(3) Effect an exchange, reclassification or cancellation of all or part of the memberships; or

(4) Authorize a new class of membership.

(b) Bylaws may be adopted, amended or repealed by approval of the members (Section 12224); provided, however, that ~~such~~ adoption, amendment, or repeal also requires approval by the members of a class if ~~such~~ *that* action would:

(1) Materially and adversely affect the rights or obligations of that class as to voting, dissolution, redemption, transfer, distributions, patronage distributions, patronage, property rights, or rights to repayment of contributed capital, in a manner different than such action affects another class;

(2) Materially and adversely affect such class as to voting, dissolution, redemption, transfer, distributions, patronage distributions, patronage, property rights, or rights to repayment of contributed capital, by changing the rights, privileges, preferences, restrictions or conditions of another class;

(3) Increase or decrease the number of memberships authorized for such class;

(4) Increase the number of memberships authorized for another class;

(5) Effect an exchange, reclassification or cancellation of all or part of the memberships of such class; or

(6) Authorize a new class of memberships.

(c) The articles or bylaws may restrict or eliminate the power of the board to adopt, amend or repeal any or all bylaws, subject to subdivision (e) of Section 12331.

(d) Bylaws may also provide that repeal or amendment of those bylaws, or the repeal or amendment of specified portions of those bylaws, may occur only with the approval in writing of a specified person or persons other than the board or members. *However, this approval requirement, unless the articles or the bylaws specify otherwise, shall not apply if any of the following circumstances exist:*

(1) The specified person or persons have died or ceased to exist.

(2) If the right of the specified person or persons to approve is in the capacity of an officer, trustee, or other status and the office, trust, or status has ceased to exist.

(3) If the corporation has a specific proposal for amendment or repeal, and the corporation has provided written notice of that proposal, including a copy of the proposal, to the specified person or persons at the most recent address for each of them, based on the corporation's records, and the corporation has not received written approval or nonapproval within the period specified in the notice, which shall not be less than 10 nor more than 30 days commencing at least 20 days after the notice has been provided.

SEC. 42. Section 12331 of the Corporations Code is amended to read:

12331. (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 the method of determining the number of directors of the corporation,* or that the number of directors shall be not less than a stated minimum or more than a stated maximum with the exact number of directors to be fixed, within the limits specified, by approval of the board or the members (Sections 12222 and 12224), in the manner provided in the bylaws, subject to subdivision (e). The number or minimum number of directors shall not be less than three. Alternate directors may be permitted, in which event, the bylaws shall specify the manner and times of their election and the conditions to their service in place of a director.

(b) Once members have been admitted, 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 members.

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

(1) Any provision referred to in subdivision (c) of Section 12313.

(2) The time, place and manner of calling, conducting and giving notice of members', directors', and committee meetings, or of conducting mail ballots.

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

(4) The appointment of committees, composed of directors or nondirectors or both, by the board or any officer and the authority of any such committees.

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

(6) The mode of determination of members of record.

(7) The making of reports and financial statements to members.

(8) Setting, imposing and collecting dues, assessments, and membership and transfer fees.

(9) The time and manner of patronage distributions consistent with this part.

(d) The bylaws may provide for eligibility, the manner of admission, withdrawal, suspension, and expulsion of members, and the suspension or termination of memberships consistent with the requirements of Section 12431.

(e) The bylaws may require, for any or all corporate actions, the vote of a larger proportion of, or all of, the members or the members of any class, unit, or grouping of members or the vote of a larger proportion of, or all of, the directors, than is otherwise required by this part. Such a provision in the bylaws requiring such greater vote shall not be altered, amended or repealed except by such greater vote, unless otherwise provided in the bylaws.

(f) The bylaws may contain a provision limiting the number of members, in total or of any class, which the corporation is authorized to admit.

(g) The bylaws may provide for the establishment by the corporation of a program for the education of its members, officers, employees and the general public in the principles and techniques of cooperation.

SEC. 43. Section 12351 of the Corporations Code is amended to read:

12351. (a) Unless otherwise provided in the articles or in the bylaws:

(1) Meetings of the board may be called by the ~~chairman~~ *chair* 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 first-class 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 any director who provides a waiver of notice or 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. All waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

(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 any 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 any place within or without the state which has been designated in the notice of the

meeting or, if not stated in the notice or if 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 use of 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 number of directors authorized in *or pursuant to* the articles or bylaws constitutes a quorum of the board for the transaction of business. *The articles or bylaws may require the presence of one or more specified directors to constitute a quorum of the board to transact business, as long as the death of a director or the death or nonexistence of the person or persons otherwise authorized to appoint or designate a director does not prevent the corporation from transacting business in the normal course of events.* The articles or bylaws may not provide that a quorum shall be less than one-fifth the number of directors authorized in *or pursuant to* the articles or bylaws, or less than two, whichever is larger.

(8) Subject to the provisions of Sections 12352, 12373, 12374, and subdivision (e) of Section 12377, every 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. 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 the meeting, or a greater number as is required by this division, the articles or bylaws.

(b) Any 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 ~~such~~ *that* action. Such written consent or consents shall be filed with the minutes of the proceedings of the board.

The action by written consent shall have the same force and effect as a unanimous vote of the directors.

(c) Each director present and voting at a meeting shall have one vote on each matter presented to the board of directors for action at that meeting. No director may vote at any meeting by proxy.

SEC. 44. Section 12352 of the Corporations Code is amended to read:

12352. (a) The board may, by resolution adopted by a majority of the number of directors then in office, provided that a quorum is present, create one or more committees, each consisting of two or more directors, to serve at the pleasure of the board. Appointments to ~~such~~ *those* committees shall be by a majority vote of the directors then in office, unless the articles or bylaws require a majority vote of the number of directors authorized in the articles or bylaws. The bylaws may authorize one or more committees, each consisting of two or more directors, and may provide that a specified officer or officers who are also directors of the corporation shall be a member or members of ~~such~~ *the* committee or committees. The board may appoint one or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. 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:

(1) The approval of any action for which this part also requires approval of the members (Section 12224) or approval of a majority of all members (Section 12223) *regardless of whether the corporation has members*.

(2) The filling of vacancies on the board or in any committee which has the authority of the board.

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

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

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

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

(7) The expenditure of corporate funds to support a nominee for director after there are more people nominated for director than can be elected.

(b) ~~Subdivision (a) shall not apply to any committee which does not exercise the authority of the board.~~ *A committee exercising the authority of the board shall not include as members persons who are not directors. The board may create other committees that do not exercise the authority of the board and these other committees may include persons who are not directors.*

(c) Unless the bylaws otherwise provide, the board may delegate to any committee, appointed pursuant to paragraph (4) of subdivision (c) of Section 12331 or otherwise, powers as authorized by Section 12350, but may not delegate the powers set forth in paragraphs (1) through (7) of subdivision (a) of this section.

SEC. 45. Section 12353 of the Corporations Code is amended to read:

12353. (a) A corporation shall have a ~~chairman~~ *chair* of the board, *who may be given the title chair of the board, chairperson of the board, chairman of the board, or chairwoman of the board,* or a president or both, a secretary, a *treasurer or a* chief financial officer, *or both,* and ~~such~~ *any* other officers with ~~such~~ *any* 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. The president, or if there is no president the ~~chairman~~ *chair* of the board, is the chief executive officer of the corporation, unless otherwise provided in the articles or bylaws. *If there is no chief financial officer, the treasurer is the chief financial officer of the corporation, unless otherwise provided for in the articles or bylaws.* Any number of offices may be held by the same person unless the articles or bylaws provide otherwise. Either the ~~chairman~~ *chair* of the board or the president shall be elected from among those board members elected by the membership of the corporation.

(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.

SEC. 46. Section 12360 of the Corporations Code is amended to read:

12360. (a) Except as provided in subdivision (d), directors shall be elected for such terms, not longer than four years, as are fixed in the articles or bylaws. In the absence of any provision in the articles or bylaws, the terms shall be one year. No amendment of the articles or bylaws may extend the term of a director beyond that for which the director was elected, nor may any bylaw provision increasing the terms of directors be adopted without approval of the members.

(b) Unless the articles or bylaws otherwise provide, 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*, unless the director has been removed from office*.

(c) The articles or bylaws may prescribe requirements for eligibility for election as a director.

(d) Subdivisions (a) through (c) notwithstanding, all or any portion of the directors authorized in the articles or bylaws of a corporation may hold office by virtue of designation or selection as provided by the articles or bylaws rather than by election by a member or members. Such directors shall continue in office for the term prescribed by the governing article or bylaw provision, or, if there is no term prescribed, until the governing article or bylaw provision is duly amended or repealed, except as provided in subdivision (f) of Section 12362. A bylaw provision authorized by this subdivision may be adopted, amended, or repealed only by approval of the members (Section 12224). *Unless otherwise provided in the articles or bylaws, the entitlement to designate or select the director or directors shall not apply if any of the following circumstances exist:*

(1) The specified person or persons have died or ceased to exist.

(2) If the entitlement of the person or persons to designate is in the capacity of an officer, trustee, or other status and the office, trust, or status has ceased to exist. After this cessation, the members or, if there are no members, the board shall succeed to this entitlement to designate or select the director or directors.

(e) If a corporation has not issued memberships and (1) all the directors resign, die, or become incompetent, or (2) a corporation's initial directors have not been named in the articles and all incorporators resign, die, or become incompetent before 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.

SEC. 47. Section 12362 of the Corporations Code is amended to read:

12362. (a) Subject to subdivisions (b), (c) and (g), any or all directors may be removed without cause if one of the following applies:

(1) In a corporation with fewer than 50 members, the removal is approved by a majority of all members (Section 12223).

(2) In a corporation with 50 or more members, the removal is approved by the members (Section 12224).

(b) In a corporation in which the articles or bylaws authorize members to cumulate their votes pursuant to subdivision (a) of Section 12485, 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 ballot, all memberships 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; and

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

(d) Any reduction of the authorized number of directors or any amendment reducing the number of class of directors does not remove any director prior to the expiration of the director's term of office*, unless the reduction or amendment also provides for removal of one or more specified directors*.

(e) Except as provided in this section and Sections 12361 and 12363, a director may not be removed prior to the expiration of the director's term of office.

(f) Where a director removed under this section or Section 12361 or 12363 was chosen by designation pursuant to subdivision (d) of Section 12360, then:

(1) Where a different person may be designated pursuant to the governing article or bylaw provision, the new designation shall be made; or

(2) Where the governing article or bylaw provision contains no provision under which a different person may be designated, the governing article or bylaw provision shall be deemed repealed.

(g) When by the provisions of the articles or bylaws a person or persons are entitled to designate one or more directors, the provisions shall also provide for removal of those directors and any director so designated may only be removed as so provided.

(h) If the articles or bylaws entitle a person or persons to designate one or more directors, then:

(1) Unless as otherwise provided in the articles or bylaws at the time of designation, any director so designated may be removed without cause by the designating person or persons.

(2) Any director so designated may only be removed under subdivision (a) with the written consent of the designating person or persons.

(3) Unless as otherwise provided in the articles or bylaws, the right to remove shall not apply if any of the following circumstances exist:

(A) The person or persons entitled to that right have died or ceased to exist.

(B) If that right to remove is in the capacity of an officer, trustee, or other status, and the office, trust, or status has ceased to exist. After this cessation, the members or, if there are no members, the board shall succeed to this right to remove.

SEC. 48. Section 12371 of the Corporations Code is amended to read:

12371. (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 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:

(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; or

(3) A committee ~~of the board~~ upon which the director does not serve *that is composed exclusively of any or any combination of directors, persons described in paragraph (1), or persons described in paragraph (2)*, as to matters within ~~its~~ *the committee's* 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 persons's obligations as a director.

SEC. 49. Section 12630 of the Corporations Code is amended to read:

12630. (a) Any corporation may elect voluntarily to wind up and dissolve (1) by approval of a majority of all members (Section 12223) or (2) by approval of the board and approval of the members (Section 12224).

(b) Any corporation which comes within one of the following descriptions may elect by approval of the board to wind up and dissolve:

(1) A corporation which has been adjudicated as bankrupt.

(2) A corporation which has disposed of all of its assets and has not conducted any activity for a period of five years immediately preceding the adoption of the resolution electing to dissolve the corporation.

(3) A corporation which has no members.

(c) If a corporation comes within one of the descriptions in subdivision (b) and if the number of directors then in office is less than a quorum, it may elect to voluntarily wind up and dissolve by any of the following:

(1) The unanimous 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 waiver of notice by those directors complying with subdivision (a) of Section 12351.

(3) The vote of a sole remaining director.

(d) If a corporation elects to voluntarily wind up and dissolve pursuant to subdivision (c), references to the board in this chapter and Chapter 17 (commencing with Section 12650) shall be deemed to be to a board consisting solely of those directors or that sole director and action by the board shall require at least the same consent or vote as would be required under subdivision (c) for an election to wind up and dissolve.

SEC. 50. Section 12694 of the Corporations Code is amended to read:

12694. Subdivision (a) of Section 12353 of the new law shall apply to subject corporations, but the treasurer of these corporations shall be deemed to be the chief financial officer *unless otherwise provided in the articles or bylaws*.

SEC. 51. Section 18360 of the Corporations Code is amended to read:

18360. An unincorporated association may merge ~~into~~ *with* a domestic or foreign corporation, domestic or foreign limited partnership, domestic or foreign general partnership, or domestic or foreign limited liability company. Notwithstanding this section, a merger may be effected only if each constituent entity is authorized to effect the merger by the laws under which it was organized.

SEC. 52. Section 24001.5 of the Corporations Code is amended to read:

24001.5. (a) The Legislature finds and declares that the services of directors or officers of nonprofit medical associations, as defined in Section 21200, who serve without compensation are critical to the efficient conduct and management of the public service and charitable affairs of the people of California. The willingness of volunteers to offer their services has been deterred by a perception that their personal assets are at risk for these activities. The unavailability and unaffordability of appropriate liability insurance makes it difficult for these associations to protect the personal assets of their volunteer decisionmakers with adequate insurance. It is the public policy of this state to provide incentive and protection to the individuals who perform these important functions.

(b) Except as provided in this section, no cause of action for monetary damages shall arise against any person serving without compensation as a director or officer of a nonprofit medical association, as defined in Section 21200, on account of any negligent act or omission occurring (1) within the scope of that person's duties as a director acting as a board member, or within the scope of that person's duties as an officer acting in an official capacity; (2) in good faith; (3) in a manner that the person believes to be in the best interest of the association; and (4) is in the exercise of his or her policymaking judgment.

(c) This section shall not limit the liability of a director or officer for any of the following:

(1) Self-dealing transactions, as described in Sections 5233 and 9243.

(2) Conflicts of interest, as described in Section 7233.

(3) Actions described in Sections 5237, 7236, and 9245.

(4) In the case of a charitable trust, an action or proceeding against a trustee brought by a beneficiary of that trust.

(5) Any action or proceeding brought by the Attorney General.

(6) Intentional, wanton, or reckless acts, gross negligence, or an action based on fraud, oppression, or malice.

(7) Any action brought under Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code.

(d) This section only applies to nonprofit organizations organized to provide charitable, educational, scientific, social, or other forms of public service that are exempt from federal income taxation under Section 501(c)(3) or 501(c)(6) of the Internal Revenue Code.

(e) This section applies only if the nonprofit association maintains a ~~general~~ liability insurance policy with an amount of coverage of at least the following amounts:

(1) If the association's annual budget is less than fifty thousand dollars ($50,000), the minimum required amount is five hundred thousand dollars ($500,000).

(2) If the association's annual budget equals or exceeds fifty thousand dollars ($50,000), the minimum required amount is one million dollars ($1,000,000).

This section applies only if the ~~general~~ liability insurance policy ~~is in force both at the time of injury and at the time that the claim is made, so that the policy~~ is applicable to the claim.

(f) For the purposes of this section, the payment of actual expenses incurred in attending meetings or otherwise in the execution of the duties of a director or officer shall not constitute compensation.

(g) Nothing in this section shall be construed to limit the liability of a nonprofit association for any negligent act or omission of a director, officer, employee, agent, or servant occurring within the scope of his or her duties.

(h) This section does not apply to any association that unlawfully restricts membership, services, or benefits conferred on the basis of political affiliation, age, or any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code.

(i) This section does not apply to any volunteer director or officer who receives compensation from the association in any other capacity, including, but not limited to, as an employee.

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