

AMENDED IN ASSEMBLY MAY 18, 2010

AMENDED IN ASSEMBLY APRIL 22, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2158

Introduced by Assembly Member Hagman

February 18, 2010

An act to amend Sections 154, 202, 203, 204, 300, 418, 602, 902, 1001, 1100, 1152, 1201, 1300, 1800, 1900, 1901, 1902, 1904, 2000, and 25103 of, to amend and repeal Section 307 of, to add Chapter 24 (commencing with Section 2400) to Division 1 of Title 1 of, and to repeal Sections 158, 186, 421, and 1111 of, the Corporations Code, An act to amend and repeal Section 307 of the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2158, as amended, Hagman. Corporations.

(1) Existing law, the General Corporation Law, regulates corporations, including close corporations. Under existing law, a close corporation is a corporation whose articles contain, among other things, a provision that all of the corporation's issued shares of all classes shall be held of record by not more than 35 persons, and a statement describing itself as a close corporation. Existing law authorizes these provisions to be deleted from the articles or for the number of shareholders to be changed by amendment pursuant to specified voting requirements. Existing law prescribes how to determine the number of shareholders for the purposes of these provisions. Under existing law, a corporation ceases to be a close corporation upon the filing of a specified amendment to its articles or under certain circumstances as a

result of a specified transfer of shares. Under existing law, any attempted voluntary inter vivos transfer of the shares of a close corporation resulting in the number of holders of record of its shares exceeding the maximum specified in the articles is void if the certificate contains a specified legend.

More generally, existing law governing corporations, including close corporations, requires that the business and affairs of the corporation be managed and all corporate powers be exercised by or under the direction of a board and authorizes offices to be held by the same person. Existing law also prohibits a shareholders' agreement relating to the affairs of a close corporation from being construed as invalid because it relates to corporate affairs or it is an attempt to treat the corporation as if it were a partnership. Existing law also requires shareholders to have an annual meeting. Existing law authorizes a corporation to voluntarily dissolve by the vote of shareholders representing 50% or more of the voting power. For involuntary dissolution, existing law authorizes a verified complaint to be filed by any shareholder of a close corporation.

This bill would replace the term "close corporation" with "statutory close corporation" and would revise and recast those provisions governing these corporations by consolidating them into a chapter limited exclusively to statutory close corporations. Specifically, the bill would modify the statement required to be included in the articles and share certificates of a statutory close corporation and would set forth a more detailed scheme for determining the number of persons who are shareholders of record. The bill would authorize shareholders to agree in writing pursuant to a shareholders' agreement to dispense with the board, subject to specified requirements. The bill would also authorize the shareholders to dispense with the annual meeting requirement and permit individuals with more than one office to execute, acknowledge, or verify documents in more than one capacity.

The bill would authorize a statutory close corporation to only be terminated by amending its articles in accordance with certain requirements and, if the corporation eliminated or dispensed with the board, would require the amendment to provide for a board, as specified.

The bill would additionally authorize a statutory close corporation's articles to contain a provision authorizing one or more shareholders to elect to dissolve the corporation at will or upon the occurrence of a certain event. The bill would also authorize the articles to require a

verified complaint for involuntary dissolution to be filed by more than one shareholder.

The bill would specify that these provisions are applicable to close corporations meeting certain requirements, prior to January 1, 2011, as well as those corporations meeting the requirements for a statutory close corporation. The bill would make other conforming changes.

~~(2) Existing~~

Existing law, the General Corporation Law, provides that an action required or permitted to be taken by the board of a corporation may be taken without a meeting if all members of the board consent in writing to that action. Existing law, until January 1, 2011, provides that “all members of the board” includes an “interested director” or a “common director” who abstains in writing from providing consent if specified disclosures have been made to certain directors, the disclosures are included in the written consent, and these directors approve the action by a specified vote.

This bill would extend the operation of that provision indefinitely.

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

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

- 1 ~~SECTION 1. Section 154 of the Corporations Code is amended~~
- 2 ~~to read:~~
- 3 ~~154. “Articles” includes the articles of incorporation,~~
- 4 ~~amendments thereto, amended articles, restated articles, certificate~~
- 5 ~~of incorporation and certificates of determination.~~
- 6 ~~SEC. 2. Section 158 of the Corporations Code is repealed.~~
- 7 ~~SEC. 3. Section 186 of the Corporations Code is repealed.~~
- 8 ~~SEC. 4. Section 202 of the Corporations Code is amended to~~
- 9 ~~read:~~
- 10 ~~202. The articles of incorporation shall set forth:~~
- 11 ~~(a) The name of the corporation; provided, however, that in~~
- 12 ~~order for the corporation to be a statutory close corporation~~
- 13 ~~pursuant to Chapter 24 (commencing with Section 2400), the name~~
- 14 ~~of the corporation shall comply with subdivision (b) of Section~~
- 15 ~~2404.~~
- 16 ~~(b) (1) The applicable one of the following statements:~~
- 17 ~~(i) The purpose of the corporation is to engage in any lawful~~
- 18 ~~act or activity for which a corporation may be organized under the~~

1 General Corporation Law of California other than the banking
2 business, the trust company business or the practice of a profession
3 permitted to be incorporated by the California Corporations Code;
4 or

5 (ii) The purpose of the corporation is to engage in the profession
6 of _____ (with the insertion of a profession permitted to be
7 incorporated by the California Corporations Code) and any other
8 lawful activities (other than the banking or trust company business)
9 not prohibited to a corporation engaging in such profession by
10 applicable laws and regulations.

11 (2) In case the corporation is a corporation subject to the
12 Banking Law, the articles shall set forth a statement of purpose
13 which is prescribed in the applicable provision of the Banking
14 Law.

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

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

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

30 (e) The name and address in this state of the corporation’s initial
31 agent for service of process in accordance with subdivision (b) of
32 Section 1502.

33 (d) If the corporation is authorized to issue only one class of
34 shares, the total number of shares which the corporation is
35 authorized to issue.

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

38 (1) The total number of shares of each class the corporation is
39 authorized to issue, and the total number of shares of each series

1 which the corporation is authorized to issue or that the board is
2 authorized to fix the number of shares of any such series;

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

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

23 SEC. 5. ~~Section 203 of the Corporations Code is amended to~~
24 ~~read:~~

25 203. ~~Except as specified in the articles or in any shareholders'~~
26 ~~agreement pursuant to Section 2408, no distinction shall exist~~
27 ~~between classes or series of shares or the holders thereof.~~

28 SEC. 6. ~~Section 204 of the Corporations Code is amended to~~
29 ~~read:~~

30 204. ~~The articles of incorporation may set forth:~~

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

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

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

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

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

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

7 ~~(6) A provision limiting or restricting the business in which the~~
8 ~~corporation may engage or the powers that the corporation may~~
9 ~~exercise or both.~~

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

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

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

20 ~~(10) Provisions eliminating or limiting the personal liability of~~
21 ~~a director for monetary damages in an action brought by or in the~~
22 ~~right of the corporation for breach of a director's duties to the~~
23 ~~corporation and its shareholders, as set forth in Section 309,~~
24 ~~provided, however, that (A) such a provision may not eliminate~~
25 ~~or limit the liability of directors (i) for acts or omissions that~~
26 ~~involve intentional misconduct or a knowing and culpable violation~~
27 ~~of law, (ii) for acts or omissions that a director believes to be~~
28 ~~contrary to the best interests of the corporation or its shareholders~~
29 ~~or that involve the absence of good faith on the part of the director,~~
30 ~~(iii) for any transaction from which a director derived an improper~~
31 ~~personal benefit, (iv) for acts or omissions that show a reckless~~
32 ~~disregard for the director's duty to the corporation or its~~
33 ~~shareholders in circumstances in which the director was aware, or~~
34 ~~should have been aware, in the ordinary course of performing a~~
35 ~~director's duties, of a risk of serious injury to the corporation or~~
36 ~~its shareholders, (v) for acts or omissions that constitute an~~
37 ~~unexcused pattern of inattention that amounts to an abdication of~~
38 ~~the director's duty to the corporation or its shareholders, (vi) under~~
39 ~~Section 310, or (vii) under Section 316, (B) no such provision shall~~
40 ~~eliminate or limit the liability of a director for any act or omission~~

1 occurring prior to the date when the provision becomes effective,
2 and (C) no such provision shall eliminate or limit the liability of
3 an officer for any act or omission as an officer, notwithstanding
4 that the officer is also a director or that his or her actions, if
5 negligent or improper, have been ratified by the directors.

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

16 Notwithstanding this subdivision, bylaws may require for all or
17 any actions by the board the affirmative vote of a majority of the
18 authorized number of directors. Nothing contained in this
19 subdivision shall affect the enforceability, as between the parties
20 thereto, of any lawful agreement not otherwise contrary to public
21 policy.

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

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

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

33 SEC. 7. Section 300 of the Corporations Code is amended to
34 read:

35 300. Subject to the provisions of this division and any
36 limitations in the articles relating to action required to be approved
37 by the shareholders (Section 153) or by the outstanding shares
38 (Section 152), or by a less than majority vote of a class or series
39 of preferred shares (Section 402.5), the business and affairs of the
40 corporation shall be managed and all corporate powers shall be

1 exercised by or under the direction of the board. The board may
2 delegate the management of the day-to-day operation of the
3 business of the corporation to a management company or other
4 person provided that the business and affairs of the corporation
5 shall be managed and all corporate powers shall be exercised under
6 the ultimate direction of the board. The business and affairs of a
7 statutory close corporation, as described in Section 2404, may be
8 managed as provided in Chapter 24 (commencing with Section
9 2400).

10 ~~SEC. 8.~~

11 *SECTION 1.* Section 307 of the Corporations Code, as amended
12 by Section 1 of Chapter 102 of the Statutes of 2005, is amended
13 to read:

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

17 (1) Meetings of the board may be called by the chair of the
18 board or the president or any vice president or the secretary or any
19 two directors.

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

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

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

1 time of the adjourned meeting to the directors who were not present
2 at the time of the adjournment.

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

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

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

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

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

31 (8) An act or decision done or made by a majority of the
32 directors present at a meeting duly held at which a quorum is
33 present is the act of the board, subject to the provisions of Section
34 310 and subdivision (e) of Section 317. The articles or bylaws may
35 not provide that a lesser vote than a majority of the directors present
36 at a meeting is the act of the board. A meeting at which a quorum
37 is initially present may continue to transact business
38 notwithstanding the withdrawal of directors, if any action taken is
39 approved by at least a majority of the required quorum for that
40 meeting.

1 (b) An action required or permitted to be taken by the board
2 may be taken without a meeting, if all members of the board shall
3 individually or collectively consent in writing to that action and
4 if the number of members of the board serving at the time
5 constitutes a quorum. The written consent or consents shall be
6 filed with the minutes of the proceedings of the board. For purposes
7 of this subdivision only, “all members of the board” shall include
8 an “interested director” as described in subdivision (a) of Section
9 310 or a “common director” as described in subdivision (b) of
10 Section 310 who abstains in writing from providing consent, where
11 the disclosures required by Section 310 have been made to the
12 noninterested or noncommon directors, as applicable, prior to their
13 execution of the written consent or consents, the specified
14 disclosures are conspicuously included in the written consent or
15 consents executed by the noninterested or noncommon directors,
16 and the noninterested or noncommon directors, as applicable,
17 approve the action by a vote that is sufficient without counting the
18 votes of the interested or common directors. If written consent is
19 provided by the directors in accordance with the immediately
20 preceding sentence and the disclosures made regarding the action
21 that is the subject of the consent do not comply with the
22 requirements of Section 310, the action that is the subject of the
23 consent shall be deemed approved, but in any suit brought to
24 challenge the action, the party asserting the validity of the action
25 shall have the burden of proof in establishing that the action was
26 just and reasonable to the corporation at the time it was approved.

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

30 ~~SEC. 9.~~

31 *SEC. 2.* Section 307 of the Corporations Code, as added by
32 Section 2 of Chapter 102 of the Statutes of 2005, is repealed.

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Assembly, April 22, 2010. (JR11)**

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