

ASSEMBLY BILL

No. 2260

Introduced by Assembly Member Hagman

February 24, 2012

An act to amend Section 2115 of the Corporations Code, relating to foreign corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2260, as introduced, Hagman. Foreign corporations.

Existing law requires foreign corporations to abide by specified provisions of the Corporations Code, including provisions relating to the election and removal of directors, shareholders' rights, vote requirements, and mergers.

This bill would make a technical, nonsubstantive change to these provisions.

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 2115 of the Corporations Code is
- 2 amended to read:
- 3 2115. (a) A foreign corporation (other than a foreign
- 4 association or foreign nonprofit corporation but including a foreign
- 5 parent corporation even though it does not itself transact intrastate
- 6 business) is subject to the requirements of subdivision (b)
- 7 commencing on the date specified in subdivision (d) and continuing
- 8 until the date specified in subdivision (e) if:

1 (1) The average of the property factor, the payroll factor, and
2 the sales factor (as defined in Sections 25129, 25132, and 25134
3 of the Revenue and Taxation Code) with respect to it is more than
4 50 percent during its latest full income year, and
5 (2) more than one-half of its outstanding voting securities are
6 held of record by persons having addresses in this state appearing
7 on the books of the corporation on the record date for the latest
8 meeting of shareholders held during its latest full income year or,
9 if no meeting was held during that year, on the last day of the latest
10 full income year. The property factor, payroll factor, and sales
11 factor shall be those used in computing the portion of its income
12 allocable to this state in its franchise tax return or, with respect to
13 corporations the allocation of whose income is governed by special
14 formulas or that are not required to file separate or any tax returns,
15 which would have been so used if they were governed by this
16 three-factor formula. The determination of these factors with
17 respect regard to any parent corporation shall be made on a
18 consolidated basis, including in a unitary computation (after
19 elimination of intercompany transactions) the property, payroll,
20 and sales of the parent and all of its subsidiaries in which it owns
21 directly or indirectly more than 50 percent of the outstanding shares
22 entitled to vote for the election of directors, but deducting a
23 percentage of the property, payroll, and sales of any subsidiary
24 equal to the percentage minority ownership, if any, in the
25 subsidiary. For the purpose of this subdivision, any securities held
26 to the knowledge of the issuer in the names of broker-dealers,
27 nominees for broker-dealers (including clearing corporations), or
28 banks, associations, or other entities holding securities in a nominee
29 name or otherwise on behalf of a beneficial owner (collectively
30 “nominee holders”), shall not be considered outstanding. However,
31 if the foreign corporation requests all nominee holders to certify,
32 with respect to all beneficial owners for whom securities are held,
33 the number of shares held for those beneficial owners having
34 addresses (as shown on the records of the nominee holder) in this
35 state and outside of this state, then all shares so certified shall be
36 considered outstanding and held of record by persons having
37 addresses either in this state or outside of this state as so certified,
38 provided that the certification so provided shall be retained with
39 the record of shareholders and made available for inspection and
40 copying in the same manner as is provided in Section 1600 with

1 respect to that record. A current list of beneficial owners of a
2 foreign corporation's securities provided to the corporation by one
3 or more nominee holders or their agent pursuant to the requirements
4 of Rule 14b-1(b)(3) or 14b-2(b)(3) as adopted on January 6, 1992,
5 promulgated under the Securities Exchange Act of 1934, shall
6 constitute an acceptable certification with respect to beneficial
7 owners for the purposes of this subdivision.

8 (b) Except as provided in subdivision (c), the following chapters
9 and sections of this division shall apply to a foreign corporation
10 as defined in subdivision (a) (to the exclusion of the law of the
11 jurisdiction in which it is incorporated):

12 Chapter 1 (general provisions and definitions), to the extent
13 applicable to the following provisions;

14 Section 301 (annual election of directors);

15 Section 303 (removal of directors without cause);

16 Section 304 (removal of directors by court proceedings);

17 Section 305, subdivision (c) (filling of director vacancies where
18 less than a majority in office elected by shareholders);

19 Section 309 (directors' standard of care);

20 Section 316 (excluding paragraph (3) of subdivision (a) and
21 paragraph (3) of subdivision (f)) (liability of directors for unlawful
22 distributions);

23 Section 317 (indemnification of directors, officers, and others);

24 Sections 500 to 505, inclusive (limitations on corporate
25 distributions in cash or property);

26 Section 506 (liability of shareholder who receives unlawful
27 distribution);

28 Section 600, subdivisions (b) and (c) (requirement for annual
29 shareholders' meeting and remedy if same not timely held);

30 Section 708, subdivisions (a), (b), and (c) (shareholder's right
31 to cumulate votes at any election of directors);

32 Section 710 (supermajority vote requirement);

33 Section 1001, subdivision (d) (limitations on sale of assets);

34 Section 1101 (provisions following subdivision (e)) (limitations
35 on mergers);

36 Section 1151 (first sentence only) (limitations on conversions);

37 Section 1152 (requirements of conversions);

38 Chapter 12 (commencing with Section 1200) (reorganizations);

39 Chapter 13 (commencing with Section 1300) (dissenters' rights);

40 Sections 1500 and 1501 (records and reports);

1 Section 1508 (action by Attorney General);
2 Chapter 16 (commencing with Section 1600) (rights of
3 inspection).

4 (c) This section does not apply to any corporation (1) with
5 outstanding securities listed on the New York Stock Exchange,
6 the NYSE Amex, the NASDAQ Global Market, or the NASDAQ
7 Capital Market, or (2) if all of its voting shares (other than
8 directors' qualifying shares) are owned directly or indirectly by a
9 corporation or corporations not subject to this section.

10 (d) For purposes of subdivision (a), the requirements of
11 subdivision (b) shall become applicable to a foreign corporation
12 only upon the first day of the first income year of the corporation
13 (1) commencing on or after the 135th day of the income year
14 immediately following the latest income year with respect to which
15 the tests referred to in subdivision (a) have been met or (2)
16 commencing on or after the entry of a final order by a court of
17 competent jurisdiction declaring that those tests have been met.

18 (e) For purposes of subdivision (a), the requirements of
19 subdivision (b) shall cease to be applicable to a foreign corporation
20 (1) at the end of the first income year of the corporation
21 immediately following the latest income year with respect to which
22 at least one of the tests referred to in subdivision (a) is not met or
23 (2) at the end of the income year of the corporation during which
24 a final order has been entered by a court of competent jurisdiction
25 declaring that one of those tests is not met, provided that a contrary
26 order has not been entered before the end of the income year.

27 (f) Any foreign corporation that is subject to the requirements
28 of subdivision (b) shall advise any shareholder of record, any
29 officer, director, employee, or other agent (within the meaning of
30 Section 317) and any creditor of the corporation in writing, within
31 30 days of receipt of written request for that information, whether
32 or not it is subject to subdivision (b) at the time the request is
33 received. Any party who obtains a final determination by a court
34 of competent jurisdiction that the corporation failed to provide to
35 the party information required to be provided by this subdivision
36 or provided the party information of the kind required to be
37 provided by this subdivision that was incorrect, then the court, in
38 its discretion, shall have the power to include in its judgment
39 recovery by the party from the corporation of all court costs and

- 1 reasonable attorneys' fees incurred in that legal proceeding to the
- 2 extent they relate to obtaining that final determination.

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