

## Assembly Bill No. 434

### CHAPTER 38

An act to amend Section 402.5 of the Corporations Code, relating to corporations.

[Approved by Governor June 28, 2013. Filed with  
Secretary of State June 28, 2013.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 434, Hagman. Preferred shares: rights and preferences distributions.

Existing law authorizes a corporation to issue one or more classes or series of shares, as specified, including designating a class or series of shares as "preferred," which are defined as shares other than common shares.

Under existing law, a corporation may make a distribution to the corporation's shareholders only if certain conditions are met. Existing law prohibits a corporation from making a distribution to its shareholders unless the board of directors determines that either (1) the amount of retained earnings of the corporation immediately prior to the distribution equals or exceeds the sum of the amount of the proposed distribution plus the preferential dividends arrears amount, or (2) immediately after the distribution, the value of the corporation's assets would equal or exceed the sum of its total liabilities plus the preferential rights amount. Existing law defines "preferential dividends arrears" and "preferential rights amount" for these purposes.

Existing law authorizes the rights, preferences, privileges, and restrictions imposed on a class or series of preferred shares to exclude specified provisions that would otherwise be required by law.

This bill would also authorize the rights, preferences, privileges, and restrictions imposed on preferred shares to exclude specified rights to a preferential dividends arrears amount, preferential rights amount, or both, in a distribution to the corporation's junior shareholders.

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

SECTION 1. Section 402.5 of the Corporations Code is amended to read:

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

(a) Notwithstanding paragraph (9) of subdivision (a) of Section 204, include a provision requiring a vote of a specified percentage or proportion

of the outstanding shares of the class or series that is less than a majority of the class or series to approve any corporate action, except where the vote of a majority or greater proportion of the class or series is required by this division, regardless of restrictions or limitations on the voting rights thereof.

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

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