

**ASSEMBLY BILL**

**No. 491**

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**Introduced by Assembly Member Torres**

February 19, 2013

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An act to amend Sections 207 and 212 of the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 491, as introduced, Torres. Corporations: bylaws.

The General Corporation Law authorizes and regulates the formation and operation of a corporation, including, but not limited to, the adoption and contents of corporate bylaws.

This bill would authorize a corporation to take actions during an emergency, as defined, to conduct the corporation's ordinary business operations and affairs, as specified, and provide that any action taken in good faith during an emergency under this authorization would bind the corporation and not be a basis to impose liability on a corporate director, officer, employee, or agent. This bill would also authorize a corporation to adopt bylaws to further direct the operations of the corporation during an emergency, as specified.

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 207 of the Corporations Code is amended
- 2 to read:
- 3 207. Subject to any limitations contained in the articles and to
- 4 compliance with other provisions of this division and any other

1 applicable laws, a corporation shall have all of the powers of a  
2 natural person in carrying out its business activities, including,  
3 without limitation, the power to:

4 (a) Adopt, use and at will alter a corporate seal, but failure to  
5 affix a seal does not affect the validity of any instrument.

6 (b) Adopt, amend and repeal bylaws.

7 (c) Qualify to do business in any other state, territory,  
8 dependency or foreign country.

9 (d) Subject to the provisions of Section 510, issue, purchase,  
10 redeem, receive, take or otherwise acquire, own, hold, sell, lend,  
11 exchange, transfer or otherwise dispose of, pledge, use and  
12 otherwise deal in and with its own shares, bonds, debentures and  
13 other securities.

14 (e) Make donations, regardless of specific corporate benefit, for  
15 the public welfare or for community fund, hospital, charitable,  
16 educational, scientific, civic or similar purposes.

17 (f) Pay pensions, and establish and carry out pension,  
18 profit-sharing, share bonus, share purchase, share option, savings,  
19 thrift and other retirement, incentive and benefit plans, trusts and  
20 provisions for any or all of the directors, officers and employees  
21 of the corporation or any of its subsidiary or affiliated corporations,  
22 and to indemnify and purchase and maintain insurance on behalf  
23 of any fiduciary of such plans, trusts or provisions.

24 (g) Subject to the provisions of Section 315, assume obligations,  
25 enter into contracts, including contracts of guaranty or suretyship,  
26 incur liabilities, borrow and lend money and otherwise use its  
27 credit, and secure any of its obligations, contracts or liabilities by  
28 mortgage, pledge or other encumbrance of all or any part of its  
29 property, franchises and income.

30 (h) Participate with others in any partnership, joint venture or  
31 other association, transaction or arrangement of any kind, whether  
32 or not such participation involves sharing or delegation of control  
33 with or to others.

34 (i) (1) *In advance of, or during an emergency, take any or all*  
35 *of the following actions necessary to conduct the corporation's*  
36 *ordinary business operations and affairs during an emergency,*  
37 *unless emergency bylaws provide otherwise pursuant to subdivision*  
38 *(c) of Section 212:*

1 (A) *Modify lines of succession to accommodate the incapacity*  
2 *of any director, officer, employee, or agent resulting from the*  
3 *emergency.*

4 (B) *Relocate the principal office, designate alternative principal*  
5 *offices or regional offices, or authorize the officers to do so.*

6 (C) *Give notice to a director or directors in any practicable*  
7 *manner under the circumstances, including, but not limited to, by*  
8 *publication and radio, when notice of a meeting of the board*  
9 *cannot be given to that director or directors in the manner*  
10 *prescribed by the bylaws or Section 307.*

11 (D) *Deem that one or more officers of the corporation present*  
12 *at a board meeting is a director, in order of rank and within the*  
13 *same rank in order of seniority, as necessary to achieve a quorum*  
14 *for that meeting.*

15 (2) *During an emergency, the board may not take any action*  
16 *that requires the vote of the shareholders or is not in the*  
17 *corporation's ordinary course of business, unless the required*  
18 *vote of the shareholders was obtained prior to the emergency.*

19 (3) *Any actions taken in good faith during an emergency under*  
20 *this subdivision binds the corporation and may not be used to*  
21 *impose liability on a corporate director, officer, employee, or*  
22 *agent.*

23 (4) *For purposes of this subdivision, "emergency" means any*  
24 *of the following events or circumstances as a result of which a*  
25 *quorum of the corporation's board of directors cannot be readily*  
26 *convened for action:*

27 (A) *A natural catastrophe, including, but not limited to, a*  
28 *hurricane, tornado, storm, high water, wind-driven water, tidal*  
29 *wave, tsunami, earthquake, volcanic eruption, landslide, mudslide,*  
30 *snowstorm, or drought, or, regardless of cause, any fire, flood, or*  
31 *explosion.*

32 (B) *An attack on this state or nation by an enemy of the United*  
33 *States of America, or upon receipt by this state of a warning from*  
34 *the federal government indicating that an enemy attack is probable*  
35 *or imminent.*

36 (C) *An act of terrorism or other man-made disaster that results*  
37 *in extraordinary levels of casualties or damage or disruption*  
38 *severely affecting the infrastructure, environment, economy,*  
39 *government functions, or population, including, but not limited to,*  
40 *mass evacuations.*

1 (D) *A state of emergency proclaimed by the Governor.*

2 SEC. 2. Section 212 of the Corporations Code is amended to  
3 read:

4 212. (a) The bylaws shall set forth (unless such provision is  
5 contained in the articles, in which case it may only be changed by  
6 an amendment of the articles) the number of directors of the  
7 corporation; or that the number of directors shall be not less than  
8 a stated minimum nor more than a stated maximum (which in no  
9 case shall be greater than two times the stated minimum minus  
10 one), with the exact number of directors to be fixed, within the  
11 limits specified, by approval of the board or the shareholders  
12 (Section 153) in the manner provided in the bylaws, subject to  
13 paragraph (5) of subdivision (a) of Section 204. The number or  
14 minimum number of directors shall not be less than three; provided,  
15 however, that (1) before shares are issued, the number may be one,  
16 (2) before shares are issued, the number may be two, (3) so long  
17 as the corporation has only one shareholder, the number may be  
18 one, (4) so long as the corporation has only one shareholder, the  
19 number may be two, and (5) so long as the corporation has only  
20 two shareholders, the number may be two. After the issuance of  
21 shares, a bylaw specifying or changing a fixed number of directors  
22 or the maximum or minimum number or changing from a fixed to  
23 a variable board or vice versa may only be adopted by approval  
24 of the outstanding shares (Section 152); provided, however, that  
25 a bylaw or amendment of the articles reducing the fixed number  
26 or the minimum number of directors to a number less than five  
27 cannot be adopted if the votes cast against its adoption at a meeting  
28 or the shares not consenting in the case of action by written consent  
29 are equal to more than  $16\frac{2}{3}$  percent of the outstanding shares  
30 entitled to vote.

31 (b) The bylaws may contain any provision, not in conflict with  
32 law or the articles for the management of the business and for the  
33 conduct of the affairs of the corporation, including but not limited  
34 to:

35 (1) Any provision referred to in subdivision (b), (c) or (d) of  
36 Section 204.

37 (2) The time, place and manner of calling, conducting and giving  
38 notice of shareholders', directors' and committee meetings.

39 (3) The manner of execution, revocation and use of proxies.

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

4 (5) The appointment and authority of committees of the board.

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

7 (7) The mode of determination of holders of record of its shares.

8 (8) The making of annual reports and financial statements to  
9 the shareholders.

10 (c) (1) *The bylaws may contain any provision, not in conflict*  
11 *with the articles, to manage and conduct the ordinary business*  
12 *affairs of the corporation effective only in an emergency as defined*  
13 *in Section 207, including, but not limited to, procedures for calling*  
14 *a board meeting, quorum requirements for a board meeting, and*  
15 *designation of additional or substitute directors.*

16 (2) *During an emergency, the board may not take any action*  
17 *that requires the vote of the shareholders or otherwise is not in*  
18 *the corporation's ordinary course of business, unless the required*  
19 *vote of the shareholders was obtained prior to the emergency.*

20 (3) *All provisions of the regular bylaws consistent with the*  
21 *emergency bylaws shall remain effective during the emergency,*  
22 *and the emergency bylaws shall not be effective after the emergency*  
23 *ends.*

24 (4) *Corporate action taken in good faith in accordance with the*  
25 *emergency bylaws binds the corporation, and may not be used to*  
26 *impose liability on a corporate director, officer, employee, or*  
27 *agent.*