

Assembly Bill No. 1255

CHAPTER 538

An act to amend Sections 12313, 12330, 12331, 12420, 12422, 12446, 12502, and 12503 of, and to add Sections 12245.2 and 12246.2 to, the Corporations Code, relating to corporations.

[Approved by Governor October 4, 2013. Filed with
Secretary of State October 4, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1255, Pan. Corporations: consumer cooperatives.

Existing law, the Consumer Cooperative Corporation Law, governs the organization and operation of consumer cooperative corporations. The law specifies the provisions that may be set forth in the articles of incorporation of a consumer cooperative.

This bill would include among these provisions authorization for the board of directors to fix the rights, privileges, preferences, restrictions, and conditions attaching to any wholly unissued class of memberships authorized in the bylaws or articles and, if the bylaws or articles authorize a class of memberships to be divisible into series, to any wholly unissued series of a membership class authorized to be divisible into series, and to fix the number of memberships in the series and the designation of the series, as specified. The bill would require any amendment to the bylaws or articles of a consumer cooperative to be approved by the members of a series if the series would be adversely affected by the action, as specified. The bill would also make other conforming changes.

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

SECTION 1. Section 12245.2 is added to the Corporations Code, to read:

12245.2. "Preferred memberships" means memberships that have a preference over any other memberships with respect to distribution of assets on liquidation or with respect to payment of distributions.

SEC. 2. Section 12246.2 is added to the Corporations Code, to read:

12246.2. "Series" of memberships means memberships within a class of memberships that have the same rights, privileges, preferences, restrictions, and conditions, but that differ in one or more rights, privileges, preferences, restrictions, or conditions from other memberships within the class. Certificated securities and uncertificated securities do not constitute a different series if the only difference is certificated and uncertificated status.

SEC. 3. Section 12313 of the Corporations Code is amended to read:

12313. (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 providing for the distribution of the remaining assets of the corporation, after payment or adequate provision for all of its debts and liabilities, to a charitable trust.

(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 12410.

(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) 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.

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

(6) A provision authorizing the board of directors, within any limits or restrictions stated, to fix the rights, privileges, preferences, restrictions, and conditions attaching to any wholly unissued class of memberships authorized in the bylaws or the articles.

(7) If the bylaws or articles authorize a class of memberships to be divisible into series, a provision authorizing the board of directors, within any limits or restrictions stated, to fix the rights, privileges, preferences, restrictions, and conditions attaching to any wholly unissued series of a membership class authorized to be divisible into series, and to fix the number of memberships in the series and the designation of the series. As to any series, the number of which is authorized to be fixed by the board, the articles may also authorize the board to increase or decrease, but not below the number of memberships then outstanding, the number of memberships of any such series subsequent to the issuance of that series. Unless the articles or bylaws provide otherwise, in case the number of memberships of any series is decreased, the memberships constituting this decrease shall resume the status which they had prior to the adoption of the board resolution originally fixing the number of memberships of the series.

SEC. 4. 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 do any of the following:

(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.

(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 adoption, amendment, or repeal also requires approval by the members of a class or series if that action would do any of the following:

(1) Materially and adversely affect the rights or obligations of that class or series 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 or another series within the same class.

(2) Materially and adversely affect such class or series 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 or another series within the same class.

(3) Increase or decrease the number of memberships authorized for the 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 the class or series.

(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. 5. 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 these 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. A provision in the bylaws requiring a greater vote shall not be altered, amended or repealed except by the 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 or series, 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. 6. Section 12420 of the Corporations Code is amended to read:

12420. A corporation may issue memberships having different rights, privileges, preferences, restrictions, or conditions, as provided in its articles or bylaws. If the articles or bylaws authorize at least one class of voting memberships, a corporation may also authorize and issue additional classes of memberships, preferred or otherwise, that are divisible into a series or are nonvoting or both.

SEC. 7. Section 12422 of the Corporations Code is amended to read:

12422. (a) Unless the corporation's articles or bylaws so provide, memberships are not redeemable. A corporation may provide in its articles or bylaws for one or more classes or series of memberships which are redeemable, in whole or in part, for such consideration within such time or upon the happening of one or more specified events and upon the terms and conditions stated in the articles or bylaws. However, no membership shall actually be redeemed if prohibited by Chapter 4 (commencing with Section 12450).

(b) Nothing in this section shall prevent a corporation from creating a sinking fund or similar provision for, or entering into an agreement for, the redemption or purchase of its memberships to the extent permitted by Chapter 4 (commencing with Section 12450).

SEC. 8. Section 12446 of the Corporations Code is amended to read:

12446. (a) Subject to subdivision (b), Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure shall not apply to any proprietary interest in a consumer cooperative corporation. Any proprietary interest that would otherwise escheat to the state pursuant to Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure shall instead become the property of the corporation.

(b) Notwithstanding subdivision (a), no proprietary interest shall become the property of the corporation under this section unless the following requirements are satisfied:

(1) The articles or bylaws shall specifically provide for the transfer of ownership of the otherwise escheated proprietary interests to the corporation.

(2) At least 60 days prior notice of the proposed transfer of the proprietary interest to the corporation is given to the affected member by first-class or second-class mail to the last address of the member shown on the corporation's records, and by publication in a newspaper of general circulation in the county in which the corporation has its principal office. Notice given in the foregoing manner shall be deemed actual notice.

(3) No proprietary interest shall become the property of the corporation under this section if written notice objecting thereto is received by the corporation from the affected member prior to the date of the proposed transfer.

(c) For purposes of this section, a “proprietary interest” shall mean and include any membership, membership certificate, membership share, or share certificate of any class or series representing a proprietary interest in, and issued by, the corporation together with all accrued and unpaid dividends and patronage distributions relating thereto.

SEC. 9. Section 12502 of the Corporations Code is amended to read:

12502. (a) Except as provided in this section or Section 12503, amendments may be adopted if approved by the board and approved by the members before or after the approval by the board.

(b) Notwithstanding subdivision (a), the following amendments may be adopted by approval of the board alone:

(1) An amendment extending the corporate existence or making the corporate existence perpetual, if the corporation was organized prior to August 14, 1929.

(2) An amendment deleting the initial street address and initial mailing address of the corporation, the names and addresses of the first directors, or the name and address of the initial agent.

(3) Any amendment, at a time the corporation has no members.

(4) Any amendment authorized in the articles pursuant to subdivision (c) of Section 12313 fixing the rights, privileges, preferences, restrictions, and conditions attaching to any wholly unissued class of memberships.

(5) Any amendment authorized in the articles pursuant to subdivision (c) of Section 12313 fixing the designation, number of memberships and the rights, privileges, preferences, restrictions, and conditions attaching to any wholly unissued series of memberships, or an increase or decrease in the number of memberships of any series.

(c) Whenever the articles require for corporate action the approval of a particular class of members or of a larger proportion of, or all of, the votes of any class, or of a larger proportion of, or all of, the directors, than is otherwise required by this part, the provision in the articles requiring a greater vote shall not be altered, amended or repealed except by the class or the greater vote, unless otherwise provided in the articles.

SEC. 10. Section 12503 of the Corporations Code is amended to read:

12503. (a) An amendment shall also be approved by the members (Section 12224) of a class, whether or not the class is entitled to vote thereon by the provisions of the articles, if the amendment would do any of the following:

(1) Materially and adversely affect the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption or transfer, or the obligations of that class, 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 the number of memberships authorized for the 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 the class.

(6) Authorize a new class of memberships.

(b) An amendment shall also be approved by the members of a series whether or not the series is entitled to vote thereon by the articles or bylaws if the series is adversely affected by the amendment in a different manner than other shares of the same class.