

Senate Bill No. 1301

Passed the Senate August 19, 2014

Secretary of the Senate

Passed the Assembly August 18, 2014

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 107, 158, 171.08, 911, 1100, 1112.5, 1113, 1151, 1152, 1155, 1201, 2500, 2501, 2502, 2502.01, 2502.03, 2502.04, 2502.05, 2502.06, 2503.1, 2504, 2506, 2507, 2509, 2510, 2510.1, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2600, 2600.5, 2601, 2602, 2603, 2604, 2605, 2700, 2701, 2702, 2800, 2900, 3000, 3001, 3002, 3100, 3200, 3201, 3202, 3203, 3300, 3301, 3302, 3303, 3304, 3305, 3400, 3401, 3500, 3501, 3502, 3503, 5813.5, 7813.5, 9621, and 12504 of, to amend the heading of Division 1.5 (commencing with Section 2500) of Title 1 of, and to add Section 3307 to, the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1301, DeSaulnier. Corporate Flexibility Act of 2011: Social Purpose Corporations Act.

The Corporate Flexibility Act of 2011 authorizes and regulates the formation and operation of flexible purpose corporations.

This bill would rename the act as the Social Purpose Corporations Act and rename the type of corporation authorized and regulated under that act as a social purpose corporation.

Under the act, an existing business association organized as a trust under the laws of this state or of a foreign jurisdiction may incorporate under the act upon approval by its board of trustees or similar governing body and approval by the affirmative vote of a majority of the outstanding voting shares of beneficial interest, and the filing of articles with a certificate.

This bill would revise the approval by the affirmative vote of a majority of the outstanding voting shares of beneficial interest requirement to approval by the affirmative vote of $\frac{2}{3}$ of those shares.

Under the act, the articles of incorporation are required to set forth specified statements, including the name of the corporation.

This bill would revise the statements that are required to be contained in the articles of incorporation. This bill would authorize a corporation formed pursuant to the act before January 1, 2015, to elect to change its status from a flexible purpose corporation to

a social purpose corporation by amending its articles of incorporation, as provided. The bill would require that any reference in the act to social purpose corporation be deemed a reference to flexible purpose corporation, for any flexible purpose corporation formed prior to January 1, 2015, that has not amended its articles of incorporation to change its status to a social purpose corporation.

This bill would require, for corporations organized on and after January 1, 2015, a statement that the corporation is organized as a social purpose corporation under the Social Purpose Corporations Act.

Under the act, the director, in discharging his or her duties, may consider those factors, and give weight to those factors, as the director deems relevant, including the short-term and long-term prospects of the corporation, the best interests of the corporation and its shareholders, and the purposes of the corporation as set forth in its articles.

This bill would revise one of the factors and would require the director to consider those factors. This bill would authorize shareholders to maintain a derivative lawsuit to enforce this requirement.

Under the act, certificates representing the shares of a corporation formed under the act are required to contain specified statements.

This bill would revise the statements required to be on those certificates. This bill would provide that the certificates representing shares of a corporation formed pursuant to this act as a “flexible purpose corporation” before January 1, 2015, continue to be valid, and that any reference to a “flexible purpose corporation” or any abbreviation of that term in those certificates is also a reference to “social purpose corporation.”

Under the act, a corporation formed under the act may, by amendment of its articles as specified in the act, convert to a domestic corporation.

This bill would instead provide that a corporation formed under the act may change its status to that of a business corporation. This bill would provide that if the status change is approved, shareholders with dissenting shares may exercise dissenters’ rights set forth in the General Corporation Law.

Under the act, certain mergers require approval by an affirmative vote of at least $\frac{2}{3}$ of the outstanding shares of each class, or a

greater vote if required in the articles, regardless of whether that class is entitled to vote thereon by the provisions of the articles, of the disappearing corporation.

This bill would provide that if the merger is approved, shareholders with dissenting shares may exercise dissenters' rights set forth in the General Corporation Law.

Under the act, a corporation formed under the act may be converted into a domestic other business entity if specified conditions are met. The act requires the approval of a plan of conversion.

This bill would provide that if the plan is approved, shareholders with dissenting shares may exercise dissenters' rights set forth in the General Corporation Law.

Under the act, the principal terms of a reorganization are required to be approved by the outstanding shares of any class of a corporation formed under that act that is a party to a merger or sale-of-assets reorganization if holders of shares of that class receive shares of the surviving or acquiring corporation formed under that act or parent party having different rights, preferences, privileges, or restrictions than those surrendered.

This bill would instead require the principal terms of a reorganization to be approved by the affirmative vote of at least $\frac{2}{3}$ of each class, or a greater vote if required in the articles, of the outstanding shares of any class of a corporation formed under that act that is a party to a merger or sale-of-assets reorganization if holders of shares of that class receive shares of the surviving or acquiring corporation formed under that act or parent party having different rights, preferences, privileges, or restrictions than those surrendered.

Under the act, the board of a corporation formed under the act is required to cause an annual report to be sent to the shareholders, provided with a management discussion and analysis (special purpose MD&A) that contains specified information concerning the corporation's stated purposes. Existing law exempts the annual report and special purpose MD&A requirement for corporations formed under the act with fewer than 100 holders of record of its shares if specified conditions exist.

This bill would revise the information required to be contained in the special purpose MD&A. This bill would repeal the exemption.

Existing law sets forth procedures for how a corporation formed pursuant to the Corporate Flexibility Act of 2011 may convert or change its status into other types of entities and how other entities may convert or change their status to a corporation formed pursuant to the Corporate Flexibility Act of 2011.

This bill would revise those procedures.

This bill would make other changes to correct erroneous cross-references.

This bill would incorporate additional changes to Sections 1155 and 3304 of the Corporations Code proposed by SB 1041 that would become operative only if this bill and SB 1041 are both chaptered and this bill is chaptered last.

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

SECTION 1. Section 107 of the Corporations Code is amended to read:

107. No corporation, social purpose corporation, association, or individual shall issue or put in circulation, as money, anything but the lawful money of the United States.

SEC. 2. Section 158 of the Corporations Code is amended to read:

158. (a) “Close corporation” means a corporation, including a close social purpose corporation, whose articles contain, in addition to the provisions required by Section 202, a provision that all of the corporation’s issued shares of all classes shall be held of record by not more than a specified number of persons, not exceeding 35, and a statement “This corporation is a close corporation.”

(b) The special provisions referred to in subdivision (a) may be included in the articles by amendment, but if such amendment is adopted after the issuance of shares only by the affirmative vote of all of the issued and outstanding shares of all classes.

(c) The special provisions referred to in subdivision (a) may be deleted from the articles by amendment, or the number of shareholders specified may be changed by amendment, but if such amendment is adopted after the issuance of shares only by the affirmative vote of at least two-thirds of each class of the outstanding shares; provided, however, that the articles may

provide for a lesser vote, but not less than a majority of the outstanding shares, or may deny a vote to any class, or both.

(d) In determining the number of shareholders for the purposes of the provision in the articles authorized by this section, a husband and wife and the personal representative of either shall be counted as one regardless of how shares may be held by either or both of them, a trust or personal representative of a decedent holding shares shall be counted as one regardless of the number of trustees or beneficiaries and a partnership or corporation or business association holding shares shall be counted as one (except that any such trust or entity the primary purpose of which was the acquisition or voting of the shares shall be counted according to the number of beneficial interests therein).

(e) A corporation shall cease to be a close corporation upon the filing of an amendment to its articles pursuant to subdivision (c) or if it shall have more than the maximum number of holders of record of its shares specified in its articles as a result of an inter vivos transfer of shares which is not void under subdivision (d) of Section 418, the transfer of shares on distribution by will or pursuant to the laws of descent and distribution, the dissolution of a partnership or corporation or business association or the termination of a trust which holds shares, by court decree upon dissolution of a marriage or otherwise by operation of law. Promptly upon acquiring more than the specified number of holders of record of its shares, a close corporation shall execute and file an amendment to its articles deleting the special provisions referred to in subdivision (a) and deleting any other provisions not permissible for a corporation which is not a close corporation, which amendment shall be promptly approved and filed by the board and need not be approved by the outstanding shares.

(f) Nothing contained in this section shall invalidate any agreement among the shareholders to vote for the deletion from the articles of the special provisions referred to in subdivision (a) upon the lapse of a specified period of time or upon the occurrence of a certain event or condition or otherwise.

(g) The following sections contain specific references to close corporations: Sections 186, 202, 204, 300, 418, 421, 1111, 1201, 1800, and 1904.

SEC. 3. Section 171.08 of the Corporations Code is amended to read:

171.08. “Social purpose corporation” means any social purpose corporation formed under Division 1.5 (commencing with Section 2500).

SEC. 4. Section 911 of the Corporations Code is amended to read:

911. (a) A corporation may, by amendment of its articles pursuant to this section, change its status to that of a social purpose corporation, nonprofit public benefit corporation, nonprofit mutual benefit corporation, nonprofit religious corporation, or cooperative corporation.

(b) The amendment of the articles to change status to a nonprofit corporation shall revise the statement of purpose, delete the authorization for shares and any other provisions relating to authorized or issued shares, make such other changes as may be necessary or desired, and, if any shares have been issued, provide either for the cancellation of those shares or for the conversion of those shares to memberships of the nonprofit corporation. The amendment of the articles to change status to a cooperative corporation shall revise the statement of purpose, make such other changes as may be necessary or desired, and, if any shares have been issued, provide for the cancellation of those shares or for the conversion of those shares to memberships of the cooperative corporation, if necessary.

(c) If shares have been issued, an amendment to change status to a nonprofit corporation shall be approved by all of the outstanding shares of all classes regardless of limitations or restrictions on the voting rights thereof and an amendment to change status to a cooperative corporation shall be approved by the outstanding shares (Section 152) of each class regardless of limitations or restrictions on the voting rights thereof.

(d) In the case of a change of status to a social purpose corporation:

(1) The corporation shall modify the name of the corporation, revise the statement of purpose, include the statement required by subparagraph (B) of paragraph (3) of subdivision (b) of Section 2602, and make such other conforming changes as may be necessary or desired.

(2) The amendment shall be approved by the affirmative vote of at least two-thirds of each class, or a greater vote if required in

the articles, of outstanding shares (Section 152) of that changing corporation.

(e) If an amendment pursuant to this section is included in a merger agreement, the provisions of this section apply, except that any provision for cancellation or conversion of shares shall be in the merger agreement rather than in the amendment of the articles.

(f) Notwithstanding subdivision (c), if a corporation is a mutual water company within the meaning of Section 2705 of the Public Utilities Code and under the terms of the status change each outstanding share is converted to a membership of a nonprofit mutual benefit corporation, an amendment to change status to a nonprofit mutual benefit corporation shall be approved by the outstanding shares (Section 152) of each class regardless of limitations or restrictions on the voting rights thereof.

SEC. 5. Section 1100 of the Corporations Code is amended to read:

1100. Any two or more corporations may be merged into one of those corporations. A corporation may merge with one or more domestic corporations (Section 167), social purpose corporations (Section 171.08), foreign corporations (Section 171), or other business entities (Section 174.5) pursuant to this chapter. Mergers in which a foreign corporation but no other business entity is a constituent party are governed by Section 1108, mergers in which a social purpose corporation but no other business entity is a constituent party are governed by Section 1112.5, and mergers in which an other business entity is a constituent party are governed by Section 1113.

SEC. 6. Section 1112.5 of the Corporations Code is amended to read:

1112.5. If a disappearing corporation in a merger is a corporation governed by this division and the surviving corporation is a social purpose corporation, both of the following shall apply:

(a) The merger shall be approved by the affirmative vote of at least two-thirds of each class, or a greater vote if required in the articles, of the outstanding shares (Section 152) of the disappearing corporation, notwithstanding any provision of Chapter 12 (commencing with Section 1200).

(b) The shareholders of the disappearing corporation shall have all of the rights under Chapter 13 (commencing with Section 1300) of the shareholders of a corporation involved in a reorganization

requiring the approval of its outstanding shares (Section 152), and the disappearing corporation shall have all of the obligations under Chapter 13 (commencing with Section 1300) of a corporation involved in the reorganization.

SEC. 7. Section 1113 of the Corporations Code is amended to read:

1113. (a) Any one or more corporations may merge with one or more other business entities (Section 174.5). One or more domestic corporations (Section 167) not organized under this division and one or more foreign corporations (Section 171) may be parties to the merger. Notwithstanding the provisions of this section, the merger of any number of corporations with any number of other business entities may be effected only if:

(1) In a merger in which a domestic corporation not organized under this division or a domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each corporation and each other party that desires to merge shall approve, and shall be a party to, an agreement of merger. Other persons, including a parent party (Section 1200), may be parties to the agreement of merger. The board of each corporation that desires to merge and, if required, the shareholders shall approve the agreement of merger. The agreement of merger shall be approved on behalf of each party by those persons required to approve the merger by the laws under which it is organized. The agreement of merger shall state:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each party to the merger and the identity of the surviving party.

(3) The amendments, if any, subject to Sections 900 and 907, to the articles of the surviving corporation, if applicable, to be effected by the merger. If any amendment changes the name of the surviving corporation, if applicable, the new name may be,

subject to subdivision (b) of Section 201, the same as or similar to the name of a disappearing party to the merger.

(4) The manner of converting the shares of each constituent corporation into shares, interests, or other securities of the surviving party. If any shares of any constituent corporation are not to be converted solely into shares, interests, or other securities of the surviving party, the agreement of merger shall state (A) the cash, rights, securities, or other property which the holders of those shares are to receive in exchange for the shares, which cash, rights, securities, or other property may be in addition to or in lieu of shares, interests, or other securities of the surviving party, or (B) that the shares are canceled without consideration.

(5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a public benefit corporation or a religious corporation is a party to the merger, Section 6019.1, or, if a mutual benefit corporation is a party to the merger, Section 8019.1, or, if a consumer cooperative corporation is a party to the merger, Section 12540.1, or if an unincorporated association is a party to the merger, Section 18370, or, if a domestic limited partnership is a party to the merger, Section 15911.12, or, if a domestic partnership is a party to the merger, Section 16911, or, if a domestic limited liability company is a party to the merger, Section 17710.12.

(6) Any other details or provisions as are desired, including, without limitation, a provision for the payment of cash in lieu of fractional shares or for any other arrangement with respect thereto consistent with the provisions of Section 407.

(c) Each share of the same class or series of any constituent corporation (other than the cancellation of shares held by a party to the merger or its parent, or a wholly owned subsidiary of either, in another constituent corporation) shall, unless all shareholders of the class or series consent and except as provided in Section 407, be treated equally with respect to any distribution of cash, rights, securities, or other property. Notwithstanding paragraph (4) of subdivision (b), the unredeemable common shares of a constituent corporation may be converted only into unredeemable common shares of a surviving corporation or a parent party (Section 1200) or unredeemable equity securities of a surviving party other than a corporation if another party to the merger or its parent owns, directly or indirectly, prior to the merger shares of

that corporation representing more than 50 percent of the voting power of that corporation, unless all of the shareholders of the class consent and except as provided in Section 407.

(d) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger or the certificate of merger, as is applicable, if the amendment is approved by the board of each constituent corporation and, if the amendment changes any of the principal terms of the agreement, by the outstanding shares (Section 152), if required by Chapter 12 (commencing with Section 1200), in the same manner as the original agreement of merger. If the agreement of merger as so amended and approved is also approved by each of the other parties to the agreement of merger, the agreement of merger as so amended shall then constitute the agreement of merger.

(e) The board of a constituent corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other parties to the agreement of merger, without further approval by the outstanding shares (Section 152), at any time before the merger is effective.

(f) Each constituent corporation shall sign the agreement of merger by its chairperson of the board, president or a vice president, and also by its secretary or an assistant secretary acting on behalf of their respective corporations.

(g) (1) If the surviving party is a corporation or a foreign corporation, or if a social purpose corporation (Section 171.08), a public benefit corporation (Section 5060), a mutual benefit corporation (Section 5059), a religious corporation (Section 5061), or a corporation organized under the Consumer Cooperative Corporation Law (Section 12200) is a party to the merger, after required approvals of the merger by each constituent corporation through approval of the board (Section 151) and any approval of the outstanding shares (Section 152) required by Chapter 12 (commencing with Section 1200) and by the other parties to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic and foreign corporation attached stating the total number of outstanding shares or membership interests of each class entitled to vote on the merger (and identifying any other person or persons whose approval is required), that the agreement of merger in the form attached or its principal terms, as required, were approved

by that corporation by a vote of a number of shares or membership interests of each class that equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class and, if applicable, by that other person or persons whose approval is required, or that the merger agreement was entitled to be and was approved by the board alone (as provided in Section 1201, in the case of corporations subject to that section). If equity securities of a parent party (Section 1200) are to be issued in the merger, the officers' certificate of that controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed those officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for that party the provision of law or other basis for the authority of the signing persons. The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of the constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on

the merger and that the agreement of merger in the form attached or its principal terms, as required, were approved by a vote of the number of interests of each class that equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15911.14, if a domestic partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17710.04. The certificate of merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other business entity is authorized by the laws under which it is organized to effect the merger. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall be effective upon filing of the agreement of merger with an officer's certificate of each constituent domestic and foreign corporation and a certificate of merger for each constituent other business entity, subject to subdivision (c) of Section 110 and subject to the provisions of subdivision (j), and the several parties thereto shall be one entity. If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code. The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(2) If the surviving entity is an other business entity, and no public benefit corporation (Section 5060), mutual benefit corporation (Section 5059), religious corporation (Section 5061), or corporation organized under the Consumer Cooperative Corporation Law (Section 12200) is a party to the merger, after required approvals of the merger by each constituent corporation through approval of the board (Section 151) and any approval of the outstanding shares (Section 152) required by Chapter 12 (commencing with Section 1200) and by the other parties to the merger, the parties to the merger shall file a certificate of merger

in the office of, and on a form prescribed by, the Secretary of State. The certificate of merger shall be executed and acknowledged by each constituent domestic and foreign corporation by its chairperson of the board, president or a vice president, and also by its secretary or an assistant secretary and by each domestic constituent limited liability company by all managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed those officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact. The certificate of merger shall be signed by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for that party the provision of law or other basis for the authority of the signing persons. The certificate of merger shall set forth all of the following:

(A) The name, place of incorporation or organization, and the Secretary of State's file number, if any, of each party to the merger, separately identifying the disappearing parties and the surviving party.

(B) If the approval of the outstanding shares of a constituent corporation was required by Chapter 12 (commencing with Section 1200), a statement setting forth the total number of outstanding shares of each class entitled to vote on the merger and that the principal terms of the agreement of merger were approved by a vote of the number of shares of each class entitled to vote and the percentage vote required of each class.

(C) The future effective date or time, not more than 90 days subsequent to the date of filing of the merger, if the merger is not to be effective upon the filing of the certificate of merger with the office of the Secretary of State.

(D) A statement, by each party to the merger which is a domestic corporation not organized under this division, a foreign corporation, or an other business entity, of the statutory or other basis under which that party is authorized by the laws under which it is organized to effect the merger.

(E) Any other information required to be stated in the certificate of merger by the laws under which each party to the merger is organized, including, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17710.14, if a domestic partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15911.14.

(F) Any other details or provisions that may be desired.

Unless a future effective date or time is provided in a certificate of merger, in which event the merger shall be effective at that future effective date or time, a merger shall be effective upon the filing of the certificate of merger in the office of the Secretary of State and the several parties thereto shall be one entity. The surviving other business entity shall keep a copy of the agreement of merger at its principal place of business which, for purposes of this subdivision, shall be the office referred to in Section 17710.13 if a domestic limited liability company, at the business address specified in paragraph (5) of subdivision (a) of Section 17710.14 if a foreign limited liability company, at the office referred to in subdivision (a) of Section 16403 if a domestic general partnership, at the business address specified in subdivision (f) of Section 16911 if a foreign partnership, at the office referred to in subdivision (a) of Section 15901.14 if a domestic limited partnership, or at the business address specified in paragraph (3) of subdivision (a) of Section 15909.02 if a foreign limited partnership. Upon the request of a holder of equity securities of a party to the merger, a person with authority to do so on behalf of the surviving other business entity shall promptly deliver to that holder, a copy of the agreement of merger. A waiver by that holder of the rights provided in the foregoing sentence shall be unenforceable. If a domestic reciprocal insurer organized after 1974 to provide medical malpractice

insurance is a party to the merger the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger in accordance with Section 1555 of the Insurance Code.

(h) (1) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving party to the merger, and the performance of the conditions necessary to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger.

(2) For all purposes for a merger in which the surviving entity is a domestic other business entity and the filing of a certificate of merger is required by paragraph (2) of subdivision (g), a copy of the certificate of merger duly certified by the Secretary of State is conclusive evidence of the merger of the constituent corporations, either by themselves or together with the other parties to the merger, into the surviving other business entity.

(i) (1) Upon a merger pursuant to this section, the separate existences of the disappearing parties to the merger cease and the surviving party to the merger shall succeed, without other transfer, to all the rights and property of each of the disappearing parties to the merger and shall be subject to all the debts and liabilities of each in the same manner as if the surviving party to the merger had itself incurred them.

(2) All rights of creditors and all liens upon the property of each of the constituent corporations and other parties to the merger shall be preserved unimpaired, provided that those liens upon property of a disappearing party shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(3) Any action or proceeding pending by or against any disappearing corporation or disappearing party to the merger may be prosecuted to judgment, which shall bind the surviving party, or the surviving party may be proceeded against or substituted in its place.

(4) If a limited partnership or a general partnership is a party to the merger, nothing in this section is intended to affect the liability a general partner of a disappearing limited partnership or general partnership may have in connection with the debts and liabilities

of the disappearing limited partnership or general partnership existing prior to the time the merger is effective.

(j) (1) The merger of domestic corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivision (a) and this subdivision.

(2) If the surviving party is a domestic corporation or domestic other business entity, the merger proceedings with respect to that party and any domestic disappearing corporation shall conform to the provisions of this section. If the surviving party is a foreign corporation or foreign other business entity, then, subject to the requirements of subdivision (c), and of Section 407 and Chapter 12 (commencing with Section 1200) and Chapter 13 (commencing with Section 1300), and, if applicable, corresponding provisions of the Nonprofit Corporation Law or the Consumer Cooperative Corporation Law, with respect to any domestic constituent corporations, Article 11 (commencing with Section 17711.01) of Title 2.6 with respect to any domestic constituent limited liability companies, Article 6 (commencing with Section 16601) of Chapter 5 of Title 2 with respect to any domestic constituent general partnerships, and Article 11.5 (commencing with Section 15911.20) of Chapter 5.5 of Title 2 with respect to any domestic constituent limited partnerships, the merger proceedings may be in accordance with the laws of the state or place of incorporation or organization of the surviving party.

(3) If the surviving party is a domestic corporation or domestic other business entity, the certificate of merger or the agreement of merger with attachments shall be filed as provided in subdivision (g) and thereupon, subject to subdivision (c) of Section 110 or paragraph (2) of subdivision (g), as is applicable, the merger shall be effective as to each domestic constituent corporation and domestic constituent other business entity.

(4) If the surviving party is a foreign corporation or foreign other business entity, the merger shall become effective in accordance with the law of the jurisdiction in which the surviving party is organized, but, except as provided in paragraph (5), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of each constituent foreign and

domestic corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of paragraph (1) of subdivision (g). If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which that domestic other business entity is organized, including subdivision (a) of Section 15911.14, subdivision (b) of Section 16915, or subdivision (a) of Section 17710.14, as is applicable, shall also be filed at the same time as the filing of the agreement of merger.

(5) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.

(6) In a merger described in paragraph (3) or (4), each foreign disappearing corporation that is qualified for the transaction of intrastate business shall by virtue of the filing pursuant to this subdivision, subject to subdivision (c) of Section 110, automatically surrender its right to transact intrastate business in this state. The filing of the agreement of merger or certificate of merger, as is applicable, pursuant to this subdivision, by a disappearing foreign other business entity registered for the transaction of intrastate business in this state shall, by virtue of that filing, subject to subdivision (c) of Section 110, automatically cancel the registration for that foreign other business entity, without the necessity of the filing of a certificate of cancellation.

SEC. 8. Section 1151 of the Corporations Code is amended to read:

1151. (a) A corporation may be converted into a domestic other business entity, including, but not limited to, a limited liability company or a partnership, pursuant to this chapter if, pursuant to the proposed conversion, (1) each share of the same class or series of the converting corporation shall, unless all the shareholders of the class or series consent, be treated equally with respect to any cash, rights, securities, or other property to be

received by, or any obligations or restrictions to be imposed on, the holder of that share, and (2) nonredeemable common shares of the converting corporation shall be converted only into nonredeemable equity securities of the converted entity unless all of the shareholders of the class consent; provided, however, that clause (1) shall not restrict the ability of the shareholders of a converting corporation to appoint one or more managers, if the converted entity is a limited liability company, or one or more general partners, if the converted entity is a limited partnership, in the plan of conversion or in the converted entity's governing documents.

(b) Notwithstanding this section, the conversion of a corporation into a domestic other business entity, including, but not limited to, a limited liability company or a partnership, may be effected only if both of the following conditions are complied with:

(1) The law under which the converted entity will exist expressly permits the formation of that entity pursuant to a conversion.

(2) The corporation complies with any and all other requirements of any other law that applies to conversion to the converted entity.

SEC. 9. Section 1152 of the Corporations Code is amended to read:

1152. (a) A corporation that desires to convert to a domestic other business entity shall approve a plan of conversion. The plan of conversion shall state all of the following:

(1) The terms and conditions of the conversion.

(2) The jurisdiction of the organization of the converted entity and of the converting corporation and the name of the converted entity after conversion.

(3) The manner of converting the shares of each of the shareholders of the converting corporation into securities of, or interests in, the converted entity.

(4) The provisions of the governing documents for the converted entity, including the partnership agreement or limited liability company articles of organization and operating agreement, to which the holders of interests in the converted entity are to be bound.

(5) Any other details or provisions that are required by the laws under which the converted entity is organized, or that are desired by the converting corporation.

(b) The plan of conversion shall be approved by the board of the converting corporation (Section 151), and the principal terms of the plan of the conversion shall be approved by the outstanding shares (Section 152) of each class of the converting corporation. The approval of the outstanding shares may be given before or after approval by the board. Notwithstanding the foregoing, if a converting corporation is a close corporation, the conversion shall be approved by the affirmative vote of at least two-thirds of each class, or a greater vote if required in the articles, of outstanding shares (Section 152) of that converting corporation; provided, however, that the articles may provide for a lesser vote, but not less than a majority of the outstanding shares of each class.

(c) If the corporation is converting into a general or limited partnership or into a limited liability company, then in addition to the approval of the shareholders set forth in subdivision (b), the plan of conversion shall be approved by each shareholder who will become a general partner or manager, as applicable, of the converted entity pursuant to the plan of conversion unless the shareholders have dissenters' rights pursuant to Section 1159 and Chapter 13 (commencing with Section 1300).

(d) Upon the effectiveness of the conversion, all shareholders of the converting corporation, except those that exercise dissenters' rights as provided in Section 1159 and Chapter 13 (commencing with Section 1300), shall be deemed parties to any agreement or agreements constituting the governing documents for the converted entity adopted as part of the plan of conversion, irrespective of whether or not a shareholder has executed the plan of conversion or those governing documents for the converted entity. Any adoption of governing documents made pursuant thereto shall be effective at the effective time or date of the conversion.

(e) Notwithstanding its prior approval by the board and the outstanding shares or either of them, a plan of conversion may be amended before the conversion takes effect if the amendment is approved by the board and, if it changes any of the principal terms of the plan of conversion, by the shareholders of the converting corporation in the same manner and to the same extent as was required for approval of the original plan of conversion.

(f) A plan of conversion may be abandoned by the board of a converting corporation, or by the shareholders of a converting corporation if the abandonment is approved by the outstanding

shares, in each case in the same manner as required for approval of the plan of conversion, subject to the contractual rights of third parties, at any time before the conversion is effective.

(g) The converted entity shall keep the plan of conversion at (1) the principal place of business of the converted entity if the converted entity is a domestic partnership or (2) at the office at which records are to be kept under Section 15901.11 if the converted entity is a domestic limited partnership or at the office at which records are to be kept under Section 17701.13 if the converted entity is a domestic limited liability company. Upon the request of a shareholder of a converting corporation, the authorized person on behalf of the converted entity shall promptly deliver to the shareholder, at the expense of the converted entity, a copy of the plan of conversion. A waiver by a shareholder of the rights provided in this subdivision shall be unenforceable.

SEC. 10. Section 1155 of the Corporations Code is amended to read:

1155. (a) To convert a corporation:

(1) If the corporation is converting into a domestic limited partnership, a statement of conversion shall be completed on the certificate of limited partnership for the converted entity.

(2) If the corporation is converting into a domestic partnership, a statement of conversion shall be completed on the statement of partnership authority for the converted entity, or if no statement of partnership authority is filed then a certificate of conversion shall be filed separately.

(3) If the corporation is converting into a domestic limited liability company, a statement of conversion shall be completed on the articles of organization for the converted entity.

(b) Any statement or certificate of conversion of a converting corporation shall be executed and acknowledged by those officers of the converting corporation as would be required to sign an officers' certificate (Section 173), and shall set forth all of the following:

(1) The name and the Secretary of State's file number of the converting corporation.

(2) A statement of the total number of outstanding shares of each class entitled to vote on the conversion, that the principal terms of the plan of conversion were approved by a vote of the number of shares of each class which equaled or exceeded the vote

required under Section 1152, specifying each class entitled to vote and the percentage vote required of each class.

(3) The name, form, and jurisdiction of organization of the converted entity.

(c) For the purposes of this chapter, the certificate of conversion shall be on a form prescribed by the Secretary of State.

(d) The filing with the Secretary of State of a statement of conversion on an organizational document or a certificate of conversion as set forth in subdivision (a) shall have the effect of the filing of a certificate of dissolution by the converting corporation and no converting corporation that has made the filing is required to file a certificate of election under Section 1901 or a certificate of dissolution under Section 1905 as a result of that conversion.

(e) Upon the effectiveness of a conversion pursuant to this chapter, a converted entity that is a domestic partnership, domestic limited partnership, or domestic limited liability company shall be deemed to have assumed the liability of the converting corporation (1) to prepare and file or cause to be prepared and filed all tax and information returns otherwise required of the converting corporation under the Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code) and (2) to pay any tax liability determined to be due pursuant to that law.

SEC. 10.5. Section 1155 of the Corporations Code is amended to read:

1155. (a) To convert a corporation:

(1) If the corporation is converting into a domestic limited partnership, a statement of conversion shall be completed on the certificate of limited partnership for the converted entity.

(2) If the corporation is converting into a domestic partnership, a statement of conversion shall be completed on the statement of partnership authority for the converted entity, or if no statement of partnership authority is filed then a certificate of conversion shall be filed separately.

(3) If the corporation is converting into a domestic limited liability company, a statement of conversion shall be completed on the articles of organization for the converted entity.

(b) Any statement or certificate of conversion of a converting corporation shall be executed and acknowledged by those officers

of the converting corporation as would be required to sign an officers' certificate (Section 173), and shall set forth all of the following:

(1) The name of the converting corporation and the Secretary of State's file number of the converting corporation.

(2) A statement of the total number of outstanding shares of each class entitled to vote on the conversion, that the principal terms of the plan of conversion were approved by a vote of the number of shares of each class which equaled or exceeded the vote required under Section 1152, specifying each class entitled to vote and the percentage vote required of each class.

(3) The name, form, and jurisdiction of organization of the converted entity.

(4) The name and street address of the corporation's agent for service of process. If a corporation qualified under Section 1505 is designated, no address for it shall be set forth.

(c) For the purposes of this chapter, the certificate of conversion shall be on a form prescribed by the Secretary of State.

(d) The filing with the Secretary of State of a statement of conversion on an organizational document or a certificate of conversion as set forth in subdivision (a) shall have the effect of the filing of a certificate of dissolution by the converting corporation and no converting corporation that has made the filing is required to file a certificate of election under Section 1901 or a certificate of dissolution under Section 1905 as a result of that conversion.

(e) Upon the effectiveness of a conversion pursuant to this chapter, a converted entity that is a domestic partnership, domestic limited partnership, or domestic limited liability company shall be deemed to have assumed the liability of the converting corporation (1) to prepare and file or cause to be prepared and filed all tax and information returns otherwise required of the converting corporation under the Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code) and (2) to pay any tax liability determined to be due pursuant to that law.

SEC. 11. Section 1201 of the Corporations Code is amended to read:

1201. (a) The principal terms of a reorganization shall be approved by the outstanding shares (Section 152) of each class of

each corporation the approval of whose board is required under Section 1200, except as provided in subdivision (b) and except that (unless otherwise provided in the articles) no approval of any class of outstanding preferred shares of the surviving or acquiring corporation or parent party shall be required if the rights, preferences, privileges, and restrictions granted to or imposed upon that class of shares remain unchanged (subject to the provisions of subdivision (c)). For the purpose of this subdivision, two classes of common shares differing only as to voting rights shall be considered as a single class of shares.

(b) No approval of the outstanding shares (Section 152) is required by subdivision (a) in the case of any corporation if that corporation, or its shareholders immediately before the reorganization, or both, shall own (immediately after the reorganization) equity securities, other than any warrant or right to subscribe to or purchase those equity securities, of the surviving or acquiring corporation or a parent party (subdivision (d) of Section 1200) possessing more than five-sixths of the voting power of the surviving or acquiring corporation or parent party. In making the determination of ownership by the shareholders of a corporation, immediately after the reorganization, of equity securities pursuant to the preceding sentence, equity securities which they owned immediately before the reorganization as shareholders of another party to the transaction shall be disregarded. For the purpose of this section only, the voting power of a corporation shall be calculated by assuming the conversion of all equity securities convertible (immediately or at some future time) into shares entitled to vote but not assuming the exercise of any warrant or right to subscribe to or purchase those shares.

(c) Notwithstanding subdivision (b), the principal terms of a reorganization shall be approved by the outstanding shares (Section 152) of the surviving corporation in a merger reorganization if any amendment is made to its articles that would otherwise require that approval.

(d) Notwithstanding subdivision (b), the principal terms of a reorganization shall be approved by the outstanding shares (Section 152) of any class of a corporation that is a party to a merger or sale-of-assets reorganization if holders of shares of that class receive shares of the surviving or acquiring corporation or parent party having different rights, preferences, privileges, or restrictions

than those surrendered. Shares in a foreign corporation received in exchange for shares in a domestic corporation have different rights, preferences, privileges, and restrictions within the meaning of the preceding sentence.

(e) Notwithstanding subdivisions (a) and (b), the principal terms of a reorganization shall be approved by the affirmative vote of at least two-thirds of each class, or a greater vote if required in the articles, of the outstanding shares (Section 152) of any close corporation if the reorganization would result in their receiving shares of a corporation that is not a close corporation. However, the articles may provide for a lesser vote, but not less than a majority of the outstanding shares of each class.

(f) Notwithstanding subdivisions (a) and (b), the principal terms of a reorganization shall be approved by at least two-thirds of each class, or a greater vote if required in the articles, of the outstanding shares (Section 152) of a corporation that is a party to a merger reorganization if holders of shares receive shares of a surviving social purpose corporation in the merger.

(g) Notwithstanding subdivisions (a) and (b), the principal terms of a reorganization shall be approved by the outstanding shares (Section 152) of any class of a corporation that is a party to a merger reorganization if holders of shares of that class receive interests of a surviving other business entity in the merger.

(h) Notwithstanding subdivisions (a) and (b), the principal terms of a reorganization shall be approved by all shareholders of any class or series if, as a result of the reorganization, the holders of that class or series become personally liable for any obligations of a party to the reorganization, unless all holders of that class or series have the dissenters' rights provided in Chapter 13 (commencing with Section 1300).

(i) Any approval required by this section may be given before or after the approval by the board. Notwithstanding approval required by this section, the board may abandon the proposed reorganization without further action by the shareholders, subject to the contractual rights, if any, of third parties.

SEC. 12. The heading of Division 1.5 (commencing with Section 2500) of Title 1 of the Corporations Code is amended to read:

DIVISION 1.5. SOCIAL PURPOSE CORPORATIONS ACT

SEC. 13. Section 2500 of the Corporations Code is amended to read:

2500. This division shall be known and may be cited as the Social Purpose Corporations Act.

SEC. 14. Section 2501 of the Corporations Code is amended to read:

2501. Except as otherwise expressly stated, the provisions of Division 1 (commencing with Section 100) shall apply to corporations organized under this division, and references in that division to the terms “close corporation,” “constituent corporation,” “corporation,” “disappearing corporation,” “domestic corporation,” “foreign corporation,” “surviving corporation,” and similar terms shall be read to apply, in the same manner, to include the similar “social purpose corporation.”

SEC. 15. Section 2502 of the Corporations Code is amended to read:

2502. This division applies only to social purpose corporations organized expressly under this division whether organized or existing under this division or amended, merged or converted into a social purpose corporation in accordance with Chapter 9 (commencing with Section 900) of Division 1, Chapter 11 (commencing with Section 1100) of Division 1 or Chapter 11.5 (commencing with Section 1150) of Division 1, including all flexible purpose corporations formed under this division prior to January 1, 2015, and now existing except as provided in paragraph (2) of subdivision (b) of Section 2601 and paragraph (3) of subdivision (b) of Section 2602.

SEC. 16. Section 2502.01 of the Corporations Code is amended to read:

2502.01. Every social purpose corporation organized under the laws of this state or similar foreign social purpose corporation, all of the capital stock of which is beneficially owned by the United States, an agency or instrumentality of the United States or any social purpose corporation or similar foreign social purpose corporation the whole of the capital stock of which is owned by the United States or by an agency or instrumentality of the United States, is conclusively presumed to be an agency and instrumentality of the United States and is entitled to all privileges and immunities to which the holders of all of its stock are entitled as agencies of the United States.

SEC. 17. Section 2502.03 of the Corporations Code is amended to read:

2502.03. A social purpose corporation may be sued in the same manner as a corporation as provided in the Code of Civil Procedure.

SEC. 18. Section 2502.04 of the Corporations Code is amended to read:

2502.04. A social purpose corporation formed under this division shall, in respect of its property, as a condition of its existence as a social purpose corporation, be subject, in the same manner as a corporation, to the provisions of the Code of Civil Procedure authorizing the attachment of corporate property.

SEC. 19. Section 2502.05 of the Corporations Code is amended to read:

2502.05. The fees of the Secretary of State for filing instruments by or on behalf of social purpose corporations shall be the same fees prescribed for corporations in Article 3 (commencing with Section 12180) of Chapter 3 of Part 2 of Division 3 of Title 2 of the Government Code.

SEC. 20. Section 2502.06 of the Corporations Code is amended to read:

2502.06. (a) Provisions of the articles described in paragraph (3) of subdivision (e) of Section 2602 and subdivisions (a) and (b) of Section 2603 may be made dependent upon facts ascertainable outside of the articles, if the manner in which those facts shall operate upon those provisions is clearly and expressly set forth in the articles. Similarly, any of the terms of an agreement of merger pursuant to Section 1101 may be made dependent upon facts ascertainable outside of that agreement, if the manner in which those facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger.

(b) Notwithstanding subdivision (a), when any provisions or terms of articles or an agreement of merger are made dependent upon facts ascertainable outside of the filed instrument through a reference to an agreement or similar document, the social purpose corporation filing that instrument shall maintain at its principal executive office a copy of that referenced agreement or document and all amendments, and shall provide to its shareholders, in the case of articles, or to shareholders of any constituent corporation or other business entity, in the case of an agreement of merger, a copy of them upon written request and without charge.

(c) For the purposes of this section, “referenced agreement” means an agreement or contract to which the social purpose corporation is a party. An amendment or revision of a referenced agreement shall require shareholder approval, in addition to any other required approvals, upon any of the following circumstances:

(1) If the amendment or revision of the referenced agreement would result in a material change in the rights, preferences, privileges, or restrictions of a class or series of shares, the amendment or revision shall be approved by the outstanding shares, as defined in Section 152, of that class or series.

(2) If the amendment or revision of the referenced agreement would result in a material change in the rights or liabilities of any class or series of shares with respect to the subject matter of paragraph (1), (2), (3), (5), or (9) of subdivision (a) of Section 2603, the amendment or revision shall be approved by the outstanding shares, as defined in Section 152, of that class or series.

(3) If the amendment or revision of the referenced agreement would result in a material change in the restrictions on transfer or hypothecation of any class or series of shares, the amendment or revision shall be approved by the outstanding shares, as defined in Section 152, of that class or series.

(4) If the amendment or revision of the referenced agreement would result in a change of any of the principal terms of an agreement of merger, the amendment or revision shall be approved in the same manner as required by Section 3504 for a change in the principal terms of an agreement of merger.

SEC. 21. Section 2503.1 of the Corporations Code is amended to read:

2503.1. “Close social purpose corporation” means a social purpose corporation that is also a close corporation.

SEC. 22. Section 2504 of the Corporations Code is amended to read:

2504. “Constituent social purpose corporation” means a social purpose corporation that is merged with or into one or more corporations or one or more other business entities and includes a surviving social purpose corporation.

SEC. 23. Section 2506 of the Corporations Code is amended to read:

2506. “Disappearing social purpose corporation” means a constituent social purpose corporation that is not the surviving entity.

SEC. 24. Section 2507 of the Corporations Code is amended to read:

2507. “Domestic social purpose corporation” means a corporation organized under this division.

SEC. 25. Section 2509 of the Corporations Code is amended to read:

2509. “Social purpose corporation,” unless otherwise expressly provided, refers only to a corporation organized under this division.

SEC. 26. Section 2510 of the Corporations Code is amended to read:

2510. “Social purpose corporation subject to the Banking Law” means any of the following:

(a) A social purpose corporation that, with the approval of the Commissioner of Financial Institutions, is incorporated for the purpose of engaging in, or that is authorized by the Commissioner of Financial Institutions to engage in, the commercial banking business under the Banking Law (Division 1 (commencing with Section 99) of the Financial Code).

(b) Any social purpose corporation that, with the approval of the Commissioner of Financial Institutions, is incorporated for the purpose of engaging in, or that is authorized by the Commissioner of Financial Institutions to engage in, the industrial banking business under the Banking Law (Division 1 (commencing with Section 99) of the Financial Code).

(c) Any social purpose corporation, other than a social purpose corporation described in subdivision (d), that, with the approval of the Commissioner of Financial Institutions, is incorporated for the purpose of engaging in, or that is authorized by the Commissioner of Financial Institutions to engage in, the trust business under the Banking Law (Division 1 (commencing with Section 99) of the Financial Code).

(d) Any social purpose corporation that is authorized by the Commissioner of Financial Institutions and the Commissioner of Insurance to maintain a title insurance department to engage in title insurance business and a trust department to engage in trust business.

(e) Any social purpose corporation that, with the approval of the Commissioner of Financial Institutions, is incorporated for the purpose of engaging in, or that is authorized by the Commissioner of Financial Institutions to engage in, business under Article 1 (commencing with Section 3500) of Chapter 19 of Division 1 of the Financial Code.

SEC. 27. Section 2510.1 of the Corporations Code is amended to read:

2510.1. “Social purpose corporation subject to the Insurance Code as an insurer” means a social purpose corporation that has met the requirements of Sections 201.5, 201.6, and 201.7.

SEC. 28. Section 2511 of the Corporations Code is amended to read:

2511. “Reorganization” means a merger reorganization, an exchange reorganization, or a sale of assets reorganization.

(a) “Merger reorganization” means a merger pursuant to Chapter 11 (commencing with Section 1100) of Division 1 and Chapter 8 (commencing with Section 3200), of this division, other than a short-form merger.

(b) “Exchange reorganization” means the acquisition by one domestic social purpose corporation, foreign social purpose corporation, or other business entity in exchange, in whole or in part, for its equity securities, or the equity securities of a domestic social purpose corporation, a foreign social purpose corporation, or an other business entity that is in control of the acquiring entity, of equity securities of another domestic social purpose corporation, foreign social purpose corporation, or other business entity if, immediately after the acquisition, the acquiring entity has control of the other entity.

(c) “Sale-of-assets reorganization” means the acquisition by one domestic social purpose corporation, foreign social purpose corporation, or other business entity in exchange in whole or in part for its equity securities, or the equity securities of a domestic social purpose corporation, a foreign social purpose corporation, or an other business entity that is in control of the acquiring entity, or for its debt securities, or debt securities of a domestic social purpose corporation, foreign social purpose corporation, or other business entity that is in control of the acquiring entity, that are not adequately secured and that have a maturity date in excess of five years after the consummation of the reorganization, or both,

of all or substantially all of the assets of another domestic social purpose corporation, foreign social purpose corporation, or other business entity.

SEC. 29. Section 2512 of the Corporations Code is amended to read:

2512. “Share exchange tender offer” means any acquisition by one social purpose corporation in exchange in whole or in part for its equity securities, or the equity securities of a corporation or a social purpose corporation that is in control of the acquiring social purpose corporation, of shares of another corporation or social purpose corporation, other than an exchange reorganization (subdivision (b) of Section 2511).

SEC. 30. Section 2513 of the Corporations Code is amended to read:

2513. “Special purpose” means the special purpose set forth in a social purpose corporation’s articles pursuant to subdivision (b) of Section 2602.

SEC. 31. Section 2514 of the Corporations Code is amended to read:

2514. “Special purpose current report” means the report required of a social purpose corporation pursuant to Section 3501.

SEC. 32. Section 2515 of the Corporations Code is amended to read:

2515. “Special purpose MD&A” means the management discussion and analysis required of a social purpose corporation pursuant to subdivision (b) of Section 3500.

SEC. 33. Section 2516 of the Corporations Code is amended to read:

2516. “Special purpose objectives” means those objectives set forth by management and the directors of a social purpose corporation for purposes of measuring the impact of the social purpose corporation’s efforts relating to its special purpose in accordance with Section 3500.

SEC. 34. Section 2517 of the Corporations Code is amended to read:

2517. “Surviving social purpose corporation” means a social purpose corporation into which one or more other corporations or one or more other business entities is merged.

SEC. 35. Section 2600 of the Corporations Code is amended to read:

2600. (a) One or more natural persons, partnerships, associations, social purpose corporations, or corporations, domestic or foreign, may form a social purpose corporation under this division by executing and filing articles of incorporation.

(b) If initial directors are named in the articles, each director named in the articles shall sign and acknowledge the articles. If initial directors are not named in the articles, the articles shall be signed by one or more incorporators who shall be persons described in subdivision (a).

(c) The corporate existence begins upon the filing of the articles and continues perpetually, unless otherwise expressly provided by law or in the articles.

SEC. 36. Section 2600.5 of the Corporations Code is amended to read:

2600.5. (a) An existing business association organized as a trust under the laws of this state or of a foreign jurisdiction may incorporate under this division upon approval by its board of trustees or similar governing body and approval by the affirmative vote of two-thirds of the outstanding voting shares of beneficial interest, or a greater proportion of the outstanding shares of beneficial interest or the vote of those other classes of shares of beneficial interest as may be specifically required by its declaration of trust or bylaws, and the filing of articles with a certificate attached pursuant to this chapter.

(b) In addition to the matters required to be set forth in the articles pursuant to Section 2602, the articles filed pursuant to this section shall state that an existing unincorporated association, stating its name, is being incorporated by the filing of the articles.

(c) The articles filed pursuant to this section shall be signed by the president, or any vice president, and the secretary, or any assistant secretary, of the existing association and shall be accompanied by a certificate signed and verified by those officers signing the articles and stating that the incorporation of the association has been approved by the trustees and by the required vote of holders of shares of beneficial interest in accordance with subdivision (a).

(d) Upon the filing of articles pursuant to this section, the social purpose corporation shall succeed automatically to all of the rights and property of the association being incorporated and shall be subject to all of its debts and liabilities in the same manner as if

the social purpose corporation had itself incurred them. The incumbent trustees of the association shall constitute the initial directors of the social purpose corporation and shall continue in office until the next annual meeting of the shareholders or their earlier death, resignation, or removal. All rights of creditors and all liens upon the property of the association shall be preserved unimpaired. Any action or proceeding pending by or against the association may be prosecuted to judgment, which shall bind the social purpose corporation, or the social purpose corporation may be proceeded against or substituted in its place.

(e) The filing for record in the office of the county recorder of any county in this state in which any of the real property of the association is located of a copy of the articles filed pursuant to this section, certified by the Secretary of State, shall evidence record ownership in the social purpose corporation of all interests of the association in and to the real property located in that county.

SEC. 37. Section 2601 of the Corporations Code is amended to read:

2601. (a) The Secretary of State shall not file articles setting forth a name in which “bank,” “trust,” “trustee,” or related words appear, unless the certificate of approval of the Commissioner of Financial Institutions is attached to the articles. This subdivision does not apply to the articles of any social purpose corporation subject to the Banking Law on which is endorsed the approval of the Commissioner of Financial Institutions.

(b) (1) The Secretary of State shall not file articles that set forth a name that is likely to mislead the public or that is the same as, or resembles so closely as to tend to deceive, the name of a domestic corporation, the name of a domestic social purpose corporation, or the name of a foreign corporation that is authorized to transact intrastate business or has registered its name pursuant to Section 2101, a name that a foreign corporation has assumed under subdivision (b) of Section 2106, a name that will become the record name of a corporation or social purpose corporation or a foreign corporation upon the effective date of a filed corporate instrument where there is a delayed effective date pursuant to subdivision (c) of Section 110 or subdivision (c) of Section 5008, or a name that is under reservation for another corporation or social purpose corporation pursuant to this title, except that a social purpose corporation may adopt a name that is substantially the

same as an existing corporation or social purpose corporation, foreign or domestic, which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, upon proof of consent by the domestic or foreign corporation or social purpose corporation and a finding by the Secretary of State that under the circumstances the public is not likely to be misled. The use by a social purpose corporation of a name in violation of this section may be enjoined notwithstanding the filing of its articles by the Secretary of State.

(2) A corporation formed pursuant to this division before January 1, 2015, may elect to change its status from a flexible purpose corporation to a social purpose corporation by amending its articles of incorporation to change its name to replace “flexible purpose corporation” with “social purpose corporation” and to replace the term “flexible purpose corporation” with “social purpose corporation” as applicable in any statements contained in the articles. For any flexible purpose corporation formed prior to January 1, 2015, that has not amended its articles of incorporation to change its status to a social purpose corporation, any reference in this division to social purpose corporation shall be deemed a reference to “flexible purpose corporation.”

(c) Any applicant may, upon payment of the fee prescribed in the Government Code, obtain from the Secretary of State a certificate of reservation of any name not prohibited by subdivision (b), and upon the issuance of the certificate the name stated in the certificate shall be reserved for a period of 60 days. The Secretary of State shall not, however, issue certificates reserving the same name for two or more consecutive 60-day periods to the same applicant or for the use or benefit of the same person, partnership, firm, corporation, or social purpose corporation. No consecutive reservations shall be made by or for the use or benefit of the same person, partnership, firm, corporation, or social purpose corporation of names so similar as to fall within the prohibitions of subdivision (b).

SEC. 38. Section 2602 of the Corporations Code is amended to read:

2602. The articles of incorporation shall set forth:

(a) The name of the social purpose corporation that shall contain the words “social purpose corporation” or an abbreviation of those words.

(b) (1) Either of the following statements, as applicable:

(A) “The purpose of this social purpose corporation is to engage in any lawful act or activity for which a social purpose corporation may be organized under Division 1.5 of the California Corporations Code, other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code, for the benefit of the overall interests of the social purpose corporation and its shareholders and in furtherance of the following enumerated purposes ____.”

(B) “The purpose of this social purpose corporation is to engage in the profession of ____ (with the insertion of a profession permitted to be incorporated by the California Corporations Code) and any other lawful activities, other than the banking or trust company business, not prohibited to a social purpose corporation engaging in that profession by applicable laws and regulations, for the benefit of the overall interests of the social purpose corporation and its shareholders and in furtherance of the following enumerated purposes ____.”

(2) A statement that a purpose of the social purpose corporation, in addition to the purpose stated pursuant to paragraph (1), is to engage in one or more of the following enumerated purposes, as also specified in the statement set forth pursuant to paragraph (1):

(A) One or more charitable or public purpose activities that a nonprofit public benefit corporation is authorized to carry out.

(B) The purpose of promoting positive effects of, or minimizing adverse effects of, the social purpose corporation’s activities upon any of the following, provided that the corporation consider the purpose in addition to or together with the financial interests of the shareholders and compliance with legal obligations, and take action consistent with that purpose:

(i) The social purpose corporation’s employees, suppliers, customers, and creditors.

(ii) The community and society.

(iii) The environment.

(3) (A) For any corporation organized under this division before January 1, 2015, that has not elected to change its status to a social purpose corporation, a statement that the corporation is organized as a flexible purpose corporation under the Corporate Flexibility Act of 2011. Such a corporation is not required to revise the

statements required in paragraphs (1) and (2) to conform to the changes made by the act adding this subparagraph.

(B) For any corporation organized under this division on and after January 1, 2015, or that has elected to change its status to a social purpose corporation pursuant to paragraph (2) of subdivision (b) of Section 2601, a statement that the corporation is organized as a social purpose corporation under the Social Purpose Corporations Act.

(4) If the social purpose corporation is a social purpose corporation subject to the Banking Law (Division 1.1 (commencing with Section 1000) of the Financial Code), the articles shall set forth a statement of purpose that is prescribed by the applicable provision of the Banking Law (Division 1.1 (commencing with Section 1000) of the Financial Code).

(5) If the social purpose corporation is a social purpose corporation subject to the Insurance Code as an insurer, the articles shall additionally state that the business of the social purpose corporation is to be an insurer.

(6) If the social purpose corporation is intended to be a professional corporation within the meaning of the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3), the articles shall additionally contain the statement required by Section 13404. The articles shall not set forth any further or additional statement with respect to the purposes or powers of the social purpose corporation, except by way of limitation or except as expressly required by any law of this state, other than this division, or any federal or other statute or regulation, including the Internal Revenue Code and regulations thereunder as a condition of acquiring or maintaining a particular status for tax purposes.

(7) If the social purpose corporation is a close social purpose corporation, a statement as required by subdivision (a) of Section 158.

(c) The name and street address in this state of the social purpose corporation's initial agent for service of process in accordance with subdivision (b) of Section 1502.

(d) The initial street address of the corporation.

(e) The initial mailing address of the corporation, if different from the initial street address.

(f) If the social purpose corporation is authorized to issue only one class of shares, the total number of shares that the social purpose corporation is authorized to issue.

(g) If the social purpose corporation is authorized to issue more than one class of shares, or if any class of shares is to have two or more series, the articles shall state:

(1) The total number of shares of each class that the social purpose corporation is authorized to issue and the total number of shares of each series that the social purpose corporation is authorized to issue or that the board is authorized to fix the number of shares of any such series.

(2) The designation of each class and the designation of each series or that the board may determine the designation of any such series.

(3) The rights, preferences, privileges, and restrictions granted to or imposed upon the respective classes or series of shares or the holders thereof, or that the board, within any limits and restrictions stated, may determine or alter the rights, preferences, privileges, and restrictions granted to or imposed upon any wholly unissued class of shares or any wholly unissued series of any class of shares. As to any series the number of shares of which is authorized to be fixed by the board, the articles may also authorize the board, within the limits and restrictions stated in the article or in any resolution or resolutions of the board originally fixing the number of shares constituting any series, to increase or decrease, but not below the number of shares of such series then outstanding, the number of shares of any series subsequent to the issue of shares of that series. If the number of shares of any series shall be so decreased, the shares constituting that decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of that series.

SEC. 39. Section 2603 of the Corporations Code is amended to read:

2603. The articles of incorporation may set forth:

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

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

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

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

(4) A provision limiting the duration of the social purpose corporation's existence to a specified date.

(5) A provision requiring, for any or all corporate actions, except as provided in Section 303, subdivision (b) of Section 402.5, subdivision (c) of Section 708, and Section 1900, the vote of a larger proportion or of all of the shares of any class or series, or the vote or quorum for taking action of a larger proportion or of all of the directors, than is otherwise required by Division 1 (commencing with Section 100) or this division.

(6) So long as consistent with the purpose of the social purpose corporation as set forth in the articles in accordance with subdivision (b) of Section 2602, a provision limiting or restricting the business in which the social purpose corporation may engage or the powers which the social purpose corporation may exercise, or both.

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

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

(9) A provision requiring the approval of the shareholders (Section 153) or the approval of the outstanding shares (Section 152) for any corporate action, even though not otherwise required by Division 1 (commencing with Section 100) or this division.

(10) Provisions eliminating or limiting the personal liability of a director for monetary damages in an action brought by or in the right of the social purpose corporation for breach of a director's duties to the social purpose corporation and its shareholders, as set forth in Section 2700, subject to the following:

(A) The provision may not eliminate or limit the liability of directors (i) for acts or omissions that involve intentional misconduct or a knowing and culpable violation of law, (ii) for acts or omissions that a director believes to be contrary to the best interests of the social purpose corporation or its shareholders and its corporate purposes as expressed in its articles, or that involve the absence of good faith on the part of the director, (iii) for any transaction from which a director derived an improper personal benefit, (iv) for acts or omissions that show a reckless disregard

for the director's duty to the social purpose corporation or its shareholders in circumstances in which the director was aware, or should have been aware, in the ordinary course of performing a director's duties, of a risk of serious injury to the social purpose corporation, its shareholders, or its corporate purposes as expressed in its articles, (v) for acts or omissions that constitute an unexcused pattern of inattention that amounts to an abdication of the director's duty to the social purpose corporation, its shareholders, or its corporate purposes as expressed in its articles pursuant to Section 2602, or (vi) under Section 310 or 2701.

(B) The provision shall not eliminate or limit the liability of a director for any act or omission occurring prior to the date on which the provision becomes effective.

(C) The provision shall not eliminate or limit the liability of an officer for any act or omission as an officer, notwithstanding that the officer is also a director or that his or her actions, if negligent or improper, have been ratified by the directors.

(11) A provision authorizing, whether by bylaw, agreement, or otherwise, the indemnification of agents of the social purpose corporation for breach of duty to the social purpose corporation and its shareholders, provided, however, that the provision may not provide for indemnification of any agent for any acts or omissions or transactions from which a director may not be relieved of liability as described in subparagraphs (A), (B), and (C) of paragraph (10).

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

(b) Reasonable restrictions upon the right to transfer or hypothecate shares of any class or classes or series, except that no restriction shall be binding with respect to shares issued prior to the adoption of the restriction unless the holders of those shares voted in favor of the restriction.

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

(d) Any other provision, not in conflict with law, for the management of the business and for the conduct of the affairs of

the social purpose corporation, including any provision that is required or permitted by this division to be stated in the bylaws.

SEC. 40. Section 2604 of the Corporations Code is amended to read:

2604. Subject to any limitation contained in the articles, to compliance with any other applicable laws, and to consistency with the special purpose of the social purpose corporation, any social purpose corporation other than a social purpose corporation subject to the Banking Law or a professional social purpose corporation may engage in any business activity. A social purpose corporation subject to the Banking Law or a professional social purpose corporation may engage in any business activity not prohibited by the respective statutes and regulations to which it is subject.

SEC. 41. Section 2605 of the Corporations Code is amended to read:

2605. Subject to any limitations contained in the articles, to compliance with other provisions of this division and any other applicable laws, and to consistency with the special purpose of the social purpose corporation, a social purpose corporation shall have all the powers of a natural person in carrying out its business activities, including, without limitation, the power to:

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

(b) Adopt, amend, and repeal bylaws.

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

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

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

(f) Pay pensions, and establish and carry out pension, profit-sharing, share bonus, share purchase, share option, savings, thrift, and other retirement, incentive, and benefit plans, trusts, and provisions for any or all of the directors, officers, and employees of the social purpose corporation or any of its subsidiaries or

affiliates, and to indemnify and purchase and maintain insurance on behalf of any fiduciary of these plans, trusts, or provisions.

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

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

SEC. 42. Section 2700 of the Corporations Code is amended to read:

2700. (a) A director shall perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner the director believes to be in the best interests of the social purpose corporation and its shareholders, and with that care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

(b) In performing the duties of a director, a director shall be entitled to rely upon information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

(1) An officer or employee of the social purpose corporation whom the director believes to be reliable and competent in the matters presented.

(2) Counsel, independent accountants, or other persons as to matters which the director believes to be within that person's professional or expert competence.

(3) A committee of the board upon which the director does not serve, as to matters within its designated authority, which committee the director believes to merit confidence, so long as the director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause that reliance to be unwarranted.

(c) In discharging his or her duties, a director shall consider those factors, and give weight to those factors, as the director deems relevant, including the overall prospects of the social

purpose corporation, the best interests of the social purpose corporation and its shareholders, and the purposes of the social purpose corporation as set forth in its articles.

(d) A person who performs the duties of a director in accordance with subdivisions (a), (b), and (c) shall have no liability based upon any alleged failure to discharge the person's obligations as a director. The liability of a director for monetary damages may be eliminated or limited by a social purpose corporation's articles to the extent provided in paragraph (10) of subdivision (a) of Section 2603.

(e) Notwithstanding any of the purposes set forth in its articles, a social purpose corporation shall not be deemed to hold any of its assets for the benefit of any party other than its shareholders. However, nothing in this division shall be construed as negating existing charitable trust principles or the Attorney General's authority to enforce any charitable trust created.

(f) Nothing in this section, express or implied, is intended to create or grant or shall create or grant any right in or for any person or any cause of action by or for any person, and a director shall not be responsible to any party other than the social purpose corporation and its shareholders.

SEC. 43. Section 2701 of the Corporations Code is amended to read:

2701. (a) Subject to Section 2700, directors of a social purpose corporation who approve any of the following corporate actions shall be jointly and severally liable to the social purpose corporation for the benefit of all of the creditors or shareholders entitled to institute an action under subdivision (c):

(1) The making of any distribution to its shareholders to the extent that it is contrary to the provisions of Sections 500 to 503, inclusive.

(2) The distribution of assets to shareholders after institution of dissolution proceedings of the social purpose corporation, without paying or adequately providing for all known liabilities of the social purpose corporation, excluding any claims not filed by creditors within the time limit set by the court in a notice given to creditors under Chapter 18 (commencing with Section 1800) of Division 1, Chapter 20 (commencing with Section 1900) of Division 1, and Chapter 20 (commencing with Section 2000).

(3) The making of any loan or guaranty contrary to Section 2715.

(b) A director who is present at a meeting of the board, or any committee of the board, at which an action specified in subdivision (a) is taken and who abstains from voting, shall be deemed to have approved the action.

(c) Suit may be brought in the name of the social purpose corporation to enforce the liability as follows:

(1) Under paragraph (1) of subdivision (a) against any or all directors liable, by the persons entitled to sue under subdivision (b) of Section 506.

(2) Under paragraph (2) or (3) of subdivision (a) against any or all directors liable, by any one or more creditors of the social purpose corporation whose debts or claims arose prior to the time of any of the corporate actions specified in paragraph (2) or (3) of subdivision (a) and who have not consented to the corporate action, regardless of whether they have reduced their claims to judgment.

(3) Under paragraph (3) of subdivision (a) against any or all directors liable, by any one or more holders of shares outstanding at the time of any corporate action specified in paragraph (3) of subdivision (a) who have not consented to the corporate action, without regard to the provisions of Section 2900.

(d) The damages recoverable from a director under this section shall be the amount of the illegal distribution, or if the illegal distribution consists of property, the fair market value of that property at the time of the illegal distribution, plus interest thereon from the date of the distribution at the legal rate on judgments until paid, together with all reasonably incurred costs of appraisal or other valuation, if any, of that property or loss suffered by the social purpose corporation as a result of the illegal loan or guaranty, respectively, but not exceeding the liabilities of the social purpose corporation owed to nonconsenting creditors at the time of the violation and the injury suffered by nonconsenting shareholders.

(e) Any director sued under this section may implead all other directors liable and may compel contribution, either in that action or in an independent action against directors not joined in that action.

(f) Directors liable under this section shall also be entitled to be subrogated to the rights of the social purpose corporation:

(1) With respect to paragraph (1) of subdivision (a), against shareholders who received the distribution.

(2) With respect to paragraph (2) of subdivision (a), against shareholders who received the distribution of assets.

(3) With respect to paragraph (3) of subdivision (a), against the person who received the loan or guaranty.

Any director sued under this section may file a cross-complaint against the person or persons who are liable to the director as a result of the subrogation provided for in this subdivision or may proceed against them in an independent action.

SEC. 44. Section 2702 of the Corporations Code is amended to read:

2702. (a) For the purposes of this section:

(1) “Agent” means any person who is or was a director, officer, employee, or other agent of the social purpose corporation, or is or was serving at the request of the social purpose corporation as a director, officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, or was a director, officer, employee, or agent of a foreign or domestic corporation which was a predecessor corporation of the social purpose corporation or of another enterprise at the request of the predecessor corporation.

(2) “Proceeding” means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative.

(3) “Expenses” includes without limitation attorneys’ fees and any expenses of establishing a right to indemnification under subdivision (b).

(b) Subject to the standards and restrictions, if any, set forth in its articles or bylaws, and subject to the limitations required by paragraph (11) of subdivision (a) of Section 2603, a social purpose corporation may indemnify and hold harmless any agent or any other person from and against any and all claims and demands whatsoever.

(c) Expenses incurred in defending any proceeding may be advanced by the social purpose corporation prior to the final disposition of the proceeding. The provisions of subdivision (a) of Section 315 do not apply to advances made pursuant to this subdivision.

(d) A social purpose corporation may purchase and maintain insurance on behalf of any of its agents against any liability asserted against or incurred by the agent in that capacity or arising out of the agent's status as an agent regardless of whether the social purpose corporation would have the power to indemnify the agent against that liability under this section. The fact that a social purpose corporation owns all or a portion of the shares of the company issuing a policy of insurance shall not render this subdivision inapplicable if either of the following conditions are satisfied:

(1) The insurance provided by this subdivision is limited as indemnification is required to be limited by paragraph (11) of subdivision (a) of Section 2603.

(2) (A) The company issuing the insurance policy is organized, licensed, and operated in a manner that complies with the insurance laws and regulations applicable to its jurisdiction of organization.

(B) The company issuing the policy provides procedures for processing claims that do not permit that company to be subject to the direct control of the social purpose corporation that purchased that policy.

(C) The policy issued provides for some manner of risk sharing between the issuer and purchaser of the policy, on one hand, and some unaffiliated person or persons, on the other, such as by providing for more than one unaffiliated owner of the company issuing the policy or by providing that a portion of the coverage furnished will be obtained from some unaffiliated insurer or reinsurer.

(e) This section does not apply to any proceeding against any trustee, investment manager, or other fiduciary of an employee benefit plan in that person's capacity as such, even though the person may also be an agent as defined in subdivision (a) of the employer social purpose corporation. A social purpose corporation shall have power to indemnify a trustee, investment manager, or other fiduciary to the extent permitted by subdivision (f) of Section 2605.

SEC. 45. Section 2800 of the Corporations Code is amended to read:

2800. (a) All certificates representing shares of a social purpose corporation shall contain, in addition to any other statements

required by this section, the following conspicuous language on the face of the certificate.

“This entity is a social purpose corporation organized under Division 1.5 of the California Corporations Code. The articles of this corporation state one or more purposes required by law. Refer to the articles on file with the Secretary of State, and the bylaws and any agreements on file with the secretary of the corporation, for further information.”

(b) There shall also appear on the certificate, the initial transaction statement, and written statements, unless stated or summarized under subdivision (a) or (b) of Section 417, the statements required by all of the following, to the extent applicable:

(1) The fact that the shares are subject to restrictions upon transfer.

(2) If the shares are assessable or are not fully paid, a statement that they are assessable or the statements required by subdivision (d) of Section 409 if they are not fully paid.

(3) The fact that the shares are subject to a voting agreement under subdivision (a) of Section 706 or an irrevocable proxy under subdivision (e) of Section 705 or restrictions upon voting rights contractually imposed by the social purpose corporation.

(4) The fact that the shares are redeemable.

(5) The fact that the shares are convertible and the period for conversion.

Statements or references to statements on the face of the certificate, the initial transaction statement, and written statements required by paragraph (1) or (2) shall be conspicuous.

(c) Unless stated on the certificate, the initial transaction statement, and written statements as required by subdivision (a), no restriction upon transfer, no right of redemption and no voting agreement under subdivision (a) of Section 706, no irrevocable proxy under subdivision (e) of Section 705, and no voting restriction imposed by the social purpose corporation shall be enforceable against a transferee of the shares without actual knowledge of the restriction, right, agreement, or proxy. With regard only to liability to assessment or for the unpaid portion of the subscription price, unless stated on the certificate as required by subdivision (a), that liability shall not be enforceable against a

transferee of the shares. For the purpose of this subdivision, “transferee” includes a purchaser from the social purpose corporation.

(d) All certificates representing shares of a close social purpose corporation shall contain, in addition to any other statements required by this section, the following conspicuous legend on the face thereof:

“This social purpose corporation is a close social purpose corporation. The number of holders of record of its shares of all classes cannot exceed ____ (a number not in excess of 35). Any attempted voluntary inter vivos transfer which would violate this requirement is void. Refer to the articles, bylaws, and any agreements on file with the secretary of the social purpose corporation for further restrictions.”

(e) Any attempted voluntary inter vivos transfer of the shares of a close social purpose corporation that would result in the number of holders of record of its shares exceeding the maximum number specified in its articles is void if the certificate contains the legend required by subdivision (c).

(f) Notwithstanding any other subdivision, the certificates representing shares of a corporation formed pursuant to this division as a “flexible purpose corporation” before January 1, 2015, shall continue to be valid even if the certificates reference a “flexible purpose corporation.” A corporation formed pursuant to this division before January 1, 2015, may, but is not required to, reissue certificates to replace “flexible purpose corporation” with “social purpose corporation” as applicable. Any reference to a “flexible purpose corporation” or any abbreviation of that term in certificates representing shares of a corporation formed pursuant to this division before January 1, 2015, shall also be a reference to “social purpose corporation.”

SEC. 46. Section 2900 of the Corporations Code is amended to read:

2900. (a) As used in this section:

(1) “Social purpose corporation” includes an unincorporated association.

(2) “Board” includes the managing body of an unincorporated association.

(3) “Shareholder” includes a member of an unincorporated association.

(4) “Shares” includes memberships in an unincorporated association.

(b) Shareholders of a social purpose corporation may maintain a derivative lawsuit to enforce the requirements set forth in subdivision (c) of Section 2700.

(c) No action may be instituted or maintained in right of any domestic or foreign social purpose corporation under this section by any party other than a shareholder of the social purpose corporation.

(d) No action may be instituted or maintained in right of any domestic or foreign social purpose corporation by any holder of shares or of voting trust certificates of the social purpose corporation unless both of the following conditions exist:

(1) The plaintiff alleges in the complaint that plaintiff was a shareholder, of record or beneficially, or the holder of voting trust certificates at the time of the transaction or any part thereof of which plaintiff complains or that plaintiff’s shares or voting trust certificates thereafter devolved upon plaintiff by operation of law from a holder who was a holder at the time of the transaction or any part thereof complained of. Any shareholder who does not meet these requirements may nevertheless be allowed, in the discretion of the court, to maintain the action on a preliminary showing to and determination by the court, by motion and after a hearing, at which the court shall consider the evidence by affidavit or testimony, as it deems material, of all of the following:

(A) There is a strong prima facie case in favor of the claim asserted on behalf of the social purpose corporation.

(B) No other similar action has been or is likely to be instituted.

(C) The plaintiff acquired the shares before there was disclosure to the public or to the plaintiff of the wrongdoing of which plaintiff complains.

(D) Unless the action can be maintained the defendant may retain a gain derived from defendant’s willful breach of a fiduciary duty.

(E) The requested relief will not result in unjust enrichment of the social purpose corporation or any shareholder of the social purpose corporation.

(2) The plaintiff alleges in the complaint with particularity plaintiff's efforts to secure from the board the action as plaintiff desires, or the reasons for not making that effort, and alleges further that plaintiff has either informed the social purpose corporation or the board in writing of the ultimate facts of each cause of action against each defendant or delivered to the social purpose corporation or the board a true copy of the complaint which plaintiff proposes to file.

(e) In any action referred to in subdivision (c), at any time within 30 days after service of summons upon the social purpose corporation or upon any defendant who is an officer or director of the social purpose corporation, or held that office at the time of the acts complained of, the social purpose corporation or the defendant may move the court for an order, upon notice and hearing, requiring the plaintiff to furnish a bond as hereinafter provided. The motion shall be based upon one or both of the following grounds:

(1) There is no reasonable possibility that the prosecution of the cause of action alleged in the complaint against the moving party will benefit the social purpose corporation or its shareholders.

(2) The moving party, if other than the social purpose corporation, did not participate in the transaction complained of in any capacity.

The court on application of the social purpose corporation or any defendant may, for good cause shown, extend the 30-day period for an additional period or periods not exceeding 60 days.

(f) At the hearing upon any motion pursuant to subdivision (d), the court shall consider the evidence, written or oral, by witnesses or affidavit, as may be material to the ground or grounds upon which the motion is based, or to a determination of the probable reasonable expenses, including attorney's fees, of the social purpose corporation and the moving party that will be incurred in the defense of the action. If the court determines, after hearing the evidence adduced by the parties, that the moving party has established a probability in support of any of the grounds upon which the motion is based, the court shall fix the amount of the bond, not to exceed fifty thousand dollars (\$50,000), to be furnished by the plaintiff for reasonable expenses, including attorney's fees, which may be incurred by the moving party and the social purpose corporation in connection with the action,

including expenses for which the social purpose corporation may become liable pursuant to Section 2702. A ruling by the court on the motion shall not be a determination of any issue in the action or of the merits thereof. If the court, upon the motion, makes a determination that a bond shall be furnished by the plaintiff as to any one or more defendants, the action shall be dismissed as to the defendant or defendants, unless the bond required by the court has been furnished within such reasonable time as may be fixed by the court.

(g) If the plaintiff, either before or after a motion is made pursuant to subdivision (d), or any order or determination pursuant to the motion, furnishes a bond in the aggregate amount of fifty thousand dollars (\$50,000) to secure the reasonable expenses of the parties entitled to make the motion, the plaintiff shall be deemed to have complied with the requirements of this section and with any order for a bond theretofore made, and any motion then pending shall be dismissed and no further or additional bond shall be required.

(h) If a motion is filed pursuant to subdivision (d), no pleadings need be filed by the social purpose corporation or any other defendant and the prosecution of the action shall be stayed until 10 days after the motion has been disposed of.

SEC. 47. Section 3000 of the Corporations Code is amended to read:

3000. (a) A proposed amendment to the articles of a social purpose corporation shall be approved by the outstanding shares of a class, regardless of whether that class is entitled to vote thereon by the provisions of the articles, if the amendment would:

(1) Increase or decrease the aggregate number of authorized shares of that class, other than an increase as provided in either subdivision (b) of Section 405 or subdivision (b) of Section 902.

(2) Effect an exchange, reclassification, or cancellation of all or part of the shares of that class, including a reverse stock split but excluding a stock split.

(3) Effect an exchange, or create a right of exchange, of all or part of the shares of another class into the shares of that class.

(4) Change the rights, preferences, privileges, or restrictions of the shares of that class.

(5) Create a new class of shares having rights, preferences, or privileges prior to the shares of that class, or increase the rights,

preferences, or privileges or the number of authorized shares of any class having rights, preferences, or privileges prior to the shares of that class.

(6) In the case of preferred shares, divide the shares of any class into series having different rights, preferences, privileges, or restrictions or authorize the board to do so.

(7) Cancel or otherwise affect dividends on the shares of that class that have accrued but have not been paid.

(b) A proposed amendment shall be approved by an affirmative vote of at least two-thirds of the outstanding shares of each class, or a greater vote if required in the articles, regardless of whether that class is entitled to vote thereon by the provisions of the articles, if the amendment would materially alter any special purpose of the social purpose corporation stated in the articles pursuant to paragraph (2) of subdivision (b) of Section 2602, regardless of whether that purpose, as amended, would comply with the provisions of that paragraph.

(c) Different series of the same class shall not constitute different classes for the purpose of voting by classes except when a series is adversely affected by an amendment in a different manner than other shares of the same class.

(d) In addition to approval by a class as provided in subdivisions (a) and (b), a proposed amendment shall also be approved by the outstanding voting shares (Section 152).

SEC. 48. Section 3001 of the Corporations Code is amended to read:

3001. (a) A social purpose corporation may, by amendment of its articles pursuant to this section, change its status to that of a nonprofit public benefit corporation, nonprofit mutual benefit corporation, nonprofit religious corporation, or cooperative corporation.

(b) The amendment of the articles to change its status to a nonprofit corporation shall revise the statement of purpose, delete the authorization for shares and any other provisions relating to authorized or issued shares, make other changes as may be necessary or desired, and, if any shares have been issued, provide either for the cancellation of those shares or for the conversion of those shares to memberships of the nonprofit corporation. The amendment of the articles to change status to a cooperative corporation shall revise the statement of purpose, make other

changes as may be necessary or desired, and, if any shares have been issued, provide for the cancellation of those shares or for the change of those shares to memberships of the cooperative corporation, if necessary.

(c) If shares have been issued, an amendment to change status to a nonprofit corporation shall be approved by all of the outstanding shares of all classes regardless of limitations or restrictions on their voting rights and an amendment to change status to a cooperative corporation shall be approved by the outstanding shares of each class regardless of limitations or restrictions on their voting rights.

(d) If an amendment pursuant to this section is included in a merger agreement, the provisions of this section shall apply, except that any provision for cancellation or conversion of shares shall be in the merger agreement rather than in the amendment of the articles.

(e) Notwithstanding subdivision (c), if a social purpose corporation is a mutual water company within the meaning of Section 2705 of the Public Utilities Code and under the terms of the status change each outstanding share is converted to a membership of a nonprofit mutual benefit corporation, an amendment to change status to a nonprofit mutual benefit corporation shall be approved by the outstanding shares of each class regardless of limitations or restrictions on their voting rights.

SEC. 49. Section 3002 of the Corporations Code is amended to read:

3002. (a) A social purpose corporation may, by amendment of its articles pursuant to this section, change its status to that of a business corporation.

(b) The amendment of the articles to change status to a business corporation shall revise the statement of purpose to delete any provisions in the articles that are permitted by Section 2602, but that are not permitted to be in the articles of a domestic corporation.

(c) If shares have been issued, an amendment to change status to a business corporation shall be approved by an affirmative vote of at least two-thirds of the outstanding shares of each class, or a greater vote if required in the articles, regardless of whether that class is entitled to vote thereon by the provisions of the articles. If the status change is approved, shareholders with dissenting shares, as defined in subdivision (b) of Section 1300, may exercise

dissenters' rights pursuant to Section 3305 and Chapter 13 (commencing with Section 1300) of Division 1.

(d) If an amendment pursuant to this section is included in a merger agreement, the provisions of this section shall apply, except that any provision for cancellation or conversion of shares shall be in the merger agreement rather than in the amendment of the articles.

SEC. 50. Section 3100 of the Corporations Code is amended to read:

3100. (a) A social purpose corporation may sell, lease, convey, exchange, transfer, or otherwise dispose of all or substantially all of its assets when the principal terms of the transaction are approved by the board and are approved by an affirmative vote of at least two-thirds of the outstanding shares of each class, or a greater vote if required in the articles, regardless of whether that class is entitled to vote thereon by the provisions of the articles, either before or after approval by the board and before the transaction. A transaction constituting a reorganization shall be subject to Chapter 12 (commencing with Section 1200) of Division 1 and Chapter 10 (commencing with Section 3400) of this division and shall not be subject to this section, other than subdivision (d). A transaction constituting a conversion shall be subject to Chapter 11.5 (commencing with Section 1150) of Division 1 and Chapter 9 (commencing with Section 3300) of this division and shall not be subject to this section.

(b) Notwithstanding approval of two-thirds of the outstanding shares, the board may abandon the proposed transaction without further action by the shareholders, subject to the contractual rights, if any, of third parties.

(c) The sale, lease, conveyance, exchange, transfer, or other disposition may be made upon those terms and conditions and for that consideration as the board may deem in the best interests of the social purpose corporation. The consideration may be money, securities, or other property.

(d) If the acquiring party in a transaction pursuant to subdivision (a) or subdivision (g) of Section 2001 is in control of or under common control with the disposing social purpose corporation, the principal terms of the sale shall be approved by at least 90 percent of the voting power of the disposing social purpose corporation unless the disposition is to a domestic or foreign other

business entity or social purpose corporation, the articles of incorporation of which specify materially the same purposes, in consideration of the nonredeemable common shares or nonredeemable equity securities of the acquiring party or its parent.

(e) Subdivision (d) shall not apply to a transaction if the Commissioner of Corporations, the Commissioner of Financial Institutions, the Insurance Commissioner, or the Public Utilities Commission has approved the terms and conditions of the transaction and the fairness of those terms and conditions pursuant to Section 25142, Section 696.5 of the Financial Code, Section 838.5 of the Insurance Code, or Section 822 of the Public Utilities Code.

SEC. 51. Section 3200 of the Corporations Code is amended to read:

3200. If any disappearing social purpose corporation in a merger is a close social purpose corporation and the surviving social purpose corporation is not a close social purpose corporation, the merger shall be approved by an affirmative vote of at least two-thirds of the outstanding shares of each class, or a greater vote if required in the articles, regardless of whether that class is entitled to vote thereon by the provisions of the articles, of the disappearing social purpose corporation. The articles may provide for a lesser vote, but not less than a majority of the outstanding shares of each class.

SEC. 52. Section 3201 of the Corporations Code is amended to read:

3201. If any disappearing corporation in a merger is a social purpose corporation and the surviving entity is not a social purpose corporation, or is a social purpose corporation the articles of incorporation of which set forth materially different purposes, the merger shall be approved by an affirmative vote of at least two-thirds of the outstanding shares of each class, or a greater vote if required in the articles, regardless of whether that class is entitled to vote thereon by the provisions of the articles, of the disappearing social purpose corporation. If the merger is approved, shareholders with dissenting shares, as defined in subdivision (b) of Section 1300, may exercise dissenters' rights pursuant to Section 3305 and Chapter 13 (commencing with Section 1300) of Division 1.

SEC. 53. Section 3202 of the Corporations Code is amended to read:

3202. If a disappearing social purpose corporation in a merger is a social purpose corporation governed by this division and the surviving corporation is a nonprofit public benefit corporation, a nonprofit mutual benefit corporation, or a nonprofit religious corporation, the merger shall be approved by all of the outstanding shares of all classes of the disappearing social purpose corporation, regardless of limitations or restrictions on their voting rights, notwithstanding any provision of Chapter 10 (commencing with Section 3400).

SEC. 54. Section 3203 of the Corporations Code is amended to read:

3203. (a) Any one or more social purpose corporations may merge with one or more other business entities. One or more domestic social purpose corporations not organized under this division and one or more foreign corporations may be parties to the merger. Notwithstanding this section, the merger of any number of social purpose corporations with any number of other business entities may be effected only if:

(1) In a merger in which a domestic social purpose corporation not organized under this division or a domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each social purpose corporation and each other party that desires to merge shall approve, and shall be a party to, an agreement of merger. Other persons, including a parent party, may be parties to the agreement of merger. The board of each social purpose corporation that desires to merge, and, if required, the shareholders, shall approve the agreement of merger. The agreement of merger shall be approved on behalf of each party by those persons required to approve the merger by the laws under which it is organized. The agreement of merger shall state:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each party to the merger and the identity of the surviving party.

(3) The amendments, if any, subject to Sections 900, 902, 907, and 3002 to the articles of the surviving social purpose corporation, if applicable, to be effected by the merger. If any amendment changes the name of the surviving social purpose corporation, if applicable, the new name may be, subject to subdivision (b) of Section 2601, the same as or similar to the name of a disappearing party to the merger.

(4) The manner of converting the shares of each constituent social purpose corporation into shares, interests, or other securities of the surviving party. If any shares of any constituent social purpose corporation are not to be converted solely into shares, interests, or other securities of the surviving party, the agreement of merger shall state (A) the cash, rights, securities, or other property that the holders of those shares are to receive in exchange for the shares, which cash, rights, securities, or other property may be in addition to or in lieu of shares, interests, or other securities of the surviving party, or (B) that the shares are canceled without consideration.

(5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a domestic corporation is a party to the merger, Section 3203, if a public benefit corporation or a religious corporation is a party to the merger, Section 6019.1, if a mutual benefit corporation is a party to the merger, Section 8019.1, if a consumer cooperative corporation is a party to the merger, Section 12540.1, if a domestic limited partnership is a party to the merger, Section 15911.12, if a domestic partnership is a party to the merger, Section 16911, and if a domestic limited liability company is a party to the merger, Section 17551.

(6) Any other details or provisions as are desired, including, without limitation, a provision for the payment of cash in lieu of fractional shares or for any other arrangement with respect thereto consistent with the provisions of Section 407.

(c) Each share of the same class or series of any constituent social purpose corporation, other than the cancellation of shares held by a party to the merger or its parent, or a wholly owned subsidiary of either, in another constituent social purpose corporation, shall, unless all shareholders of the class or series consent and except as provided in Section 407, be treated equally with respect to any distribution of cash, rights, securities, or other

property. Notwithstanding paragraph (4) of subdivision (b), the nonredeemable common shares of a constituent social purpose corporation may be converted only into nonredeemable common shares of a surviving social purpose corporation or a parent party or nonredeemable equity securities of a surviving party other than a social purpose corporation if another party to the merger or its parent owns, directly or indirectly, prior to the merger shares of that corporation representing more than 50 percent of the voting power of that social purpose corporation, unless all of the shareholders of the class consent and except as provided in Section 407.

(d) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger or the certificate of merger, as is applicable, if the amendment is approved by the board of each constituent social purpose corporation and, if the amendment changes any of the principal terms of the agreement, by the outstanding shares, if required by Chapter 10 (commencing with Section 3400), in the same manner as the original agreement of merger. If the agreement of merger as so amended and approved is also approved by each of the other parties to the agreement of merger, the agreement of merger as so amended shall then constitute the agreement of merger.

(e) The board of a constituent social purpose corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other parties to the agreement of merger, without further approval by the outstanding shares, at any time before the merger is effective.

(f) Each constituent social purpose corporation shall sign the agreement of merger by its chairperson of the board, president, or a vice president and also by its secretary or an assistant secretary acting on behalf of their respective corporations.

(g) (1) If the surviving party is a domestic social purpose corporation, or if a domestic corporation or a foreign corporation, a public benefit corporation, a mutual benefit corporation, a religious corporation, or a corporation organized under the Consumer Cooperative Corporation Law (Part 2 (commencing with Section 12200) of Division 3) is a party to the merger, after required approvals of the merger by each constituent social purpose corporation through approval of the board and any approval of the outstanding shares required by Chapter 10 (commencing with

Section 3400) and by the other parties to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic social purpose corporation and foreign social purpose corporation attached stating the total number of outstanding shares of each class entitled to vote on the merger, and identifying any other person or persons whose approval is required, that the agreement of merger in the form attached or its principal terms, as required, were approved by that social purpose corporation by a vote of a number of shares of each class that equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class and, if applicable, by that other person or persons whose approval is required, or that the merger agreement was entitled to be and was approved by the board alone, as provided in Section 3401, in the case of a social purpose corporation subject to that section. If equity securities of a parent party are to be issued in the merger, the officers' certificate of that controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all managers of the limited liability company, unless a lesser number is specified in its articles or organization or operating agreement, and by each domestic constituent limited partnership by all general partners, unless a lesser number is provided in its certificate of limited partnership or partnership agreement, and by each domestic constituent general partnership by two partners, unless a lesser number is provided in its partnership agreement, and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed those officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact, and by each other party to the merger by those persons required

or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for that party the provision of law or other basis for the authority of the signing persons. The certificate of merger shall set forth, if a vote of the shareholders, members, partners, or other holders of interests of the constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the agreement of merger in the form attached or its principal terms, as required, were approved by a vote of the number of interests of each class that equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15911.14, if a domestic partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. The certificate of merger for each constituent foreign other business entity, if any, shall also set forth the statutory or other basis under which that foreign other business entity is authorized by the laws under which it is organized to effect the merger. The merger and any amendment of the articles of the surviving social purpose corporation, if applicable, contained in the agreement of merger shall be effective upon filing of the agreement of merger with an officer's certificate of each constituent domestic corporation and foreign corporation and a certificate of merger for each constituent other business entity, subject to subdivision (c) of Section 110 and subject to the provisions of subdivision (j), and the several parties thereto shall be one entity. If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code. The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(2) If the surviving entity is an other business entity, and no public benefit corporation, mutual benefit corporation, religious

corporation, or corporation organized under the Consumer Cooperative Corporation Law (Part 2 (commencing with Section 12200) of Division 3) is a party to the merger, after required approvals of the merger by each constituent social purpose corporation through approval of the board and any approval of the outstanding shares required by Chapter 10 (commencing with Section 3400) and by the other parties to the merger, the parties to the merger shall file a certificate of merger in the office of, and on a form prescribed by, the Secretary of State. The certificate of merger shall be executed and acknowledged by each constituent domestic and foreign social purpose corporation by its chairperson of the board, president, or a vice president and also by its secretary or an assistant secretary and by each domestic constituent limited liability company by all managers of the limited liability company, unless a lesser number is specified in its articles of organization or operating agreement, and by each domestic constituent limited partnership by all general partners, unless a lesser number is provided in its certificate of limited partnership or partnership agreement, and by each domestic constituent general partnership by two partners, unless a lesser number is provided in its partnership agreement, and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed those officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact. The certificate of merger shall be signed by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for that party the provision of law or other basis for the authority of the signing persons. The certificate of merger shall set forth all of the following:

(A) The name, place of incorporation or organization, and the Secretary of State's file number, if any, of each party to the merger, separately identifying the disappearing parties and the surviving party.

(B) If the approval of the outstanding shares of a constituent social purpose corporation was required by Chapter 10 (commencing with Section 3400), a statement setting forth the total number of outstanding shares of each class entitled to vote on the merger and that the principal terms of the agreement of merger were approved by a vote of the number of shares of each class entitled to vote and the percentage vote required of each class.

(C) The future effective date or time, not more than 90 days subsequent to the date of filing of the merger, if the merger is not to be effective upon the filing of the certificate of merger with the Secretary of State.

(D) A statement, by each party to the merger that is a domestic corporation not organized under this division, a foreign corporation or foreign other business entity, or an other business entity, of the statutory or other basis under which that party is authorized by the laws under which it is organized to effect the merger.

(E) Any other information required to be stated in the certificate of merger by the laws under which each respective party to the merger is organized, including, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552, if a domestic partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15911.14.

(F) Any other details or provisions that may be desired.

Unless a future effective date or time is provided in a certificate of merger, in which event the merger shall be effective at that future effective date or time, a merger shall be effective upon the filing of the certificate of merger with the Secretary of State and the several parties thereto shall be one entity. The surviving other business entity shall keep a copy of the agreement of merger at its principal place of business which, for purposes of this subdivision, shall be the office referred to in Section 17057 if a domestic limited liability company, at the business address specified in paragraph (5) of subdivision (a) of Section 17552 if a foreign limited liability company, at the office referred to in subdivision (a) of Section 16403 if a domestic general partnership, at the business address specified in subdivision (f) of Section 16911 if a foreign partnership, at the office referred to in subdivision (a) of Section 15901.14 if a domestic limited partnership, or at the business

address specified in paragraph (5) of subdivision (a) of Section 15911.14 if a foreign limited partnership. Upon the request of a holder of equity securities of a party to the merger, a person with authority to do so on behalf of the surviving other business entity shall promptly deliver to that holder, a copy of the agreement of merger. A waiver by that holder of the rights provided in the foregoing sentence shall be unenforceable. If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger in accordance with Section 1555 of the Insurance Code.

(h) (1) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving party to the merger, and the performance of the conditions necessary to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger.

(2) For all purposes for a merger in which the surviving entity is a domestic other business entity and the filing of a certificate of merger is required by paragraph (2) of subdivision (g), a copy of the certificate of merger duly certified by the Secretary of State is conclusive evidence of the merger of the constituent corporations, either by themselves or together with the other parties to the merger, into the surviving other business entity.

(i) (1) Upon a merger pursuant to this section, the separate existences of the disappearing parties to the merger cease and the surviving party to the merger shall succeed, without other transfer, to all the rights and property of each of the disappearing parties to the merger and shall be subject to all the debts and liabilities of each in the same manner as if the surviving party to the merger had itself incurred them.

(2) All rights of creditors and all liens upon the property of each of the constituent social purpose corporations and other parties to the merger shall be preserved unimpaired, provided that those liens upon property of a disappearing party shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(3) Any action or proceeding pending by or against any disappearing social purpose corporation or disappearing party to the merger may be prosecuted to judgment, which shall bind the surviving party, or the surviving party may be proceeded against or substituted in its place.

(4) Nothing in this section shall be construed to affect the liability a general partner of a disappearing limited partnership or general partnership may have in connection with the debts and liabilities of the disappearing limited partnership or general partnership existing prior to the time the merger is effective.

(j) (1) The merger of domestic social purpose corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivision (a) and this subdivision.

(2) If the surviving party is a domestic social purpose corporation or domestic other business entity, the merger proceedings with respect to that party and any domestic disappearing social purpose corporation shall conform to the provisions of this section. If the surviving party is a foreign corporation or foreign other business entity, then, subject to the requirements of subdivision (c), Section 407, Chapter 10 (commencing with Section 3400), and Chapter 13 (commencing with Section 1300) of Division 1, and, if applicable, corresponding provisions of the Nonprofit Corporation Law (Division 2 (commencing with Section 5002)) or the Consumer Cooperative Corporation Law (Part 2 (commencing with Section 12200) of Division 3), with respect to any domestic constituent corporations, Chapter 13 (commencing with Section 17600) of Title 2.5 with respect to any domestic constituent limited liability companies, Article 6 (commencing with Section 16601) of Chapter 5 of Title 2 with respect to any domestic constituent general partnerships, and Article 11.5 (commencing with Section 15911.20) of Chapter 5.5 of Title 2 with respect to any domestic constituent limited partnerships, the merger proceedings may be in accordance with the laws of the state or place of incorporation or organization of the surviving party.

(3) If the surviving party is a domestic social purpose corporation or domestic other business entity, the certificate of merger or the agreement of merger with attachments shall be filed as provided in subdivision (g) and thereupon, subject to subdivision

(c) of Section 110 or paragraph (2) of subdivision (g), as applicable, the merger shall be effective as to each domestic constituent social purpose corporation and domestic constituent other business entity.

(4) If the surviving party is a foreign corporation or foreign other business entity, the merger shall become effective in accordance with the law of the jurisdiction in which the surviving party is organized, but, except as provided in paragraph (5), the merger shall be effective as to any domestic disappearing social purpose corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of each constituent foreign and domestic social purpose corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of paragraph (1) of subdivision (g). If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which that domestic other business entity is organized, including subdivision (a) of Section 15911.14, subdivision (b) of Section 16915, or subdivision (a) of Section 17552, as is applicable, shall also be filed at the same time as the filing of the agreement of merger.

(5) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing social purpose corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing social purpose corporation as of the date of filing in this state.

(6) In a merger described in paragraph (3) or (4), each foreign disappearing social purpose corporation that is qualified for the transaction of intrastate business shall by virtue of the filing pursuant to this subdivision, subject to subdivision (c) of Section 110, automatically surrender its right to transact intrastate business in this state. The filing of the agreement of merger or certificate of merger, as is applicable, pursuant to this subdivision, by a disappearing foreign other business entity registered for the transaction of intrastate business in this state shall, by virtue of that filing, subject to subdivision (c) of Section 110, automatically

cancel the registration for that foreign other business entity, without the necessity of the filing of a certificate of cancellation.

SEC. 55. Section 3300 of the Corporations Code is amended to read:

3300. For purposes of this chapter, the following definitions shall apply:

(a) “Converted social purpose corporation” means a social purpose corporation that results from a conversion of an other business entity or a foreign other business entity or a foreign corporation pursuant to Section 3307.

(b) “Converted entity” means a domestic other business entity that results from a conversion of a social purpose corporation under this chapter.

(c) “Converting social purpose corporation” means a social purpose corporation that converts into a domestic other business entity pursuant to this chapter.

(d) “Converting entity” means an other business entity or a foreign other business entity or foreign corporation that converts into a social purpose corporation pursuant to Section 3307.

(e) “Domestic other business entity” has the meaning provided in Section 167.7.

(f) “Foreign other business entity” has the meaning provided in Section 171.07.

(g) “Other business entity” has the meaning provided in Section 174.5.

SEC. 56. Section 3301 of the Corporations Code is amended to read:

3301. (a) A social purpose corporation may be converted into a domestic other business entity pursuant to this chapter if, pursuant to the proposed conversion, each of the following conditions is met:

(1) Each share of the same class or series of the converting social purpose corporation shall, unless all the shareholders of the class or series consent, be treated equally with respect to any cash, rights, securities, or other property to be received by, or any obligations or restrictions to be imposed on, the holder of that share.

(2) The conversion is approved by an affirmative vote of at least two-thirds of the outstanding shares of each class, or a greater vote

if required in the articles, regardless of whether that class is entitled to vote thereon by the provisions of the articles.

(3) Nonredeemable common shares of the converting social purpose corporation shall be converted only into nonredeemable equity securities of the converted entity unless all of the shareholders of the class consent.

(4) Paragraph (1) shall not restrict the ability of the shareholders of a converting social purpose corporation to appoint one or more managers, if the converted entity is a limited liability company, or one or more general partners, if the converted entity is a limited partnership, in the plan of conversion or in the converted entity's governing documents.

(b) Notwithstanding subdivision (a), the conversion of a social purpose corporation into a domestic other business entity may be effected only if both of the following conditions are met:

(1) The law under which the converted entity will exist expressly permits the formation of that entity pursuant to a conversion.

(2) The social purpose corporation complies with any and all other requirements of any other law that applies to conversion to the converted entity.

SEC. 57. Section 3302 of the Corporations Code is amended to read:

3302. (a) A social purpose corporation that desires to convert to a domestic other business entity shall approve a plan of conversion. The plan of conversion shall state all of the following:

(1) The terms and conditions of the conversion.

(2) The jurisdiction of the organization of the converted entity and of the converting social purpose corporation and the name of the converted entity after conversion.

(3) The manner of converting the shares of each of the shareholders of the converting social purpose corporation into securities of, or interests in, the converted entity.

(4) The provisions of the governing documents for the converted entity, including the articles and bylaws, partnership agreement or limited liability company articles of organization and operating agreement, to which the holders of interests in the converted entity are to be bound.

(5) Any other details or provisions that are required by the laws under which the converted entity is organized, or that are desired by the converting social purpose corporation.

(b) The plan of conversion shall be approved by the board of the converting social purpose corporation, and the principal terms of the plan of the conversion shall be approved by at least two-thirds of the outstanding shares of each class, or a greater vote if required in the articles, regardless of whether that class is entitled to vote thereon by the provisions of the articles of the converting social purpose corporation. The approval of at least two-thirds of the outstanding shares may be given before or after approval by the board. If the plan is approved, shareholders with dissenting shares, as defined in subdivision (b) of Section 1300, may exercise dissenters' rights pursuant to Section 3305 and Chapter 13 (commencing with Section 1300) of Division 1.

(c) If the social purpose corporation is converting into a general or limited partnership or into a limited liability company, then in addition to the approval of the shareholders set forth in subdivision (b), the plan of conversion shall be approved by each shareholder who will become a general partner or manager, as applicable, of the converted entity pursuant to the plan of conversion unless the shareholders have dissenters' rights pursuant to Section 3305 and Chapter 13 (commencing with Section 1300) of Division 1.

(d) Upon the effectiveness of the conversion, all shareholders of the converting social purpose corporation, except those that exercise dissenters' rights as provided in Section 3305 and Chapter 13 (commencing with Section 1300) of Division 1, shall be deemed parties to any agreement or agreements constituting the governing documents for the converted entity adopted as part of the plan of conversion, regardless of whether a shareholder has executed the plan of conversion or those governing documents for the converted entity. Any adoption of governing documents made pursuant thereto shall be effective at the effective time or date of the conversion.

(e) Notwithstanding its prior approval by the board and the outstanding shares, or either of them, a plan of conversion may be amended before the conversion takes effect if the amendment is approved by the board and, if it changes any of the principal terms of the plan of conversion, by the shareholders of the converting social purpose corporation in the same manner and to the same extent as was required for approval of the original plan of conversion.

(f) A plan of conversion may be abandoned by the board of a converting social purpose corporation, or by the shareholders of a converting social purpose corporation if the abandonment is approved by the outstanding shares, in each case in the same manner as required for approval of the plan of conversion, subject to the contractual rights of third parties, at any time before the conversion is effective.

(g) The converted entity shall keep the plan of conversion at the principal place of business of the converted entity if the converted entity is a domestic partnership, or at the office at which records are to be kept under Section 15901.14 if the converted entity is a domestic limited partnership, or at the office at which records are to be kept under Section 17701.13 if the converted entity is a domestic limited liability company. Upon the request of a shareholder of a converting social purpose corporation, the authorized person on behalf of the converted entity shall promptly deliver to the shareholder, at the expense of the converted entity, a copy of the plan of conversion. A waiver by a shareholder of the rights provided in this subdivision shall be unenforceable.

SEC. 58. Section 3303 of the Corporations Code is amended to read:

3303. (a) After the approval, as provided in Section 3302, of a plan of conversion by the board and the outstanding shares of a social purpose corporation converting into a domestic other business entity, the converting social purpose corporation shall cause the filing of all documents required by law to effect the conversion and create the converted entity, which documents shall include a certificate of conversion or a statement of conversion as required by Section 3304, and the conversion shall thereupon be effective.

(b) A copy of the statement of partnership authority, certificate of limited partnership, or articles of organization complying with Section 3304, duly certified by the Secretary of State on or after the effective date, shall be conclusive evidence of the conversion of the social purpose corporation.

SEC. 59. Section 3304 of the Corporations Code is amended to read:

3304. (a) To convert a social purpose corporation:

(1) If the social purpose corporation is converting into a domestic limited partnership, a statement of conversion shall be

completed on the certificate of limited partnership for the converted entity.

(2) If the social purpose corporation is converting into a domestic partnership, a statement of conversion shall be completed on the statement of partnership authority for the converted entity, or if no statement of partnership authority is filed, then a certificate of conversion shall be filed separately.

(3) If the social purpose corporation is converting into a domestic limited liability company, a statement of conversion shall be completed on the articles of organization for the converted entity.

(b) Any statement or certificate of conversion of a converting social purpose corporation shall be executed and acknowledged by those officers of the converting social purpose corporation as would be required to sign an officers' certificate, and shall set forth all of the following:

(1) The name and the Secretary of State's file number of the converting social purpose corporation.

(2) A statement of the total number of outstanding shares of each class entitled to vote on the conversion, that the principal terms of the plan of conversion were approved by a vote of the number of shares of each class which equaled or exceeded the vote required under Section 3302, specifying each class entitled to vote and the percentage vote required of each class.

(3) The name, form, and jurisdiction of organization of the converted entity.

(c) The certificate of conversion shall be on a form prescribed by the Secretary of State.

(d) The filing with the Secretary of State of a statement of conversion on an organizational document or a certificate of conversion as set forth in subdivision (a) shall have the effect of the filing of a certificate of dissolution by the converting social purpose corporation and no converting social purpose corporation that has made the filing is required to file a certificate of election under Section 1901 or a certificate of dissolution under Section 1905 as a result of that conversion.

(e) Upon the effectiveness of a conversion pursuant to this chapter, a converted entity that is a domestic partnership, domestic limited partnership, or domestic limited liability company shall be deemed to have assumed the liability of the converting social

purpose corporation to prepare and file or cause to be prepared and filed all tax and information returns otherwise required of the converting social purpose corporation under the Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code) and to pay any tax liability determined to be due pursuant to that law.

SEC. 59.5. Section 3304 of the Corporations Code is amended to read:

3304. (a) To convert a social purpose corporation:

(1) If the social purpose corporation is converting into a domestic limited partnership, a statement of conversion shall be completed on the certificate of limited partnership for the converted entity.

(2) If the social purpose corporation is converting into a domestic partnership, a statement of conversion shall be completed on the statement of partnership authority for the converted entity, or if no statement of partnership authority is filed, then a certificate of conversion shall be filed separately.

(3) If the social purpose corporation is converting into a domestic limited liability company, a statement of conversion shall be completed on the articles of organization for the converted entity.

(b) Any statement or certificate of conversion of a converting social purpose corporation shall be executed and acknowledged by those officers of the converting social purpose corporation as would be required to sign an officers' certificate, and shall set forth all of the following:

(1) The name and the Secretary of State's file number of the converting social purpose corporation.

(2) A statement of the total number of outstanding shares of each class entitled to vote on the conversion, that the principal terms of the plan of conversion were approved by a vote of the number of shares of each class which equaled or exceeded the vote required under Section 3302, specifying each class entitled to vote and the percentage vote required of each class.

(3) The name, form, and jurisdiction of organization of the converted entity.

(4) The name and street address of the converted entity's agent for service of process. If a corporation qualified under Section 1505 is designated as the agent, no address for it shall be set forth.

(c) The certificate of conversion shall be on a form prescribed by the Secretary of State.

(d) The filing with the Secretary of State of a statement of conversion on an organizational document or a certificate of conversion as set forth in subdivision (a) shall have the effect of the filing of a certificate of dissolution by the converting social purpose corporation and no converting social purpose corporation that has made the filing is required to file a certificate of election under Section 1901 or a certificate of dissolution under Section 1905 as a result of that conversion.

(e) Upon the effectiveness of a conversion pursuant to this chapter, a converted entity that is a domestic partnership, domestic limited partnership, or domestic limited liability company shall be deemed to have assumed the liability of the converting social purpose corporation to prepare and file or cause to be prepared and filed all tax and information returns otherwise required of the converting social purpose corporation under the Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code) and to pay any tax liability determined to be due pursuant to that law.

SEC. 60. Section 3305 of the Corporations Code is amended to read:

3305. The shareholders with dissenting rights, as defined in subdivision (b) of Section 1300, of a converting social purpose corporation shall have all of the rights under Chapter 13 (commencing with Section 1300) of Division 1 of the shareholders of a corporation involved in a reorganization requiring the approval of its outstanding shares, and the converting social purpose corporation shall have all of the obligations under Chapter 13 (commencing with Section 1300) of Division 1 of a corporation involved in the reorganization. Solely for purposes of applying the provisions of Chapter 13 (commencing with Section 1300) of Division 1, and not for purposes of this chapter, a conversion pursuant to Section 3301 or 3307 shall be deemed to constitute a reorganization.

SEC. 61. Section 3307 is added to the Corporations Code, to read:

3307. (a) An other business entity or a foreign other business entity or a foreign corporation may be converted into a social purpose corporation pursuant to this chapter only if the converting

entity is authorized by the laws under which it is organized to effect the conversion.

(b) An other business entity or a foreign other business entity or a foreign corporation that desires to convert into a social purpose corporation shall approve a plan of conversion or other instrument as is required to be approved to effect the conversion pursuant to the laws under which that entity is organized.

(c) The conversion of an other business entity or a foreign other business entity or a foreign corporation shall be approved by the number or percentage of the partners, members, shareholders, or other holders of interest of the converting entity that is required by the laws under which that entity is organized, or a greater or lesser percentage as may be set forth in the converting entity's partnership agreement, articles of organization, operating agreement, articles of incorporation, or other governing document in accordance with applicable laws.

(d) The conversion by an other business entity or a foreign other business entity or a foreign corporation shall be effective under this chapter upon the filing with the Secretary of State of the articles of incorporation of the converted corporation, containing a statement of conversion that complies with subdivision (e).

(e) A statement of conversion of an entity converting into a social purpose corporation pursuant to this chapter shall set forth all of the following:

(1) The name, form, and jurisdiction of organization of the converting entity.

(2) The Secretary of State's file number, if any, of the converting entity.

(3) If the converting entity is a foreign other business entity or a foreign corporation, the statement of conversion shall contain the following:

(A) A statement that the converting entity is authorized to effect the conversion by the laws under which it is organized.

(B) A statement that the converting entity has approved a plan of conversion or other instrument as is required to be approved to effect the conversion pursuant to the laws under which the converting entity is organized.

(C) A statement that the conversion has been approved by the number or percentage of the partners, members, shareholders, or other holders of interest of the converting entity that is required

by the laws under which that entity is organized, or a greater or lesser percentage as may be set forth in the converting entity's partnership agreement, articles of organization, operating agreement, articles of incorporation, or other governing document in accordance with applicable laws.

(f) The filing with the Secretary of State of articles of incorporation containing a statement pursuant to subdivision (e) shall have the effect of the filing of a certificate of cancellation by a converting foreign limited liability company or foreign limited partnership, and no converting foreign limited liability company or foreign limited partnership that has made the filing is required to file a certificate of cancellation under Section 17708.06 or 15909.07 as a result of that conversion. If a converting entity is a foreign corporation qualified to transact business in this state, the foreign corporation shall, by virtue of the filing, automatically surrender its right to transact intrastate business.

SEC. 62. Section 3400 of the Corporations Code is amended to read:

3400. A reorganization or a share exchange tender offer shall be approved by the board of all of the following:

(a) Each constituent social purpose corporation in a merger reorganization.

(b) The acquiring social purpose corporation in an exchange reorganization.

(c) The acquiring social purpose corporation and the social purpose corporation whose property and assets are acquired in a sale-of-assets reorganization.

(d) The acquiring social purpose corporation in a share exchange tender offer.

(e) The social purpose corporation in control of any constituent or acquiring domestic or foreign social purpose corporation or other business entity under subdivision (a), (b), or (c) and whose equity securities are issued, transferred, or exchanged in the reorganization, hereafter a "parent party."

SEC. 63. Section 3401 of the Corporations Code is amended to read:

3401. (a) The principal terms of a reorganization shall be approved by the outstanding shares of each class of each social purpose corporation the approval of whose board is required under Section 3400, except as provided in subdivision (b) and except

that, unless otherwise provided in the articles, no approval of any class of outstanding preferred shares of the surviving or acquiring social purpose corporation or parent party shall be required if the rights, preferences, privileges, and restrictions granted to or imposed upon that class of shares remain unchanged, subject to the provisions of subdivision (c). For the purpose of this subdivision, two classes of common shares differing only as to voting rights shall be considered as a single class of shares.

(b) No approval of the outstanding shares is required by subdivision (a) if the social purpose corporation, or its shareholders immediately before the reorganization, or both, shall own, immediately after the reorganization, equity securities, other than any warrant or right to subscribe to or purchase those equity securities, of the surviving or acquiring social purpose corporation or a parent party possessing more than five-sixths of the voting power of the surviving or acquiring social purpose corporation or parent party. In making the determination of ownership by the shareholders of a social purpose corporation, immediately after the reorganization, of equity securities pursuant to the preceding sentence, equity securities that they owned immediately before the reorganization as shareholders of another party to the transaction shall be disregarded. For the purpose of this section, the voting power of a social purpose corporation shall be calculated by assuming the conversion of all equity securities convertible, immediately or at some future time, into shares entitled to vote but not assuming the exercise of any warrant or right to subscribe to or purchase those shares.

(c) Notwithstanding subdivisions (a) and (b), the principal terms of a reorganization shall be approved by the outstanding shares of the surviving social purpose corporation in a merger reorganization, as otherwise required by Chapter 10 (commencing with Section 3400), if any amendment is made to its articles that would otherwise require that approval.

(d) Notwithstanding subdivisions (a) and (b), the principal terms of a reorganization shall be approved by the affirmative vote of at least two-thirds of each class, or a greater vote if required in the articles, of the outstanding shares of any class of a social purpose corporation that is a party to a merger or sale-of-assets reorganization if holders of shares of that class receive shares of the surviving or acquiring social purpose corporation or parent

party having different rights, preferences, privileges, or restrictions than those surrendered. Shares in a foreign corporation received in exchange for shares in a domestic social purpose corporation shall be deemed to have different rights, preferences, privileges, and restrictions within the meaning of the preceding sentence.

(e) Notwithstanding subdivisions (a) and (b), the principal terms of a reorganization shall be approved by the affirmative vote of at least two-thirds of each class, or a greater vote if required in the articles, of the outstanding shares of any social purpose corporation that is a close social purpose corporation if the reorganization would result in the holders receiving shares or other interests of a corporation or other business entity that is not a close social purpose corporation. The articles may provide for a lesser vote, but not less than a majority of the outstanding shares of each class.

(f) Notwithstanding subdivisions (a) and (b), the principal terms of a reorganization shall be approved by a vote of at least two-thirds of the outstanding shares of each class, or a greater vote if required in the articles, of a social purpose corporation that is a party to a merger reorganization, regardless of whether that class is entitled to vote thereon by the provisions of the articles, if holders of shares of that class receive interests of a surviving other business entity in the merger that is not a social purpose corporation, or receive interests of a surviving social purpose corporation the articles of incorporation of which specify a materially different purpose as part of the reorganization.

(g) Notwithstanding subdivisions (a) and (b), the principal terms of a reorganization shall be approved by all shareholders of any class or series if, as a result of the reorganization, the holders of that class or series become personally liable for any obligations of a party to the reorganization, unless all holders of that class or series have the dissenters' rights provided in Chapter 13 (commencing with Section 1300) of Division 1.

(h) Any approval required by this section may be given before or after the approval by the board. Notwithstanding approval required by this section, the board may abandon the proposed reorganization without further action by the shareholders, subject to the contractual rights, if any, of third parties.

SEC. 64. Section 3500 of the Corporations Code is amended to read:

3500. (a) The board of a social purpose corporation shall cause an annual report to be sent to the shareholders not later than 120 days after the close of the fiscal year. The annual report shall contain (1) a balance sheet as of the end of that fiscal year and an income statement and a statement of cashflows for that fiscal year, accompanied by any report thereon of independent accountants or, if there is no report, the certificate of an authorized officer of the social purpose corporation that the statements were prepared without audit from the books and records of the corporation, and (2) the information required by subdivision (b).

(b) The board shall cause to be provided with the annual report, a management discussion and analysis (special purpose MD&A) concerning the social purpose corporation's stated purpose or purposes as set forth in its articles pursuant to paragraph (2) of subdivision (b) of Section 2602, and, to the extent consistent with reasonable confidentiality requirements, shall cause the special purpose MD&A to be made publicly available by posting it on the social purpose corporation's Internet Web site or providing it through similar electronic means. The special purpose MD&A shall include the information specified in this subdivision and any other information that the social purpose corporation's officers and directors believe to be reasonably necessary or appropriate to an understanding of the social purpose corporation's efforts in connection with its special purpose or purposes. The special purpose MD&A shall also include the following information:

(1) Identification and discussion of the overall objectives of the social purpose corporation relating to its special purpose or purposes, and an identification and explanation of any changes made in those special purpose objectives during the fiscal year.

(2) Identification and discussion of the material actions taken by the social purpose corporation during the fiscal year to achieve its special purpose objectives, the impact of those actions, including the causal relationships between the actions and the reported outcomes, and the extent to which those actions achieved the special purpose objectives for the fiscal year.

(3) Identification and discussion of material actions, including the intended impact of those actions, that the social purpose corporation expects to take in the short term and long term with respect to achievement of its special purpose objectives.

(4) A description of the process for selecting, and an identification and description of, the financial, operating, and other measures used by the social purpose corporation during the fiscal year for evaluating its performance in achieving its special purpose objectives, including an explanation of why the social purpose corporation selected those measures and identification and discussion of the nature and rationale for any material changes in those measures made during the fiscal year.

(5) Identification and discussion of any material operating and capital expenditures incurred by the social purpose corporation during the fiscal year in furtherance of achieving the special purpose objectives, a good faith estimate of any additional material operating or capital expenditures the social purpose corporation expects to incur over the next three fiscal years in order to achieve its special purpose objectives, and other material expenditures of resources incurred by the social purpose corporation during the fiscal year, including employee time, in furtherance of achieving the special purpose objectives, including a discussion of the extent to which that capital or use of other resources serves purposes other than and in addition to furthering the achievement of the special purpose objectives.

(c) Except as may otherwise be excused pursuant to subdivision (h) of Section 1501.5, the reports specified in subdivisions (a) and (b) shall be sent to the shareholders at least 15 days, or, if sent by bulk mail, 35 days, prior to the annual meeting of shareholders to be held during the next fiscal year. This requirement shall not limit the requirement for holding an annual meeting as required by Section 600.

(d) If no annual report for the last fiscal year has been sent to shareholders, the social purpose corporation shall, upon the written request of any shareholder made more than 120 days after the end of that fiscal year, deliver or mail to the person making the request within 30 days following the request, the statements required by subdivisions (a) and (b) for that fiscal year.

(e) A shareholder or shareholders holding at least 5 percent of the outstanding shares of any class of a social purpose corporation may make a written request to the social purpose corporation for an income statement of the social purpose corporation for the three-month, six-month, or nine-month period of the current fiscal year ended more than 30 days prior to the date of the request and

a balance sheet of the social purpose corporation as at the end of that period and, in addition, if no annual report for the most recent fiscal year has been sent to the shareholders, the statements referred to in subdivisions (a) and (b) relating to that fiscal year. The statements shall be delivered or mailed to the person making the request within 30 days following the request. A copy of the statements shall be kept on file in the principal office of the social purpose corporation for 12 months and shall be exhibited at all reasonable times to any shareholder demanding an examination of the statements or a copy shall be mailed to the shareholder. The quarterly income statements and balance sheets referred to in this subdivision shall be accompanied by the report thereon, if any, of any independent accountants engaged by the social purpose corporation or the certificate of an authorized officer of the social purpose corporation that the financial statements were prepared without audit from the books and records of the social purpose corporation.

SEC. 65. Section 3501 of the Corporations Code is amended to read:

3501. (a) The board shall cause a special purpose current report to be sent to the shareholders not later than 45 days following the occurrence of any one or more of the events specified in subdivision (b) or (c), and, to the extent consistent with reasonable confidentiality requirements, shall cause the special purpose current report to be made publicly available by posting it on the social purpose corporation's Internet Web site or providing it through similar electronic means.

(b) Unless previously reported in the most recent annual report, the special purpose current report shall identify and discuss, in reasonable detail, any expenditure or group of related or planned expenditures, excluding compensation of officers and directors, made in furtherance of the special purpose objectives, whether an operating expenditure, a capital expenditure, or some other expenditure of corporate resources, including, but not limited to, employee time, whether the expenditure was direct or indirect, and whether the expenditure was categorized as overhead or otherwise where the expenditure has or is likely to have a material adverse impact on the social purpose corporation's results of operations or financial condition for a quarterly or annual fiscal period.

(c) Unless previously reported in the most recent annual report, the special purpose current report shall identify and discuss, in reasonable detail, any decision by the board or action by management to do either of the following:

(1) Withhold expenditures or a group of related or planned expenditures, whether temporarily or permanently, that were to have been made in furtherance of the special purpose as contemplated in the most recent annual report, whether those planned expenditures were an operating expenditure, a capital expenditure, or some other expenditure of corporate resources, including, but not limited to, employee time, whether the planned expenditure was direct or indirect, and whether the planned expenditure to be made would have been categorized as overhead or otherwise, in any case, where the planned expenditure was likely to have had a material positive impact on the social purpose corporation's impact in furtherance of its special purpose objectives, as contemplated in the most recent annual report.

(2) Determine that the special purpose has been satisfied or should no longer be pursued, whether temporarily or permanently.

SEC. 66. Section 3502 of the Corporations Code is amended to read:

3502. (a) Nothing contained in subdivision (b) of Section 3500 or Section 3501 shall require a detailing or itemization of every relevant expenditure incurred, or planned or action taken or planned, by the corporation. Management and the board shall use their discretion in providing that information, including the reasonable detail that a reasonable investor would consider important in understanding the corporation's objectives, actions, impacts, measures, rationale, and results of operations as they relate to the nature and achievement of the special purpose objectives.

(b) Where best practices emerge for providing the information required by subdivision (b) of Section 3500 or Section 3501, use of those best practices shall create a presumption that the social purpose corporation caused all the information required by those provisions to be provided. This presumption can only be rebutted by showing that the reporting contained either a misstatement of a material fact or omission of a material fact.

(c) Notwithstanding subdivision (b) of Section 3500 and Section 3501, under no circumstances shall the social purpose corporation

be required to provide information that would result in a violation of state or federal securities laws or other applicable laws.

(d) The social purpose corporation and its officers and directors are expressly excluded from liability for any and all forward looking statements supplied in the report required by subdivision (b) of Section 3500 and Section 3501, so long as those statements are supplied in good faith. Statements are deemed to be forward looking as that term is defined in the federal securities laws.

(e) The special purpose MD&A and any special purpose current report shall be written in plain English and shall be provided in an efficient and understandable manner, avoiding repetition and disclosure of immaterial information.

(f) Unless otherwise provided by the articles or bylaws, and if approved by the board of directors, the reports specified in Sections 3500 and 3501 and any accompanying material sent pursuant to this section may be sent by electronic transmission by the corporation.

(g) The financial statements of any social purpose corporation with fewer than 100 holders of record of its shares, determined as provided in Section 605, required to be furnished by Sections 3500 and 3501 are not required to be prepared in conformity with generally accepted accounting principles if they reasonably set forth the assets and liabilities and the income and expense of the social purpose corporation and disclose the accounting basis used in their preparation.

(h) The requirements described in Section 3500 shall be satisfied if a corporation with an outstanding class of securities registered under Section 12 of the Securities Exchange Act of 1934 both complies with Section 240.14a-16 of Title 17 of the Code of Federal Regulations, as amended from time to time, with respect to the obligation of a corporation to furnish an annual report to shareholders pursuant to Section 240.14a-3(b) of Title 17 of the Code of Federal Regulations, and includes the information required by subdivision (b) of Section 3500 in the annual report.

(i) The requirements described in Section 3501 shall be satisfied if a corporation with an outstanding class of securities registered under Section 12 of the Securities Exchange Act of 1934 both complies with Section 240.13a-13 of Title 17 of the Code of Federal Regulations, as amended from time to time, with respect to the obligation of a corporation to furnish a quarterly report to

shareholders, and includes the information required by subdivision (b) of Section 3501 in the quarterly report.

(j) In addition to the penalties provided for in this division, the superior court of the proper county shall enforce the duty of making and mailing or delivering the information and financial statements required by Sections 3500 and 3501 and, for good cause shown, may extend the time therefor.

(k) In any action or proceeding with respect to Section 3500 or 3501, if the court finds the failure of the social purpose corporation to comply with the requirements of those sections to have been without justification, the court may award an amount sufficient to reimburse the shareholder for the reasonable expenses incurred by the shareholder, including attorney's fees, in connection with the action or proceeding.

(l) Section 3500 and Section 3501 apply to any domestic social purpose corporation and also to a foreign social purpose corporation having its principal executive office in this state or customarily holding meetings of its board in this state.

(m) All reports and notices required by Section 3500 and Section 3501 shall be maintained by the social purpose corporation, in an electronic form for a period of not less than 10 years.

SEC. 67. Section 3503 of the Corporations Code is amended to read:

3503. Any officers, directors, employees, or agents of a social purpose corporation who do any of the following shall be liable jointly and severally for all the damages resulting therefrom to the social purpose corporation or any person injured by those actions who relied on those actions or to both:

(a) Make, issue, deliver, or publish any prospectus, report, including the reports required pursuant to Sections 3500 and 3501, circular, certificate, financial statement, balance sheet, public notice, or document respecting the social purpose corporation or its shares, assets, liabilities, capital, dividends, business, earnings, or accounts which is false in any material respect, knowing it to be false, or participate in the making, issuance, delivery, or publication thereof with knowledge that the same is false in a material respect.

(b) Make or cause to be made in the books, minutes, records, or accounts of a social purpose corporation any entry that is false in any material particular knowing it to be false.

(c) Remove, erase, alter, or cancel any entry in any books or records of the social purpose corporation, with intent to deceive.

(d) With respect to the reports required pursuant to subdivision (b) of Section 3500 and Section 3501, omit to state any material fact necessary in order to make the statements contained therein, in light of the circumstances under which those statements were made, not misleading in a material respect, knowing the omission to be misleading.

SEC. 68. Section 5813.5 of the Corporations Code is amended to read:

5813.5. (a) A public benefit corporation may amend its articles to change its status to that of a mutual benefit corporation, a social purpose corporation, a religious corporation, a business corporation, or a cooperative corporation by complying with this section and the other sections of this chapter.

The Secretary of State shall notify the Franchise Tax Board, in the manner and at the times agreed upon by the Secretary of State and the Franchise Tax Board, of any amendments to a public benefit corporation's articles.

(b) If the public benefit corporation has any assets, an amendment to change its status to a mutual benefit corporation, business corporation, social purpose corporation, or cooperative corporation shall be approved in advance in writing by the Attorney General. If the public benefit corporation has no assets, the Attorney General shall be given a copy of the amendment at least 20 days before the amendment is filed.

(c) Amended articles authorized by this section shall include the provisions which would have been required (other than the initial street address and initial mailing address of the corporation and the name of the initial agent for service of process if a statement has been filed pursuant to Section 6210), and may in addition only include those provisions which would have been permitted, in original articles filed by the type of corporation (mutual benefit, religious, business, social purpose, or cooperative) into which the public benefit corporation is changing its status.

(d) In the case of a change of status to a business corporation, social purpose corporation, or cooperative corporation, if the Franchise Tax Board has issued a determination exempting the corporation from tax as provided in Section 23701 of the Revenue and Taxation Code, the corporation shall be subject to Section

23221 of the Revenue and Taxation Code upon filing the certificate of amendment.

SEC. 69. Section 7813.5 of the Corporations Code is amended to read:

7813.5. (a) A mutual benefit corporation may amend its articles to change its status to that of a public benefit corporation, a religious corporation, a business corporation, a social purpose corporation, or a cooperative corporation by complying with this section and the other sections of this chapter.

(b) Except as authorized by Section 7811 or unless the corporation has no members, an amendment to change its status to a public benefit corporation or religious corporation shall: (i) be approved by the members (Section 5034), and the fairness of the amendment to the members shall be approved by the Commissioner of Corporations pursuant to Section 25142; (ii) be approved by the members (Section 5034) in an election conducted by written ballot pursuant to Section 7513 in which no negative votes are cast; or (iii) be approved by 100 percent of the voting power.

(c) Amended articles authorized by this section shall include the provisions which would have been required (other than the initial street address and initial mailing address of the corporation and the name of the initial agent for service of process if a statement has been filed pursuant to Section 8210), and may in addition only include those provisions which would have been permitted, in original articles filed by the type of corporation (public benefit, religious, business, social purpose, or cooperative) into which the mutual benefit corporation is changing its status.

(d) At the time of filing a certificate of amendment to change status to a public benefit corporation, the Secretary of State shall forward a copy of the filed certificate to the Attorney General.

(e) In the case of a change of status to a business corporation, social purpose corporation, or a cooperative corporation, if the Franchise Tax Board has issued a determination exempting the corporation from tax as provided in Section 23701 of the Revenue and Taxation Code, the corporation shall be subject to Section 23221 of the Revenue and Taxation Code upon filing the certificate of amendment.

SEC. 70. Section 9621 of the Corporations Code is amended to read:

9621. (a) A religious corporation may amend its articles to change its status to that of (1), a public benefit corporation, by complying with this section and the other sections of Chapter 8 (commencing with Section 5810) of Part 2 (made applicable pursuant to Section 9620) or (2), a mutual benefit corporation, business corporation, a social purpose corporation, or cooperative corporation by complying with Chapter 8 (commencing with Section 5810) of Part 2.

(b) Amended articles authorized by this section shall include the provisions which would have been required (other than the initial street address and initial mailing address of the corporation and the name of the initial agent for service of process if a statement has been filed pursuant to Section 6210, made applicable pursuant to Section 9660) and may in addition only include those provisions which would have been permitted, in original articles filed by the type of corporation (public benefit, mutual benefit, business, social purpose, or cooperative) into which the religious corporation is changing its status.

SEC. 71. Section 12504 of the Corporations Code is amended to read:

12504. (a) A corporation may amend its articles to change its status to that of a nonprofit public benefit corporation, a nonprofit mutual benefit corporation, a nonprofit religious corporation, a business corporation, or a social purpose corporation by complying with this section and the other sections of this chapter.

(b) Except as authorized by Section 12501 or unless the corporation has no members, an amendment to change its status to a nonprofit public benefit corporation or a nonprofit religious corporation shall: (1) be approved by the members (Section 12224), and the fairness of the amendment to the members shall be approved by the Commissioner of Corporations pursuant to Section 25142; or (2) be approved by the members (Section 12224) in an election conducted by written ballot pursuant to Section 12463 in which no negative votes are cast; or (3) be approved by 100 percent of the voting power.

(c) Amended articles authorized by this section shall include the provisions which would have been required (other than the initial street address and initial mailing address of the corporation and the name of the initial agent for service of process if a statement has been filed pursuant to Section 12570), and may in

addition only include those provisions which would have been permitted, in original articles filed by the type of corporation (nonprofit public benefit, nonprofit mutual benefit, nonprofit religious, business, or social purpose) into which the corporation is changing its status.

(d) At the time of filing a certificate of amendment to change status to a nonprofit public benefit corporation, the Secretary of State shall forward a copy of the filed certificate to the Attorney General.

SEC. 72. Section 10.5 of this bill incorporates amendments to Section 1155 of the Corporations Code proposed by both this bill and Senate Bill 1041. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2015, (2) each bill amends Section 1155 of the Corporations Code, and (3) this bill is enacted after Senate Bill 1041, in which case Section 10 of this bill shall not become operative.

SEC. 73. Section 59.5 of this bill incorporates amendments to Section 3304 of the Corporations Code proposed by both this bill and Senate Bill 1041. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2015, (2) each bill amends Section 3304 of the Corporations Code, and (3) this bill is enacted after Senate Bill 1041, in which case Section 59 of this bill shall not become operative.

Approved _____, 2014

Governor