

AMENDED IN SENATE JUNE 22, 1995

AMENDED IN ASSEMBLY MAY 3, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 640

Introduced by Assembly Member Weggeland

February 21, 1995

An act to amend Sections 118, 307, 308, 317, 510, 910, 1201, 1600, 2115, 5015, 5211, 5225, 5238, 5819, 7211, 7225, 7237, 7819, and 9211 of the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 640, as amended, Weggeland. Corporations: notice.

Existing law sets forth various requirements as respects the giving or receiving of notice, whether oral or written, as applied to notice of special corporate meetings and other forms of notice.

This bill would, among other things, with respect to those notice provisions, specify that, in certain instances, facsimiles, telegrams, electronic mail, and electronic voice mail messages are encompassed within specified terms of notice.

The bill would also revise and recast provisions respecting the reacquisition of shares by a corporation. The bill would revise the *the conditions by which* shareholders *are* entitled to obtain member information by providing that right to shareholders who hold at least 1% of those voting shares and who are subject to specified rules of the Securities Exchange Act of 1934, by virtue of solicitations of proxies relating to the

election of directors of the corporation rather than those who have filed a specified form. The bill would make various other technical ~~amendments~~ *changes*.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section 118 of the Corporations Code is
2 amended to read:

3 118. Any reference in this division to the time a notice
4 is given or sent means, unless otherwise expressly
5 provided, (a) the time a written notice by mail is
6 deposited in the United States mails, postage prepaid; or
7 (b) the time any other written notice, including, but not
8 limited to, facsimile, telegram, or electronic mail
9 message, is personally delivered to the recipient or is
10 delivered to a common carrier for transmission, or
11 actually transmitted by the person giving the notice by
12 electronic means, to the recipient; or (c) the time any
13 oral notice is communicated, in person or by telephone,
14 including, but not limited to, a voice messaging system or
15 other system or technology designed to record and
16 communicate messages, *or* wireless, to the recipient,
17 including, but not limited to, the recipient's designated
18 voice mailbox or address on such a system, or to a person
19 at the office of the recipient who the person giving the
20 notice has reason to believe will promptly communicate it
21 to the recipient.

22 SEC. 2. Section 307 of the Corporations Code is
23 amended to read:

24 307. (a) Unless otherwise provided in the articles or
25 (subject to paragraph (5) of subdivision (a) of Section
26 204) in the bylaws:

27 (1) Meetings of the board may be called by the
28 chairperson of the board or the president or any vice
29 president or the secretary or any two directors.

30 (2) Regular meetings of the board may be held
31 without notice if the time and place of such meetings are
32 fixed by the bylaws or the board. Special meetings of the



1 board shall be held upon four days' notice by mail or 48
2 hours' notice delivered personally or by telephone,
3 including, but not limited to, a voice messaging system or
4 other system or technology designed to record and
5 communicate messages, telegraph, facsimile, electronic
6 mail, or other electronic means. The articles or bylaws
7 may not dispense with notice of a special meeting. A
8 notice, or waiver of notice, need not specify the purpose
9 of any regular or special meeting of the board.

10 (3) Notice of a meeting need not be given to any
11 director who signs a waiver of notice or a consent to
12 holding the meeting or an approval of the minutes
13 thereof, whether before or after the meeting, or who
14 attends the meeting without protesting, prior thereto or
15 at its commencement, the lack of notice to such director.
16 All such waivers, consents and approvals shall be filed
17 with the corporate records or made a part of the minutes
18 of the meeting.

19 (4) A majority of the directors present, whether or not
20 a quorum is present, may adjourn any meeting to another
21 time and place. If the meeting is adjourned for more than
22 24 hours, notice of any adjournment to another time or
23 place shall be given prior to the time of the adjourned
24 meeting to the directors who were not present at the time
25 of the adjournment.

26 (5) Meetings of the board may be held at any place
27 within or without the state which has been designated in
28 the notice of the meeting or, if not stated in the notice or
29 there is no notice, designated in the bylaws or by
30 resolution of the board.

31 (6) Members of the board may participate in a
32 meeting through use of conference telephone or similar
33 communications equipment, so long as all members
34 participating in such meeting can hear one another.
35 Participation in a meeting pursuant to this subdivision
36 constitutes presence in person at such meeting.

37 (7) A majority of the authorized number of directors
38 constitutes a quorum of the board for the transaction of
39 business. The articles or bylaws may not provide that a
40 quorum shall be less than one-third the authorized



1 number of directors or less than two, whichever is larger,
2 unless the authorized number of directors is one, in which
3 case one director constitutes a quorum.

4 (8) Every act or decision done or made by a majority
5 of the directors present at a meeting duly held at which
6 a quorum is present is the act of the board, subject to the
7 provisions of Section 310 and subdivision (e) of Section
8 317. The articles or bylaws may not provide that a lesser
9 vote than a majority of the directors present at a meeting
10 is the act of the board. A meeting at which a quorum is
11 initially present may continue to transact business
12 notwithstanding the withdrawal of directors, if any action
13 taken is approved by at least a majority of the required
14 quorum for such meeting.

15 (b) Any action required or permitted to be taken by
16 the board may be taken without a meeting, if all members
17 of the board shall individually or collectively consent in
18 writing to such action. Such written consent or consents
19 shall be filed with the minutes of the proceedings of the
20 board. Such action by written consent shall have the same
21 force and effect as a unanimous vote of such directors.

22 (c) The provisions of this section apply also to
23 committees of the board and incorporators and action by
24 such committees and incorporators, *mutatis mutandis*.

25 SEC. 3. Section 308 of the Corporations Code is
26 amended to read:

27 308. (a) If a corporation has an even number of
28 directors who are equally divided and cannot agree as to
29 the management of its affairs, so that its business can no
30 longer be conducted to advantage or so that there is
31 danger that its property and business will be impaired or
32 lost, the superior court of the proper county may,
33 notwithstanding any provisions of the articles or bylaws
34 and whether or not an action is pending for an
35 involuntary winding up or dissolution of the corporation,
36 appoint a provisional director pursuant to this section.
37 Action for such appointment may be brought by any
38 director or by the holders of not less than $33\frac{1}{3}$ percent
39 of the voting power.



1 (b) If the shareholders of a corporation are deadlocked
2 so that they cannot elect the directors to be elected at an
3 annual meeting of shareholders, the superior court of the
4 proper county may, notwithstanding any provisions of
5 the articles or bylaws, upon petition of a shareholder or
6 shareholders holding 50 percent of the voting power,
7 appoint a provisional director or directors pursuant to this
8 section or order such other equitable relief as the court
9 deems appropriate.

10 (c) A provisional director shall be an impartial person,
11 who is neither a shareholder nor a creditor of the
12 corporation, nor related by consanguinity or affinity
13 within the third degree according to the common law to
14 any of the other directors of the corporation or to any
15 judge of the court by which such provisional director is
16 appointed. A provisional director shall have all the rights
17 and powers of a director until the deadlock in the board
18 or among shareholders is broken or until such provisional
19 director is removed by order of the court or by approval
20 of the outstanding shares (Section 152). Such person shall
21 be entitled to such compensation as shall be fixed by the
22 court unless otherwise agreed with the corporation.

23 (d) This section does not apply to corporations subject
24 to the Public Utilities Act (Part 1 (commencing with
25 Section 201) of Division 1 of the Public Utilities Code).

26 SEC. 4. Section 317 of the Corporations Code is
27 amended to read:

28 317. (a) For the purposes of this section, “agent”
29 means any person who is or was a director, officer,
30 employee or other agent of the corporation, or is or was
31 serving at the request of the corporation as a director,
32 officer, employee or agent of another foreign or domestic
33 corporation, partnership, joint venture, trust or other
34 enterprise, or was a director, officer, employee or agent
35 of a foreign or domestic corporation which was a
36 predecessor corporation of the corporation or of another
37 enterprise at the request of the predecessor corporation;
38 “proceeding” means any threatened, pending or
39 completed action or proceeding, whether civil, criminal,
40 administrative or investigative; and “expenses” includes



1 without limitation attorneys' fees and any expenses of
2 establishing a right to indemnification under subdivision
3 (d) or paragraph (4) of subdivision (e).

4 (b) A corporation shall have power to indemnify any
5 person who was or is a party or is threatened to be made
6 a party to any proceeding (other than an action by or in
7 the right of the corporation to procure a judgment in its
8 favor) by reason of the fact that the person is or was an
9 agent of the corporation, against expenses, judgments,
10 fines, settlements, and other amounts actually and
11 reasonably incurred in connection with the proceeding if
12 that person acted in good faith and in a manner the
13 person reasonably believed to be in the best interests of
14 the corporation and, in the case of a criminal proceeding,
15 had no reasonable cause to believe the conduct of the
16 person was unlawful. The termination of any proceeding
17 by judgment, order, settlement, conviction, or upon a
18 plea of nolo contendere or its equivalent shall not, of itself,
19 create a presumption that the person did not act in good
20 faith and in a manner which the person reasonably
21 believed to be in the best interests of the corporation or
22 that the person had reasonable cause to believe that the
23 person's conduct was unlawful.

24 (c) A corporation shall have power to indemnify any
25 person who was or is a party or is threatened to be made
26 a party to any threatened, pending, or completed action
27 by or in the right of the corporation to procure a
28 judgment in its favor by reason of the fact that the person
29 is or was an agent of the corporation, against expenses
30 actually and reasonably incurred by that person in
31 connection with the defense or settlement of the action
32 if the person acted in good faith, in a manner the person
33 believed to be in the best interests of the corporation and
34 its shareholders.

35 No indemnification shall be made under this
36 subdivision for any of the following:

37 (1) In respect of any claim, issue or matter as to which
38 the person shall have been adjudged to be liable to the
39 corporation in the performance of that person's duty to
40 the corporation and its shareholders, unless and only to



1 the extent that the court in which the proceeding is or was
2 pending shall determine upon application that, in view of
3 all the circumstances of the case, the person is fairly and
4 reasonably entitled to indemnity for expenses and then
5 only to the extent that the court shall determine.

6 (2) Of amounts paid in settling or otherwise disposing
7 of a pending action without court approval.

8 (3) Of expenses incurred in defending a pending
9 action which is settled or otherwise disposed of without
10 court approval.

11 (d) To the extent that an agent of a corporation has
12 been successful on the merits in defense of any
13 proceeding referred to in subdivision (b) or (c) or in
14 defense of any claim, issue, or matter therein, the agent
15 shall be indemnified against expenses actually and
16 reasonably incurred by the agent in connection
17 therewith.

18 (e) Except as provided in subdivision (d), any
19 indemnification under this section shall be made by the
20 corporation only if authorized in the specific case, upon
21 a determination that indemnification of the agent is
22 proper in the circumstances because the agent has met
23 the applicable standard of conduct set forth in subdivision
24 (b) or (c), by any of the following:

25 (1) A majority vote of a quorum consisting of directors
26 who are not parties to such proceeding.

27 (2) If such a quorum of directors is not obtainable, by
28 independent legal counsel in a written opinion.

29 (3) Approval of the shareholders (Section 153), with
30 the shares owned by the person to be indemnified not
31 being entitled to vote thereon.

32 (4) The court in which the proceeding is or was
33 pending upon application made by the corporation or the
34 agent or the attorney or other person rendering services
35 in connection with the defense, whether or not the
36 application by the agent, attorney or other person is
37 opposed by the corporation.

38 (f) Expenses incurred in defending any proceeding
39 may be advanced by the corporation prior to the final
40 disposition of the proceeding upon receipt of an



1 undertaking by or on behalf of the agent to repay that
2 amount if it shall be determined ultimately that the agent
3 is not entitled to be indemnified as authorized in this
4 section. The provisions of Section 315 do not apply to
5 advances made pursuant to this subdivision.

6 (g) The indemnification authorized by this section
7 shall not be deemed exclusive of any additional rights to
8 indemnification for breach of duty to the corporation and
9 its shareholders while acting in the capacity of a director
10 or officer of the corporation to the extent the additional
11 rights to indemnification are authorized in an article
12 provision adopted pursuant to paragraph (11) of
13 subdivision (a) of Section 204. The indemnification
14 provided by this section for acts, omissions, or transactions
15 while acting in the capacity of, or while serving as, a
16 director or officer of the corporation but not involving
17 breach of duty to the corporation and its shareholders
18 shall not be deemed exclusive of any other rights to which
19 those seeking indemnification may be entitled under any
20 bylaw, agreement, vote of shareholders or disinterested
21 directors, or otherwise, to the extent the additional rights
22 to indemnification are authorized in the articles of the
23 corporation. An article provision authorizing
24 indemnification “in excess of that otherwise permitted by
25 Section 317” or “to the fullest extent permissible under
26 California law” or the substantial equivalent thereof shall
27 be construed to be both a provision for additional
28 indemnification for breach of duty to the corporation and
29 its shareholders as referred to in, and with the limitations
30 required by, paragraph (11) of subdivision (a) of Section
31 204 and a provision for additional indemnification as
32 referred to in the second sentence of this subdivision. The
33 rights to indemnity hereunder shall continue as to a
34 person who has ceased to be a director, officer, employee,
35 or agent and shall inure to the benefit of the heirs,
36 executors, and administrators of the person. Nothing
37 contained in this section shall affect any right to
38 indemnification to which persons other than the directors
39 and officers may be entitled by contract or otherwise.



1 (h) No indemnification or advance shall be made
2 under this section, except as provided in subdivision (d)
3 or paragraph (4) of subdivision (e), in any circumstance
4 where it appears:

5 (1) That it would be inconsistent with a provision of
6 the articles, bylaws, a resolution of the shareholders, or an
7 agreement in effect at the time of the accrual of the
8 alleged cause of action asserted in the proceeding in
9 which the expenses were incurred or other amounts were
10 paid, which prohibits or otherwise limits indemnification.

11 (2) That it would be inconsistent with any condition
12 expressly imposed by a court in approving a settlement.

13 (i) A corporation shall have power to purchase and
14 maintain insurance on behalf of any agent of the
15 corporation against any liability asserted against or
16 incurred by the agent in that capacity or arising out of the
17 agent's status as such whether or not the corporation
18 would have the power to indemnify the agent against that
19 liability under this section. The fact that a corporation
20 owns all or a portion of the shares of the company issuing
21 a policy of insurance shall not render this subdivision
22 inapplicable if either of the following conditions are
23 satisfied: (1) if the articles authorize indemnification in
24 excess of that authorized in this section and the insurance
25 provided by this subdivision is limited as indemnification
26 is required to be limited by paragraph (11) of subdivision
27 (a) of Section 204; or (2) (A) the company issuing the
28 insurance policy is organized, licensed, and operated in
29 a manner that complies with the insurance laws and
30 regulations applicable to its jurisdiction of organization,
31 (B) the company issuing the policy provides procedures
32 for processing claims that do not permit that company to
33 be subject to the direct control of the corporation that
34 purchased that policy, and (C) the policy issued provides
35 for some manner of risk sharing between the issuer and
36 purchaser of the policy, on one hand, and some
37 unaffiliated person or persons, on the other, such as by
38 providing for more than one unaffiliated owner of the
39 company issuing the policy or by providing that a portion



1 of the coverage furnished will be obtained from some
2 unaffiliated insurer or reinsurer.

3 (j) This section does not apply to any proceeding
4 against any trustee, investment manager, or other
5 fiduciary of an employee benefit plan in that person's
6 capacity as such, even though the person may also be an
7 agent as defined in subdivision (a) of the employer
8 corporation. A corporation shall have power to indemnify
9 such a trustee, investment manager, or other fiduciary to
10 the extent permitted by subdivision (f) of Section 207.

11 SEC. 5. Section 510 of the Corporations Code is
12 amended to read:

13 510. (a) When a corporation reacquires its own
14 shares, those shares are restored to the status of
15 authorized but unissued shares, unless the articles
16 prohibit the reissuance thereof.

17 (b) When a corporation reacquires authorized shares
18 of a class or series and the articles prohibit the reissuance
19 of those shares:

20 (1) If all of the authorized shares of that class or series,
21 as the case may be, are reacquired, then (A) that class or
22 series is automatically eliminated, (B) in the case of
23 reacquisition of all of the authorized shares of a series, the
24 authorized number of shares of the class to which the
25 shares belonged is reduced by the number of shares so
26 reacquired, and (C) the articles shall be amended to
27 eliminate any statement of rights, preferences, privileges,
28 and restrictions relating solely to that class or series.

29 (2) If less than all of the authorized shares but all of the
30 issued and outstanding shares of that class or series, as the
31 case may be, are reacquired, the authorized number of
32 shares of the class or series is automatically reduced by the
33 number of shares so reacquired, and the board shall
34 determine either (A) to eliminate that class or series,
35 whereupon the articles shall be amended to eliminate any
36 statement of rights, preferences, privileges, and
37 restrictions relating solely to that class or series, or (B) not
38 to eliminate that class or series, whereupon the articles
39 shall be amended to reflect that reduction of the number



1 of authorized shares of that class or series by the shares so
2 reacquired.

3 (3) If less than all of the authorized shares and less than
4 all of the issued and outstanding shares of a class or series,
5 as the case may be, are reacquired, the authorized
6 number of shares of that class or series shall be
7 automatically reduced by the number of shares
8 reacquired, and the articles shall be amended to reflect
9 that reduction.

10 (c) When a corporation reacquires authorized shares
11 of a series of shares and the articles only prohibit the
12 reissuance of those shares as shares of the same series:

13 (1) If all of the authorized shares of that series are
14 reacquired, then that series is automatically eliminated,
15 the articles shall be amended to eliminate any statement
16 of rights, preferences, privileges, and restrictions relating
17 solely to that series, and the board shall determine either
18 (A) to return those shares to the status of authorized but
19 undesignated shares of the class to which they belong or
20 (B) to eliminate those shares entirely, whereupon the
21 articles in either case shall be amended to reflect the
22 reduction in the authorized shares of that series and the
23 effect, if any, on the class to which that series belongs.

24 (2) If all of the issued and outstanding shares of that
25 series (but less than all of the authorized shares of that
26 series) are reacquired, the board shall determine either
27 (A) to eliminate that series, whereupon the articles shall
28 be amended to eliminate any statement of rights,
29 preferences, privileges, and restrictions relating solely to
30 that series, or (B) not to eliminate that series, whereupon
31 the articles shall be amended to reflect the return of the
32 reacquired shares to the status of authorized but
33 undesignated shares of the class to which they belong.

34 (3) If less than all of the issued and outstanding shares
35 of that series are reacquired, the authorized number of
36 shares of that series shall be automatically reduced by the
37 number of shares reacquired, and the board shall
38 determine either (A) to return those shares to the status
39 of authorized but undesignated shares of the class to
40 which they belong, or (B) to eliminate those shares



1 entirely, whereupon the articles in either case shall be
2 amended to reflect the reduction in the authorized shares
3 of that series and the effect, if any, on the class to which
4 that series belongs.

5 (d) “Reacquires” as used in this section means that a
6 corporation purchases, redeems, acquires by way of
7 conversion to another class or series, or otherwise
8 acquires its own shares or that issued and outstanding
9 shares cease to be outstanding.

10 (e) The provisions of this section are subject to any
11 contrary or inconsistent provision in the articles.

12 (f) A certificate of amendment shall be filed in
13 accordance with the requirements of Chapter 9
14 (commencing with Section 900) reflecting any
15 elimination or reduction of authorized shares set forth in
16 subdivisions (b) and (c), and any related elimination
17 from the articles of the designation and the rights,
18 preferences, privileges, and restrictions of any series or
19 class of stock that is eliminated, *except that approval by*
20 *the* outstanding shares (Section 152) shall not be required
21 to adopt any such amendment. Nothing contained in this
22 section is intended to alter or otherwise affect the powers
23 of the board to amend the articles as contemplated in
24 Sections 202 and 401.

25 SEC. 6. Section 910 of the Corporations Code is
26 amended to read:

27 910. (a) A corporation may restate in a single
28 certificate the entire text of its articles as amended by
29 filing an officers’ certificate or, in circumstances where
30 incorporators or the board may amend a corporation’s
31 articles pursuant to Sections 901 and 906, a certificate
32 signed and verified by a majority of the incorporators or
33 the board, as applicable, entitled “Restated Articles of
34 Incorporation of (insert name of corporation)” which
35 shall set forth the articles as amended to the date of the
36 filing of the certificate, except that the signatures and
37 acknowledgments of the articles by the incorporators and
38 any statements regarding the effect of any prior
39 amendment upon outstanding shares and any provisions
40 of agreements of merger (other than amendments to the



1 articles of the surviving corporation) and the names and
2 addresses of the first directors and of the initial agent for
3 service of process shall be omitted (except that the names
4 and addresses of the *initial* agent for service of process
5 and, if previously set forth in the articles, the initial
6 directors, shall not be omitted prior to the time that the
7 corporation has filed a statement under Section 1502).
8 Such omissions are not alterations or amendments of the
9 articles. The certificate may also itself alter or amend the
10 articles in any respect, in which case the certificate must
11 comply with Section 905 or 906, as the case may be, and
12 Section 907.

13 (b) If the certificate does not itself alter or amend the
14 articles in any respect, it shall be approved by the board
15 or, prior to the issuance of any shares or the naming or
16 election of directors, by a majority of the incorporators,
17 and shall be subject to the provisions of this chapter
18 relating to an amendment of the articles not requiring
19 any approval of the outstanding shares (Section 152). If
20 the certificate does itself alter or amend the articles, it
21 shall be subject to the provisions of this chapter relating
22 to the amendment or amendments so made and, except
23 for certificates approved by a majority of the
24 incorporators, the ~~certificates~~ *certificate* shall also state
25 that the board has approved the restated articles.

26 (c) Certificates of determination are a part of the
27 articles within the meaning of this section. The provisions
28 of such a certificate shall be given an article designation
29 in the restated articles.

30 (d) Restated articles of incorporation filed pursuant to
31 this section shall supersede for all purposes the original
32 articles and all amendments and certificates of
33 determination filed prior thereto.

34 SEC. 7. Section 1201 of the Corporations Code is
35 amended to read:

36 1201. (a) The principal terms of a reorganization
37 shall be approved by the outstanding shares (Section 152)
38 of each class of each corporation the approval of whose
39 board is required under Section 1200, except as provided
40 in subdivision (b) and except that (unless otherwise



1 provided in the articles) no approval of any class of
2 outstanding preferred shares of the surviving or
3 acquiring corporation or parent party shall be required if
4 the rights, preferences, privileges and restrictions
5 granted to or imposed upon such class of shares remain
6 unchanged (subject to the provisions of subdivision (c)).
7 For the purpose of this subdivision, two classes of
8 common shares differing only as to voting rights shall be
9 considered as a single class of shares.

10 (b) No approval of the outstanding shares (Section
11 152) is required by subdivision (a) in the case of any
12 corporation if such corporation, or its shareholders
13 immediately before the reorganization, or both, shall own
14 (immediately after the reorganization) equity securities,
15 other than any warrant or right to subscribe to or
16 purchase such equity securities, of the surviving or
17 acquiring corporation or a parent party (subdivision (d)
18 of Section 1200) possessing more than five-sixths of the
19 voting power of the surviving or acquiring corporation or
20 parent party. In making the determination of ownership
21 by the shareholders of a corporation, immediately after
22 the reorganization, of equity securities pursuant to the
23 preceding sentence, equity securities which they owned
24 immediately before the reorganization as shareholders of
25 another party to the transaction shall be disregarded. For
26 the purpose of this section only, the voting power of a
27 corporation shall be calculated by assuming the
28 conversion of all equity securities convertible
29 (immediately or at some future time) into shares entitled
30 to vote but not assuming the exercise of any warrant or
31 right to subscribe to or purchase such shares.

32 (c) Notwithstanding the provisions of subdivision (b),
33 the principal terms of a reorganization shall be approved
34 by the outstanding shares (Section 152) of the surviving
35 corporation in a merger reorganization if any
36 amendment is made to its articles which would otherwise
37 require such approval.

38 (d) Notwithstanding the provisions of subdivision (b),
39 the principal terms of a reorganization shall be approved
40 by the outstanding shares (Section 152) of any class of a



1 corporation which is a party to a merger or sale-of-assets
2 reorganization if holders of shares of that class receive
3 shares of the surviving or acquiring corporation or parent
4 party having different rights, preferences, privileges or
5 restrictions than those surrendered. Shares in a foreign
6 corporation received in exchange for shares in a domestic
7 corporation have different rights, preferences, privileges
8 and restrictions within the meaning of the preceding
9 sentence.

10 (e) Notwithstanding the provisions of subdivisions (a)
11 and (b), the principal terms of a reorganization shall be
12 approved by the affirmative vote of at least two-thirds of
13 each class of the outstanding shares of any close
14 corporation if the reorganization would result in their
15 receiving shares of a corporation which is not a close
16 corporation; provided, however, that the articles may
17 provide for a lesser vote, but not less than a majority of the
18 outstanding shares of each class.

19 (f) Notwithstanding the provisions of subdivisions (a)
20 and (b), the principal terms of a reorganization shall be
21 approved by the outstanding shares (Section 152) of any
22 class of a corporation which is a party to a merger
23 reorganization if holders of shares of that class receive
24 interests of a surviving other business entity in the
25 merger.

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

32 SEC. 8. Section 1600 of the Corporations Code is
33 amended to read:

34 1600. (a) A shareholder or shareholders holding at
35 least 5 percent in the aggregate of the outstanding voting
36 shares of a corporation or who hold at least 1 percent of
37 such voting shares and are subject to Rule 14a-2
38 promulgated under the Securities Exchange Act of 1934,
39 as amended, by virtue of solicitations of proxies relating
40 to the election of directors of the corporation (or, in case



1 the corporation is a bank the deposits of which are insured
2 in accordance with the Federal Deposit Insurance Act,
3 have filed a Form F-6 with the appropriate federal bank
4 regulatory agency) shall have an absolute right to do
5 either or both of the following: (1) inspect and copy the
6 record of shareholders' names and addresses and
7 shareholdings during usual business hours upon five
8 business days' prior written demand upon the
9 corporation, or (2) obtain from the transfer agent for the
10 corporation, upon written demand and upon the tender
11 of its usual charges for such a list (the amount of which
12 charges shall be stated to the shareholder by the transfer
13 agent upon request), a list of the shareholders' names and
14 addresses, who are entitled to vote for the election of
15 directors, and their shareholdings, as of the most recent
16 record date for which it has been compiled or as of a date
17 specified by the shareholder subsequent to the date of
18 demand. The list shall be made available on or before the
19 later of five business days after the demand is received or
20 the date specified therein as the date as of which the list
21 is to be compiled. A corporation shall have the
22 responsibility to cause its transfer agent to comply with
23 this subdivision.

24 (b) Any delay by the corporation or the transfer agent
25 in complying with a demand under subdivision (a)
26 beyond the time limits specified therein shall give the
27 shareholder or shareholders properly making the
28 demand a right to obtain from the superior court, upon
29 the filing of a verified complaint in the proper county and
30 after a hearing, notice of which shall be given to such
31 persons and in such manner as the court may direct, an
32 order postponing any shareholders' meeting previously
33 noticed for a period equal to the period of such delay.
34 Such right shall be in addition to any other legal or
35 equitable remedies to which the shareholder may be
36 entitled.

37 (c) The record of shareholders shall also be open to
38 inspection and copying by any shareholder or holder of
39 a voting trust certificate at any time during usual business
40 hours upon written demand on the corporation, for a



1 purpose reasonably related to such holder's interests as a
2 shareholder or holder of a voting trust certificate.

3 (d) Any inspection and copying under this section
4 may be made in person or by agent or attorney. The rights
5 provided in this section may not be limited by the articles
6 or bylaws. This section applies to any domestic
7 corporation and to any foreign corporation having its
8 principal executive office in this state or customarily
9 holding meetings of its board in this state.

10 SEC. 9. Section 2115 of the Corporations Code is
11 amended to read:

12 2115. (a) A foreign corporation (other than a foreign
13 association or foreign nonprofit corporation but including
14 a foreign parent corporation even though it does not itself
15 transact intrastate business) is subject to this section if the
16 average of the property factor, the payroll factor and the
17 sales factor (as defined in Sections 25129, 25132 and 25134
18 of the Revenue and Taxation Code) with respect to it is
19 more than 50 percent during its latest full income year
20 and if more than one-half of its outstanding voting
21 securities are held of record by persons having addresses
22 in this state. The property factor, payroll factor and sales
23 factor shall be those used in computing the portion of its
24 income allocable to this state in its franchise tax return or,
25 with respect to corporations the allocation of whose
26 income is governed by special formulas or which are not
27 required to file separate or any tax returns, which would
28 have been so used if they were governed by such
29 three-factor formula. The determination of these factors
30 with respect to any parent corporation shall be made on
31 a consolidated basis, including in a unitary computation
32 (after elimination of intercompany transactions) the
33 property, payroll and sales of the parent and all of its
34 subsidiaries in which it owns directly or indirectly more
35 than 50 percent of the outstanding shares entitled to vote
36 for the election of directors, but deducting a percentage
37 of the property, payroll, and sales of any subsidiary equal
38 to the percentage minority ownership, if any, in the
39 subsidiary. For the purpose of this subdivision, any
40 securities held to the knowledge of the issuer in the names



1 of broker-dealers, nominees for broker-dealers,
2 (including clearing corporations) or banks, associations,
3 or other entities holding securities in a nominee name or
4 otherwise on behalf of a beneficial owner (collectively
5 “Nominee Holders”), shall not be considered
6 outstanding. However, if the foreign corporation requests
7 all Nominee Holders to certify, with respect to all
8 beneficial owners for whom securities are held, the
9 number of shares held for those beneficial owners having
10 addresses (as shown on the records of the Nominee
11 Holder) in this state and outside of this state, then all
12 shares so certified shall be considered outstanding and
13 held of record by persons having addresses either in this
14 state or outside of this state as so certified, provided that
15 the certification so provided shall be retained with the
16 record of shareholders and made available for inspection
17 and copying in the same manner as is provided in Section
18 1600 with respect to that record. A current list of
19 beneficial owners of a foreign corporation’s securities
20 provided to the corporation by one or more Nominee
21 Holders or their agent pursuant to the requirements of
22 Rule 14b-1(b) and 14b-2(b) as adopted on January 6, 1992,
23 promulgated under the Securities Exchange Act of 1934,
24 or any successor rules thereto, shall constitute an
25 acceptable certification with respect to beneficial owners
26 for the purposes of this subdivision.

27 (b) The following chapters and sections of this division
28 shall apply to a foreign corporation subject to this section
29 (to the exclusion of the law of the jurisdiction in which it
30 is incorporated):

31 Chapter 1 (general provisions and definitions), to the
32 extent applicable to the following provisions;

33 Section 301 (annual election of directors);

34 Section 303 (removal of directors without cause);

35 Section 304 (removal of directors by court
36 proceedings);

37 Section 305, subdivision (c) (filing of director vacancies
38 where less than a majority in office elected by
39 shareholders);

40 Section 309 (directors’ standard of care);



1 Section 316 (excluding paragraph (3) of subdivision (a)
2 and paragraph (3) of subdivision (f)) (liability of
3 directors for unlawful distributions);
4 Section 317 (indemnification of directors, officers and
5 others);
6 Sections 500 to 505, inclusive (limitations on corporate
7 distributions in cash or property);
8 Section 506 (liability of shareholder who receives
9 unlawful distribution);
10 Section 600, subdivisions (b) and (c) (requirement for
11 annual shareholders' meeting and remedy if same not
12 timely held);
13 Section 708, subdivisions (a), (b) and (c)
14 (shareholder's right to cumulate votes at any election of
15 directors);
16 Section 710 (supermajority vote requirement);
17 Section 1001, subdivision (d) (limitations on sale of
18 assets);
19 Section 1101 (provisions following subdivision (e))
20 (limitations on mergers);
21 Chapter 12 (commencing with Section 1200)
22 (reorganizations);
23 Chapter 13 (commencing with Section 1300)
24 (dissenters' rights);
25 Sections 1500 and 1501 (records and reports);
26 Section 1508 (action by Attorney General);
27 Chapter 16 (commencing with Section 1600) (rights of
28 inspection).
29 (c) Subdivision (a) shall become applicable to any
30 foreign corporation only upon the first day of the first
31 income year of the corporation commencing on or after
32 the 30th day after the filing by it of the report pursuant
33 to Section 2108 showing that the tests referred to in
34 subdivision (a) have been met or on or after the entry of
35 a final order by a court of competent jurisdiction
36 declaring that such tests have been met.
37 (d) Subdivision (a) shall cease to be applicable at the
38 end of any income year during which a report pursuant
39 to Section 2108 shall have been filed showing that at least
40 one of the tests referred to in subdivision (a) is not met



1 or a final order shall have been entered by a court of
2 competent jurisdiction declaring that one of such tests is
3 not met, provided that such filing or order shall be
4 ineffective if a contrary report or order shall be made or
5 entered before the end of such income year.

6 (e) This section does not apply to any corporation (1)
7 with outstanding securities listed on the New York Stock
8 Exchange or the American Stock Exchange, or (2) with
9 outstanding securities designated as qualified for trading
10 as a national market security on the National Association
11 of Securities Dealers Automatic Quotation System (or
12 any successor national market system) if such corporation
13 has at least 800 holders of its equity securities as of the
14 record date of its most recent annual meeting of
15 shareholders, or (3) if all of its voting shares (other than
16 directors' qualifying shares) are owned directly or
17 indirectly by a corporation or corporations not subject to
18 this section. For purposes of determining the number of
19 holders of a corporation's equity securities under clause
20 (2) of this subdivision, there shall be included, in addition
21 to the number of recordholders reflected on the
22 corporation's stock records, the number of holders of the
23 equity securities held in the name of any Nominee Holder
24 which furnishes the corporation with a certification
25 pursuant to subdivision (a) provided that the corporation
26 retains the certification with the record of shareholders
27 and makes it available for inspection and copying in the
28 same manner as is provided in Section 1600 with respect
29 to that record.

30 SEC. 10. Section 5015 of the Corporations Code is
31 amended to read:

32 5015. Any reference in this part, Part 2 (commencing
33 with Section 5110), Part 3 (commencing with Section
34 7110), Part 4 (commencing with Section 9110), or Part 5
35 (commencing with Section 9910) to the time a notice is
36 given or sent means, unless otherwise expressly provided,
37 (a) the time a written notice by mail is deposited in the
38 United States mails, postage prepaid; or (b) the time any
39 other written notice, including, but not limited to,
40 facsimile, telegram, or other electronic mail message, is



1 personally delivered to the recipient or is delivered to a
2 common carrier for transmission, or actually transmitted
3 by the person giving the notice by electronic means, to
4 the recipient; or (c) the time any oral notice is
5 communicated, in person or by telephone, including, but
6 not limited to, a voice messaging system or other system
7 or technology designed to record and communicate
8 messages, or wireless, to the recipient, including, but not
9 limited to, the recipient's designated voice mailbox or
10 address on such a system, or to a person at the office of the
11 recipient who the person giving the notice has reason to
12 believe will promptly communicate it to the recipient.

13 SEC. 11. Section 5211 of the Corporations Code is
14 amended to read:

15 5211. (a) Unless otherwise provided in the articles or
16 in the bylaws:

17 (1) Meetings of the board may be called by the
18 chairperson of the board or the president or any vice
19 president or the secretary or any two directors.

20 (2) Regular meetings of the board may be held
21 without notice if the time and place of such meetings are
22 fixed by the bylaws or the board. Special meetings of the
23 board shall be held upon four days' notice by first-class
24 mail or 48 hours' notice delivered personally or by
25 telephone, including, but not limited to, a voice
26 messaging system or other system or technology designed
27 to record and communicate messages, telegraph,
28 facsimile, electronic mail, or other electronic means. The
29 articles or bylaws may not dispense with notice of a
30 special meeting. A notice, or waiver of notice, need not
31 specify the purpose of any regular or special meeting of
32 the board.

33 (3) Notice of a meeting need not be given to any
34 director who signed a waiver of notice or a written
35 consent to holding the meeting or an approval of the
36 minutes thereof, whether before or after the meeting, or
37 who attends the meeting without protesting, prior
38 thereto or at its commencement, the lack of notice to such
39 director. All such waivers, consents and approvals shall be



1 filed with the corporate records or made a part of the
2 minutes of the meetings.

3 (4) A majority of the directors present, whether or not
4 a quorum is present, may adjourn any meeting to another
5 time and place. If the meeting is adjourned for more than
6 24 hours, notice of any adjournment to another time or
7 place shall be given prior to the time of the adjourned
8 meeting to the directors who were not present at the time
9 of the adjournment.

10 (5) Meetings of the board may be held at any place
11 within or without the state which has been designated in
12 the notice of the meeting or, if not stated in the notice or
13 there is no notice, designated in the bylaws or by
14 resolution of the board.

15 (6) Members of the board may participate in a
16 meeting through use of conference telephone or similar
17 communications equipment, so long as all members
18 participating in such meeting can hear one another.
19 Participation in a meeting pursuant to this subdivision
20 constitutes presence in person at such meeting.

21 (7) A majority of the number of directors authorized
22 in the articles or bylaws constitutes a quorum of the board
23 for the transaction of business. The articles or bylaws may
24 not provide that a quorum shall be less than one-fifth the
25 number of directors authorized in the articles or bylaws,
26 or less than two, whichever is larger, unless the number
27 of directors authorized in the articles or bylaws is one, in
28 which case one director constitutes a quorum.

29 (8) Subject to the provisions of Sections 5212, 5233,
30 5234, 5235, and subdivision (e) of Section 5238, every act
31 or decision done or made by a majority of the directors
32 present at a meeting duly held at which a quorum is
33 present is the act of the board. The articles or bylaws may
34 not provide that a lesser vote than a majority of the
35 directors present at a meeting is the act of the board. A
36 meeting at which a quorum is initially present may
37 continue to transact business notwithstanding the
38 withdrawal of directors, if any action taken is approved by
39 at least a majority of the required quorum for such



1 meeting, or such greater number as is required by this
2 division, the articles or bylaws.

3 (b) Any action required or permitted to be taken by
4 the board may be taken without a meeting, if all members
5 of the board shall individually or collectively consent in
6 writing to such action. Such written consent or consents
7 shall be filed with the minutes of the proceedings of the
8 board. Such action by written consent shall have the same
9 force and effect as the unanimous vote of such directors.
10 For the purposes of this section only, “all members of the
11 board” shall not include any “interested director” as
12 defined in Section 5233.

13 (c) The provisions of this section apply also to
14 incorporators, to committees of the board, and to action
15 by such incorporators or such committees *mutatis*
16 *mutandis*.

17 SEC. 12. Section 5225 of the Corporations Code is
18 amended to read:

19 5225. (a) If a corporation has an even number of
20 directors who are equally divided and cannot agree as to
21 the management of its affairs, so that its activities can no
22 longer be conducted to advantage or so that there is
23 danger that its property, activities, or business will be
24 impaired or lost, the superior court of the proper county
25 may, notwithstanding any provisions of the articles or
26 bylaws and whether or not an action is pending for an
27 involuntary winding up or dissolution of the corporation,
28 appoint a provisional director pursuant to this section.
29 Action for such appointment may be brought by any
30 director or by members holding not less than $33\frac{1}{3}$
31 percent of the voting power.

32 (b) If the members of a corporation are deadlocked so
33 that they cannot elect the directors to be elected at the
34 time prescribed therefor, the superior court of the proper
35 county may, notwithstanding any provisions of the
36 articles or bylaws, upon petition of members holding 50
37 percent of the voting power, appoint a provisional
38 director or directors pursuant to this section or order such
39 other equitable relief as the court deems appropriate.



1 (c) Any person bringing an action under subdivision
2 (a) or (b) shall give notice to the Attorney General, who
3 may intervene.

4 (d) The Attorney General may bring an action under
5 subdivision (a) or (b).

6 (e) A provisional director shall be an impartial person,
7 who is neither a member nor a creditor of the
8 corporation, nor related by consanguinity or affinity
9 within the third degree according to the common law to
10 any of the other directors of the corporation or to any
11 judge of the court by which such provisional director is
12 appointed. A provisional director shall have all the rights
13 and powers of a director until the deadlock in the board
14 or among members is broken or until such provisional
15 director is removed by order of the court or by approval
16 of a majority of all members (Section 5033). Such person
17 shall be entitled to such compensation as shall be fixed by
18 the court unless otherwise agreed with the corporation.

19 SEC. 13. Section 5238 of the Corporations Code is
20 amended to read:

21 5238. (a) For the purposes of this section, “agent”
22 means any person who is or was a director, officer,
23 employee or other agent of the corporation, or is or was
24 serving at the request of the corporation as a director,
25 officer, employee or agent of another foreign or domestic
26 corporation, partnership, joint venture, trust or other
27 enterprise, or was a director, officer, employee or agent
28 of a foreign or domestic corporation which was a
29 predecessor corporation of the corporation or of another
30 enterprise at the request of such predecessor corporation;
31 “proceeding” means any threatened, pending or
32 completed action or proceeding, whether civil, criminal,
33 administrative or investigative; and “expenses” includes
34 without limitation attorneys’ fees and any expenses of
35 establishing a right to indemnification under subdivision
36 (d) or paragraph (3) of subdivision (e).

37 (b) A corporation shall have power to indemnify any
38 person who was or is a party or is threatened to be made
39 a party to any proceeding (other than an action by or in
40 the right of the corporation to procure a judgment in its



1 favor, an action brought under Section 5233, or an action
2 brought by the Attorney General or a person granted
3 relator status by the Attorney General for any breach of
4 duty relating to assets held in charitable trust) by reason
5 of the fact that such person is or was an agent of the
6 corporation, against expenses, judgments, fines,
7 settlements and other amounts actually and reasonably
8 incurred in connection with such proceeding if such
9 person acted in good faith and in a manner such person
10 reasonably believed to be in the best interests of the
11 corporation and, in the case of a criminal proceeding, had
12 no reasonable cause to believe the conduct of such person
13 was unlawful. The termination of any proceeding by
14 judgment, order, settlement, conviction or upon a plea of
15 nolo contendere or its equivalent shall not, of itself, create
16 a presumption that the person did not act in good faith
17 and in a manner which the person reasonably believed to
18 be in the best interests of the corporation or that the
19 person had reasonable cause to believe that the person's
20 conduct was unlawful.

21 (c) A corporation shall have power to indemnify any
22 person who was or is a party or is threatened to be made
23 a party to any threatened, pending or completed action
24 by or in the right of the corporation, or brought under
25 Section 5233, or brought by the Attorney General or a
26 person granted relator status by the Attorney General for
27 breach of duty relating to assets held in charitable trust,
28 to procure a judgment in its favor by reason of the fact
29 that such person is or was an agent of the corporation,
30 against expenses actually and reasonably incurred by
31 such person in connection with the defense or settlement
32 of such action if such person acted in good faith, in a
33 manner such person believed to be in the best interests
34 of the corporation and with such care, including
35 reasonable inquiry, as an ordinarily prudent person in a
36 like position would use under similar circumstances. No
37 indemnification shall be made under this subdivision:

38 (1) In respect of any claim, issue or matter as to which
39 such person shall have been adjudged to be liable to the
40 corporation in the performance of such person's duty to



1 the corporation, unless and only to the extent that the
2 court in which such proceeding is or was pending shall
3 determine upon application that, in view of all the
4 circumstances of the case, such person is fairly and
5 reasonably entitled to indemnity for the expenses which
6 such court shall determine;

7 (2) Of amounts paid in settling or otherwise disposing
8 of a threatened or pending action, with or without court
9 approval; or

10 (3) Of expenses incurred in defending a threatened or
11 pending action which is settled or otherwise disposed of
12 without court approval unless it is settled with the
13 approval of the Attorney General.

14 (d) To the extent that an agent of a corporation has
15 been successful on the merits in defense of any
16 proceeding referred to in subdivision (b) or (c) or in
17 defense of any claim, issue or matter therein, the agent
18 shall be indemnified against expenses actually and
19 reasonably incurred by the agent in connection
20 therewith.

21 (e) Except as provided in subdivision (d), any
22 indemnification under this section shall be made by the
23 corporation only if authorized in the specific case, upon
24 a determination that indemnification of the agent is
25 proper in the circumstances because the agent has met
26 the applicable standard of conduct set forth in subdivision
27 (b) or (c), by:

28 (1) A majority vote of a quorum consisting of directors
29 who are not parties to such proceeding;

30 (2) Approval of the members (Section 5034), with the
31 persons to be indemnified not being entitled to vote
32 thereon; or

33 (3) The court in which such proceeding is or was
34 pending upon application made by the corporation or the
35 agent or the attorney or other person rendering services
36 in connection with the defense, whether or not such
37 application by the agent, attorney or other person is
38 opposed by the corporation.

39 (f) Expenses incurred in defending any proceeding
40 may be advanced by the corporation prior to the final



1 disposition of such proceeding upon receipt of an
2 undertaking by or on behalf of the agent to repay such
3 amount unless it shall be determined ultimately that the
4 agent is entitled to be indemnified as authorized in this
5 section. The provisions of Section 5236 do not apply to
6 advances made pursuant to this subdivision.

7 (g) No provision made by a corporation to indemnify
8 its or its subsidiary's directors or officers for the defense
9 of any proceeding, whether contained in the articles,
10 bylaws, a resolution of members or directors, an
11 agreement or otherwise, shall be valid unless consistent
12 with this section. Nothing contained in this section shall
13 affect any right to indemnification to which persons other
14 than such directors and officers may be entitled by
15 contract or otherwise.

16 (h) No indemnification or advance shall be made
17 under this section, except as provided in subdivision (d)
18 or paragraph (3) of subdivision (e), in any circumstance
19 where it appears:

20 (1) That it would be inconsistent with a provision of
21 the articles, bylaws, a resolution of the members or an
22 agreement in effect at the time of the accrual of the
23 alleged cause of action asserted in the proceeding in
24 which the expenses were incurred or other amounts were
25 paid, which prohibits or otherwise limits indemnification;
26 or

27 (2) That it would be inconsistent with any condition
28 expressly imposed by a court in approving a settlement.

29 (i) A corporation shall have power to purchase and
30 maintain insurance on behalf of any agent of the
31 corporation against any liability asserted against or
32 incurred by the agent in such capacity or arising out of the
33 agent's status as such whether or not the corporation
34 would have the power to indemnify the agent against
35 such liability under the provisions of this section;
36 provided, however, that a corporation shall have no
37 power to purchase and maintain such insurance to
38 indemnify any agent of the corporation for a violation of
39 Section 5233.



1 (j) This section does not apply to any proceeding
2 against any trustee, investment manager or other
3 fiduciary of an employee benefit plan in such person's
4 capacity as such, even though such person may also be an
5 agent as defined in subdivision (a) of the employer
6 corporation. A corporation shall have power to indemnify
7 such trustee, investment manager or other fiduciary to
8 the extent permitted by subdivision (f) of Section 207.

9 SEC. 14. Section 5819 of the Corporations Code is
10 amended to read:

11 5819. (a) A corporation may restate in a single
12 certificate the entire text of its articles as amended by
13 filing an officers' certificate or, in circumstances where
14 incorporators or the board may amend a corporation's
15 articles pursuant to Sections 5811 and 5815, a certificate
16 signed and verified by a majority of the incorporators or
17 the board, as applicable, entitled "Restated Articles of
18 Incorporation of (insert name of corporation)" which
19 shall set forth the articles as amended to the date of filing
20 of the certificate, except that the signatures and
21 acknowledgments of the articles by the incorporators and
22 any statements regarding the effect of any prior
23 amendment upon memberships and any provisions of
24 agreements of merger (other than amendments to the
25 articles of the surviving corporation) and the names and
26 addresses of the first directors and of the initial agent for
27 service of process shall be omitted (except that the names
28 and addresses of the *initial* agent for service of process
29 and, if previously set forth in the articles, the initial
30 directors, shall not be omitted prior to the time that the
31 corporation has filed a statement under Section 8210).
32 Such omissions are not alterations or amendments of the
33 articles. The certificate may also itself alter or amend the
34 articles in any respect, in which case the certificate must
35 comply with Section 5814 or 5815, as the case may be, and
36 Section 5816.

37 (b) If the certificate does not itself alter or amend the
38 articles in any respect, it shall be approved by the board
39 or, prior to the issuance of any memberships or the
40 naming or election of directors, by a majority of the



1 incorporators, and shall be subject to the provisions of this
2 chapter relating to an amendment of the articles not
3 requiring approval of the members (Section 5034). If the
4 certificate does itself alter or amend the articles, it shall
5 be subject to the provisions of this chapter relating to the
6 amendment or amendments so made.

7 (c) Restated articles of incorporation filed pursuant to
8 this section shall supersede for all purposes the original
9 articles and all amendments filed prior thereto.

10 SEC. 15. Section 7211 of the Corporations Code is
11 amended to read:

12 7211. (a) Unless otherwise provided in the articles or
13 in the bylaws:

14 (1) Meetings of the board may be called by the
15 chairperson of the board or the president or any vice
16 president or the secretary or any two directors.

17 (2) Regular meetings of the board may be held
18 without notice if the time and place of such meetings are
19 fixed by the bylaws or the board. Special meetings of the
20 board shall be held upon four days' notice by first-class
21 mail or 48 hours' notice delivered personally or by
22 telephone, including, but not limited to, a voice
23 messaging system or other system or technology designed
24 to record and communicate messages, telegraph,
25 facsimile, electronic mail, or other electronic means. The
26 articles or bylaws may not dispense with notice of a
27 special meeting. A notice, or waiver of notice, need not
28 specify the purpose of any regular or special meeting of
29 the board.

30 (3) Notice of a meeting need not be given to any
31 director who signed a waiver of notice or a written
32 consent to holding the meeting or an approval of the
33 minutes thereof, whether before or after the meeting, or
34 who attends the meeting without protesting, prior
35 thereto or at its commencement, the lack of notice to such
36 director. All such waivers, consents and approvals shall be
37 filed with the corporate records or made a part of the
38 minutes of the meetings.

39 (4) A majority of the directors present, whether or not
40 a quorum is present, may adjourn any meeting to another



1 time and place. If the meeting is adjourned for more than
2 24 hours, notice of any adjournment to another time or
3 place shall be given prior to the time of the adjourned
4 meeting to the directors who were not present at the time
5 of the adjournment.

6 (5) Meetings of the board may be held at any place
7 within or without the state which has been designated in
8 the notice of the meeting or, if not stated in the notice or
9 if there is no notice, designated in the bylaws or by
10 resolution of the board.

11 (6) Members of the board may participate in a
12 meeting through use of conference telephone or similar
13 communications equipment, so long as all members
14 participating in such meeting can hear one another.
15 Participation in a meeting pursuant to this subdivision
16 constitutes presence in person at such meeting.

17 (7) A majority of the number of directors authorized
18 in the articles or bylaws constitutes a quorum of the board
19 for the transaction of business. The articles or bylaws may
20 not provide that a quorum shall be less than one-fifth the
21 number of directors authorized in the articles or bylaws,
22 or less than two, whichever is larger, unless the number
23 of directors authorized in the articles or bylaws is one, in
24 which case one director constitutes a quorum.

25 (8) Subject to the provisions of Sections 7212, 7233,
26 7234, and subdivision (e) of Section 7237 and Section 5233,
27 insofar as it is made applicable pursuant to Section 7238,
28 every act or decision done or made by a majority of the
29 directors present at a meeting duly held at which a
30 quorum is present is the act of the board. The articles or
31 bylaws may not provide that a lesser vote than a majority
32 of the directors present at a meeting is the act of the
33 board. A meeting at which a quorum is initially present
34 may continue to transact business notwithstanding the
35 withdrawal of directors, if any action taken is approved by
36 at least a majority of the required quorum for such
37 meeting, or such greater number as is required by this
38 division, the articles or bylaws.

39 (b) Any action required or permitted to be taken by
40 the board may be taken without a meeting, if all members



1 of the board shall individually or collectively consent in
2 writing to such action. Such written consent or consents
3 shall be filed with the minutes of the proceedings of the
4 board. Such action by written consent shall have the same
5 force and effect as a unanimous vote of such directors. For
6 the purposes of this section only, “all members of the
7 board” shall not include any “interested director” as
8 defined in Section 5233, insofar as it is made applicable
9 pursuant to Section 7238.

10 (c) The provisions of this section apply also to
11 incorporators, to committees of the board, and to action
12 by such incorporators or such committees *mutatis*
13 *mutandis*.

14 SEC. 16. Section 7225 of the Corporations Code is
15 amended to read:

16 7225. (a) If a corporation has an even number of
17 directors who are equally divided and cannot agree as to
18 the management of its affairs, so that its activities can no
19 longer be conducted to advantage or so that there is
20 danger that its property, activities, or business will be
21 impaired or lost, the superior court of the proper county
22 may, notwithstanding any provisions of the articles or
23 bylaws and whether or not an action is pending for an
24 involuntary winding up or dissolution of the corporation,
25 appoint a provisional director pursuant to this section.
26 Action for such appointment may be brought by any
27 director or by members holding not less than $33\frac{1}{3}$
28 percent of the voting power.

29 (b) If the members of a corporation are deadlocked so
30 that they cannot elect the directors to be elected at the
31 time prescribed therefor, the superior court of the proper
32 county may, notwithstanding any provisions of the
33 articles or bylaws, upon petition of members holding 50
34 percent of the voting power, appoint a provisional
35 director or directors pursuant to this section or order such
36 other equitable relief as the court deems appropriate.

37 (c) In the case of a corporation holding assets in
38 charitable trust:



1 (1) Any person bringing an action under subdivision
2 (a) or (b) shall give notice to the Attorney General, who
3 may intervene; and

4 (2) The Attorney General may bring an action under
5 subdivision (a) or (b).

6 (d) A provisional director shall be an impartial person,
7 who is neither a member nor a creditor of the
8 corporation, nor related by consanguinity or affinity
9 within the third degree according to the common law to
10 any of the other directors of the corporation or to any
11 judge of the court by which such provisional director is
12 appointed. A provisional director shall have all the rights
13 and powers of a director until the deadlock in the board
14 or among members is broken or until such provisional
15 director is removed by order of the court or by approval
16 of a majority of all members (Section 5033). Such person
17 shall be entitled to such compensation as shall be fixed by
18 the court unless otherwise agreed with the corporation.

19 SEC. 17. Section 7237 of the Corporations Code is
20 amended to read:

21 7237. (a) For the purposes of this section, “agent”
22 means any person who is or was a director, officer,
23 employee or other agent of the corporation, or is or was
24 serving at the request of the corporation as a director,
25 officer, employee or agent of another foreign or domestic
26 corporation, partnership, joint venture, trust or other
27 enterprise, or was a director, officer, employee or agent
28 of a foreign or domestic corporation which was a
29 predecessor corporation of the corporation or of another
30 enterprise at the request of such predecessor corporation;
31 “proceeding” means any threatened, pending or
32 completed action or proceeding, whether civil, criminal,
33 administrative or investigative; and “expenses” includes
34 without limitation attorneys’ fees and any expenses of
35 establishing a right to indemnification under subdivision
36 (d) or paragraph (3) of subdivision (e).

37 (b) A corporation shall have power to indemnify any
38 person who was or is a party or is threatened to be made
39 a party to any proceeding (other than an action by or in
40 the right of the corporation to procure a judgment in its



1 favor, an action brought under Section 5233 of Part 2
2 (commencing with Section 5110) made applicable
3 pursuant to Section 7238, or an action brought by the
4 Attorney General or a person granted relator status by
5 the Attorney General for any breach of duty relating to
6 assets held in charitable trust) by reason of the fact that
7 such person is or was an agent of the corporation, against
8 expenses, judgments, fines, settlements and other
9 amounts actually and reasonably incurred in connection
10 with such proceeding if such person acted in good faith
11 and in a manner such person reasonably believed to be in
12 the best interests of the corporation and, in the case of a
13 criminal proceeding, had no reasonable cause to believe
14 the conduct of such person was unlawful. The
15 termination of any proceeding by judgment, order,
16 settlement, conviction or upon a plea of nolo contendere
17 or its equivalent shall not, of itself, create a presumption
18 that the person did not act in good faith and in a manner
19 which the person reasonably believed to be in the best
20 interests of the corporation or that the person had
21 reasonable cause to believe that the person's conduct was
22 unlawful.

23 (c) A corporation shall have power to indemnify any
24 person who was or is a party or is threatened to be made
25 a party to any threatened, pending or completed action
26 by or in the right of the corporation, or brought under
27 Section 5233 of Part 2 (commencing with Section 5110)
28 made applicable pursuant to Section 7238, or brought by
29 the Attorney General or a person granted relator status
30 by the Attorney General for breach of duty relating to
31 assets held in charitable trust, to procure a judgment in
32 its favor by reason of the fact that such person is or was
33 an agent of the corporation, against expenses actually and
34 reasonably incurred by such person in connection with
35 the defense or settlement of such action if such person
36 acted in good faith, in a manner such person believed to
37 be in the best interests of the corporation and with such
38 care, including reasonable inquiry, as an ordinarily
39 prudent person in a like position would use under similar



1 circumstances. No indemnification shall be made under
2 this subdivision:

3 (1) In respect of any claim, issue or matter as to which
4 such person shall have been adjudged to be liable to the
5 corporation in the performance of such person’s duty to
6 the corporation, unless and only to the extent that the
7 court in which such proceeding is or was pending shall
8 determine upon application that, in view of all the
9 circumstances of the case, such person is fairly and
10 reasonably entitled to indemnity for the expenses which
11 such court shall determine;

12 (2) Of amounts paid in settling or otherwise disposing
13 of a threatened or pending action, with or without court
14 approval; or

15 (3) Of expenses incurred in defending a threatened or
16 pending action which is settled or otherwise disposed of
17 without court approval unless such action concerns assets
18 held in charitable trust and is settled with the approval of
19 the Attorney General.

20 (d) To the extent that an agent of a corporation has
21 been successful on the merits in defense of any
22 proceeding referred to in subdivision (b) or (c) or in
23 defense of any claim, issue or matter therein, the agent
24 shall be indemnified against expenses actually and
25 reasonably incurred by the agent in connection
26 therewith.

27 (e) Except as provided in subdivision (d), any
28 indemnification under this section shall be made by the
29 corporation only if authorized in the specific case, upon
30 a determination that indemnification of the agent is
31 proper in the circumstances because the agent has met
32 the applicable standard of conduct set forth in subdivision
33 (b) or (c), by:

34 (1) A majority vote of a quorum consisting of directors
35 who are not parties to such proceeding;

36 (2) Approval of the members (Section 5034), with the
37 persons to be indemnified not being entitled to vote
38 thereon; or

39 (3) The court in which such proceeding is or was
40 pending upon application made by the corporation or the



1 agent or the attorney or other person rendering services
2 in connection with the defense, whether or not such
3 application by the agent, attorney or other person is
4 opposed by the corporation.

5 (f) Expenses incurred in defending any proceeding
6 may be advanced by the corporation prior to the final
7 disposition of such proceeding upon receipt of an
8 undertaking by or on behalf of the agent to repay such
9 amount unless it shall be determined ultimately that the
10 agent is entitled to be indemnified as authorized in this
11 section. The provisions of Section 7235 do not apply to
12 advances made pursuant to this subdivision.

13 (g) No provision made by a corporation to indemnify
14 its or its subsidiary's directors or officers for the defense
15 of any proceeding, whether contained in the articles,
16 bylaws, a resolution of members or directors, an
17 agreement or otherwise, shall be valid unless consistent
18 with this section. Nothing contained in this section shall
19 affect any right to indemnification to which persons other
20 than such directors and officers may be entitled by
21 contract or otherwise.

22 (h) No indemnification or advance shall be made
23 under this section, except as provided in subdivision (d)
24 or paragraph (3) of subdivision (e), in any circumstance
25 where it appears:

26 (1) That it would be inconsistent with a provision of
27 the articles, bylaws, a resolution of the members or an
28 agreement in effect at the time of the accrual of the
29 alleged cause of action asserted in the proceeding in
30 which the expenses were incurred or other amounts were
31 paid, which prohibits or otherwise limits indemnification;
32 or

33 (2) That it would be inconsistent with any condition
34 expressly imposed by a court in approving a settlement.

35 (i) A corporation shall have power to purchase and
36 maintain insurance on behalf of any agent of the
37 corporation against any liability asserted against or
38 incurred by the agent in such capacity or arising out of the
39 agent's status as such whether or not the corporation



1 would have the power to indemnify the agent against
2 such liability under the provisions of this section.

3 (j) This section does not apply to any proceeding
4 against any trustee, investment manager or other
5 fiduciary of an employee benefit plan in such person's
6 capacity as such, even though such person may also be an
7 agent as defined in subdivision (a) of the employer
8 corporation. A corporation shall have power to indemnify
9 such trustee, investment manager or other fiduciary to
10 the extent permitted by subdivision (f) of Section 207.

11 SEC. 18. Section 7819 of the Corporations Code is
12 amended to read:

13 7819. (a) A corporation may restate in a single
14 certificate the entire text of its articles as amended by
15 filing an officers' certificate or, in circumstances where
16 incorporators or the board may amend a corporation's
17 articles pursuant to Sections 7811 and 7815, a certificate
18 signed and verified by a majority of the incorporators or
19 the board, as applicable, entitled "Restated Articles of
20 Incorporation of (insert name of corporation)" which
21 shall set forth the articles as amended to the date of filing
22 of the certificate, except that the signatures and
23 acknowledgments of the articles by the incorporators and
24 any statements regarding the effect of any prior
25 amendment upon memberships and any provisions of
26 agreements of merger (other than amendments to the
27 articles of the surviving corporation) and the names and
28 addresses of the first directors and of the initial agent for
29 service of process shall be omitted (except that the names
30 and addresses of the *initial* agent for service of process
31 and, if previously set forth in the articles, the initial
32 directors, shall not be omitted prior to the time that the
33 corporation has filed a statement under Section 8210).
34 Such omissions are not alterations or amendments of the
35 articles. The certificate may also itself alter or amend the
36 articles in any respect, in which case the certificate must
37 comply with Section 7814 or 7815, as the case may be, and
38 Section 7816.

39 (b) If the certificate does not itself alter or amend the
40 articles in any respect, it shall be approved by the board



1 or, prior to the issuance of any memberships or the
2 naming or election of directors, by a majority of the
3 incorporators, and shall be subject to the provisions of this
4 chapter relating to an amendment of the articles not
5 requiring approval of the members (Section 5034). If the
6 certificate does itself alter or amend the articles, it shall
7 be subject to the provisions of this chapter relating to the
8 amendment or amendments so made.

9 (c) Restated articles of incorporation filed pursuant to
10 this section shall supersede for all purposes the original
11 articles and all amendments filed prior thereto.

12 SEC. 19. Section 9211 of the Corporations Code is
13 amended to read:

14 9211. (a) Unless otherwise provided in the articles or
15 in the bylaws:

16 (1) Meetings of the board may be called by the
17 chairperson of the board or the president or any vice
18 president or the secretary or any two directors.

19 (2) Regular meetings of the board may be held
20 without notice if the time and place of such meetings are
21 fixed by the bylaws or the board. Special meetings of the
22 board shall be held upon four days' notice by first-class
23 mail or 48 hours' notice delivered personally or by
24 telephone, including, but not limited to, a voice
25 messaging system or other system or technology designed
26 to record and communicate messages, telegraph,
27 facsimile, electronic mail, or other electronic means. The
28 articles or bylaws may not dispense with notice of a
29 special meeting. A notice, or waiver of notice, need not
30 specify the purpose of any regular or special meeting of
31 the board.

32 (3) Notice of a meeting need not be given to any
33 director who signed a waiver of notice or a written
34 consent to holding the meeting or an approval of the
35 minutes thereof, whether before or after the meeting, or
36 who attends the meeting without protesting, prior
37 thereto or at its commencement, the lack of notice to such
38 director. All such waivers, consents and approvals shall be
39 filed with the corporate records or made a part of the
40 minutes of the meetings.



1 (4) A majority of the directors present, whether or not
2 a quorum is present, may adjourn any meeting to another
3 time and place.

4 (5) Meetings of the board may be held at any place
5 within or without the state which has been designated in
6 the notice of the meeting or, if not stated in the notice or
7 there is no notice, designated in the bylaws or by
8 resolution of the board.

9 (6) Members of the board may participate in a
10 meeting through use of conference telephone or similar
11 communications equipment, so long as all members
12 participating in such meeting can hear one another.
13 Participation in a meeting pursuant to this subdivision
14 constitutes presence in person at such meeting.

15 (7) A majority of the number of directors authorized
16 in the articles or bylaws constitutes a quorum of the board
17 for the transaction of business.

18 (8) Every act or decision done or made by a majority
19 of the directors present at a meeting duly held at which
20 a quorum is present is the act of the board. The articles
21 or bylaws may not provide that a lesser vote than a
22 majority of the directors present at a meeting is the act
23 of the board. A meeting at which a quorum is initially
24 present may continue to transact business
25 notwithstanding the withdrawal of directors, if any action
26 taken is approved by at least a majority of the required
27 quorum for such meeting, or such greater number as is
28 required by this division, the articles or bylaws.

29 (b) Any action required or permitted to be taken by
30 the board may be taken without a meeting, if all members
31 of the board shall individually or collectively consent in
32 writing to such action. Such written consent or consents
33 shall be filed with the minutes of the proceedings of the
34 board. Such action by written consent shall have the same
35 force and effect as the unanimous vote of such directors.

36 (c) The provisions of this section apply also to
37 incorporators, to committees of the board, and to action
38 by such incorporators or such committees mutatis
39 mutandis.



1 SEC. 20. The amendments made by this act to
2 Sections 317, 1201, 5238, and 7237 of the Corporations
3 Code, are declarative of existing law. The amendments to
4 Sections 118, 307, 5015, 5211, 7211, and 9211 of the
5 Corporations Code are declarative of existing law to the
6 extent that they include facsimile and electronic mail as
7 permissible means of communicating notice of special
8 meetings. The amendments to Sections 118 and 5015 of
9 the Corporations Code are further declarative of existing
10 law to the extent that they clarify, for the purpose of
11 determining the time at which certain forms of notice are
12 deemed to have been given, that (a) facsimiles,
13 telegrams, and electronic mail messages are
14 encompassed by the term “other written notice” and (b)
15 messages delivered over the telephone or the voice
16 mailbox of the recipient on a computerized voice
17 messaging, or similar, system are encompassed by the
18 term “oral notice...by telephone...to the recipient.”

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