

ASSEMBLY BILL

No. 161

Introduced by Assembly Member Adams

January 27, 2009

An act to amend Sections 601 and 1501 of the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 161, as introduced, Adams. Corporations: notices and reports.

Existing law, the General Corporation Law, requires a corporation to give each shareholder a written notice prior to a shareholders' meeting. Existing law requires a corporate board to send a specified annual report to shareholders no later than 120 days after the close of the fiscal year, except as specified.

This bill would provide that, where 2 or more shareholders have the same address on the books of the corporation, these requirements would be satisfied if, after receiving the consent of, or being requested by, the shareholders, the corporation sends a single written notice or report to the address of the shareholders.

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 601 of the Corporations Code is amended
- 2 to read:
- 3 601. (a) Whenever shareholders are required or permitted to
- 4 take any action at a meeting a written notice of the meeting shall
- 5 be given not less than 10 (or, if sent by third-class mail, 30) nor

1 more than 60 days before the date of the meeting to each
2 shareholder entitled to vote thereat. That notice shall state the
3 place, date and hour of the meeting, the means of electronic
4 transmission by and to the corporation (Sections 20 and 21) or
5 electronic video screen communication, if any, by which
6 shareholders may participate in that meeting, and (1) in the case
7 of a special meeting, the general nature of the business to be
8 transacted, and no other business may be transacted, or (2) in the
9 case of the annual meeting, those matters that the board, at the
10 time of the mailing of the notice, intends to present for action by
11 the shareholders, but subject to the provisions of subdivision (f)
12 any proper matter may be presented at the meeting for that action.
13 The notice of any meeting at which directors are to be elected shall
14 include the names of nominees intended at the time of the notice
15 to be presented by the board for election.

16 (b) Notice of a shareholders' meeting or any report shall be
17 given personally, by electronic transmission by the corporation,
18 or by first-class mail, or, in the case of a corporation with
19 outstanding shares held of record by 500 or more persons
20 (determined as provided in Section 605) on the record date for the
21 shareholders' meeting, notice may also be sent third-class mail,
22 or other means of written communication, addressed to the
23 shareholder at the address of that shareholder appearing on the
24 books of the corporation or given by the shareholder to the
25 corporation for the purpose of notice; or if no address appears or
26 is given, at the place where the principal executive office of the
27 corporation is located or by publication at least once in a newspaper
28 of general circulation in the county in which the principal executive
29 office is located. *Without limiting the manner by which notices of*
30 *a shareholders' meeting and any other required reports may be*
31 *given, notices or reports to two or more shareholders that have*
32 *the same address on the books of the corporation may be given by*
33 *the corporation by means of a single notice or report delivered to*
34 *the shareholders at that address if consented to or requested by*
35 *the shareholders. A shareholder who affirmatively consents in*
36 *writing, or who fails to object in writing or by telephone to the*
37 *corporation within 60 days of having been given written notice by*
38 *the corporation of its intention to send a single notice or report,*
39 *shall be deemed to have consented to receiving a single notice or*
40 *report. A consent or request shall be revocable by a shareholder*

1 *by written or telephonic notice to the corporation in the manner*
2 *provided by the corporation for the revocation.* The notice or report
3 shall be deemed to have been given at the time when delivered
4 personally, sent by electronic transmission by the corporation,
5 deposited in the mail, or sent by other means of written
6 communication. An affidavit of mailing or electronic transmission
7 by the corporation of any notice or report in accordance with the
8 provisions of this division, executed by the secretary, assistant
9 secretary or any transfer agent, shall be prima facie evidence of
10 the giving of the notice or report.

11 If any notice or report addressed to the shareholder at the address
12 of that shareholder appearing on the books of the corporation is
13 returned to the corporation by the United States Postal Service
14 marked to indicate that the United States Postal Service is unable
15 to deliver the notice or report to the shareholder at that address,
16 all future notices or reports shall be deemed to have been duly
17 given without further mailing if the same shall be available for the
18 shareholder upon written demand of the shareholder at the principal
19 executive office of the corporation for a period of one year from
20 the date of the giving of the notice or report to all other
21 shareholders.

22 Notice given by electronic transmission by the corporation under
23 this subdivision shall be valid only if it complies with Section 20.
24 Notwithstanding the foregoing, notice shall not be given by
25 electronic transmission by the corporation under this subdivision
26 after either of the following:

27 (1) The corporation is unable to deliver two consecutive notices
28 to the shareholder by that means.

29 (2) The inability to so deliver the notices to the shareholder
30 becomes known to the secretary, any assistant secretary, the transfer
31 agent, or other person responsible for the giving of the notice.

32 (c) Upon request in writing to the corporation addressed to the
33 attention of the chairperson of the board, president, vice president
34 or secretary by any person (other than the board) entitled to call a
35 special meeting of shareholders, the officer forthwith shall cause
36 notice to be given to the shareholders entitled to vote that a meeting
37 will be held at a time requested by the person or persons calling
38 the meeting, not less than 35 nor more than 60 days after the receipt
39 of the request. If the notice is not given within 20 days after receipt
40 of the request, the persons entitled to call the meeting may give

1 the notice or the superior court of the proper county shall
2 summarily order the giving of the notice, after notice to the
3 corporation giving it an opportunity to be heard. The procedure
4 provided in subdivision (c) of Section 305 shall apply to that
5 application. The court may issue orders as may be appropriate,
6 including, without limitation, orders designating the time and place
7 of the meeting, the record date for determination of shareholders
8 entitled to vote and the form of notice.

9 (d) When a shareholders' meeting is adjourned to another time
10 or place, unless the bylaws otherwise require and except as
11 provided in this subdivision, notice need not be given of the
12 adjourned meeting if the time and place thereof (or the means of
13 electronic transmission by and to the corporation or electronic
14 video screen communication, if any, by which the shareholders
15 may participate) are announced at the meeting at which the
16 adjournment is taken. At the adjourned meeting the corporation
17 may transact any business that might have been transacted at the
18 original meeting. If the adjournment is for more than 45 days or
19 if after the adjournment a new record date is fixed for the adjourned
20 meeting, a notice of the adjourned meeting shall be given to each
21 shareholder of record entitled to vote at the meeting.

22 (e) The transactions of any meeting of shareholders, however
23 called and noticed, and wherever held, are as valid as though had
24 at a meeting duly held after regular call and notice, if a quorum is
25 present either in person or by proxy, and if, either before or after
26 the meeting, each of the persons entitled to vote, not present in
27 person or by proxy, provides a waiver of notice or consent to the
28 holding of the meeting or an approval of the minutes thereof in
29 writing. All those waivers, consents and approvals shall be filed
30 with the corporate records or made a part of the minutes of the
31 meeting. Attendance of a person at a meeting shall constitute a
32 waiver of notice of and presence at the meeting, except when the
33 person objects, at the beginning of the meeting, to the transaction
34 of any business because the meeting is not lawfully called or
35 convened and except that attendance at a meeting is not a waiver
36 of any right to object to the consideration of matters required by
37 this division to be included in the notice but not so included, if the
38 objection is expressly made at the meeting. Neither the business
39 to be transacted at nor the purpose of any regular or special meeting
40 of shareholders need be specified in any written waiver of notice,

consent to the holding of the meeting or approval of the minutes thereof, unless otherwise provided in the articles or bylaws, except as provided in subdivision (f).

(f) Any shareholder approval at a meeting, other than unanimous approval by those entitled to vote, pursuant to Section 310, 902, 1152, 1201, 1900 or 2007 shall be valid only if the general nature of the proposal so approved was stated in the notice of meeting or in any written waiver of notice.

SEC. 2. Section 1501 of the Corporations Code is amended to read:

1501. (a) (1) The board shall cause an annual report to be sent to the shareholders not later than 120 days after the close of the fiscal year, unless in the case of a corporation with less than 100 holders of record of its shares (determined as provided in Section 605) this requirement is expressly waived in the bylaws. Unless otherwise provided by the articles or bylaws and if approved by the board of directors, that report and any accompanying material sent pursuant to this section may be sent by electronic transmission by the corporation (Section 20). *Without limiting the manner by which annual reports otherwise may be sent, the obligation to send an annual report to two or more shareholders that have the same address on the books of the corporation shall be satisfied if the corporation sends a single annual report to that address if consented to or requested by the shareholders. A shareholder who affirmatively consents in writing, or who fails to object in writing or by telephone to the corporation within 60 days of having been given written notice by the corporation of its intention to send a single annual report, shall be deemed to have consented to receiving a single report. A consent or request shall be revocable by a shareholder by written or telephonic notice to the corporation in the manner provided by the corporation for the revocation.* This report shall contain 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 corporation that the statements were prepared without audit from the books and records of the corporation.

(2) Unless so waived, the report specified in paragraph (1) shall be sent to the shareholders at least 15 (or, if sent by third-class mail, 35) days prior to the annual meeting of shareholders to be

1 held during the next fiscal year, but this requirement shall not limit
2 the requirement for holding an annual meeting as required by
3 Section 600.

4 (3) Notwithstanding Section 114, the financial statements of
5 any corporation with fewer than 100 holders of record of its shares
6 (determined as provided in Section 605) required to be furnished
7 by this subdivision and subdivision (c) are not required to be
8 prepared in conformity with generally accepted accounting
9 principles if they reasonably set forth the assets and liabilities and
10 the income and expense of the corporation and disclose the
11 accounting basis used in their preparation.

12 (4) The requirements described in paragraphs (1) and (2) shall
13 be satisfied if a corporation with an outstanding class of securities
14 registered under Section 12 of the Securities Exchange Act of 1934
15 complies with Section 240.14a-16 of Title 17 of the Code of
16 Federal Regulations, as it may be amended from time to time, with
17 respect to the obligation of a corporation to furnish an annual report
18 to shareholders pursuant to Section 240.14a-3(b) of Title 17 of the
19 Code of Federal Regulations.

20 (b) In addition to the financial statements required by
21 subdivision (a), the annual report of any corporation having 100
22 or more holders of record of its shares (determined as provided in
23 Section 605) either not subject to the reporting requirements of
24 Section 13 of the Securities Exchange Act of 1934, or exempted
25 from those reporting requirements by Section 12(g)(2) of that act,
26 shall also describe briefly both of the following:

27 (1) Any transaction (excluding compensation of officers and
28 directors) during the previous fiscal year involving an amount in
29 excess of forty thousand dollars (\$40,000) (other than contracts
30 let at competitive bid or services rendered at prices regulated by
31 law) to which the corporation or its parent or subsidiary was a
32 party and in which any director or officer of the corporation or of
33 a subsidiary or (if known to the corporation or its parent or
34 subsidiary) any holder of more than 10 percent of the outstanding
35 voting shares of the corporation had a direct or indirect material
36 interest, naming the person and stating the person's relationship
37 to the corporation, the nature of the person's interest in the
38 transaction and, where practicable, the amount of the interest;
39 provided that in the case of a transaction with a partnership of
40 which the person is a partner, only the interest of the partnership

1 need be stated; and provided further that no report need be made
2 in the case of any transaction approved by the shareholders (Section
3 153).

4 (2) The amount and circumstances of any indemnification or
5 advances aggregating more than ten thousand dollars (\$10,000)
6 paid during the fiscal year to any officer or director of the
7 corporation pursuant to Section 317; provided that no report need
8 be made in the case of indemnification approved by the
9 shareholders (Section 153) under paragraph (2) of subdivision (e)
10 of Section 317.

11 (c) If no annual report for the last fiscal year has been sent to
12 shareholders, the corporation shall, upon the written request of
13 any shareholder made more than 120 days after the close of that
14 fiscal year, deliver or mail to the person making the request within
15 30 days thereafter the financial statements required by subdivision
16 (a) for that year. A shareholder or shareholders holding at least 5
17 percent of the outstanding shares of any class of a corporation may
18 make a written request to the corporation for an income statement
19 of the corporation for the three-month, six-month, or nine-month
20 period of the current fiscal year ended more than 30 days prior to
21 the date of the request and a balance sheet of the corporation as of
22 the end of the period and, in addition, if no annual report for the
23 last fiscal year has been sent to shareholders, the statements referred
24 to in subdivision (a) for the last fiscal year. The statements shall
25 be delivered or mailed to the person making the request within 30
26 days thereafter. A copy of the statements shall be kept on file in
27 the principal office of the corporation for 12 months and it shall
28 be exhibited at all reasonable times to any shareholder demanding
29 an examination of the statements or a copy shall be mailed to the
30 shareholder.

31 (d) The quarterly income statements and balance sheets referred
32 to in this section shall be accompanied by the report thereon, if
33 any, of any independent accountants engaged by the corporation
34 or the certificate of an authorized officer of the corporation that
35 the financial statements were prepared without audit from the
36 books and records of the corporation.

37 (e) In addition to the penalties provided for in Section 2200, the
38 superior court of the proper county shall enforce the duty of making
39 and mailing or delivering the information and financial statements

1 required by this section and, for good cause shown, may extend
2 the time therefor.

3 (f) In any action or proceeding under this section, if the court
4 finds the failure of the corporation to comply with the requirements
5 of this section to have been without justification, the court may
6 award an amount sufficient to reimburse the shareholder for the
7 reasonable expenses incurred by the shareholder, including
8 attorney's fees, in connection with the action or proceeding.

9 (g) This section applies to any domestic corporation and also
10 to a foreign corporation having its principal executive office in
11 this state or customarily holding meetings of its board in this state.