



## **BUSINESS LAW SECTION**

NONPROFIT ORGANIZATIONS COMMITTEE  
THE STATE BAR OF CALIFORNIA  
180 Howard Street  
San Francisco, CA 94105-1639  
<http://www.calbar.org/buslaw>

### ***REVISIONS TO UPDATE CALIFORNIA CONSUMER COOPERATIVE CORPORATION LAW TO ADD EMERGENCY POWERS AND BYLAW PROVISIONS***

#### **LEGISLATIVE PROPOSAL (BLS-2015-03)**

**TO:** Office of Governmental Affairs

**FROM:** Joel S. Corwin, Chair, and Carol A. Bradford, Vice Chair-Legislation, Business Law Section (the "Section") Nonprofit Organizations Committee (the "Committee")

**DATE:** March 18, 2014

**RE:** Proposal to amend Corporations Code Sections 12320 and 12331

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#### **SECTION ACTION AND CONTACTS**

Date of Approval by Section Executive Committee (the "Executive Committee"): July 11, 2014  
Approval Vote:

For: 11      Against: 0

| <b>Executive Committee Contact:</b>  | <b>Committee Contact:</b>  |
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#### **HISTORY, DIGEST AND PURPOSE**

This Proposal would add emergency powers and bylaw provisions to the California Consumer Cooperative Corporation Law ("Consumer Cooperative Law") by amending Corporations Code Sections 12320 and 12331.

## **History**

In 2013, the Committee and the Corporations Committee of the State Bar's Business Law Section jointly sponsored AB 491 (Stats. 2013, ch. 255). Sections 207, 212, 5140, 5151, 7140, 7151, 9140 and 9151 of the Corporations Code, relating to for-profit, public benefit, mutual benefit and religious corporations, were all amended in AB 491 to add emergency powers and bylaw provisions.

## **Proposal and Reasons for the Proposal**

The Consumer Cooperative Law was based in large part on the Nonprofit Mutual Benefit Corporation Law, including sections similar to those in the latter law which were amended to add emergency powers and bylaw provisions. However, conforming amendments to the Consumer Cooperative Law were not included in AB 491. This Proposal is being made in order to correct that oversight and give consumer cooperative corporations the benefit of the same emergency powers and bylaw provisions, with the same statutory language.

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

## **APPLICATION**

If enacted in 2015, the proposed legislation would become effective on January 1, 2016.

## **PENDING LITIGATION**

We are not aware of any specific pending litigation that would be affected by this Proposal.

## **LIKELY SUPPORT AND OPPOSITION**

We anticipate support from organizations that are subject to the California Consumer Cooperative Corporation Law, which this change would impact. We are unaware of any specific segments that might oppose this proposal.

## **FISCAL IMPACT**

None.

## GERMANENESS

The matters addressed in this Proposal require the special knowledge, training, experience or technical expertise of the Section and of members of the Committee. The position advanced would promote clarity, consistency, and comprehensiveness in the law.

## DISCLAIMER

This position is only that of the Nonprofit Organizations Committee of the Business Law Section of the State Bar of California. This position has not been adopted by the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California.

Membership in the Nonprofit Organizations Committee and in the Business Law Section is voluntary and funding for their activities, including all legislative activities, is obtained entirely from voluntary sources.

## TEXT OF PROPOSAL

The proposal, if enacted, would revise the text of Corporations Code Section 12320 to add a new subsection (m) and the text of Corporations Code Section 12331 to add a new subsection (h) as set forth below. Added text is indicated by underscore.

### § 12320. Powers

Subject to any limitations contained in the articles or bylaws and to compliance with other provisions of this part and any other applicable laws, a corporation, in carrying out its activities, shall have all of the powers of a natural person, including, without limitation, the power to:

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(m) (1) In anticipation of or during an emergency, take either or both of the following actions necessary to conduct the corporation's ordinary business operations and affairs, unless emergency bylaws provide otherwise pursuant to subdivision (h) of Section 12331:

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

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

(2) During an emergency, take either or both of the following actions necessary to conduct the corporation's ordinary business operations and affairs, unless emergency bylaws provide otherwise pursuant to subdivision (h) of Section 12331:

(A) Give notice to a director or directors in any practicable manner under the circumstances, including, but not limited to, by publication and radio, when notice of a meeting of the board

cannot be given to that director or directors in the manner prescribed by the bylaws or Section 12351.

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

(3) In anticipation of or during an emergency, the board may not take any action that requires the vote of the members or is not in the corporation's ordinary course of business, unless the required vote of the members was obtained prior to the emergency.

(4) Any actions taken in good faith in anticipation of or during an emergency under this subdivision bind the corporation and may not be used to impose liability on a corporate director, officer, employee, or agent.

(5) For purposes of this subdivision, "emergency" means any of the following events or circumstances as a result of which, and only so long as, a quorum of the corporation's board of directors cannot be readily convened for action:

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

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

(C) An act of terrorism or other manmade disaster that results in extraordinary levels of casualties or damage or disruption severely affecting the infrastructure, environment, economy, government functions, or population, including, but not limited to, mass evacuations.

(D) A state of emergency proclaimed by a governor or by the President.

## **§ 12331. Bylaws; contents**

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(h) (1) The bylaws may contain any provision, not in conflict with the articles, to manage and conduct the ordinary business affairs of the corporation effective only in an emergency as defined in Section 12320, including, but not limited to, procedures for calling a board meeting, quorum requirements for a board meeting, and designation of additional or substitute directors.

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

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

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