

AMENDED IN SENATE JUNE 18, 2008
AMENDED IN ASSEMBLY MAY 6, 2008
AMENDED IN ASSEMBLY APRIL 22, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2944

Introduced by Assembly Member Leno

February 22, 2008

An act to amend, *repeal, and add* Section 309 of the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2944, as amended, Leno. Corporations: director's duties.

Under existing law, a director of a corporation is required to perform the duties of a director in good faith and in a manner that the director believes to be in the best interests of the corporation and its shareholders, and with the care of an ordinarily prudent person.

This bill would, *until January 1, 2015*, specify that, in considering the best interests of the corporation, the board of directors, committees of the board, and individual directors of a domestic corporation may consider specified factors, including, among others, the effect the corporation's actions would have on the prospects for potential growth and on the economy of the state and nation. The bill would enact related provisions relative to the consideration of these factors and the duties of the board of directors, committees of the board, and individual directors of a domestic corporation.

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 309 of the Corporations Code is amended
2 to read:

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

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

14 (1) One or more officers or employees of the corporation whom
15 the director believes to be reliable and competent in the matters
16 presented.

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

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

27 (c) A person who performs the duties of a director in accordance
28 with subdivisions (a) and (b) shall have no liability based upon
29 any alleged failure to discharge the person's obligations as a
30 director. In addition, the liability of a director for monetary
31 damages may be eliminated or limited in a corporation's articles
32 of incorporation to the extent provided in paragraph (10) of
33 subdivision (a) of Section 204.

34 (d) In performing the duties of their respective positions, the
35 board of directors, committees of the board, and individual
36 directors of a domestic corporation may, in considering the best
37 interests of the corporation, consider, without limitation, the
38 following factors, to the extent they deem them appropriate:

1 (1) The long-term and the short-term interests of the corporation
2 and its shareholders.

3 (2) The effects that the corporation's actions may have in the
4 short term or in the long term upon any of the following:

5 (A) The prospects for potential growth, development,
6 productivity, and profitability of the corporation.

7 (B) The economy of the state and the nation.

8 (C) The corporation's employees, suppliers, customers, and
9 creditors.

10 (D) Community and societal considerations.

11 (E) The environment.

12 (e) (1) Nothing in this section shall create any duties owed by
13 any director to any person or entity to consider or afford any
14 particular weight to any interest or factor described in subdivision
15 (d) or to abrogate any duty of the directors, either statutory or
16 recognized by common law or court decisions.

17 (2) The duty of the board of directors, committees of the board,
18 and individual directors under subdivisions (a) and (b) is solely to
19 the domestic corporation and may be enforced directly by the
20 corporation or may be enforced by a shareholder or member by
21 an action in the right of the corporation, and may not be enforced
22 directly by a shareholder, member, or by any other person or group.

23 (3) Notwithstanding paragraph (2), subdivision (d) shall not
24 impose upon the board of directors, committees of the board, and
25 individual directors any legal or equitable duties, obligations or
26 liabilities, or create any right or cause of action against, or basis
27 for standing to sue, the board of directors, committees of the board,
28 and individual directors.

29 (f) (1) Absent breach of fiduciary duty, lack of good faith, or
30 self-dealing, any act as the board of directors, a committee of the
31 board, or an individual director shall be presumed to be in the best
32 interests of the corporation. In assessing whether the standard set
33 forth in this section has been satisfied, there shall not be any greater
34 obligation to justify, or higher burden of proof with respect to, any
35 act as the board of directors, any committee of the board, or any
36 individual director relating to or affecting an acquisition or
37 potential or proposed acquisition of control of the corporation than
38 is applied to any other act as a board of directors, any committee
39 of the board, or any individual director.

1 (2) Notwithstanding paragraph (1), any act of the board of
2 directors, a committee of the board, or an individual director
3 relating to or affecting an acquisition or potential or proposed
4 acquisition of control to which a majority of the disinterested
5 directors have assented shall be presumed to satisfy the standard
6 set forth in this section, unless it is proven by clear and convincing
7 evidence that the disinterested directors did not assent to the act
8 in good faith after reasonable investigation.

9 (g) *This section shall remain in effect only until January 1, 2015,*
10 *and as of that date is repealed, unless a later enacted statute, that*
11 *is enacted before January 1, 2015, deletes or extends that date.*

12 SEC. 2. *Section 309 is added to the Corporations Code, to*
13 *read:*

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

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

25 (1) *One or more officers or employees of the corporation whom*
26 *the director believes to be reliable and competent in the matters*
27 *presented.*

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

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

38 (c) *A person who performs the duties of a director in accordance*
39 *with subdivisions (a) and (b) shall have no liability based upon*
40 *any alleged failure to discharge the person's obligations as a*

- 1 *director. In addition, the liability of a director for monetary*
- 2 *damages may be eliminated or limited in a corporation's articles*
- 3 *to the extent provided in paragraph (10) of subdivision (a) of*
- 4 *Section 204.*
- 5 *(d) This section shall become operative on January 1, 2015.*