Memorandum 76-57

Subject: Study 77.220 - Nonprofit Corporations (Crimes and Penalties)

Chapter 22 (Sections 2200-2260) of the new General Corporation Law collects in one place the provisions relating to crimes and penalties imposed upon corporations and their officers, directors, and agents; these provisions are presently scattered throughout the General Corporation Law. With a single exception, these sections have been carried over virtually verbatim to the new law. These sections are now applicable to nonprofit corporations by virtue of Section 9002 as no specific provisions for such crimes or penalties are contained in the existing General Nonprofit Corporation Law.

The attached staff draft of provisions concerning crimes and penalties relating to nonprofit corporations does not follow the pattern of the new General Corporation Law with respect to the sections imposing penalties (Sections 2200-2204 of the new law; Sections 6514, 6515, 6540, 7106.5, 7106.6, and 7106.7 of the attached draft). In the draft, these sections have been placed in the chapters in which the underlying duties are found. The staff believes that the penalty provisions should be in close proximity to the substantive sections imposing obligations and to the sections containing relevant damage and enforcement provisions. This placement corresponds generally to the location of such sections in the existing General Corporation Law.

An obvious disadvantage of this change is the resulting dissimilarity between the arrangement of provisions of the code relating to business and nonprofit corporations. However, this consideration is outweighed by the greater clarity and ease of use inherent in maintaining a close proximity among the sections establishing a duty, setting forth liability for damages, providing enforcement procedures, and imposing penalties for nonperformance. If the Commission disagrees with this recommendation, these sections may be inserted in Chapter 22 as Sections 7200-7204.

The attached draft does continue the policy of the new General Corporation Law in collecting together all of the sections imposing criminal sanctions although these provisions are also found in various parts of existing Division 1 of the code. These sections have been assembled as Article 10 of Division 4 (Provisions Applicable to Corporations Generally). There are two reasons for this arrangement:

(1) The crime sections relate less often than the penalty provisions to the violation of specific substantive sections, thus making it difficult to place a crime section in close proximity to the section or sections imposing related duties or obligations;

(2) The material in these sections is applicable to all corporations.

At its April meeting, the Commission directed the staff to review the sections of the new General Corporations Law relating to crimes to determine whether these sections are superfluous in light of the contents of the Penal Code. The staff has done this, and a discussion of the relationship of each of these sections to the Penal Code is contained in the following analysis of individual sections.

In general, the staff found that it was rarely able to conclude that all of the criminal behavior delineated in a Corporations Code section was clearly proscribed in one or more Penal Code sections. While we did find that Corporations Code crimes were often charged in conjunction with Penal Code violations, some such cases specifically distinguished the charges and upheld conviction on one and not the other. See, e.g., People v. Blau, 140 Cal. App.2d 193 (1956). The review was made more difficult by the lack of reported cases involving the Corporations Code crimes, which left some uncertainty as to the scope of some of these sections.

In these circumstances, the staff recommends that the crimes sections be continued as set forth in the attached draft.

Analysis of Individual Sections

Penalties

§ 6514. Failure to keep records or submit financial statements

Section 2200 is a duplicate of existing Section 3015. Section 6514 continues the substance of these sections; it has been rewritten for clarity.

No reported cases have arisen under Section 3015 which would clarify whether the direction in subdivision (c) that the penalty be paid "to the shareholder . . . damaged by the neglect, failure, or refusal" might be construed to require actual damages as a prerequisite to the imposition of the penalty. The use of the word "penalty" and the provision in existing Section 3017 (carried forward in Section 2202 and draft Section 6515) that the penalty is "in addition to any action . . . for damages" militate against such a construction. See Pourroy v. Gardner, 122 Cal. App. 521, 528 (1932)(distinguishing a penalty from a "liability imposed by law," with only the latter requiring actual damages).

At its April meeting, the Commission raised the question of whether this section should provide for prosecution by the District Attorney or Attorney General and payment of the penalty to the county or state. This scheme is used in Section 2203 and draft Section 7106.5 (penalty for unauthorized transaction of intrastate business by foreign corporation). Public enforcement of the foreign corporation responsibilities is more appropriate than utilization of such resources under Section 6514; the statutes requiring qualification of foreign corporations are for the benefit of the general public dealing with these bodies while the usual beneficiaries of the record-keeping requirements of Chapter 15 are only the individual members. The staff therefore recommends that the penalty of Section 6514 remain payable to injured members in order to encourage private enforcement of the record-keeping duties.

Note: Section 2201 of the new General Corporation Law, continuing existing Section 3016, imposes a maximum $500 penalty (payable to each aggrieved shareholder) on any corporate officer with the duty to execute stock transfers who fails to perform; the penalty is also applicable to directors or other officers causing such failure. Section 3016 is applicable to nonprofit corporations by virtue of Section 9002 although there are no reported cases involving nonprofit corporations.

It is the general policy of the existing General Nonprofit Corporation Law (Sections 9402, 9600-9611) to allow nonprofit corporations virtually complete freedom in determining membership rights, including matters relating to the transfer and issuance of membership certificates; this plan is continued in this draft (see Sections 5262, 5400-5410). In light of this policy and the infrequency of situations in which memberships will be investment securities whose delay in transfer will cause any injury, the staff has not included in this draft such a section imposing penalties for the neglect or failure to transfer a membership.

§ 6515. Penalty cumulative; remission of penalty

Section 6515 is the same in substance as existing Section 3017 which has been placed in Chapter 22 (Section 2202) of the new General Corporation Law.

§ 6539. Procedure upon failure to file statement

This section requires the Secretary of State to mail a notice of delinquency to any nonprofit corporation which fails to file the required statement identifying its directors, officers, and the like, and then to certify the name of such corporation to the Franchise Tax Board upon its failure to file within 60 days of the notice. The Board then assesses a $250 penalty on the corporation.

At its April meeting, the Commission directed the staff to discuss with the office of the Secretary of State the desirability and probable cost of these provisions. We raised both issues with Bill Holden, who was the representative of the Secretary of State on the drafting committee for the new General Corporation Law. He indicated that the penalty provision had been created because the committee felt that the existing sanction (suspension of corporation powers) for the failure to file was too drastic. The amount of the penalty was selected arbitrarily.

Mr. Holden did not see the cost of running this penalty system as excessive. Corporate names and characteristics are now in the computer memory used by his office for the purpose of sending out statement forms required by Section 3301 (annually to both business and nonprofit corporations). Some cost will be involved in preparing a new program to comply with new Section 2204 (a monthly computer scan to determine which corporations should receive annual statement forms, delinquency notices, or certification to the Franchise Tax Board). He did not know the amount involved in this start-up or the continuing expenses of implementing the system, but it did seem apparent that little additional cost to the Secretary of State would result from including nonprofit corporations in the system.

§ 7106.5. Penalty for unauthorized transaction of intrastate business
§ 7106.6. Consent to jurisdiction
§ 7106.7. Disability to maintain action upon intrastate business

These three sections together constitute a revised (for clarity) version of Section 2203 of the new General Corporation Law. Section 2203 is a compilation of penalties and disabilities visited upon foreign corporations which transact unauthorized intrastate business; these provisions are now in Section 6801 and subdivisions (a) and (b) of Section 6408.

Crimes

§ 14901. Fraudulent issuance of memberships

Except for the addition of "memberships" to "shares," this section is the same as new Section 2251 and existing Section 1308. There are no reported cases involving prosecution under Section 1308.

While it is possible that Penal Code Sections 182(4)(conspiracy to defraud person of property), 484 (theft, including the fraudulent appropriation of another's property), and 503 (embezzlement) might in combination cover the range of offenses contained in Section 14901, there are too many questions without answers for certainty. For instance, when is an existing shareholder's property "appropriated" by a later unlawful issue of shares; did such a shareholder "entrust" property to the corporate officer which was then appropriated (embezzled); does the act of "consenting" to the invalid issuance of memberships constitute false pretenses, fraudulent representations, or false reports of "mercantile character"?

Section 25541 of the Corporations Code makes criminal the willful use of a fraudulent scheme or willfully fraudulent conduct "in connection with the offer, purchase, or sale of any security." As the Draftsmen's Commentary indicates, this language is taken from SEC Rule 10b-5 under the Securities Exchange Act of 1934. Existing 10b-5 case law generally requires that the plaintiff be either a buyer or seller of securities. 2 A. Bromberg, Securities Law: Fraud, Sec. 8.8, at 221-223 (1975). This restricts the reach of Section 25541, denying it the same coverage of creditors and existing shareholders provided in Section 14901.

§ 14902. Fictitious or fraudulent subscriptions

Section 14902 is the same in substance as Section 2252 and existing Section 1309. There are no reported cases involving prosecution under Section 1309.

Forgery is defined as the signing of the name of another or of a fictitious person, with intent to defraud and without authority, on certain legal instruments, including a "contract for money or other property." Penal Code § 470. The difference between this definition and the crime set forth in Section 14902 is that forgery requires actual intent to defraud--a significant distinction.

§ 14903. Fraudulent payment or distribution

Section 14903 is the same in substance as new Section 2253 and existing Section 1511 except that those sections cover only "stock corporations." Arguably, this language currently exempts directors of most nonprofit corporations from the coverage of Section 1511. There is no reason, however, why members or creditors of nonprofit corporations should not have the same protection offered by the criminal penalty imposed upon directors as shareholders and creditors of business corporations. There are no reported cases involving criminal prosecution under Section 1511.

To the extent that the forbidden payment or distribution operated to injure a stock or membership purchaser or subscriber, Section 25541 of the Corporations Code would apply to this offense; this would not be the case with regard to existing shareholders, members, or creditors. Any attempt to bring such activity within such Penal Code provisions as theft (Section 484) or fraudulent removal or concealment of property (Sections 154-155) meets the difficulty that the activity proscribed by those sections is actually that of the corporation rather than the individual.

§ 14904. False report or statement; refusal to keep book or post notice

Section 14904 is the same in substance as new Section 2254 and existing Section 3019. There are no reported cases involving criminal prosecutions under Section 3019 (although a handful of pre-1925 cases under a predecessor statute do exist).

Where any of the acts prohibited by this section result in the purchase or sale of securities, Section 25541 of the Corporations Code is adequate protection. If the false reports or lack of posting or notice results in the transfer of funds or property by a defrauded party, the crime of theft (Section 484) or conspiracy to defraud a person of property (Section 182(4)) under the Penal Code is probably involved. In other instances of activity described by Section 14904 (such as the use of false reports to exaggerate the value of the corporation, its stock, or its property which does not cause anyone to give up property or otherwise act to his detriment), no other criminal statutes are applicable.

§ 14905. Fraudulent records

Section 14905 is the same in substance as new Section 2255 and existing Section 3020. The reported cases indicate that offenses under Section 3020 are generally charged in conjunction with theft and conspiracy counts.

The crime described in subdivision (a) constitutes theft or embezzlement under Penal Code Section 484, depending upon whether the corporation or a third party is the victim. There is no Penal Code analogue to subdivision (b).

§ 14906. Exhibition of false records to public officer

Section 14906 is substantially the same as new Section 2256 and existing Section 3021. Reported prosecutions under Section 3021 have all involved bank officers.

The behavior described in this section may constitute forgery (Penal Code § 470), perjury (Penal Code § 118) if evidence or testimony under oath is involved, or the recording of false documents in a public office (Penal Code § 115). If the false documents or books are utilized in connection with the sale of securities, Section 25541 of the Corporations Code will apply. However, there exists a residue of activity within the scope of Section 7256 which is not covered by these Penal Code and Corporate Securities Act sections.

§ 14907. Unauthorized use of names

Section 14907 is the same in substance as new Section 2257 and existing Section 3022. There are no reported cases of prosecutions under Section 3022.

To the extent that Section 14907 behavior involves actually signing another's name, the crime of forgery has been committed (Penal Code § 470). Forgery may also be involved if the third party's name is "inserted" into a document which contains some other signatures as an "alteration" of a signed instrument. The use of such a fraudulent document to obtain property from another constitutes a form of theft (Penal Code § 484). If the document involved is used to cause the sale of stock of the corporation, a violation of Section 25541 of the Corporations Code will also have occurred. There remains within the scope of Section 14907 and outside the coverage of other criminal sections the unauthorized use of an individual's name in a document relating to an existing or not-yet-formed corporation which does not lead to the purchase or sale of securities or any other transfer of property.

Respectfully submitted,

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Rough Outline

GENERAL NONPROFIT CORPORATION LAW

§ 6514. Failure to keep records or submit financial statements

§ 6515. Penalty cumulative; remission of penalty

§ 6539. Procedure upon failure to file statement

§ 7106.5. Penalty for unauthorized transaction of intrastate business

§ 7106.6. Consent to jurisdiction

§ 7106.7. Disability to maintain action upon intrastate business

DIVISION 4. PROVISIONS APPLICABLE TO CORPORATIONS GENERALLY

CHAPTER 10. CRIMES

§ 14901. Fraudulent issuance of shares or memberships

§ 14902. Fictitious or fraudulent subscriptions

§ 14903. Fraudulent payment or distribution

§ 14904. False report or statement; refusal to keep book or post notice

§ 14905. Fraudulent records

§ 14906. Exhibition of false records to public officer

§ 14907. Unauthorized use of names

§ 14908. Transacting intrastate business without qualification

§ 14909. Transacting intrastate business as agent for unauthorized foreign corporation

§ 14910. Foreign incorporation as defense

§ 6514. Failure to keep records or submit financial statements

6514. (a) A nonprofit corporation is subject to penalty as provided in subdivision (b) if it neglects, fails, or refuses:

(1) To keep or cause to be kept or maintained the record of members or books of account required by this division to be kept or maintained; or

(2) To prepare or cause to be prepared or submitted the financial statements required by this division to be prepared or submitted.

(b) The penalty shall be twenty-five dollars ($25) for each day that the failure or refusal continues, beginning 30 days after receipt of written request that the duty be performed from one entitled to make the request, up to a maximum of one thousand five hundred dollars ($1,500).

(c) The penalty shall be paid to the member or members jointly making the request for performance of the duty and damaged by the neglect, failure, or refusal if suit therefor is commenced within 90 days after the written request is made; but the maximum daily penalty because of failure to comply with any number of separate requests made on any one day or for the same act shall be two hundred fifty dollars ($250).

Comment. Section 6514 is the same in substance as Section 2200 and former Section 3015. The language of Section 2200 has been modified to substitute "members" for "shareholders."

Cross-Reference:

Sections 6510 (required books and records), 6511 (form of records; where kept), 6521 (presentation of annual report), 6522 (annual report; financial information), 6524 (additional required information), 6525 (providing member with copy of annual report), 6527 (members' right to obtain fiscal information), and 7254 (false report or statement; refusal to keep book or post notice).

§ 6515. Penalty cumulative; remission of penalty

6515. (a) The penalty prescribed by Section 6514 is in addition to any remedy by injunction or action for damages or by writ of mandate for the nonperformance of acts and duties enjoined by law upon the nonprofit corporation or its directors or officers.

(b) The court in which an action for the penalty is brought may reduce, remit, or suspend the penalty on such terms and conditions as it may deem reasonable when it is made to appear that the neglect, failure, or refusal was inadvertent or excusable.

Comment. Section 6515 is the same in substance as Section 2202 and former Section 3017.

969/014 (968/695) § 6539

Not Approved

§ 6539. Procedure upon failure to file statement

6539. (a) Upon the failure of a nonprofit corporation to file the statement required by this article, the Secretary of State shall mail a notice of such delinquency to the nonprofit corporation. The notice shall also contain information concerning the application of this article and advise the nonprofit corporation of the penalty imposed by Section 25936 of the Revenue and Taxation Code for failure to timely file the required statement after notice of delinquency has been mailed by the Secretary of State. If, within 60 days after the mailing of the notice of delinquency, a statement pursuant to this article has not been filed by the nonprofit corporation, the Secretary of State shall certify the name of such nonprofit corporation to the Franchise Tax Board.

(b) Upon certification pursuant to subdivision (a), the Franchise Tax Board shall assess against the nonprofit corporation a penalty of two hundred fifty dollars ($250) pursuant to Section 25936 of the Revenue and Taxation Code.

(c) The penalty herein provided shall not apply to a nonprofit corporation which on or prior to the date of certification pursuant to subdivision (a) has dissolved or has been merged into another corporation.

(d) The penalty herein provided shall not apply to any nonprofit corporation, the corporate powers, rights, and privileges of which have been suspended by the Franchise Tax Board pursuant to Section 23301 or 23001.5 of the Revenue and Taxation Code more than six months prior to the last day of the filing period pursuant to this article and which the corporate powers, rights, and privileges have not been revived on or prior to the last day of the filing period. The Secretary of State need not mail a form pursuant to Section 6536 nor a notice of delinquency pursuant to this section to a nonprofit corporation whose corporate powers, rights, and privileges have been suspended more than six months prior to the last day of the filing period and which corporate powers, rights, and privileges have not been revived on or prior to such last day of the filing period.

(e) If, after certification pursuant to subdivision (a) the Secretary of State finds the required statement was filed before the expiration of the 60-day period after mailing of the notice of delinquency, the Secretary of State shall promptly decertify the name of the nonprofit corporation to the Franchise Tax Board. The Franchise Tax Board shall then promptly abate any penalty assessed against the nonprofit corporation pursuant to Section 25936 of the Revenue and Taxation Code.

Comment. Section 6539 is new. It is the same in substance as Section 2204. The imposition of a monetary penalty for the failure to file the required statement replaces the sanction of suspension of corporate powers, rights, and privileges contained in former Section 3301.1.

406/214 § 7106.5

§ 7106.5. Penalty for unauthorized transaction of intrastate business

7106.5. (a) A foreign nonprofit corporation which transacts intrastate business and which does not hold a valid certificate from the Secretary of State may be subject to a penalty of twenty dollars ($20) for each day that such unauthorized intrastate business is transacted.

(b) The penalty established by subdivision (a) shall be assessed according to the number of days it is found that the corporation has been willfully doing unauthorized intrastate business. Prosecution under this section may be brought, and the money penalty recovered thereby shall be paid, in the manner provided by Section 7253 for a prosecution brought under that section.

Comment. Subdivision (a) is the same in substance as a portion of Section 2203(a) and a portion of former Section 6408(a).

Subdivision (b) is the same in substance as Section 2203(b) and former Section 6408(b).

406/215 § 7106.6

§ 7106.6. Consent to jurisdiction

7106.6. A foreign nonprofit corporation which transacts intrastate business and which does not hold a valid certificate from the Secretary of State shall be deemed:

(a) To consent to the jurisdiction of the courts of California in any civil action arising in this state wherein the nonprofit corporation is named a party defendant; and

(b) To have designated the Secretary of State as the agent upon whom process directed to the nonprofit corporation may be served within this state.

Comment. Section 7106.6 is the same in substance as a portion of Section 2203(a) and former Section 6408(a).

§ 7106.7. Disability to maintain action upon intrastate business

7106.7. A foreign nonprofit corporation subject to the provisions of this chapter which transacts intrastate business without complying therewith shall not maintain any action or proceeding upon any intrastate business so transacted in any court of this state, commenced prior to compliance with this chapter, until the foreign nonprofit corporation has complied with the provisions thereof and has done all of the following:

(a) Paid to the Secretary of State a penalty of two hundred fifty dollars ($250) in addition to the fees due for filing the statement and designation required by Section 7105.

(b) Filed with the clerk of the court in which the action is pending receipts showing the payment of said fees and penalty and all franchise taxes and any other taxes on business or property in this state that should have been paid for the period during which it transacted intrastate business.

Comment. Section 7106.7 is the same in substance as Section 2403(c) and former Section 6801.

DIVISION 4. PROVISIONS APPLICABLE TO CORPORATIONS GENERALLY

CHAPTER 10. CRIMES

§ 14901. Fraudulent issuance of shares or memberships

14901. A promoter, director, or officer of a corporation who knowingly and willfully issues or consents to the issuance of shares, memberships, or certificates for shares or memberships in violation of this title with intent to defraud present or future shareholders or members, subscribers, purchasers of shares or memberships, or creditors is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000) or imprisonment for not more than one year or both.

Comment. Section 14901 is the same in substance as Section 2251 and former Section 1308.

Note. Enactment of this section makes possible the repeal of Section 2251.

406/218 § 14902

§ 14902. Fictitious or fraudulent subscriptions

14902. A person who does any of the following is guilty of a misdemeanor:

(a) Signs the name of a fictitious person to any subscription for or agreement to take stock or a membership in any domestic or foreign corporation, existing or proposed.

(b) Signs to any subscription or agreement the name of any person, knowing:

(1) The person has no means or does not intend in good faith to comply with all the terms thereof; or

(2) There is any understanding or agreement that the terms of the subscription or agreement are not to be complied with or enforced.

Comment. Section 14902 is the same in substance as Section 2252 and former Section 1309.

Note. Enactment of this section makes possible the repeal of Section 2252.

406/219 § 14903

§ 14903. Fraudulent payment or distribution

14903. A director of a corporation, domestic or foreign, who concurs in any vote or act of the directors of the corporation or any of them, knowingly and with dishonest or fraudulent purpose, to make any dividend, payment to members or distribution of assets except in the cases and in the manner allowed by law, either with the design of defrauding creditors, shareholders, or members or of giving a false appearance to the value of the stock or memberships and thereby defrauding subscribers or purchasers, is guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars ($1,000) or imprisonment for not more than one year or both.

Comment. Section 14903 is the same in substance as Section 2253 and former Section 1511 except as noted below.

Both former Section 1511 and existing Section 7253 limit their application to the directors of "stock corporations," thus excluding the directors of nonprofit corporations which do not issue shares. Section 14903 is not so limited, and it specifically applies to the directors of a nonprofit corporation which issues memberships.

Distributions to shareholders and members are generally regulated by Sections 500-503 and 5236.

Note. Enactment of this section will allow the repeal of Section 2253.

968/900 § 14904

§ 14904. False report or statement; refusal to keep book or post notice

14904. A director, officer, or agent of any corporation, domestic or foreign, is guilty of a felony if he does any of the following:

(a) Knowingly concurs in making, publishing, or posting either generally or privately to the shareholders, members, or other persons:

(1) Any written report, exhibit, statement of its affairs or pecuniary condition, or notice containing any material statement which is false;

(2) Any untrue or willfully or fraudulently exaggerated report, prospectus, account, or statement of operations, values, business, profits, receipts, expenditures, or prospects; or

(3) Any other paper or document intended to produce or give, or having a tendency to produce or give, the shares of stock or memberships

in such corporation a greater value or less apparent or market value than they really possess.

(b) Refuses to make any book entry or post any notice required by law in the manner required by law.

Comment. Section 14904 is comparable to Section 2254 and former Section 3019. The language of Section 2254 has been revised to reflect the inclusion of nonprofit corporations within the scope of Section 14904.

Note. Enactment of Section 14904 will allow the repeal of Section 2254.

968/988 § 14905

§ 14905. Fraudulent records

14905. (a) A director, officer, or agent of any corporation, domestic or foreign, who knowingly receives or acquires possession of any property of the corporation, otherwise than in payment of a just demand, and, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of the corporation is guilty of a public offense.

(b) A director, officer, agent, shareholder, or member of any corporation, domestic or foreign, who, with intent to defraud, destroys, alters, mutilates, or falsifies any of the books, papers, writings, or securities belonging to the corporation or makes or concurs in omitting to make any material entry in any book of accounts or other record or document kept by the corporation is guilty of a public offense.

(c) Each public offense specified in this section is punishable by imprisonment in a state prison for not more than 10 years or by imprisonment in a county jail for not exceeding one year or a fine not exceeding five hundred dollars ($500) or by both such fine and imprisonment.

Comment. Section 14905 is the same in substance as Section 2255 and former Section 3020.

Note. Enactment of Section 14905 will allow the repeal of Section 2255.

406/220 § 14906

§ 14906. Exhibition of false records to public officer

14906. An officer, agent, or clerk of any corporation, domestic or foreign, or any person proposing to organize such a corporation or to increase the capital stock of, or obtain additional memberships in or contributions to, any such corporation, who knowingly exhibits any false, forged, or altered book, paper, voucher, security, or other instrument of evidence to any public officer or board authorized by law to examine the organization of the corporation or to investigate its affairs or to allow an increase of its capital or the sale of additional memberships, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in a state prison for not more than 10 years or by imprisonment in a county jail for not exceeding one year.

<u>Comment.</u> Section 14906 is comparable to Section 2256 and former Section 3021. The language of Section 2256 has been adapted to reflect the broader coverage of Section 14906.

406/221 § 14907

<u>§ 14907. Unauthorized use of names</u>

14907. A person who without authorization subscribes the name of another to or inserts the name of another in any prospectus, circular, or other advertisement or announcement of any corporation, domestic or foreign, whether existing or intended to be formed, with intent to permit the document to be published and thereby to lead persons to believe that the person whose name is no subscribed or inserted is an officer, agent, shareholder, member, or promoter of the corporation, when in fact no such relationship exists to the knowledge of such person, is guilty of a misdemeanor.

<u>Comment.</u> Section 14907 is the same in substance as Section 2257 and former Section 3022.

<u>Note.</u> Enactment of Section 14907 will allow the repeal of Section 2257.

§ 14908. Transacting intrastate business without qualification

14908. (a) A foreign corporation subject to the provisions of this title which transacts intrastate business without complying therewith is guilty of a misdemeanor, punishable by fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000), to be recovered in any court of competent jurisdiction.

(b) Prosecution under this section may be brought by the Attorney General or by any district attorney. If brought by the latter, one-half of the fine collected shall be paid to the treasurer of the county in which the conviction was had and one-half to the State Treasurer. If brought by the Attorney General, the entire amount of fine collected shall be paid to the State Treasurer to the credit of the General Fund of the state.

Comment. Section 14908 is the same in substance as Section 2258 and former Section 6800. The requirement that a foreign corporation obtain a certificate of qualification from the Secretary of State as a prerequisite to transacting intrastate business is set forth in Sections 2105 and 7105. The failure to obtain a certificate of qualification when required may also result in a penalty (Sections 2203, 7106.5) or an additional misdemeanor (Sections 2259, 14909).

Note. Enactment of Section 14908 will allow the repeal of Section 2258.

406/223 § 14909

§ 14909. Transacting intrastate business as agent for unauthorized foreign corporation

14909. A person who transacts intrastate business on behalf of a foreign corporation which is not authorized to transact intrastate business in this state, knowing that it is not so authorized, is guilty of a misdemeanor punishable by fine of not less than twenty-five dollars ($25) nor more than three hundred dollars ($300).

Comment. Section 14909 is the same in substance as Section 2259 and former Section 6803. Authorization for a foreign corporation to transact intrastate business may be obtained pursuant to Sections 2205, 2206, 7205, and 7206.

Note. Enactment of Section 14909 will allow the repeal of Section 2259.

406/224 § 14910

§ 14910. Foreign incorporation as defense

14910. In a prosecution for a violation of Section 14902, 14903, 14904, 14905, 14906, or 14907, the fact that the corporation was a foreign corporation is not a defense, if it was carrying on business, conducting activities, or keeping an office therefor within this state.

Comment. Section 14910 is the same in substance as Section 2260 and former Section 6804.

Note. Enactment of Section 14910 will allow the repeal of Section 2260.