

#77.180

10/13/76

Fi
Memorandum 76-95

Subject: Study 77.180 - Nonprofit Corporations (Transitional Provisions)

A number of comments received in connection with the tentative recommendation mention the need for a delay in the operation of the statute to accommodate existing nonprofit corporations. See discussion in Memorandum 76-90 under Section 6810. The transition provisions tentatively adopted by the Commission at the September 1976 meeting provide for a one-year deferred operative date, with an additional delay of up to one year for existing nonprofit corporations. The draft of the transitional provisions, revised in accordance with the Commission's instructions at the September meeting, is attached to this memorandum. We hope they can be approved to print at the October meeting.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

CHAPTER 18. TRANSITION PROVISIONS

Comment. This division becomes operative January 1, 1979. This chapter provides exceptions to blanket application of this division to existing nonprofit corporations in order to facilitate orderly compliance.

§ 6810. Definitions

6810. As used in this chapter:

(a) "Existing nonprofit corporation" means a nonprofit corporation formed prior to January 1, 1979.

(b) "Operative date" means the date this division becomes applicable to an existing nonprofit corporation pursuant to Section 6811.

(c) "Prior law" means the applicable law as in effect prior to January 1, 1979.

Comment. Section 6810 is comparable to Section 2300 (General Corporation Law).

§ 6811. Operative date

6811. (a) Subject to subdivision (b), this division becomes operative on January 1, 1979.

(b) An existing nonprofit corporation is governed by prior law until the earlier of the following dates:

(1) January 1, 1980.

(2) The date on or after January 1, 1979, the nonprofit corporation elects to be governed by this division. The election shall be made by filing a certificate of amendment or a certificate of restated articles

stating that the nonprofit corporation elects to be governed by this division.

Comment. Subdivision (a) of Section 6811 defers the operative date of this division for one year in order to allow sufficient time for interested persons to become familiar with the new law. Nonprofit corporations formed after the operative date are governed by the new law.

Subdivision (b) enables existing nonprofit corporations to postpone the application of this division for an additional year in order to make any changes in their articles or bylaws that may be appropriate. Under subdivision (b), however, an existing nonprofit corporation may elect in its articles to be governed by this division before then. The election is made by the process of amending articles ordinarily applicable to the particular nonprofit corporation. Subdivision (b) does not authorize an election to make applicable selected portions of this division; the election is only for the nonprofit corporation to be governed by the entire division.

Defined Terms:

Articles, § 5126
 Existing nonprofit corporation, § 6810
 Filed, § 5148
 Prior law, § 6810

31/515

§ 6812. Application of division to acts taken before operative date

6812. Except as otherwise expressly provided in this chapter, acts, contracts, or other transactions by an existing nonprofit corporation or its directors, officers, or members, if occurring prior to the operative date are governed by prior law, and if occurring on or after the operative date are governed by this division.

Comment. Section 6812 is the same in substance as subdivision (b) of Section 2301 (General Corporation Law). The succeeding sections of

this chapter are express exceptions to the general rule stated in this section that actions taken by an existing nonprofit corporation, members, and directors are governed by prior law if taken prior to the operative date and are governed by this division if taken after the operative date.

Defined Terms:

Director, § 5140
 Operative date, § 6810
 Prior law, § 6810

28/292

§ 6813. Application of division to instruments filed after operative date

6813. If a certificate or document that is required to be filed relates to a vote by the directors or members of an existing nonprofit corporation prior to the operative date in accordance with prior law, the vote is effective and the certificate or document may be filed after the operative date in accordance with prior law.

Comment. Section 6813 is the same in substance as the last portion of Section 2301(c) (General Corporation Law). For other provisions relating to the effect of votes and consents, see Section 6817.

Defined Terms:

Existing nonprofit corporation, § 6810
 Filed, § 5148
 Operative date, § 6810
 Prior law, § 6810
 Vote, § 5182

31/518

§ 6814. Application of provisions relating to indemnification

6814. (a) Article 8 (commencing with Section 5380) of Chapter 3 applies to any proposed indemnification by an existing nonprofit cor-

poration on or after the operative date, regardless of when the events upon which the indemnification is based occurred.

(b) A statement relating to indemnification contained in the bylaws of an existing nonprofit corporation on the operative date shall not be construed as limiting the indemnification permitted by Article 3 (commencing with Section 5380) of Chapter 3 unless it is expressly stated as so intended.

Comment. Section 6814 is the same in substance as Section 2306 (General Corporation Law).

Defined Terms:

Bylaws, § 5132
Existing nonprofit corporation, § 6810
Operative date, § 6810

31/519

§ 6815. Application of provisions relating to capital improvement assessments

6815. Subdivision (c) of Section 5512 does not apply to a capital improvement assessment levied by an existing nonprofit corporation prior to the operative date.

Comment. Section 6815 makes clear that a member may not exercise the withdrawal right to avoid a capital improvement assessment under Section 5512(c) after the operative date in the case of an assessment levied before the operative date.

Defined Terms:

Existing nonprofit corporation, § 6810
Operative date, § 6810

§ 6816. Application of provisions relating to payments to members

6816. (a) Article 5 (commencing with Section 5550) of Chapter 5 applies to a payment to members made after the operative date by an existing nonprofit corporation.

(b) A payment to members made by an existing nonprofit corporation after the operative date pursuant to a contract for the purchase or redemption of memberships entered into by the existing nonprofit corporation prior to the operative date may be made if permissible under Article 5 (commencing with Section 5560) of Chapter 5 or under prior law at the time the contract was entered into.

Comment. Section 6816 is the same in substance as Section 2308 (General Corporation Law).

Defined Terms:

Existing nonprofit corporation, § 6810
 Operative date, § 6810
 Prior law, § 6810

§ 6817. Application of provisions relating to members' meetings, consents, and voting rights

6817. Chapters 6 (commencing Section 5610) and 7 (commencing with Section 5710), other than Article 3 (commencing with Section 5730) or 4 (commencing with Section 5740), apply to:

(a) A meeting of members of an existing nonprofit corporation held after the operative date and any vote cast at the meeting except that prior law applies if the meeting was initially called for a date prior to the operative date and notice of the meeting was given to persons entitled to vote at the meeting.

(b) A written consent given by members of an existing nonprofit corporation that becomes effective on or after the operative date, whether or not the consent was executed prior to the operative date.

Comment. Section 6817 is the same in substance as Section 2310 (General Corporation Law) except that it does not apply to proxies (which are governed by Section 6817) or to actions taken pursuant to written consent (which are governed by Section 6811).

Defined Terms:

Existing nonprofit corporation, § 6810
 Operative date, § 6810
 Prior law, § 6810
 Proxy, § 5168
 Vote, § 5182

§ 6818. Application of provisions relating to proxies

6818. Prior law applies to a proxy in an existing nonprofit corporation executed prior to the operative date except that any such proxy is not valid after the expiration of three years from the operative date.

Comment. Section 6818 makes clear that a proxy validly executed prior to the operative date continues in effect in accordance with prior law notwithstanding any possible noncompliance with the provisions of Article 3 (commencing with Section 5730) of Chapter 7. Such a proxy is not valid for a period of more than three years beyond the operative date, however, and may be terminated by its terms or otherwise in accordance with prior law before the three-year period has expired.

Defined Terms:

Existing nonprofit corporation, § 6810
 Operative date, § 6810
 Prior law, § 6810
 Proxy, § 5168

§ 6819. Application of provisions relating to voting agreements

6819. Prior law applies to a voting agreement or voting trust in an existing nonprofit corporation entered into prior to the operative date except that Article 4 (commencing with Section 5740) applies to such an agreement or trust amended or extended on or after the operative date.

Comment. Section 6819 is the same in substance as Section 2311 (General Corporation Law).

Defined Terms:

Existing nonprofit corporation, § 6810
Operative date, § 6810
Prior law, § 6810

4264

§ 6820. Application of provisions relating to derivative actions

6820. Chapter 3 (commencing with Section 5810) applies to an action by a member in the right of an existing nonprofit corporation commenced on or after the operative date, and prior law governs such an action commenced prior to the operative date.

Comment. Section 6820 is the same in substance as Section 2312 (General Corporation Law).

Defined Terms:

Existing nonprofit corporation, § 6810
Operative date, § 6810
Prior law, § 6810

4265

§ 6821. Application of provisions relating to amendment of articles

6821. Notwithstanding Section 5920, an amendment of the articles of an existing nonprofit corporation may be adopted by approval of the

board alone to delete the reference to the county in this state where the principal office for the transaction of the business of the existing nonprofit corporation is located.

Comment. Section 6821 is intended to enable the board alone to remove from the articles unnecessary verbiage that was included pursuant to former Section 9300(d).

Defined Terms:

Approval of the board, § 5122
Articles, § 5126
Existing nonprofit corporation, § 6310

4266

§ 6822. Application of provisions relating to sales of assets, mergers, and consolidations

6822. (a) Except as provided in subdivision (b):

(1) Chapter 10 (commencing with Section 6010) applies to a transaction by an existing nonprofit corporation consummated on or after the operative date.

(2) Chapter 11 (commencing with Section 6110) applies to a merger or consolidation of an existing nonprofit corporation if a copy of the agreement of merger or consolidation is filed on or after the operative date.

(b) Prior law applies to a transaction, merger, or consolidation described in subdivision (a) if a required approval of the members has been given either prior to the operative date or on or after the operative date but at a meeting of members initially called for a date prior to the operative date.

Comment. Section 6822 is the same in substance as Section 2313 (General Corporation Law) except that the time of "consummation" of a

merger or consolidation is specified as the time of filing of a copy of the agreement.

Defined Terms:

Approval of the members, § 5124
 Existing nonprofit corporation, § 6810
 Filed, § 5146
 Operative date, § 6810
 Prior law, § 6810

4267

§ 6823. Application of provisions relating to dissolution

6823. (a) Chapter 17 (commencing with Section 6710) applies to an action for involuntary dissolution of an existing nonprofit corporation commenced on or after the operative date, and prior law applies to such an action commenced prior to the operative date.

(b) Chapter 17 (commencing with Section 6710) applies to voluntary dissolution of an existing nonprofit corporation if the certificate evidencing the election to wind up and dissolve is filed on or after the operative date, and prior law applies to such a dissolution if the certificate is filed prior to the operative date.

Comment. Subdivision (a) of Section 6823 is the same in substance as Section 2314 (General Corporation Law). Subdivision (b) is the same in substance as Section 2315 (General Corporation Law).

Defined Terms:

Existing nonprofit corporation, § 6810
 Filed, § 5143
 Operative date, § 6810
 Prior law, § 6810

§ 6824

4268

§ 6824. Application of provisions relating to revivor of suspended rights

6824. If the corporate rights, privileges, and powers of an existing nonprofit corporation have been suspended and are still suspended immediately prior to the operative date pursuant to Sections 5700 to 5908, inclusive, of the prior law and statutes there referred to, the prior law and statutes continue to apply to the existing nonprofit corporation until restoration by the Controller pursuant to prior law.

Comment. Section 6824 is the same in substance as Section 2319 (General Corporation Law).

Defined Terms:

Existing nonprofit corporation, § 6810
Operative date, § 6810
Prior law, § 6810

SEC. ____ . This act becomes operative on January 1, 1979.

DIVISION 4§ 14612. Validity of statement or certificate filed under prior law

14612. (a) A corporation which prior to January 1, 1979, has filed in proper form the most recent statement required by former Section 1502 as enacted in Chapter 682 of the Statutes of 1975 or as subsequently amended, or required by former Section 3301 as enacted in Chapter 1038 of the Statutes of 1947 or as subsequently amended, has thereby satisfied the requirements of Sections 14601 to 14603, inclusive, until another statement is required to be filed pursuant thereto.

(b) A domestic or foreign corporation which prior to January 1, 1979, has filed in proper form the certificate required by former Section 1505 as enacted in Chapter 682 of the Statutes of 1975, or required by former Section 3301.5 as enacted in Chapter 628 of the Statutes of 1951 or as subsequently amended, has thereby satisfied the requirements of subdivision (a) of Section 14611.

Comment. Section 14612 is new; it ensures that the enactment of new Division 4 of Title 1 of the Corporations Code does not invalidate specified statements or certificates valid under prior law.

§ 14613. Place for service of process on corporate agent

14613. When a corporate agent for service of process has been designated by a domestic or foreign corporation prior to January 1, 1979, and the designation of agent included the name of a city, town, or village wherein the corporate agent maintained an office, service on the agent may be made at any office of the agent set forth in the certifi-

cate of the corporate agent filed pursuant to Section 14611, former Section 1505 as enacted in Chapter 632 of the Statutes of 1975, or former Section 3301.5, 3301.6, 6403.5, or 6403.6 as enacted in Chapter 628 of the Statutes of 1951 or as subsequently amended, whether or not such office is in the city, town, or village.

Comment. Section 14613 is the same in substance as former Section 2317 (new General Corporation Law). "January 1, 1979" is substituted for "effective date" and appropriate adjustments are made to statutory references.

Defined Terms:

Domestic corporation, § 14403

Foreign corporation, § 14403