

Date of Hearing: April 2, 2018

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Monique Limón, Chair

AB 2557 (Maienschein) – As Introduced February 15, 2018

SUBJECT: Corporations: directors and distributions

SUMMARY: Makes minor technical and clarifying changes to statute governing non-profit corporation distributions, as specified.

EXISTING LAW: Section 5049 of the Corporations Code defines “distribution” as the distribution of any gains, profits or dividends to any member as such.

FISCAL EFFECT: Unknown

COMMENTS: This bill is sponsored by The California Lawyers Association (CLA). The CLA has brought forward these additions to the term “distribution” in order to provide further guidance and clarification to non-profit directors and board members in the distribution of non-profit funds.

The sponsor and the author’s office have expressed a concern that “By definition, if the entity making the payment has any gain, they run the risk of any payment to a member being deemed an improper distribution.” Accordingly, they have provided the following additions and clarifications to help prevent inadvertent inappropriate distributions by non-profit directors and board members.

Specifically, this bill expands the definition of “distribution” as follows:

“Distribution” means the distribution of any income, gains, profits, or dividends to any member as such. As the term “distribution” does not include any of the following:

- (1) A payment or transfer of gains, profits, or dividends by a corporation to any member if the member is a nonprofit public benefit corporation or religious corporation, for a charitable purpose consistent with that of the corporation making the payment and the payment or transfer of those gains, profits, or dividends does not result in the corporation making the distribution being unable to meet its liabilities as they mature, except for those whose payment is otherwise adequately provided for as they mature.
- (2) Conferring benefits on members in conformity with the purpose of the corporation making the payment or transfer.
- (3) A payment or transfer of gains, profits, or dividends approved by the Attorney General.
- (4) A payment or transfer in a reasonable amount for goods sold or services received.
- (5) Repayment of borrowed funds.
- (6) Payment or transfer in liquidation of the corporation

The current minimal definition of “distribution” does introduce ambiguity and allows for misinterpretation. The proposed language provides clarity and significantly increases guidance to non-profit directors and board members on what is, or is not, an allowable distribution.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Lawyers Association

Opposition

None on file

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