

Date of Hearing: June 18, 2018

ASSEMBLY COMMITTEE ON BANKING AND FINANCE  
Monique Limón, Chair  
SB 838 (Hertzberg) – As Amended May 10, 2018

**SENATE VOTE:** 38-0

**SUBJECT:** Corporate records: articles of incorporation: blockchain technology

**SUMMARY:** Authorizes corporations to include a provision in their articles of corporation, allowing the use of blockchain technology to record and track the issuance and transfer of stock certificates. Specifically, this bill:

- 1) Authorizes corporations formed under the General Corporation Law and the Social Purpose Corporation Act to include a provision in their articles of incorporation authorizing records administered by or on behalf of the corporation, in which the names of all the corporation's stockholders of record, the address and number of shares registered in the name of each of these stockholders, and all issuances and transfers of corporate stock are recorded, to be kept on or by means of blockchain technology or one or more distributed electronic networks, as long as the following conditions are met:
  - a) The records can be converted into clearly legible paper within a reasonable period of time.
  - b) The records can be used to prepare the list of shareholders, record information required to be included on stock certificates, and record transfers of stock, as specified.
- 2) Defines blockchain technology or a distributed electronic network as a distributed ledger technology that uses a distributed, decentralized, shared, and reciprocal ledger that may be public or private, permissioned or permissionless, or driven by tokenized crypto economics or tokenless, where the data on the ledger is protected with cryptography, is immutable, auditable, and provides an uncensored truth.

**EXISTING LAW:** Provides for the General Corporation Law (Corporations Code Section 100) and the Social Purpose Corporation Act (Corporations Code Section 2500). Requires California corporations wishing to issue securities to comply with the Corporate Securities Law of 1968 (Corporations Code Section 25000), administered by the Department of Business Oversight (DBO).

**FISCAL EFFECT:** none

**COMMENTS:** This bill is sponsored by the author to provide privately-held corporations with a more secure means to protect their shareholders from fraud involving the issuance and transfer of stock certificates. According to the author:

SB 838 is intended to authorize privately-held corporations to issue and transfer share certificates through blockchain technology or distributed electronic network. In order for corporations to record and keep these private exchanges on

a blockchain or distributed electronic network, they would be required to place the intent to do so in their articles of incorporation. By authorizing this technology to be used in this way, California is engaging a new technology that will protect consumers and corporations from cases of fraud and theft.

Blockchain technology allows individuals to conduct financial transactions between and among themselves, with few or no traditional intermediaries, such as banks, payment networks, or clearinghouses. In place of those traditional intermediaries, a blockchain relies on a software code run by different computers, which guarantee the transactions that are added to a ledger as they occur. Blockchain technology uses cryptographic techniques to encode transactions as they are added to the digital ledger.

DBO and the Secretary of State's Office are tasked with overseeing and tracking the issuance and transfer of stock certificates by privately-held corporations. Neither agency has identified any impacts on the way they will perform their statutory duties as a result of SB 838. Once a privately held corporation is approved to issue securities by DBO (or if covered by a securities law exemption), corporations appear to be free to issue and transfer stock certificates in any manner they choose, as long as that manner is acceptable to their shareholders.

Because SB 838 is permissive, it will not require any existing or newly formed corporation to do anything; the bill is merely designed to authorize corporations to add a blockchain-specific provision to their articles of incorporation if they wish.

Recent amendments agreed to by the author in the Senate are clarifying and technical in nature.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

Blockchain Group of CodeX

##### **Opposition**

None on file

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