

Date of Hearing: April 16, 2012

ASSEMBLY COMMITTEE ON BANKING AND FINANCE
Mike Eng, Chair
AB 2668 (Banking & Finance) – As Introduced: March 5, 2012

SUBJECT: Corporate agents: indemnification.

SUMMARY: Provides indemnification standards to a fiduciary of a pension, deferred compensation, saving, thrift, or other retirement, incentive, or benefit plan, trust or provision for any or all of the corporation's directors, officers, employees, and persons providing services to the corporation or any of its subsidiary or related or affiliated corporations.

EXISTING LAW

- 1) Provides a nonprofit public benefit corporation the authority to indemnify their agents does not apply to any proceedings against any trustee, investment manager, or other fiduciary of an employee benefit plan. [Corporations Code, Section 5238]
- 2) Provides a nonprofit mutual benefit corporation the authority to indemnify their agents does not apply to any proceedings against any trustee, investment manager, or other fiduciary of an employee benefit plan. [Corporations Code, Section 7237]
- 3) Provides a nonprofit religious corporation the authority to indemnify their agents does not apply to any proceedings against any trustee, investment manager, or other fiduciary of an employee benefit plan. [Corporations Code, Section 9246]
- 4) Provides a consumer cooperative corporation the authority to indemnify their agents does not apply to any proceedings against any trustee, investment manager, or other fiduciary of an employee benefit plan. [Corporations Code, Section 12377]

FISCAL EFFECT: None.

COMMENTS:

This measure would eliminate the ambiguity in the Corporations Code regarding the indemnification standards applicable to fiduciaries of an employee benefit plan when acting on behalf of a nonprofit public benefit, mutual benefit, religious or a consumer cooperative corporation.

AB 2668, sponsored by the Nonprofit and Unincorporated Organization Committee of the California State Bar, would provide certainty for nonprofit and cooperative corporations with respect to the sorts of plans the fiduciaries of which may be indemnified and to the scope of activities that can be indemnified.

The measure would amend subdivision (j) of Corporations Code Sections 5238, 7237, 9246, and 12377. Each of these sections makes the indemnification standards provided by Corporations Code section 207(f) applicable to any trustee, investment manager or other fiduciary of an employee benefit plan when acting in that capacity on behalf of a nonprofit public benefit,

mutual benefit, religious and consumer cooperative corporation, respectively. Such indemnification is authorized even if the person would also be considered that corporation's agent under Corporations Code sections 5238, 7237, 9246, and 12377, which describes the scope of indemnification generally applicable to a corporation's agents. This change in law would eliminate ambiguity arising from the internal cross-reference to a section of the General Corporation Law where an analogous statute is already contained in the Nonprofit Corporation Law and the Consumer Cooperative Corporation Law. AB 2668 would also eliminate further ambiguity between the different descriptions of employee benefit plan fiduciaries contained in the Corporations Code.

REGISTERED SUPPORT / OPPOSITION:

Support

The State Bar of California (Sponsor)

Opposition

None on file.

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