

Date of Hearing: April 8, 2013

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Roger Dickinson, Chair

AB 457 (Torres) – As Introduced: February 19, 2013

SUBJECT: Shareholders.

SUMMARY: Eliminates the 10-day waiting period that currently applies for reorganizations in which shareholders have the right under dissenters' rights to demand payment of cash for their shares.

EXISTING LAW

- 1) Authorizes certain actions that may be taken at any annual or special meeting of shareholders to be taken with written consent of the shareholders outside of a meeting under specific requirements and circumstances. [Corporations Code Section 603]
- 2) Requires corporations to solicit the consent of all shareholders or subject certain proposed corporate actions to a 10-day waiting period. [Corporations Code Section 603 (b)(1)]
- 3) Prohibits shareholders with dissenters' rights from attacking the validity of the transaction and it prohibits any suit for an injunction to stop the reorganization. [Corporations Code, Section 1312 (a)]

FISCAL EFFECT: None.

COMMENTS:

Current law requires corporations to solicit the consent of all shareholders or subject certain proposed corporate actions to a 10-day waiting period. AB 457, eliminates the 10-day waiting period which would only apply to California Dissenters' Rights law, Chapter 13 of the Corporations Code, commencing with Section 1300. Dissenters' rights permit non-consenting shareholders to seek a fair market value determination with respect to its shares and eliminate any right at law or in equity to attack the validity of a reorganization.

According to the sponsor, the California State Bar, Business Law Section, Corporations Committee, the 10-day waiting period "places the consummation of the corporate action at unnecessary risk." For example, to a merger involving a corporation with one shareholder who holds 95% of the outstanding shares, who has approved the transaction, and with a large number of employee shareholders who hold the remaining 5% by operation of an employee stock incentive plan. If this corporation wishes to close the transaction quickly and have its shareholders approve the merger by written consent, it will be required to either absorb the costs of soliciting the consent of all shareholders or subject the closing of the transaction to a 10-day waiting period. The 10-day waiting period creates significant consummation risk for the parties even though approval of the transaction is certain. The additional period of time provides an opportunity for new laws or regulations to be enacted, for facts or circumstances to develop or exist that may cause a material adverse effect to one of the parties or for the conditions of the financial or credit markets to worsen, any of which may change the landscape of the transaction and affect the ability or obligation of a party to close.

Under existing law, time periods are already built into California dissenters' rights laws, which will not be affected by this bill. These time periods include: after shareholder approval of a reorganization with dissenter' rights, the corporation would continue to be subject to a 10-day period in which to notify shareholders of the approval and provide them with copies of the dissenters' rights statutes, a description of the procedure to be followed and a statement of the price the corporation deems to be fair market value of the shares, including an offer to buy the shares at that price; dissenting shareholders would continue to have 30 days to demand appraisal; and, dissenting shareholders would continue to have six months in which to commence an appraisal action in Superior Court.

Other states such as Delaware (which is known for being corporation-friendly) and Nevada do not impose a 10-day waiting period on any corporate action that is approved by written consent of shareholders.

QUESTIONS:

The Legislature has made some significant changes to dissenters' rights laws recently, through AB 1680 (noted below), considering those changes just enacted last year, why is this change that may hinder dissenters' rights happen now? Is the deletion of the 10-day waiting period crucial? Does the 10-day waiting serve as a disincentive to corporations to incorporate in California?

While Delaware and Nevada are noted for not having this requirement, are these the only two states?

The sponsor contends that the "additional period of time provides an opportunity for new laws or regulations to be enacted, for facts or circumstances to develop or exist that may cause a material adverse effect to one of the parties or for the conditions of the financial credit markets to worsen, any which may change the landscape of the transaction and affect the ability or obligation of a party to close." Was the 10-day waiting period created to allow these occurrences?

PREVIOUS LEGISLATION:

AB 1680 (Wieckowski) (Chapter 473, Statutes of 2012) Dissenting Shareholders' Rights-Provides that the fair market value of dissenting shares shall be determined as of the day of, and immediately prior to, the first announcement of the terms of the proposed transaction, subject to adjustment.

REGISTERED SUPPORT / OPPOSITION:

Support

State Bar of California, Business Law Section, Corporations Committee.

Opposition

None on file.

Analysis Prepared by: Kathleen O'Malley / B. & F. / (916) 319-3081