

AMENDED IN SENATE APRIL 9, 2012

SENATE BILL

No. 982

Introduced by Senator Evans

January 23, 2012

An act to add Chapter 7.5 (commencing with Section 750) to Division 1 of Title 1 of the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 982, as amended, Evans. Corporations: political activities: shareholder disclosure.

Existing law, the General Corporation Law, provides for the regulation of corporations. Under existing law, the board of directors of a corporation is required, except as specified, to send an annual report to shareholders containing, among other things, a balance sheet as of the end of that fiscal year and an income statement and a statement of cashflows for that fiscal year.

The Political Reform Act of 1974 provides for the regulation of political campaign financing, including the reporting and disclosure of campaign contributions and expenditures. Under the act, elected officers, candidates for elective office, and campaign committees are required to file periodic campaign statements that disclose specified information for specified reporting periods, including the amount of contributions received and the identities of donors.

This bill would require a corporation, as defined, that has shareholders located in this state and that makes a contribution or expenditure, *as defined*, to, or in support of, or in opposition to, a candidate, ballot measure campaign, or a signature-gathering effort on behalf of a ballot measure, political party, or political action committee to issue a report on the ~~planned~~ political expenditures of the corporation ~~in the~~

~~forthcoming fiscal year as well as expenditures in the previous fiscal year, as well as 24 hours prior to each political contribution during the fiscal year, by specified means, including posting the report on the corporation's Internet Web site, if any.~~

This bill would provide for a civil cause of action for damages by a ~~shareholder~~ *specified shareholders* against a corporation for *willful or reckless* violations of the bill's provisions *and would specify a prevailing shareholder's remedies*. The bill would require a corporation to maintain records that include copies of the reports on its political activities for 5 years, and to make copies of these reports available to the Secretary of State upon request. The bill would also state findings and declarations of the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
2 following:
- 3 (a) Corporations make substantial political contributions and
4 expenditures to support and oppose candidates, ballot measures,
5 political parties, and political causes. However, decisions to use
6 corporate funds for political contributions and expenditures are
7 usually made by corporate boards and executives, rather than the
8 shareholders who own the corporations.
- 9 (b) Shareholders have a right to know how corporations are
10 spending shareholder funds to make political contributions and
11 expenditures to support or oppose candidates, ballot measures,
12 political parties, and political causes.
- 13 (c) Most shareholders have no means by which they may learn
14 of, influence, or object to the political activities of the corporations
15 in which they have invested. Moreover, most shareholders have
16 no means by which they may influence ~~whether~~ *the use of* their
17 invested funds ~~not be used~~ to make political contributions or
18 expenditures to support candidates, ballot measures, political
19 parties, or political causes to which the shareholders are opposed.
- 20 (d) By limiting the extent to which corporate political
21 contributions and expenditures may be regulated, the United States
22 Supreme Court, through its decision in *Citizens United v. Federal*
23 *Election Com'n* (2010) 130 S.Ct. 876, has increased the need for

1 greater accountability of corporations to their shareholders with
2 regard to political contributions and expenditures.

3 (e) The Citizens United decision was handed down in January
4 2010, but the debate over whether the invested funds of
5 shareholders should be used for political activities without their
6 consent is not a new one. In 1905, President Theodore Roosevelt
7 said, “All contributions by corporations to any political committee
8 or for any political purpose should be forbidden by law; directors
9 should not be permitted to use stockholders’ money for such
10 purposes.”

11 (f) It is the intent of the Legislature in enacting this act to inform
12 shareholders and the public ~~of~~ *with regard to* how corporations
13 are spending funds to make political contributions and expenditures
14 ~~benefitting~~ *benefiting* candidates, political parties, and political
15 causes.

16 SEC. 2. Chapter 7.5 (commencing with Section 750) is added
17 to Division 1 of Title 1 of the Corporations Code, to read:

18
19 CHAPTER 7.5. POLITICAL ACTIVITY

20
21 750. As used in this chapter, the following terms have the
22 following meanings:

23 (a) “Ballot measure” means a constitutional amendment or other
24 proposition that is submitted to a popular vote at an election by
25 action of a legislative body, or that is submitted or is intended to
26 be submitted to a popular vote at an election by initiative,
27 referendum, or recall procedure, whether or not it qualifies for the
28 ballot.

29 (b) (1) “Contribution” or “expenditure” includes any monetary
30 and nonmonetary political contributions and expenditures not
31 deductible under subparagraph (B) of paragraph (1) of subsection
32 (e) of Section 162 of the Internal Revenue Code of 1986 (26 U.S.C.
33 Sec. 162(e)(1)(B)), including, but not limited to, contributions to,
34 or expenditures on behalf of, political candidates, political parties,
35 political committees, and other political entities organized and
36 operating under Section 527 of the Internal Revenue Code of 1986
37 (26 U.S.C. Sec. 527), any portion of any dues or similar payments
38 made to any tax exempt organization that is used for an expenditure
39 or contribution that, if made directly by the corporation, would
40 not be deductible under subparagraph (B) of paragraph (1) of

1 subsection (e) of Section 162 of the Internal Revenue Code of 1986,
2 any contribution or expenditure, as those terms are defined in
3 Section 302 of the Federal Election Campaign Act of 1971 (2
4 U.S.C. Sec. 431), and any contribution or expenditure as defined
5 under the Political Reform Act of 1974 (Title 9 (commencing with
6 Section 81000) of the Government Code).

7 The terms also include any direct or indirect payment,
8 distribution, loan, advance, deposit, or gift of money, or any
9 services, or anything of value, except a loan of money by a national
10 or state bank made in accordance with the applicable banking
11 laws and regulations and in the ordinary course of business, to
12 any candidate, campaign committee, or political party or
13 organization, in connection with any election to any office.

14 (2) The terms “contribution” or “expenditure” do not include
15 any of the following:

16 (A) Communications by a corporation to its stockholders and
17 executive or administrative personnel and their families or by a
18 labor organization to its members and their families on any subject.

19 (B) Nonpartisan registration and get-out-the-vote campaigns
20 by a corporation aimed at its stockholders and executive or
21 administrative personnel and their families or by a labor
22 organization aimed at its members and their families.

23 (C) The establishment, administration, and solicitation of
24 contributions to a separate segregated fund to be utilized for
25 political purposes by a corporation, labor organization,
26 membership organization, cooperative, or corporation without
27 capital stock.

28 ~~(b)~~

29 (c) “Corporation” means any of the following:

30 (1) A publicly held corporation with shareholders.

31 (2) An entity in which a corporation with shareholders has an
32 equity interest.

33 (3) The parent corporation of a subsidiary or affiliate of a
34 corporation with shareholders.

35 ~~(e)~~

36 (d) “Political activity” means a contribution or expenditure made
37 to, or in support of, or in opposition to, a candidate, ballot measure
38 campaign, signature gathering effort on behalf of a ballot measure,
39 political party, or political action committee.

40 ~~(d)~~

1 (e) “Public corporation” means a corporation that is required to
2 file periodic reports pursuant to Section 13(a) or 15(d) of the
3 *federal Securities Exchange Act of 1934, as amended (15 U.S.C.*
4 *Secs. 78m(a), 78m(a) and 78o(d)).*

5 (e)

6 (f) “Shareholder” has the same meaning as set forth in Section
7 185.

8 751. A corporation that has shareholders with legal residency
9 in California and that engages in political activity shall do all of
10 the following:

11 (a) (1) Issue a report on the ~~planned~~ political expenditures of
12 the corporation in the ~~forthcoming fiscal year as well as~~
13 ~~expenditures in the~~ previous fiscal year. The report shall include
14 all of the following:

15 (A) A description of the political activities.

16 (B) The name of the person, candidate, committee, or political
17 party, or a description of the political cause, to which each
18 contribution or expenditure was made.

19 (C) The aggregate amount of the contribution or contributions
20 and expenditure or expenditures for each candidate, ballot measure
21 campaign, signature gathering effort on behalf of a ballot measure,
22 political party, or political action committee.

23 (D) If a contribution or expenditure was made in support of, or
24 in opposition to, a candidate, the office sought by the candidate
25 and the political party affiliation of the candidate.

26 (E) If a contribution or expenditure was made for or against a
27 ballot measure, a description of the ballot measure and a statement
28 as to whether the contribution or expenditure was made in support
29 of, or in opposition to, the ballot measure.

30 (2) A public corporation is deemed to have complied with this
31 subdivision if it includes the report required by paragraph (1) in
32 its annual report to shareholders under a separate caption entitled
33 “Political Activity Report,” *and* if the annual report is provided to
34 shareholders within 90 days of the fiscal yearend.

35 (3) If the corporation maintains an Internet Web site, the
36 corporation shall post the report required by this subdivision on
37 its Internet Web site.

38 (b) *Notify its shareholders not less than 24 hours prior to each*
39 *political contribution during the fiscal year. Notification shall be*

1 *made by mail, e-mail, posting on its Internet Web site, or any other*
2 *means regularly used in its course of business.*

3 ~~(b)~~

4 (c) This section shall not apply to a corporation's use of
5 segregated accounts, political action committees, or political
6 committees, as long as the funds in those accounts or committees
7 come from shareholders, board members, or employees of the
8 corporation who, as individuals, choose to contribute to those
9 accounts or committees.

10 752. (a) A corporation subject to Section 751 shall maintain
11 records of its political activities, including the report required by
12 subdivision (a) of *Section 751*, for a minimum of five years.

13 (b) Upon a request by the Secretary of State, a corporation shall
14 file with the Secretary of State a copy of each report produced
15 pursuant to subdivision (a) of Section 751.

16 753. No provision of Section 751 shall be construed to relieve
17 a corporation of its obligations under existing law, including, but
18 not limited to, the following:

19 (a) Section 604, or a successor statute or regulation.

20 (b) ~~Any~~ A state or federal statute or regulation that regulates
21 the solicitation of proxies.

22 (c) With respect to a corporation with an outstanding class of
23 securities registered pursuant to Section 12 of the *federal* Securities
24 Exchange Act of 1934, as amended (15 U.S.C. Sec. 78l), the proxy
25 rules promulgated under that act.

26 754. (a) A *willful or reckless* violation of Section 751 by a
27 corporation shall create a civil cause of action for damages against
28 the corporation that may be brought by any shareholder of the
29 ~~corporation~~ *corporation who held a share in the corporation at*
30 *the time of the political contribution or expenditure. A prevailing*
31 *shareholder shall be entitled to the information that was not*
32 *reported or disclosed in compliance with Section 751, as well as*
33 *reasonable attorney's fees and costs.*

34 (b) The remedies provided in this section are in addition to any
35 other rights or remedies available under any other provision of
36 law.

37 755. The provisions of this chapter are severable. If any
38 provision of this chapter or its application is held invalid, that

- 1 invalidity shall not affect other provisions or applications that can
- 2 be given effect without the invalid provision or application.

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