

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 218 (Jones)
Version: March 25, 2021
Hearing Date: April 6, 2021
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Corporations: ratification or validation of noncompliant corporate actions

DIGEST

This bill provides two mechanisms by which a California corporation may ratify or validate an otherwise-lawful corporate act that was not in compliance with General Corporation Law or the corporation's articles or bylaws when it was made.

EXECUTIVE SUMMARY

Under current law, there is no means by which a corporation can ratify an otherwise-lawful corporate act that was not in compliance with the General Corporation Law or the corporation's articles or bylaws, and have that ratification relate back to the original intended date of the action. This can cause uncertainty and complications for a corporation that believes it took an action years ago, but, because it failed to follow corporate formalities, is concerned that the action might not have been valid.

This bill provides two means by which a corporation may retroactively ratify a corporate action that was, or might have been, invalid at the time it was made. The bill allows a corporation to ratify the act through a vote of the directors and, as required, by the shareholders, following the same procedure that would have been required to implement the corporate act in the first place. The corporation may also petition the superior court for an order deeming the act valid, and the superior court may make any order in equity as necessary to render the validation just. The author has agreed to amendments relating to the validation procedure to provide additional protections for shareholders and other parties that might be affected by the validation.

This bill is sponsored by the Business Law Section of the California Lawyers Association and supported by the California Southwest Legislative Council. There is no known opposition. This bill passed out of the Senate Banking and Financial Institutions Committee with a 9-0 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides the General Corporation Law, which sets forth rules governing domestic and foreign corporations authorized to do business in California. (*See generally* Corp. Code, tit. 1, div. 1 (§ 100 et seq.).)
- 2) Provides that a corporation may file a “certificate of correction” by which a corporation may correct a misstatement of fact, defect in the execution of the document, or other error or defect in any agreement, certificate, or other instrument filed under the General Corporation Law, except where the correction would alter the wording of any written consent adopted by the corporation’s board of directors or shareholders, or effect a corrected amendment of the corporation’s articles when such amendment would not have complied with the requirements of the General Corporation Law at the time the document being corrected was filed. (Corp. Code, § 109.)

This bill:

- 1) Establishes procedures for how the Secretary of State may accept or deny filings relating to ratified or validated acts:
 - a) A corporate filing reflecting a ratification or validation may not provide that it shall be withheld from filing until a future date.
 - b) If the Secretary of State determines that a ratification or validation filing does not conform to law, the person submitting the filing may return it with a written opinion of a member of the Bar as to why the filing is proper, but the Secretary of State need not rely on the opinion in determining whether the filing conforms to law.
 - c) A corporate filing reflecting a ratification or validation may not provide that it is to become effective subsequent to its filing date.
- 2) Creates two procedures by which a domestic corporation may retroactively render effective otherwise-lawful corporate actions – including issuances of shares, options, or other corporate securities – that were not in compliance, or purportedly not in compliance, with the General Corporation Law or the corporation’s articles, bylaws, or plan or agreement to which the corporation is a party. As provided below, a corporation may ratify a corporate action through a vote by the board and, as required, the shareholders; or a corporation or other affected party may seek validation of an action from a superior court sitting in equity. A ratification or validation is conclusive in the absence of fraud.
- 3) Provides procedures by which a corporation may ratify a corporate action:
 - a) For acts other than the election of initial directors, the corporation must obtain approval of the ratification from the corporation’s board of directors

- and, where applicable, from the corporation's shareholders if the General Corporation Law, corporate articles, corporate bylaws, or any plan or agreement to which the corporation is a party would require shareholder approval of the act to be ratified.
- i. If the General Corporation Law, corporate articles, corporate bylaws, or any plan or agreement to which the corporation is a party required a higher degree for approval for the corporate action being ratified at the time of the act, the approval must also be granted with that higher degree.
 - b) The board and, as applicable, the shareholders must adopt a resolution for each action to be ratified, setting forth all of the following for each action to be ratified:
 - i. The corporate action to be ratified.
 - ii. The date when the corporate action was purportedly taken, and the date the action shall be deemed to have become effective once ratified if different than the date of the original action.
 - iii. For a corporate action involving the purported issuance of shares, the number and type of shares purportedly issued and the date or dates upon which such shares were purported to have been issued.
 - iv. The nature of the noncompliance or purported noncompliance of such corporate action.
 - v. A statement that the ratification of the corporate action is approved.
 - c) Where the action to be ratified related to the issuance of shares issued or purportedly issued, those shares or purported shares shall be disregarded for purposes of approval of the ratification, including for purposes of determining a quorum or for a vote.
 - d) Where the corporate action to be ratified relates to the election of initial directors, a majority of the persons who, at the time of the ratification, are exercising the powers of directors may approve the ratification by adopting resolutions setting forth all of the following:
 - i. The name of the person or persons who first took action in the name of the corporation as its initial directors.
 - ii. The earlier of the date on which those persons first took such action or were purported to have been elected as the initial directors, and the date on which such person or persons shall be deemed to have become the initial directors of the corporation pursuant to this section.
 - iii. That the ratification of the election of such person or persons as the initial directors is approved.
- 4) Requires that the corporation, after approving a ratification as set forth above, give prompt notice of the ratification to each shareholder and holder of shares purportedly issued at the time of the ratification, regardless of whether shareholder approval was required for the ratification.
- a) Except as provided in b), below, notice must be given in accordance with the requirements for providing notice of meetings in which shareholders are

- required or permitted to take action, set forth in Corporations Code section 601. The notice must include a copy of any resolutions adopted as part of the ratification and a copy of the code section adopted by this bill.
- b) If the corporation that ratified an action is subject to the reporting requirements of Sections 13 or 15(d) of the federal Securities Exchange Act of 1934, it may satisfy the reporting requirement by including the necessary information in a report, proxy statement, or information statement filed with or furnished to the Securities and Exchange Commission.
- 5) Provides that, if a corporate action ratified through this procedure would have required the filing of an instrument with the Secretary of State pursuant to the General Corporation Law, or if the ratification would cause an instrument previously filed with the Secretary of State to be inaccurate or incomplete in any material respect after the ratification is accomplished, the corporation must file a certificate of ratification to make, amend, or correct each such instrument. The certificate of ratification will have the effect set forth in the certificate and must be filed with the Secretary of State. The certificate must consist of an officers' certificate setting forth all of the following:
- a) The corporation's name and its file number with the Secretary of State.
 - b) The title of any such instrument whose making, amendment, or correction is being effected by the certificate of ratification.
 - c) The date any such instrument was filed with the Secretary of State, or a statement that such instrument was not previously filed with the Secretary of State and, as applicable, a statement that the ratification approved pursuant to the resolutions set forth in the certificate of ratification has caused any such instrument to be inaccurate and misleading.
 - d) The date any such instrument shall be deemed to have become effective, which may be prior to or after the filing date.
 - e) A statement that the certificate of ratification is making, amending, or correcting any such instrument, as applicable, and a copy of any such instrument containing all of the information required to be included under this division for such instrument to be made, amended, or corrected. An instrument attached to a certificate of ratification need not be separately executed and acknowledged and need not include any statement required by any other statement required by the General Corporation Law that such instrument has been approved and adopted in accordance with the provisions of the ratification procedure.
 - f) A statement that the ratification has been approved as required, a copy of the resolutions adopted as required including, where the ratification of corporate action involved the purported issuance of shares, the number and type of shares purportedly issued, the date or dates upon which the shares were purported to have been issued, and, if applicable, a statement of the total number of outstanding shares of each class entitled to vote with respect to the ratification.

- g) A statement that the number of shares of each class voting in favor of the ratification equaled or exceeded the vote required, specifying the percentage vote required of each class entitled to vote.
- 6) Provides that the office of the Secretary of State may, in its discretion, refuse to file any certificate of ratification if the instrument would render prior filings with the Secretary of State inaccurate, ambiguous, or unintelligible. If the Secretary of State refuses to file a certificate of ratification, the corporation must seek validation of the action through the superior court procedure set forth below.
- 7) Establishes a procedure by which a superior court may validate a corporate action or shares, options, or other securities of the corporation, as follows:
 - a) The corporation, any successor entity to the corporation, any director, any shareholder or holder of shares purportedly issued, any shareholder or holder of shares purportedly issued as of the time of a corporate action ratified pursuant to this section, or any other person claiming to be substantially and adversely affected by the ratification of a corporate action, may petition the superior court of the proper county to determine the validity of the corporate action, shares, options, or other securities.
 - i. The proper county is the county where the principal office of the corporation is located or, if the principal office is not in this state, in the county in which the corporation's agent for service of process is located.
 - b) Upon receiving a petition, the superior court may validate and declare effective any corporate action, shares, options, or other securities and declare the date the action, shares, options, or other securities are deemed to be effective or valid. The superior court may consider any facts and grant any remedies in exercising its jurisdiction and may make any order concerning the corporate action as justice and equity may require.
 - c) Any petition relating to a ratification taken or proposed to be taken under the provisions of this bill must be filed not later than 180 days after the corporation gives the required notice of the action to shareholders.
- 8) Provides that, if a corporate action validated by the superior court would have required the filing of an instrument with the Secretary of State pursuant to the General Corporation Law, or if such validation would cause any instrument previously filed with the Secretary of State to be inaccurate or incomplete in any material respect after giving effect to the validation, the corporation must file a certificate of validation to make, amend, or correct each such affected instrument. The certificate of validation must consist of an officers' certificate setting forth all of the following:
 - a) The corporation's name and its file number with the Secretary of State.
 - b) The title of any such instrument whose making, amendment, or correction is being effected by the certificate of validation.
 - c) The date any such instrument was filed with the Secretary of State, or a statement that such instrument was not previously filed with the Secretary of

- State and, as applicable, a statement that the validation ordered pursuant to the superior court order set forth in the certificate of validation has caused any such instrument to be inaccurate and misleading.
- d) The date any such instrument shall be deemed to have become effective, which may be prior to or after the filing date.
 - e) A statement that the certificate of validation is making, amending, or correcting any such instrument, as applicable, and a copy of any such instrument containing all of the information required to be included under this division for such instrument to be made, amended, or corrected. An instrument attached to a certificate of validation need not be separately executed and acknowledged and need not include any statement required by any other statement required by the General Corporation Law that such instrument has been approved and adopted in accordance with the provisions of the validation procedure.
 - f) A statement that the validation has been ordered pursuant to the validation procedure set forth in this bill, and a copy of the superior court's order with respect to the validation.
- 9) Unless otherwise stated in a resolution adopting a ratification or a superior court order determining a validation, the corporate action, share, option, or other security of the corporation ratified or validated consistent with these procedures relates back to the date of the original corporate action.
- 10) Defines the following relevant terms:
- a) "Corporate action" is any action or purported action of the board or the shareholders, and any other action taken, or purportedly taken, by or on behalf of the corporation, including the issuance or purported issuance of shares, options, or other securities of the corporation.
 - b) "Higher approval standard" is any provision set forth in the General Corporation Law, the corporations' articles or bylaws, or any agreement to which the corporation was a party in effect at the time of the original taking of a corporate action that:
 - i. Requires action of the board or shareholders, at a meeting or by written consent, to be taken by a proportion greater than what otherwise would be required at the time of the ratification.
 - ii. Requires a greater proportion of the directors or shareholders to constitute a quorum for the transaction of business at a meeting than what otherwise would have been required at the time of the ratification.
 - iii. Requires, prohibits, or prescribes conditions on action of the board or shareholders at a meeting or by written consent.
 - iv. Requires separate action of the holders of any class or series of the corporation's shares, unless no shares of that class or series are outstanding at the time of the ratification of the corporate action.

- v. Requiring separate action of the holders of securities of the corporation other than shares, unless those securities are not outstanding at the time of the ratification of the corporate action.
- vi. Requires separate action of any specified person(s).

COMMENTS

1. Author's comment

According to the author:

Current law does not allow a pathway to correct otherwise-lawful corporate actions that failed to comply (or purportedly failed to comply) with legal procedures when originally undertaken. This uncertainty negatively affects the ability of California corporations to raise money, complete mergers, acquisitions, and sales, and undertake other significant transactions. SB 218 creates a statutory mechanism to allow corporations to ratify (or petition the superior court to validate) noncompliant but otherwise lawful corporate actions, providing greater certainty to California businesses.

2. California law does not provide a clear statutory procedure by which corporations may ratify or validate potentially defective corporate acts retroactively to the date of the original corporate action

The General Corporation Law, a corporation's articles of incorporation, and a corporation's bylaws exist to ensure that corporations are governed fairly and provide protections to corporate shareholders. But corporate formalities should not be a trap for the unwary. In circumstances where all relevant parties *assume* a corporate action – such as issuing additional shares in the corporation – was properly taken, then realize later that the action might have been invalid for failure to follow all the proper steps, the ambiguity introduced by the potential invalidity can harm shareholders and prevent the corporation from taking further actions to benefit the company. According to the author, these inadvertent violations of corporate formalities are especially common in small, privately held corporations or corporations which, in their early years, attempted to save money by not seeking legal advice on matters of corporate governance.

An example of this scenario is as follows:

Widget Corp. is incorporated and names its initial directors. The directors approve an amendment to, and restatement of, Widget Corp.'s initial certificate of incorporation, which authorizes the issuance of several classes and series of stock. Widget Corp. then purports to issue various shares by unanimous written consent of the board.

Several years later, it is discovered that the amended certificate of incorporation was not filed with the Secretary of State until *after* the shares were issued, rendering the stock issuances invalid. In the interim, Widget Corp. and all of its constituents had operated under the mistaken assumption that Widget Corp. was properly capitalized.¹

Current law is unclear as to whether a corporation incorporated under California law may retroactively ratify any corporate act and render it valid as of the date of the original action.²

In the last decade, several states have adopted statutory schemes expressly authorizing corporations to ratify void or voidable corporate acts.³ Delaware was the first state to adopt such statutes “follow[ing] experiences suggesting that the existing patchwork of potential remedies suffered from critical holes. In that regard, common law ratification was an important but oftentimes inadequate tool for the issues posed by technically defective corporate actions and capital stock.”⁴ Of the states that subsequently adopted similar corporate ratification statutes, some followed the Delaware model, while Nevada developed a more bare-bones scheme which other states use as a guide.⁵ This bill draws from both the Delaware and Nevada models, synthesizing the two.

3. This bill establishes procedures by which a corporation may definitively ratify or validate corporate actions and render them effective as of the original date

This bill provides two procedures through which a domestic corporation may render a corporate action – including the issuance of shares or other securities – effective despite technical noncompliance with provisions of the General Corporation Law, the corporations own articles of incorporation or bylaws, or a plan or agreement to which the corporation is a party. The “ratification” procedure is achieved internally, through a

¹ This example is taken from *In re CertiSign Holding, Inc.* (Del. Ch., Jan. 20, 2015) 2015 Del. Ch. LEXIS 234, pp. 2-3.

² In recent unpublished decisions, courts have relied on Civil Code section 2313, which provides that ratification of an agent’s act may be retroactive if the retroactivity does not injure third parties, to hold that corporate ratifications may have retroactive effect. (*E.g., Rosenberg v. Screen Actors Guild* (Cal.Ct.App., Oct. 27, 2009) 2009 Cal. App. Unpub. LEXIS 8516; *Storix, Inc. v. Johnson* (Cal.Ct.App. Dec. 30, 2020) 2020 Cal. App. Unpub. LEXIS 8682.) However, the fact that this section resides in the portion of the Civil Code addressing authority of agents (Civ. Code, Div. 3, pt. 4, tit. 9), not the General Corporation Law, renders the scope of its applicability to corporate acts such as the issuances of securities and amending corporate documents questionable.

³ See Emeritz, *The Development of Statutes for Ratification and Validation of Defective Corporate Acts*, Harvard Law School Forum on Corporate Governance (Jul. 26, 2019), <https://corpgov.law.harvard.edu/2019/07/28/the-development-of-statutes-for-ratification-and-validation-of-defective-corporate-acts/> [last visited Mar. 23, 2021].

⁴ *Ibid*; see 8 Del. Code, §§ 204-205.

⁵ Emeritz, *The Development of Statutes for Ratification and Validation of Defective Corporate Acts*, Harvard Law School Forum on Corporate Governance (Jul. 26, 2019), <https://corpgov.law.harvard.edu/2019/07/28/the-development-of-statutes-for-ratification-and-validation-of-defective-corporate-acts/> [last visited Mar. 23, 2021]; see Nev. Rev. Stat., § 78.0296.

vote of the board of directors and, where necessary, the shareholders; the “validation” procedure is achieved externally, through an order of the superior court sitting in equity. A ratification or validation provides certainty for future corporate acts, because it generally conclusively establishes the validity of the act; ratification and validation cannot, however, be used to cure fraud. In both circumstances, the ratification or validation relates back to the date of the original corporate action (unless otherwise specified), so that all other corporate acts that might be invalid due to the inadvertently erroneous act are also rendered valid.

a. The internal corporate “ratification” procedure

The procedures for the internal “ratification” procedure are similar to the procedures for corporate actions generally. Upon discovering that an action taken by the corporation was, or might have been, ineffective due to noncompliance with the required steps, the board of directors can vote to ratify the action; if the original action would have required shareholder approval, the holders of the shares that would have been entitled to vote at the time of the original action must also vote to approve the ratification. This procedure ensures that the ratification is achieved through means as similar as possible to the original, but potentially invalid, action, while ensuring that persons who would not have had the right to weigh in on the original action – such as classes of shares that did not exist yet, or holders of putative shares that are subject to the ratification – cannot influence a decision in which they would have had no say at the time. Furthermore, if the action to be ratified would have been subjected to a heightened approval standard – such as a supermajority vote to approve – the ratification must also meet that heightened standard. In connection with the ratification, the board must adopt a resolution memorializing the ratification and containing specified information about the original act.

The exception to this procedure is when the action to be ratified is the appointment of initial directors. Improperly appointed initial directors create an existential dilemma in a corporation: if the initial directors were improperly appointed, virtually every subsequent corporate action is invalid. This bill allows the persons exercising the powers of directors to approve the ratification by adopting a resolution setting forth the names of the intended initial directors and their putative appointment dates, and stating that the ratification of the initial directors is approved. This procedure is something of a legal ouroboros, given that the persons acting as directors do not, technically, have the authority to do anything on behalf of the corporation; but the legal fiction permitted under this bill seems preferable to forcing an otherwise-functioning corporation to fold because of a failure in formalities when appointing initial directors.

In circumstances when the original act being ratified would have required filing an instrument with the Secretary of State, or if the ratified action renders an existing filing materially inaccurate or incomplete, the corporation must also file a certificate of ratification to provide the missing filing or correct the prior one. The certificate of ratification must provide specified information about the corporation and the action(s)

being ratified, along with a statement that, where applicable, the requisite shareholders approved the ratification. The office of the Secretary of State retains the discretion to reject a filing of a certificate of ratification if doing so would render prior filings with the Secretary of State inaccurate, ambiguous, or unintelligible; in the case of a rejection, the corporation's only avenue to validate a potentially invalid act is through the superior court validation procedure, set forth below. Otherwise, the filing of the certificate of ratification renders the ratified action(s), and any prior filing(s), effective and correct as of the relevant dates.

b. The superior court "validation" procedure

As an alternative to the internal ratification procedure – or when a corporate's attempted ratification is rejected by the Secretary of State – a corporation may seek validation of a corporate act from a superior court sitting in equity. The corporation itself, any director, or any shareholder or putative shareholder may petition the superior court for an order determining the validity of any corporate action; additionally, the same persons, plus any person claiming to be substantially and adversely affected by a corporation's ratification of an action through the internal procedures set forth above, may petition the superior court to determine the validity of the internally ratified action. The petition must be brought in the superior court where the corporation has its principal place of business or, if the principal place of business is outside California, where its agent for service of process is located.

The court considering a validation petition may decide to validate the action or decline to do so. In determining whether and under what terms to deem an action valid, the court may make any order concerning the corporate action as justice may require, which could include compensating persons harmed by the validated action or modifying the validated act to achieve a more just result. In order to clarify that the court's jurisdiction is equitable – thereby allowing the courts broad discretion to craft fair solutions – the author has agreed to amendments expressly stating that the court has jurisdiction in equity.

As drafted, the bill states that any validation petition relating to a ratification taken or proposed to be taken must be filed within 180 days of when notice of the ratification was provided pursuant to the internal ratification procedure. This is a limitation similar to the one contained in the Delaware law,⁶ but it lacks Delaware's protections for (1) challenges asserting that the ratification was not accomplished as required by law, and (2) persons who were entitled to, but not provided, the required notice. In order to protect the rights of shareholders and others whose rights could be extinguished, but who, for reasons of corporate noncompliance, might not learn about the purported ratification until more than 180 days later, the author has agreed to amend the bill to add these protections.

⁶ See 8 Del. Code, § 205(f).

Finally, the Delaware version of this law provides a safety valve for validation proceedings that may implicate persons whose interests are affected by a validation, or purported ratification, but who would have no reason to know that the corporation has sought a validation determination in the superior court. The relevant Delaware provision specifies that no party other than the corporation *must* be a party to the proceeding to permit the action to be validated, but that, when the corporation files the petition, the superior court may require the corporation to provide notice of the action to other persons as specified by the court and permit those persons to intervene in the action.⁷ This provision is construed broadly in Delaware, in order to ensure that persons who might be harmed by a validation are entitled to intervene and have their interests considered as part of the court's holistic equitable solution. The author has agreed to amend the bill to include the same provision here, so as to provide those same assurances against an unjust result.

As with the ratification procedure, if a validated corporate action would have required the corporation to file an instrument with the Secretary of State, or renders a prior instrument materially inaccurate or incomplete, the corporation must file a certificate of validation with the Secretary of state, setting forth specified information relating to the corporation, the action(s) validated, and attaching the superior court's order of validation.

4. Amendments

As discussed above, the validation procedure provided for in the superior court provides a means for a superior court to determine and declare the validity of a corporate action (or decline to do so, as justice so requires). The validation procedure also provides a means by which parties substantially and adversely affected by a corporate ratification may challenge that ratification.

As currently drafted, the bill omits some of the shareholder and third-party protective measures contained in the Delaware bill. The bill also does not specify that the superior court considering a validation petition has jurisdiction in equity, which is necessary to ensure that the superior court can craft equitable solutions to the issues presented by a potentially invalid corporate act.

In order to strengthen the bill's protections for shareholders and third parties, and clarify the scope of the court's equitable jurisdiction, the author has agreed to the amendments set forth below. The author has also agreed to certain technical amendments to clarify the scope of the statute.

Amendment 1

On page 4, in line 25, after "with" insert "the provisions of"

⁷ *Id.*, § 205(c).

Amendment 2

On page 4, in line 27, after “party” insert “that is applicable to the type of action proposed to be ratified”

Amendment 3

On page, in line 35, strike out “may” and insert “shall have jurisdiction in equity to”

Amendment 4

On page 8, in line 40, strike out “action” and insert “action or”

Amendment 5

On page 9, in line 1, strike out “corporation” and insert “corporation,”

Amendment 6

On page 9, in line 1, strike out “action” and insert “action or”

Amendment 7

On page 9, in line 17, strike out “given.” and insert “given, except this paragraph shall not apply to an action asserting that a ratification was not accomplished in accordance with this section or to any person to whom notice of the ratification was required to have been given pursuant to subdivision (c), but to whom such notice was not given.”

Amendment 8

On page 9, between lines 21 and 22, insert “(5) Service of the petition under paragraph (1) upon the registered agent of the corporation shall be deemed to be service upon the corporation, and no other party need be joined in order for the superior court to adjudicate the matter. In an action filed by the corporation, the superior court may require notice of the action be provided to other persons specified by the court and permit those other persons to intervene in the action.”

5. Arguments in support

The sponsor of the bill, the Business Law Section of the California Lawyers Association, writes:

It is not unusual for small, privately held corporations (often family-owned at the start) to be managed with less formality than seasoned corporations. Such businesses often try to conserve resources by, among other things, handling

management procedures on their own rather than seeking the advice of legal experts. In the nature of things, and as the individuals who form California corporations often hope, these businesses can develop to a stage where the formality of board and shareholder actions becomes more important. That often happens when developing businesses reach the point of undertaking significant corporate transactions, such as seeking outside funding, acquiring other businesses, selling a line of business (or the entire corporation), or undertaking an initial public offering. When corporations reach that point, management often learns that certain prior corporate actions were not properly undertaken and that corrective action is necessary to proceed with the transaction...

Although there may be ways to “clean-up” such matters by having the board of directors and/or the shareholders ratify past actions, there is uncertainty as to whether such ratification can cure prior defects in authorization as the law is silent as to whether those efforts actually have the intended effect. That uncertainty can serve as a basis to inhibit the ability of a closely-held, relatively informally managed young corporation from carrying out its objectives...

In recent years, a number of states have established a framework to ratify or validate defective corporate acts. This bill would establish such a framework in California would benefit small businesses in particular that want to maintain their identity as California corporations as they grow.

Bill supporter Southwest California Legislative Council states:

Unlike large corporations, which often have in-house counsel, small businesses usually handle most of their own regulatory paperwork. In most small business operations, the owner not only works at the business but does the advertising, bookkeeping, ordering, stocking, and governmental regulatory compliance. Yet government regulations are modified every year and, in many cases, in minor and insignificant ways. An owner’s focus may not be on those minor changes, especially during these CV-19 imposed lockdowns, to the point where there may be minor, unintentional, and technically “non-compliant” paperwork issues. SB 218 would provide an easy pathway for the business owner to correct the issue, return to compliance, and get back to running their business.

SUPPORT

California Lawyers Association – Business Law Section (sponsor)
Southwest California Legislative Council

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: AB 663 (Chen, 2021) clarifies what measures a corporate board of directors may take in anticipation of, or in response to, an emergency. AB 663 is pending before the Assembly Banking and Finance Committee.

Prior Legislation: SB 870 (Jones, 2020) would have made the same changes to the Corporations Code as the bill under consideration. SB 870 was held in the Banking and Financial Institutions Committee.

PRIOR VOTES:

Senate Banking and Financial Institutions Committee (Ayes 9, Noes 0)
