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SB-540 Nonprofit public benefit corporations. (2019-2020)

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Senate Bill No. 540

CHAPTER 250

An act to amend Section 5236 of the Corporations Code, relating to nonprofit corporations.

[Approved by Governor September 05, 2019. Filed with Secretary of State September 05, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 540, Jones. Nonprofit public benefit corporations.

Existing law prohibits a nonprofit public benefit corporation from lending money or property to a director or officer, or guaranteeing the obligation of a director or officer, without the approval of the Attorney General. However, a nonprofit public benefit corporation is authorized to pay life insurance premiums for insurance on the life of a director or officer if repayment is secured by the proceeds of the policy and its cash surrender value.

This bill would revise the above-described exception to allow the nonprofit public benefit corporation to pay life insurance premiums if repayment is secured by either the policy's death benefit proceeds or its cash surrender value, or both. The bill would provide that when repayment is secured only by a policy's death benefit, the contract between the corporation and director or officer that secures the loan must include terms sufficient to ensure that any policy fees and charges, withdrawals of the cash value, or loans taken against it do not impair the value of the death benefit to repay the cost of the loan, for the life of the policy. The bill would also provide that when repayment is secured only by the policy's cash surrender value, the contract between the corporation and director or officer that secures the loan must include terms sufficient to ensure that the cash surrender value is sufficient to repay the cost of the loan, for the life of the policy.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 5236 of the Corporations Code is amended to read:

5236. (a) A corporation shall not make any loan of money or property to or guarantee the obligation of any director or officer, unless approved by the Attorney General; provided, however, that a corporation may advance money to a director or officer of the corporation or of its parent or any subsidiary for expenses reasonably anticipated to be incurred in the performance of the duties of such officer or director, provided that in the absence of such advance, such director or officer would be entitled to be reimbursed for such expenses by such corporation, its parent, or any subsidiary.

(b) The provisions of subdivision (a) do not apply to the payment of premiums in whole or in part by a corporation on a life insurance policy on the life of a director or officer so long as repayment to the corporation of the amount paid by it is secured by either the policy's death benefit proceeds or its cash surrender value, or both.

(c) When repayment of a loan, entered into under subdivision (b), to a corporation is secured by only the policy's death benefit, the contract between the corporation and director or officer that secures the loan shall include terms sufficient to ensure that any policy fees and charges, withdrawals of the cash value, or loans taken against it do not impair the value of the death benefit to repay the cost of the loan, for the life of the policy.

(d) When repayment of a loan, entered into under subdivision (b), to a corporation is secured by only the policy's cash surrender value, the contract between the corporation and the director or officer that secures the loan shall include terms sufficient to ensure that the cash surrender value is sufficient to repay the cost of the loan, for the life of the policy.

(e) The provisions of subdivision (a) do not apply to a loan of money to or for the benefit of an officer in circumstances where the loan is necessary, in the judgment of the board, to provide financing for the purchase of the principal residence of the officer in order to secure the services or continued services of the officer and the loan is secured by real property located in the state.