

Date of Hearing: April 22, 2019

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Monique Limón, Chair

AB 1305 (Oberholte) – As Introduced February 22, 2019

SUBJECT: Limited liability companies

SUMMARY: Specifies that the provision requiring a limited liability company that has filed a certificate of cancellation to be canceled and to cease all powers, rights, or privileges does not prevent the limited liability company from existing for the purpose of winding up its affairs.

EXISTING LAW: Existing law requires the managers, except as provided, of a limited liability company to file with the Secretary of State a certificate of dissolution of the limited liability company containing specified information upon the dissolution of the limited liability company.

Existing law requires, upon filing a certificate of cancellation, a limited liability company to be canceled and its powers, rights, and privileges be ceased. Existing law also provides for the limited existence of the limited liability company that has filed a certificate of cancellation for the purposes of winding up its affairs, prosecuting and defending actions by or against it in order to collect and discharge obligations, disposing of and conveying its property, and collecting and dividing its assets.

FISCAL EFFECT: Unknown

COMMENTS: This bill clarifies provisions in the Corporations Code that require a limited liability corporation that has filed a certificate of dissolution to continue to exist in order to wind up its affairs. According to the author:

Under current law, there are two Corporations code sections that are in conflict over what powers and rights an LLC has while it is winding up, which causes unnecessary confusion for these businesses. AB 1305 is a simple measure that would add a cross reference between these two sections of the Corporations Code. This will make clear that after cancellation an LLC still retains power to sue and defend itself in court, eliminating any conflict or ambiguity.

Arguments in Support

Current law recognizes that as an LLC files a certificate of cancellation and begins to end its corporate life, some authority is required in order to wind up its business affairs. This bill would add a cross reference between two sections of the Corporations Code in order to make clear that after cancellation an LLC still retains power to sue and defend itself in court, eliminating any conflict or ambiguity.

Arguments in Opposition

Although the current statute is ambiguous, a close reading of the law reveals the legislative intent of allowing LLC's to continue to have the authority to wind up their business affairs even after filing a certificate of cancellation.

REGISTERED SUPPORT / OPPOSITION:

Support

Conference Of California Bar Associations (Sponsor)

Opposition

None on file.

Analysis Prepared by: William Herms / B. & F. / (916) 319-3081