

Date of Hearing: March 28, 2022

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Timothy Grayson, Chair

AB 2431 (Committee on Banking and Finance) – As Introduced February 17, 2022

SUBJECT: Business entities: statement of information: requirements

SUMMARY: Modifies the requirement for a limited liability company (LLC) to include its business filings a statement indicating whether a member or manager has an outstanding final judgment related to a wage order or Labor Code violations. Specifically, **this bill**:

- 1) Specifies that, for a manager-managed LLC, the statement must indicate whether any manager has an outstanding final judgment issued by the Division of Labor Standards Enforcement (DLSE) or a court of law, for which no appeal therefrom is pending, for the violation of any wage order or provision of the Labor Code
- 2) Specifies that, for a member-managed LLC, the statement must indicate whether any managing member has an outstanding final judgment issued by DLSE or a court of law, for which no appeal therefrom is pending, for the violation of any wage order or provision of the Labor Code

EXISTING LAW:

- 1) Establishes the California Revised Uniform Limited Liability Company Act, which governs all California LLCs. (Corp Code, Section 17701.01 et seq.)
- 2) Requires an LLC or foreign LLC to deliver to the Secretary of State (SOS) an SOI containing certain information, including the name of the company, the name and street address of the company's agent. The LLC must submit this information within 90 days after the filing of its original articles of organization or registration and biennially thereafter. (Corporation Code Section 17702.09.)
- 3) Requires the SOI to include a statement indicating whether any member of manager has an outstanding final judgment issued by DLSE or a court of law, for which no appeal therefrom is pending, for the violation of any wage order or provision of the Labor Code (Corporation Code Section 17702.09).

FISCAL EFFECT: Unknown. This bill is keyed Fiscal by Legislative Counsel.

COMMENTS:

1) **LLCs and business filings.**

An LLC is a hybrid between a corporation and a partnership. An LLC generally has the beneficial characteristics of a partnership for operational and taxation purposes, but its members enjoy the immunity provided by a corporation to its shareholders for contract debts or tort liability. Regulation of LLCs varies by state, and the California Revised Uniform Limited Liability Company Act (RULLCA) governs LLCs registered in California. Among its many provisions, RULLCA includes default provisions in LLC operating agreements and provides a breadth of default rules that apply to LLCs in situations where an operating

agreement is silent on a particular issue. RULLCA is based on model legislation adopted by the National conference of Commissioners on Uniform State Laws, which aligns it with legislation in other states and makes it easier for businesses to operate across state lines.

RULLCA also requires an LLC to submit specified information to the Secretary of State (SOS). As part of its duties, the SOS processes and maintains information on business formations and business terminations. The SOS manages more than 250 types of filing documents, including the Statement of Information (SOI), which identifies the key individuals running a business. Generally, an LLC files a new SOI whenever any of the required information changes, and this new SOI supersedes any previously filed statement. A business often uses the SOI to open bank accounts, enter into contracts, and to otherwise verify the legitimacy of the company.

The process to submit an SOI and other documents to the SOS has undergone significant changes in recent years. Historically, antiquated systems and workload challenges led to long processing times and delays for businesses submitting forms and documents. According to the Department of Finance, processing times, at their peaks, were more than 90 calendar days for SOI filings. In response to this, the SOS initiated the California Business Connect (CBC) project, which aims to update and modernize online services for business filings and requests for information.

2) **Outstanding wage order statement.**

AB 3075 (Gonzalez), Chapter 357, Statutes of 2020, sought to hold employers accountable for failing to pay their workers and was one of a number of bills that year that tried to address the issue of “successor liability” in order to prevent companies from escaping wage order judgments. Historically, a corporation that has violated labor law has had numerous options available to it to evade a judgment, including creating subsidiaries to absorb liability or debt, dissolving the company completely, and reincorporating under a different name.

AB 3075 attempted to address the above issue through two strategies: 1) A change to the business filing process that requires a corporation or an LLC to include a statement in its required business filing indicating whether any director of the corporation or member or manager of the LLC has an outstanding final judgment issued by DLSE or a court of law; 2) Liability provisions for successors related to wages, penalties, and damages owed pursuant to a final judgment.

Unfortunately, AB 3075’s business filing requirement for LLCs blurs the types of LLC management styles, which creates confusion and a misalignment with the comparable requirement for corporations. Generally, an LLC is either member-managed, where some or all of the LLC’s owners have decision-making power, or manager-managed, where the LLC’s owners elect a manager or managers to handle business decisions and members become akin to passive investors (comparable to a corporation’s shareholder).

In contrast, AB 3075’s attestation requirement for corporations applies only to the officers or directors of the corporation, thereby applying its provisions to those who manage and direct the affairs the business entity. For example, the attestation requirement does not apply for a corporations’ shareholders, while the requirement for the LLC would include minor passive investors who have no direct control over business affairs or who do not exert any influence over management decisions.

3) Purpose.

This bill is sponsored by the California Lawyer's Association (CLA) to ensure equal treatment of LLCs and corporations under the Corporations Code. CLA states that "this amendment would improve the provisions of RULLCA, clarify and eliminate a potential ambiguity or conflict of terms, and conform to the practices in place for other California business entities."

REGISTERED SUPPORT / OPPOSITION:

Support

California Lawyer's Association (sponsor)

Opposition

None on file.

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