

Date of Hearing: May 4, 2015

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Matthew Dababneh, Chair

AB 844 (Bloom) – As Introduced February 26, 2015

SUBJECT: Search warrants: foreign corporations and foreign limited liability companies

SUMMARY: Authorizes a foreign corporation and a foreign limited liability company (LLC) to consent to service of process for a search warrant by email or submission to a designated Internet Web portal.

EXISTING STATE LAW:

- 1) Requires any domestic or foreign corporation, before it may be designated as the agent for the purpose of service of process of any entity, to file a certificate executed in the name of the corporation by an officer thereof stating all of the following:
 - a) The complete street address of its office or offices in this state, wherein any entity designating it as such agent may be served with process;
 - b) The name of each person employed by it at each such office to whom it authorizes the delivery of a copy of any such process; and,
 - c) Its consent that delivery thereof to any such person at the office where the person is employed shall constitute delivery of any such copy to it, as such agent. (Corporations Code, Section 1505)
- 2) Provides that delivery by hand of a copy of any process against the corporation: to any natural person designated by it as agent or, if a corporate agent has been designated, to any person named in the latest certificate of the corporate agent filed with the Secretary of State (SOS) at the office of such corporate agent shall constitute valid service on the corporation. (Corporations Code, Section 1701)
- 3) Prohibits a foreign corporation from transacting intrastate business without having first obtained from the SOS a certificate of qualification. To obtain that certificate it shall file, on a form prescribed by the SOS, a statement and designation signed by a corporate officer or, in the case of a foreign association that has no officers, signed by a trustee stating:
 - a) Its name and the state or place of its incorporation or organization;
 - b) The street address of its principal executive office;
 - c) The street address of its principal office within this state, if any;
 - d) The mailing address of its principal executive office, if different from the addresses specified above;

- e) The name of an agent upon whom process directed to the corporation may be served within this state, as specified;
 - f) Its irrevocable consent to service of process directed to it upon the agent designated and to service of process on the SOS if the agent so designated or the agent's successor is no longer authorized to act or cannot be found at the address given; and,
 - g) If it is a corporation which will be subject to the Insurance Code as an insurer, it shall so state that fact. (Corporations Code, Section 2105, subdivision (a))
- 4) Specifies that consent extends to service of process directed to the foreign corporation's agent in California for a search warrant issued pursuant to Section 1524.2 of the Penal Code, or for any other validly issued and properly served search warrant, for records or documents that are in the possession of the foreign corporation and are located inside or outside of this state. This subparagraph shall apply to a foreign corporation that is a party or a nonparty to the matter for which the search warrant is sought. For purposes of this subparagraph, "properly served" means delivered by hand, or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service, or facsimile to a person or entity listed, as specified. (Corporations Code, Section 2105, subdivision (a)(6)(B))
- 5) States that delivery by hand of a copy of any process against a foreign corporation (a) to any officer of the corporation or its general manager in this state, or if the corporation is a bank to a cashier or an assistant cashier, (b) to any natural person designated by it as agent for the service of process, or (c), if the corporation has designated a corporate agent, to any person named in the latest certificate of the corporate agent filed with the SOS shall constitute valid service on the corporation. (Corporations Code, Section 2110)
- 6) Provides that a foreign LLC may apply for a certificate of registration to transact business in this state by delivering an application to the SOS for filing on a form prescribed by the SOS. The application shall state all of the following:
- a) The name of the foreign LLC, or an alternate name, as specified;
 - b) The state or other jurisdiction under whose law the foreign LLC is organized and the date of its organization in that state or other jurisdiction, and a statement that the foreign LLC is authorized to exercise its powers and privileges in that state or other jurisdiction;
 - c) The street address of the foreign LLCs principal office and of its principal business office in this state, if any;
 - d) The name and street address of the foreign LLCs initial agent for service of process in this state who meets the qualifications specified. If a corporate agent is designated, only the name of the agent shall be set forth;
 - e) A statement that the SOS is appointed the agent of the foreign LLC for service of process if the agent has resigned and has not been replaced or if the agent cannot be found or served with the exercise of reasonable diligence; and,

- f) The mailing address of the foreign LLC if different than the street address of the principal office, or principal business office in this state. (Corporations Code, Section 17708.02, subdivision (a))
- 7) Requires, when properly served with a search warrant issued by the California court, a foreign corporation subject to this section to provide to the applicant, all records sought pursuant to that warrant within five business days of receipt, including those records maintained or located outside this state. (Penal Code, Section 1524.2, subdivision (b)(1))
- 8) Defines a "search warrant" as an order in writing in the name of the People, signed by a magistrate, directed to a peace officer, commanding him or her to search for a person or persons, a thing or things, or personal property, and in the case of a thing or things or personal property, bring the same before the magistrate. (Penal Code, Section 1523)
- 9) States that a California corporation that provides electronic communication services or remote computing services to the general public, when served with a warrant issued by another state to produce records that would reveal the identity of the customers using those services, data stored by, or on behalf of, the customer, the customer's usage of those services, the recipient or destination of communications sent to or from those customers, or the content of those communications, shall produce those records as if that warrant had been issued by a California court. (Penal Code, Section 1524.2, subdivision (c))
- 10) Provides that the terms "electronic communication services" and "remote computing services" shall be construed in accordance with applicable federal law. (Penal Code, Section 1524.2, subdivision (a)(1))
- 11) Defines "properly served" as a search warrant has been delivered by hand, or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service, or facsimile to a person or entity listed. (Penal Code, Section 1524.2, subdivision (a)(6))
- 12) States that a provider of wire or electronic communication services or a remote computing service, upon the request of a peace officer, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of a search warrant or a request in writing and an affidavit declaring an intent to file a warrant to the provider. Records shall be retained for a period of 90 days which shall be extended for an additional 90-day upon a renewed request by the peace officer. (Penal Code, Section 1524.3, subdivision (d))

EXISTING FEDERAL LAW: The Stored Communications Act (the Act) regulates access to electronic communications from providers of electronic communications services. Under the Act a person is prohibited from (1) intentionally accessing without authorization a facility through which an electronic communication service is provided; or (2) intentionally exceeding an authorization to access that facility; and thereby obtaining, altering or preventing the authorized access to a wire or electronic communication while in electronic storage in such a system. The Act requires governmental entities to obtain a warrant prior to requiring a provider of electronic communication service or remote computing service to disclose a record or other information pertaining to a subscriber to or customer of such service. (18 U.S.C. § 2701 et seq.)

FISCAL EFFECT: None.

COMMENTS:***Need for the bill:***

According to the author, "California's statutes definition of "properly served" is out of date. The following forms of service are permitted for a properly served search warrant "delivered by hand, or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service, or facsimile." It is becoming increasingly common for Internet Service Providers and others to insist on electronic service of documents, either by email or via web portal established for this purpose. The proposed legislation would update the definition of "properly served" to comport with today's technological innovations and modern business practices."

Background:

Existing law prohibits foreign corporations and foreign LLCs from transacting intrastate business without obtaining a certificate of qualification from the SOS. Both a domestic and foreign corporation must designate an agent for the purpose of service of process when the foreign corporation or foreign LLC files a certificate in the office of the SOS to transact business in California. (Corp. Code, §§ 1505 and 2105.) An agent for service of process is an individual who resides in the state, or a corporation, designated to accept court documents if the business entity is sued. Designating a person or an entity to receive service of process ensures that the corporation has formal notice of a law suit and any related court documents. The designated agent for service of process is also the entity upon whom a search warrant would be served for records or documents that are in the possession of the foreign corporation or foreign LLC.

In order to be "properly served," the applicable statutes require the court documents to be "delivered by hand, or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service, or facsimile to a person or entity listed, as specified." (Pen. Code, § 1524.2, subd. (a)(6); Corp. Code, § 2105, subd. (a)(6)(B).) This bill adds other means of notice as specified by the foreign corporation or the foreign LLC, including email or submission via an Internet web portal designated by the corporation for the purpose of service of process.

Previous Legislation:

SB 467 (Leno), of the 2013-2014 Legislative Session, would have required a search warrant when a governmental agency is seeking the contents of a wire or electronic communication that is stored, held or maintained by a provider, as specified. AB 467 was vetoed.

SB 1980 (McPherson), Chapter 864, Statutes of 2002, created state procedures, similar to those in federal law, for a governmental entity to gather specified records, not including the contents of stored communications, from a provider of electronic communication service or a remote computing service by search warrant.

SB 662 (Figueroa), Chapter 896, Statutes of 1999, established a procedure for obtaining and serving a search warrant on a foreign corporation that provides electronic communication

services or remote computing service to the general public and is registered to do business in California.

Double-referral:

This measure passed out the Assembly Public Safety Committee on consent.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County District Attorney's Office (Sponsor)

California Bankers Association

California District Attorneys Association (CDAA)

California State Sheriffs' Association (CSSA)

Opposition

None on file.

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