

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

AB 2431 (Committee on Banking and Finance)

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Hearing Date: May 31, 2022

Fiscal: Yes

Urgency: No

AWM

SUBJECT

Business entities: statement of information: requirements

DIGEST

This bill modifies the requirement for a limited liability company (LLC) to include in its statement of information a statement indicating whether a member or manager has an outstanding final judgment related to a wage order or Labor Code violations.

EXECUTIVE SUMMARY

The California Revised Uniform Limited Liability Company Act (the Act) governs all LLCs formed in California. The Act provides requirements for how an LLC may be formed and what information the LLC must provide to the Secretary of State, such as the addresses of the LLC's principal place of business and its agent for service of process, the contact information for its manager or managing members, and the type of business the LLC is engaged in. Generally, this information must be provided once every two years in a statement of information filed with the Secretary of State. Corporations are required to file a similar biennial statement of information.

In 2020, the Legislature passed, and the Governor signed, AB 3075 (Gonzalez, Ch. 357, Stats. 2020), which required, beginning January 1, 2022, LLCs and corporations to include in their statements of information a statement of whether any of the persons running the company had outstanding judgments for wage order or Labor Code violations, as a way to give the public more information about how companies are doing business and to prevent bad actors from using corporate formalities to avoid the consequences of their prohibited labor practices. AB 3075 requires a corporation to disclose if any of its officers or directors have any such violations; for LLCs, the statute requires the disclosure of any violations by "any member or manager" of the LLC. Since the implementation of AB 3075's disclosure requirements, it has become clear that its member *and* manager requirement overlooks the difference between member-managed LLCs and manager-managed LLCs insofar as, in a manager-managed LLC, the

members who are not specifically designated with authority to act on behalf of the company are more like passive shareholders than officers or directors. To bring the labor violations disclosure requirement into alignment with the requirements for corporations, and to avoid disclosures from persons who play no role in managing an LLC, this bill clarifies that the labor violation disclosure requirement applies only to members who are or empowered to be involved in the management of the company.

This bill is sponsored by the Partnerships and Limited Liability Companies Committee of the Business Law Section of the California Lawyers Association. There is no known opposition. If this bill is passed by this Committee, it will then be heard by the Senate Labor, Public Employment and Retirement Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the California Revised Uniform Limited Liability Company Act, which governs the formation and regulation of limited liability companies in this state. (Corp. Code, tit. 2.6, §§ 17701.01 et seq.)
- 2) Defines the following relevant terms:
 - a) A “foreign limited liability company” is an unincorporated entity formed under the law of a jurisdiction other than this state and denominated by that law as a limited liability company. (Corp. Code, § 17701.02(j).)
 - b) A “limited liability company,” except in the phrase “foreign limited liability company,” is a domestic entity formed under the Act. (Corp. Code, § 17701.02(k).)
- 3) Requires every limited liability company and every foreign limited liability company registered to transact intrastate business in this state to deliver to the SOS a statement of information that contains the following information:
 - a) The name of the LLC, the filing number issued by the Secretary of State, and for a foreign LLC, the name under which it is authorized to transact business in this state and the jurisdiction under the laws of which it was organized.
 - b) The name and address of its agent in this state for service of process.
 - c) The street address of its principal office.
 - d) The mailing address of the LLC, if different from its principal office.
 - e) The name and complete business or residence address of any manager(s) and the chief executive officer, if any; or, if no manager or officer has been elected, the name and business or residence address of each member.
 - f) The valid email address for the LLC, if the LLC chooses to receive renewal notices and other notifications from the Secretary of State by email.
 - g) The general type of business that constitutes the LLC’s principal business activity.

- h) A statement indicating whether any member or manager has an outstanding final judgment issued by the Division of Labor Standards Enforcement or a court of law, for which no appeal therefrom is pending, for the violation of a wage order or provision of the Labor Code. (Corp. Code, § 17702.09(a).)
- 4) Provides that a statement of information must be filed at the following times:
- a) Ninety days after the LLC files its original articles of organization or, for a foreign LLC, its registration to transact intrastate business in the state;
 - b) Biennially after the first statement.
 - c) When the LLC changes its agent for service of process or the address of the agent.
 - d) At the discretion of the LLC, when the LLC changes information required to be disclosed under 3) other than the information relating to the agent for service of process; the LLC may also opt to wait until its regular filing period. (Corp. Code, § 17702.09(a), (d).)
- 5) Requires a corporation incorporated in California to file a biennial statement of information containing similar information to the LLC statement of information described in 3), including a statement indicating whether any officer or any director has an outstanding final judgment issued by the Division of Labor Standards Enforcement 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. (Corp. Code, § 1502.)

This bill:

- 1) Modifies the requirement that an LLC disclose judgments for wage order or Labor Code violations as follows:
- a) For a manager-managed LLC, the statement of information must include a statement indicating whether any manager has an outstanding final judgment issued by the Division of Labor Standards Enforcement 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.
 - b) For a member-managed LLC, the statement of information must include a statement indicating whether any member has an outstanding final judgment issued by the Division of Labor Standards Enforcement 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; unless, however, the LLC's written operating agreement limits the members who are agents of the LLC for the purpose of its business and affairs to a specified member or specified members pursuant to Corporations Code section 17701.10, in which case the statement is required only with respect to the specified member or members.
 - c) For a foreign LLC that is not managed by a manger or mangers, the statement of information must include a statement indicating whether any member has an outstanding final judgment issued by the Division of Labor Standards

Enforcement 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; unless, however, the member is not an agent of the foreign LLC for purposes of its business and affairs, in which case the statement is required only with respect to the member or members who are agents of the foreign LLC.

- 2) Makes certain technical and nonsubstantive conforming changes.

COMMENTS

1. Author's comment

According to the author:

In 2020, the Legislature passed AB 3075 to help prevent a bad actor business from evading a wage theft judgment by closing down and starting a new business. One of AB 3075's provisions requires limited liability companies (LLCs) and corporations to attest whether key individuals in the business have an outstanding final judgment issued by the Labor Commissioner. Unfortunately, this requirement, as drafted, did not anticipate different management structures for LLCs. This bill clarifies this requirement so that it more precisely applies to the individuals who manage the LLC's business operations rather than passive investors, making the attestation requirement consistent for LLCs and corporations. AB 2431 strengthens the protections put in place by AB 3075 and ensures equal treatment of limited liability companies (LLC's) and corporations under the Corporations Code.

2. This bill clarifies which members and/or managers of an LLC must disclose outstanding final judgments relating to wage order or Labor Code violations

A statement of information is the means by which an LLC formed or doing business in California updates the Secretary of State when specific key information changes, such as the names of its members or managers, its place of business, or its agent for service of process in the state.¹ An LLC must file a statement of information every two years as a matter of course; if the required information has not changed since the prior filing, the LLC may state that no changes have occurred in the applicable filing period.² Additionally, the LLC must file an updated statement of information when its agent for service of process, or its agent's address, changes, and may file an updated statement when any of the other information changes.³ The information in a statement of information supersedes all prior information filed on that point, including statements in

¹ Corp. Code, § 17702.09(a).

² *Id.*, § 17702.09(a), (b).

³ *Id.*, § 17702.09(a), (d).

a prior statement of information, the LLC's filed articles of incorporation, or a foreign LLC's application for registration.⁴

AB 3075 (Gonzalez, Ch. 357, Stats. 2020) was one of a number of bills passed that year to increase employer accountability for failing to pay workers. AB 3075 and others were particularly targeted at employers that used corporate formalities and chains of entities to avoid judgments for labor violations, such as creating subsidiaries to absorb liability or dissolving the liable company and reincorporating under a different name. AB 3075 attempted to limit these evasion tactics by (1) requiring a corporation or LLC to disclose in its statement of information whether any corporate director or member or manager of an LLC has an outstanding final judgment from the Division of Labor Standards enforcement or a court of law for the violation of a wage order or provision of the Labor Code, and (2) imposing successor liability on entities that were formed to avoid a prior entity's judgment debts for wages, damages, and/or penalties owed to the prior entity's workforce. The disclosure requirements in (1) took effect on January 1, 2022.

Since the implementation of the requirement that LLCs disclose specified wage and labor violations in their statements of information, it has become apparent that the terms of those provisions inadvertently blurred the types of LLC management styles, which resulted in confusion and an inconsistent scope with the disclosure requirements for corporations. LLCs are generally member-managed or manager managed. In a member-managed company, the management and conduct of the LLC are vested in the members, and members are agents of the LLC that can bind the company.⁵ A member-managed LLC can also elect to limit the members who are agents of the company for purposes of the company's business and affairs by setting forth the members empowered to act as agents in its operating agreement.⁶ In a manager-managed company, the members select a manager or managers to run the affairs of the company while the members retain only very limited authority over the company and are not the company's agents.⁷ The members of a manager-managed LLC are thus considerably more passive than the members of a member-managed LLC, closer to shareholders of a corporation than officers or directors.

AB 3075, however, does not distinguish between member-managed and manager-managed LLCs for purposes of the disclosure requirement in the statement of information. The law currently states that the LLC must disclose all members' and all managers' (if any) outstanding wage order/Labor Code judgments without distinguishing between the active members of a member-managed LLC and the passive members of a manager-managed LLC.⁸ This is inconsistent with the disclosure requirement for corporations, which requires a corporation to disclose in its statement

⁴ *Id.*, § 17702.09(d).

⁵ *Id.*, §§ 17703.01(a), 17704.07(a).

⁶ *Id.*, § 17701.10.

⁷ *Id.*, §§ 17703(b), 17704.07(b), (c).

⁸ *Id.*, § 17702.09(a)(8).

of information only whether any officer or director has an outstanding final judgment for wage order or Labor Code violations.⁹

In order to bring the LLC and corporation disclosure provisions into alignment, and to avoid requiring passive LLC members from having to disclose information, this bill clarifies an LLC's obligation to disclose members' and managers' wage order and/or Labor Code violation judgments as follows:

- For a manager-managed LLC, the statement of information must state whether any manager has an outstanding final judgment issued by the Division of Labor Standards Enforcement or a court of law, for which no appeal therefrom is pending, for a violation of any wage order or provision of the Labor Code.
- For a member-managed LLC, the statement of information must state whether any member has an outstanding final judgment issued by the Division of Labor Standards Enforcement or a court of law, for which no appeal therefrom is pending, for the violation of any wage order of the Labor Code unless the LLC's written operating agreement limits the members who are agents of the company for the purpose of its business and affairs to specified member(s), in which case the statement need be made only with respect to the specified member(s).
- For a foreign LLC that is not managed by a manager or managers, a statement indicating whether any member has an outstanding final judgment issued by the Division of Labor Standards Enforcement or a court of law, for which no appeal therefrom is pending, for the violation of any wage order of the Labor Code, unless the member is not an agent of the foreign LLC for purposes of its business and affairs, in which case the statement need be made only with respect to the member(s) who are agents of the foreign LLC.

3. Arguments in support

According to the sponsor of the bill, the Partnerships and Limited Liability Companies Committee of the Business Law Section of the California Lawyers Association:

This bill addresses an inconsistency in the treatment of limited liability companies from that of corporations...

Under current statutory language, the statement of a corporation applies only to the officers or directors of the corporation, thereby applying the provisions to those who manage and direct the affairs of the business entity. It does not, for example, apply to a corporation's shareholders. In contrast, the statement of a limited liability company applies to "any member" even if the member is not an agent of the limited liability company for the purpose of its business and affairs.

⁹ *Id.*, § 1502(a)(10).

This bill ensures that the disclosure requirement for a limited liability company is consistent with that of a corporation by limiting that requirement to managers and those members who are agents of the limited liability company for the purpose of its business affairs.

SUPPORT

California Lawyers Association, Business Law Section, Partnerships and Limited Liability Companies Committee

OPPOSITION

None known

RELATED LEGISLATION

Pending legislation: AB 1381 (Gallagher, 2022) requires the Secretary of State to notify a limited liability company (LLC) when an updated statement of information for that LLC has been delivered for filing. AB 1381 is pending before the Senate Judiciary Committee and is scheduled to be heard on the same date as this bill.

Prior legislation:

AB 3075 (Gonzalez, Ch. 357, Stats. 2020) required, beginning January 1, 2024, that LLCs and other business entities disclose whether key members have any outstanding final judgments issued by the Division of Labor Standards Enforcement 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.

AB 786 (Kiley, 2017) would have required, among other documents, the statement of information to be permitted to be filed with the Secretary of State through online means. AB 786 died in the Assembly Banking and Finance Committee.

PRIOR VOTES:

Assembly Floor (Ayes 68, Noes 0)

Assembly Appropriations Committee (Ayes 13, Noes 0)

Assembly Banking and Finance Committee (Ayes 10, Noes 0)
