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AB-844 Search warrants: foreign corporations and foreign limited liability companies. (2015-2016)

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Assembly Bill No. 844

CHAPTER 57

An act to amend Sections 2105 and 17708.02 of the Corporations Code, and to amend Section 1524.2 of the Penal Code, relating to search warrants.

[Approved by Governor July 06, 2015. Filed with Secretary of State July 06, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 844, Bloom. Search warrants: foreign corporations and foreign limited liability companies.

Existing law prohibits a foreign corporation from transacting intrastate business without a certificate of qualification from the Secretary of State, and requires a statement filed for a certificate of qualification to include, among other things, an agent for service of process within the state. Existing law prohibits a foreign limited liability company transacting intrastate business in this state from maintaining an action or proceeding in this state unless it has a certificate of registration filed with the Secretary of State, and requires an application for a certificate of registration to include, among other things, an agent for service of process.

This bill would specify that a foreign corporation and foreign limited liability company may consent to service of process for a search warrant by email or submission to a designated Internet Web portal.

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

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

SECTION 1. Section 2105 of the Corporations Code is amended to read:

2105. (a) A foreign corporation shall not transact intrastate business without having first obtained from the Secretary of State a certificate of qualification. To obtain that certificate it shall file, on a form prescribed by the Secretary of State, 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:

- (1) Its name and the state or place of its incorporation or organization.
- (2) The street address of its principal executive office.
- (3) The street address of its principal office within this state, if any.
- (4) The mailing address of its principal executive office, if different from the addresses specified pursuant to paragraphs (2) and (3).
- (5) The name of an agent upon whom process directed to the corporation may be served within this state. The designation shall comply with the provisions of subdivision (b) of Section 1502.

(6) (A) Its irrevocable consent to service of process directed to it upon the agent designated and to service of process on the Secretary of State if the agent so designated or the agent's successor is no longer authorized to act or cannot be found at the address given.

(B) Consent under this paragraph 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 in Section 2110, or any other means specified by the foreign corporation, including, but not limited to, email or submission via an Internet web portal that the foreign corporation has designated for the purpose of service of process.

(7) If it is a corporation which will be subject to the Insurance Code as an insurer, it shall so state that fact.

(b) Annexed to that statement and designation shall be a certificate by an authorized public official of the state or place of incorporation of the corporation to the effect that the corporation is an existing corporation in good standing in that state or place or, in the case of an association, an officers' certificate stating that it is a validly organized and existing business association under the laws of a specified foreign jurisdiction.

(c) Before it may be designated by any foreign corporation as its agent for service of process, any corporate agent must comply with Section 1505.

SEC. 2. Section 17708.02 of the Corporations Code is amended to read:

17708.02. (a) A foreign limited liability company may apply for a certificate of registration to transact business in this state by delivering an application to the Secretary of State for filing on a form prescribed by the Secretary of State. The application shall state all of the following:

(1) The name of the foreign limited liability company, and, if the name does not comply with Section 17701.08, an alternate name adopted pursuant to subdivision (a) of Section 17708.05.

(2) The state or other jurisdiction under whose law the foreign limited liability company is organized and the date of its organization in that state or other jurisdiction, and a statement that the foreign limited liability company is authorized to exercise its powers and privileges in that state or other jurisdiction.

(3) The street address of the foreign limited liability company's principal office and of its principal business office in this state, if any.

(4) (A) The name and street address of the foreign limited liability company's initial agent for service of process in this state who consents to service of process and meets the qualifications specified in subdivision (c) of Section 17701.13. If a corporate agent is designated, only the name of the agent shall be set forth.

(B) Consent under this paragraph extends to service of process directed to the foreign limited liability company'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 limited liability company and are located inside or outside of this state. This subparagraph shall apply to a foreign limited liability company 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, facsimile, or any other means specified by the foreign limited liability company, including email or submission via an Internet web portal the foreign limited liability company has designated for the purpose of service of process.

(5) A statement that the Secretary of State is appointed the agent of the foreign limited liability company 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.

(6) The mailing address of the foreign limited liability company if different than the street address of the principal office, or principal business office in this state.

(b) A foreign limited liability company shall deliver with a completed application under subdivision (a) a certificate of existence, status, or good standing or a record of similar import signed by the Secretary of State or other official having custody of the

foreign limited liability company's publicly filed records in the state or other jurisdiction under whose law the foreign limited liability company is formed.

(c) The Secretary of State shall include with instructional materials, provided in conjunction with registration under subdivision (a), a notice that filing the registration will obligate the foreign limited liability company to pay an annual tax to the Franchise Tax Board pursuant to Section 17941 of the Revenue and Taxation Code. That notice shall be updated annually to specify the dollar amount of the tax.

SEC. 3. Section 1524.2 of the Penal Code is amended to read:

1524.2. (a) As used in this section, the following terms have the following meanings:

(1) The terms "electronic communication services" and "remote computing services" shall be construed in accordance with the Electronic Communications Privacy Act in Chapter 121 (commencing with Section 2701) of Part I of Title 18 of the United State Code Annotated. This section shall not apply to corporations that do not provide those services to the general public.

(2) An "adverse result" occurs when notification of the existence of a search warrant results in:

(A) Danger to the life or physical safety of an individual.

(B) A flight from prosecution.

(C) The destruction of or tampering with evidence.

(D) The intimidation of potential witnesses.

(E) Serious jeopardy to an investigation or undue delay of a trial.

(3) "Applicant" refers to the peace officer to whom a search warrant is issued pursuant to subdivision (a) of Section 1528.

(4) "California corporation" refers to any corporation or other entity that is subject to Section 102 of the Corporations Code, excluding foreign corporations.

(5) "Foreign corporation" refers to any corporation that is qualified to do business in this state pursuant to Section 2105 of the Corporations Code.

(6) "Properly served" means that 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 in Section 2110 of the Corporations Code, or any other means specified by the recipient of the search warrant, including email or submission via an Internet web portal that the recipient has designated for the purpose of service of process.

(b) The following provisions shall apply to any search warrant issued pursuant to this chapter allowing a search for records that are in the actual or constructive possession of a foreign corporation that provides electronic communication services or remote computing services to the general public, where those records 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.

(1) When properly served with a search warrant issued by the California court, a foreign corporation subject to this section shall 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.

(2) Where the applicant makes a showing and the magistrate finds that failure to produce records within less than five business days would cause an adverse result, the warrant may require production of records within less than five business days. A court may reasonably extend the time required for production of the records upon finding that the foreign corporation has shown good cause for that extension and that an extension of time would not cause an adverse result.

(3) A foreign corporation seeking to quash the warrant must seek relief from the court that issued the warrant within the time required for production of records pursuant to this section. The issuing court shall hear and decide that motion no later than five court days after the motion is filed.

(4) The foreign corporation shall verify the authenticity of records that it produces by providing an affidavit that complies with the requirements set forth in Section 1561 of the Evidence Code. Those records shall be admissible in evidence as set forth in Section 1562 of the Evidence Code.

(c) 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.

(d) No cause of action shall lie against any foreign or California corporation subject to this section, its officers, employees, agents, or other specified persons for providing records, information, facilities, or assistance in accordance with the terms of a warrant issued pursuant to this chapter.