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AB-1471 Business entities: filings. (2015-2016)

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Assembly Bill No. 1471

CHAPTER 189

An act to amend Sections 201, 1155, 2601, 15911.06, 16906, 17701.09, 17702.03, 17707.08, and 17710.06 of the Corporations Code, relating to business.

[Approved by Governor August 12, 2015. Filed with Secretary of State August 12, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1471, Perea. Business entities: filings.

(1) The General Corporation Law, the Social Purpose Corporations Act, and the California Revised Uniform Limited Liability Company Act, authorize the Secretary of State, upon payment of a fee by the applicant, to issue a certificate of reservation of any name, not otherwise prohibited.

The bill would make a nonsubstantive change to the cross-reference of the requirement to pay a fee by the applicant in these laws.

(2) The General Corporation Law and the Social Purpose Corporations Act limit the Secretary of State from issuing a certificate reserving any name that is likely to mislead the public or the same name for 2 or more consecutive 60-day periods to the same applicant or for the use or benefit of the same person, partnership, firm, corporation, or social purpose corporation, as applicable.

This bill would specify that the Secretary of State may reserve that name to the use or benefit of a person, as provided.

(3) The Social Purpose Corporations Act does not prohibit the Secretary of State from filing articles for a social purpose corporation subject to the Banking Law setting forth a name in which "bank," "trust," "trustee," or related words appear, if the articles are endorsed with the approval of the Commissioner of Financial Institutions. Existing law reorganized the Department of Financial Institutions and the Commissioner of Financial Institutions into the Department of Business Oversight headed by a Commissioner of Business Oversight.

This bill would add another basis under which the Secretary of State is not prohibited from filing articles for a social purpose corporation subject to the Banking Law setting forth a name in which "bank," "trust," "trustee," or related words appear, and would change the name of the Commissioner of Financial Institutions to the Commissioner of Business Oversight.

(4) The General Corporation Law, the Uniform Limited Partnership Act of 2008, and the Uniform Partnership Act of 1994 authorize a business entity formed under its respective provisions to be converted into another business entity under certain conditions, including, among others, that the execution of a statement or certificate of conversion set forth a name and street address, as specified.

This bill would specify that the statement or certificate of conversion set forth the name, mailing address, and street address of the converted entity's agent for service of process.

(5) The California Revised Uniform Limited Liability Company Act requires a record delivered to the Secretary of State for filing under its provisions to be signed by particular individuals, as specified. The act specifically requires the person who filed a certificate of dissolution to sign a certificate of cancellation of the article of organization upon the completion of the winding up of affairs of the limited liability company, except as specified.

This bill would revise the general provisions relating to the particular individual required to sign a record, and instead require the managers to sign a certificate of cancellation of the article of organization upon the completion of the winding up of affairs of the limited liability company, except as specified.

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

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

SECTION 1. Section 201 of the Corporations Code is amended to read:

201. (a) The Secretary of State shall not file articles setting forth a name in which "bank," "trust," "trustee," or related words appear, unless the certificate of approval of the Commissioner of Business Oversight is attached thereto. This subdivision does not apply to the articles of any corporation subject to the Banking Law on which is endorsed the approval of the Commissioner of Business Oversight.

(b) The Secretary of State shall not file articles which set forth a name which is likely to mislead the public or which is the same as, or resembles so closely as to tend to deceive, the name of a domestic corporation, the name of a foreign corporation which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, a name which a foreign corporation has assumed under subdivision (b) of Section 2106, a name which will become the record name of a domestic or foreign corporation upon the effective date of a filed corporate instrument where there is a delayed effective date pursuant to subdivision (c) of Section 110 or subdivision (c) of Section 5008, or a name which is under reservation for another corporation pursuant to this title, except that a corporation may adopt a name that is substantially the same as an existing domestic corporation or foreign corporation which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, upon proof of consent by such domestic or foreign corporation and a finding by the Secretary of State that under the circumstances the public is not likely to be misled.

(c) The use by a corporation of a name in violation of this section may be enjoined notwithstanding the filing of its articles by the Secretary of State.

(d) Any applicant may, upon payment of the fee prescribed therefor in Article 3 (commencing with Section 12180) of Chapter 3 of Part 2 of Division 3 of Title 2 of the Government Code, obtain from the Secretary of State a certificate of reservation of any name not prohibited by subdivision (b), and upon the issuance of the certificate the name stated therein shall be reserved for a period of 60 days. The Secretary of State shall not, however, issue certificates reserving the same name for two or more consecutive 60-day periods to the same applicant or for the use or benefit of the same person; nor shall consecutive reservations be made by or for the use or benefit of the same person; of names so similar as to fall within the prohibitions of subdivision (b).

SEC. 2. Section 1155 of the Corporations Code is amended to read:

1155. (a) To convert a corporation:

(1) If the corporation is converting into a domestic limited partnership, a statement of conversion shall be completed on the certificate of limited partnership for the converted entity.

(2) If the corporation is converting into a domestic partnership, a statement of conversion shall be completed on the statement of partnership authority for the converted entity, or if no statement of partnership authority is filed then a certificate of conversion shall be filed separately.

(3) If the corporation is converting into a domestic limited liability company, a statement of conversion shall be completed on the articles of organization for the converted entity.

(b) Any statement or certificate of conversion of a converting corporation shall be executed and acknowledged by those officers of the converting corporation as would be required to sign an officers' certificate (Section 173), and shall set forth all of the following:

(1) The name of the converting corporation and the Secretary of State's file number of the converting corporation.

(2) A statement of the total number of outstanding shares of each class entitled to vote on the conversion, that the principal terms of the plan of conversion were approved by a vote of the number of shares of each class which equaled or exceeded the vote required under Section 1152, specifying each class entitled to vote and the percentage vote required of each class.

(3) The name, form, and jurisdiction of organization of the converted entity.

(4) The name, mailing address, and street address of the converted entity's agent for service of process. If a corporation qualified under Section 1505 is designated as the agent, no address for it shall be set forth.

(c) For the purposes of this chapter, the certificate of conversion shall be on a form prescribed by the Secretary of State.

(d) The filing with the Secretary of State of a statement of conversion on an organizational document or a certificate of conversion as set forth in subdivision (a) shall have the effect of the filing of a certificate of dissolution by the converting corporation and no converting corporation that has made the filing is required to file a certificate of election under Section 1901 or a certificate of dissolution under Section 1905 as a result of that conversion.

(e) Upon the effectiveness of a conversion pursuant to this chapter, a converted entity that is a domestic partnership, domestic limited partnership, or domestic limited liability company shall be deemed to have assumed the liability of the converting corporation (1) to prepare and file or cause to be prepared and filed all tax and information returns otherwise required of the converting corporation under the Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code) and (2) to pay any tax liability determined to be due pursuant to that law.

SEC. 3. Section 2601 of the Corporations Code is amended to read:

2601. (a) The Secretary of State shall not file articles setting forth a name in which "bank," "trust," "trustee," or related words appear, unless the certificate of approval of the Commissioner of Business Oversight is attached to the articles. This subdivision does not apply to the articles of any social purpose corporation subject to the Banking Law on which is endorsed the approval of the Commissioner of Business Oversight or to which a certificate of approval of the Commissioner of Business Oversight is attached to the articles.

(b) (1) The Secretary of State shall not file articles that set forth a name that is likely to mislead the public or that is the same as, or resembles so closely as to tend to deceive, the name of a domestic corporation, the name of a domestic social purpose corporation, or the name of a foreign corporation that is authorized to transact intrastate business or has registered its name pursuant to Section 2101, a name that a foreign corporation has assumed under subdivision (b) of Section 2106, a name that will become the record name of a corporation or social purpose corporation or a foreign corporation upon the effective date of a filed corporate instrument where there is a delayed effective date pursuant to subdivision (c) of Section 110 or subdivision (c) of Section 5008, or a name that is under reservation for another corporation or social purpose corporation pursuant to this title, except that a social purpose corporation may adopt a name that is substantially the same as an existing corporation or social purpose corporation, foreign or domestic, which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, upon proof of consent by the domestic or foreign corporation or social purpose corporation and a finding by the Secretary of State that under the circumstances the public is not likely to be misled. The use by a social purpose corporation of a name in violation of this section may be enjoined notwithstanding the filing of its articles by the Secretary of State.

(2) A corporation formed pursuant to this division before January 1, 2015, may elect to change its status from a flexible purpose corporation to a social purpose corporation by amending its articles of incorporation to change its name to replace "flexible purpose corporation" with "social purpose corporation" and to replace the term "flexible purpose corporation" with "social purpose corporation" as applicable in any statements contained in the articles. For any flexible purpose corporation formed prior to January 1, 2015, that has not amended its articles of incorporation to change its status to a social purpose corporation, any reference in this division to social purpose corporation shall be deemed a reference to "flexible purpose corporation."

(c) Any applicant may, upon payment of the fee prescribed in Article 3 (commencing with Section 12180) of Chapter 3 of Part 2 of Division 3 of Title 2 of the Government Code, obtain from the Secretary of State a certificate of reservation of any name not prohibited by subdivision (b), and upon the issuance of the certificate the name stated in the certificate shall be reserved for a period of 60 days. The Secretary of State shall not, however, issue certificates reserving the same name for two or more consecutive 60-day periods to the same applicant or for the use or benefit of the same person. No consecutive reservations shall be made by or for the use or benefit of the same person of names so similar as to fall within the prohibitions of subdivision (b).

SEC. 4. Section 15911.06 of the Corporations Code is amended to read:

15911.06. (a) Upon conversion of a limited partnership, one of the following applies:

(1) If the limited partnership is converting into a domestic limited liability company, a statement of conversion shall be completed on the articles of organization for the converted entity and shall be filed with the Secretary of State.

(2) If the limited partnership is converting into a domestic partnership, a statement of conversion shall be completed on the statement of partnership authority for the converted entity. If no statement of partnership authority is filed, a certificate of conversion shall be filed separately with the Secretary of State.

(3) If the limited partnership is converting into a domestic corporation, a statement of conversion shall be completed on the articles of incorporation for the converted entity and shall be filed with the Secretary of State.

(4) If the limited partnership is converting to a foreign limited partnership or foreign other business entity, a certificate of conversion shall be filed with the Secretary of State.

(b) Any certificate or statement of conversion shall be executed and acknowledged by all general partners and shall set forth all of the following:

(1) The name of the converting limited partnership and the Secretary of State's file number of the converting limited partnership.

(2) A statement that the principal terms of the plan of conversion were approved by a vote of the partners, that equaled or exceeded the vote required under Section 15911.03, specifying each class entitled to vote and the percentage vote required of each class.

(3) The form of organization of the converted entity.

(4) The name, mailing address, and street address of the converted entity's agent for service of process and the mailing address of the chief executive office of the converted entity. If a corporation qualified under Section 1505 is designated as the agent, no address for it shall be set forth.

(c) The filing with the Secretary of State of a certificate of conversion or a statement of partnership authority, articles of organization, or articles of incorporation containing a statement of conversion as set forth in subdivision (a) shall have the effect of the filing of a certificate of cancellation by the converting limited partnership, and no converting limited partnership that has made the filing is required to file a certificate of cancellation under Section 15902.03 as a result of that conversion.

SEC. 5. Section 16906 of the Corporations Code is amended to read:

16906. (a) If the converting partnership has filed a statement of partnership authority under Section 16303 that is effective at the time of the conversion, then upon conversion to a domestic limited partnership, limited liability company, or corporation, the certificate of limited partnership, articles of organization, or articles of incorporation filed by the converted entity, as applicable, shall contain a statement of conversion, in that form as may be prescribed by the Secretary of State. If the converting partnership has not filed a statement of partnership authority under Section 16303 that is effective at the time of the conversion, upon conversion to a domestic limited partnership, limited liability company, or corporation, the converted entity may, but is not required to file, on its certificate of limited partnership, articles of organization, or articles of incorporation, a statement of conversion. A statement of conversion shall set forth all of the following:

(1) The name of the converting partnership and the Secretary of State's file number, if any, of the converting partnership.

(2) A statement that the principal terms of the plan of conversion were approved by a vote of the partners, which equaled or exceeded the vote required under Section 16903.

(3) The name, mailing address, and street address of the converted entity's agent for service of process. If a corporation qualified under Section 1505 is designated as the agent, no address for it shall be set forth.

(b) A partnership converting to a foreign other business entity that has filed a statement of partnership authority under Section 16303 that is effective at the time of conversion may file a certificate of conversion with the Secretary of State. The certificate of conversion shall contain the following:

(1) The names of the converting partnership and the converted entity.

(2) The street address of the converted entity's chief executive office and of an office in this state, if any.

(3) The form of organization of the converted entity.

(4) The name, mailing address, and street address of the converted entity's agent for service of process. If a corporation qualified under Section 1505 is designated as the agent, no address for it shall be set forth.

(c) The filing with the Secretary of State of a certificate of limited partnership, articles of organization, or articles of incorporation containing a statement of conversion as set forth in subdivision (a) or a certificate of conversion filed pursuant to subdivision (b) shall have the effect of the filing of a cancellation by the converting partnership of any statement of partnership authority filed by it.

SEC. 6. Section 17701.09 of the Corporations Code is amended to read:

17701.09. (a) Upon payment of the fee prescribed in Article 3 (commencing with Section 12180) of Chapter 3 of Part 2 of Division 3 of Title 2 of the Government Code, a person may apply to reserve the exclusive use of the name of a limited liability company or foreign limited liability company, including an alternative name for a foreign limited liability company whose name is not available. If the Secretary of State finds that the name applied for is available, it shall reserve the name for the applicant's exclusive use for up to 60 days and issue a certificate of reservation. The Secretary of State shall not issue certificates reserving the same name for two or more consecutive 60-day periods to the same applicant or for the use or benefit of the same person; nor shall consecutive reservations be made by or for the use or benefit of the same person for a name so similar as to fall within the prohibitions of subdivision (b) of Section 17701.08.

(b) The owner of a name reserved for a limited liability company or foreign limited liability company may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer which states the reserved name and the name and address of the transferee.

SEC. 7. Section 17702.03 of the Corporations Code is amended to read:

17702.03. (a) A record delivered to the Secretary of State for filing pursuant to this title shall be signed as follows:

(1) Except as otherwise expressly provided in this title and in this subdivision, a record signed on behalf of a limited liability company shall be signed by a person authorized by the limited liability company.

(2) A limited liability company's initial articles of organization shall be signed by at least one person acting as an organizer.

(3) A record filed on behalf of a dissolved limited liability company that has no members shall be signed by the person winding up the limited liability company's activities or a person appointed under Section 17707.04 to wind up those activities.

(4) A certificate of cancellation under Section 17707.02 shall be signed by each organizer that signed the initial articles of organization, but a personal representative of a deceased or incompetent organizer may sign in the place of the decedent or incompetent.

(5) A certificate of cancellation under Section 17707.08 shall be signed in accordance with paragraph (1) of subdivision (b) of Section 17707.08.

(6) A certificate of correction shall be executed in the same manner in which the record being corrected was required to be executed.

(b) Except as otherwise expressly provided in this title and in subdivision (a), any record filed under this title may be signed by an agent.

(c) A limited liability company may record in the office of the county recorder of any county in this state, and county recorders, on request, shall record a certified copy of the limited liability company articles of organization and any exhibit or attachment, or any amendment or correction thereto, that has been filed in the office of the Secretary of State. A foreign limited liability company may record in the office of the county recorder of any county in the state a certified copy of the application for registration of the foreign limited liability company, or any amendment thereto, that has been filed in the office of the Secretary of State. The recording shall create a conclusive presumption in favor of any bona fide purchaser or encumbrancer for value of the limited liability company real property located in the county in which the certified copy has been recorded, of the statements contained therein.

(d) If the Secretary of State determines that an instrument submitted for filing or otherwise submitted does not conform to the law and returns it to the person submitting it, the instrument may be resubmitted accompanied by a written opinion of a member of the State Bar of California submitting the instrument or representing the person submitting it, to the effect that the specific provisions of the instrument objected to by the Secretary of State do conform to law and stating the points and authorities upon which the opinion is based. The Secretary of State shall rely, with respect to any disputed point of law, other than the application of Sections 17701.08, 17701.09, 17708.02, and 17708.03, upon that written opinion in determining whether the instrument conforms to law. The date of filing in that case shall be the date the instrument is received on resubmission.

SEC. 8. Section 17707.08 of the Corporations Code is amended to read:

17707.08. (a) (1) The managers shall sign and cause to be filed in the office of, and on a form prescribed by, the Secretary of State, a certificate of dissolution upon the dissolution of the limited liability company pursuant to Article 7 (commencing with Section 17707.01), unless the event causing the dissolution is that specified in subdivision (c) of Section 17707.01, in which case the persons conducting the winding up of the limited liability company's affairs pursuant to Section 17707.04 shall have the obligation to sign and cause to be filed the certificate of dissolution.

(2) The certificate of dissolution shall set forth all of the following:

(A) The name of the limited liability company and the Secretary of State's file number.

(B) Any other information the persons filing the certificate of dissolution determine to include.

(C) The event listed in Section 17707.01 causing dissolution.

(3) If a dissolution pursuant to subdivision (b) of Section 17707.01 is made by the vote of all of the members and a statement to that effect is added to the certificate of cancellation of articles of organization pursuant to subdivision (b), the separate filing of a certificate of dissolution pursuant to this subdivision is not required.

(b) (1) The managers shall sign and cause to be filed in the office of, and on a form prescribed by, the Secretary of State, a certificate of cancellation of articles of organization upon the completion of the winding up of the affairs of the limited liability company pursuant to Section 17707.06, unless the event causing the dissolution is that specified in subdivision (c) of Section 17707.01, in that case the persons conducting the winding up of the limited liability company's affairs pursuant to Section 17707.04 shall have the obligation to sign and cause to be filed the certificate of cancellation of articles of organization.

(2) The certificate of cancellation of articles of organization shall set forth all of the following:

(A) The name of the limited liability company and the Secretary of State's file number.

(B) That a final franchise tax return, as described by Section 23332 of the Revenue and Taxation Code, or a final annual tax return, as described by Section 17947 of the Revenue and Taxation Code, has been or will be filed with the Franchise Tax Board, as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code.

(C) That upon the filing of the certificate of cancellation, the limited liability company shall be canceled and its powers, rights, and privileges shall cease.

(D) Any other information the persons filing the certificate of cancellation of articles of organization determine to include.

(3) The Secretary of State shall notify the Franchise Tax Board of the filing.

(c) Upon filing a certificate of cancellation pursuant to subdivision (b), a limited liability company shall be canceled and its powers, rights, and privileges shall cease.

SEC. 9. Section 17710.06 of the Corporations Code is amended to read:

17710.06. (a) Upon conversion of a limited liability company, one of the following applies:

(1) If the limited liability company is converting into a domestic limited partnership, a statement of conversion shall be completed on a certificate of limited partnership for the converted entity and shall be filed with the Secretary of State.

(2) If the limited liability company is converting into a domestic partnership, a statement of conversion shall be completed on the statement of partnership authority for the converted entity. If no statement of partnership authority is filed, a certificate of conversion shall be filed separately with the Secretary of State.

(3) If the limited liability company is converting into a domestic corporation, a statement of conversion shall be completed on the articles of incorporation for the converted entity and shall be filed with the Secretary of State.

(4) If the limited liability company is converting to a foreign limited liability company or foreign other business entity, a certificate of conversion shall be filed with the Secretary of State.

(b) Any certificate or statement of conversion shall be executed and acknowledged by all members, unless a lesser number is provided in the articles of organization or operating agreement, and shall set forth all of the following:

(1) The name of the converting limited liability company and the Secretary of State's file number of the converting limited liability company.

(2) A statement that the principal terms of the plan of conversion were approved by a vote of the members, that equaled or exceeded the vote required under Section 17710.03, specifying each class entitled to vote and the percentage vote required of each class.

(c) A certificate of conversion shall set forth all of the following:

(1) The name, form, and jurisdiction of organization of the converted entity.

(2) The name, street address, and mailing address of the converted entity's agent for service of process. If a corporation qualified under Section 1505 is designated as the agent, no address for it shall be set forth.

(3) The street address of the converted entity's chief executive office.

(d) The filing with the Secretary of State of a certificate of conversion, a certificate of limited partnership, a statement of partnership authority, or articles of incorporation containing a statement of conversion as set forth in subdivision (a) shall have the effect of the filing of a certificate of cancellation by the converting limited liability company, and no converting limited liability company that has made the filing is required to take any action under Article 7 (commencing with Section 17707.01) as a result of that conversion.

(e) For the purposes of this title, the certificate of conversion shall be on a form prescribed by the Secretary of State.