

Assembly Bill No. 1000

CHAPTER 819

An act to amend Sections 1502 and 2117 of, and to add Sections 1502.1 and 2117.1 to, the Corporations Code, and to amend Section 12186 of the Government Code, relating to corporations, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1000, Dutra. Corporations: disclosure statement.

Existing law, the General Corporation Law, requires a domestic corporation and a foreign corporation to file statements annually with the Secretary of State disclosing specified information concerning its operation and makes the information contained in the statements open to public inspection. Existing law specifies additional information that a publicly traded company is required to include in the statement.

This bill would revise these provisions, including changing the definitions for "publicly traded company" to "publicly traded corporation" and for "executive officer."

Under existing law, information required in the statement includes the name of the independent auditor used by the corporation and a description of any services performed for the corporation during the previous 24 months by the auditor or its parent corporation, or by an agent, subsidiary, corporate partner, or corporate affiliate of the auditor or its parent corporation.

This bill would instead require the corporations to disclose services performed during its 2 most recent fiscal years and the period between the end of its most recent fiscal year.

Existing law requires these corporations to provide a statement indicating whether any member of the board of directors or executive officer of the corporation has been convicted of fraud within the previous 10 years.

This bill would instead require that statement if the conviction has not been overturned or expunged.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. (a) It is the intent of the Legislature to provide for the timely and accurate disclosure of information to the public regarding key relationships and activities of public corporations doing business in California.

(b) It is the intent of the Legislature that the California Corporate Disclosure Act serve to provide critical items of information about a corporation in one centralized location where consumers, investors, and taxpayers can locate the information quickly and efficiently. While much of the information required under the act is provided to the federal government through regular filings to the Securities and Exchange Commission, the reports filed with the Securities and Exchange Commission are not readily searchable or understood by the average consumer or investor.

(c) It is further the intent of the Legislature that any inconsistencies or asymmetries between disclosures made pursuant to Sections 1502, 1502.1, 2117, 2117.1, 6210, and 8210 of the Corporations Code and disclosures or filings made pursuant to federal securities law shall not be construed to infer anything beyond the information disclosed.

SEC. 2. Section 1502 of the Corporations Code is amended to read:

1502. (a) Every corporation shall file, within 90 days after the filing of its original articles and annually thereafter during the applicable filing period, on a form prescribed by the Secretary of State, a statement containing all of the following:

(1) The names and complete business or residence addresses of its incumbent directors.

(2) The number of vacancies on the board, if any.

(3) The names and complete business or residence addresses of its chief executive officer, secretary, and chief financial officer.

(4) The street address of its principal executive office.

(5) If the address of its principal executive office is not in this state, the street address of its principal business office in this state, if any.

(6) A statement of the general type of business that constitutes the principal business activity of the corporation (for example, manufacturer of aircraft; wholesale liquor distributor; or retail department store).

(b) The statement required by subdivision (a) shall also designate, as the agent of the corporation for the purpose of service of process, a natural person residing in this state or a corporation that has complied with Section 1505 and whose capacity to act as an agent has not terminated. If a natural person is designated, the statement shall set forth that person's complete business or residence address. If a corporate agent is designated, no address for it shall be set forth.



(c) If there has been no change in the information in the last filed statement of the corporation on file in the Secretary of State's office, the corporation may, in lieu of filing the statement required by subdivisions (a) and (b), advise the Secretary of State, on a form prescribed by the Secretary of State, that no changes in the required information have occurred during the applicable filing period.

(d) For the purposes of this section, the applicable filing period for a corporation shall be the calendar month during which its original articles were filed and the immediately preceding five calendar months. The Secretary of State shall mail a form for compliance with this section to each corporation approximately three months prior to the close of the applicable filing period. The form shall state the due date thereof and shall be mailed to the last address of the corporation according to the records of the Secretary of State. The failure of the corporation to receive the form is not an excuse for failure to comply with this section.

(e) Whenever any of the information required by subdivision (a) is changed, the corporation may file a current statement containing all the information required by subdivisions (a) and (b). In order to change its agent for service of process or the address of the agent, the corporation must file a current statement containing all the information required by subdivisions (a) and (b). Whenever any statement is filed pursuant to this section, it supersedes any previously filed statement and the statement in the articles as to the agent for service of process and the address of the agent.

(f) The Secretary of State may destroy or otherwise dispose of any statement filed pursuant to this section after it has been superseded by the filing of a new statement.

(g) This section shall not be construed to place any person dealing with the corporation on notice of, or under any duty to inquire about, the existence or content of a statement filed pursuant to this section.

(h) The statement required by subdivision (a) shall be available and open to the public for inspection. The Secretary of State, not later than December 31, 2004, shall provide access to all information contained in this statement by means of an online database.

(i) In addition to any other fees required, a corporation shall pay a five-dollar (\$5) disclosure fee when filing the statement required by subdivision (a). One-half of the fee shall be utilized to further the provisions of this section, including the development and maintenance of the online database required by subdivision (h), and one-half shall be deposited into the Victims of Corporate Fraud Compensation Fund established in Section 1502.5.

(j) A corporation shall certify that the information it provides pursuant to subdivisions (a) and (b) is true and correct. No claim may be



made against the state for inaccurate information contained in the statements.

SEC. 3. Section 1502.1 is added to the Corporations Code, to read:

1502.1. (a) In addition to the statement required pursuant to Section 1502, every publicly traded corporation shall file annually, within 150 days after the end of its fiscal year, a statement, on a form prescribed by the Secretary of State, that includes all of the following information:

(1) The name of the independent auditor that prepared the most recent auditor's report on the corporation's annual financial statements.

(2) A description of other services, if any, performed for the corporation during its two most recent fiscal years and the period between the end of its most recent fiscal year and the date of the statement by the foregoing independent auditor, by its parent corporation, or by a subsidiary or corporate affiliate of the independent auditor or its parent corporation.

(3) The name of the independent auditor employed by the corporation on the date of the statement, if different from the independent auditor listed pursuant to paragraph (1).

(4) The compensation for the most recent fiscal year of the corporation paid to each member of the board of directors and paid to each of the five most highly compensated executive officers of the corporation who are not members of the board of directors, including the number of any shares issued, options for shares granted, and similar equity-based compensation granted to each of those persons. If the chief executive officer is not among the five most highly compensated executive officers of the corporation, the compensation paid to the chief executive officer shall also be included.

(5) A description of any loan, including the amount and terms of the loan, made to any member of the board of directors by the corporation during the corporation's two most recent fiscal years at an interest rate lower than the interest rate available from unaffiliated commercial lenders generally to a similarly-situated borrower.

(6) A statement indicating whether an order for relief has been entered in a bankruptcy case with respect to the corporation, its executive officers, or members of the board of directors of the corporation during the 10 years preceding the date of the statement.

(7) A statement indicating whether any member of the board of directors or executive officer of the corporation was convicted of fraud during the 10 years preceding the date of the statement, if the conviction has not been overturned or expunged.

(8) A description of any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the corporation or any of its subsidiaries is a party or of which any of their



property is the subject, as specified by Item 103 of Regulation S-K of the Securities Exchange Commission (Section 229.103 of Title 12 of the Code of Federal Regulations). A description of any material legal proceeding during which the corporation was found legally liable by entry of a final judgment or final order that was not overturned on appeal during the five years preceding the date of the statement.

(b) For purposes of this section, the following definitions apply:

(1) “Publicly traded corporation” means a corporation, as defined in Section 162, that is an issuer as defined in Section 3 of the Securities Exchange Act of 1934, as amended (15 U.S.C. Sec. 78c), and has at least one class of securities listed or admitted for trading on a national securities exchange, on the National or Small-Cap Markets of the NASDAQ Stock Market, on the OTC-Bulletin Board, or on the electronic service operated by Pink Sheets, LLC.

(2) “Executive officer” means the chief executive officer, president, any vice president in charge of a principal business unit, division, or function, any other officer of the corporation who performs a policymaking function, or any other person who performs similar policymaking functions for the corporation.

(3) “Compensation” as used in paragraph (4) of subdivision (a) means all plan and nonplan compensation awarded to, earned by, or paid to the person for all services rendered in all capacities to the corporation and to its subsidiaries, as the compensation is specified by Item 402 of Regulation S-K of the Securities and Exchange Commission (Section 229.402 of Title 17 of the Code of Federal Regulations).

(4) “Loan” as used in paragraph (5) of subdivision (a) excludes an advance for expenses permitted under subdivision (d) of Section 315, the corporation’s payment of life insurance premiums permitted under subdivision (e) of Section 315, and an advance of expenses permitted under Section 317.

(c) This statement shall be available and open to the public for inspection. The Secretary of State, not later than December 31, 2004, shall provide access to all information contained in this statement by means of an online database.

(d) A corporation shall certify that the information it provides pursuant to this section is true and correct. No claim may be made against the state for inaccurate information contained in statements filed under this section with the Secretary of State.

SEC. 4. Section 2117 of the Corporations Code is amended to read:

2117. (a) Every foreign corporation (other than a foreign association) qualified to transact intrastate business shall file, annually during the applicable filing period, on a form prescribed by the Secretary of State, a statement containing the following:



(1) The names and complete business or residence addresses of its chief executive officer, secretary, and chief financial officer.

(2) The street address of its principal executive office.

(3) The street address of its principal business office in this state, if any.

(4) A statement of the general type of business that constitutes the principal business activity of the corporation (for example, manufacturer of aircraft; wholesale liquor distributor; or retail department store).

(b) The statement required by subdivision (a) shall also designate, as the agent of the corporation for the purpose of service of process, a natural person residing in this state or a corporation that has complied with Section 1505 and whose capacity to act as the agent has not terminated. If a natural person is designated, the statement shall set forth the person's complete business or residence address. If a corporate agent is designated, no address for it shall be set forth.

(c) The statement required by subdivision (a) shall be available and open to the public for inspection. The Secretary of State, not later than December 31, 2004, shall provide access to all information contained in the statement by means of an online database.

(d) In addition to any other fees required, a foreign corporation shall pay a five-dollar (\$5) disclosure fee upon filing the statement required by subdivision (a). One-half of the fee shall be utilized to further the provisions of this section, including the development and maintenance of the online database required by subdivision (d), and one-half shall be deposited into the Victims of Corporate Fraud Compensation Fund established in Section 1502.5.

(e) Whenever any of the information required by subdivision (a) is changed, the corporation may file a current statement containing all the information required by subdivisions (a) and (b). In order to change its agent for service of process or the address of the agent, the corporation shall file a current statement containing all the information required by subdivisions (a) and (b). Whenever any statement is filed pursuant to this section, it supersedes any previously filed statement and the statement in the filing pursuant to Section 2105.

(f) Subdivisions (c), (d), (f), and (g) of Section 1502 apply to statements filed pursuant to this section, except that "articles" shall mean the filing pursuant to Section 2105, and "corporation" shall mean a foreign corporation.

SEC. 5. Section 2117.1 is added to the Corporations Code, to read:

2117.1. (a) In addition to the statement required pursuant to Section 2117, every publicly traded foreign corporation shall file annually, within 150 days after the end of its fiscal year, on a form prescribed by



the Secretary of State, a statement that includes all of the following information:

(1) The name of the independent auditor that prepared the most recent auditor's report on the publicly traded foreign corporation's annual financial statements.

(2) A description of other services, if any, performed for the publicly traded foreign corporation during its two most recent fiscal years and the period between the end of its most recent fiscal year and the date of the statement by the foregoing independent auditor, by its parent corporation, or by a subsidiary or corporate affiliate of the independent auditor or its parent corporation.

(3) The name of the independent auditor employed by the foreign corporation on the date of the statement, if different from the independent auditor listed pursuant to paragraph (1).

(4) The compensation for the most recent fiscal year of the publicly traded foreign corporation paid to each member of the board of directors and paid to each of the five most highly compensated executive officers of the foreign corporation who are not members of the board of directors, including the number of any shares issued, options for shares granted, and similar equity-based compensation granted to each of those persons. If the chief executive officer is not among the five most highly compensated executive officers of the corporation, the compensation paid to the chief executive officer shall also be included.

(5) A description of any loan, including the amount and terms of the loans, made to any member of the board of directors by the publicly traded foreign corporation during the foreign corporation's two most recent fiscal years at an interest rate lower than the interest rate available from unaffiliated commercial lenders generally to a similarly situated borrower.

(6) A statement indicating whether an order for relief has been entered in a bankruptcy case with respect to the foreign corporation, its executive officers, or members of the board of directors of the foreign corporation during the 10 years preceding the date of the statement.

(7) A statement indicating whether any member of the board of directors or executive officer of the publicly traded foreign corporation was convicted of fraud during the 10 years preceding the date of the statement, which conviction has not been overturned or expunged.

(8) A description of any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the corporation or any of its subsidiaries is a party or of which any of their property is the subject, as specified by Item 103 of Regulation S-K of the Securities Exchange Commission (Section 229.103 of Title 12 of the Code of Federal Regulations). A description of any material legal



proceeding during which the corporation was found legally liable by entry of a final judgment or final order that was not overturned on appeal during the five years preceding the date of the statement.

(b) For purposes of this section, the following definitions apply:

(1) “Publicly traded foreign corporation” means a foreign corporation, as defined in Section 171, that is an issuer as defined in Section 3 of the Securities Exchange Act of 1934, as amended (15 U.S.C. Sec. 78c), and has at least one class of securities listed or admitted for trading on a national securities exchange, on the National or Small-Cap Markets of the NASDAQ Stock Market, on the OTC-Bulletin Board, or on the electronic service operated by Pink Sheets, LLC.

(2) “Executive officer” means the chief executive officer, president, any vice president in charge of a principal business unit, division, or function, any other officer of the corporation who performs a policymaking function, or any other person who performs similar policymaking functions for the corporation.

(3) “Compensation” as used in paragraph (4) of subdivision (a) means all plan and nonplan compensation awarded to, earned by, or paid to the person for all services rendered in all capacities to the corporation and to its subsidiaries, as the compensation is specified by Item 402 of Regulation S-K of the Securities and Exchange Commission (Section 229.402 of Title 17 of the Code of Federal Regulations).

(4) “Loan” as used in paragraph (5) of subdivision (a) excludes an advance for expenses, the foreign corporation’s payment of life insurance premiums, and an advance of litigation expenses, in each instance as permitted according to the applicable law of the state or place of incorporation or organization of the foreign corporation.

(c) This statement shall be available and open to the public for inspection. The Secretary of State, not later than December 31, 2004, shall provide access to all information contained in this statement by means of an online database.

(d) A foreign corporation shall certify that the information it provides pursuant to this section is true and correct. No claim may be made against the state for inaccurate information contained in statements filed under this section with the Secretary of State.

SEC. 6. Section 12186 of the Government Code is amended to read:
12186. The fees for corporate filings are the following:

(a) Issuing a certificate of reservation of corporate name: Ten dollars (\$10).

(b) Registering a corporate name for the calendar year pursuant to Section 2101 of the Corporations Code: Fifty dollars (\$50).

(c) Filing articles of incorporation providing for shares: One hundred dollars (\$100).



(d) Filing articles of incorporation not providing for shares: Thirty dollars (\$30).

(e) Filing the statement and designation upon the qualification of a foreign, nonprofit, nonstock corporation, and of a foreign corporation organized for educational, religious, scientific, or charitable purposes, and not issuing shares: Thirty dollars (\$30).

(f) Filing the statement and designation upon the qualification of any other foreign corporation not provided for in subdivision (e): One hundred dollars (\$100).

(g) Filing the statement of information for every corporation pursuant to Sections 1502, 6210, 8210, and 9660 of the Corporations Code: Twenty dollars (\$20).

(h) Filing the statement of information for every foreign corporation (other than a foreign association) qualified to transact intrastate business pursuant to Section 2117 of the Corporations Code: Twenty dollars (\$20).

(i) Filing changes to any statement of information subject to subdivisions (g) and (h): No fee.

(j) Filing the statement pursuant to Section 1502.1 or 2117.1 of the Corporations Code: No fee.

(k) Filing for the merger of one corporation solely with one or more other corporations: One hundred dollars (\$100).

(l) Filing for the merger of one or more corporations with one or more other types of business entities: One hundred fifty dollars (\$150).

(m) Filing a certificate of amendment changing the status of a nonprofit corporation into a stock corporation: Seventy dollars (\$70).

(n) Filing a certificate of election to dissolve a corporation, a certificate of dissolution of a corporation, or a certificate of surrender, or of change of address: No fee.

(o) Filing a statement of address by a foreign lending institution on or before June 30 of each year pursuant to Section 2104 of the Corporations Code: Fifty dollars (\$50).

(p) Filing any other instrument by or on behalf of a corporation, unless another fee is specified by law: Thirty dollars (\$30).

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the provisions of this act to take effect as soon as possible, it is necessary that this act take effect immediately.

