

Introduced by Senator AckermanFebruary 15, 2007

An act to amend Sections 1502, 1502.1, 2117, and 2117.1 of the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 294, as introduced, Ackerman. Corporations: disclosure statements.

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. Existing law makes the information contained in the statement open to public inspection and requires the Secretary of State to make this information available through an online database.

This bill would require these corporations to additionally disclose whether the corporation is publicly traded; and if so, the corporation's Central Index Key, as defined. The bill would require the Secretary of State to include, on its Internet Web site, instructions on how one may use a publicly traded corporation's Central Index Key to obtain information about that corporation from the U.S. Securities and Exchange Commission.

Existing law requires that a publicly traded domestic corporation and a publicly traded foreign corporation file an additional statement annually with the Secretary of State disclosing specified information concerning, among other things, its auditor, compensation of and loans to board members, and information regarding specified legal proceedings.

This bill would specify that this requirement does not apply to a publicly traded domestic or foreign corporation that submitted its Central

Index Key on its most recent annual statement, as specified, and filed specified annual or transition reports with the U.S. Securities and Exchange Commission.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Section 1502 of the Corporations Code is
2 amended to read:

3 1502. (a) Every corporation shall file, within 90 days after the
4 filing of its original articles and annually thereafter during the
5 applicable filing period, on a form prescribed by the Secretary of
6 State, a statement containing all of the following:

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

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

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

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

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

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

20 (7) *A statement as to whether the corporation is a publicly*
21 *traded corporation, as defined in Section 1502.1; and if so, the*
22 *corporation's Central Index Key, if available.*

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

31 (c) If there has been no change in the information in the last
32 filed statement of the corporation on file in the Secretary of State's

1 office, the corporation may, in lieu of filing the statement required
2 by subdivisions (a) and (b), advise the Secretary of State, on a
3 form prescribed by the Secretary of State, that no changes in the
4 required information have occurred during the applicable filing
5 period.

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

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

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

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

33 (h) The statement required by subdivision (a) shall be available
34 and open to the public for inspection. The Secretary of State, ~~not~~
35 ~~later than December 31, 2004,~~ shall provide access to all
36 information contained in this statement ~~by means of an online~~
37 ~~database on its Internet Web site. The Secretary of State shall also~~
38 *include on its Internet Web site instructions describing the manner*
39 *in which a member of the public may use a publicly traded*
40 *corporation's Central Index Key to obtain information about that*

1 corporation from the United States Securities and Exchange
2 Commission.

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

10 (j) A corporation shall certify that the information it provides
11 pursuant to subdivisions (a) and (b) is true and correct. No claim
12 may be made against the state for inaccurate information contained
13 in the statements.

14 (k) “Central Index Key” means the Central Index Key assigned
15 to a corporation by the United States Securities and Exchange
16 Commission pursuant to the EDGAR Filer Manual and Rule 301
17 of Regulation S-T (17 C.F.R. 232.301).

18 SEC. 2. Section 1502.1 of the Corporations Code is amended
19 to read:

20 1502.1. (a) In addition to the statement required pursuant to
21 Section 1502, every publicly traded corporation shall file annually,
22 within 150 days after the end of its fiscal year, a statement, on a
23 form prescribed by the Secretary of State, that includes all of the
24 following information:

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

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

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

37 (4) The compensation for the most recent fiscal year of the
38 corporation paid to each member of the board of directors and paid
39 to each of the five most highly compensated executive officers of
40 the corporation who are not members of the board of directors,

1 including the number of any shares issued, options for shares
2 granted, and similar equity-based compensation granted to each
3 of those persons. If the chief executive officer is not among the
4 five most highly compensated executive officers of the corporation,
5 the compensation paid to the chief executive officer shall also be
6 included.

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

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

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

21 (8) A description of any material pending legal proceedings,
22 other than ordinary routine litigation incidental to the business, to
23 which the corporation or any of its subsidiaries is a party or of
24 which any of their property is the subject, as specified by Item 103
25 of Regulation S-K of the Securities Exchange Commission (Section
26 229.103 of Title 12 of the Code of Federal Regulations). A
27 description of any material legal proceeding during which the
28 corporation was found legally liable by entry of a final judgment
29 or final order that was not overturned on appeal during the five
30 years preceding the date of the statement.

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

32 (1) "Publicly traded corporation" means a corporation, as
33 defined in Section 162, that is an issuer as defined in Section 3 of
34 the Securities Exchange Act of 1934, as amended (15 U.S.C. Sec.
35 78c), and has at least one class of securities listed or admitted for
36 trading on a national securities exchange, on the ~~National or~~
37 ~~Small-Cap~~ *Global, Global Select, or Capital* Markets of the
38 NASDAQ Stock Market *or any successor market thereto*, on the
39 OTC-Bulletin Board, or on the electronic service operated by Pink
40 Sheets, LLC.

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

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

13 (4) “Loan” as used in paragraph (5) of subdivision (a) excludes
14 an advance for expenses permitted under subdivision (d) of Section
15 315, the corporation’s payment of life insurance premiums
16 permitted under subdivision (e) of Section 315, and an advance of
17 expenses permitted under Section 317.

18 (c) This statement shall be available and open to the public for
19 inspection. The Secretary of State, ~~not later than December 31,~~
20 ~~2004,~~ shall provide access to all information contained in this
21 statement ~~by means of an online database on its Internet Web site.~~

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

26 (e) *This section shall not apply to a publicly traded corporation*
27 *that has done both of the following:*

28 (1) *Provided its Central Index Key on its most recent annual*
29 *statement filed pursuant to Section 1502.*

30 (2) *Filed with the United States Securities and Exchange*
31 *Commission its annual report pursuant to Rule 13a-1 or Rule*
32 *13a-3 (17 C.F.R. 240.13a-1 and 17 C.F.R. 240.13a-3), or its*
33 *transition report pursuant to Rule 13a-10 (17 C.F.R. 240.13a-10),*
34 *under the Securities Exchange Act of 1934, as amended, for its*
35 *most recently completed fiscal year.*

36 SEC. 3. Section 2117 of the Corporations Code is amended to
37 read:

38 2117. (a) Every foreign corporation (other than a foreign
39 association) qualified to transact intrastate business shall file,

1 annually during the applicable filing period, on a form prescribed
2 by the Secretary of State, a statement containing the following:

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

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

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

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

12 (5) *A statement as to whether the corporation is a publicly
13 traded foreign corporation, as defined in Section 2117.1; and if
14 so, the corporation's Central Index Key, if available.*

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

23 (c) The statement required by subdivision (a) shall be available
24 and open to the public for inspection. The Secretary of State, ~~not~~
25 ~~later than December 31, 2004,~~ shall provide access to all
26 information contained in the statement ~~by means of an online~~
27 ~~database on its Internet Web site.~~ *The Secretary of State shall also*
28 *include on its Internet Web site instructions describing the manner*
29 *in which a member of the public may use a publicly traded foreign*
30 *corporation's Central Index Key to obtain information about that*
31 *corporation from the United States Securities and Exchange*
32 *Commission.*

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

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

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

14 (g) *“Central Index Key” means the Central Index Key assigned*
15 *to a corporation by the United States Securities and Exchange*
16 *Commission pursuant to the EDGAR Filer Manual and Rule 301*
17 *of Regulation S-T (17 C.F.R. 232.301).*

18 SEC. 4. Section 2117.1 of the Corporations Code is amended
19 to read:

20 2117.1. (a) In addition to the statement required pursuant to
21 Section 2117, every publicly traded foreign corporation shall file
22 annually, within 150 days after the end of its fiscal year, on a form
23 prescribed by the Secretary of State, a statement that includes all
24 of the following information:

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

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

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

37 (4) The compensation for the most recent fiscal year of the
38 publicly traded foreign corporation paid to each member of the
39 board of directors and paid to each of the five most highly
40 compensated executive officers of the foreign corporation who are

1 not members of the board of directors, including the number of
2 any shares issued, options for shares granted, and similar
3 equity-based compensation granted to each of those persons. If
4 the chief executive officer is not among the five most highly
5 compensated executive officers of the corporation, the
6 compensation paid to the chief executive officer shall also be
7 included.

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

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

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

24 (8) A description of any material pending legal proceedings,
25 other than ordinary routine litigation incidental to the business, to
26 which the corporation or any of its subsidiaries is a party or of
27 which any of their property is the subject, as specified by Item 103
28 of Regulation S-K of the Securities Exchange Commission (Section
29 229.103 of Title 12 of the Code of Federal Regulations). A
30 description of any material legal proceeding during which the
31 corporation was found legally liable by entry of a final judgment
32 or final order that was not overturned on appeal during the five
33 years preceding the date of the statement.

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

35 (1) "Publicly traded foreign corporation" means a foreign
36 corporation, as defined in Section 171, that (A) *is qualified to*
37 *transact intrastate business*, (B) is an issuer as defined in Section
38 3 of the Securities Exchange Act of 1934, as amended (15 U.S.C.
39 Sec. 78c), and (C) has at least one class of securities listed or
40 admitted for trading on a national securities exchange, on the

1 ~~National or Small-Cap~~ *Global, Global Select, or Capital Markets*
2 *of the NASDAQ Stock Market or any successor market thereto,*
3 *on the OTC-Bulletin Board, or on the electronic service operated*
4 *by Pink Sheets, LLC.*

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

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

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

22 (c) This statement shall be available and open to the public for
23 inspection. The Secretary of State, ~~not later than December 31,~~
24 ~~2004,~~ shall provide access to all information contained in this
25 statement ~~by means of an online database~~ *on its Internet Web site.*

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

30 (e) *This section shall not apply to a publicly traded foreign*
31 *corporation that has done both of the following:*

32 (1) *Provided its Central Index Key on its most recent annual*
33 *statement filed pursuant to Section 2117.*

34 (2) *Filed with the United States Securities and Exchange*
35 *Commission its annual report pursuant to Rule 13a-1 or Rule*
36 *13a-3 (17 C.F.R. 240.13a-1 and 17 C.F.R. 240.13a-3), or its*
37 *transition report pursuant to Rule 13a-10 (17 C.F.R. 240.13a-10),*

- 1 *under the Securities Exchange Act of 1934, as amended, for its*
- 2 *most recently completed fiscal year.*

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