

ASSEMBLY BILL

No. 1355

Introduced by Assembly Member Wilk

February 22, 2013

An act to amend Section 17704.08 of the Corporations Code, relating to limited liability companies.

LEGISLATIVE COUNSEL'S DIGEST

AB 1355, as introduced, Wilk. Limited liability companies: indemnification: agents.

Existing law requires a corporation, nonprofit public benefit corporation, nonprofit mutual benefit corporation, nonprofit religious corporation, or consumer cooperative corporation to indemnify its agent, as defined, in proceedings, as defined, for the successful defense or settlement of claims brought against the agent by reason of his or her agent status.

Existing law, the California Revised Uniform Limited Liability Company Act, which becomes operative on January 1, 2014, governs the formation and operation of limited liability companies. The act requires a limited liability company to indemnify a member of a member-managed limited liability company or the manager of a manager-managed limited liability company for any liability incurred in the course of the member's or manager's activities on behalf of the limited liability company, if specified conditions are met. Existing law authorizes a limited liability company to purchase and maintain insurance on behalf of a member or manager of the limited liability company against liability asserted against or incurred by the member or manager in that capacity or arising from that status.

This bill would require a limited liability company to indemnify its agent, as defined, in proceedings, as defined, for the successful defense or settlement of claims brought against the agent by reason of his or her agent status.

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

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

1 SECTION 1. Section 17704.08 of the Corporations Code is
2 amended to read:

3 17704.08. (a) A limited liability company shall reimburse for
4 any payment made and indemnify for any debt, obligation, or other
5 liability incurred by a member of a member-managed limited
6 liability company or the manager of a manager-managed limited
7 liability company in the course of the member’s or manager’s
8 activities on behalf of the limited liability company, if, in making
9 the payment or incurring the debt, obligation, or other liability,
10 the member or manager complied with the duties stated in Section
11 17704.09.

12 (b) A limited liability company may purchase and maintain
13 insurance on behalf of a member or manager of the limited liability
14 company against liability asserted against or incurred by the
15 member or manager in that capacity or arising from that status
16 even if, under subdivision (g) of Section 17701.10, the operating
17 agreement could not eliminate or limit the person’s liability to the
18 limited liability company for the conduct giving rise to the liability.

19 (c) (1) *To the extent that an agent of a limited liability company*
20 *has been successful on the merits in defense or settlement of any*
21 *claim, issue, or matter in any proceeding in which the agent was*
22 *or is a party or is threatened to be made a party by reason of the*
23 *fact that the person is or was an agent of the limited liability*
24 *company, if the agent acted in good faith, in a manner the agent*
25 *believed to be in the best interests of the limited liability company*
26 *and its members, the agent shall be indemnified against expenses*
27 *actually and reasonably incurred by the agent in connection*
28 *therewith.*

29 (2) *For purposes of this subdivision, the following terms have*
30 *the following meaning:*

1 (A) “Agent” means any person who is or was a member,
2 manager, employee, or other agent of the limited liability company,
3 or is or was serving at the request of the limited liability company
4 as a member, manager, director, officer, employee or agent of
5 another foreign or domestic corporation, limited liability company
6 or foreign limited liability company, partnership, joint venture,
7 trust, or other enterprise, or was a member, manager, director,
8 officer, employee or agent of a foreign or domestic corporation,
9 limited liability company or foreign limited liability company,
10 partnership, joint venture, trust, or other enterprise that was a
11 predecessor of the limited liability company or of another
12 enterprise at the request of the predecessor corporation or other
13 enterprise.

14 (B) “Expenses” includes without limitation the attorney’s fees
15 and expenses of establishing a right to indemnification under this
16 subdivision.

17 (C) “Proceeding” means any threatened, pending, or completed
18 action or proceeding, whether civil, criminal, administrative, or
19 investigative.