

AMENDED IN ASSEMBLY JANUARY 6, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1355**

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**Introduced by Assembly Member Wilk**

February 22, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1355, as amended, 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~~, *member*  
2 *of a member-managed limited liability company or a* manager,  
3 employee, or other agent of the limited liability company, or is or  
4 was serving at the request of the limited liability company as a  
5 ~~member~~, *member of another member-managed limited liability*  
6 *company or foreign limited liability company, or as a* manager,  
7 director, officer, employee or agent of another foreign or domestic  
8 corporation, limited liability company or foreign limited liability  
9 company, partnership, joint venture, trust, or other enterprise, or  
10 was a ~~member~~, *member of another member-managed limited*  
11 *liability company or foreign limited liability company, or a*  
12 manager, director, officer, employee or agent of a foreign or  
13 domestic corporation, limited liability company or foreign limited  
14 liability company, partnership, joint venture, trust, or other  
15 enterprise that was a predecessor of the limited liability company  
16 or of another enterprise at the request of the predecessor  
17 corporation or other enterprise.

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

21 (C) “Proceeding” means any threatened, pending, or completed  
22 action or proceeding, whether civil, criminal, administrative, or  
23 investigative.

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