

ASSEMBLY BILL

No. 844

Introduced by Assembly Member Bloom

February 26, 2015

An act to amend Sections 2105 and 17708.02 of the Corporations Code, and to amend Section 1524.2 of the Penal Code, relating to search warrants.

LEGISLATIVE COUNSEL'S DIGEST

AB 844, as introduced, Bloom. Search warrants: foreign corporations and foreign limited liability companies.

Existing law prohibits a foreign corporation from transacting intrastate business without a certificate of qualification from the Secretary of State, and requires a statement filed for a certificate of qualification to include, among other things, an agent for service of process within the state. Existing law prohibits a foreign limited liability company transacting intrastate business in this state from maintaining an action or proceeding in this state unless it has a certificate of registration filed with the Secretary of State, and requires an application for a certificate of registration to include, among other things, an agent for service of process.

This bill would specify that a foreign corporation and foreign limited liability company may consent to service of process for a search warrant by email or submission to a designated Internet Web portal.

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 2105 of the Corporations Code is
2 amended to read:

3 2105. (a) A foreign corporation shall not transact intrastate
4 business without having first obtained from the Secretary of State
5 a certificate of qualification. To obtain that certificate it shall file,
6 on a form prescribed by the Secretary of State, a statement and
7 designation signed by a corporate officer or, in the case of a foreign
8 association that has no officers, signed by a trustee stating:

9 (1) Its name and the state or place of its incorporation or
10 organization.

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

12 (3) The street address of its principal office within this state, if
13 any.

14 (4) The mailing address of its principal executive office, if
15 different from the addresses specified pursuant to paragraphs (2)
16 and (3).

17 (5) The name of an agent upon whom process directed to the
18 corporation may be served within this state. The designation shall
19 comply with the provisions of subdivision (b) of Section 1502.

20 (6) (A) Its irrevocable consent to service of process directed to
21 it upon the agent designated and to service of process on the
22 Secretary of State if the agent so designated or the agent’s successor
23 is no longer authorized to act or cannot be found at the address
24 given.

25 (B) Consent under this paragraph extends to service of process
26 directed to the foreign corporation’s agent in California for a search
27 warrant issued pursuant to Section 1524.2 of the Penal Code, or
28 for any other validly issued and properly served search warrant,
29 for records or documents that are in the possession of the foreign
30 corporation and are located inside or outside of this state. This
31 subparagraph shall apply to a foreign corporation that is a party
32 or a nonparty to the matter for which the search warrant is sought.
33 For purposes of this subparagraph, “properly served” means
34 delivered by hand, or in a manner reasonably allowing for proof
35 of delivery if delivered by United States mail, overnight delivery
36 service, or facsimile to a person or entity listed in Section ~~2110.~~
37 *2110, or any other means specified by the foreign corporation,*
38 *including, but not limited to, email or submission via an Internet*

1 *web portal that the foreign corporation has designated for the*
2 *purpose of service of process.*

3 (7) If it is a corporation which will be subject to the Insurance
4 Code as an insurer, it shall so state that fact.

5 (b) Annexed to that statement and designation shall be a
6 certificate by an authorized public official of the state or place of
7 incorporation of the corporation to the effect that the corporation
8 is an existing corporation in good standing in that state or place
9 or, in the case of an association, an officers' certificate stating that
10 it is a validly organized and existing business association under
11 the laws of a specified foreign jurisdiction.

12 (c) Before it may be designated by any foreign corporation as
13 its agent for service of process, any corporate agent must comply
14 with Section 1505.

15 SEC. 2. Section 17708.02 of the Corporations Code is amended
16 to read:

17 17708.02. (a) A foreign limited liability company may apply
18 for a certificate of registration to transact business in this state by
19 delivering an application to the Secretary of State for filing on a
20 form prescribed by the Secretary of State. The application shall
21 state all of the following:

22 (1) The name of the foreign limited liability company, and, if
23 the name does not comply with Section 17701.08, an alternate
24 name adopted pursuant to subdivision (a) of Section 17708.05.

25 (2) The state or other jurisdiction under whose law the foreign
26 limited liability company is organized and the date of its
27 organization in that state or other jurisdiction, and a statement that
28 the foreign limited liability company is authorized to exercise its
29 powers and privileges in that state or other jurisdiction.

30 (3) The street address of the foreign limited liability company's
31 principal office and of its principal business office in this state, if
32 any.

33 (4) (A) The name and street address of the foreign limited
34 liability company's initial agent for service of process in this ~~state,~~
35 *state who consents to service of process and* meets the
36 qualifications specified in subdivision (c) of Section 17701.13. If
37 a corporate agent is designated, only the name of the agent shall
38 be set forth.

39 (B) *Consent under this paragraph extends to service of process*
40 *directed to the foreign limited liability company's agent in*

1 *California for a search warrant issued pursuant to Section 1524.2*
2 *of the Penal Code, or for any other validly issued and properly*
3 *served search warrant, for records or documents that are in the*
4 *possession of the foreign limited liability company and are located*
5 *inside or outside of this state. This subparagraph shall apply to a*
6 *foreign limited liability company that is a party or a nonparty to*
7 *the matter for which the search warrant is sought. For purposes*
8 *of this subparagraph, properly served means delivered by hand,*
9 *or in a manner reasonably allowing for proof of delivery if*
10 *delivered by United States mail, overnight delivery service,*
11 *facsimile, or any other means specified by the foreign limited*
12 *liability company, including email or submission via an Internet*
13 *web portal the foreign limited liability company has designated*
14 *for the purpose of service of process.*

15 (5) A statement that the Secretary of State is appointed the agent
16 of the foreign limited liability company for service of process if
17 the agent has resigned and has not been replaced or if the agent
18 cannot be found or served with the exercise of reasonable diligence.

19 (6) The mailing address of the foreign limited liability company
20 if different than the street address of the principal office, or
21 principal business office in this state.

22 (b) A foreign limited liability company shall deliver with a
23 completed application under subdivision (a) a certificate of
24 existence, status, or good standing or a record of similar import
25 signed by the Secretary of State or other official having custody
26 of the foreign limited liability company's publicly filed records in
27 the state or other jurisdiction under whose law the foreign limited
28 liability company is formed.

29 (c) The Secretary of State shall include with instructional
30 materials, provided in conjunction with registration under
31 subdivision (a), a notice that filing the registration will obligate
32 the foreign limited liability company to pay an annual tax to the
33 Franchise Tax Board pursuant to Section 17941 of the Revenue
34 and Taxation Code. That notice shall be updated annually to specify
35 the dollar amount of the tax.

36 SEC. 3. Section 1524.2 of the Penal Code is amended to read:

37 1524.2. (a) As used in this section, the following terms have
38 the following meanings:

39 (1) The terms "electronic communication services" and "remote
40 computing services" shall be construed in accordance with the

1 Electronic Communications Privacy Act in Chapter 121
2 (commencing with Section 2701) of Part I of Title 18 of the United
3 State Code Annotated. This section shall not apply to corporations
4 that do not provide those services to the general public.

5 (2) An “adverse result” occurs when notification of the existence
6 of a search warrant results in:

7 (A) Danger to the life or physical safety of an individual.

8 (B) A flight from prosecution.

9 (C) The destruction of or tampering with evidence.

10 (D) The intimidation of potential witnesses.

11 (E) Serious jeopardy to an investigation or undue delay of a
12 trial.

13 (3) “Applicant” refers to the peace officer to whom a search
14 warrant is issued pursuant to subdivision (a) of Section 1528.

15 (4) “California corporation” refers to any corporation or other
16 entity that is subject to Section 102 of the Corporations Code,
17 excluding foreign corporations.

18 (5) “Foreign corporation” refers to any corporation that is
19 qualified to do business in this state pursuant to Section 2105 of
20 the Corporations Code.

21 (6) “Properly served” means that a search warrant has been
22 delivered by hand, or in a manner reasonably allowing for proof
23 of delivery if delivered by United States mail, overnight delivery
24 service, or facsimile to a person or entity listed in Section 2110 of
25 the Corporations ~~Code~~. *Code, or any other means specified by the*
26 *recipient of the search warrant, including email or submission via*
27 *an Internet web portal that the recipient has designated for the*
28 *purpose of service of process.*

29 (b) The following provisions shall apply to any search warrant
30 issued pursuant to this chapter allowing a search for records that
31 are in the actual or constructive possession of a foreign corporation
32 that provides electronic communication services or remote
33 computing services to the general public, where those records
34 would reveal the identity of the customers using those services,
35 data stored by, or on behalf of, the customer, the customer’s usage
36 of those services, the recipient or destination of communications
37 sent to or from those customers, or the content of those
38 communications.

39 (1) When properly served with a search warrant issued by the
40 California court, a foreign corporation subject to this section shall

1 provide to the applicant, all records sought pursuant to that warrant
2 within five business days of receipt, including those records
3 maintained or located outside this state.

4 (2) Where the applicant makes a showing and the magistrate
5 finds that failure to produce records within less than five business
6 days would cause an adverse result, the warrant may require
7 production of records within less than five business days. A court
8 may reasonably extend the time required for production of the
9 records upon finding that the foreign corporation has shown good
10 cause for that extension and that an extension of time would not
11 cause an adverse result.

12 (3) A foreign corporation seeking to quash the warrant must
13 seek relief from the court that issued the warrant within the time
14 required for production of records pursuant to this section. The
15 issuing court shall hear and decide that motion no later than five
16 court days after the motion is filed.

17 (4) The foreign corporation shall verify the authenticity of
18 records that it produces by providing an affidavit that complies
19 with the requirements set forth in Section 1561 of the Evidence
20 Code. Those records shall be admissible in evidence as set forth
21 in Section 1562 of the Evidence Code.

22 (c) A California corporation that provides electronic
23 communication services or remote computing services to the
24 general public, when served with a warrant issued by another state
25 to produce records that would reveal the identity of the customers
26 using those services, data stored by, or on behalf of, the customer,
27 the customer's usage of those services, the recipient or destination
28 of communications sent to or from those customers, or the content
29 of those communications, shall produce those records as if that
30 warrant had been issued by a California court.

31 (d) No cause of action shall lie against any foreign or California
32 corporation subject to this section, its officers, employees, agents,
33 or other specified persons for providing records, information,
34 facilities, or assistance in accordance with the terms of a warrant
35 issued pursuant to this chapter.

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