

ASSEMBLY BILL

No. 1187

Introduced by Assembly Member Travis Allen

February 27, 2015

An act to amend Section 17701.02 of the Corporations Code, relating to limited liability companies.

LEGISLATIVE COUNSEL'S DIGEST

AB 1187, as introduced, Travis Allen. Limited liability companies.

The California Revised Uniform Limited Liability Company Act governs the formation and operation of limited liability companies. The act defines various terms for the purposes of its provisions.

This bill would make a nonsubstantive change to these definitions.

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 17701.02 of the Corporations Code is
2 amended to read:
3 17701.02. In this title:
4 (a) "Acknowledged" means that an instrument is either of the
5 following:
6 (1) Formally acknowledged as provided in Article 3
7 (commencing with Section 1180) of Chapter 4 of Title 4 of Part
8 4 of Division 2 of the Civil Code.
9 (2) Executed to include substantially the following wording
10 preceding the signature:
11

1 “It is hereby declared that I am the person who executed this
2 instrument which execution is my act and deed.”

3
4 Any certificate of acknowledgment taken without this state
5 before a notary public or a judge or clerk of a court of record
6 having an official seal need not be further authenticated.

7 (b) “Articles of organization” means the articles required by
8 Section 17702.01. The term includes the articles of organization
9 as amended or restated.

10 (c) “Contribution” means any benefit provided by a person to
11 a limited liability company:

12 (1) In order to become a member upon formation of the limited
13 liability company and in accordance with an agreement between
14 or among the persons that have agreed to become the initial
15 members of the limited liability company.

16 (2) In order to become a member after formation of the limited
17 liability company and in accordance with an agreement between
18 the person and the limited liability company.

19 (3) In the person’s capacity as a member and in accordance with
20 the operating agreement or an agreement between the member and
21 the limited liability company.

22 (d) “Debtor in bankruptcy” means a person that is the subject
23 of either of the following:

24 (1) An order for relief under Title 11 of the United States Code
25 or a successor statute of general application.

26 (2) A comparable order under federal, state, or foreign law
27 governing bankruptcy or insolvency, an assignment for the benefit
28 of creditors, or an order appointing a trustee, receiver, or liquidator
29 of the person or of all or substantially all of the person’s property.

30 (e) “Designated office” means either of the following:

31 (1) The office that a limited liability company is required to
32 designate and maintain under Section 17701.13.

33 (2) The principal office of a foreign limited liability company.

34 (f) “Distribution,” except as otherwise provided in subdivision
35 (g) of Section 17704.05, means a transfer of money or other
36 property from a limited liability company to another person on
37 account of a transferable interest.

38 (g) “Domestic” means organized under the laws of this state
39 when used in relation to any limited liability company, other
40 business entity, or person other than a natural person.

1 (h) “Effective,” with respect to a record required or permitted
2 to be delivered to the Secretary of State for filing under this title,
3 means effective under subdivision (c) of Section 17702.05.

4 (i) (1) “Electronic transmission by the limited liability
5 company” means a communication delivered by any of the
6 following means:

7 (A) Facsimile telecommunication or electronic mail when
8 directed to the facsimile number or electronic mail address,
9 respectively, for that recipient on record with the limited liability
10 company.

11 (B) Posting on an electronic message board or network that the
12 limited liability company has designated for those communications,
13 together with a separate notice to the recipient of the posting, which
14 transmission shall be validly delivered upon the later of the posting
15 or delivery of the separate notice thereof.

16 (C) Other means of electronic communication to which both of
17 the following apply:

18 (i) The communication is delivered to a recipient who has
19 provided an unrevoked consent to the use of those means of
20 transmission.

21 (ii) The communication creates a record that is capable of
22 retention, retrieval, and review, and that may thereafter be rendered
23 into clearly legible tangible form. However, an electronic
24 transmission by a limited liability company to an individual
25 member is not authorized unless, in addition to satisfying the
26 requirements of this section, the transmission satisfies the
27 requirements applicable to consumer consent to electronic records
28 as set forth in the federal Electronic Signatures in Global and
29 National Commerce Act (15 U.S.C. Sec. 7001(c)(1)).

30 (2) “Electronic transmission to the limited liability company”
31 means a communication delivered by any of the following means:

32 (A) Facsimile telecommunication or electronic mail when
33 directed to the facsimile number or electronic mail address,
34 respectively, that the limited liability company has provided from
35 time to time to members or managers for sending communications
36 to the limited liability company.

37 (B) Posting on an electronic message board or network that the
38 limited liability company has designated for those communications,
39 which transmission shall be validly delivered upon the posting.

1 (C) Other means of electronic communication to which both of
2 the following apply:

3 (i) The limited liability company has placed in effect reasonable
4 measures to verify that the sender is the member or manager, in
5 person or by proxy, purporting to send the transmission.

6 (ii) The communication creates a record that is capable of
7 retention, retrieval, and review, and that may thereafter be rendered
8 into clearly legible tangible form.

9 (j) “Foreign limited liability company” means an unincorporated
10 entity formed under the law of a jurisdiction other than this state
11 and denominated by that law as a limited liability company.

12 (k) “Limited liability company,” except in the phrase “foreign
13 limited liability company,” means an entity formed ~~under~~ *pursuant*
14 *to* this title or an entity that becomes subject to this title pursuant
15 to Article 13 (commencing with Section 17713.01).

16 (l) “Majority of the managers” unless otherwise provided in the
17 operating agreement, means more than 50 percent of the managers
18 of the limited liability company.

19 (m) “Majority of the members” unless otherwise provided in
20 the operating agreement, means more than 50 percent of the
21 membership interests of members in current profits of the limited
22 liability company.

23 (n) “Manager” means a person that under the operating
24 agreement of a manager-managed limited liability company is
25 responsible, alone or in concert with others, for performing the
26 management functions stated in subdivision (c) of Section
27 17704.07.

28 (o) “Manager-managed limited liability company” means a
29 limited liability company that qualifies under subdivision (a) of
30 Section 17704.07.

31 (p) “Member” means a person that has become a member of a
32 limited liability company under Section 17704.01 and has not
33 dissociated under Section 17706.02.

34 (q) “Member-managed limited liability company” means a
35 limited liability company that is not a manager-managed limited
36 liability company.

37 (r) “Membership interest” means a member’s rights in the
38 limited liability company, including the member’s transferable
39 interest, any right to vote or participate in management, and any

1 right to information concerning the business and affairs of the
2 limited liability company provided by this title.

3 (s) “Operating agreement” means the agreement, whether or
4 not referred to as an operating agreement and whether oral, in a
5 record, implied, or in any combination thereof, of all the members
6 of a limited liability company, including a sole member, concerning
7 the matters described in subdivision (a) of Section 17701.10. The
8 term “operating agreement” may include, without more, an
9 agreement of all members to organize a limited liability company
10 pursuant to this title. An operating agreement of a limited liability
11 company having only one member shall not be unenforceable by
12 reason of there being only one person who is a party to the
13 operating agreement. The term includes the agreement as amended
14 or restated.

15 (t) “Organization” means, whether domestic or foreign, a
16 partnership whether general or limited, limited liability company,
17 association, corporation, professional corporation, professional
18 association, nonprofit corporation, business trust, or statutory
19 business trust having a governing statute.

20 (u) “Organizer” means a person that acts under Section 17702.01
21 to form a limited liability company.

22 (v) “Person” means an individual, partnership, limited
23 partnership, trust, estate, association, corporation, limited liability
24 company, or other entity, whether domestic or foreign. Nothing
25 in this subdivision shall be construed to confer any rights under
26 the California Constitution or the United States Constitution.

27 (w) “Principal office” means the principal executive office of
28 a limited liability company or foreign limited liability company,
29 whether or not the office is located in this state.

30 (x) “Record” means information that is inscribed on a tangible
31 medium or that is stored in an electronic or other medium and is
32 retrievable in perceivable form.

33 (y) “State” means a state of the United States, the District of
34 Columbia, Puerto Rico, the United States Virgin Islands, or any
35 territory or insular possession subject to the jurisdiction of the
36 United States.

37 (z) “Transfer” includes an assignment, conveyance, deed, bill
38 of sale, lease, mortgage, security interest, encumbrance, gift, and
39 transfer by operation of law.

- 1 (aa) “Transferable interest” means the right, as originally
2 associated with a person’s capacity as a member, to receive
3 distributions from a limited liability company in accordance with
4 the operating agreement, whether or not the person remains a
5 member or continues to own any part of the right.
- 6 (ab) “Transferee” means a person to which all or part of a
7 transferable interest has been transferred, whether or not the
8 transferor is a member.
- 9 (ac) “Vote” includes authorization by written consent or consent
10 given by electronic transmission to the limited liability company.