

ASSEMBLY BILL

No. 1722

Introduced by Assembly Member Wagner

January 28, 2016

An act to amend Sections 17707.01 and 17707.02 of the Corporations Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

AB 1722, as introduced, Wagner. Limited liability companies: dissolution: cancellation of articles of organization.

Existing law, the California Revised Uniform Limited Liability Company Act, authorizes a limited liability company to have any lawful purpose, except as specified. A limited liability company is an entity distinct from its members. Existing law authorizes one or more persons to form a limited liability company by, among other things, signing and delivering articles of organization to the Secretary of State. Under existing law, a limited liability company is a member-managed limited liability company unless the articles of organization contain a statement that the limited liability company is to be manager managed. Under existing law, the operating agreement governs, among other things, relations among the members as members and between the members and the limited liability company and the activities of the limited liability company.

Under existing law, a limited liability company is dissolved, and its activities are required to be wound up, if, among other things, a majority of the members of the limited liability company votes to dissolve.

This bill would instead require the vote of 50% of the voting interests of the members of the limited liability company to dissolve.

Under existing law, if a domestic limited liability company has not conducted any business, only a majority of the members, or, if there are no members, the majority of the managers, if any, or if no members or managers, the person or a majority of the persons signing the articles of organization, are authorized to execute and acknowledge a certificate of cancellation of articles of organization, on a specified form prescribed by the Secretary of State.

This bill would replace that majority requirement to cancel the articles of organization with 50% of the voting interests of the members or managers, or 50% of the persons signing the articles of incorporation, as applicable.

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 17707.01 of the Corporations Code is
2 amended to read:
3 17707.01. A limited liability company is dissolved, and its
4 activities shall be wound up, upon the happening of the first to
5 occur of the following:
6 (a) On the happening of an event set forth in a written operating
7 agreement or the articles of organization.
8 (b) By the vote of ~~a majority~~ 50 percent of the voting interests
9 of the members of the limited liability company or a greater
10 percentage of the voting interests of members as may be specified
11 in the articles of organization, or a written operating agreement.
12 (c) The passage of 90 consecutive days during which the limited
13 liability company has no members, except that, on the death of a
14 natural person who is the sole member of a limited liability
15 company, the status of the member, including a membership
16 interest, may pass to one or more heirs, successors, and assigns of
17 the member by will or applicable law. An heir, successor, or assign
18 of the member's interest becomes a substituted member pursuant
19 to paragraph (4) of subdivision (c) of Section 17704.01, subject
20 to administration as provided by applicable law, without the
21 permission or consent of the heirs, successors, or assigns or those
22 administering the estate of the deceased member.

1 (d) Entry of a decree of judicial dissolution pursuant to Section
2 17707.03.

3 SEC. 2. Section 17707.02 of the Corporations Code is amended
4 to read:

5 17707.02. (a) Notwithstanding any other provision of this title,
6 if a domestic limited liability company has not conducted any
7 business, ~~only a majority 50 percent of the voting interests~~ of the
8 members, or, if there are no members, ~~the majority 50 percent of~~
9 ~~the voting interests~~ of the managers, if any, or if no members or
10 managers, the person or ~~a majority 50 percent~~ of the persons
11 signing the articles of organization, may execute and acknowledge
12 a certificate of cancellation of articles of organization, on a form
13 prescribed by the Secretary of State, stating all of the following:

14 (1) The name of the domestic limited liability company and the
15 Secretary of State's file number.

16 (2) That the certificate of cancellation is being filed within 12
17 months from the date the articles of organization was filed.

18 (3) That the limited liability company does not have any debts
19 or other liabilities, except as provided in paragraph (4).

20 (4) That a final franchise tax return, as described by Section
21 23332 of the Revenue and Taxation Code, or a final annual tax
22 return, as described by Section 17947 of the Revenue and Taxation
23 Code, has been or will be filed with the Franchise Tax Board, as
24 required under Part 10.2 (commencing with Section 18401) of
25 Division 2 of the Revenue and Taxation Code.

26 (5) That the known assets of the limited liability company
27 remaining after payment of, or adequately providing for, known
28 debts and liabilities have been distributed to the persons entitled
29 thereto or that the limited liability company acquired no known
30 assets, as the case may be.

31 (6) That the limited liability company has not conducted any
32 business from the time of the filing of the articles of organization.

33 (7) That ~~a majority 50 percent of the voting interests~~ of the
34 managers or members voted, or, if no managers or members, the
35 person or ~~a majority 50 percent~~ of the persons signing the articles
36 of organization, voted to dissolve the limited liability company.

37 (8) If the limited liability company has received payments for
38 interests from investors, that those payments have been returned
39 to those investors.

1 (b) A certificate of cancellation executed and acknowledged
2 pursuant to subdivision (a) shall be filed with the Secretary of State
3 within 12 months from the date that the articles of organization
4 was filed. The Secretary of State shall notify the Franchise Tax
5 Board of the cancellation.

6 (c) Upon filing a certificate of cancellation pursuant to
7 subdivision (a), a limited liability company shall be canceled and
8 its powers, rights, and privileges shall cease.