

Assembly Bill No. 831

Passed the Assembly September 8, 1999

Chief Clerk of the Assembly

Passed the Senate September 3, 1999

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 1999, at _____ o'clock ____M.

Private Secretary of the Governor



CHAPTER _____

An act to amend Sections 17001, 17050, and 17101 of the Corporations Code, relating to limited liability companies.

LEGISLATIVE COUNSEL'S DIGEST

AB 831, Leach. Limited liability companies: formation.

Existing provisions of the Beverly-Killea Limited Liability Company Act authorize the creation of, and govern the activities of, limited liability companies. Existing law generally provides that the members of a limited liability company are personally liable under a judgment of a court or for any debt, obligation, or liability of the company under the same or similar circumstances and to the same extent as a shareholder of a corporation, except with respect to the failure to hold meetings or to observe certain formalities at meetings under specified conditions. Existing law also generally requires limited liability companies to have 2 or more members.

This bill would permit limited liability companies to have one member, and would provide that the members of a limited liability company are subject to the common law of alter ego liability.

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

SECTION 1. Section 17001 of the Corporations Code is amended to read:

17001. Unless the context otherwise indicates, the following definitions govern the construction of this title:

(a) "Acknowledged" means that an instrument is either of the following:

(1) Formally acknowledged as provided in Article 3 (commencing with Section 1180) of Chapter 4 of Title 4 of Part 4 of Division 2 of the Civil Code.

(2) Executed to include substantially the following wording preceding the signature: It is hereby declared



that I am the person who executed this instrument, which execution is my act and deed.

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

(b) “Articles of organization” means articles of organization filed under Section 17050, including all amendments thereto or restatements thereof, or, in the case of a foreign limited liability company, all documents that serve a like function under the laws of the jurisdiction in which the foreign limited liability company is organized.

(c) “Bankrupt” or “bankruptcy” means, with respect to any person, being the subject of an order for relief under Title 11 of the United States Code, or any successor statute or other statute in any foreign jurisdiction having like import or effect.

(d) “Capital account” means, unless otherwise provided in the operating agreement, the amount of the capital interest of a member in the limited liability company consisting of that member’s original contribution, as (1) increased by any additional contributions and by that member’s share of the limited liability company’s profits, and (2) decreased by any distribution to that member and by that member’s share of the limited liability company’s losses.

(e) “Constituent limited liability company” means a limited liability company that is merged with or into one or more other limited liability companies or other business entities and includes a surviving limited liability company.

(f) “Constituent other business entity” means any other business entity that is merged with or into one or more limited liability companies and includes a surviving other business entity.

(g) “Contribution” means any money, property, or services rendered, or a promissory note or other binding obligation to contribute money or property, or to render services as permitted in this title, which a member



contributes to a limited liability company as capital in that member's capacity as a member pursuant to an agreement between the members, including an agreement as to value.

(h) "Disappearing limited liability company" means a constituent limited liability company that is not the surviving limited liability company.

(i) "Disappearing other business entity" means a constituent other business entity that is not the surviving other business entity.

(j) "Distribution" means the transfer of money or property by a limited liability company to its members without consideration.

(k) "Domestic" means organized under the laws of this state when used in relation to any limited liability company, other business entity or person (other than a natural person).

(l) "Domestic corporation" means a corporation as defined in Section 162.

(m) "Domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(n) "Economic interest" means a person's right to share in the income, gains, losses, deductions, credit, or similar items of, and to receive distributions from, the limited liability company, but does not include any other rights of a member, including, without limitation, the right to vote or to participate in management, or, except as provided in Section 17106, any right to information concerning the business and affairs of the limited liability company.

(o) [RESERVED]

(p) "Foreign corporation" means a corporation formed under the laws of any state other than this state or under the laws of the United States or of a foreign country.

(q) "Foreign limited liability company" means either (1) an entity formed under the limited liability company laws of any state other than this state, or (2) an entity



organized under the laws of any foreign country that is (A) an unincorporated association, (B) organized under a statute pursuant to which an association may be formed that affords each of its members limited liability with respect to the liabilities of the entity, and (C) not an entity that is required to be registered or qualified pursuant to the provisions of Title 1 (commencing with Section 100) or Title 2 (commencing with Section 15001); but the term “foreign limited liability company” does not include a foreign association, as defined in Section 170.

(r) “Foreign limited partnership” means a partnership formed under the laws of any state other than this state or under the laws of a foreign country and having as partners one or more general partners and one or more limited partners or their equivalents under any name.

(s) “Foreign other business entity” means any other business entity formed under the laws of any state other than this state or under the laws of the United States or of a foreign country.

(t) “Limited liability company” or “domestic limited liability company” means an entity having one or more members that is organized under this title and is subject to the provisions of Section 17101.

(u) “Mail” unless otherwise provided in the operating agreement, means first-class mail, postage prepaid, unless registered mail is specified. Registered mail includes certified mail.

(v) “Majority in interest of the members,” unless otherwise provided in the operating agreement, means more than 50 percent of the interests of members in current profits of the limited liability company.

(w) “Manager” means a person elected by the members of a limited liability company to manage the limited liability company if the articles of organization contain the statement referred to in subdivision (b) of Section 17151 or, if the articles of organization do not contain that statement, “manager” means each of the members of the limited liability company.

(x) “Member” means a person who:



(1) Has been admitted to a limited liability company as a member in accordance with the articles of organization or operating agreement, or an assignee of an interest in a limited liability company who has become a member pursuant to Section 17303.

(2) Has not resigned, withdrawn, or been expelled as a member or, if other than an individual, been dissolved.

(y) “Member of record” means a member named as a member on the list maintained in accordance with paragraph (1) of subdivision (a) of Section 17058.

(z) “Membership interest” means a member’s rights in the limited liability company, collectively, including the member’s economic interest, any right to vote or participate in management, and any right to information concerning the business and affairs of the limited liability company provided by this title.

(aa) “Officer” means any person elected or appointed pursuant to Section 17154.

(ab) “Operating agreement” means any agreement, written or oral, between all of the members as to the affairs of a limited liability company and the conduct of its business in any manner not inconsistent with law or the articles of organization, including all amendments thereto, or, in the case of a foreign limited liability company, all documents that serve a like function under the laws of the jurisdiction in which the foreign limited liability company is organized. The term “operating agreement” may include, without more, an agreement between all the members to organize a limited liability company pursuant to the provisions of this title.

(ac) “Other business entity” means a corporation, limited partnership, general partnership, business trust, real estate investment trust, or an unincorporated association (other than a nonprofit association), but excluding a domestic limited liability company and a foreign limited liability company.

(ad) “Parent,” when used in relation to a specified limited liability company, means a person who owns, directly or indirectly, membership interests possessing more than 50 percent of the voting power of the specified



limited liability company. When used in relation to a specified corporation or limited partnership, the term “parent” shall have the meanings set forth in Section 1200 and subdivision (v) of Section 15611, respectively.

(ae) “Person” means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, whether domestic or foreign.

(af) [RESERVED]

(ag) [RESERVED]

(ah) [RESERVED]

(ai) “Proxy,” unless otherwise provided in the operating agreement, means a written authorization signed or an electronic transmission authorized by a member or the member’s attorney-in-fact giving another person the power to exercise the voting rights of that member. “Signed,” for the purpose of this section, means the placing of the member’s name on the proxy (whether by manual signature, typewriting, telegraphic or electronic transmission, or otherwise) by the member or member’s attorney-in-fact.

A proxy may be transmitted by an oral telephonic transmission if it is submitted with information from which it may be determined that the proxy was authorized by the member, or by the member’s attorney-in-fact.

(aj) “Return of capital,” unless otherwise provided in the operating agreement, means any distribution to a member to the extent that the member’s capital account, immediately after the distribution, is less than the amount of that member’s contributions to the limited liability company as reduced by prior distributions that were a return of capital.

(ak) “State” means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(al) “Subsidiary of a specified limited liability company” means a limited liability company or other business entity in which shares, interests, or other securities possessing more than 50 percent of the voting



power are owned by the specified limited liability company.

(am) “Surviving limited liability company” means a limited liability company into which one or more other limited liability companies or other business entities are merged.

(an) “Surviving other business entity” means an other business entity into which one or more limited liability companies are merged.

(ao) “Time a notice is given or sent,” unless otherwise expressly provided, means the time a written notice is deposited in the United States mail ; is personally delivered to the recipient, is delivered to a common carrier for transmission, or is actually transmitted by the person giving the notice by electronic means, to the recipient; or the time any oral notice is communicated, in person or by telephone, to the recipient or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the recipient.

(ap) “Transact intrastate business” means to enter into repeated and successive transactions of business in this state, other than in interstate or foreign commerce.

(1) Without excluding other activities which may not be considered to be transacting intrastate business, a foreign limited liability company shall not be considered to be transacting intrastate business merely because its subsidiary transacts intrastate business, or merely because of its status as any one or more of the following:

(A) A shareholder of a domestic corporation.

(B) A shareholder of a foreign corporation transacting intrastate business.

(C) A limited partner of a foreign limited partnership transacting intrastate business.

(D) A limited partner of a domestic limited partnership.

(E) A member or manager of a foreign limited liability company transacting intrastate business.

(F) A member or manager of a domestic limited liability company.



(2) Without excluding other activities which may not be considered to be transacting intrastate business, a foreign limited liability company shall not be considered to be transacting intrastate business within the meaning of this subdivision solely by reason of carrying on in this state any one or more of the following activities:

(A) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof, or the settlement of claims or disputes.

(B) Holding meetings of its managers or members or carrying on any other activities concerning its internal affairs.

(C) Maintaining bank accounts.

(D) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's securities or maintaining trustees or depositaries with respect to those securities.

(E) Effecting sales through independent contractors.

(F) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where those orders require acceptance without this state before becoming binding contracts.

(G) Creating or acquiring evidences of debt or mortgages, liens, or security interests in real or personal property.

(H) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

(I) Conducting an isolated transaction that is completed within 180 days and not in the course of a number of repeated transactions of a like nature.

(3) A person shall not be deemed to be transacting intrastate business in this state merely because of its status as a member or manager of a domestic limited liability company or a foreign limited liability company registered to transact intrastate business in this state.

(aq) "Vote" includes authorization by written consent.



(ar) “Voting power” means the power to vote on any matter at the time any determination of voting power is made and does not include the right to vote upon the happening of some condition or event which has not yet occurred.

(as) “Withdrawal” includes the resignation or retirement of a member as a member.

(at) “Written” or “in writing” includes facsimile and telegraphic communication.

SEC. 2. Section 17050 of the Corporations Code is amended to read:

17050. (a) In order to form a limited liability company, one or more persons shall execute and file articles of organization with, and on a form prescribed by, the Secretary of State and, either before or after the filing of articles of organization, the members shall have entered into an operating agreement. The person or persons who execute and file the articles of organization may, but need not, be members of the limited liability company.

(b) A limited liability company shall have one or more members.

(c) The existence of a limited liability company begins upon the filing of the articles of organization. For all purposes, a copy of the articles of organization duly certified by the Secretary of State is conclusive evidence of the formation of a limited liability company and prima facie evidence of its existence.

SEC. 3. Section 17101 of the Corporations Code is amended to read:

17101. (a) Except as otherwise provided in Section 17254 or in subdivision (e), no member of a limited liability company shall be personally liable under any judgment of a court, or in any other manner, for any debt, obligation, or liability of the limited liability company, whether that liability or obligation arises in contract, tort, or otherwise, solely by reason of being a member of the limited liability company.

(b) A member of a limited liability company shall be subject to liability under the common law governing alter



ego liability, and shall also be personally liable under a judgment of a court or for any debt, obligation, or liability of the limited liability company, whether that liability or obligation arises in contract, tort, or otherwise, under the same or similar circumstances and to the same extent as a shareholder of a corporation may be personally liable for any debt, obligation, or liability of the corporation; except that the failure to hold meetings of members or managers or the failure to observe formalities pertaining to the calling or conduct of meetings shall not be considered a factor tending to establish that a member or the members have alter ego or personal liability for any debt, obligation, or liability of the limited liability company where the articles of organization or operating agreement do not expressly require the holding of meetings of members or managers.

(c) Nothing in this section shall be construed to affect the liability of a member of a limited liability company (1) to third parties for the member's participation in tortious conduct, or (2) pursuant to the terms of a written guarantee or other contractual obligation entered into by the member, other than an operating agreement.

(d) A limited liability company or foreign limited liability company shall carry insurance or provide an undertaking to the same extent and in the same amount as is required by any law, rule, or regulation of this state that would be applicable to the limited liability company or foreign limited liability company were it a corporation organized and existing or duly qualified for the transaction of intrastate business under the General Corporation Law.

(e) Notwithstanding subdivision (a), a member of a limited liability company may agree to be obligated personally for any or all of the debts, obligations, and liabilities of the limited liability company as long as the agreement to be so obligated is set forth in the articles of organization or in a written operating agreement that specifically references this subdivision.



Approved _____, 1999

Governor

