

AMENDED IN SENATE APRIL 21, 2009

SENATE BILL

No. 653

Introduced by Senator Correa

February 27, 2009

An act to ~~add Section 22 to~~ amend Sections 17001, 17056, 17060, 17450, and 17451 of the Corporations Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

SB 653, as amended, Correa. ~~Tribal business entities: file numbers. Foreign limited liability companies: Indian tribes.~~

Federally recognized tribes are those Indian tribes recognized by the United States Secretary of the Interior for certain federal government purposes. Existing federal law authorizes a federally recognized tribe to form a business entity.

Existing law requires every limited liability company and every foreign limited liability company registered to transact intrastate business in California to file certain information with the Secretary of State and to comply with various other procedures. Existing law defines "foreign limited liability company" as either an entity formed under the limited liability company laws of any state other than this state or a specified entity formed under the laws of a foreign country meeting certain requirements.

This bill would revise this definition to provide that a "foreign limited liability company" includes an entity formed under the limited liability laws of any jurisdiction, other than this state or a foreign country, or a specified entity formed under the laws of a foreign country meeting certain requirements.

Existing law provides that the organization and internal affairs and various other matters relating to a foreign limited liability company

are generally governed by the laws of the state or foreign jurisdiction under which the limited liability company is organized.

This bill would instead refer to the laws of the jurisdiction under which the limited liability company is organized. The bill would make other conforming changes.

~~Existing law requires various business entities, including, but not limited to, corporations, foreign corporations, limited liability companies, and foreign limited liability companies, to file statements containing specified information with the Secretary of State. Existing law also authorizes the Secretary of State to issue file numbers to these entities.~~

~~This bill would require the Secretary of State, upon written request by a tribal business entity formed by a federally recognized tribe, to issue a file number to that business entity to be used for specified purposes.~~

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 17001 of the Corporations Code is*
2 *amended to read:*

3 17001. Unless the context otherwise indicates, the following
4 definitions govern the construction of this title:

5 (a) “Acknowledged” means that an instrument is either of the
6 following:

7 (1) Formally acknowledged as provided in Article 3
8 (commencing with Section 1180) of Chapter 4 of Title 4 of Part
9 4 of Division 2 of the Civil Code.

10 (2) Executed to include substantially the following wording
11 preceding the signature: It is hereby declared that I am the person
12 who executed this instrument, which execution is my act and deed.

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

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

1 of the jurisdiction in which the foreign limited liability company
2 is organized.

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

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

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

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

22 (g) “Contribution” means any money, property, or services
23 rendered, or a promissory note or other binding obligation to
24 contribute money or property, or to render services as permitted
25 in this title, which a member contributes to a limited liability
26 company as capital in that member’s capacity as a member pursuant
27 to an agreement between the members, including an agreement as
28 to value.

29 (h) “Disappearing limited liability company” means a constituent
30 limited liability company that is not the surviving limited liability
31 company.

32 (i) “Disappearing other business entity” means a constituent
33 other business entity that is not the surviving other business entity.

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

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

39 (l) “Domestic corporation” means a corporation as defined in
40 Section 162.

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

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

11 (o) (1) “Electronic transmission by the limited liability
12 company” means a communication (a) delivered by (1) facsimile
13 telecommunication or electronic mail when directed to the facsimile
14 number or electronic mail address, respectively, for that recipient
15 on record with the limited liability company, (2) posting on an
16 electronic message board or network that the limited liability
17 company has designated for those communications, together with
18 a separate notice to the recipient of the posting, which transmission
19 shall be validly delivered upon the later of the posting or delivery
20 of the separate notice thereof, or (3) other means of electronic
21 communication, (b) to a recipient who has provided an unrevoked
22 consent to the use of those means of transmission, and (c) that
23 creates a record that is capable of retention, retrieval, and review,
24 and that may thereafter be rendered into clearly legible tangible
25 form. However, an electronic transmission by a limited liability
26 company to an individual member is not authorized unless, in
27 addition to satisfying the requirements of this section, the
28 transmission satisfies the requirements applicable to consumer
29 consent to electronic records as set forth in the Electronic
30 Signatures in Global and National Commerce Act (15 U.S.C. Sec.
31 7001(c)(1)).

32 (2) “Electronic transmission to the limited liability company”
33 means a communication (a) delivered by (1) facsimile
34 telecommunication or electronic mail when directed to the facsimile
35 number or electronic mail address, respectively, which the limited
36 liability company has provided from time to time to members or
37 managers for sending communications to the limited liability
38 company, (2) posting on an electronic message board or network
39 that the limited liability company has designated for those
40 communications, and which transmission shall be validly delivered

1 upon the posting, or (3) other means of electronic communication,
2 (b) as to which the limited liability company has placed in effect
3 reasonable measures to verify that the sender is the member or
4 manager (in person or by proxy) purporting to send the
5 transmission, and (c) that creates a record that is capable of
6 retention, retrieval, and review, and that may thereafter be rendered
7 into clearly legible tangible form.

8 (p) “Foreign corporation” means a corporation formed under
9 the laws of any state other than this state or under the laws of the
10 United States or of a foreign country.

11 (q) “Foreign limited liability company” means either (1) an
12 entity formed under the limited liability company laws of any ~~state~~
13 *jurisdiction*, other than this state *or a foreign country*, or (2) an
14 entity organized under the laws of any foreign country that is (A)
15 an unincorporated association, (B) organized under a statute
16 pursuant to which an association may be formed that affords each
17 of its members limited liability with respect to the liabilities of the
18 entity, and (C) not an entity that is required to be registered or
19 qualified pursuant to the provisions of Title 1 (commencing with
20 Section 100) or Title 2 (commencing with Section 15001); but the
21 term “foreign limited liability company” does not include a foreign
22 association, as defined in Section 170.

23 (r) “Foreign limited partnership” means a partnership formed
24 under the laws of any state other than this state or under the laws
25 of a foreign country, including a limited liability limited
26 partnership, and having as partners one or more general partners
27 and one or more limited partners or their equivalents under any
28 name.

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

32 (t) “Limited liability company” or “domestic limited liability
33 company” means an entity having one or more members that is
34 organized under this title and is subject to the provisions of Section
35 17101.

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

39 (v) “Majority in interest of the members,” unless otherwise
40 provided in the operating agreement, means more than 50 percent

1 of the interests of members in current profits of the limited liability
2 company.

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

9 (x) “Member” means a person who:

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

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

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

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

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

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

36 (ac) “Other business entity” means a corporation, limited
37 partnership, general partnership, business trust, real estate
38 investment trust, or an unincorporated association (other than a
39 nonprofit association), but excluding a domestic limited liability
40 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 175 and subdivision (w) of Section 15611 or subdivision (v) of Section 15901.02 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

1 the voting power are owned by the specified limited liability
2 company.

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

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

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

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

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

26 (A) A shareholder of a domestic corporation.

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

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

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

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

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

36 (2) Without excluding other activities which may not be
37 considered to be transacting intrastate business, a foreign limited
38 liability company shall not be considered to be transacting intrastate
39 business within the meaning of this subdivision solely by reason

1 of carrying on in this state any one or more of the following
2 activities:

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

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

8 (C) Maintaining bank accounts.

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

13 (E) Effecting sales through independent contractors.

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

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

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

21 (I) Conducting an isolated transaction that is completed within
22 180 days and not in the course of a number of repeated transactions
23 of a like nature.

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

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

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

34 (as) "Withdrawal" includes the resignation or retirement of a
35 member as a member.

36 (at) "Written" or "in writing" includes facsimile, telegraphic,
37 and other electronic communication as authorized by this code.

38 *SEC. 2. Section 17056 of the Corporations Code is amended*
39 *to read:*

1 17056. (a) Unless otherwise specified in any other section of
2 this title, any document required by this title to be executed and
3 filed with the Secretary of State shall be executed:

4 (1) By the person or persons organizing the limited liability
5 company when the limited liability company has not yet been
6 formed.

7 (2) By any manager.

8 (3) If the limited liability company is in the hands of a receiver,
9 trustee, or other court-appointed fiduciary, by that fiduciary.

10 (4) In the case of a foreign limited liability company, in the
11 manner required by the laws of the ~~state~~ *jurisdiction* of its
12 organization.

13 (b) Any person may execute any document referred to in
14 subdivision (a) by an attorney in fact. Powers of attorney relating
15 to the signing of those documents by an attorney in fact need not
16 be sworn to, verified, or acknowledged, and need not be filed with
17 the Secretary of State.

18 (c) Any instrument filed with respect to a limited liability
19 company, other than the original articles of organization, may
20 provide that it is to become effective not more than 90 days after
21 its filing date. In case a delayed effective date is specified, the
22 instrument may be prevented from becoming effective by a
23 certificate stating that by appropriate action it has been revoked
24 and is null and void. This certificate shall be executed in the same
25 manner as the original instrument and shall be filed before the
26 specified effective date. In the case of a merger agreement or
27 certificate of merger, a certificate revoking the earlier filing need
28 only be executed on behalf of one of the constituent parties to the
29 merger. If no revocation certificate is filed, the instrument becomes
30 effective on the date specified.

31 (d) If the Secretary of State determines that an instrument
32 submitted for filing or otherwise submitted does not conform to
33 the law and returns it to the person submitting it, the instrument
34 may be resubmitted accompanied by a written opinion of a member
35 of the State Bar of California submitting the instrument or
36 representing the person submitting it, to the effect that the specific
37 provisions of the instrument objected to by the Secretary of State
38 does conform to law and stating the points and authorities upon
39 which the opinion is based. The Secretary of State shall rely, with
40 respect to any disputed point of law, other than the application of

1 Sections 17052, 17053, 17451, and 17452, upon that written
2 opinion in determining whether the instrument conforms to law.
3 The date of filing in that case shall be the date the instrument is
4 received on resubmission.

5 *SEC. 3. Section 17060 of the Corporations Code is amended*
6 *to read:*

7 17060. (a) Every limited liability company and every foreign
8 limited liability company registered to transact intrastate business
9 in this state shall file within 90 days after the filing of its original
10 articles of organization and biennially thereafter during the
11 applicable filing period, on a form prescribed by the Secretary of
12 State, a statement containing:

13 (1) The name of the limited liability company and the Secretary
14 of State's file number and, in the case of a foreign limited liability
15 company, the ~~state~~ *jurisdiction* under the laws of which it is
16 organized.

17 (2) The name and address of the agent for service of process
18 required to be maintained pursuant to subdivision (b) of Section
19 17057. If a corporate agent is designated, only the name of the
20 agent shall be set forth.

21 (3) The street address of its principal executive office and, in
22 the case of a domestic limited liability company, of the office
23 required to be maintained pursuant to Section 17057.

24 (4) The name and complete business or residence addresses of
25 any manager or managers and the chief executive officer, if any,
26 appointed or elected in accordance with the articles of organization
27 or operating agreement or, if no manager has been so elected or
28 appointed, the name and business or residence address of each
29 member.

30 (5) The general type of business that constitutes the principal
31 business activity of the limited liability company (for example,
32 manufacturer of aircraft; wholesale liquor distributor; or retail
33 department store).

34 (b) If there has been no change in the information in the last
35 filed statement of the limited liability company on file in the
36 Secretary of State's office, the limited liability company may, in
37 lieu of filing the statement required by subdivision (a), advise the
38 Secretary of State, on a form prescribed by the Secretary of State,
39 that no changes in the required information have occurred during
40 the applicable filing period.

(c) For the purposes of this section, the applicable filing period for a limited liability company shall be the calendar month during which its original articles of organization were filed or, in the case of a foreign limited liability company, the month during which its application for registration was filed, and the immediately preceding five calendar months. The Secretary of State shall mail a form for compliance with this section to each limited liability company approximately three months prior to the close of the applicable filing period. The form shall state the due date thereof and shall be mailed to the last address of the limited liability company according to the records of the Secretary of State. The failure of the limited liability company to receive the form shall not exempt the limited liability company from complying with this section.

(d) Whenever any of the information required by subdivision (a) changes, other than the name and address of the agent for service of process, the limited liability company may file a current statement containing all the information required by subdivision (a). When changing its agent for service of process or when the address of the agent changes, the limited liability company shall file a current statement containing all the information required by subdivision (a). Whenever any statement is filed pursuant to this section changing the name and address of the agent for service of process, that statement supersedes any previously filed statement pursuant to this section, the statement in the original articles of organization, and the statement in any restated articles of organization that have been filed, or in the case of a foreign limited liability company, in the application for registration. Whenever restated articles of organization are filed, the statement therein, if any, of the name and address of the agent for service of process supersedes any previously filed statement pursuant to this section.

(e) The Secretary of State may destroy or otherwise dispose of any statement filed pursuant to this section after it has been superseded by the filing of a new statement.

(f) This section shall not be construed to place any person dealing with the limited liability company on notice of, or under any duty to inquire about, the existence or content of a statement filed pursuant to this section.

SEC. 4. Section 17450 of the Corporations Code is amended to read:

1 17450. Subject to the provisions of Section 17453:

2 (a) The laws of the ~~state or foreign country~~ *jurisdiction* under
3 which a foreign limited liability company is organized shall govern
4 its organization and internal affairs and the liability and authority
5 of its managers and members.

6 (b) A foreign limited liability company may not be denied
7 registration by reason of any difference between those laws and
8 the laws of this state.

9 *SEC. 5. Section 17451 of the Corporations Code is amended*
10 *to read:*

11 17451. (a) Before transacting intrastate business in this state,
12 a foreign limited liability company shall register with the Secretary
13 of State. In order to register, a foreign limited liability company
14 shall submit to the Secretary of State an application for registration
15 as a foreign limited liability company, signed by a person with
16 authority to do so under the laws of the ~~state~~ *jurisdiction* of its
17 organization, on a form prescribed by the Secretary of State and
18 setting forth:

19 (1) The name of the foreign limited liability company and, if
20 different, the name under which it proposes to transact business
21 in this state.

22 (2) The ~~state~~ *jurisdiction* and date of its organization and a
23 statement that the foreign limited liability company is authorized
24 to exercise its powers and privileges in that ~~state~~ *jurisdiction*.

25 (3) The name and address of an agent for service of process on
26 the foreign limited liability company meeting the qualifications
27 specified in paragraph (1) of subdivision (d) of Section 17061,
28 unless a corporate agent is designated, in which case only the name
29 of the agent shall be set forth.

30 (4) A statement that the Secretary of State is appointed the agent
31 of the foreign limited liability company for service of process if
32 the agent has resigned and has not been replaced or if the agent
33 cannot be found or served with the exercise of reasonable diligence.

34 (5) The address of the principal executive office of the foreign
35 limited liability company and of its principal office in this state,
36 if any.

37 (b) Annexed to the application for registration shall be a
38 certificate from an authorized public official of the foreign limited
39 liability company's *jurisdiction* of organization to the effect that
40 the foreign limited liability company is in good standing in that

1 jurisdiction, if the laws of that jurisdiction permit the issuance of
2 those certificates; or, in the alternative, a statement by the foreign
3 limited liability company that the laws of its jurisdiction of
4 organization do not permit the issuance of those certificates.

5 (c) The Secretary of State may cancel the application and
6 certificate of registration of a foreign limited liability company if
7 a check or other remittance accepted in payment of the filing fee
8 is not paid upon presentation. Upon receiving written notification
9 that the item presented for payment has not been honored for
10 payment, the Secretary of State shall give a first written notice of
11 the applicability of this section to the agent for service of process
12 or to the person submitting the instrument. Thereafter, if the amount
13 has not been paid by cashier's check or equivalent, the Secretary
14 of State shall give a second written notice of cancellation and the
15 cancellation shall thereupon be effective. The second notice shall
16 be given 20 days or more after the first notice and 90 days or less
17 after the original filing.

18 (d) The Secretary of State shall include with instructional
19 materials, provided in conjunction with registration under
20 subdivision (a), a notice that filing the registration will obligate
21 the limited liability company to pay an annual tax to the Franchise
22 Tax Board pursuant to Section 17941 of the Revenue and Taxation
23 Code. That notice shall be updated annually to specify the dollar
24 amount of the tax.

25 ~~SECTION 1. Section 22 is added to the Corporations Code, to~~
26 ~~read:~~

27 ~~22. Upon written request, the Secretary of State shall issue a~~
28 ~~file number to a business entity formed by a federally recognized~~
29 ~~Indian tribe. The written request shall be provided on a form~~
30 ~~prescribed by the Secretary of State and shall contain any~~
31 ~~information that the secretary deems necessary. The file number~~
32 ~~may be used by the business entity for the sole purposes of~~
33 ~~obtaining business licenses and filing California income taxes.~~