
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

AB 1381 (Gallagher) - Limited liability companies: statement of information: Secretary of State: notice

Version: June 13, 2022

Urgency: No

Hearing Date: June 27, 2022

Policy Vote: JUD. 9 - 0

Mandate: No

Consultant: Matthew Fleming

Bill Summary: Requires the Secretary of State (SOS) to notify a limited liability company (LLC) when an updated statement of information for that LLC has been delivered for filing.

Fiscal Impact: The SOS reports costs ranging from \$115,000 in Fiscal Year (FY) 2022-23 and \$90,000 ongoing, up to \$ 1.7 million in FY 2022-23 and \$1.6 million ongoing (Special Fund – Business Fees Fund). Actual costs will depend in large part on how many notices are required to be sent electronically or by regular mail. See Staff Comments for additional detail.

Background: The California Revised Uniform Limited Liability Company Act (the Act) governs all LLCs formed in California. The Act provides requirements for how an LLC may be formed and what information the LLC must provide to the Secretary of State, such as the addresses of the LLC's principal place of business and its agent for service of process, the contact information for its manager or managing members, and the type of business the LLC is engaged in. Generally, this information must be provided once every two years in a statement of information filed with the Secretary of State; however, if the LLC changes its agent for service of process or the agent changes their address, the LLC must file a statement of information with the new information at that point. Additionally, an LLC may file a statement of information to update other required information before the two-year deadline. Information in a statement of information filed with the Secretary of State supersedes all previous information on that point.

The author of this bill and its proponents seek to address a concern that the relative ease of filing a statement of information leaves open the potential for fraud. Specifically, they state that persons are currently able to file a fraudulent statement of information that, e.g., lists themselves as a manager of the LLC, and when that information is updated on the Secretary of State's website, use the website as proof of membership and borrow against the LLC's assets. Because an LLC does not receive notice when a statement of information is filed on its behalf, an LLC could go months or years before it realizes that a third party filed a fraudulent statement of information, long after the fraud was accomplished. In order to mitigate the risk of fraudulently filed statements of information, this bill requires the SOS to send a notice to the LLC's last-recorded address or email address when it receives a statement of information (i.e., the address or email address the Secretary of State had on file prior to the filing of the newly received statement of information). This is intended to give the LLC notice of the filing so that the LLC can take swift action if it believes the statement was fraudulently filed.

Proposed Law:

- Requires, by January 1, 2024, the Secretary of State to create and implement a procedure to transmit a notice to an LLC or foreign LLC stating that an updated statement of information has been delivered for filing for the LLC.
- Provides that the Secretary of State must transmit the notice to the mailing address or email address of the LLC that was previously on file before the submission of the updated statement of information.
- Provides that the Secretary of State may send the notice either before or after the updated statement of information is filed.

Staff Comments: Costs reported by the SOS include one-time costs of at least \$20,000 in order to upgrade the online bizfile system. Ongoing costs reflect increased staff to prepare and send out notices as well as for postage for notices that cannot be sent via electronic mail. The SOS cannot require filers to provide an email address. Therefore, the SOS may need to send out notices via regular mail, even if the filer makes an electronic submission. The wide range of anticipated costs predominantly reflects the difference in postage costs. The high end of the estimate anticipates all filers needing to be sent notice by regular mail, requiring approximately 630,000 mailings by the SOS annually. The low end of the estimate reflects the SOS needing to send out relatively few paper notices, approximately 33,000. The low end of the estimate is likely, but additional costs that could reach the high end are possible depending on how many entities will qualify or request to receive a notice by regular mail.

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