
Judiciary Committee

SB 5387

Title: An act relating to uniformity in common provisions governing business organizations and other entities.

Brief Description: Creating uniformity in common provisions governing business organizations and other entities.

Sponsors: Senators Pedersen and O'Ban; by request of Uniform Law Commission.

Brief Summary of Bill

- Establishes a new chapter providing uniform rules governing common administrative procedures and legal requirements that apply to specified business or nonprofit entities formed under the laws of this state or doing business in this state.
- Amends various entity statutes to remove substantive provisions that are governed by the new chapter and instead reference applicable provisions of the new chapter.

Hearing Date: 3/12/15

Staff: Edie Adams (786-7180).

Background:

There are a variety of business and non-profit entity forms authorized in Washington. These include business corporations, nonprofit corporations, partnerships and limited partnerships, limited liability companies, and cooperative associations, among others.

Laws governing the various entities each contain common provisions relating to administrative filing and licensing requirements and a number of other legal requirements applicable to all entity types. In many instances, the common provisions covered by each entity statute are not consistent in their substantive or procedural requirements, resulting in differing rules for different entities.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Corporations Division of the Office of the Secretary of State is responsible for a number of administrative functions applicable to the various entities regarding entity formation or registration to do business in the state, annual licensing and reporting requirements, and administrative dissolution procedures. Other common provisions across the various entity statutes include: entity name requirements; registered agent and registered office requirements, and service of process requirements; and standards and procedures for foreign entities to register to do business in the state.

In 2011 the National Conference of Commissioners on Uniform State Laws (NCCUSL) formally adopted a Uniform Business Organization Code (Code) to provide more uniformity in the laws applicable to the various entity laws. The Code adopts a "hub and spoke" model, which places requirements common to all entities in Article I, often referred to as "the hub," and each of the individual entity acts are the spokes containing entity-specific requirements. The common provisions in Article I are harmonized across the various entity laws.

Summary of Bill:

A new chapter is created in Title 23 RCW designated the Uniform Business Organizations Code--General Provisions (UBOC) that is based on the framework of Article I of the NCCUSL's Uniform Business Organization Code. The UBOC establishes uniform administrative procedures and general rules that apply to business and nonprofit entities formed under the laws of this state or doing business in this state. The UBOC applies to the following entities formed under or subject to the laws of this state: business corporations, nonprofit corporations, limited liability partnerships, limited partnerships, limited liability companies, and general cooperative associations.

The UBOC contains six substantive articles addressing common administrative and legal requirements applicable to the various entities. In most instances, the UBOC's provisions are based on and consistent with provisions that currently exist in the Washington Business Corporation Act, the Limited Liability Company Act, or other entity statutes.

Article I (General Provisions) provides definitions applicable to the UBOC, establishes standards for the permissible means of delivery of a record, and addresses the authority of the Secretary of State (SOS) to adopt rules necessary for the administration of the chapter.

Article II (Filing) contains requirements relating to the filing of entity documents by the SOS, including required content of entity filings and method of filing, effective date and time of entity filings, procedures for withdrawing or correcting filed records, the duties of the SOS to file entity filings and issue a certificate of existence for a domestic entity or a certificate of registration for a foreign entity, annual report requirements, and the authority of the SOS to adopt fees for entity filings and other services provided by the SOS.

Article III (Name of Entity) addresses general and entity-specific requirements for entity names and procedures for a domestic entity to reserve a name or a foreign entity to register a name with the SOS.

Article IV (Registered Agent of Entity) requires entities to designate and maintain a registered agent, provides rules for changing a registered agent or changing the name or address of a

registered agent, establishes duties of registered agents and standards for service of process, and provides procedures for resignation of a registered agent. Article IV allows for the listing of commercial registered agents with the Office of the Secretary of State, and provides separate standards for designating and making changes with respect to commercial registered agents and non-commercial registered agents.

Article V (Foreign Entities) addresses requirements for a foreign entity to register to do business in the state, provides a list of activities that do not constitute doing business in the state, establishes standards for the withdrawal or transfer of a foreign entity's registration, and provides standards and procedures for the SOS to terminate the registration of a foreign entity.

Article VI (Administrative Dissolution) addresses the grounds under which an entity may be administratively dissolved by the SOS, the procedures for and effect of an administrative dissolution, and the procedures and requirements for reinstating an administratively dissolved entity.

Amendments are made to provisions of the various entity statutes that are subject to the UBOC. In general, sections in the entity statutes dealing with matters covered by the UBOC are amended to delete the substantive requirements and instead reference the applicable provisions of the UBOC. Some provisions of the entity statutes that relate specifically to the duties or authority of the SOS or that are duplicative are repealed. Amendments are also made to statutes governing employee cooperatives, corporations sole, fraternal societies, and granges to revise provisions addressing matters covered by the UBOC.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect January 1, 2016, except sections 7101 through 7133 which amend provisions of SB 5030 relating to the Limited Liability Company Act, which take effect upon the effective date of SB 5030.