

HOUSE BILL REPORT

SB 5387

As Reported by House Committee On: Judiciary

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 History:

Committee Activity:

Judiciary: 3/12/15, 4/1/15 [DPA].

Brief Summary of Bill (As Amended by Committee)

- 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.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Klippert, Muri, Orwall, Stokesbary and Walkinshaw.

Staff: Edie Adams (786-7180).

Background:

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.

There are a variety of business and nonprofit 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.

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 Uniform Law Commission (ULC) 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 Amended 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 ULC'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 noncommercial 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 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 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 professional service corporations, employee cooperatives, corporations sole, fraternal societies, and granges to revise provisions addressing matters covered by the UBOC.

Amended Bill Compared to Original Bill:

A clarification is made that the effective date and time of an entity filing is determined first by whether the entity filing specifies an effective time or a delayed effective date, and if not, then the effective date is the date and time of filing by the SOS. The SOS is an agent of an entity for service of process if service of process cannot be made under any of the specified methods for service on the registered agent or entity.

A statement of withdrawal of a filed record must be executed by a person acting in a valid representative capacity, rather than a person to whom authority has been properly delegated and not revoked under the entity's organic law. A filed record may be corrected if it

contained an inaccurate statement at the time of filing, rather than if it was incorrect, inaccurate, or defective. A registered foreign entity that files an amendment to its foreign registration statement must do so promptly.

A statute establishing name requirements for professional service corporations is amended to eliminate the substantive name requirements and instead reference the name requirements for professional service corporations under the bill. Other changes are made for clarity and consistency, and to correct inaccurate cross references.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill takes effect January 1, 2016, except sections 7101 through 7133, which amends provisions of Substitute Senate Bill 5030 (SSB 5030), relating to the Limited Liability Company Act, which take effect upon the effective date of SSB 5030.

Staff Summary of Public Testimony:

(In support) This legislation will provide more predictability and uniformity among the various entity statutes for common administrative provisions. Each of the entity acts contain administrative requirements for things such as reserving a name, registered agents, foreign entity requirements, and administrative dissolution. These issues are replicated in each of the statutes with many inconsistencies and there are no good reasons for the differences. This legislation pulls those provisions out of each of the entity statutes and puts them into one chapter. This creates a consistent and uniform approach to administrative rules and results in the removal of about 100 pages of duplicative sections from the code. It will no longer be necessary to amend various statutes when a change is made in the administrative rules. Business lawyers will have to learn only one set of rules for all types of entities, creating more efficient and easier to use laws.

The legislation harmonizes many of the filings with the Office of the Secretary of State (OSOS) and allows for more prompt filings. The OSOS is developing a new online filing system and having one set of rules that apply to all entities will make that system work better. The Washington OSOS is one of the best in the country. This legislation is one more tool for them to perform the wonderful services they provide. There are no real substantive changes except with respect to commercial registered agents. The legislation incorporates the Model Registered Agent's Act (MORA) developed by the Uniform Law Commission, which addresses how to handle registered agents for entities. The MORA is well-vetted and has been adopted by a dozen states. It establishes consistent and efficient standards for dealing with commercial registered agents.

(Opposed) None.

Persons Testifying: Senator Pedersen, prime sponsor; Pam Floyd, Office of the Secretary of State; Doug Batey, Washington State Bar Association; and Garth Jacobson, CT Corporation.

Persons Signed In To Testify But Not Testifying: None.