

# SENATE BILL REPORT

## SB 5040

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As Passed Senate, March 1, 2017

**Title:** An act relating to making revisions to the uniform business organizations code.

**Brief Description:** Making revisions to the uniform business organizations code.

**Sponsors:** Senators Pedersen and Padden; by request of Secretary of State.

**Brief History:**

**Committee Activity:** Law & Justice: 1/19/17, 1/25/17 [DP].

**Floor Activity:**

Passed Senate: 3/01/17, 48-1.

**Brief Summary of Bill**

- Aligns and clarifies the contents of a certificate of registration for a foreign entity doing business in this state with the contents of a certificate of existence for a domestic entity.
- Makes other clarifying changes to the Uniform Business Organizations Code to ensure provisions refer to the appropriate business entity.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Darneille, Frock and Wilson.

**Staff:** Shani Bauer (786-7468)

**Background:** The Legislature recently incorporated provisions from the Uniform Business Organizations Code into state law. That framework adopted a new title containing general provisions applicable to all types of business entities, including provisions applicable to domestic and foreign entities doing business in this state.

As defined in the title, entity includes a business corporation, nonprofit corporation, limited liability partnership, limited liability company, limited partnership, or a general cooperative association. A domestic entity is an entity that is governed as to its internal affairs by the

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laws of this state while a foreign entity is one that is governed by the laws of another state. A foreign entity is required to register with the Secretary of State's office (SOS) before it is authorized to do business in the state. The foreign entity must file a statement of registration including specified information about the entity.

Certificate of Existence/Registration. Upon request, the SOS must issue a certificate of existence for a domestic entity or a certificate of registration for a registered foreign entity. The certificates vary slightly depending on whether the entity is foreign or domestic. The certificate must generally state the name of the entity, that all fees, interest, or penalties owed to the state have been paid, that the most recent annual report has been delivered to the SOS for filing, and any other facts the SOS might find pertinent. For a domestic entity, the SOS must additionally include that its public organic file has been filed and taken effect, the date the file took effect, the period of the entity's duration, that the entity has not been dissolved, and there is no administrative action pending to dissolve the entity. A certificate for a foreign entity must additionally include a statement that the foreign entity is registered to do business in the state. A certificate issued by the SOS may be relied on as conclusive evidence of the facts stated.

Initial/Annual Report. A domestic entity must file an initial report within 120 days of inception. Both domestic and foreign entities must file an annual report with the SOS. The contents of the reports are specified in statute.

Withdrawal of Registration. A registered foreign entity may withdraw its registration by delivering a statement of withdrawal to the SOS. The statement of withdrawal must be accompanied by a copy of a revenue clearance certificate. A revenue clearance certificate is a certificate from the Department of Revenue that the entity has paid any outstanding license fee, tax, or penalty.

**Summary of Bill:** Certificate of Existence/Registration. A certificate of registration for a foreign entity must also include the date the foreign entity registered to do business in this state, that the entity's registration to do business in the state has not been terminated, and there is no administrative action pending to terminate the entity's registration. A certificate of existence of a domestic entity may be relied on as conclusive evidence that as of the date of issuance, the entity is in existence and duly formed or incorporated. A certificate of registration for a foreign entity may be relied on as conclusive evidence that as of the date of issuance, the foreign entity is registered and authorized to do business in this state.

Initial/Annual Report. Penalties for failure to file a full and complete initial report apply only to domestic corporations. An annual report filed by a domestic or foreign corporation no longer needs to include the names and addresses of the chairperson of its board of directors or its officers. The requirement to include specified information about a partnership with an annual fee filed with the SOS is removed and replaced with the requirement to file an annual report.

Withdrawal of Registration. In order to withdraw a registration, a registered foreign entity need only file a revenue clearance certificate if it is a foreign corporation.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This is a technical cleanup bill. The Code was adopted last year with the goal of making the organization and maintenance of a business easier. It moved many of the requirements for maintaining a business into one title and moved toward consistency for the various business entities. This bill attempts to clarify some aspects of the law and pick up some things that were inadvertently missed. It adds explicit statements to the certificate of existence and takes out the requirement for corporations to include addresses in the annual report because it is not required for other types of entities. A foreign corporation provides all of its information as part of its statement of registration, so it would be duplicative for the entity to file an initial report. When a domestic company files, it may not necessarily know all of its formation information yet, so it makes sense to require the report 120 days later. Specifically with regard to the certificate of existence, the proposed amendment restores important language from the predecessor statute which contained language that attorneys rely on when issuing opinions. The new statute specifies the contents of a certificate, but did not state what the certificate means. This language is restored with the bill.

**Persons Testifying:** PRO: Toni McKinley and Dan Speigle, Office of the Secretary of State; Diane Lourdes Dick, Seattle University School of Law, Washington State Bar Association, Business Law Section.

**Persons Signed In To Testify But Not Testifying:** No one.