

HOUSE BILL REPORT

HB 2657

As Reported by House Committee On:
Judiciary

Title: An act relating to the dissolution of limited liability companies.

Brief Description: Addressing the dissolution of limited liability companies.

Sponsors: Representative Pedersen.

Brief History:

Committee Activity:

Judiciary: 1/20/10, 2/1/10 [DPS].

Brief Summary of Substitute Bill

- Creates a certificate of dissolution for limited liability companies to provide notice of dissolution.
- Establishes procedures to allow a dissolved limited liability company to dispose of known claims.
- Removes all references to a "certificate of cancellation" for domestic limited liability companies.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Kelley, Kirby, Ormsby, Roberts and Ross.

Staff: Courtney Barnes (786-7194).

Background:

A limited liability company (LLC) is a business entity that possesses some of the attributes of a corporation and some of the attributes of a partnership. The LLCs were authorized by the Legislature in 1994. A properly constructed LLC can be a business entity in which the

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ownership enjoys limited liability like a corporation's shareholders, but the entity itself is not taxed as a corporation. Domestic LLCs are entities formed under the Washington LLC Act. Foreign LLCs are entities formed under the laws of a state other than Washington or a foreign country.

Dissolution of an LLC.

An LLC may be dissolved voluntarily, administratively, or judicially. Dissolution does not terminate the existence of the LLC. Instead, it begins a period in which the affairs of the LLC must be wound up. Dissolution of an LLC does not eliminate any cause of action against the LLC that was incurred prior to or after the dissolution if an action on the claim is filed within three years after the effective date of dissolution.

Revocation of Dissolution.

A voluntarily-dissolved LLC may file for reinstatement by filing an application with the Office of the Secretary of State (OSOS). Current law requires the OSOS to cancel a voluntarily-dissolved LLC's certificate of formation if the dissolved LLC fails to file for reinstatement within 120 days after the effective date of dissolution.

Winding Up the Affairs of a Dissolved LLC.

After dissolution of an LLC, but before cancellation of the certificate of formation, a manager or member of the LLC or a court-appointed receiver may wind up the business of the LLC. Winding up involves liquidating assets, paying creditors, and distributing proceeds from the liquidation of assets to the members of the LLC.

Cancellation of Certificate.

After an LLC is dissolved, the certificate of formation that created the LLC is canceled. Recently, the Washington Supreme Court held that cancellation of an LLC's certificate of formation bars the LLC from filing or continuing a lawsuit and bars a claimant from filing or continuing a lawsuit against the LLC. Under this decision, an LLC ceases to exist as a legal entity and cannot be sued once its certificate of formation is canceled.

Summary of Substitute Bill:

Certificate of Dissolution.

A new document, a certificate of dissolution, is created for LLCs. A dissolved LLC may file a certificate of dissolution with the OSOS to provide notice that the LLC is dissolved. The certificate of dissolution must be signed by the person who is authorized to wind up the LLC's affairs.

The dissolution of an LLC does not eliminate any cause of action by or against the LLC that was incurred prior to or after the dissolution if an action is filed within three years after the

filing of the certificate of dissolution. This provision does not apply if the dissolved LLC has disposed of known claims.

Revocation of Dissolution.

The procedures for how a voluntarily-dissolved LLC may revoke its dissolution are modified. An LLC that has dissolved and filed a certificate of dissolution with the OSOS may revoke its dissolution within 120 days of filing its certificate of dissolution. This provision applies to LLCs dissolved due to the happening of events specified in the LLCs agreement or by written consent of all the LLC's members. To revoke its voluntary dissolution, an LLC must file a certificate of revocation of dissolution with the OSOS. Procedures are created to address how a revocation of dissolution must be approved by the LLC's managers or members.

Winding Up the Affairs of a Dissolved LLC.

The provisions addressing who may wind up a LLC's affairs are revised. The persons responsible for managing the business and affairs of the LLC are responsible for winding up the activities of the dissolved LLC. Upon certain conditions, a superior court may order judicial supervision of the winding up of a dissolved LLC, including the appointment of a person to wind up the LLC's activities. For the purposes of winding up, a dissolved LLC may:

- preserve the LLC's activities and property as a going concern for a reasonable time;
- prosecute and defend actions and proceedings, whether civil, criminal, or administrative;
- transfer the LLC's property;
- settle disputes; and
- perform other acts necessary or appropriate to the winding up.

Disposing of Known Claims.

A dissolved LLC that has filed a certificate of dissolution with the OSOS may dispose of the known claims against it by providing notice to known claimants. Procedures are created to address what the notice to known claimants must contain and how claimants must notify a dissolved LLC of a claim. A known claim against an LLC is barred and the claim is not the liability of the LLC if the holder of the known claim was given written notice of dissolution and:

- the known claim was not received by a specified deadline; or
- the holder of a known claim that is rejected by the dissolved LLC does not commence a proceeding to enforce the claim within 90 days after the receipt of the notice of rejection.

Certificate of Cancellation.

All references to a "certificate of cancellation" for domestic LLCs are removed. The issuance of a certificate of cancellation of a foreign LLC's registration does not impair the ability of a party to maintain an action, suit, or proceeding against the foreign LLC.

Substitute Bill Compared to Original Bill:

The substitute bill removes all references to a "certificate of cancellation" both in the original bill and under current law for domestic LLCs. The substitute bill specifies that the issuance of a certificate of cancellation of a foreign LLC's registration does not impair the ability of a party to maintain an action against the foreign LLC. The substitute bill modifies the provisions in the original bill for filing a certificate of dissolution, revoking a certificate of dissolution, winding up the affairs of a dissolved LLC, and disposing of known claims.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The bill will address and resolve two issues that need immediate attention. First, under the *Chadwick Farms* decision issued by the Washington Supreme Court, a certificate of cancellation abates all legal claims. This decision leaves creditors in an untenable situation. The second issue relates to voluntary dissolution of an LLC. The law requires the OSOS to cancel a voluntarily-dissolved LLC's certificate of formation within 120 days of its dissolution. Many LLCs require more than 120 days to dissolve, and this requirement creates unintended problems. The bill is a simple bill and the intent is to make technical corrections. A certificate of cancellation is an old concept. The Washington State Bar Association intends on significantly revising the LLC Act in the future and will likely remove certificates of cancellation from the LLC Act.

(With concerns) There may be an issue with the provisions allowing a dissolved LLC to dispose of known claims. This provision may establish a 90-day statute of limitations for known claims. This limitation may have serious consequences in circumstances where a claim is known to the LLC, but the elements are not known to the potential claimant. The bill should be amended to address these types of claims. The bill amends the claims survival statute and only references a certificate of dissolution. This provision needs to be amended to address situations where an LLC does not file a certificate of dissolution but files a certificate of cancellation.

(Opposed) None.

Persons Testifying: (In support) Brian Todd and Don Percival, Washington State Bar Association; and Larry Shannon, Washington State Association for Justice.

(With concerns) Jeremy Stillwell, Washington State Community Associations Institute.

Persons Signed In To Testify But Not Testifying: None.