

# HOUSE BILL REPORT

## SHB 1592

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### As Amended by the Senate

**Title:** An act relating to business entities and associations registered with the secretary of state.

**Brief Description:** Registering business entities and associations with the secretary of state.

**Sponsors:** House Committee on Judiciary (originally sponsored by Representatives Pedersen, Rodne, Kelley and Kenney; by request of Secretary of State).

#### **Brief History:**

##### **Committee Activity:**

Judiciary: 2/2/09, 2/9/09 [DPS].

##### **Floor Activity**

Passed House: 2/27/09, 94-0.

Senate Amended.

Passed Senate: 4/10/09, 43-3.

Senate Amended.

Passed Senate: 4/23/09, 43-3.

#### **Brief Summary of Substitute Bill**

- Changes the requirements for the reinstatement of dissolved Limited Liability Companies.
- Amends Limited Liability Partnership provisions to establish requirements for designating a registered agent and making changes to the registered agent or office.
- Amends the Corporations Sole Act, including prohibiting the formation of corporations sole after August 1, 2009.

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#### **HOUSE COMMITTEE ON JUDICIARY**

**Staff:** Courtney Barnes (786-7194)

#### **Background:**

Limited Liability Companies.

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*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.*

A Limited Liability Company (LLC) is a type of business entity that provide owners with limited personal liability for the LLC's debts and actions. One or more individuals or entities form LLCs through a certificate of formation filed with the Office of the Secretary of State (OSOS). The certificate of formation details the organization of the LLC, including provisions for management, assignments of interests, and distribution of profits or losses.

#### Limited Liability Partnerships.

A Limited Liability Partnership (LLP) is a type of business entity that is similar to a general partnership. Normally, unlike a general partnership, a partner does not have personal liability for the negligence of another partner. An LLP is often used by professionals, such as accountants and lawyers. A foreign LLP is a partnership that is formed under laws other than the laws of Washington and has the status of an LLP under those laws. All LLPs are required to register with the OSOS.

#### Corporations Sole.

A corporation sole is a legal entity through which religious organizations can hold property and conduct business for the benefit of that organization. Corporations sole enable religious leaders to be incorporated for the purpose of ensuring the continuation of ownership of property dedicated to the benefit of a legitimate religious organization. Generally, creditors of a corporation sole may not look to the assets of the individual holding the office, nor may the creditors of the individual look to the assets held by the corporation sole.

#### **Summary of Substitute Bill:**

#### Limited Liability Companies.

The Limited Liability Companies Act is amended to change the requirements for the reinstatement of administratively or voluntarily dissolved LLCs. If the LLC was dissolved administratively, an LLC may apply to the Office of the Secretary of State (OSOS) for reinstatement within five years after the effective date of dissolution. If the LLC was dissolved voluntarily, the LLC may apply for reinstatement within 120 days after the effective date of dissolution.

#### Limited Liability Partnerships.

Provisions are added to establish requirements for designating a registered agent and making changes to an LLP's registered office or agent. A registered agent must be an individual who is a Washington resident or a person authorized to do business in Washington. Registered agents are authorized to accept service of process on behalf of an LLP. If a registered agent wants to resign, the agent must notify the OSOS. When an LLP's registered agent cannot be found after reasonable diligence, the OSOS is authorized to accept service on behalf of the LLP. These requirements also apply to foreign LLPs.

#### Corporations Sole.

Existing corporations sole registered with the OSOS are required to file an annual report with a \$10 filing fee. The OSOS is required to notify each corporation sole of the requirement to renew annually. The failure to file an annual report may result in the administrative dissolution of the corporation sole by the OSOS. A corporation sole that is dissolved or whose certificate of authority is revoked may request the OSOS to have the corporation sole reinstated. When exigent or mitigating circumstances are present, the OSOS may reinstate a corporation sole to full active status. The OSOS is required to keep all requests for reinstatement and the disposition of the requests. The OSOS will report to the Legislature annually the number of relief requests received in the preceding year and a summary of the disposition of the requests. Effective August 1, 2009, a corporation sole may not be formed.

**EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment requires the Secretary of State to reinstate an administratively dissolved corporation sole if the corporation sole files a statement to request relief within five years of the missed filing or lapse. The statement must set forth: the nature of the missed filing or lapse; the circumstances of the missed filing or lapse; that disproportionate harm would occur if relief was not granted; and the relief sought.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) This legislation is by request of the OSOS. The LLP and LLC provisions are largely administrative provisions in response to customer requests. The bill provides an administratively dissolved LLC a five-year reinstatement period, which is consistent with the reinstatement period for corporations. About 5 percent of LLC dissolutions are voluntary. Under current law, if an LLC is voluntarily dissolved, an LLC cannot be reinstated. The bill allows voluntarily dissolved LLCs to reinstate within 120 days. This change is consistent with the reinstatement period for voluntarily dissolved corporations.

The LLP provisions require an LLP to have a registered agent. If the registered agent cannot be found, the OSOS may serve as an agent for service of process. These provisions were reviewed by the Partnership/ LLC Committee of the Washington State Bar Association, which did not find any problems.

Corporations sole allow leaders of religious entities to hold and dispose of property without having to pay taxes on the transfer of property. Corporations sole have become the subject of abuse. People are using corporations sole to avoid paying taxes. The bill will provide a path for legitimate corporations sole to maintain their existence while preventing further abuse of corporations sole. In 1980, there were two corporations sole registrations that year. In 2000, there were 720 corporation sole registrations that year. The bill requires corporations sole to file an annual report with the OSOS and pay an annual filing fee, which is consistent with the

requirements of non-profit corporations. Many illegitimate corporations sole will not be able to file annually because they provide false addresses. Washington is one of 15 states that allow corporations sole registrations. Oregon and Idaho recently prohibited the formation of corporations sole. Washington is on the Internal Revenue Service's radar for fraudulent corporations sole registrations. Disallowing further registrations will prevent new fraud. Between 1861 and 1990 there were a total of 82 corporations sole. As of today there are more than 4,000 corporations sole. The OSOS estimates that only a quarter of corporations sole are legitimate. Legitimate corporations sole often have the option of filing as a non-profit corporation.

(Opposed) None.

**Persons Testifying:** Representative Pedersen, prime sponsor; and Megan Moreno, Office of the Secretary of State.

**Persons Signed In To Testify But Not Testifying:** None.