

HOUSE BILL REPORT

SB 5040

As Reported by House Committee On: Judiciary

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:

Judiciary: 3/14/17, 3/22/17 [DP].

Brief Summary of Bill

- Revises the Uniform Business Organizations Code (UBOC) provisions governing certificates of existence and certificates of registration, required contents of a corporation's annual report, and revenue clearance certificate requirements for withdrawal of a registered foreign entity.
- Amends provisions of the statutes applicable to corporations and limited liability partnerships for consistency with the UBOC.

HOUSE COMMITTEE ON JUDICIARY

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

Staff: Edie Adams (786-7180).

Background:

Legislation enacted in 2015 established a Uniform Business Organizations Code (UBOC), which provides uniform administrative procedures and general legal requirements that apply to business and nonprofit entities formed under the laws of this state or doing business in this state. The UBOC covers issues such as entity filing requirements, registered agents and service of process, foreign entity registration and withdrawal requirements, and

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administrative dissolution of entities. The UBOC applies to the following domestic entities formed under the laws of Washington or foreign entities that are doing business in the state: business corporations, nonprofit corporations, limited liability partnerships, limited partnerships, limited liability companies, and general cooperative associations.

Certificate of Existence and Certificate of Registration.

Upon request, the Secretary of State (SOS) must issue a certificate of existence for a domestic entity or a certificate of registration for a registered foreign entity. There are differences in the information that must be included in a certificate of existence and certificate of registration. Both certificates must include a statement that the entity has been formed, in the case of a domestic entity, or is registered to do business in the state, in the case of a registered foreign entity. In addition, both must state the name of the entity, that all fees, interest, and penalties owed to the state have been paid, and that the entity's most recent annual report has been filed. In the case of a domestic entity, the certificate of existence must also state the date of the entity's formation and that the SOS's records do not reflect that the entity has been dissolved and that a proceeding for administrative dissolution is not pending. A certificate of registration for a foreign entity does not need to include similar information.

A certificate of existence or certificate of registration issued by the SOS may be relied upon as conclusive evidence of the facts stated in the certificate, subject to any qualifications stated in the certificate. The law in effect prior to the enactment of the UBOC provided that a certificate of existence or certificate of registration could be relied upon as conclusive proof that, in the case of a domestic entity, it was in existence and duly formed, and in the case of a foreign entity, it was registered to do business in the state.

Initial and Annual Reports.

Under the UBOC, all domestic entities other than limited liability partnerships or nonprofit corporations must file an initial report with the SOS within 120 days of the effective date of formation. The UBOC eliminated a requirement previously contained in some entity statutes that a foreign entity must file an initial report. However, a provision of the business corporations law imposes a penalty on any foreign corporation that does not file an initial or annual report.

Both foreign and domestic entities are required to file an annual report that includes specified information, including the entity's name and address, a brief description of the nature of the entity's business, and the names of the entity's governors. In the case of a business corporation, the UBOC added a requirement that the annual report also must include names and addresses of the chairperson of its board of directors and the officers of the corporation.

Withdrawal of Registered Foreign Entities.

A registered foreign entity may withdraw its registration by executing and delivering a statement of withdrawal to the SOS that contains specified information. The statement of withdrawal must be accompanied by a copy of a revenue clearance certificate issued by the Department of Revenue that indicates the entity has paid any outstanding license fee, tax, or penalty. Under the provision of law governing excise tax administration, a revenue clearance certificate must be issued only in the case of the dissolution or withdrawal of a business corporation.

Summary of Bill:

Certificate of Existence and Certificate of Registration.

The certificate of registration of a foreign entity must state the date the foreign entity registered to do business in Washington, that the records of the Secretary of State (SOS) do not reflect that the foreign entity's registration to do business in the state has been terminated, and that a proceeding is not pending for the administrative termination of the registration of the registered foreign entity.

A certificate of existence or certificate of registration issued by the SOS may be relied upon as conclusive evidence that, in the case of a domestic entity, it is in existence and duly formed or incorporated, and in the case of a registered foreign entity, it is registered and authorized to do business in the state.

The term "doing business" and "transacting business" and their variants, including "do business" and "transact business" are used interchangeably and each has the same meaning when used in the Uniform Business Organizations Code (UBOC) and the laws governing specific entities.

Initial and Annual Reports.

The Washington Business Corporation Act is amended to remove a provision indicating a penalty applies when a foreign corporation fails to file an initial report.

The requirement that a business corporation's annual report must include the names and addresses of the chairperson of the board of directors and the officers of the corporation is eliminated.

The requirement that a limited liability partnership must include with its annual license fee a notice containing specifically listed information is eliminated, and instead replaced with a requirement to file an annual report in accordance with the UBOC.

Withdrawal of Foreign Entities.

The requirement that a registered foreign entity must include a revenue clearance statement with its statement of withdrawal is limited to apply only to foreign corporations.

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) The Uniform Business Organizations Code (UBOC) was a long, detailed, and difficult project that aligned administrative provisions governing business and nonprofit entities and placed them all in one chapter. This streamlined the law and resulted in reducing the size of the code. The substantive change in the bill relates to the certificates of existence. There was concern that the certificate of existence provision is lacking language that is needed to give legal opinions. In some business transactions it is necessary to provide third party legal opinion letters that provide an opinion that the entity is validly existing under Washington law or properly registered and authorized to do business in the state. Prior law stated that a certificate of existence or registration means that the entity is in existence and validly formed or authorized to do business. When the UBOC was enacted, those provisions were not carried over from the Washington Business Corporation Act and made applicable to all entities. The bill eliminates the requirement that the addresses of officers be included in the annual report, but the names of those officers are made publicly available. This makes the requirement for corporations the same as other entities. Entities are sued through the registered agent, and the requirement that the registered agent's address be provided is not affected by the bill.

(Opposed) None.

Persons Testifying: Senator Pedersen, prime sponsor; Brian Hulse, Washington State Bar Association; and Tsering Cornell, Office of the Secretary of State.

Persons Signed In To Testify But Not Testifying: None.