

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 1202 (Limón)
Version: March 21, 2022
Hearing Date: March 29, 2022
Fiscal: Yes
Urgency: No
AM

SUBJECT

Business entities: Secretary of State: document filings

DIGEST

This bill makes various technical, non-substantive, and clarifying changes throughout the Corporations Code in preparation for the Secretary of State's (SOS) automated filing system, including, among others, standardizing terms, making practices uniform across all business entity types, and updating cross-references. The bill also makes some other substantive changes, such as removing a prohibition on disclosing certain information to the public under the Commercial and Industrial Common Interest Development Act.

EXECUTIVE SUMMARY

The California Corporations Code provides for the formation and governance of various business entities, including corporations, partnerships, limited partnerships, limited liability companies, and limited liability partnerships. In order to form and stay in good standing with the state, businesses are required to file certain documents with the SOS and pay various fees. These documents require certain information to be included, such as name of the business, agent for service of process, and address. The SOS has been working on transitioning to a fully automated filing system, and has identified various issues, conflicting standards, and outdated references in existing statutes during the transition. This bill generally makes numerous technical, non-substantive, and clarifying changes throughout existing law to assist in the transition to a paperless filing system. The bill would also make a few substantive changes to existing law to address certain issues identified by the SOS.

The bill is sponsored by the Secretary of State, Shirley N. Weber, Ph.D. There is no known support or opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Prohibits businesses whose name does not comply with certain requirements from registering with the SOS until they adopt, for purposes of transacting business in this state, an alternate or assumed name. (Corp. Code. §§ 201, 2106, 15901.08, & 17701.08.)
- 2) Requires the location of a principal office, which is sometimes also referred to as principal business office, designated office, chief executive office, place of business, or principal executive office, to be included on various forms filed with the SOS. (Corp. Code §§ 202, 17702.02, 17708.02, & 17710.06.)
- 3) Requires certificates of good standing, certificates of existence, and certificates that a name change was made in accordance with laws of the state or place of incorporation, declaration of trust, organization, or where formed to be filed with the SOS, as provided. (Corp. Code §§ 2101, 2107, 15909.02, 15909.06, 17708.02, & 17708.05.)
- 4) Prohibits the name of a limited partnership and a limited liability company from containing certain words, such as bank, insurance, trust, or corporation. (Corp. Code §§ 15901.08(g) & 17701.08(e).)
 - a) Additionally prohibits the name of a limited liability company from including the words “insurer” or “insurance company” or any other words suggesting that it is in the business of issuing policies of insurance and assuming insurance risk. (Corp. Code § 17701.08(e).)
- 5) Authorizes the SOS to cancel filings of articles of domestic corporations, nonprofit corporations, or cooperative corporations, applications and certificates of limited partnerships and foreign limited partnerships, the filing of the registration of a limited liability partnership and foreign limited liability partnership, the articles of organization of a limited liability company, and the application and certificate of registration of a foreign limited liability company upon written notification that the item presented for payment has not been honored for payment after an initial notice to the agent for service of process or to the person submitting the instrument. If the amount has not been paid, the SOS is required to give a second written notice of cancellation. (110.5, 5008.5, 12214.5, 15902.01(f), 15909.05(c), 16953(d), 16959(d), 17702.01(f), & 17708.06(c).)
- 6) Requires a foreign corporation, foreign limited liability company, or foreign limited partnership, to provide certain information to the SOS when applying for a certificate to transact business in this state. (Corp. Code §§ 2105, 15909.02, & 17708.02.)

- a) A foreign limited partnership and foreign limited liability company must provide the date of organization in the state or other jurisdiction where they are organized. (Corp Code §§ 15909.02(a)(2) & 17708.02(a)(2).)
 - b) Foreign corporations must provide their name and the state or place of their incorporation. (Corp. Code § 2105(a)(1).)
 - c) A foreign limited liability company must provide a statement that the foreign limited liability company is authorized to exercise its powers and privileges in that state or other jurisdiction where it is organized. (Corp. Code § 17708.02(a)(2).)
- 7) Requires, under the Commercial and Industrial Common Interest Development Act, each association, whether incorporated or unincorporated, to submit to the SOS specified information concerning the association and development that it manages. (Civ. Code § 6760.)
- a) Requires the SOS to make the name, address, and either the daytime telephone number or email address of the association's onsite office or managing agent available only for governmental purposes and only to Members of the Legislature and the Business, Consumer Services, and Housing Agency, upon written request. (*Id.* at subd. (f).)
 - b) Provides that all other information submitted pursuant to this provision is subject to public inspection pursuant to the California Public Records Act and shall be made available for governmental or public inspection. (*Ibid.*)
- 8) Imposes, under the Corporation Tax Law, a franchise tax on any corporation doing business within the state, including a minimum franchise tax on specified corporations, and requires any taxpayer (corporation) that is dissolved or withdraws from the state during any taxable year to pay a tax only for the months of the taxable year that precede the effective date of the dissolution or withdrawal, as specified. (Rev. & Tax. Code §§ 23151, 23153, & 23332.)
- a) Provides that the effective date of dissolution of a corporation for purposes of the Corporation Tax Law is the date on which the certified copy of the court decree, judgment, or order declaring the corporation duly wound up and dissolved is filed in the office of the SOS or the date on which the certificate of winding up, if necessary, and the certificate of dissolution are filed in the office of the SOS. (Rev. & Tax. Code § 23331(a).)
 - b) Requires the SOS to recommend, as provided, that all documents required to be filed with the SOS to dissolve a corporation be sent, if mailed, by certified mail with return receipt requested. (*Id.* at subd. (b).)
 - c) Requires the SOS to notify the taxpayer that receipts of the documents by the SOS will be acknowledged within 21 days of receipt. (*Ibid.*)
 - d) Requires the SOS, on or before 21 days after receipt of the documents, to provide a taxpayer with acknowledgment of receipt of the documents. (*Id.* at para. (c).)

This bill:

- 1) Streamlines terms used across business entities by:
 - a) changing references to assumed name to alternate name, and
 - b) changing references to principal business office, designated office, chief executive office, place of business, or principal executive office to principal office.
- 2) Requires certificates of good standing, certificates of existence, and certificates related to a name change to be issued within the past six months from submission of application in California, as provided.
- 3) Additionally prohibits the name of a limited partnership from containing the words “insurer” or “insurance company” or any words suggesting that it is in the business of issuing policies of insurance and assuming insurance risks.
- 4) Authorizes the SOS to cancel filings of articles of domestic corporations, nonprofit corporations, or cooperative corporations, applications and certificates of limited partnerships and foreign limited partnerships, the filing of the registration of a limited liability partnership and foreign limited liability partnership, the articles of organization of a limited liability company, and the application and certificate of registration of a foreign limited liability company within 90 days of written notification that the item presented for payment has not been honored for payment.
 - a) Clarifies that these provisions also apply to certificates affecting a conversion, as specified.
 - b) Additionally applies these provisions to partnerships, as specified.
- 5) Requires a foreign corporation to provide the SOS the name of the corporation, and if it does not comply with naming requirements for corporations an alternate name, and a statement the foreign corporation is authorized to exercise its powers and privileges in its state of incorporation or organization.
- 6) Deletes the requirement for a foreign limited partnership and foreign limited liability company to provide the SOS the date of organization in the state or other jurisdiction where they are organized.
- 7) Requires a foreign limited partnership to provide a statement that the foreign limited partnership is authorized to exercise its powers and privileges in the state or jurisdiction where it is organized.
- 8) Deletes the requirement that the SOS make the name, address, and either the daytime telephone number or email address of the association’s onsite office or managing agent available only for governmental purposes and only to Members of the Legislature and the Business, Consumer Services, and Housing Agency, upon

written request, under the Commercial and Industrial Common Interest Development Act.

- 9) Deletes the requirement under the Corporation Tax Law for the SOS to notify taxpayers that receipt of documents will be acknowledged and instead requires the SOS to provide the taxpayer a filing response in 21 days of receipt of the documents.
- 10) Updates various obsolete or incorrect cross-references.
- 11) Makes various other nonsubstantive changes.

COMMENTS

1. Author Statement

The author writes:

SB 1202 empowers the office of the Secretary of State to provide better customer service for Californians trying to start new businesses. The bill improves efficiency by clearing ambiguities and conflicts in the Corporations Code that will facilitate the transition from paper-based applications to a streamlined, digital experience. By taking into account modernized online filing functionalities, this bill simplifies filing processes with the Secretary of State and will result in a better experience for people starting a new business in California.

2. Changes related to the implementation of the SOS automated filing system

The SOS anticipates launching the California Business Connect (CBC), its automated filing system, on March 29, 2022. In preparation for the implementation of the CBC, the SOS has sponsored several bills to make changes to the statutes governing how businesses register with, and provide documents to, the SOS. SB 1041 (Jackson, Ch. 834, Stats. 2014) made various changes related to the implementation of the CBC, such as harmonizing statutes relating to the resignation of agents for service of process to provide consistency across different types of business entities, clarifying situations wherein a penalty for otherwise delinquent annual statements would not be applied, striking requirements for the provision of additional copies of specified filings, and correcting various internal cross references. SB 1532 (Pavley, Ch. 494, Stats. 2012) also enacted various changes in relation to the implementation of the CBC, including revising requirements with respect to the maintenance of forms filed with the SOS, and revising provisions relating to the assignment of filing dates and fees by the SOS.

This bill also makes numerous minor changes throughout the Corporations Code, many of which are technical in nature, but are geared at streamlining, clarifying, and updating

existing law in order to enable the SOS to efficiently and effectively move to an automated system. For example, a business whose name does not comply with specified requirements cannot register with the SOS unless it adopts an alternate name or assumed name. This bill would change all references to assumed name to alternate name. Similarly, existing law requires a business to disclose the mailing address of its principal office, sometimes referred to as principal business office, designated office, chief executive office, place of business, or principal executive office. The bill streamlines the term across business entities to simply refer to principal office.

In addition, the bill seeks to address the variation of standards across business entity types, which requires the SOS to create different requirements in its forms and review procedures. The bill would eliminate the differences in standards and eliminate the necessity for the SOS to adopt multiple procedures in their online forms. One such variation is that under existing law a foreign limited partnership and foreign limited liability company must provide the date of organization in the state or other jurisdiction where they are organized when registering with the SOS, but foreign corporations do not have this requirement. The bill deletes the requirement to provide the date of organization. Another variation is that a foreign limited liability company is required to provide the SOS a statement that it is authorized to exercise its powers and privileges in the jurisdiction of its organization, but foreign corporations and foreign limited partnerships are not. The bill requires foreign corporations and foreign limited partnerships to provide this statement.

The bill requires a foreign corporation to provide the SOS the name of the corporation, and if it does not comply with specified naming requirements, to provide an alternate name as other business entities are required to under existing law. The bill also prohibits the name of a limited partnership from including the words “insurer,” “insurance company,” or any words suggesting that it is in the business of issuing policies of insurance and assuming insurance risks as existing law does for limited liability companies. The bill would also specify that certificates of good standing, certificates of existence, and certificates related to a name change be issued within the past six months from submission of application in California.

The bill also seeks to standardize the timeframe for giving notice before canceling specified filings of businesses upon written notification that an item presented for payment has not been honored. Under existing law, the time frame for giving this notice varies across business entities. For example, it is 70 days for nonprofit corporations and cooperative corporations but for others it is 90 days. The bill provides that the SOS is required to give notice within 90 days of written notification payment was not honored, and clarifies that the authority to cancel filings after the 90 day notice period applies to filings affecting a conversion as well. The bill additionally applies the authority to cancel a filing, including a filing affecting a conversion, to partnerships in the same manner as for other business entities.

3. Other changes in the bill

a. *Commercial and Industrial Common Interest Development Act*

The Commercial and Industrial Common Interest Development Act (Act) was enacted in SB 752 (Roth, Ch. 605, Stats. 2013) and was modeled after the provisions in the Davis-Sterling Common Interest Development Act¹, which regulates residential property as opposed to commercial property. The Act requires an association to submit specified information to the SOS in order to assist with the identification of commercial or industrial common interest developments.² This information includes the name, address, and either the daytime telephone number or email address of the association's onsite office or managing agent.³ The statute specifies that the name, address, and either the daytime telephone number or email address of the association's onsite office or managing agent is only available for governmental purposes and only to Members of the Legislature and the Business, Consumer Services, and Housing Agency, but that all other information submitted to the SOS under that section is to be made available for public inspection pursuant to the California Public Records Act.⁴

This section was specifically modeled after Section 5405 of the Civil Code in the Davis-Sterling Common Interest Development Act, which also requires each association to submit specified information to the SOS. However, the information required is the name, address, and either the daytime telephone number or email address of the president of the association, other than the address, telephone number, or email address of the association's onsite office or managing agent.⁵ This information is extremely personal information of a private person and was therefore shielded from disclosure to the public by the limitation that the information is only available for governmental purposes and to specified governmental actors while all other information submitted under that section was made subject to public inspection.⁶ The information required to be submitted under the Act—the name, address, and daytime telephone number or email address of the association's onsite office or managing agent—is not personal information of a private person that warrants or needs shielding from public disclosure. The SOS believes that this limitation on disclosure was erroneously included when the Act was enacted and proposes deleting the entirety of subdivision (f) of Section 6760 of the Civil Code, thereby making the information submitted to the SOS under that section subject to the California Public Records Act in the same manner as any other public record.

In order to ensure that the deletion of subdivision (f) of Section 6760 of the Civil Code does not create an implication that the information in that section is not subject to the

¹ Part 5 (commencing with § 4000) of Division 4 of the Civil Code.

² Civ. Code §6760

³ *Id.* at para. (5) of subd. (a)

⁴ *Id.* at subd. (f)

⁵ Civ. Code § 5405(a)(5).

⁶ *Id.* at subd. (f).

California Public Records Act in the same manner as any other public record, the Author has agreed to add a clarifying amendment in an uncodified section of the bill to make it clear that the information is to be considered a public record.

b. Changes to the Corporation Tax Law

The Corporation Tax Law generally imposes a franchise tax on corporations doing business within the state, as provided, and also imposes a minimum franchise tax on specified corporations. That law specifies that a corporation that is dissolved or withdraws from the state during any taxable year is required to pay a tax only for the months of the taxable year that precede the effective date of the dissolution or withdrawal, as specified. The effective date of dissolution of a corporation for purposes of the Corporation Tax Law is the date on which the certified copy of the court decree, judgment, or order declaring the corporation duly wound up and dissolved is filed in the office of the SOS or the date on which the certificate of winding up, if necessary, and the certificate of dissolution are filed in the office of the SOS. The SOS is required to notify the taxpayer that receipts of the documents of dissolution will be acknowledged within 21 days of receipt and requires the SOS to provide a taxpayer with acknowledgment of receipt of the documents on or before 21 days after receipt of the documents. In order to streamline this process, the bill instead requires the SOS to provide the taxpayer a filing response within 21 days of receipt of the documents of dissolution.

c. Various other technical and nonsubstantive changes

The bill makes various other technical and nonsubstantive changes including, among others:

- changing gendered terms to non-gendered terms;
- changing references to “prior to” to “before”;
- changing references to the “Commissioner of Business Oversight” to “Commissioner of Financial Protection and Innovation”;
- changing references to “this state” to “California” and “within this state” to “in California”;
- fixing a scrivener’s error in Section 17709.02 of the Corporations Code by changing “beneficiary” to “beneficial” to align with the correct term for types of membership and Section 800 of the Corporations Code; and
- correcting and updating various internal cross-references.

4. Proposed Amendments

The author offers the following amendments to address various drafting issues:⁷

Amendment 1

Remove Section 17701.04 of the Corporations Code from the bill.

Amendment 2

Add an uncodified section of law to the bill that states:

It is the intent of the Legislature that the change made to Section 1 of this bill deleting subdivision (f) of Section 6760 of the Civil Code subjects the information in that section to the California Public Records Act (Division 10 (commencing with Section 7920.000) of the Government Code).

Amendment 3

Fix a sequencing issue in the bill by placing amended Section 23331 of the Revenue and Taxation Code after amended Section 25211 of the Corporations Code.

5. Statement in support

The sponsor of the bill, the Secretary of State, Shirley N. Weber, Ph.D., writes:

As the sponsor of Senate Bill 1202, I respectfully request your support for this measure. This bill is a key step toward making the business filing process more user friendly as part of the California Business Connect project within the Secretary of State (SOS). California Business Connect modernizes business filing processes by allowing customers to file documents and request records online 24 hours a day, 7 days a week.

SB 1202 makes focused and meaningful changes to support the goal of improved customer service and business filing efficiency. This bill ensures consistency and uniformity across entity types and removes confusing terminology from statute. Specifically, SB 1202 reduces confusing statutory language relating to definitions and terminology across entity types such as alternate names against assumed names, surrender against withdrawal pertaining to foreign corporations (formed outside California), and the multiple definitions of an entity's office address.

⁷ The amendments may also include technical, nonsubstantive changes recommended by the Office of Legislative Counsel.

In addition, SB 1202 incorporates environmentally sound practices by allowing customers to use electronic documents, when applicable, in place of paper records. This measure also makes technical omnibus changes to standardize the processing and handling of SOS business customer transactions in line with recently enacted legislation. [...]

SUPPORT

Secretary of State, Shirley N. Weber, Ph.D. (sponsor)

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 1041 (Jackson, Ch. 834, Stats. 2014) was enacted to implement changes necessary for the California Business Connect automated system, such as requiring that the SOS prescribe forms for the resignation of agents for service of process, authorizing the SOS to remove and destroy records relating to agent resignations if a new agent for service of process is designated, as specified, and striking requirements for the provision of additional copies of specified filings. SB 1041 also made other technical and clarifying changes.

SB 1532 (Pavley, Ch. 494, Stats. 2012), was enacted to implement changes necessary for the California Business Connect automated system, such as specifying that the required address information in business filings is the street address and required business entities to provide a mailing address if not the same as the street address. SB 1532 also revised requirements with respect to the maintenance of forms filed with the SOS, revised provisions relating to the assignment of filing dates and fees by the SOS, repealed specified provisions relating to special purpose corporations, and made other technical changes.
