

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

SB 288 (Jones)  
Version: March 11, 2021  
Hearing Date: March 16, 2021  
Fiscal: Yes  
Urgency: No  
AWM

**SUBJECT**

Corporations: conversions: foreign corporation or foreign other business entity

**DIGEST**

This bill establishes a procedure through which domestic corporations can convert to business entities organized under the laws of a different state.

**EXECUTIVE SUMMARY**

Under current law, there is no procedure for a California corporation to convert into a business entity registered under the laws of another state. There are, however, procedures for a California corporation to convert into a different type of business entity, and procedures for other business entities to convert into foreign business entities. Accordingly, a California corporation seeking to convert into a foreign business entity must go through two steps: first convert into another form of domestic entity, and then convert into a foreign entity.

This bill, sponsored by the Business Law Section of the California Lawyers Association, would establish a procedure by which a California corporation could convert directly into a foreign business entity. According to the sponsor, removing the extra step for California corporate conversions encourage corporations to register in California, by providing needed flexibility through the streamlined process. There is no known opposition. This bill passed out of the Senate Committee on Banking and Financial Institutions on a 9-0 vote.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Defines the following terms:
  - a) "Domestic corporation" is defined as a corporation formed under the laws of California. (Corp. Code, § 167.)
  - b) "Foreign corporation" is defined as any corporation other than a domestic corporation. (Corp. Code, § 171.)
  - c) "Other business entity" is defined as a limited liability partnership, limited partnership, general partnership, business trust, real estate development trust, unincorporated association (not including a nonprofit association), or domestic reciprocal insurer. (Corp. Code, § 174.5.)
- 2) Provides procedures for a domestic corporation to convert into a domestic other business entity. (Corp. Code, §§ 1150-1157.)
- 3) Provides procedures for a domestic other business entity to convert into a foreign other business entity or a foreign corporation. (Corp. Code, §§ 15911.01-15911.19, 16901-16917, 17710.01-17710.19.)
- 4) Does not provide procedures for a domestic corporation to convert into a foreign corporation or a foreign other business entity.
- 5) Authorizes the Secretary of State to charge and collect a fee of \$150 from a business entity that converts itself to a different form. (Corp. Code, § 1160; Gov. Code, § 12184.)

This bill:

- 1) Establishes procedures for a domestic corporation to convert into a foreign corporation or a foreign business entity, which are similar to the existing procedures for other types of entity conversions.
- 2) Provides that, where a person or entity seeks to enforce an obligation against a domestic corporation that has subsequently converted into a foreign corporation or foreign other business entity, and the entity's designated process recipient cannot be located through due diligence, a court may designate the Secretary of State as agent for service of process in an action against that entity. When the notice is served on the Secretary of State following the procedures set forth in section 12197 of the Government Code for serving the Secretary of State with documents to be served on a business entity, the Secretary of State shall provide notice of the service of process to the entity via certified mail with return receipt requested.

- 3) Deletes section 1160 of the Corporations Code – which authorizes the Secretary of State to charge and collect a \$150 fee from a business entity converting itself into a different form – as redundant in light of section 12184 of the Government Code, which authorizes the Secretary of State to charge and collect the same fee.

### COMMENTS

1. Author's comment

According to the author:

This proposal will encourage business startups to incorporate in California rather than another state. Current law discourages incorporating in California because California is one of the few states that does not offer a single-step process for the subsequent conversion of a corporation into a business entity organized under the laws of another state.

SB 288 will eliminate this impediment and encourage California business owners to choose a California corporation by streamlining the process for the corporation to convert to a foreign corporation if needed. Although this solution might appear to be promoting California corporations to leave the state, corporations can already leave, but with more steps and at a greater expense to the business. For California residents starting a new business, the benefits of this bill are real: it will increase the flexibility of California-based corporations and increase the likelihood that a business owner would select a California corporation over a foreign corporation, even if the business never actually needs to take advantage of that flexibility.

2. This bill streamlines the corporate conversion process

Under current law, California corporations must undergo two steps to convert to a foreign business entity: convert into a domestic business entity, and then convert into a foreign business entity.<sup>1</sup> Other business entities – such as limited liability companies and general partnerships – can convert directly into a foreign business entity.<sup>2</sup>

There does not appear to be any reason to require corporations to convert twice in order to become a foreign business entity, when all other business entities can convert to a foreign business entity in a single step. California corporations are not prevented from leaving the state – the law just makes it more difficult for them to do so. As the sponsor argues, this added burden might discourage businesses from incorporating in California in the first place. While there is no specific evidence suggesting that the two-

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<sup>1</sup> See Corp. Code, §§ 1150-1157 (procedures for a domestic corporation to convert to a domestic other business entity).

<sup>2</sup> See *id.*, §§ 15911.01-15911.19, 16901-16917, 17710.01-17710.19.

step conversion process is causing businesses to register elsewhere, there also does not appear to be any argument in favor of maintaining the current, more onerous procedure for California corporations wishing to convert. On balance, the bill seems to be a reasonable approach to the added burden imposed on California corporations converting into foreign entities.

The bill also eliminates Corporations Code section 1160, which authorizes the Secretary of State to charge a \$150 fee to a corporation converting into a different entity.<sup>3</sup> This provision is duplicative of Government Code section 12184, which likewise authorizes the Secretary of State to collect a \$150 fee from a converting corporation.<sup>4</sup> In the absence of opposition to deleting the redundant Corporations Code section, this appears to be a reasonable deletion to clean up the codes.

3. The bill's provision designating the Secretary of State as agent for service of process when a converted entity's agent cannot be located is consistent with existing law

Under current law, when a domestic limited liability company converts to a foreign other business entity, the converted entity must file with the Secretary of State a certificate of conversion that includes its designated agent for service of process.<sup>5</sup> If, after the conversion, a person seeks to hold the converted entity liable for an obligation but cannot locate the designated agent set forth in the certificate of conversion through due diligence – or if no agent has been designated and none of the entity's members, officers, managers, or agents can be located – the court may designate the Secretary of State as the converted entity's agent for service of process.<sup>6</sup> If the Secretary of State is so designated, and is provided with the required fee, the Secretary of State shall provide notice to the converted entity via certified mail with the return receipt requested, and keep a record of all such attempts at service.<sup>7</sup> This procedure was adopted in 2012 as part of the California Revised Uniform Limited Liability Company Act<sup>8</sup> and ensures that Californians with claims against entities that have left the state are not left without recourse because of an inability to locate or serve the departed entity.

This bill would adopt the same procedure for a California corporation that converts into a foreign business entity. In the absence of any objection from the Secretary of State, or any information suggesting this procedure has not worked well in the context of limited liability companies, it appears this is a reasonable approach to prevent converted entities from avoiding obligations by failing to provide adequate service information.

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<sup>3</sup> See Corp. Code, § 1160.

<sup>4</sup> See Gov. Code, § 12184.

<sup>5</sup> Corp. Code, § 17710.6.

<sup>6</sup> *Id.*, § 17710.5.

<sup>7</sup> *Ibid.*

<sup>8</sup> See SB 323 (Vargas, Ch. 419, Stats. 2012).

**SUPPORT**

California Lawyers Association, Business Law Section (sponsor)

**OPPOSITION**

None known

**RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation:

SB 913 (Jones, 2020) was substantially similar to this bill and would have established procedures by which a domestic corporation could convert directly into a foreign corporation. This bill was held in the Senate Banking and Financial Institutions Committee without further action.

AB 1471 (Perea, Ch. 189, Stats. 2015) added additional requirements for other business entities converting into foreign business entities.

AB 506 (Maienschein, Ch. 775, Stats. 2015) clarified conversion requirements for member-managed limited liability companies and manager-managed limited liability companies.

SB 1041 (Jackson, Ch. 834, Stats. 2014) modified the procedures for a California corporation to convert into a domestic other business entity.

**PRIOR VOTES:**

Senate Banking and Financial Institutions Committee (Ayes 9, Noes 0)