

Date of Hearing: June 25, 2012

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Mike Eng, Chair

SB 1532 (Pavley) – As Amended: June 19, 2012

SENATE VOTE: 38-0

SUBJECT: Business filings.

SUMMARY: Updates and standardizes California Law to more efficiently facilitate the development of California Business Connect (a 24 hour, online business filing program). Specifically, this bill:

- 1) Requires the Secretary of State (SOS) to cause the lien notice filing or certificate to be filed, indexed, and marked, as specified.
- 2) Provides that the SOS must file the instrument on the date it is received, unless the instrument provides that it is to be withheld from filing until a future date or, in the judgment of the SOS, the filing is intended to coordinate with the filing of another document that cannot be filed.
- 3) Provides that the SOS must file the instrument on the date it is received, unless the instrument provides that it is to be withheld from filing until a future date not to exceed 90 days or, in the judgment of the SOS, the filing is intended to coordinate with the filing of another document that cannot be filed.
- 4) Specifies that the address required is the street address.
- 5) Requires the business entity to disclose the mailing address of its principal office (or other specified office), if different from the street address.
- 6) Requires that the business entity disclose both its street address and its mailing address, if different from the street address, wherever this information is not specifically required to be disclosed.
- 7) Adds that the articles of incorporation shall also disclose the name and street address of the entity's initial agent for service of process, as specified.
- 8) Requires the street address and of the corporation and the mailing address of the corporation to information required to be provided in the articles of incorporation.
- 9) Provides that a limited liability company (LLC) shall not amend its articles of organization to amend any statement that may appear in the original articles of organization concerning the street address, mailing address, or name and address of the initial agent for service of process, except as specified.
- 10) Specifies that the required address information is the initial street address, and requires the business entity to provide its initial mailing address, if different from its street address.

- 11) Provides that completion of filing is reached upon acceptance by the SOS.
- 12) Allows a corporation to amend or restate its articles of incorporation, as specified, but shall not amend its articles to alter any statement which may appear in its original articles of the names and addresses of the first directors or initial agent for service of process.
- 13) Adds that whenever the street address, mailing address, or electronic mail addresses of an LLC changes, it may file a current statement, as specified. This bill amends the above to specify that the address that these documents shall include is the street address.
- 14) Deletes existing law that allows for the SOS to collect a fee for comparing a copy of any law, resolution, record or other document or paper with the original, or the certified copy of the original, on file with the SOS.
- 15) Provides that the SOS shall provide a copy without charge at the time of the filing.
- 16) Makes various finding and declarations.
- 17) Makes other technical and non-substantive changes.

EXISTING LAW

- 1) Requires the SOS, upon receipt of specified lien notice filings or specified certificates, for those filings or certificates to be marked, held, and indexed upon receipt, as specified. [Code of Civil Procedure, Sections 2103(a)-(b)]
- 2) Requires that the SOS file specified instruments on the date it is received, unless the submitting party requests a later date or, in the judgment of the SOS, the filing is intended to coordinate with the filing of another instrument that cannot be filed. [Corporations Code, Sections 110(a), 5008(a), and 12214(a)]
- 3) Requires that the SOS file specified instruments on the date it is received, unless the instrument is withheld from filing for a period of time not to exceed 90 days pursuant to a request from the submitting party or, in the judgment of the SOS, the filing is intended to coordinate with the filing of another instrument that cannot be filed. [Corporations Code, Section 17062(d)]
- 4) Requires business entities to file specified documents with the SOS, and to disclose, among other things, specified contact information for the entity. This contact information includes, in relevant part, the address of the entity's agent for service of process, or address of the principal (or other specified) office, or both. [Corporations Code, Sections 202(c), 1505(a)(1), 1505(a)(1), 2105(a)(2)-(3), 2602(c), 5130(c), 7130(c), 9130(c), 12310(c), 12570(c), 13226, 15901.16(d)(1), 15092.01(a)(2)-(3), 15909.02(a)(3)-(4), 16303(a)(1), 16309(a), 16953(a)(2)-(3), 16959(a)(1), 17051(a), 17051(a)(4), 17060(a)(2), 17060(d), 17451(a), 17451(a)(3), 17451(a)(5), 18200(a)(1)-(2), and 18200(b)]
- 5) Requires that a credit union specify in its articles of incorporation, among other things, the name and address of its initial agent for service of process, as specified. [Financial Code,

Section 14101(c)]

- 6) Provides that the articles of organization of a LLC may be amended at any time, and in any manner as the members may determine, as specified. Existing law also specifies that a certificate of amendment to the articles must be filed to effect specified changes. [Corporations Codes, Section 17054]
- 7) Requires an LLC to file a statement containing specified information on a biennial basis, starting within 90 days of filing its original articles of incorporation, and that whenever that information changes, the LLC may file a current statement with the information required, as specified. [Corporations Code, Section 17060]
- 8) Provides for what constitutes the completion of filing, including that the SOS has accepted the statement, a copy of the statement, and the filing fee. Requires the SOS to return a copy to the filing entity with notations that indicate the file number and filing date of the original. [Corporations Code, Section 18200(c)]
- 9) Allows for the SOS to collect a fee for comparing a copy of any law, resolution, record or other document or paper with the original, or the certified copy of the original, on file with the SOS. [Government Code, Section 12178.1(c)]
- 10) Provides, that upon the filing of any document pursuant to any provision of the Corporations Code for which there is a filing fee of \$25 or more, the SOS shall compare and certify up to two copies without charge, provided that the copies are submitted to the SOS with the original to be filed. [Government Code, Section 12185]
- 11) Provides for special purpose corporations, including bridge, ferry, wharf, chute, and pier corporations, as well as water and canal corporations.

FISCAL EFFECT: Unknown.

COMMENTS:

BACKGROUND:

The California Corporations Code provides for the formation and governance of various business entities, including corporations, associations, partnerships, limited partnerships, limited liability companies, limited liability partnerships, and more. Each of these businesses must file certain documents with the SOS in order to form and stay in good standing with the state. These documents include articles of incorporation, annual statements, and more.

The California Business Connect Feasibility Study Report, approved by the California Technology Agency in April of 2011, provides an overview of the problem faced by California with respect to its current business filings system. The reliance on manual labor and hard copies makes it not only increasingly difficult to comply with current mandates and new mandates that are created by law, but it also makes these vital business records prone to human error and at risk of irreparable destruction. In addition to such concerns, the report outlines concerns for the time it takes to process and file documents-all of which has already led to an extensive backlog.

NEED FOR THE BILL:

According to the Author this measure is necessary, "to update and standardize current law to prepare for the creation of California Business Connect -- a program to modernize the Secretary of State's antiquated paper-based business filing processes allowing customers to file documents and request records online 24 hours a day, 7 days a week. The new automated system, slated for 2016, will help expedite the way California does business and provide a means to preserve the business and special filing records of the state."

According to the SOS, the sponsor of this measure, California Business Connect, will benefit businesses, the economy, and the taxpayers, as well as, SOS and other state government agencies. Some of the benefits include: eliminate unnecessary delays; provide a centralized and integrated single point of services for business entities and special filings; ensure a more secure processing of payment; provide online help in completing forms; reduce the cost and time required to establish and maintain a business; make services available 24 hours a day, seven days a week; and allow users to see all filing activities related to the business over the long term.

The SOS states, "My office relies on two separately developed legacy information technology systems implemented in the 1980s to serve as databases for most of California's business entities. There are 23 total applications to support the processes of tracking recording and retrieving the records filed and maintained in my office. The current processes are very manual and paper intensive. The new automated system will provide the foundation to expedite the way California does business and provide a means to preserve the business and special filing records of the state. To prepare for California Business Connect, many state laws related to business filings with my office need to be standardized to improve the filing processes. There are no fiscal costs associated with this bill, and by updating these laws now, it will be less expensive and easier to design and build California Business Connect in the future."

REGISTERED SUPPORT / OPPOSITION:

Support

Secretary of State, Debra Bowen (Sponsor)

Opposition

None on file.

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