

MAINE STATE LEGISLATURE

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Date: 5/31/7

L.D. 1853
(Filing No. H-397)

JUDICIARY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
123RD LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1292, L.D. 1853, Bill, "An Act To Enact the Model Registered Agents Act and Amend Entity Acts To Rationalize Annual Filings"

Amend the bill in Part A in section 1 by striking out §121, §122, §123 and §124 and inserting the following:

§120-A. Routine technical rules

Rules adopted pursuant to this chapter, unless expressly designated otherwise, are routine technical rules as defined in chapter 375, subchapter 2-A.

§120-B. Duty of Secretary of State

The duty of the Secretary of State to file documents under this chapter is ministerial. The filing or refusal to file a document does not:

1. Validity of documents. Affect the validity or invalidity of the document in whole or in part;

2. Correctness of information. Relate to the correctness or incorrectness of information contained in the document; or

3. Presumption of validity or correctness. Create a presumption that the document is valid or invalid or that the information in the document is correct or incorrect.

§120-C. Relation to Electronic Signatures in Global and National Commerce Act

This chapter modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001, et seq., but does not modify, limit or supersede Section 101(c) of that Act, 15 United States Code, Section 7001(c), or authorize delivery of any of the notices described in Section 103(b) of that Act, 15 United States Code, Section 7003(b).

COMMITTEE AMENDMENT

1 **§120-D. Effective date**

2 This chapter takes effect July 1, 2008.'

3 Amend the bill by adding before the summary the following:

4 **'PREFATORY NOTE**

5 The Model Registered Agents Act (the "Act") is one of several projects undertaken
6 by the Conference and the American Bar Association ("ABA") to integrate state entity
7 laws into a more coherent and rational scheme. Other projects include the development
8 of the Model Entity Transactions Act jointly by the Conference and the ABA and the
9 addition of Chapter 9 to the Model Business Corporation Act by the Committee on
10 Corporate Laws of the ABA Section on Business Law.

11 The Act grew out of discussions within the International Association of Commercial
12 Administrators ("IACA"), which is the association of state corporation bureaus and
13 similar filing offices in the United States and Canada. IACA was approached by
14 representatives of corporation service companies who were seeking to solve problems
15 they have encountered in their provision of registered agent services. IACA had also
16 been considering on its own how filing requirements in state corporation bureaus could
17 be simplified and standardized. IACA decided that the time was right for it to develop
18 proposed statutory provisions on two subjects:

- 19 1. A standard set of provisions that would apply to all forms of entities that are
20 required to designate in a public filing an agent for service of process.
21 2. A standard form of annual report to be filed with secretaries of state by all forms
22 of entities.

23 The Ad Hoc Committee on Entity Rationalization of the ABA Section on Business
24 Law (the "ABA Committee") had been working cooperatively with IACA for several
25 years on other projects of mutual interest. After IACA had prepared a first draft of
26 provisions on registered agents and annual reports, the ABA Committee joined the
27 drafting effort. The ABA Committee also approached the leadership of the Conference
28 with the suggestion that the Conference also join the drafting effort. The result was the
29 development of the Act.

30 The original draft of the Act contained separate articles dealing with the two subjects
31 originally identified by IACA: (i) registered agents and (ii) annual report filings. After
32 detailed consideration, the drafting committee and its advisors were all agreed that a
33 separate article on annual reports was not necessary and should be omitted from the Act.
34 Instead, the changes needed to standardize annual report filings are included in the
35 Appendix of conforming amendments to the Act. Thus, the Act has two parts:

- 36 1. The provisions of the Act itself, which deal with registered agent issues and apply
37 to all forms of entities.

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1 2. An Appendix of conforming changes to all of the existing uniform, model, and
2 prototype entity laws that have two separate purposes:
3 some of the conforming amendments integrate the uniform, model, and prototype
4 entity laws with the Act and its new registered agent provisions, and
5 the remaining conforming amendments standardize the provisions of the uniform,
6 model, and prototype entity laws on annual report filings.

7 Under existing uniform, model, and prototype entity laws, an entity's registered agent
8 and the location of the registered agent's office serve three purposes:

- 9 1. the registered agent is an agent of the entity authorized to receive service of
10 process on behalf of the entity;
11 2. the location of the office of the registered agent determines where venue is to be
12 laid in certain actions under the entity's organic law; and
13 3. the location of the office of the registered agent also determines where certain
14 notices required by the entity's organic law are to be published.

15 The first function, that of being an agent for service of process, is the principal reason
16 why the appointment of a registered agent is required under entity organic laws. The
17 remaining two functions made sense at a time when the registered office address of an
18 entity was often a business address for the entity. In recent years, however, it has become
19 common for entities to use as their registered agents businesses whose principal activity
20 is the provision of registered agent services, and thus the address of the registered agent
21 has become divorced from any real connection with the business activities of the
22 represented entity.

23 The conforming amendments in the Appendix to this Act accordingly eliminate the
24 functions of the registered office address as the means of determining where venue or
25 publication is appropriate. Venue and publication will be determined by the location of
26 an entity's principal office; or, if the principal office is outside the state, venue and
27 publication will be in a county specified by the legislature (for example, the county where
28 the state capitol is located).

29 The conforming amendments also eliminate the provisions found in some entity
30 organic laws that make the Secretary of State the default agent for service of process
31 under certain circumstances.

32 **Comments for section 102**

33 **MODEL ACT COMMENT**

34 (This is Section 2 of the Model Registered Agents Act.)

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1 **In general.** Many of the definitions in this section were developed for use in the
2 Model Entity Transactions Act (META). States that have adopted META should
3 consider arranging their entity laws in such a manner that the definitions in META will
4 apply more broadly and do not need to be repeated in other laws. The definitions that are
5 common to this Act and META are:

6 "domestic entity"

7 "entity"

8 "filing entity"

9 "foreign entity"

10 "governance interest"

11 "governor"

12 "interest"

13 "interest holder"

14 "jurisdiction of organization"

15 "organic law"

16 "organic rules"

17 "person"

18 "private organic rules"

19 "public organic document"

20 "qualified foreign entity"

21 "record"

22 "sign"

23 "transferable interest"

24 "type"

25 The comments below with respect to defined terms taken from META are substantively
26 the same as the corresponding comments in META.

27 **"Appointment of agent."** [(1)] - An appointment of agent is an optional filing that
28 may be made by an entity that does not otherwise make a public filing in the state naming
29 an agent for service of process. If a state has not enacted the Uniform Unincorporated
30 Nonprofit Association Act, paragraph (A) of this definition should be omitted.

31 **"Commercial registered agent."** [(2)] - A commercial registered agent is an
32 individual or entity that is in the business of serving as a registered agent in the state and
33 that files a listing statement under Section 6. Being listed as a commercial registered
34 agent is voluntary and persons serving as registered agents are not required to be listed
35 under Section 6. The benefits to the registered agent of being listed under Section 6,
36 however, are substantial and most registered agents will elect to be so listed. Although

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1 this definition and Section 6 do not expressly require that a foreign entity that is listed as
2 a commercial registered agent be qualified to do business in the state, the activity of
3 serving as a registered agent is one that requires such registration.

4 **"Domestic entity." [(3)]** - The term "domestic entity" in this Act means an entity
5 whose internal affairs are governed by the organic laws of the adopting state. Except in
6 the case of general partnerships and unincorporated nonprofit associations, this will mean
7 an entity that is formed, organized, or incorporated under domestic law. In the case of a
8 general partnership organized under the Uniform Partnership Act (1997) (RUPA), it will
9 mean a general partnership whose governing law under RUPA § 106 is the law of the
10 adopting state. Under RUPA § 106 the governing law is determined by the location of
11 the partnership's chief executive office, except for limited liability partnerships where the
12 governing law is the state where the statement of qualification is filed. It is a factual
13 question whether the activities and organization of an unincorporated nonprofit
14 association make it a domestic or foreign entity.

15 This definition is patterned after Model Entity Transactions Act § 102(9) ("domestic
16 entity").

17 **"Entity." [(4)]** - The term "entity" includes:

18 Business corporation.

19 Business or statutory trust.

20 General partnership, whether or not a limited liability partnership.

21 Limited liability company.

22 Limited partnership, whether or not a limited liability limited partnership.

23 Nonprofit corporation.

24 Unincorporated nonprofit association.

25 The term does not include a sole proprietorship.

26 This definition is intended to include all forms of private organizations, regardless of
27 whether organized for profit, and artificial legal persons other than those excluded by

1 paragraphs (A) through (E). Thus, this definition is broader than the definition of
2 "business entity" in, e.g., Code of Ala. § 10-15-2(2) which does not include nonprofit
3 entities. This definition does not exclude regulated entities such as public utilities, banks
4 and insurance companies.

5 Inter vivos and testamentary trusts are treated in many states as having a separate
6 legal existence, but they have been excluded from the definition of "entity." Trusts that
7 carry on a business, however, such as a Massachusetts trust, real estate investment trust,
8 Illinois land trust, or other common law or statutory business trusts are "entities."

9 Section 4 of the Uniform Unincorporated Nonprofit Association Act gives an
10 unincorporated nonprofit association the power to acquire an estate in real property and
11 thus an unincorporated nonprofit association organized in a state that has adopted that act
12 will be an "entity." At common law, an unincorporated nonprofit association was not a
13 legal entity and did not have the power to acquire real property. Most states that have not
14 adopted the Uniform Act have nonetheless modified the common law rule, but states that
15 have not adopted the Uniform Act should analyze whether they should modify the
16 definition of "entity" to add an express reference to unincorporated nonprofit
17 associations.

18 There is some question as to whether a partnership subject to the Uniform Partnership
19 Act (1914) (UPA) is an entity or merely an aggregation of its partners. That question has
20 been resolved by Section 201 of the Uniform Partnership Act (1997) (RUPA), which
21 makes clear that a general partnership is an entity with its own separate legal existence.
22 Section 8 of UPA gives partnerships subject to it the power to acquire estates in real
23 property and thus such a partnership will be an "entity." As a result, all general
24 partnerships will be "entities" regardless of whether the state in which they are organized
25 has adopted RUPA.

26 Paragraph (C) of this definition excludes from the concept of an "entity" any form of
27 co-ownership of property or sharing of returns from property that is not a partnership
28 under RUPA. In that connection, Section 202(c) of RUPA provides in part:

29 In determining whether a partnership is formed, the following rules apply:

30 (1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property,
31 common property, or part ownership does not by itself establish a partnership, even if
32 the co-owners share profits made by the use of the property.

33 (2) The sharing of gross returns does not by itself establish a partnership, even if the
34 persons sharing them have a joint or common right or interest in property from which
35 the returns are derived.

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1 Limited liability partnerships and limited liability limited partnerships are "entities"
2 because they are general partnerships and limited partnerships, respectively, that have
3 made the additional required election claiming LLP or LLLP status. A limited liability
4 partnership is not, therefore, a separate type of entity from the underlying general or
5 limited partnership that has elected limited liability partnership status.

6 This definition is patterned after Model Entity Transactions Act § 102(13) ("entity").

7 **"Filing entity."** [(5)] Whether an entity is a filing entity is determined by reference
8 to whether its legal existence is attributable to the filing of a document with the state
9 filing officer. While the statute refers to an entity that is "created," it is intended to
10 encompass corporations which are "incorporated," limited liability companies which are
11 "organized," and limited partnerships which are "formed" by a filing required by the
12 organic law governing the entity. Business trusts (sometimes referred to as "statutory
13 trusts") present a special problem. In some states, for example, a business trust is a filing
14 entity, while in other states business trusts are recognized only by common law.

15 The term does not include a limited liability partnership because an election filed by a
16 general partnership claiming that status (e.g., a statement of qualification under Uniform
17 Partnership Act (1997), § 1001) does not create the entity. A limited liability limited
18 partnership, on the other hand, is a filing entity because the underlying limited
19 partnership is created by filing a certificate of limited partnership.

20 This definition is patterned after Model Entity Transactions Act § 102(14) ("filing
21 entity"). See also Model Business Corporation Act § 1.40(9B) ("filing entity").

22 **"Foreign entity."** [(6)] - The term "foreign entity" includes any non-domestic entity
23 of any type. Where a foreign entity is a filing entity, the entity is governed by the laws of
24 the state of filing. A nonfiling foreign entity is governed by the laws of the state
25 governing its internal affairs. It is a factual question whether a general partnership whose
26 internal affairs are governed by the Uniform Partnership Act (1914) (UPA) is a domestic
27 or foreign partnership. A UPA partnership will likely be deemed to be a domestic entity
28 where the greatest nexus of contacts are found. Similar issues arise with respect to
29 determining the domestic or foreign status of unincorporated nonprofit associations. The
30 domestic or foreign characterization of partnerships under the Uniform Partnership Act
31 (1997) (RUPA) that have not registered as limited liability partnerships will be governed
32 by RUPA § 106(a) ("state where the partnership's chief executive office is located").

33 This definition is patterned after Model Entity Transactions Act § 102(15) ("foreign
34 entity").

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1 **"Foreign qualification document."** [(7)] - This definition should be construed
2 broadly to include filings in the state that are required when a foreign entity is conducting
3 activities in the state, regardless of whether the process is referred to as "obtaining a
4 certificate of authority to do business," "qualifying to do business," "being authorized to
5 transact business," or some other formulation.

6 **"Governance interest."** [(8)] - A governance interest is typically only part of the
7 interest that a person will hold in an entity and is usually coupled with a transferable
8 interest (or economic rights). However, memberships in some nonprofit corporations and
9 unincorporated nonprofit associations consist solely of governance interests and
10 memberships in other nonprofit entities may not include either governance interests or
11 transferable interests. In some unincorporated business entities, there is a more limited
12 right to transfer governance interests than there is to transfer transferable interests. An
13 interest holder in such an unincorporated business entity who transfers only a transferable
14 interest and retains the governance interest will also retain the status of an interest holder.
15 Whether a transferee who acquires only a transferable interest will acquire the status of an
16 interest holder is determined by the definition of "interest holder."

17 Shares in a business corporation that are nonvoting nonetheless have a governance
18 interest because they entitle the holder to certain rights of access to information and to
19 certain statutory voting rights on amendments of the articles of incorporation.

20 Governors of an entity have the kinds of rights listed in the definition of "governance
21 interest" by reason of their position with the entity. For a governor to have a "governance
22 interest," however, requires that the governor also have those rights for a reason other
23 than the governor's status as such. A manager who is not a member in a limited liability
24 company, for example, will not have a governance interest, but a manager who is a
25 member will have a governance interest arising from the ownership of a membership
26 interest.

27 This definition is patterned after Model Entity Transactions Act § 102(16)
28 ("governance interest").

29 **"Governor."** [(9)] - This term has been chosen to provide a way of referring to a
30 person who has the authority under an entity's organic law to make management
31 decisions regarding the entity that is different from any of the existing terms used in
32 connection with particular types of entities. Compare Colo. § 7-90-102(35.7) which uses
33 the term "manager" to refer to this concept, even though "manager" is also a term of art in
34 connection with limited liability companies. Depending on the type of entity or its
35 organic rules, the governors of an entity may have the power to act on their own
36 authority, or they may be organized as a board or similar group and only have the power
37 to act collectively, and then only through a designated agent. In other words, a person
38 having only the power to bind the organization pursuant to the instruction of the

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1 governors is not a governor. Under the organic rules, particularly those of unincorporated
2 entities, most or all of the management decisions may be reserved to the members or
3 partners. Thus, if a manager of a limited liability company were limited to having
4 authority to execute management decisions made by the members and did not have any
5 authority to make independent management decisions, the manager would not be a
6 governor under this definition.

7 Except as described above, the term "governor" includes:

8 Director of a business corporation.

9 Director or trustee of a nonprofit corporation.

10 General partner of a general partnership.

11 General partner of a limited partnership.

12 Manager of a limited liability company.

13 Member of a member-managed limited liability company.

14 Trustee of a business or statutory trust.

15 This definition is patterned after Model Entity Transactions Act § 102(17)
16 ("governor").

17 **"Interest."** [(10)] - In the usual case, the interest held by an interest holder will
18 include both a governance interest and a transferable interest (or economic rights).
19 Members in many nonprofit corporations or unincorporated nonprofit associations do not
20 have a transferable interest because they do not receive distributions, but they nonetheless
21 may hold a governance interest in which case they would have the status of interest
22 holders under the Act. An interest holder in an unincorporated business entity may
23 transfer all or part of the interest holder's transferable interest without the transferee
24 acquiring the governance interest of the transferor. In that case, whether the transferor
25 will retain the status of an interest holder will be determined by the applicable organic
26 law and the transferee will have the status of an interest holder under paragraph (B) of
27 this definition. That paragraph will also apply to subsequent transferees from the original
28 transferee.

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1 The term "interest" includes:

2 Beneficial interest in a business or statutory trust.

3 Membership in a nonprofit corporation.

4 Membership in an unincorporated nonprofit association.

5 Membership interest in a limited liability company.

6 Partnership interest in a general partnership.

7 Partnership interest in a limited partnership.

8 Shares in a business corporation.

9 This definition is patterned after Model Entity Transactions Act § 102(18)
10 ("interest").

11 **"Interest holder."** [(11)] - This Act does not refer to "equity" interests or "equity"
12 owners or holders because the term "equity" could be confusing in the case of a nonprofit
13 entity whose members do not have an interest in the assets or results of operations of the
14 entity but only have a right to vote on its internal affairs. Compare Code of Ala. § 10-15-
15 2(4) ("equity owner").

16 The term "interest holder" includes:

17 Beneficiary of a business or statutory trust.

18 General partner of a general partnership.

19 General partner of a limited partnership.

20 Limited partner of a limited partnership.

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1 Member of a limited liability company.

2 Member of a nonprofit corporation.

3 Member of an unincorporated nonprofit association.

4 Shareholder of a business corporation.

5 This definition is patterned after Model Entity Transactions Act § 102(20) ("interest
6 holder"). See also Model Business Corporation Act § 1.40(13B) ("interest holder").

7 **"Jurisdiction of organization."** [(12)] - The term "jurisdiction of organization"
8 refers to the jurisdiction whose laws include the organic law of the entity.

9 This definition is patterned after Model Entity Transactions Act § 102(22)
10 ("jurisdiction of organization").

11 **"Noncommercial registered agent."** [(13)] - A noncommercial registered agent is a
12 person that serves as an agent for service of process but that is not listed under Section 6.
13 All agents for service of process that are not commercial registered agents are
14 noncommercial registered agents.

15 **"Nonqualified foreign entity."** [(14)] - A nonqualified foreign entity is a foreign
16 entity for which there is no foreign qualification document in effect in the adopting state.

17 **"Nonresident LLP statement."** [(15)] - A nonresident LLP statement is the filing
18 that is made by a limited liability partnership under Section 1001 of the Uniform
19 Partnership Act (1997).

20 **"Organic law."** [(16)] - Organic law means statutes other than this Act that govern
21 the internal affairs of an entity. Entity laws in a few states purport to require that some of
22 their internal governance rules applicable to a domestic entity also apply to a foreign
23 entity with significant ties to the state. See, e.g., Cal. Gen. Corp. Law § 2115, N.Y.
24 N-PCL §§ 1318-1321, 15 Pa.C.S. § 6145. Such a "sticky fingers" law is included within
25 the definition of "organic law" for purposes of the Act.

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1 If a state has adopted the Model Entity Transactions Act, it should amend this
2 definition to also exclude that act from the term "organic law."

3 This definition is patterned after Model Entity Transactions Act § 102(26) ("organic
4 law"). See also Model Business Corporation Act § 1.40(15B) ("organic law").

5 **"Organic rules."** [(17)] - The term "organic rules" means an entity's public organic
6 document and its private organic rules.

7 This definition is patterned after Model Entity Transactions Act § 102(27) ("organic
8 rules").

9 **"Person."** [(18)] - The term "person" has the standard meaning of that term in
10 uniform acts.

11 **"Private organic rules."** [(19)] - The term "private organic rules" is intended to
12 include all governing rules of an entity that are binding on all of its interest holders,
13 whether or not in written form, except for the provisions of the entity's public organic
14 document, if any. The term is intended to include agreements in "record" form as well as
15 oral partnership agreements and oral operating agreements among LLC members. Where
16 private organic rules have been amended or restated, the term means the private organic
17 rules as last amended or restated.

18 The term "private organic rules" includes:

19 Bylaws of a business corporation.

20 Bylaws of a business or statutory trust.

21 Bylaws of a nonprofit corporation.

22 Constitution and bylaws of an unincorporated nonprofit association.

23 Operating agreement of a limited liability company.

24 Partnership agreement of a general partnership.

1 Partnership agreement of a limited partnership.

2 This definition is patterned after Model Entity Transactions Act § 102(30) ("private
3 organic rules"). Compare Model Business Corporation Act § 1.40(17A) ("private organic
4 document").

5 **"Public organic document."** [(20)] - A "public organic document" is a document
6 that is filed of public record to form, organize, incorporate, or otherwise create an entity.
7 The term does not include a statement of partnership authority filed under Section 303 of
8 the Uniform Partnership Act (1997) or any of the other statements that may be filed under
9 that act since those statements do not create a new entity. A limited liability partnership
10 is the same entity as the partnership that files the statement. For the same reason, the
11 term also does not include a statement of qualification filed under Section 1001 of that act
12 to become a limited liability partnership. Similarly, the term does not include a statement
13 of authority filed under Section 5 of the Uniform Unincorporated Nonprofit Association
14 Act or a statement appointing an agent filed under Section 10 of that act. Where a public
15 organic document has been amended or restated, the term means the public organic
16 document as last amended or restated.

17 The term "public organic document" includes:

18 Articles of incorporation of a business corporation.

19 Articles of incorporation of a nonprofit corporation.

20 Certificate of limited partnership.

21 Certificate of organization of a limited liability company.

22 In those states where a deed of trust or other instrument is publicly filed to create a
23 business trust, that filing will constitute a public organic document. But in those states
24 where a business trust is not created by a public filing, the deed of trust or similar
25 document will be part of the private organic rules of the business trust.

26 This definition is patterned after Model Entity Transactions Act § 102(32) ("public
27 organic document").

28 **"Qualified foreign entity."** [(21)] - A qualified foreign entity is a foreign entity for
29 which there is a foreign qualification document in effect in the adopting state.

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1 This definition is patterned after Model Entity Transactions Act § 102(33) ("qualified
2 foreign entity").

3 **"Record."** [(22)] - The term "record" has the standard meaning of that term in
4 uniform acts.

5 **"Registered agent."** [(23)] - This term is used in the Act to refer to agents for
6 service of process in contexts where it is not necessary to differentiate between
7 commercial registered agents and noncommercial registered agents.

8 **"Registered agent filing."** [(24)] - Some states require that filings in addition to
9 those listed in this definition, such as articles of amendment or articles of merger, state
10 the registered agent information of the entity making the filing. In states where that is the
11 case, this definition should be amended to add the following additional provision:

12 "(E) any other filing with the [Secretary of State] under an entity's organic law that
13 must include the information required by Section 5(a)."

14 **"Represented entity."** [(25)] - This definition lists the various classes of entities for
15 which registered agents act as agents for service of process.

16 **"Sign."** [(26)] - The term "sign" has the standard meaning of that term in uniform
17 acts.

18 **"Transferable interest."** [(27)] - The term "transferable interest" is taken from
19 Section 102(22) of the Uniform Limited Partnership Act (2001).

20 This definition is patterned after Model Entity Transactions Act § 102(38)
21 ("transferable interest").

22 **"Type."** [(28)] - The term "type" has been developed in an attempt to distinguish
23 different legal forms of entities. It is sometimes difficult to decide whether one is dealing
24 with a different form of entity or a variation of the same form. For example, a limited
25 partnership, although it has been defined as a partnership, is a different type of entity
26 from a general partnership, while a limited liability partnership is not a different type of
27 entity from a general partnership. In some states cooperative corporations are categories
28 of business corporations or nonprofit corporations, while in other states cooperatives are a
29 separate type of entity.

30 This definition is patterned after Model Entity Transactions Act § 102(39) ("type").

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MAINE COMMENT

The Maine enactment of the Model Registered Agents Act includes a definition of "clerk," as well as "commercial clerk" and "noncommercial clerk," to maintain consistency with the Maine Business Corporation Act, the Maine Revised Statutes, Title 13-C, which requires the appointment of a clerk for a corporation.

Comment for section 103

MODEL ACT COMMENT

(This is Section 3 of the Model Registered Agents Act.)

Subsection (a) establishes the filing fees for each type of document that may be filed under the Act. The dollar amounts for each filing should be inserted by the adopting state with reference to the filing fees charged for other filings with the Secretary of State.

Subsection (a)(4) provides that a fee is not required in connection with a filing of a statement of resignation. That permits a person who is named as a registered agent without the person's consent, or who agrees to serve as registered agent for a fee and the fee is not paid, to reflect properly the status of the person in the records of the Secretary of State without expense.

Subsection (b) establishes fees for copying and certifying documents filed under the Act. The dollar amounts for these fees should be inserted by the adopting state with reference to the fees charged for those services under the state's various entity organic laws.

This section is patterned after Section 1.22 of the Model Business Corporation Act.

Comment for section 104

MODEL ACT COMMENT

(This is Section 4 of the Model Registered Agents Act.)

When this Act requires that a filing state an address, the address used must always be a geographic location. Where a person uses a post office box as its mailing address, paragraph (2) requires that the post office box address also be stated.

Comment for section 105

MODEL ACT COMMENT

(This is Section 5 of the Model Registered Agents Act.)

1 Subsection (a)(1) gives an entity the option of listing just the name of its commercial
2 registered agent in a registered agent filing and omitting the address of the registered
3 agent. If the commercial registered agent subsequently changes its address, that change
4 will be reflected in the filing made by the agent under Section 6, as amended under
5 Section 10, but no change will be necessary in the registered agent filing of any of the
6 entities represented by the commercial registered agent. The address of an entity's
7 commercial registered agent may be ascertained from the records of the Secretary of State
8 by consulting its listing under Section 6.

9 The address of an entity's noncommercial registered agent is usually not a business
10 address of the represented entity. On the other hand, subsection 5(a)(2)(B) permits an
11 entity to designate a person within the organization, such as its general counsel, to serve
12 as its registered agent; and in that circumstance the address of the registered agent may
13 very well be a business address of the represented entity.

14 The addresses required by subsection (a) to be stated in a registered agent filing must
15 satisfy the requirements in Section 4.

16 Subsection (b) avoids the need to include with a registered agent filing a consent of
17 the registered agent to serve as such.

18 Subsection (c) creates a procedure that will permit registered agents to determine if
19 they have been named in filings of which they were not aware by periodically consulting
20 the list prepared by the Secretary of State. Subsection (c) requires the registered agents to
21 be listed in alphabetical order to facilitate the use of the list by registered agents and also
22 to indicate the type of filing (e.g., articles of incorporation, certificates of limited
23 partnership, appointments of agents under Section 12 of this Act, etc.) in which each
24 registered agent is named. Subsection (c) will not be necessary under the circumstances
25 described in the Legislative Note because registered agents may consult the regular
26 database maintained by the Secretary of State to verify when they have been named as a
27 registered agent.

28 Subsection (a) is a generalization of Section 5.01 of the Model Business Corporation
29 Act, Section 114 of the Uniform Limited Partnership Act, and Section 108 of the Uniform
30 Limited Liability Company Act.

31 **Comment for section 106**

32 **MODEL ACT COMMENT**

33 (This is Section 6 of the Model Registered Agents Act.)

1 This section is a substantial simplification of practice because it removes the need to
2 amend the filed record of every entity represented by a commercial registered agent when
3 the agent changes its address.

4 Subsection (a)(3) only permits a commercial registered agent to list one address
5 where service of process and other notices may be sent to entities represented by the
6 agent. This may require a change in practice for registered agents who have previously
7 maintained more than one address in a state and have permitted represented entities to
8 choose which address they would use in their registered agent filings. A corporation, for
9 example, located in one part of a state might include in its articles of incorporation an
10 address for its registered agent which is the address of an office of the agent located close
11 to the corporation and which is different than the address used by a corporation in another
12 part of the state which has the same registered agent but uses a different office of the
13 agent. In the example given, the registered agent will need to pick just one address in the
14 state where all service of process will be sent to it. If a commercial registered agent
15 wishes to maintain more than one office in a state where service of process will be
16 received by it, it can accomplish that result by organizing separate entities to conduct its
17 business in the state and filing separate statements for each entity under this section.

18 The address required by subsection (a)(3) to be stated in a commercial registered
19 agent listing statement must satisfy the requirements in Section 4.

20 Subsection (e) is a transitional provision that deals with the effect on the entities
21 represented by a registered agent at the time the agent is first listed under this section.
22 The effect is to amend the registered agent filing of each such entity to delete the address
23 of the registered agent consistent with Section 5(a)(1).

24 This section is patterned generally after 15 Pa.C.S. § 109.

25 **Comment for section 107**

26 **MODEL ACT COMMENT**

27 (This is Section 7 of the Model Registered Agents Act.)

28 This section provides a procedure for a commercial registered agent to withdraw
29 from the business of providing registered agent services. Use of the procedure in this
30 section will terminate the status of the registered agent as the agent for service of process
31 of all the entities represented by the agent. Thus, the procedure in this section differs
32 from the procedure in Section 11, which permits a registered agent to resign with respect
33 to just a single represented entity instead of resigning generally with respect to all of its
34 represented entities.

1 **Comment for section 108**

2 **MODEL ACT COMMENT**

3 (This is Section 8 of the Model Registered Agents Act.)

4 Changes of the registered agent or the office address of a registered agent are usually
5 routine matters that do not affect the rights of the interest holders of the represented
6 entity. This section permits those changes to be made without a formal amendment of an
7 entity's public organic document, without approval of its interest holders, and, indeed,
8 even without formal approval by its governors (i.e., the persons managing the entity's
9 affairs, such as the board of directors of a corporation).

10 Subsection (c) avoids the need to file with a statement of change a consent of the new
11 registered agent being designated.

12 Subsection (e) makes clear that the procedures in this section are not exclusive. A
13 common way in which an entity changes its registered agent or registered office is to
14 include the change in an amendment of its public organic document.

15 Subsection (a) is a generalization of Section 5.02(a) of the Model Business
16 Corporation Act, Section 115 of the Uniform Limited Partnership Act, and Section 109 of
17 the Uniform Limited Liability Company Act. As to subsection (c), compare Section
18 5.02(a)(5) of the Model Business Corporation Act. Subsection (d) is patterned after
19 Section 115(b) of the Uniform Limited Partnership Act.

20 **Comment for section 109**

21 **MODEL ACT COMMENT**

22 (This is Section 9 of the Model Registered Agents Act.)

23 This section permits a noncommercial registered agent to change the name and
24 address of the agent that appears in the registered agent filing of an entity represented by
25 the agent. Because the noncommercial registered agent is not listed under Section 6, the
26 agent will not be able to use the procedures in Section 10 which permit commercial
27 registered agents to make only one filing to change their name and address for all entities
28 represented by them. Thus the noncommercial registered agent will need to make a filing
29 under this section for each entity represented by the agent.

30 An address included in a statement of change must satisfy the requirements in Section
31 4.

1 This section is patterned after 15 Pa.C.S. § 108.

2 **Comment for section 110**

3 **MODEL ACT COMMENT**

4 (This is Section 10 of the Model Registered Agents Act.)

5 This section permits a commercial registered agent to make a single filing that has the
6 effect of changing the name or address of the agent for all of the entities represented by it.

7 An address included in a statement of change must satisfy the requirements in Section
8 4.

9 Subsection (e) provides a procedure by which the Secretary of State may cancel the
10 listing of a commercial registered agent when the Secretary of State learns that the agent
11 has changed its address without amending its listing as a commercial registered agent.
12 When the Secretary of State acts to cancel the listing of a commercial registered agent,
13 the Secretary of State is required to notify both (i) the entities represented by the agent
14 that they no longer have a valid registered agent and (ii) the agent that it no longer is
15 listed as a commercial registered agent. Unlike in the case of a resignation under Section
16 11 which is initiated by the registered agent and thus does not require a notice from the
17 Secretary of State to the agent, notice by the Secretary of State to the agent is needed
18 under this section so that the agent has notice that its representation of the entities it
19 previously represented has terminated under Section 7.

20 This section is patterned after 15 Pa.C.S. § 109(b).

21 **Comment for section 111**

22 **MODEL ACT COMMENT**

23 (This is Section 11 of the Model Registered Agents Act.)

24 Resignation under this section may be accomplished solely by action of the registered
25 agent and does not require the cooperation or consent of the represented entity. Whether
26 a resignation violates a contract between the registered agent and the represented entity is
27 beyond the scope of this Act and subsection (d) preserves whatever claims a represented
28 entity may have against its registered agent for a wrongful termination. Even if a
29 resignation were to violate such a contract, the resignation would still be effective if the
30 provisions of this section are followed.

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1 Resignation under this section relates only to the entity named in the statement of
2 resignation. Thus, the procedure in this section differs from the procedure in Section 7
3 which terminates the status of the agent as agent for all of the entities represented by it.

4 The requirements of Section 4 with respect to addresses do not apply to subsection
5 (a)(4) because the registered agent may not have all the required information available.

6 Subsection (b) delays the effectiveness of a statement of resignation for 31 days to
7 allow the notice of the resignation that must be sent under subsection (c) to reach the
8 represented entity and to allow the represented entity to arrange for a substitute registered
9 agent.

10 Subsection (e) makes clear that a registered agent may resign with respect to an entity
11 that is not in good standing and supersedes the contrary administrative practice in some
12 states of refusing to accept any filings with respect to an entity that is not in good
13 standing until the problem with the entity's standing is cured.

14 Subsection (a) is a generalization of Section 5.03(a) of the Model Business
15 Corporation Act, Section 116(a) of the Uniform Limited Partnership Act, and Section
16 110(a) of the Uniform Limited Liability Company Act. Subsection (b) is a generalization
17 of Section 5.03(c) of the Model Business Corporation Act, Section 116(c) of the Uniform
18 Limited Partnership Act, and Section 110(c) of the Uniform Limited Liability Company
19 Act. Subsection (c) is derived from Section 5.03(b) of the Model Business Corporation
20 Act, Section 116(b) of the Uniform Limited Partnership Act, and Section 110(b) of the
21 Uniform Limited Liability Company Act, except that notice under this Act is to be given
22 by the resigning registered agent rather than the Secretary of State.

23 **Comment for section 112**

24 **MODEL ACT COMMENT**

25 (This is Section 12 of the Model Registered Agents Act.)

26 Filing under this section is elective, and no inference should be drawn from the
27 failure of an entity to make such a filing.

28 Subsection (a) is patterned after Section 10 of the Uniform Unincorporated Nonprofit
29 Association Act.

30 **Comment for section 113**

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MODEL ACT COMMENT

(This is Section 13 of the Model Registered Agents Act.)

Subsection (c) provides a means for serving process on an entity that cannot be served under subsection (a) or (b). Some entity organic laws require that service of process in that circumstance be made on the Secretary of State, but that leaves unanswered the question of what the Secretary of State should do with the process. Subsection (c) is patterned after Pa. R.Civ.Proc. 423(3) and 424(2). A similar approach is taken by Fed. R.Civ.Proc. 4(h)(1).

Subsections (a) and (d) are a generalization of Section 5.04(a) and (c) of the Model Business Corporation Act, Section 117(a) and (f) of the Uniform Limited Partnership Act, and Section 111(a) and (e) of the Uniform Limited Liability Company Act. Subsection (b) is a generalization of Section 5.04(b) of the Model Business Corporation Act.

Comment for section 114

MODEL ACT COMMENT

(This is Section 14 of the Model Registered Agents Act.)

This section is limited to prescribing the duties of a registered agent under this Act. An agent may undertake other responsibilities to a represented entity, such as by contract or course of dealing, but those duties will be determined under other law.

The Delaware General Corporation Law has been amended to add a new Section 132(b)(1), 8 Del. Code § 132(b)(1), requiring a registered agent to be generally available in the state to accept service of process. It was not considered necessary to include that provision in the Act because Section 13 provides alternative means of serving process if a registered agent cannot with reasonable diligence be served.

The Delaware General Corporation has also been amended to require a represented corporation to notify its registered agent when the corporation changes its business address and to permit a registered agent to resign if it is not supplied with current contact information. 8 Del. Code § 132(d). Section 11 of the Act provides registered agents with a broader right to resign than is available under the Delaware amendment.

Comment for section 115

MODEL ACT COMMENT

(This is Section 15 of the Model Registered Agents Act.)

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1 As discussed in the Introduction to the Act, one of the purposes of the Act is to
2 eliminate the registered office address as a means of determining where venue is to be
3 laid in an action involving a represented entity. Consistent with that purpose, this section
4 makes clear that the address of a registered agent does not determine venue. This section
5 may be inconsistent with other law or procedural rules in a state, and thus existing law on
6 venue should be reviewed when this Act is considered for adoption in a state. Compare
7 Cooper v. Chevron U.S.A., Inc., 132 N.M. 382, 49 P.3d 61 (N.M. 2002) (applying New
8 Mexico statute permitting venue "in the county where the statutory agent designated by
9 the foreign corporation resides").

10 **Comment for section 116**

11 **MODEL ACT COMMENT**

12 (This is Section 16 of the Model Registered Agents Act.)

13 A provision similar to this section is included in each uniform act promulgated by the
14 Conference. Because this Act is not a uniform act, however, the usual formulation of this
15 section has been changed from "uniformity" of application to "consistency" of application
16 to promote the same policy while recognizing the different nature of this Act.'

17 **SUMMARY**

18 This amendment corrects a numbering conflict in Part A of the bill and adds to the
19 bill the prefatory note, model act comments and a Maine comment.

20 **FISCAL NOTE REQUIRED**

21 (See attached)



Approved: 05/17/07 *MAC*

123rd MAINE LEGISLATURE

LD 1853

LR 1031(02)

An Act To Enact the Model Registered Agents Act and Amend Entity Acts To Rationalize Annual Filings

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase - General Fund