

D R A F T

FOR DISCUSSION ONLY

**UNIFORM LAW ENFORCEMENT ACCESS TO
ENTITY INFORMATION ACT**
(Record Owners of Business Act)

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For April 30 – May 3, 2009 Committee on Style Meeting

Without Prefatory Notes and With Comments

Copyright © 2009
By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

April 22, 2009

**DRAFTING COMMITTEE ON UNIFORM LAW ENFORCEMENT ACCESS TO
ENTITY INFORMATION ACT**

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

HARRY J. HAYNSWORTH, IV, 2200 IDS Center, 80 S. 8th St., Minneapolis, MN 55402,

Chair

BRUCE A. COGGESHALL, One Monument Sq., Portland, ME 04101

ANN E. CONAWAY, Widener University School of Law, 4601 Concord Pike, Wilmington, DE 19803

DAVID C. MCBRIDE, 1000 West St., P.O. Box 391, Wilmington, DE 19899

DAVID G. NIXON, 2340 Green Acres Rd., Suite 12, Fayetteville, AR 72703

STEVE WILBORN, 306 Tower Dr., Shelbyville, KY 40065

NORA WINKELMAN, Legal Counsel's Office, Room 620 Main Capitol, Harrisburg, PA 17120

WILLIAM H. CLARK, JR., One Logan Square, 18th and Cherry Streets, Philadelphia, PA 19103-6996, *Reporter*

EX OFFICIO

MARTHA LEE WALTERS, Oregon Supreme Court, 1163 State St., Salem, OR 97301-2563,

President

WILLIAM H. HENNING, University of Alabama, Box 870382, Tuscaloosa, AL 35487-0382,

Division Chair

AMERICAN BAR ASSOCIATION ADVISOR

ALLAN G. DONN, One Commercial Place, Suite 1800, Norfolk, VA 23510, *ABA Advisor*

ERIC FELDMAN, 1313 N. Market St., P.O. Box 951, Wilmington, DE 19899-0951, *ABA Section Advisor*

ROBERT R. KEATINGE, 555 17th St., Suite 3200, Denver, CO 80202-3979, *ABA Section Advisor*

EXECUTIVE DIRECTOR

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600
www.nccusl.org

UNIFORM LAW ENFORCEMENT ACCESS TO ENTITY INFORMATION ACT

TABLE OF CONTENTS

SECTION 1. SHORT TITLE.	1
SECTION 2. DEFINITIONS.....	1
SECTION 3. FORMATION OF ENTITIES.	8
SECTION 4. ENTITY INFORMATION STATEMENT	11
SECTION 5. DUTIES OF RECORDS CONTACT	14
SECTION 6. INTEREST HOLDERS FROM OUTSIDE UNITED STATES.	16
SECTION 7. RECORDS OF CONVENTIONAL PRIVATELY-HELD ENTITIES.....	17
SECTION 8. JUDICIAL DISSOLUTION	19
SECTION 9. ADMINISTRATIVE DISSOLUTION	21
SECTION 10. LIMITATION OF LIABILITIES	24
SECTION 11. ADDRESSES.....	24
SECTION 12. PROHIBITION OF BEARER INTERESTS.	24
SECTION 13. FEES	25
SECTION 14. PROCESSING OF DOCUMENTS	26
[SECTION 15. CONFIDENTIALITY.].....	26
SECTION 16. TRANSITIONAL PROVISION	27
SECTION 17. UNIFORMITY OF APPLICATION AND CONSTRUCTION.....	28
SECTION 18. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.....	28
SECTION 19. REPEALS.	28
SECTION 20. EFFECTIVE DATE	29

1 **UNIFORM LAW ENFORCEMENT ACCESS TO ENTITY INFORMATION ACT**

2
3 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Uniform Law
4 Enforcement Access to Entity Information Act.

5 **SECTION 2. DEFINITIONS.** In this [act]:

6 (1) “Appropriate request” means:

7 (A) a civil, criminal, or administrative subpoena or summons from a [local, state,
8 or] federal law enforcement authority, [state agency,] federal agency, or committee or
9 subcommittee of the United States Congress [or a state legislature]; or

10 (B) a request in the form of a record made by a federal agency on behalf of
11 another country under:

12 (i) an international treaty, agreement, or convention; or

13 (ii) 28 U.S.C. § 1782.

14 ***Legislative Note:*** *An enacting state must decide whether to include the optional provisions in*
15 *this definition which have the effect of extending the right of access to information provided in*
16 *this act to local or state authorities.*
17

18 (2) “Conventional privately-held entity” means a domestic filing entity that has, or will
19 have on the effective date of its initial public organic record, no more than 50 interest holders
20 and:

21 (A) in which one or more domestic or foreign entities with more than 50 interest
22 holders each do not hold, directly or indirectly, more than 25% of the outstanding interests;

23 (B) that is not subject to regulation as a bank or other depository institution, trust
24 company, insurance company, public utility, or securities or commodities broker or dealer;

25 (C) that is not registered as an “investment company” under the Investment

Company Act of 1940;

(D) that is not registered as an “investment advisor” under the Investment Advisors Act of 1940 or the law of any state;

(E) in which one or more domestic or foreign entities of the types described in subparagraph (B), (C), or (D) do not hold, directly or indirectly, a majority of the outstanding interests;

(F) that does not hold, directly or indirectly, a majority of the outstanding interests in a domestic or foreign entity of a type described in subparagraph (B), (C), or (D); and

(G) that has not filed a current Form 990 or Form 990-EZ with the Internal Revenue Service.

Legislative Note: Subparagraph (B) should be revised to omit any of the types of entities listed that are formed under a law that applies only to that type of entity, for example a banking corporation act or insurance company act. Those entities should also not be included in the definition of “domestic filing entity” because this act does not need to include those entities for any purpose.

(3) “Domestic,” with respect to an entity, means an entity whose internal affairs are governed by the law of this state.

(4) “Domestic filing entity” means:

(A) a domestic business corporation;

(B) a domestic nonprofit corporation;

(C) a domestic limited liability partnership that is not also a limited partnership;

(D) a domestic limited partnership, including a limited liability limited partnership;

(E) a domestic limited liability company;

(F) a domestic limited cooperative association; [or]

1 (G) a domestic statutory trust entity[; or]

2 [(H) list other types of entities authorized by the law of the state].

3 **Legislative Note:** *The entities referred to in this definition are illustrative only. The list as*
4 *enacted by a state should include all the types of non-governmental entities that may be created*
5 *under the state’s laws where a filing must be made with the Secretary of State to create or*
6 *confirm the status or existence of the entity. An enacting state should revise this definition so*
7 *that (i) the entities are referred to in the manner they are referred to in the state’s other laws and*
8 *(ii) it includes all of the types of entities that fit within the concept and are recognized by the*
9 *laws of the state.*

10
11 *It is not necessary to list in this definition entities that are a subset of a type of entity*
12 *listed if reference to the more generic type of entity includes entities in that subset. For example,*
13 *if professional corporations are subject to the state’s business corporation law so that referring*
14 *to business corporations includes professional corporations, this definition does not need to list*
15 *professional corporations; but if professional corporations are incorporated under a separate*
16 *statute and a reference to business corporations would not include professional corporations,*
17 *then professional corporations should be listed separately.*

18
19 *If a type of entity described in subparagraph (B) of the definition of “conventional*
20 *privately-held entity” is formed under a law that applies only to that type of entity, for example a*
21 *banking corporation act or insurance company act, that type of entity may be omitted from this*
22 *definition because “domestic filing entity” does not need to include that type of entity for any*
23 *purpose under this act.*

24
25 (5) “Entity information statement” means the initial or amended statement described in
26 Section 4(a) or (c).

27 (6) “Foreign,” with respect to an entity, means an entity whose internal affairs are
28 governed by the law of a jurisdiction other than this state.

29 (7) “Governance interest” means the right under the organic law or organic rules of an
30 unincorporated entity, other than as a governor, agent, assignee, or proxy, to:

31 (A) receive or demand access to:

32 (i) information concerning the entity; or

33 (ii) the books and records of the entity;

34 (B) vote for the election of the governors of the entity; or

1 (C) vote on issues involving the internal affairs of the entity.

2 (8) “Governor” means:

3 (A) a director of a business corporation [or a shareholder of a close corporation
4 that is managed by its shareholders instead of a board of directors];

5 (B) a director [or member of a designated body] of a nonprofit corporation;

6 (C) a general partner of a limited liability partnership that is not also a limited
7 partnership;

8 (D) a general partner of a limited partnership;

9 (E) a manager of a limited liability company or other person that materially
10 participates in the management of a limited liability company pursuant to its organic law and
11 organic rules;

12 (F) a director of a limited cooperative association; [or]

13 (G) a trustee of a statutory trust entity[; or]

14 [(H) list governors of other types of entities authorized by the law of the state].

15 **Legislative Note:** *An enacting state should revise this definition so that it refers to the*
16 *appropriate persons with respect to each type of entity listed in the definition of “domestic filing*
17 *entity.”*

18
19 *If an enacting state authorizes a business corporation with a limited number of*
20 *shareholders to dispense with a board of directors in favor of management by its shareholders,*
21 *the optional phrase at the end of subparagraph (A) should be included with appropriate changes*
22 *to conform to the terminology used in the enacting state.*

23
24 *The Model Nonprofit Corporation Act permits a nonprofit corporation to give some of*
25 *the responsibilities and obligations of the board of directors to another group of persons known*
26 *as a “designated body.” If the law of an enacting state permits that type of governance*
27 *structure, the optional phrase in subparagraph (B) should be included with appropriate changes*
28 *to conform to the terminology used in the enacting state.*

29
30 (9) “Interest” means:

31 (A) a governance interest;

1 (B) a transferable interest;

2 (C) a share of a business corporation; or

3 (D) a membership in a nonprofit corporation.

4 (10) “Interest holder” of an entity means:

5 (A) a shareholder of a business corporation;

6 (B) a member of a nonprofit corporation;

7 (C) a general partner of a limited liability partnership that is not also a limited
8 partnership;

9 (D) a general partner of a limited partnership;

10 (E) a limited partner of a limited partnership;

11 (F) a member of a limited liability company;

12 (G) a member of a limited cooperative association; [or]

13 (H) a beneficiary of a statutory trust entity[; or]

14 [(I) list similar persons in other types of entities authorized by the law of the
15 state].

16 **Legislative Note:** *An enacting state should revise this definition so that it includes references to*
17 *the appropriate persons with respect to each type of entity listed in the definition of “domestic*
18 *filing entity.”*

19
20 (11) “Non-US entity” means an entity whose internal affairs are governed by the laws of
21 a jurisdiction other than a state or the United States.

22 (12) “Organic law” means the statutes of an entity’s jurisdiction of incorporation,
23 organization, or other formation which govern the internal affairs of the entity.

24 (13) “Organic rules” means the public organic record and private organic rules of an
25 entity.

1 (14) “Person” means an individual, corporation, estate, trust, partnership, limited liability
2 company, business or similar trust, cooperative, association, joint venture, public corporation,
3 government or governmental subdivision, agency, or instrumentality, or any other legal or
4 commercial entity.

5 (15) “Private organic rules” means:

6 (A) the bylaws of a business corporation;

7 (B) the bylaws of a nonprofit corporation;

8 (C) the partnership agreement of a limited liability partnership that is not a
9 limited partnership;

10 (D) the partnership agreement of a limited partnership;

11 (E) the operating agreement of a limited liability company;

12 (F) the bylaws of a limited cooperative association;

13 (G) the trust instrument of a statutory trust entity; [and]

14 (H) [list similar documents for other types of entities authorized by the law of the
15 state; and

16 (I)] any other rules, whether or not in a record, that govern the internal affairs of
17 a domestic filing entity, are binding on all of its interest holders, and are not part of its public
18 organic record, if any.

19 **Legislative Note:** *An enacting state should revise this definition so that it refers to the*
20 *appropriate item with respect to each type of entity listed in the definition of “domestic filing*
21 *entity.”*
22

23 (16) “Public organic record” means:

24 (A) the articles of incorporation of a business corporation;

25 (B) the articles of incorporation of a nonprofit corporation;

(C) the statement of qualification of a limited liability partnership that is not a limited partnership;

(D) the certificate of limited partnership of a limited partnership;

(E) the certificate of organization of a limited liability company;

(F) the articles of organization of a limited cooperative association; [and]

(G) the certificate of trust of a statutory trust entity[; and]

[(H) list similar documents for other types of entities authorized by the law of the state].

Legislative Note: *An enacting state should revise this definition so that it refers to the appropriate document with respect to each type of entity listed in the definition of “domestic filing entity.”*

(17) “Record,” used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(18) “Records contact” means an individual whose principal residence is in the United States and who has access to and can produce within the United States on a timely basis upon appropriate request the information described in Section 7(a).

(19) “Responsible individual” means an individual who, directly or indirectly, participates in the control or management of an entity or, in the case of an entity being formed, will participate in the control or management of the entity.

(20) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic sound, symbol, or process.

(21) “Transferable interest” means the right under the organic law of an unincorporated

entity to receive distributions from the entity.

(22) “Transferee” means a person to which all or part of a transferable interest has been transferred without a governance interest, whether or not the transferee is an interest holder.

(23) “Unincorporated entity” means an entity that is not a corporation.

Comment

“Appropriate request.” This definition is patterned after Section 2009(a)(1)(D) of the Homeland Security Act of 2002 (6 U.S.C. § 601 et seq.), as proposed to be added by S. 569.

“Conventional privately-held entity.” The forms referred to in subparagraph (G) of this definition are the full or short form returns that are filed by organizations exempt from federal income tax under sections 501(c), 527, or 4947(a)(1) of the Internal Revenue Code. Those forms require disclosure of, among other things, the officers, directors, trustees, and most highly compensated employees of an exempt organization and thus it is not necessary to require those organizations to comply with the disclosure provisions of this act.

“Governor.” The second clause of subparagraph (E) of this definition, which refers to persons who are not managers of a limited liability company but participate materially in its management, is patterned after 6 Del. Code § 18-109(a). It is not intended that the power to elect or otherwise select or to participate in the election or selection of a person to be a manager of a limited liability company will, by itself, constitute participation in the management of the company.

“Interest holder.” Whether a person is a member of a nonprofit corporation will be determined under a state’s nonprofit corporation law. Many nonprofit corporations refer to their financial supporters as “members” even though those contributors do not have governance rights under the organic law and organic rules of the corporation.

“Responsible individual.” A responsible individual may be an individual who is a governor of the entity, an agent of another person, or an agent or officer of the entity itself, or who meets the requirements of this definition because of ownership of an interest in the entity or other factors. To qualify as a responsible individual, what is required is that the individual participate in the control or management of the entity. A responsible individual may have sole responsibility for the management of the entity or may share that responsibility with others. The term has been created for use in this act and is not intended to change the law with respect to the governance of any form of entity.

SECTION 3. FORMATION OF ENTITIES.

(a) When the initial public organic record of a domestic filing entity that is a conventional privately-held entity is delivered to the [Secretary of State] for filing, it must be

1 accompanied by an initial entity information statement.

2 (b) The public organic record of a domestic filing entity must include, in addition to any
3 other information required by its organic law, a statement as to whether or not the entity is a
4 conventional privately-held entity. The delivery to the [Secretary of State] for filing of an initial
5 or amended public organic record constitutes an affirmation under the penalties of perjury by the
6 entity and by any person signing the record that the statement required by this subsection is
7 correct.

8 **Legislative Note:** States should consider adding a reference to the requirements of subsection
9 (b) in the section of the organic law of each domestic filing entity dealing with the entity's public
10 organic record so that people consulting that law will be aware of the requirements of
11 subsection (b). Such a reference in the section of the organic law of an entity dealing with the
12 contents of its public organic record might read, for example, "the statement required by
13 [Section 3(b) of the Uniform Law Enforcement Access to Entity Information Act]."
14

15 (c) If the statement required by subsection (b) becomes incorrect, the entity must
16 promptly deliver to the [Secretary of State] for filing an amendment of its public organic record
17 correcting the statement. [An amendment pursuant to this subsection does not need to be
18 approved by the governors or interest holders.] [The [Secretary of State] shall not charge a fee
19 for filing an amendment pursuant to this subsection.]

20 **Legislative Note:** The optional penultimate sentence of subsection (c) is intended to simplify the
21 procedure for approving an amendment of the public organic record so that, for example, an
22 amendment to the articles of incorporation of a business corporation to change the statement as
23 to whether the corporation is a conventional privately-held entity may be filed without action by
24 the board of directors or shareholders. Enacting states may choose to place that type of
25 provision in the individual organic laws for each type of entity listed in the definition of
26 "domestic filing entity" in Section 2 or may decide to vary the rule of that sentence for some
27 types of entities by requiring, for example, approval by the governors.
28

29 The last sentence of subsection (c) is optional because an enacting state may choose to
30 require a fee for filing an amendment of the public organic record that is required under
31 subsection (c). It will be preferable, however, for states not to require a fee as a way of
32 encouraging amendments that keep the public records up to date regarding the status of an
33 entity. If a state chooses to impose a fee, the fee will presumably be the same as for filing any
34 other amendment to a public organic record. Thus the possibility of a fee being charged for a

1 *filing under subsection (c) has not been included in Section 13.*

2
3 (d) An amendment filed under subsection (c) indicating that an entity has become a
4 conventional privately-held entity must be accompanied by an initial entity information
5 statement.

6 (e) Subsection (a) does not apply to an initial public organic record delivered to the
7 [Secretary of State] before [the effective date of this act]. Subsections (b), (c), and (d) do not
8 apply to a domestic filing entity that is in existence on [the effective date of this act] until the
9 date provided in Section 16.

10 **Comment**

11 The same individual may serve as the records contact and responsible individual for a
12 conventional privately-held entity. When an entity needs to be formed on a rush basis, or when a
13 records contact or responsible individual has not yet been identified for an entity, a person
14 forming the entity, such as an incorporator, may serve as an accommodation in the capacities of
15 records contact and responsible individual. Regardless of the reason why the person forming the
16 entity is also shown as the records contact or responsible individual, so long as the person is
17 named in those capacities, the person will have the duties attendant to those positions under this
18 act.

19
20 The public organic record of every domestic filing entity must include a statement
21 satisfying subsection (b), either that the entity is a conventional privately-held entity or that the
22 entity is not a conventional privately-held entity.

23
24 If a domestic filing entity ceases to be a conventional privately-held entity, for example
25 because it conducts a public offering of its equity securities, it will need to amend its public
26 organic record to reflect the change in its status. Entity information statements previously
27 delivered to the Secretary of State will remain in the records of the Secretary of State, but the
28 entity will no longer have an obligation to update the information in the statements. The
29 individuals previously identified as its records contact and responsible individual will cease to
30 have that status.

31
32 Most organic laws provide that it is a criminal offense to sign a document delivered to the
33 Secretary of State for filing that the signatory knows to be false in any material respect. The last
34 sentence of subsection (b) confirms that result and also imposes liability on the entity for a false
35 statement as to its status as a conventional privately-held entity.

1 **SECTION 4. ENTITY INFORMATION STATEMENT.**

2 (a) An initial entity information statement must set forth:

3 (1) the name of the conventional privately-held entity;

4 (2) the name and a business or residential address of the records contact of the
5 entity; and

6 (3) the name and a business or residential address of a responsible individual of
7 the entity.

8 (b) An entity information statement must be signed as follows:

9 (1) an initial statement must be signed by:

10 (A) the records contact named in the statement; and

11 (B) the responsible individual named in the statement; and

12 (2) an amended statement must be signed by any new records contact or new
13 responsible individual named in the amended statement.

14 (c) If any of the information in a filed entity information statement becomes incorrect or
15 incomplete, the conventional privately-held entity must promptly deliver to the [Secretary of
16 State] for filing an amended entity information statement that is correct as of the date of its
17 delivery to the [Secretary of State] and that includes all of the information required by subsection

18 (a).

19 (d) A records contact or responsible individual may change his or her address or resign
20 by delivering to the [Secretary of State] for filing a statement of change signed by the records
21 contact or responsible individual that sets forth:

22 (1) the name of the conventional privately-held entity; and

23 (2) either:

1 (A) the new address; or
2 (B) a statement that the records contact or responsible individual resigns.

3 (e) A records contact or responsible individual who delivers to the [Secretary of State]
4 for filing a statement of change pursuant to subsection (d) must promptly furnish the
5 conventional privately-held entity with notice in a record of the delivery to the [Secretary of
6 State] of the statement of change and a copy of the statement.

7 (f) An initial entity information statement filed under subsection (a) takes effect upon
8 filing or any later effective time of the initial or amended public organic record in connection
9 with which the statement is delivered to the [Secretary of State] for filing. An amended entity
10 information statement filed under subsection (c) or a statement of change filed under subsection
11 (d) takes effect upon filing.

12 (g) The signing by a records contact or responsible individual of an entity information
13 statement or a statement of change that reflects a change of address constitutes an affirmation
14 under the penalties of perjury that:

15 (1) the address of the signing individual is correct; and

16 (2) either:

17 (A) the records contact understands the duties of a records contact under
18 this [act] and has agreed to serve in that capacity; or

19 (B) the responsible individual meets the definition of a responsible
20 individual in Section 2.

21 (h) Every signature of a records contact or responsible individual on an entity
22 information statement or statement of change must be notarized.

23 **Legislative Note:** Subsection (h) does not specify the manner in which the required notarizations
24 must be submitted. That is an issue to be determined by the enacting state and may require

1 *amendment of subsection (h) or other state law. Some states may choose to accept only paper*
2 *filings, while other states may provide for electronic notarization. If the Secretary of State only*
3 *accepts electronic filings, an enacting state will need to provide for either electronic notarization*
4 *or the acceptance of notarized documents by electronic means.*

5
6 (i) If the principal residence of a responsible individual is outside the United States, the
7 responsible individual must provide the records contact with a copy of a passport, driver's
8 license, or other government-issued photo identification document for the responsible individual.

9 [(j) The [Secretary of State] shall not charge a fee for filing an amended entity
10 information statement or statement of change.]

11 ***Legislative Note:*** *Subsection (j) is optional because an enacting state may choose to require a*
12 *fee for filing an amended entity information statement or statement of change. It will be*
13 *preferable, however, for states not to require a fee as a way of encouraging filings that keep the*
14 *public records up to date. If a state chooses to impose a fee, the fee should be included in*
15 *Section 13.*

16 17 **Comment**

18 1. Because subsection (c) requires an amended entity information statement to include all
19 of the information required by subsection (a), a domestic filing entity must always have a records
20 contact and responsible individual identified in the records of the Secretary of State. *But see* the
21 transitional provisions in Section 16.

22
23 2. Subsection (f) provides that a statement of change under subsection (d), which could
24 include a resignation by a records contact or responsible individual, takes effect upon filing.
25 That is different than the practice in some states of delaying the effectiveness of a resignation of
26 a registered agent. *See, e.g.,* Model Registered Agents Act § 11 (delaying a resignation for 31
27 days). The main function of a registered agent is simply to forward service of process to the
28 represented entity, and delaying resignation from that position typically does not pose problems
29 for either the registered agent or the represented entity. A records contact or responsible
30 individual, in contrast, has an important place in the law enforcement process created by this act,
31 making it more important for the records contact or responsible individual to be able to resign
32 immediately in appropriate circumstances. Making a resignation effective immediately under
33 subsection (f) also provides an earlier start to the period in which the entity must replace the
34 records contact or responsible individual if the entity wishes to avoid administrative dissolution
35 under Section 9.

36
37 3. The purpose of subsection (h) is to use the notarial process to provide some
38 verification of the identity of a records contact or responsible individual since notarization
39 requires the notary to know or verify the identity of the individual whose signature is being
40 notarized. Notarization may include taking an acknowledgment, administering an oath or

1 affirmation, taking a verification upon oath or affirmation, or witnessing or attesting a signature.
2 *See* Uniform Law on Notarial Acts (1982) § 1(1) (“notarial act”). Modern law on notarial acts is
3 evolving to permit notarization of electronic records, and thus even in those states where all
4 entity filings are made electronically it should be possible to comply with subsection (h).

5
6 Subsection (h) does not address the duty of the Secretary of State to verify that the
7 notarization of a signature on an entity information statement is valid. Every state has statutory
8 law on the acceptance of notarized documents. Those laws often deal separately with
9 notarizations performed within the state, outside of the state, under federal authority, or in
10 foreign countries. *See, e.g.*, Uniform Law on Notarial Acts (1982) §§ 3-6.

11 12 **SECTION 5. DUTIES OF RECORDS CONTACT.**

13 (a) A records contact for a conventional privately-held entity has the following duties:

14 (1) to enquire at the time the records contact signs an initial or amended entity
15 information statement whether the current responsible individual is required to comply with
16 Section 4(i) and, if the required individual is required to comply but does not do so within five
17 business days after the [Secretary of State] files the initial or amended entity information
18 statement, to resign as records contact in the manner provided in Section 4(d);

19 (2) to request promptly from the entity the information described in Section 7
20 when the records contact receives an appropriate request for the information;

21 (3) to produce on a timely basis to a party making an appropriate request:

22 (A) the photo identification document, if any, for the entity’s responsible
23 individual required by Section 4(i);

24 (B) any information described in Section 7(a) which is provided by the
25 entity to the records contact; and

26 (C) any certification described in Section 7(b) which is provided by the
27 entity to the records contact;

28 (4) if the records contact acquires actual knowledge, before receiving an
29 appropriate request, that a request by the records contact to the entity for the information

described in Section 7(a) will not be honored by the entity on a timely basis, to resign as records contact in the manner provided in Section 4(d); and

(5) if information in response to an appropriate request is not provided on a timely basis by the entity upon request by the records contact, to notify the party that made the appropriate request of:

(A) the name and a business or residential address of the individual whom the records contact believed would be the source of the information; or

(B) if there is no such individual, the source or location from which the records contact believed the information could be obtained.

(b) A records contact, as such, does not have a duty to verify the accuracy of information described in Section 7(a) or a certification under Section 7(b).

Comment

If there is a failure to respond to an appropriate request for information, the consequences of that failure and possible sanctions will depend on the nature of the request. For example, failure to respond to a subpoena will have the same consequences and sanctions as any other failure to respond to a subpoena under the applicable federal or state law. Whether the consequences of a failure to respond to an appropriate request for information should be imposed on the records contact or on the conventional privately-held entity will depend on whether the records contact has performed the duties required by this section. If an entity believes that it has defenses to a failure to respond to an appropriate request or should be excused from responding, it may raise those defenses or excuses in a proceeding to enforce the appropriate request or the entity may commence a proceeding to contest the appropriate request.

The requirement in subsection (a)(2) that information be produced on a “timely basis” is intended to satisfy Recommendation 33 of the 40 Recommendations of the Financial Action Task Force. In the case of a subpoena, what will be a timely response will be controlled by the response date in the subpoena. A response date in a request made under a treaty, however, does not have the force of law and will not necessarily be binding.

A records contact may wish as a matter of good business practice to verify periodically that the records contact continues to have the required access to information, although an obligation to verify that the records contact continues to have access to information is not part of the required duties of a records contact.

1 If a records contact acquires actual knowledge that information will not be provided by
2 an entity as required by this act, the records contact has a duty to resign under subsection (a)(4)
3 even though there is no pending appropriate request.
4

5 A records contact is defined in Section 2(18) as an individual who has access to the
6 information required by Section 7, and when a records contact signs an entity information
7 statement under Section 4 that signature constitutes an affirmation that the individual
8 understands the duties of a records contact.
9

10 Subsection (b) applies only to a records contact in the individual's capacity as a records
11 contact. If the individual also maintains the records required to be produced under Section 7(a)
12 in another capacity, for example as a corporate secretary, the individual will have the obligations
13 associated with serving in that capacity. This act does not address those obligations.
14

15 **SECTION 6. INTEREST HOLDERS FROM OUTSIDE UNITED STATES.**

16 (a) Except as provided in subsection (d), when a non-US entity first becomes a transferee
17 or interest holder in a conventional privately-held entity after [the effective date of this act],
18 whether by transfer, issuance of an interest, or admission as an interest holder, the transferee or
19 interest holder must provide the entity with a certification signed under the penalties of perjury
20 stating the name and a business or residential address of a responsible individual for the
21 transferee or interest holder.

22 (b) If any of the information in a certification provided under subsection (a) becomes
23 incorrect, the interest holder or transferee must promptly provide the conventional privately-held
24 entity with a corrected certification.

25 (c) A certification provided under subsection (a) or (b) that is incorrect or incomplete, or
26 the failure of a conventional privately-held entity to obtain a required certification, does not
27 affect the existence of the conventional privately-held entity, the validity of any acts of the
28 entity, the interest of any interest holder or transferee, or the status of any interest holder or
29 transferee as such.

30 (d) A non-US entity that is required to provide a certification under this section may not

1 maintain a proceeding in any court in this state with respect to the interest giving rise to the
2 obligation to provide the certification unless the non-US entity demonstrates compliance with
3 this section.

4 (e) Subsections (a) and (b) apply only to an interest holder or transferee that would be a
5 conventional privately-held entity if the interest holder or transferee were a domestic filing
6 entity.

7 **Comment**

8 This section is patterned in part after Section 2009(a)(2) of the Homeland Security Act of
9 2002 (6 U.S.C. § 601 et seq.), as proposed to be added by S. 569.

10
11 This section is not intended to require the conventional privately-held entity to track
12 transfers of interest before the entity has notice of a transfer. It is the obligation of a transferee to
13 provide the certifications required by this section.
14

15 **SECTION 7. RECORDS OF CONVENTIONAL PRIVATELY-HELD ENTITIES.**

16 (a) A conventional privately-held entity must have a records contact at all times while it
17 is a conventional privately-held entity. When the records contact notifies the entity that an
18 appropriate request has been received, the entity must provide on a timely basis to the records
19 contact information in a record that:

20 (1) includes the name and last known address of each current transferee of which
21 the entity has actual knowledge, each current interest holder in the entity, and any other person to
22 whom the entity has been instructed to send distributions;

23 (2) indicates for each current transferee of which the entity has actual knowledge
24 or current interest holder that is a foreign or domestic entity, the jurisdiction whose laws govern
25 its internal affairs;

26 (3) includes the name and a residential or business address for each governor of
27 the entity;

(4) includes a copy of a passport, driver's license, or other government-issued photo identification document for:

(A) each governor of the entity who is an individual and whose principal residence at the time the individual becomes a governor is outside the United States; and

(B) its responsible individual if the principal residence of the responsible individual is outside the United States;

(5) includes any records maintained by the entity regarding the process by which the governors of the entity are elected or otherwise designated;

(6) indicates the voting power in the entity held by each of its interest holders or describes the manner in which each interest holder's voting power in the entity is determined;

(7) identifies the individuals responsible for preparing the information provided to the records contact under this subsection; and

(8) includes the certifications required by section 6(a) and (b).

(b) When information is provided pursuant to subsection (a), it must include a certification by the conventional privately-held entity, signed under the penalties of perjury, that the information accurately reflects the current records of the entity.

Comment

A non-U.S. resident is not required to supply a photo identification document as a condition to becoming a governor under paragraph (a)(4)(A). That paragraph simply requires that when an appropriate request is made the conventional privately-held entity must be able to supply the required document. The entity may obtain the document at that time, but many entities will choose to obtain the document earlier because they otherwise run the risk of being unable to obtain the document on a timely basis once an appropriate request has been made. In contrast, if the principal residence of a responsible individual is outside the United States, the entity has a continuing obligation to obtain a photo identification document under subparagraph (a)(4)(B). The responsible individual also has an obligation to provide a photo identification document to the records contact under Section 4(i).

The obligation to provide information under paragraph (a)(6) about voting power in the

1 conventional privately-held entity may be satisfied by supplying a copy of the operative
2 documents that determine that voting power. Those documents will often be simply the public
3 organic record or private organic rules of the entity, such as the articles of incorporation of a
4 corporation or the operating agreement of a limited liability company; but may include other
5 documents such as shareholder agreements, voting agreements, investor rights agreements, etc.
6

7 **SECTION 8. JUDICIAL DISSOLUTION.**

8 (a) The [name or describe court or courts] may dissolve a conventional privately-held
9 entity in a proceeding by the attorney general if it is established that the entity materially failed
10 to comply with Section 7 or Section 12.

11 (b) It is not necessary to make interest holders parties to a proceeding to dissolve a
12 conventional privately-held entity under this section unless relief is sought against them
13 individually.

14 (c) The court may issue injunctions, appoint a receiver or custodian pendente
15 lite with the powers and duties the court directs, take other action required to preserve the assets
16 of the conventional privately-held entity wherever located, and carry on the business of the entity
17 until a full hearing can be held.

18 (d) The court may appoint one or more receivers to wind up and liquidate the business
19 and affairs of the conventional privately-held entity. The court shall hold a hearing, after
20 notifying all parties to the proceeding and any interested persons designated by the court, before
21 appointing a receiver. The court appointing a receiver has exclusive jurisdiction over the entity
22 and all of its property wherever located.

23 (e) The court may appoint an individual or a domestic or foreign entity authorized to
24 transact business in this state as a receiver. The court may require the receiver to post bond, with
25 or without sureties, in an amount the court directs.

26 (f) The court shall describe the powers and duties of the receiver in its appointing order,

1 which may be amended from time to time. Among other powers, the receiver may:

2 (1) dispose of all or any part of the assets of the conventional privately-held
3 entity wherever located, at a public or private sale, if authorized by the court; and

4 (2) sue and defend in the receiver's own name as receiver of the entity in all
5 courts of this state.

6 (g) The court from time to time during the receivership may order compensation paid
7 and expense disbursements or reimbursements made to the receiver and counsel for the receiver
8 from the assets of the conventional privately-held entity or from proceeds from the sale of the
9 assets.

10 (h) If after a hearing the court determines that grounds for judicial dissolution of a
11 conventional privately-held entity under this section exist, it may enter a decree dissolving the
12 entity and specifying the effective date of the dissolution, and the clerk of the court shall deliver
13 a certified copy of the decree to the [Secretary of State] for filing.

14 (i) After entering the decree of dissolution, the court shall direct the winding-up of the
15 business and affairs of the conventional privately-held entity in accordance with the organic law
16 of the entity.

17 ***Legislative Note:*** *If an enacting state has existing judicial dissolution procedures for some or all*
18 *of the entities included in the definition of "domestic filing entity" in Section 2, this section may*
19 *be revised so that it only applies to those entities for which the state does not already have*
20 *judicial dissolution procedures. For those entities excluded from the scope of this section,*
21 *subsection (a) will need to be added to the judicial dissolution provisions in the organic laws of*
22 *those entities as an additional basis for judicial dissolution.*

23 24 **Comment**

25 If a conventional privately-held entity believes that it has defenses to a proceeding to
26 dissolve it under this section, those issues may be raised and tried in the dissolution proceeding.

27
28 An action under this section will usually involve just the conventional privately-held
29 entity. However, subsection (b) permits the interest holders to be made parties to the dissolution

1 proceeding because it may be appropriate to seek relief against them, for example in a
2 proceeding brought to dissolve an entity that has violated the prohibition in Section 12 on issuing
3 bearer interests.

4
5 Judicial dissolution under this section is in addition to judicial dissolution on other
6 grounds that may be provided in the organic law of an entity or an enacting state's other law.

7 8 **SECTION 9. ADMINISTRATIVE DISSOLUTION.**

9 (a) The [Secretary of State] shall administratively dissolve:

10 (1) a conventional privately-held entity if the records of the [Secretary of State]
11 do not show a current records contact or responsible individual for the entity for a period of [60]
12 consecutive days; and

13 (2) except as provided in Section 16, a domestic filing entity if its public organic
14 record does not contain the statement required by Section 3(b).

15 (b) If the [Secretary of State] determines that a ground exists for administratively
16 dissolving an entity under subsection (a), the [Secretary of State] shall file a record of the
17 determination and serve the entity with a copy of the filed record.

18 (c) If within [60] days after service of the copy pursuant to subsection (b) the entity does
19 not correct each ground for dissolution, the [Secretary of State] shall administratively dissolve
20 the entity by preparing, signing, and filing a declaration of dissolution that states the grounds for
21 dissolution. The [Secretary of State] shall serve the entity with a copy of the filed declaration.

22 (d) An entity that has been administratively dissolved continues in existence but, subject
23 to subsection (i), may carry on only activities necessary to wind up its activities under its organic
24 law.

25 (e) The administrative dissolution of an entity under this section does not terminate the
26 authority of its agent for service of process or the responsibilities of a records contact or
27 responsible individual shown in the records of the [Secretary of State] at the time of dissolution.

1 (f) An entity that has been administratively dissolved under this section may apply to the
2 [Secretary of State] for reinstatement by delivering to the [Secretary of State] for filing an
3 application signed by the entity that states:

4 (1) the name of the entity and the effective date of its dissolution;

5 (2) either:

6 (A) both:

7 (i) the name and a business or residential address of the entity's
8 records contact; and

9 (ii) the name and a business or residential address of the entity's
10 responsible individual; or

11 (B) that the entity is not a conventional privately-held entity; and

12 (3) if the entity's name is no longer available, a new name that satisfies the
13 requirements of the entity's organic law.

14 (g) If the statement required by Section 3(b) in the public organic record of an entity that
15 has been administratively dissolved under this section is not consistent with the entity's
16 application for reinstatement under subsection (f), the application must be accompanied by an
17 amendment of the public organic record that correctly states whether the entity is a conventional
18 privately-held entity.

19 (h) If the [Secretary of State] determines that an application under subsection (f) contains
20 the required information and is accompanied by any required amendment of the entity's public
21 organic record, the [Secretary of State] shall prepare a declaration of reinstatement that states
22 those determinations, sign and file the original of the declaration of reinstatement, and serve the
23 entity with a copy.

1 (i) When a reinstatement under subsection (h) becomes effective, it relates back to and
2 takes effect as of the effective date of the administrative dissolution and the entity may resume
3 its activities as if the dissolution had not occurred.

4 (j) This section does not apply to a domestic filing entity in existence on [the effective
5 date of this act] until the date provided in Section 16(b).

6 **Legislative Note:** *If an enacting state has existing administrative dissolution procedures for*
7 *some or all of the entities included in the definition of “domestic filing entity” in Section 2, this*
8 *section may be revised so that it only applies to those entities for which the state does not*
9 *already have administrative dissolution procedures. For those entities excluded from the scope*
10 *of this section, subsection (a) will need to be added to the administrative dissolution provisions*
11 *in the organic laws of those entities as an additional basis for administrative dissolution.*

12
13 *This section may be conformed to existing administrative dissolution procedures in the*
14 *state. For example, if the existing practice in a state is for the Secretary of State to mail notice of*
15 *an administrative dissolution to the entity, that practice may be substituted for the requirement in*
16 *subsection (c) that the Secretary of State serve the filed declaration of dissolution on the entity.*

17
18 *Some state administrative dissolution statutes may include a time limit on reinstatement,*
19 *unlike this section which does not impose a time limit on reinstatement. States should decide*
20 *whether they wish to impose such a limit under this section.*

21 22 **Comment**

23
24 This section applies to all domestic filing entities and not just conventional privately-held
25 entities. After the transition period provided in Section 16, failure of a domestic filing entity that
26 is not a conventional privately-held entity to include in its public organic record the statement
27 required by Section 3(b) will be grounds for administrative dissolution of the entity.

28
29 A consequence of administrative dissolution in many states is to permit the use of the
30 name of the dissolved entity by another entity. Thus subsection (f)(3) requires an entity seeking
31 reinstatement to adopt a new name if its prior name has become unavailable because it has been
32 appropriated by another entity during the period the entity seeking reinstatement was dissolved.
33 *See, e.g., Model Business Corporation Act (4th Ed.) § 14.22(a)(3) and Uniform Limited Liability*
34 *Company Act (2006) § 706(a)(3).*

35
36 Administrative dissolution under this section is in addition to administrative dissolution
37 on other grounds that may be provided in the organic law of an entity or an enacting state’s other
38 law.

SECTION 10. LIMITATION OF LIABILITIES.

(a) A records contact is not liable to the conventional privately-held entity or its interest holders or transferees for producing upon an appropriate request the information described in Section 7(a) or the certification described in Section 7(b).

(c) A records contact or responsible individual is not liable under law other than this [act] because of being identified as a records contact or responsible individual in the records of the [Secretary of State].

Comment

Subsection (d) makes clear that the failure of a domestic filing entity to comply with the requirements of this act is not a basis for piercing the veil of the entity. That subsection also makes clear that complying with this act is not a basis for imposing liability on the interest holders or governors of an entity on the basis of an alter ego theory.

(1) an actual street address or rural route box number; and

SECTION 12. PROHIBITION OF BEARER INTERESTS. A domestic filing entity

1 may not issue a certificate in bearer form evidencing either a whole or fractional interest.

2 **Legislative Note:** Enacting states may choose to omit this section and instead prohibit the
3 issuance of bearer certificates in the individual organic laws for each type of entity listed in the
4 definition of “domestic filing entity” in Section 2.

5
6 **SECTION 13. FEES.**

7 **Alternative A**

8 (a) The [Secretary of State] shall collect the following fees when a document is delivered
9 for filing under this [act]:

10 (1) initial entity information statement \$____

11 (2) [amended entity information statement \$____

12 (3) statement of change \$____

13 (4)] application for reinstatement following

14 administrative dissolution \$____

15 **Legislative Note:** With respect to optional paragraphs (2) and (3), see the Legislative Note to
16 Section 4(j).

17
18 **Alternative B**

19 (a) The [Secretary of State] shall adopt rules[, in accordance with the state’s
20 administrative procedure act] setting the fee for processing filings under this [act]. The fee shall
21 be set at an amount such that the total amount of fees collected during a year is not less than the
22 annual costs incurred by the [Secretary of State] in administering this [act].

23 **End of Alternatives**

24 (b) The fees collected under subsection (a) shall be deposited into a restricted account
25 within the General Fund. Funds in the restricted account shall be used only for the
26 administration of this [act].

27 **Legislative Note:** Subsection (b) should be revised to conform to the enacting state’s practice in

1 *establishing special purpose funds.*

2
3 **SECTION 14. PROCESSING OF DOCUMENTS.** The [Secretary of State] shall

4 refuse to file a document if the document or any aspect of its delivery to the [Secretary of State]
5 does not comply with this [act].

6 **[SECTION 15. CONFIDENTIALITY.**

7 (a) The initial entity information statement of a conventional privately-held entity and
8 any amended statement or statement of change shall be kept confidential by the [Secretary of
9 State] and shall not be disclosed except:

10 (1) to an authorized agent of a [local, state, or] federal law enforcement agency,
11 [state agency,] federal agency or committee or subcommittee of the United States Congress [or a
12 state legislature] upon the request of the agent in a signed record;

13 (2) in response to a request made in a record by a federal agency on behalf of
14 another country under:

15 (A) an international treaty, agreement, or convention; or

16 (B) 28 U.S.C. section 1782; or

17 (3) to a person who is shown in the records of the [Secretary of State] as a current
18 records contact, responsible individual, governor, or officer of the entity upon the request of the
19 person in a signed record.

20 ***Legislative Note:*** *With respect to paragraph (1), see the Legislative Note to Section 2(1).*

21
22 (b) A request pursuant to subsection (a)(1) or (2) shall be kept confidential by the
23 [Secretary of State] and shall be disclosed only pursuant to a subsequent request under
24 subsection (a)(1) or (2).]

25 **Comment**
26

1 This section is optional because it implicates policy concerns beyond the scope of this
2 act. Enactment or omission of this section will not affect the purpose of this act to provide law
3 enforcement with important sources of information about conventional privately-held entities.
4 Some states may decide that it is appropriate to keep entity information statements confidential
5 as permitted by this section. Other states may conclude that it is appropriate to make the
6 contents of entity information statements publicly available.

7
8 This section does not require that the request of a law enforcement agency for access to
9 an entity information statement must be an “appropriate request” as defined in Section 2. Any
10 request in a record from an authorized law enforcement agent should be honored by the
11 Secretary of State.

12 **SECTION 16. TRANSITIONAL PROVISION.**

13
14 (a) On or before the date provided in subsection (b), a domestic filing entity in existence
15 on [the effective date of this act] must deliver to the [Secretary of State] for filing:

16 (1) an amendment of its public organic record that contains the statement
17 required by Section 3(b); and

18 (2) if it is a conventional privately-held entity, an initial entity information
19 statement.

20 (b) A domestic filing entity must comply with subsection (a) by the earlier of:

21 (1) [the second anniversary of the effective date of this act]; or
22 (2) the date the entity first delivers to the [Secretary of State] for filing any other
23 document.

24 (c) The [Secretary of State] shall, not earlier than [the first anniversary of the effective
25 date of this act], mail to every domestic filing entity that has not complied with subsection (a)
26 before that date a notice advising the entity of the requirement to comply with subsection (a).
27 Failure by the [Secretary of State] to provide the notice to any entity, or failure by any person to
28 receive the notice, shall not relieve an entity of the obligation to comply with subsection (a).

29 [(d) The amendment required by subsection (a)(1) does not need to be approved by the

governors or interest holders of a domestic filing entity.]

Legislative Note: *Optional subsection (d) is intended to simplify the procedure for approving an amendment of the public organic record so that, for example, an amendment to the articles of incorporation of a business corporation to adopt the statement as to whether the corporation is a conventional privately-held entity may be filed without action by the board of directors or shareholders. As with the similar optional provision in Section 3(c), an enacting state may choose to place that provision in the individual organic laws for each type of entity listed in the definition of “domestic filing entity” in Section 2 or may decide to vary the rule of subsection (d) for some types of entities by requiring, for example, approval by the governors.*

Comment

The intention of this act is that all entities will be in compliance within two years after the effective date of the act. Subsection (d) requires the Secretary of State to send out a reminder notice one year after the effective date to facilitate compliance. That notice or lack thereof does not modify or affect the requirement that all entities must comply with subsection (a) within two years after the effective date of the act. Failure of a domestic filing entity to comply with subsection (a) is grounds for administrative dissolution of the entity under Section 9.

SECTION 17. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In

applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 18. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 19. REPEALS. The following acts and parts of acts are repealed:

(1)

Legislative Note: *If a state chooses to include optional Section 15, the state’s open records or similar law must be amended or repealed to the extent it would require that an entity information statement or statement of change not be kept confidential as provided in Section 15.*

1 **SECTION 20. EFFECTIVE DATE.** This [act] takes effect on