

D R A F T
FOR APPROVAL

UNIFORM LAW ENFORCEMENT ACCESS TO ENTITY INFORMATION ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM LAW ENFORCEMENT ACCESS TO ENTITY INFORMATION ACT

WITH PREFATORY NOTE AND COMMENTS

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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June 2, 2009

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UNIFORM LAW ENFORCEMENT ACCESS TO ENTITY INFORMATION ACT

PREFATORY NOTE

This act is part of an international effort to fight money laundering and stop the financing of terrorist activities. Among other things, the act implements Recommendation 33 of the Financial Action Task Force (FATF).

The website of FATF describes the history of FATF as follows:

“In response to mounting concern over money laundering, the Financial Action Task Force on Money Laundering (FATF) was established by the G-7 Summit that was held in Paris in 1989. Recognizing the threat posed to the banking system and to financial institutions, the G-7 Heads of State or Government and President of the European Commission convened the Task Force from the G-7 member States, the European Commission and eight other countries.

“The Task Force was given the responsibility of examining money laundering techniques and trends, reviewing the action which had already been taken at a national or international level, and setting out the measures that still needed to be taken to combat money laundering. In April 1990, less than one year after its creation, the FATF issued a report containing a set of Forty Recommendations, which provide a comprehensive plan of action needed to fight against money laundering.”

Recommendation 33 of the Forty Recommendations provides that:

“Countries should take measures to prevent the unlawful use of legal persons by money launderers. Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. In particular, countries that have legal persons that are able to issue bearer shares should take appropriate measures to ensure that they are not misused for money laundering and be able to demonstrate the adequacy of those measures.”

A Congressional hearing relating to the issues raised by FATF Recommendation 33 was held on November 14, 2006 by the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs of the United States Senate. The testimony at that hearing led to the introduction of legislation in both the 110th Congress (S. 681, S. 2956, and H.R. 2136) and the 111th Congress (S. 569).

On June 11, 2007, the National Association of Secretaries of State (NASS) requested that the Conference draft amendments to the various uniform unincorporated entity laws to address the issues raised by FATF Recommendation 33. NASS similarly requested that the Committee on Corporate Laws (CCL) of the Section on Business Law of the American Bar Association

prepare similar amendments to the Model Business Corporation Act. Underlying the NASS requests was a desire to address the issues in a way that would be less burdensome for the private sector and Secretaries of State than the proposals in the federal legislation but still meet the needs of law enforcement and satisfy FATF Recommendation 33.

Both the Conference and the CCL agreed to undertake the drafting efforts requested by NASS. Proposed amendments to the Uniform Limited Liability Company Act were given first reading at the 2008 annual meeting of the Conference, and the CCL prepared a first draft of amendments to the Model Business Corporation Act. The Conference and the CCL then decided that, rather than requiring the states to make amendments to each of their entity laws, it would be preferable to prepare a single statute that could be enacted by a state to address the issues raised by FATF Recommendation 33. The unified approach taken in this act was considered desirable particularly because each state has a unique pattern of entity laws and no state has adopted the Model Business Corporation Act and all of the current uniform unincorporated entity laws. This act provides a single statute that can be enacted to address the issues raised by FATF Recommendation 33.

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 [state, local,
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. Section 1782.

14 (2) “Conventional privately held entity”:

15 (A) means a domestic filing entity that has, or will have on the effective date of
16 its initial public organic record, no more than 50 interest holders; and

17 (B) does not include a domestic filing entity:

18 (i) in which one or more domestic or foreign entities with more than 50
19 interest holders each holds, directly or indirectly, more than 25 percent of the outstanding
20 interests;

21 (ii) that is licensed or otherwise authorized to conduct business, or has
22 filed an application which has not been denied with the appropriate federal or state agency for a
23 license or other authorization to conduct business, as a bank or other depository institution, trust

1 company, insurance company, public utility, or securities or commodities broker or dealer;

2 (iii) that is registered, or has filed an application for registration which has
3 not been denied, as an investment company under the Investment Company Act of 1940;

4 (iv) that is registered, or has filed an application for registration which has
5 not been denied, as an investment advisor under the Investment Advisors Act of 1940 or the law
6 of any state;

7 (v) in which one or more domestic or foreign entities of the types
8 described in subparagraph (ii), (iii), or (iv) holds, directly or indirectly, a majority of the
9 outstanding interests;

10 (vi) that holds, directly or indirectly, a majority of the outstanding
11 interests in a domestic or foreign entity of a type described in subparagraph (ii), (iii), or (iv);

12 (vii) that has filed with the Internal Revenue Service a current annual
13 information return as an exempt organization or private foundation; or

14 (viii) that has filed with the Internal Revenue Service an application for
15 recognition of exemption from federal income tax, if that exemption has not been denied and the
16 due date (including any extension granted) for filing its first annual information return as an
17 exempt organization or private foundation has not yet passed.

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

20 (4) “Domestic filing entity” means:

21 (A) a domestic business corporation;

22 (B) a domestic nonprofit corporation;

23 (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]

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

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

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

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

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

(A) receive or demand access to:

(i) information concerning the entity; or

(ii) the books and records of the entity;

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

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

(8) “Governor” means:

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

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

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

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

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

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

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

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

8 (9) “Interest” means:

9 (A) a governance interest;

10 (B) a transferable interest;

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

12 (D) a membership in a nonprofit corporation.

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

14 (A) a shareholder of a business corporation;

15 (B) a member of a nonprofit corporation;

16 (C) a general partner of a limited liability partnership that is not also a limited
17 partnership;

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

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

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

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

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

23 [(I) list similar persons in other types of entities authorized by the law of the

1 state].

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

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

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

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

12 (15) “Private organic rules” means:

13 (A) the bylaws of a business corporation;

14 (B) the bylaws of a nonprofit corporation;

15 (C) the partnership agreement of a limited liability partnership that is not a
16 limited partnership;

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

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

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

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

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

23 (I)] any other rules, whether or not in a record, that govern the internal affairs of

1 a domestic filing entity, are binding on all of its interest holders, and are not part of its public
2 organic record, if any.

3 (16) “Public organic record” means:

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

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

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

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

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

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

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

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

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

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

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

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

23 (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.

Legislative Notes:

(1) “Appropriate request”: An enacting state must decide whether to include the optional provisions in this definition which have the effect of extending to local or state authorities the right of access to information provided in this act.

(2) “Conventional privately held entity”: 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.

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

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

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

1 *purpose under this act.*

2
3 (8) “Governor”: *An enacting state should revise this definition so that it refers to the*
4 *appropriate persons with respect to each type of entity listed in the definition of “domestic filing*
5 *entity.”*

6
7 *If an enacting state authorizes a business corporation with a limited number of*
8 *shareholders to dispense with a board of directors in favor of management by its shareholders,*
9 *the optional phrase at the end of subparagraph (A) should be included with appropriate changes*
10 *to conform to the terminology used in the enacting state.*

11
12 *The Model Nonprofit Corporation Act permits a nonprofit corporation to give some of*
13 *the responsibilities and obligations of the board of directors to another group of persons known*
14 *as a “designated body.” If the law of an enacting state permits that type of governance*
15 *structure, the optional phrase in subparagraph (B) should be included with appropriate changes*
16 *to conform to the terminology used in the enacting state.*

17
18 (10) “Interest holder”: *An enacting state should revise this definition so that it includes*
19 *references to the appropriate persons with respect to each type of entity listed in the definition of*
20 *“domestic filing entity.”*

21
22 (15) “Private organic rules”: *An enacting state should revise this definition so that it*
23 *refers to the appropriate item with respect to each type of entity listed in the definition of*
24 *“domestic filing entity.”*

25
26 (16) “Public organic record”: *An enacting state should revise this definition so that it*
27 *refers to the appropriate document with respect to each type of entity listed in the definition of*
28 *“domestic filing entity.”*

30 **Comment**

31 “Appropriate request.” This definition is patterned after Section 2009(a)(1)(D) of the
32 Homeland Security Act of 2002 (6 U.S.C. § 601 et seq.), as proposed to be added by S. 569
33 (111th Congress).

34
35 “Conventional privately held entity.” The annual information returns referred to in
36 subparagraphs (B)(vii) and (viii) of this definition are the form 990, 990-EZ, and 990-PF returns
37 that are filed by private foundations or organizations exempt from federal income tax under
38 sections 501(c), 527, or 4947(a)(1) of the Internal Revenue Code. Those returns, as well as
39 applications for tax exempt status, are publicly available and require disclosure of, among other
40 things, the officers, directors, trustees, and most highly compensated employees of an exempt
41 organization and thus it is not necessary to require those organizations to comply with the
42 disclosure provisions of this act.

43
44 If a nonprofit corporation does not have any members, it will fall within subparagraph
45 (A) of this definition because it will have fewer than 50 interest holders, i.e., none.

1
2 “Governor.” The second clause of subparagraph (E) of this definition, which refers to
3 persons who are not managers of a limited liability company but participate materially in its
4 management, is patterned after 6 Del. Code § 18-109(a). It is not intended that the power to elect
5 or otherwise select or to participate in the election or selection of a person to be a manager of a
6 limited liability company will, by itself, constitute participation in the management of the
7 company.
8

9 “Interest holder.” Whether a person is a member of a nonprofit corporation will be
10 determined under a state’s nonprofit corporation law. Many nonprofit corporations refer to their
11 financial supporters as “members” even though those contributors do not have governance rights
12 under the organic law and organic rules of the corporation.
13

14 “Responsible individual.” A responsible individual may be an individual who is a
15 governor of the entity, an agent of another person, or an agent or officer of the entity itself, or
16 who meets the requirements of this definition because of ownership of an interest in the entity or
17 other factors. To qualify as a responsible individual, what is required is that the individual
18 participate in the control or management of the entity. A responsible individual may have sole
19 responsibility for the management of the entity or may share that responsibility with others. The
20 term has been created for use in this act and is not intended to change the law with respect to the
21 governance of any form of entity.
22

23 **SECTION 3. PUBLIC ORGANIC RECORDS.**

24 (a) The public organic record of a domestic filing entity must include, in addition to any
25 other information required by its organic law, a statement as to whether the entity is a
26 conventional privately held entity. The delivery to the [Secretary of State] for filing of an initial
27 or amended public organic record is an affirmation under the penalties of perjury by the entity
28 and by any person signing the record that the statement required by this subsection is correct.

29 (b) When the initial public organic record of a conventional privately held entity is
30 delivered to the [Secretary of State] for filing, it must be accompanied by an initial entity
31 information statement.

32 (c) If the statement required by subsection (a) becomes incorrect, the entity shall deliver
33 promptly to the [Secretary of State] for filing an amendment of its public organic record
34 correcting the statement. [An amendment pursuant to this subsection need not be approved by

1 the governors or interest holders.] [The [Secretary of State] may not charge a fee for filing an
2 amendment pursuant to this subsection.]

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 entity information statement.

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

9 **Legislative Notes:**

10
11 *Subsection (a): States should consider adding a reference to the requirements of*
12 *subsection (a) in the section of the organic law of each domestic filing entity dealing with the*
13 *entity's public organic record so that people consulting that law will be aware of the*
14 *requirements of subsection (a). Such a reference in the section of the organic law of an entity*
15 *dealing with the contents of its public organic record might read, for example, "the statement*
16 *required by [Section 3(a) of the Uniform Law Enforcement Access to Entity Information Act]."*
17

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

27 *The last sentence of subsection (c) is optional because an enacting state may choose to*
28 *require a fee for filing an amendment of the public organic record that is required under*
29 *subsection (c). It will be preferable, however, for states not to require a fee as a way of*
30 *encouraging amendments that keep the public records up to date regarding the status of an*
31 *entity. If a state chooses to impose a fee, the fee will presumably be the same as for filing any*
32 *other amendment to a public organic record. Thus the possibility of a fee being charged for a*
33 *filing under subsection (c) has not been included in Section 13.*
34

35 **Comment**

36
37 The public organic record of every domestic filing entity must include a statement
38 satisfying subsection (a), either that the entity is a conventional privately held entity or that the

entity is not a conventional privately held entity.

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

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

SECTION 4. ENTITY INFORMATION STATEMENT.

(a) An entity information statement must set forth:

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

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

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

(b) An initial entity information statement must be signed:

(1) on behalf of the conventional privately held entity;

(2) by the records contact named in the statement; and

(3) by the responsible individual named in the statement.

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

1 (d) An amended entity information statement must be signed:

2 (1) on behalf of the conventional privately held entity;

3 (2) by any new records contact or new responsible individual named in the
4 amended statement; and

5 (3) by any records contact or responsible individual whose address is being
6 changed.

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

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

11 (2) either:

12 (A) the new address; or

13 (B) a statement that the records contact or responsible individual resigns.

14 (f) A records contact or responsible individual who delivers to the [Secretary of State]
15 for filing a statement of change pursuant to subsection (e) shall furnish promptly to the
16 conventional privately held entity notice in a record of the delivery to the [Secretary of State] of
17 the statement of change and a copy of the statement.

18 (g) An initial entity information statement filed under subsection (a) takes effect upon
19 filing or any later effective time of the initial or amended public organic record in connection
20 with which the statement is delivered to the [Secretary of State] for filing. An amended entity
21 information statement filed under subsection (c) or a statement of change filed under subsection
22 (e) takes effect upon filing.

23 (h) The signing by a records contact or responsible individual of an entity information

1 statement or a statement of change that reflects a change of address constitutes an affirmation
2 under the penalties of perjury that:

3 (1) the address of the signing person is correct; and

4 (2) either:

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

7 (B) the responsible individual meets the definition of a responsible
8 individual in Section 2.

9 (i) Every signature of a records contact or responsible individual on an entity information
10 statement or statement of change must be notarized.

11 (j) If the principal residence of the responsible individual identified in the current entity
12 information statement is outside the United States, the responsible individual must provide to the
13 records contact a copy of a passport, driver's license, or other government-issued photo
14 identification document for the responsible individual.

15 [(k) The [Secretary of State] may not charge a fee for filing an amended entity
16 information statement or statement of change.]

17 ***Legislative Notes:***

18
19 *Subsection (i): Subsection (i) does not specify the manner in which the required*
20 *notarizations must be submitted. That is an issue to be determined by the enacting state and may*
21 *require amendment of subsection (i) or other state law. Some states may choose to accept only*
22 *paper filings, while other states may provide for electronic notarization or delivery of notarized*
23 *documents by electronic means. If the Secretary of State only accepts electronic filings, an*
24 *enacting state will need to provide for either electronic notarization or the delivery of notarized*
25 *documents by electronic means.*

26
27 *Subsection (k): Subsection (k) is optional because an enacting state may choose to*
28 *require a fee for filing an amended entity information statement or statement of change. It will*
29 *be preferable, however, for states not to require a fee as a way of encouraging filings that keep*
30 *the public records up to date. If a state chooses to impose a fee, the fee should be included in*

1 *Section 13.*

2
3 **Comment**

4 1. The same individual may serve as the records contact and responsible individual for a
5 conventional privately held entity. When an entity needs to be formed on a rush basis, or when a
6 records contact or responsible individual has not yet been identified for an entity, a person
7 forming the entity, such as an incorporator, may serve as an accommodation in the capacities of
8 records contact and responsible individual. Regardless of the reason why the person forming the
9 entity is also shown as the records contact, so long as the person is named in that capacity, the
10 person will have the duties and liabilities attendant to that position under this act.

11
12 2. Because subsection (c) requires an amended entity information statement to include all
13 of the information required by subsection (a), a conventional privately held entity must always
14 have a records contact and responsible individual identified in the records of the Secretary of
15 State. *But see* the transitional provisions in Section 16.

16
17 3. Subsection (d) does not require that an amended entity information statement be
18 signed by an individual named in an earlier statement as records contact or responsible individual
19 if the information regarding that individual has not changed.

20
21 4. Subsection (g) provides that a statement of change under subsection (e), which could
22 include a resignation by a records contact or responsible individual, takes effect upon filing.
23 That is different from the practice in some states of delaying the effectiveness of a resignation of
24 a registered agent. *See, e.g.*, Model Registered Agents Act § 11 (delaying a resignation for 31
25 days). The main function of a registered agent is simply to forward service of process to the
26 represented entity, and delaying resignation from that position typically does not pose problems
27 for either the registered agent or the represented entity. A records contact or responsible
28 individual, in contrast, has an important place in the law enforcement process created by this act,
29 making it more important for the records contact or responsible individual to be able to resign
30 immediately in appropriate circumstances. Making a resignation effective immediately under
31 subsection (g) also provides an earlier start to the period in which the entity must replace the
32 records contact or responsible individual if the entity wishes to avoid administrative dissolution
33 under Section 9.

34
35 5. The purpose of subsection (i) is to use the notarial process to provide some
36 verification of the identity of a records contact or responsible individual since notarization
37 requires the notary to know or verify the identity of the individual whose signature is being
38 notarized.

39
40 Notarization may include taking an acknowledgment, administering an oath or
41 affirmation, taking a verification upon oath or affirmation, or witnessing or attesting a signature.
42 *See* Uniform Law on Notarial Acts (1982) § 1(1) (“notarial act”). The persons who may perform
43 those acts are determined by state law and may be changed by a state to broaden or restrict the
44 types of persons so authorized.

1 The manner in which a document with a notarized signature may be delivered to the
2 Secretary of State will be determined by the Secretary of State and may include by fax or in
3 portable document form (pdf). Modern law on notarial acts is also evolving to permit
4 notarization of electronic records, and thus even in those states where all entity filings are made
5 electronically it should be possible to comply with subsection (i).
6

7 Every state has statutory provisions dealing with notarial acts, although not every state
8 has adopted the Uniform Law on Notarial Acts (1982). Those state statutes typically have
9 separate provisions covering notarial acts performed within the state, under federal authority, and
10 in foreign countries. Section 6 of the Uniform Law on Notarial Acts (1982) provides, for
11 example, with respect to notarial acts performed in foreign countries:
12

13 (a) A notarial act has the same effect under the law of this State as
14 if performed by a notarial officer of this State if performed within the
15 jurisdiction of and under authority of a foreign nation or its constituent
16 units or a multi-national or international organization by any of the
17 following persons:

- 18 (1) a notary public or notary;
19 (2) a judge, clerk, or deputy clerk of a court of record; or
20 (3) any other person authorized by the law of that
21 jurisdiction to perform notarial acts.

22 (b) An "Apostille" in the form prescribed by the Hague Convention
23 of October 5, 1961, conclusively establishes that the signature of the
24 notarial officer is genuine and that the officer holds the indicated office.

25 (c) A certificate by a foreign service or consular officer of the
26 United States stationed in the nation under the jurisdiction of which the
27 notarial act was performed, or a certificate by a foreign service or consular
28 officer of that nation stationed in the United States, conclusively
29 establishes any matter relating to the authenticity or validity of the notarial
30 act set forth in the certificate.

31 (d) An official stamp or seal of the person performing the notarial
32 act is prima facie evidence that the signature is genuine and that the person
33 holds the indicated title.

34 (e) An official stamp or seal of an officer listed in subsection (a)(1)
35 or (a)(2) is prima facie evidence that a person with the indicated title has
36 authority to perform notarial acts.

37 (f) If the title of office and indication of authority to perform
38 notarial acts appears either in a digest of foreign law or in a list
39 customarily used as a source for that information, the authority of an
40 officer with that title to perform notarial acts is conclusively established.
41

42 Subsection (i) does not address the duty of the Secretary of State to verify that the
43 notarization of a signature on an entity information statement is valid. The procedures for
44 acceptance of notarized documents by the Secretary of State will be governed by other law of the
45 state. That law often deals separately with notarizations performed within the state, outside of
46 the state, under federal authority, or in foreign countries. *See, e.g.,* Uniform Law on Notarial

1 Acts (1982) §§ 3-6.
2

3 **SECTION 5. DUTIES OF RECORDS CONTACT.**

4 (a) A records contact for a conventional privately held entity must:

5 (1) inquire at the time the records contact signs an initial or amended entity
6 information statement whether the current responsible individual is required to comply with
7 Section 4(j) and, if the responsible individual is required to comply but does not do so within five
8 business days after the [Secretary of State] files the initial or amended entity information
9 statement, to resign as records contact in the manner provided in Section 4(e);

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

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

13 (A) the photo identification document, if any, for the entity's responsible
14 individual required by Section 4(j);

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

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

19 (4) resign under Section 4(e) if the records contact acquires actual knowledge,
20 before receiving an appropriate request, that a request by the records contact to the entity for the
21 information described in Section 7(a) will not be honored by the entity on a timely basis; and

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

1 (A) the name and a business or residential address of the individual whom
2 the records contact believed would supply the information to the record contacts; or

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

5 (b) A records contact, as such, does not have a duty to verify the accuracy of information
6 described in Section 4(j) or 7(a) or a certification under Section 7(b).

7 **Comment**

8 If there is a failure to respond to an appropriate request for information, the consequences
9 of that failure and possible sanctions will depend on the nature of the request. For example,
10 failure to respond to a subpoena will have the same consequences and sanctions as any other
11 failure to respond to a subpoena under the applicable federal or state law. Whether the
12 consequences of a failure to respond to an appropriate request for information should be imposed
13 on the records contact or on the conventional privately held entity will depend on whether the
14 records contact has performed the duties required by this section.

15
16 If an entity believes that it has defenses to a failure to respond to an appropriate request
17 or should be excused from responding, it may raise those defenses or excuses in a proceeding to
18 enforce the appropriate request or the entity may commence a proceeding to contest the
19 appropriate request.

20
21 The requirement in subsection (a)(3) that information be produced on a “timely basis” is
22 intended to satisfy Recommendation 33 of the 40 Recommendations of the Financial Action
23 Task Force. In the case of a subpoena, what will be a timely response will be controlled by the
24 response date in the subpoena and whether an appropriate challenge to the subpoena is made. A
25 response date in a request made under a treaty, however, does not have the force of law and will
26 not necessarily be binding.

27
28 A records contact may wish as a matter of good business practice to verify periodically
29 that the records contact continues to have the required access to information, although an
30 obligation to verify that the records contact continues to have access to information is not part of
31 the required duties of a records contact.

32
33 If a records contact acquires actual knowledge that information will not be provided by
34 an entity as required by this act, the records contact has a duty to resign under subsection (a)(4)
35 even though there is no pending appropriate request.

36
37 A records contact is defined in Section 2(18) as an individual who has access to the
38 information required by Section 7, and when a records contact signs an entity information
39 statement under Section 4 that signature constitutes an affirmation that the individual

1 understands the duties of a records contact.

2
3 Subsection (b) applies only to a records contact in the individual's capacity as a records
4 contact. If the individual also maintains the records required to be produced under Section 7(a)
5 in another capacity, for example as a corporate secretary, the individual will have the obligations
6 associated with serving in that capacity. This act does not address those obligations.
7

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

9 (a) Except as provided in subsection (e), when a non-US entity first becomes a transferee
10 or interest holder in a conventional privately held entity after [the effective date of this act],
11 whether by transfer, issuance of an interest, or admission as an interest holder, the transferee or
12 interest holder shall provide the entity with a certification signed under the penalties of perjury
13 stating the name and a business or residential address of a responsible individual for the
14 transferee or interest holder.

15 (b) Except as provided in subsection (e), if any of the information in a certification
16 provided under subsection (a) becomes incorrect, the interest holder or transferee shall provide
17 promptly to the conventional privately held entity a corrected certification.

18 (c) A certification provided under subsection (a) or (b) that is incorrect or incomplete, or
19 the failure of a conventional privately held entity to obtain a required certification, does not
20 affect the existence of the conventional privately held entity, the validity of any acts of the entity,
21 the interest of any interest holder or transferee, or the status of a person as an interest holder or
22 transferee.

23 (d) A non-US entity that is required to provide a certification under this section may not
24 maintain a proceeding in any court in this state with respect to the interest giving rise to the
25 obligation to provide the certification unless the non-US entity complies with this section.

26 (e) Subsections (a) and (b) apply only to an interest holder or transferee that would be a

1 conventional privately held entity if the interest holder or transferee were a domestic filing
2 entity.

3 **Comment**

4 This section is patterned in part after Section 2009(a)(2) of the Homeland Security Act of
5 2002 (6 U.S.C. § 601 et seq.), as proposed to be added by S. 569 (111th Congress).
6

7 This section is not intended to require the conventional privately held entity to track
8 transfers of interest. It is the obligation of a transferee to provide the certifications required by
9 this section.
10

11 Subsection (c) is patterned in part after Model Business Corporation Act, 4th Ed. § 2.03
12 and Uniform Limited Liability Company Act § 2.01(d). Section 2.03(b) of the Model Act, for
13 example, provides that “The secretary of state’s filing of the articles of incorporation is
14 conclusive proof that the incorporators satisfied all conditions precedent to incorporation except
15 in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the
16 corporation.” States should consider whether to amend those types of provisions in their entity
17 laws to make them consistent with subsection (c).
18

19 Subsection (d) is patterned after the provision found in many state entity laws that
20 prohibits a foreign entity from maintaining a lawsuit in a state if the entity is transacting business
21 in the state but has not registered to do business as a foreign entity. See, e.g., Model Business
22 Corporation Act (4th Ed.) § 15.02(a) and Uniform Limited Liability Company Act (2006) §
23 808(a).
24

25 **SECTION 7. RECORDS OF CONVENTIONAL PRIVATELY HELD ENTITIES.**

26 (a) A conventional privately held entity must have a records contact at all times while it
27 is a conventional privately held entity. When the records contact notifies the entity that an
28 appropriate request has been received, the entity shall provide on a timely basis to the records
29 contact information in a record that:

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

33 (2) indicates for each current transferee of which the entity has actual knowledge

1 or current interest holder that is a foreign or domestic entity, the jurisdiction whose laws govern
2 its internal affairs;

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

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

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

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

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

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

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

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

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

21 **Comment**

22 A non-U.S. resident is not required to supply a photo identification document as a
23 condition to becoming a governor under paragraph (a)(4)(A). That paragraph simply requires
24 that when an appropriate request is made the conventional privately held entity must be able to
25 supply the required document. The entity may obtain the document at that time, but many

1 entities will choose to obtain the document earlier because they otherwise run the risk of being
2 unable to obtain the document on a timely basis once an appropriate request has been made. In
3 contrast, if the principal residence of a responsible individual is outside the United States, the
4 entity has a continuing obligation to obtain a photo identification document under subparagraph
5 (a)(4)(B). The responsible individual also has an obligation to provide a photo identification
6 document to the records contact under Section 4(j).

7
8 The obligation to provide information under paragraph (a)(6) about voting power in the
9 conventional privately held entity may be satisfied by supplying a copy of the operative
10 documents that determine that voting power. Those documents will often be simply the public
11 organic record or private organic rules of the entity, such as the articles of incorporation of a
12 corporation or the operating agreement of a limited liability company; but may include other
13 documents such as shareholder agreements, voting agreements, investor rights agreements, etc.

14 15 **SECTION 8. JUDICIAL DISSOLUTION.**

16 (a) The [name or describe court or courts] may dissolve a conventional privately held
17 entity in a proceeding by [the Attorney General] if it is established that the entity materially
18 failed to comply with Sections 7 or 12.

19 (b) It is not necessary to make interest holders or transferees parties to a proceeding to
20 dissolve a conventional privately held entity under this section unless relief is sought against
21 them individually.

22 (c) Until a full hearing is held, the court may issue injunctions, appoint a receiver or
23 custodian with the powers and duties the court directs, and order other action required to
24 preserve the assets and carry on the business of the conventional privately held entity.

25 (d) The court may appoint a receiver to wind up and liquidate the business and affairs of
26 the conventional privately held entity. The court shall hold a hearing, after notifying all parties
27 to the proceeding and any interested persons designated by the court, before appointing a
28 receiver. The court appointing a receiver has exclusive jurisdiction over the entity and all of its
29 property wherever located.

30 (e) The court may appoint as a receiver an individual, a domestic entity, or a foreign

1 entity authorized to transact business in this state. The court may require the receiver to post
2 bond, with or without sureties, in an amount the court directs.

3 (f) The court shall prescribe the powers and duties of the receiver in its appointing order,
4 which may be amended. The powers of the receiver may include the power to:

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

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

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

13 (h) If after a hearing the court determines that a ground under this section exists for
14 judicial dissolution of a conventional privately held entity, the court shall order dissolution of the
15 entity and specify the effective date of the dissolution. The clerk of the court shall deliver a
16 certified copy of the decree to the [Secretary of State] for filing.

17 (i) After ordering dissolution, the court shall direct the winding-up of the business and
18 affairs of the conventional privately held entity in accordance with the organic law of the entity.

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

25 26 **Comment**

27 If a conventional privately held entity believes that it has defenses to a proceeding to

1 dissolve it under this section, those issues may be raised and tried in the dissolution proceeding.

2
3 An action under this section will usually involve just the conventional privately held
4 entity. However, subsection (b) permits the interest holders or transferees to be made parties to
5 the dissolution proceeding because it may be appropriate to seek relief against them, for example
6 in a proceeding brought to dissolve an entity that has violated the prohibition in Section 12 on
7 issuing bearer interests.

8
9 Judicial dissolution under this section is in addition to judicial dissolution on other
10 grounds that may be provided in the organic law of an entity or an enacting state's other law.
11

12 **SECTION 9. ADMINISTRATIVE DISSOLUTION.**

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

14 (1) a conventional privately held entity if the records of the [Secretary of State]
15 do not show a current records contact or responsible individual for the entity for [60] consecutive
16 days; and

17 (2) a domestic filing entity if its public organic record does not contain the
18 statement required by Section 3(a).

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

22 (c) If not later than [60] days after service of the copy pursuant to subsection (b) the
23 entity does not correct each ground for dissolution or demonstrate to the reasonable satisfaction
24 of the [Secretary of State] that each ground determined by the [Secretary of State] does not exist,
25 the [Secretary of State] shall administratively dissolve the entity by preparing, signing, and filing
26 a declaration of dissolution stating the grounds for dissolution. The [Secretary of State] shall
27 serve the entity with a copy of the filed declaration.

28 (d) An entity that has been dissolved under this section continues in existence but,

1 subject to subsection (i), may carry on only activities necessary to wind up its activities under its
2 organic law.

3 (e) The dissolution of an entity under this section does not terminate the authority of its
4 agent for service of process or the responsibilities of a records contact shown in the records of
5 the [Secretary of State] at the time of dissolution.

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

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

10 (2) either:

11 (A) the name and a business or residential address of the entity's records
12 contact and the name and a business or residential address of the entity's responsible individual;
13 or

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

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

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

21 (h) If the [Secretary of State] determines that an application under subsection (f) contains
22 the required information and is accompanied by any required amendment of the entity's public
23 organic record, the [Secretary of State] shall prepare a declaration of reinstatement that states

1 those determinations, sign and file the original of the declaration of reinstatement, and serve the
2 entity with a copy.

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

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

8 ***Legislative Note:*** *If an enacting state has existing administrative dissolution procedures, or*
9 *procedures for voiding or cancelling an entity that is not in compliance with tax obligations or*
10 *requirements of its organic law (all of the foregoing, “pre-existing procedures”) for some or all*
11 *of the entities included in the definition of “domestic filing entity” in Section 2, this section may*
12 *be revised so that it only applies to those entities for which the state does not already have pre-*
13 *existing procedures. For those entities excluded from the scope of this section, subsection (a)*
14 *will need to be added to the pre-existing procedures in the organic laws of those entities as an*
15 *additional basis for dissolution, voiding, or cancellation.*

16
17 *This section may be conformed to the pre-existing procedures in the state. For example,*
18 *if the existing practice in a state is for the Secretary of State to mail notice of an administrative*
19 *dissolution, voiding, or cancellation to the entity, that practice may be substituted for the*
20 *requirement in subsection (c) that the Secretary of State serve the filed declaration of dissolution*
21 *on the entity.*

22
23 *Some state administrative dissolution statutes may include a time limit on reinstatement,*
24 *unlike this section which does not impose a time limit on reinstatement. States should decide*
25 *whether they wish to impose such a limit under this section.*

26 27 **Comment**

28
29 This section applies to all domestic filing entities and not just conventional privately held
30 entities. After the transition period provided in Section 16, failure of a domestic filing entity that
31 is not a conventional privately held entity to include in its public organic record the statement
32 required by Section 3(b) will be grounds for administrative dissolution of the entity.

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

1
2 Administrative dissolution under this section is in addition to administrative dissolution
3 on other grounds that may be provided in the organic law of an entity or an enacting state's other
4 law.
5

6 **SECTION 10. LIMITATION OF LIABILITIES.**

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

10 (b) Unless a contract between a conventional privately held entity and a records contact
11 provides otherwise, a records contact is not liable for any inaccuracy in or omission from the
12 information described in Section 7(a) or the certification described in Section 7(b), but this
13 subsection does not limit the liability of a records contact for recklessness, intentional
14 misconduct, or criminal conduct.

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

18 (d) Compliance or noncompliance by a domestic filing entity with this [act] is not a
19 ground for imposing liability on its interest holders, beneficial owners, transferees, or governors
20 for the debts, obligations, or other liabilities of the entity.

21 **Comment**

22 Identifying an individual as a responsible individual does not by itself confer on the
23 individual any power, or impose any duties, with respect to the control or management of the
24 conventional privately held entity. The individual must have, however, whatever powers or
25 duties are the basis for the determination that the individual participates in the control or
26 management of the entity in a manner that satisfies the definition of "responsible individual" in
27 Section 2(19). Similarly, identifying an individual as a responsible individual does not by itself
28 make the individual liable for any of the debts, obligations, or liabilities of the entity.
29

1 Subsection (d) makes clear that the failure of a domestic filing entity to comply with the
2 requirements of this act is not a basis for piercing the veil of the entity. That subsection also
3 makes clear that complying with this act is not a basis for imposing liability on the interest
4 holders or governors of an entity on the basis of an alter ego theory.
5

6 **SECTION 11. ADDRESSES.** Whenever this [act] requires the provision of an address,
7 the following information must be provided:

8 (1) a street address or rural route box number; and

9 (2) a mailing address, if different from the address under paragraph (1).

10 **SECTION 12. PROHIBITION OF BEARER INTERESTS.** A domestic filing entity
11 may not issue a certificate in bearer form evidencing either a whole or fractional interest.

12 ***Legislative Note:** Enacting states may choose to omit this section and instead prohibit the*
13 *issuance of bearer certificates in the individual organic laws for each type of entity listed in the*
14 *definition of “domestic filing entity” in Section 2.*
15

16 **Comment**

17

18 In states that require legislation to be limited to a single subject, a question may arise as
19 to whether this section deals with the same subject as the rest of the act. As discussed in the
20 Prefatory Note, an important purpose of this act is to comply with FATF Recommendation 33,
21 which requires both disclosure of ownership and control of entities and also the prohibition of
22 bearer shares. When a purpose of the act is seen as complying with FATF Recommendation 33,
23 the inclusion of this section should be within that single purpose. If a state nonetheless believes
24 that including this section in the act may make the act unconstitutional, this section (or the
25 alternative approach described in the Legislative Note) should be enacted by separate legislation.
26

27 **SECTION 13. FEES.**

28 **Alternative A**

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

31 (1) initial entity information statement \$____

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

1 (3) statement of change \$____

2 (4)] application for reinstatement following

3 administrative dissolution \$____

4 **Alternative B**

5 (a) The [Secretary of State] shall adopt rules, in accordance with [the state's
6 administrative procedure act] setting the fees for processing filings under this [act]. [The fees
7 must be set at amounts such that the total amount of fees collected during a year is not less than
8 the annual costs incurred by the [Secretary of State] in administering this [act].]

9 **End of Alternatives**

10 [(b) The fees collected under subsection (a) shall be deposited into a restricted account
11 within the [general fund]. Funds in the restricted account shall be used only to administer this
12 [act].]

13 ***Legislative Notes:***

14
15 *Alternative A: With respect to optional paragraphs (a)(2) and (3), see the Legislative*
16 *Note to Section 4(k).*

17
18 *Subsection (b): Subsection (b) is optional. If subsection (b) is omitted by a state and*
19 *Alternative B for subsection (a) is used, the last sentence of subsection (a) should also be*
20 *omitted. If subsection (b) is adopted by a state, it should be revised to conform to the state's*
21 *practice in establishing special purpose funds.*
22

23 **SECTION 14. PROCESSING OF DOCUMENTS.** The [Secretary of State] may not
24 file a document if the document or any aspect of its delivery to the [Secretary of State] does not
25 comply with this [act].

26 **[SECTION 15. CONFIDENTIALITY.**

27 (a) The initial entity information statement of a conventional privately held entity and
28 any amended statement or statement of change must be kept confidential by the [Secretary of

State] and may be disclosed only:

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

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

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

(B) 28 U.S.C. Section 1782; or

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

(b) A request pursuant to subsection (a)(1) or (2) must be kept confidential by the [Secretary of State] and may be disclosed only pursuant to a request under subsection (a)(1) or (2).]

Legislative Note: With respect to subsection (a)(1), see the Legislative Note to Section 2(1).

Comment

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

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

1 **SECTION 16. TRANSITIONAL PROVISION.**

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

4 (1) an amendment of its public organic record that contains the statement
5 required by Section 3(a); and

6 (2) if it is a conventional privately held entity, an initial entity information
7 statement.

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

9 (1) two years after the effective date of this act; or

10 (2) the date the entity first delivers any other document to the [Secretary of State]
11 for filing under its organic law.

12 (c) The [Secretary of State], not earlier than one year after the effective date of this act,
13 shall mail to every domestic filing entity that has not complied with subsection (a) a notice
14 advising the entity of the requirement to comply with subsection (a). Failure by the [Secretary of
15 State] to provide the notice to any entity, or failure by any person to receive the notice, shall not
16 relieve an entity of the obligation to comply with subsection (a).

17 [(d) The amendment required by subsection (a)(1) need not be approved by the
18 governors or interest holders of a domestic filing entity.]

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

27
28 **Comment**

1 The intention of this act is that all entities will be in compliance within two years after the
2 effective date of the act. Subsection (d) requires the Secretary of State to send out a reminder
3 notice one year after the effective date to facilitate compliance. That notice or lack thereof does
4 not modify or affect the requirement that all entities must comply with subsection (a) within two
5 years after the effective date of the act. Failure of a domestic filing entity to comply with
6 subsection (a) is grounds for administrative dissolution of the entity under Section 9.
7

8 **SECTION 17. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
9 applying and construing this uniform act, consideration must be given to the need to promote
10 uniformity of the law with respect to its subject matter among states that enact it.

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

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

18 (1)

19 *Legislative Note: If a state chooses to include optional Section 15, it must consider the*
20 *relationship between that section and its open records or similar right to know law. The state*
21 *could amend or repeal its open records or similar law to the extent it would require that an*
22 *entity information statement or statement of change not be kept confidential as provided in*
23 *Section 15, or Section 15 could provide that initial and amended entity information statements*
24 *and statements of change are not subject to the state's open records or similar law.*
25

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