

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

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

‘§ 120-A. Routine technical rules

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

§ 120-B. Duty of Secretary of State

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

- 1. Validity of documents.** Affect the validity or invalidity of the document in whole or in part;
- 2. Correctness of information.** Relate to the correctness or incorrectness of information contained in the document; or
- 3. Presumption of validity or correctness.** Create a presumption that the document is valid or invalid or that the information in the document is correct or incorrect.

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

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

§ 120-D. Effective date

This chapter takes effect July 1, 2008.’

Amend the bill by adding before the summary the following:

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

The Act grew out of discussions within the International Association of Commercial Administrators (“IACA”), which is the association of state corporation bureaus and similar filing offices in the United States and Canada. IACA was approached by representatives of corporation service companies who were seeking to solve problems they have encountered in their provision of registered agent services. IACA had also been considering on its own how filing requirements in state corporation bureaus could be simplified

and standardized. IACA decided that the time was right for it to develop proposed statutory provisions on two subjects:

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

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

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

1. The provisions of the Act itself, which deal with registered agent issues and apply to all forms of entities.
2. An Appendix of conforming changes to all of the existing uniform, model, and prototype entity laws that have two separate purposes:

some of the conforming amendments integrate the uniform, model, and prototype entity laws with the Act and its new registered agent provisions, and

the remaining conforming amendments standardize the provisions of the uniform, model, and prototype entity laws on annual report filings.

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

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

The first function, that of being an agent for service of process, is the principal reason why the appointment of a registered agent is required under entity organic laws. The remaining two functions made sense at a time when the registered office address of an entity was often a business address for the entity. In recent years, however, it has become common for entities to use as their registered agents businesses whose principal activity is the provision of registered agent services, and thus the address of

the registered agent has become divorced from any real connection with the business activities of the represented entity.

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

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

Comments for section 102

MODEL ACT COMMENT (This is Section 2 of the Model Registered Agents Act.)

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

"domestic entity"
"entity"
"filing entity"
"foreign entity"
"governance interest"
"governor"
"interest"
"interest holder"
"jurisdiction of organization"
"organic law"
"organic rules"
"person"
"private organic rules"
"public organic document"
"qualified foreign entity"
"record"
"sign"
"transferable interest"

"type"

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

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

"Commercial registered agent." [(2)] - A commercial registered agent is an individual or entity that is in the business of serving as a registered agent in the state and that files a listing statement under Section 6. Being listed as a commercial registered agent is voluntary and persons serving as registered agents are not required to be listed under Section 6. The benefits to the registered agent of being listed under Section 6, however, are substantial and most registered agents will elect to be so listed. Although this definition and Section 6 do not expressly require that a foreign entity that is listed as a commercial registered agent be qualified to do business in the state, the activity of serving as a registered agent is one that requires such registration.

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

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

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

Business corporation.

Business or statutory trust.

General partnership, whether or not a limited liability partnership.

Limited liability company.

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

Nonprofit corporation.

Unincorporated nonprofit association.

The term does not include a sole proprietorship.

This definition is intended to include all forms of private organizations, regardless of whether organized for profit, and artificial legal persons other than those excluded by paragraphs (A) through (E).

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

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

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

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

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

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

- (1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.
- (2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

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

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

"Filing entity." [(5)] Whether an entity is a filing entity is determined by reference to whether its legal existence is attributable to the filing of a document with the state filing officer. While the statute refers to an entity that is "created," it is intended to encompass corporations which are "incorporated,"

limited liability companies which are "organized," and limited partnerships which are "formed" by a filing required by the organic law governing the entity. Business trusts (sometimes referred to as "statutory trusts") present a special problem. In some states, for example, a business trust is a filing entity, while in other states business trusts are recognized only by common law.

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

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

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

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

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

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

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

Governors of an entity have the kinds of rights listed in the definition of "governance interest" by reason of their position with the entity. For a governor to have a "governance interest," however, requires

that the governor also have those rights for a reason other than the governor's status as such. A manager who is not a member in a limited liability company, for example, will not have a governance interest, but a manager who is a member will have a governance interest arising from the ownership of a membership interest.

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

"Governor." [(9)] - This term has been chosen to provide a way of referring to a person who has the authority under an entity's organic law to make management decisions regarding the entity that is different from any of the existing terms used in connection with particular types of entities. Compare Colo. § 7-90-102(35.7) which uses the term "manager" to refer to this concept, even though "manager" is also a term of art in connection with limited liability companies. Depending on the type of entity or its organic rules, the governors of an entity may have the power to act on their own authority, or they may be organized as a board or similar group and only have the power to act collectively, and then only through a designated agent. In other words, a person having only the power to bind the organization pursuant to the instruction of the governors is not a governor. Under the organic rules, particularly those of unincorporated entities, most or all of the management decisions may be reserved to the members or partners. Thus, if a manager of a limited liability company were limited to having authority to execute management decisions made by the members and did not have any authority to make independent management decisions, the manager would not be a governor under this definition.

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

Director of a business corporation.

Director or trustee of a nonprofit corporation.

General partner of a general partnership.

General partner of a limited partnership.

Manager of a limited liability company.

Member of a member-managed limited liability company.

Trustee of a business or statutory trust.

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

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

The term "interest" includes:

Beneficial interest in a business or statutory trust.

Membership in a nonprofit corporation.

Membership in an unincorporated nonprofit association.

Membership interest in a limited liability company.

Partnership interest in a general partnership.

Partnership interest in a limited partnership.

Shares in a business corporation.

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

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

The term "interest holder" includes:

Beneficiary of a business or statutory trust.

General partner of a general partnership.

General partner of a limited partnership.

Limited partner of a limited partnership.

Member of a limited liability company.

Member of a nonprofit corporation.

Member of an unincorporated nonprofit association.

Shareholder of a business corporation.

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

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

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

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

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

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

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

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

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

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

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

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

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

The term "private organic rules" includes:

Bylaws of a business corporation.

Bylaws of a business or statutory trust.

Bylaws of a nonprofit corporation.

Constitution and bylaws of an unincorporated nonprofit association.

Operating agreement of a limited liability company.

Partnership agreement of a general partnership.

Partnership agreement of a limited partnership.

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

"Public organic document." [(20)] - A "public organic document" is a document that is filed of public record to form, organize, incorporate, or otherwise create an entity. The term does not include a statement of partnership authority filed under Section 303 of the Uniform Partnership Act (1997) or any of the other statements that may be filed under that act since those statements do not create a new entity. A limited liability partnership is the same entity as the partnership that files the statement. For the same reason, the term also does not include a statement of qualification filed under Section 1001 of that act to become a limited liability partnership. Similarly, the term does not include a statement of authority filed under Section 5 of the Uniform Unincorporated Nonprofit Association Act or a statement appointing an

agent filed under Section 10 of that act. Where a public organic document has been amended or restated, the term means the public organic document as last amended or restated.

The term "public organic document" includes:

Articles of incorporation of a business corporation.

Articles of incorporation of a nonprofit corporation.

Certificate of limited partnership.

Certificate of organization of a limited liability company.

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

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

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

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

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

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

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

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

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

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

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

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

"Type." [(28)] - The term "type" has been developed in an attempt to distinguish different legal forms of entities. It is sometimes difficult to decide whether one is dealing with a different form of entity

or a variation of the same form. For example, a limited partnership, although it has been defined as a partnership, is a different type of entity from a general partnership, while a limited liability partnership is not a different type of entity from a general partnership. In some states cooperative corporations are categories of business corporations or nonprofit corporations, while in other states cooperatives are a separate type of entity.

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

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

Comment for section 103

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

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

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

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

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

Comment for section 104

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

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

Comment for section 105

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

Subsection (a)(1) gives an entity the option of listing just the name of its commercial registered agent in a registered agent filing and omitting the address of the registered agent. If the commercial registered agent subsequently changes its address, that change will be reflected in the filing made by the agent under Section 6, as amended under Section 10, but no change will be necessary in the registered agent filing of any of the entities represented by the commercial registered agent. The address of an entity's commercial

registered agent may be ascertained from the records of the Secretary of State by consulting its listing under Section 6.

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

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

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

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

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

Comment for section 106

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

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

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

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

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

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

Comment for section 107

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

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

Comment for section 108

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

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

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

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

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

Comment for section 109

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

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

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

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

Comment for section 110

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

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

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

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

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

Comment for section 111

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

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

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

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

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

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

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

Comment for section 112

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

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

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

Comment for section 113

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

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

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

Comment for section 114

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

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

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

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

of the Act provides registered agents with a broader right to resign than is available under the Delaware amendment.

Comment for section 115

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

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

Comment for section 116

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

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

SUMMARY

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

FISCAL NOTE REQUIRED

(See attached)