



**DELBERT HOSEMAN**  
*Secretary of State*

**2009 BUSINESS REFORM STUDY GROUPS MEETING  
OF THE MODEL REGISTERED AGENTS ACT STUDY GROUP**

Tuesday, June 23, 2009  
11:00 A.M.

**Secretary of State's Office  
700 North Street  
Jackson, Mississippi**

**AGENDA**

1. Welcome – Cheryn Baker
2. Introduction of Members and Attendees
3. Remarks by Chairman
4. Presentation on Model Registered Agents Act and Reasons for Its Adoption
5. Issues to Consider in Adoption of MoRAA
6. Staff Recommendations
7. Next Steps for Upcoming Meetings
8. Reminder of Upcoming Meetings: Dates and Future Programs
9. Other Business
10. Adjourn 1:00 P.M (or earlier)

**Upcoming Meeting Dates: August 11 – Presentation on Venue Issues; September 8**

**Materials for Today's Meeting**

Committee Roster  
Booklet of Materials  
Powerpoint Presentation  
Chart of Feedback from Other States

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1. A Summary of the Model Registered Agents Act with Frequently Asked Questions
2. Copy of the Model Registered Agents Act with Uniform Law Commission comments
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4. Comparison Charts: MS Registered Agents Fees and Permitted Types of Registered Agents
5. Comparison Chart: Methods for Service of Process on Business Entities under Mississippi Law
6. Statutes providing for Secretary of State as default agent for Service of Process
7. Model Registered Agents Act Fees for other states (these states have adopted MoRAA)
8. Survey of Secretary of State Offices for states which have enacted MoRAA
9. Changes to MS business entity acts required by MoRAA
10. Memorandum concerning the effect of the Registered Agent's address on venue
11. Proposed MS Registered Agents Act (Showing revisions since October 2008 meeting)
12. Proposed MS Registered Agents Act (Clean)
13. Proposed MS Registered Agents Act (draft redlined against the model act)

Conforming amendments of the various Mississippi business entity acts required by MoRAA

14. Business Corporations Act
15. Nonprofit Corporations Act
16. Foreign Investment Trusts Act
17. Foreign Business Trusts Act
18. Uniform Limited Liability Company Act
19. Uniform Partnership Act
20. Limited Partnership Act

## **Summary of the Model Registered Agents Act and Frequently Asked Questions**

Prepared by the Mississippi Secretary of State, Division of Policy and Research  
June 2009

### **Introduction**

All business entities that are required to register to do business in a state have the opportunity to register with that state a person or company to act as their registered agent for service of process. In many states, the requirements for establishing and changing a registered agent differ greatly from one type of business entity to another. The goal of the Model Registered Agents Act (the “Model Act”), promulgated by the Uniform Law Commission, is to change all of a state’s business entity statutes to create one uniform body of law that would govern the registered agent processes for all types of business entities.

### **Model Act Provisions**

In addition to creating a single law that applies to all registered agents for all business entities, the Model Act creates a new type of registered agent called a “commercial agent.” A commercial agent may be a large, nationwide business or it could be an individual whose purpose is to receive and deliver service of process and any filings or notices for various and sundry business entities. This type of agent differs from the definition of “registered agent” under Mississippi laws. Mississippi laws require a registered agent to be an individual resident of the state or a domestic or foreign corporation, nonprofit corporation, or limited liability company<sup>1</sup> all of which must have a business office identical to their registered office. The Model Act does not use the term

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<sup>1</sup> Under current Mississippi law, a limited liability company may not act as a registered agent for a corporation.

“registered office.” It requires one address to be included in a commercial agent’s listing statement which becomes the address for service of process (and other notices) upon the commercial agent. Section 6(a)(3). The Model Act provides for commercial agents and noncommercial agents. A noncommercial agent is either an individual or business that serves as the agent for service of process of an entity or an individual who holds the office or other position in an entity that is designated as the agent for service of process. An entity may appoint either a commercial registered agent or a noncommercial registered agent. The Model Act also requires the Secretary of State’s Office to maintain a daily list of new commercial and non-commercial registered agent filings for fourteen (14) days. Six (6) of the eight (8) states where the Model Act has become effective provide this list online for the commercial agents to check in order to comply with the Model Act. The other two (2) states provide the lists to commercial agents upon request of the commercial agent.

The Model Act also governs procedures for appointing and changing a registered agent, changing the name and address of a registered agent, filing as a commercial agent, terminating a commercial agent, resigning as a commercial agent, and serving process on a business entity. It also contains provisions addressing the duties of a registered agent, legislative intent, personal jurisdiction, and the federal ESIGN act. These procedures are uniform for each type of business entity.

There are many terms within the Model Act that help to maintain uniformity across the diverse types of business entities. For example, the Model Act defines “governor” as “a person by or under whose authority the powers of an entity are exercised and under whose direction the business and affairs of the entity are managed

pursuant to the organic law and organic rules of the entity.” Organic laws and rules are the state and/or entity specific laws and rules under which an entity has been formed and is governed. The Model Act also uses the term “governance interest” to describe the right of a person other than a governor, agent, assignee, or proxy under the organic law or organic rules of an entity to receive or demand access to the books and records of the entity, vote for the election of governors, or receive notice of or vote on any or all issues involving internal affairs of the entity. A good example of a person with a governance interest is a shareholder in a publicly traded corporation. The Model Act preserves uniformity by utilizing these terms and ideas which are broader than what one individual entity type might use; thereby including all business entities within its boundaries.

### **Conclusion**

The Model Act seeks to create uniformity within all of a state’s business entity statutes. It does this by applying uniform procedures to all business entities and by using broad terms that encompass all business entities’ individual elements.

## MoRAA FAQs

### ***Q. What is the MoRAA?***

A. “MoRAA” is the acronym for the Model Registered Agents Act (“MoRAA” or the “Model Act” or the “Act”). A primary factor in motivating the industry to regulation and adoption of the Act is that in November 2006, the United States Department of the Treasury Financial Crimes Enforcement Network (FinCEN) released a report scrutinizing the registered agent and incorporating industry's albeit unknowing facilitation of financial crimes (money laundering, tax evasion, terror funding, fraud, etc.) and recommended that stricter controls and monitoring be imposed on business entities. These recommendations were a component of current federal "anti-terror" legislation that is being considered, however these provisions were removed after protest from various Secretary of State Offices and to give the industry an opportunity to enact its own regulation.

### ***Q. What does MoRAA accomplish?***

A. MoRAA accomplishes several things:

1. Standardizes and creates one set of registered agent laws, filings and fees for all forms of entities;
2. Clarifies and makes consistent service of process procedures for all entities;
3. Details the duties of registered agents; and
4. Creates and defines two (2) separate categories of agents: commercial registered agents and non-commercial registered agents and provides different requirements for the two categories.
5. Allows registered agents to represent their clients in the same manner as they did under previous laws.
6. Eliminates the filing requirement of the consent of the registered agent.
7. Enables entities without a registration requirement to voluntarily name a registered agent and establish a public record with the Secretary of State. Examples of these are national banks, unincorporated non-profit organizations, out of state insurance companies.

MoRAA grew out of discussions within the International Association of Commercial Administrators (“IACA”), which is the association of state corporation bureaus and similar filing officers in the United States and Canada. IACA was approached by representatives of corporation service companies who were seeking to solve several 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 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.

### ***Q. How is MoRAA different from existing Mississippi law?***

A. Under existing Mississippi laws, an entity's registered agent and the location of the registered agent's office serves three (3) purposes:

1. The registered agent is authorized to receive service of process on behalf of the entity;
2. The location of the office of the registered agent (the "registered office") determines where venue is to be laid in certain actions under the entity's organic law; and
3. The registered office also determines where certain notices required by the entity's organic law are to be published, such as notices by entities being dissolved made to persons with unknown claims.

The appointment of 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 (2) functions made sense at a time when the "registered office" was often the entity's actual business address. In recent years, however, it has become common for entities to use their registered agents address as their registered office (and not the business's actual address) 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 function of the registered office address as a means of determining where publication or venue for certain actions under the entity's organic law is appropriate. The Act provides that 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 Hinds County.

This Act also eliminates some of the provisions found in some entity organic laws that make the Secretary of State the default agent for service of process under certain circumstances.

***Q. What does MoRAA contain?***

1. The provisions of MoRAA itself, which deal with registered agent issues and apply to all forms of business entities; and
2. An appendix of conforming changes to all of the existing business entity laws that integrate the entity laws with the new registered agent provisions.

***Q. Which states have adopted the MoRAA?***

A. Nine states have adopted the MoRAA. They are:

1. Arkansas
2. Hawaii
3. Idaho
4. Maine

5. Montana
6. Nevada
7. North Dakota
8. South Dakota
9. Utah

**Does MoRAA impose any new burdens on entities that must register with the Secretary of State's office?**

No. It actually eliminates one burden, which is the requirement to file the appointed agent's written consent with the Secretary of State's Office. The agent must still consent to be the registered agent, but the agent does not have to sign a form and the entity does not have to file that form with the Secretary of State.

**Does the Act reduce any administrative burdens on entities that must register with the Secretary of State's office?**

Yes, See above.

**How will MoRAA make registered agent filings more efficient for the Secretary of State's Office?**

Currently, represented entities are separately filing agent appointment forms. This causes multiple name and address variations to be entered into the Secretary of State's database for the same agent. MoRAA will improve the integrity of the Secretary of State's database by requiring Commercial Registered Agents to file their address with the Secretary of State's Office. This will eliminate problems with spelling variations of the same agent's name and address for Commercial Registered Agents because the correct name and address is filed only once not by each represented entity. In addition, because Commercial Registered Agents must have their address on file with the Secretary of State's Office, they will be able to change their address, name, or jurisdiction by submitting a single form with the Secretary of State's Office rather than a separate form for each business they represent. The result is less paperwork to be processed by the Secretary of State.

**Will entities already registered with the Secretary of State's office have to make new or additional filings if the Act is adopted?**

No. No additional filings will be required by entities already registered with the Secretary of State's office.

**Does the Act impose any new or additional fees on entities that must register with the SOS?**

There are no new fees on entities. However, there will be new and changed fees for forms filed by registered agents.



**Does the Act impose any new burdens on registered agents that do not elect to be designated as “commercial registered agents”?**

No.

### **FAQs Applicable to Commercial and Noncommercial Registered Agents**

#### **What is a commercial registered agent?**

A commercial registered agent has filed a Commercial Registered Agent Listing with the Secretary of State and may be:

- An individual residing in the State of Mississippi,
- A domestic or foreign corporation,
- A domestic or foreign limited liability company, or
- A business or statutory trust, general partnership, limited partnership, or limited liability partnership,

and all registered agents that are entities must be qualified to do business in the state.

#### **Does a commercial agent have to pay a fee to file their listing?**

Not necessarily. Most states charge a fee to file the Commercial Registered Agent Listing but it is not required. A state could elect not to charge a fee.

#### **What are the benefits of becoming a Commercial Registered Agent?**

Because a Commercial Registered Agent has an address on file with the Secretary of State, if the agent changes its address, then it only has to file one single form with the Secretary of State to change its address for all of the entities it represents. This reduces the work for both the agent and the state.

#### **What is a noncommercial registered agent?**

A Noncommercial Registered Agent does not have a Commercial Registered Agent Listing filed with the Secretary of State and may be:

- An individual residing in the State of Mississippi, or
- Any other entity type that is permitted for commercial registered agents,

and all registered agents that are entities must be qualified to do business in the state.

#### **What is the difference between a commercial registered agent and a noncommercial registered agent?**

The only difference is the Commercial Registered Agent has to file a Commercial Registered Agent Listing with the Secretary of State and the Noncommercial Registered Agent does not. Because a Commercial Registered Agent's address is on file with the Secretary of State's Office, an entity does not have to include a Commercial Registered Agent's address in the appointment filing but does have to include a Noncommercial Registered Agent's address in an appointment filing. This also allows a Commercial Registered Agent to make one single filing to change its address rather than multiple filings greatly reducing the workload for the agent and the state.

**If I, or my company, serve(s) as registered agent for multiple organizations, do I or my company have to file a Commercial Registered Agent Listing Statement?**

No; the Commercial Registered Agent Listing Statement is a voluntary filing.

**Am I prohibited from charging for service as a registered agent if I or my company does not have a Commercial Registered Agent Listing Statement filed with the Secretary of State?**

The filing of a Commercial Registered Agent Listing with the Secretary of State has no bearing on my ability to charge for the service.

**Am I liable for the actions of the organization for whom I'm the appointed registered agent?**

Serving as the registered agent does not cause you to be liable for the actions of the organization for which you serve as registered agent.

**What can I do if I'm appointed as registered agent without my knowledge or approval?**

If you are named as registered agent without your knowledge or approval, you may file a statement of resignation with the Secretary of State. A fee is not required for filing the resignation statement. You must also notify the entity of your resignation.

**Does a commercial registered agent have a higher duty, responsibility or standard of care than a noncommercial registered agent?**

No. They are the same for Commercial and Noncommercial Registered Agents. A Commercial Registered Agent does not have a higher duty, responsibility, or standard of care than a noncommercial agent.

**Will the names of commercial registered agents be published on the state's website?**

The names of Commercial Registered Agents are not required to be published on the state's website. However, a state may elect to publish them on its website if it so desires.

**MODEL REGISTERED AGENTS ACT  
AND AMENDMENTS TO ENTITY ACTS TO  
RATIONALIZE ANNUAL FILINGS**

drafted by the

**NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS**

and by it

**APPROVED AND RECOMMENDED FOR ENACTMENT  
IN ALL THE STATES**

at its

**ANNUAL CONFERENCE  
MEETING IN ITS ONE-HUNDRED-AND-FIFTEENTH YEAR  
HILTON HEAD, SOUTH CAROLINA**

July 7-14, 2006

*WITH PREFATORY NOTE AND COMMENTS*

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By

**NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS**

November 6, 2006

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# MODEL REGISTERED AGENTS ACT

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# **MODEL REGISTERED AGENTS ACT**

## **PREFATORY NOTE**

The 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.



## **MODEL REGISTERED AGENTS ACT**

**SECTION 1. SHORT TITLE.** This [act] may be cited as the Model Registered Agents Act.

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

(1) “Appointment of agent” means a statement appointing an agent for service of process filed by:

(A) a domestic or foreign unincorporated nonprofit association under [Section 10 of the Uniform Unincorporated Nonprofit Association Act]; or

(B) a domestic entity that is not a filing entity or a nonqualified foreign entity under Section 12.

(2) “Commercial registered agent” means an individual or a domestic or foreign entity listed under Section 6.

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

(4) “Entity” means a person that has a separate legal existence or has the power to acquire an interest in real property in its own name other than:

(A) an individual;

(B) a testamentary, inter vivos, or charitable trust, with the exception of a business trust, statutory trust, or similar trust;

(C) an association or relationship that is not a partnership by reason of [Section 202(c) of the Uniform Partnership Act (1997)] or a similar provision of the law of any other jurisdiction;

(D) a decedent's estate; or

(E) a public corporation, government or governmental subdivision, agency, or instrumentality, or quasi-governmental instrumentality.

(5) "Filing entity" means an entity that is created by the filing of a public organic document.

(6) "Foreign entity" means an entity other than a domestic entity.

(7) "Foreign qualification document" means an application for a certificate of authority or other foreign qualification filing with the [Secretary of State] by a foreign entity.

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

(A) receive or demand access to information concerning, or the books and records of, the entity;

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

(C) receive notice of or vote on any or all issues involving the internal affairs of the entity.

(9) "Governor" means a person by or under whose authority the powers of an entity are exercised and under whose direction the business and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(10) "Interest" means:

(A) a governance interest in an unincorporated entity;

(B) a transferable interest in an unincorporated entity; or

(C) a share or membership in a corporation.

(11) "Interest holder" means a direct holder of an interest.

(12) “Jurisdiction of organization,” with respect to an entity, means the jurisdiction whose law includes the organic law of the entity.

(13) “Noncommercial registered agent” means a person that is not listed as a commercial registered agent under Section 6 and that is:

(A) an individual or a domestic or foreign entity that serves in this state as the agent for service of process of an entity; or

(B) the individual who holds the office or other position in an entity that is designated as the agent for service of process pursuant to Section 5(a)(2)(B).

(14) “Nonqualified foreign entity” means a foreign entity that is not authorized to transact business in this state pursuant to a filing with the [Secretary of State].

(15) “Nonresident LLP statement” means:

(A) a statement of qualification of a domestic limited liability partnership that does not have an office in this state; or

(B) a statement of foreign qualification of a foreign limited liability partnership that does not have an office in this state.

(16) “Organic law” means the statutes, if any, other than this [act], governing the internal affairs of an entity.

(17) “Organic rules” means the public organic document and private organic rules of an entity.

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

(19) “Private organic rules” mean the rules, whether or not in a record, that govern the

internal affairs of an entity, are binding on all of its interest holders, and are not part of its public organic document, if any.

(20) “Public organic document” means the public record the filing of which creates an entity, and any amendment to or restatement of that record.

(21) “Qualified foreign entity” means a foreign entity that is authorized to transact business in this state pursuant to a filing with the [Secretary of State].

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

(23) “Registered agent” means a commercial registered agent or a noncommercial registered agent.

(24) “Registered agent filing” means:

- (A) the public organic document of a domestic filing entity;
- (B) a nonresident LLP statement;
- (C) a foreign qualification document; or
- (D) an appointment of agent.

(25) “Represented entity” means:

- (A) a domestic filing entity;
- (B) a domestic or qualified foreign limited liability partnership that does not have an office in this state;
- (C) a qualified foreign entity;
- (D) a domestic or foreign unincorporated nonprofit association for which an appointment of agent has been filed;
- (E) a domestic entity that is not a filing entity for which an appointment of agent

has been filed; or

(F) a nonqualified foreign entity for which an appointment of agent has been filed.

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

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

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

(27) “Transferable interest” means the right under an entity’s organic law to receive distributions from the entity.

(28) “Type,” with respect to an entity, means a generic form of entity:

(A) recognized at common law; or

(B) organized under an organic law, whether or not some entities organized under that organic law are subject to provisions of that law that create different categories of the form of entity.

### **Comment**

**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”).

### **SECTION 3. FEES.**

(a) The [Secretary of State] shall collect the following fees when a filing is made under this [act]:

document	fee
(1) commercial registered agent listing statement	\$__

- |   |        |
|---|--------|
| (2) commercial registered agent termination   | \$__   |
| statement                                     |        |
| (3) statement of change                       | \$__   |
| (4) statement of resignation                  | no fee |
| (5) statement appointing an agent for service |        |
| of process                                    | \$__   |

(b) The [Secretary of State] shall collect the following fees for copying and certifying a copy of any document filed under this [act]:

- (1) \$\_\_ a page for copying; and
- (2) \$\_\_ for a certificate.

**Legislative note:** *In a state where filing fees are set by rule making, this section may be replaced with the statement “The [Secretary of State] shall by rule set fees for filings, and the services provided, under this [act].”*

### Comment

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.

**SECTION 4. ADDRESSES IN FILINGS.** Whenever a provision of this [act] other than Section 11(a)(4) requires that a filing state an address, the filing must state:

- (1) an actual street address or rural route box number in this state; and

- (2) a mailing address in this state, if different from the address under paragraph (1).

### **Comment**

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.

## **SECTION 5. APPOINTMENT OF REGISTERED AGENT.**

- (a) A registered agent filing must state:

- (1) the name of the represented entity's commercial registered agent; or
- (2) if the entity does not have a commercial registered agent:

(A) the name and address of the entity's noncommercial registered agent;

or

(B) the title of an office or other position with the entity if service of process is to be sent to the person holding that office or position, and the address of the business office of that person.

(b) The appointment of a registered agent pursuant to subsection (a)(1) or (2)(A) is an affirmation by the represented entity that the agent has consented to serve as such.

(c) The [Secretary of State] shall make available in a record as soon as practicable a daily list of filings that contain the name of a registered agent. The list must:

- (1) be available for at least 14 calendar days;
- (2) list in alphabetical order the names of the registered agents; and
- (3) state the type of filing and name of the represented entity making the filing.

**Legislative note:** Subsection (c) may be omitted if (i) the records of the Secretary of State are searchable electronically in a manner that permits filings to be identified by the date of the filing and by the name of the registered agent named in the filing, and (ii) the searchable database is updated frequently.

## **Comment**

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.

### **SECTION 6. LISTING OF COMMERCIAL REGISTERED AGENT.**

(a) An individual or a domestic or foreign entity may become listed as a commercial registered agent by filing with the [Secretary of State] a commercial registered agent listing statement signed by or on behalf of the person which states:

(1) the name of the individual or the name, type, and jurisdiction of organization



of the entity;

(2) that the person is in the business of serving as a commercial registered agent in this state; and

(3) the address of a place of business of the person in this state to which service of process and other notice and documents being served on or sent to entities represented by it may be delivered.

(b) A commercial registered agent listing statement may include the information regarding acceptance of service of process in a record by the commercial registered agent provided for in Section 13(d).

(c) If the name of a person filing a commercial registered agent listing statement is not distinguishable on the records of the [Secretary of State] from the name of another commercial registered agent listed under this section, the person must adopt a fictitious name that is distinguishable and use that name in its statement and when it does business in this state as a commercial registered agent.

(d) A commercial registered agent listing statement takes effect on filing.

(e) The [Secretary of State] shall note the filing of the commercial registered agent listing statement in the index of filings maintained by the [Secretary of State] for each entity represented by the registered agent at the time of the filing. The statement has the effect of deleting the address of the registered agent from the registered agent filing of each of those entities.

***Legislative note:*** *If the Secretary of State is not able to identify from the records maintained by the Secretary of State all of the entities represented by a registered agent, subsection (e) should be amended to read:*

*“(e) The commercial registered agent listing statement must be accompanied by a list in alphabetical order of the entities represented by the person. The*

*[Secretary of State] shall note the filing of the commercial registered agent listing statement in the index of filings maintained by the [Secretary of State] for each listed entity. The statement has the effect of deleting the address of the registered agent from the registered agent filing of each of those entities.”*

### **Comment**

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.

## **SECTION 7. TERMINATION OF LISTING OF COMMERCIAL REGISTERED AGENT.**

(a) A commercial registered agent may terminate its listing as a commercial registered agent by filing with the [Secretary of State] a commercial registered agent termination statement signed by or on behalf of the agent which states:

- (1) the name of the agent as currently listed under Section 6; and

(2) that the agent is no longer in the business of serving as a commercial registered agent in this state.

(b) A commercial registered agent termination statement takes effect on the 31st day after the day on which it is filed.

(c) The commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of the commercial registered agent termination statement.

(d) When a commercial registered agent termination statement takes effect, the registered agent ceases to be an agent for service of process on each entity formerly represented by it. Until an entity formerly represented by a terminated commercial registered agent appoints a new registered agent, service of process may be made on the entity as provided in Section 13. Termination of the listing of a commercial registered agent under this section does not affect any contractual rights a represented entity may have against the agent or that the agent may have against the entity.

### **Comment**

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.

### **SECTION 8. CHANGE OF REGISTERED AGENT BY ENTITY.**

(a) A represented entity may change the information currently on file under Section 5(a) by filing with the [Secretary of State] a statement of change signed on behalf of the entity which states:

(1) the name of the entity; and

(2) the information that is to be in effect as a result of the filing of the statement

of change.

(b) The interest holders or governors of a domestic entity need not approve the filing of:

(1) a statement of change under this section; or

(2) a similar filing changing the registered agent or registered office of the entity

in any other jurisdiction.

(c) The appointment of a registered agent pursuant to subsection (a) is an affirmation by the represented entity that the agent has consented to serve as such.

(d) A statement of change filed under this section takes effect on filing.

(e) As an alternative to using the procedures in this section, a represented entity may change the information currently on file under Section 5(a) by amending its most recent registered agent filing in the manner provided by the laws of this state other than this [act] for amending that filing.

### **Comment**

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.

**SECTION 9. CHANGE OF NAME OR ADDRESS BY NONCOMMERCIAL REGISTERED AGENT.**

(a) If a noncommercial registered agent changes its name or its address as currently in effect with respect to a represented entity pursuant to Section 5(a), the agent shall file with the [Secretary of State], with respect to each entity represented by the agent, a statement of change signed by or on behalf of the agent which states:

- (1) the name of the entity;
- (2) the name and address of the agent as currently in effect with respect to the entity;
- (3) if the name of the agent has changed, its new name; and
- (4) if the address of the agent has changed, the new address.

(b) A statement of change filed under this section takes effect on filing.

(c) A noncommercial registered agent shall promptly furnish the represented entity with notice in a record of the filing of a statement of change and the changes made by the filing.

**Comment**

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.

**SECTION 10. CHANGE OF NAME, ADDRESS, OR TYPE OF ORGANIZATION  
BY COMMERCIAL REGISTERED AGENT.**

(a) If a commercial registered agent changes its name, its address as currently listed under Section 6(a), or its type or jurisdiction of organization, the agent shall file with the [Secretary of State] a statement of change signed by or on behalf of the agent which states:

- (1) the name of the agent as currently listed under Section 6(a);
- (2) if the name of the agent has changed, its new name;
- (3) if the address of the agent has changed, the new address; and
- (4) if the type or jurisdiction of organization of the agent has changed, the new type or jurisdiction of organization.

(b) The filing of a statement of change under subsection (a) is effective to change the information regarding the commercial registered agent with respect to each entity represented by the agent.

(c) A statement of change filed under this section takes effect on filing.

(d) A commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of a statement of change relating to the name or address of the agent and the changes made by the filing.

(e) If a commercial registered agent changes its address without filing a statement of change as required by this section, the [Secretary of State] may cancel the listing of the agent under Section 6. A cancellation under this subsection has the same effect as a termination under Section 7. Promptly after canceling the listing of an agent, the [Secretary of State] shall serve notice in a record in the manner provided in Section 13(b) or (c) on:

- (1) each entity represented by the agent, stating that the agent has ceased to be an

agent for service of process on the entity and that, until the entity appoints a new registered agent, service of process may be made on the entity as provided in Section 13; and

(2) the agent, stating that the listing of the agent has been canceled under this section.

### **Comment**

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).

### **SECTION 11. RESIGNATION OF REGISTERED AGENT.**

(a) A registered agent may resign at any time with respect to a represented entity by filing with the [Secretary of State] a statement of resignation signed by or on behalf of the agent which states:

- (1) the name of the entity;
- (2) the name of the agent;
- (3) that the agent resigns from serving as agent for service of process for the entity; and
- (4) the name and address of the person to which the agent will send the notice

required by subsection (c).

(b) A statement of resignation takes effect on the earlier of the 31st day after the day on which it is filed or the appointment of a new registered agent for the represented entity.

(c) The registered agent shall promptly furnish the represented entity notice in a record of the date on which a statement of resignation was filed.

(d) When a statement of resignation takes effect, the registered agent ceases to have responsibility for any matter tendered to it as agent for the represented entity. A resignation under this section does not affect any contractual rights the entity has against the agent or that the agent has against the entity.

(e) A registered agent may resign with respect to a represented entity whether or not the entity is in good standing.

### **Comment**

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.

## **SECTION 12. APPOINTMENT OF AGENT BY NONFILING OR NONQUALIFIED FOREIGN ENTITY.**

(a) A domestic entity that is not a filing entity or a nonqualified foreign entity may file with the [Secretary of State] a statement appointing an agent for service of process signed on behalf of the entity which states:

- (1) the name, type, and jurisdiction of organization of the entity; and
- (2) the information required by Section 5(a).

(b) A statement appointing an agent for service of process takes effect on filing.

(c) The appointment of a registered agent under this section does not qualify a nonqualified foreign entity to do business in this state and is not sufficient alone to create personal jurisdiction over the nonqualified foreign entity in this state.

(d) A statement appointing an agent for service of process may not be rejected for filing because the name of the entity filing the statement is not distinguishable on the records of the [Secretary of State] from the name of another entity appearing in those records. The filing of a statement appointing an agent for service of process does not make the name of the entity filing the statement unavailable for use by another entity.

(e) An entity that has filed a statement appointing an agent for service of process may cancel the statement by filing a statement of cancellation, which shall take effect upon filing, and

must state the name of the entity and that the entity is canceling its appointment of an agent for service of process in this state. A statement appointing an agent for service of process which has not been canceled earlier is effective for a period of five years after the date of filing.

(f) A statement appointing an agent for service of process for a nonqualified foreign entity terminates automatically on the date the entity becomes a qualified foreign entity.

### **Comment**

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.

### **SECTION 13. SERVICE OF PROCESS ON ENTITIES.**

(a) A registered agent is an agent of the represented entity authorized to receive service of any process, notice, or demand required or permitted by law to be served on the entity.

(b) If an entity that previously filed a registered agent filing with the [Secretary of State] no longer has a registered agent, or if its registered agent cannot with reasonable diligence be served, the entity may be served by registered or certified mail, return receipt requested, addressed to the governors of the entity by name at its principal office in accordance with any applicable judicial rules and procedures. The names of the governors and the address of the principal office may be as shown in the most recent annual report filed with the [Secretary of State]. Service is perfected under this subsection at the earliest of:

- (1) the date the entity receives the mail;
- (2) the date shown on the return receipt, if signed on behalf of the entity; or
- (3) five days after its deposit with the United States Postal Service, if correctly addressed and with sufficient postage.

(c) If process, notice, or demand cannot be served on an entity pursuant to subsection (a) or (b), service of process may be made by handing a copy to the manager, clerk, or other person in charge of any regular place of business or activity of the entity if the person served is not a plaintiff in the action.

(d) Service of process, notice, or demand on a registered agent must be in the form of a written document, except that service may be made on a commercial registered agent in such other forms of a record, and subject to such requirements as the agent has stated from time to time in its listing under Section 6 that it will accept.

(e) Service of process, notice, or demand may be perfected by any other means prescribed by law other than this [act].

***Legislative Note:** The conforming amendments in the Appendix to the Act recommend that provisions similar to subsections (b) through (e) be repealed to the extent they appear in a state's individual entity organic laws. In a state with that statutory scheme, subsections (b) through (e) will be needed to replace the repealed provisions. On the other hand, a state that does not have provisions similar to subsections (b) through (e) in its individual entity organic laws, and instead provides rules for service of process on entities in a statute separate from its entity organic laws or in rules of court, should omit subsections (b) through (e). If subsections (b) through (e) are omitted, a conforming change must be made to Section 10(e).*

### **Comment**

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.

**SECTION 14. DUTIES OF REGISTERED AGENT.** The only duties under this [act] of a registered agent that has complied with this [act] are:

(1) to forward to the represented entity at the address most recently supplied to the agent by the entity any process, notice, or demand that is served on the agent;

(2) to provide the notices required by this [act] to the entity at the address most recently supplied to the agent by the entity;

(3) if the agent is a noncommercial registered agent, to keep current the information required by Section 5(a) in the most recent registered agent filing for the entity; and

(4) if the agent is a commercial registered agent, to keep current the information listed for it under Section 6(a).

### **Comment**

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.

**SECTION 15. JURISDICTION AND VENUE.** The appointment or maintenance in this state of a registered agent does not by itself create the basis for personal jurisdiction over the represented entity in this state. The address of the agent does not determine venue in an action or proceeding involving the entity.

### **Comment**

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”).

**SECTION 16. CONSISTENCY OF APPLICATION.** In applying and construing this [act], consideration must be given to the need to promote consistency of the law with respect to its subject matter among states that enact it.

#### **Comment**

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.

**SECTION 17. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

**SECTION 18. SAVINGS CLAUSE.** This [act] does not affect an action or proceeding commenced or right accrued before the effective date of this [act].

**SECTION 19. EFFECTIVE DATE.** This [act] takes effect \_\_\_\_\_ .

## APPENDIX

### CONFORMING AMENDMENTS AND REPEALS

#### SECTION A1. MODEL BUSINESS CORPORATION ACT

(a) Sections 1.22, 1.25, 1.26, 1.41, and 2.02 of the Model Business Corporation Act are amended to read:

§ 1.22. Filing, service, and copying fees.

(a) The secretary of state shall collect the following fees when the documents described in this subsection are delivered to him for filing:

\* \* \*

~~(7) Corporation's statement of change of registered agent or~~  
~~registered office or both~~ \$\_\_

~~(8) Agent's statement of change of registered office for~~  
~~each affected corporation not to exceed a total of~~ \$\_\_

~~(9) Agent's statement of resignation~~ no fee

\* \* \*

§ 1.25. Filing duty of Secretary of State.

\* \* \*

(b) The secretary of state files a document by recording it as filed on the date and time of receipt. After filing a document, except as provided in ~~sections 5.03 and~~ section 15.10, the secretary of state shall deliver to the domestic or foreign corporation or its representative a copy of the document with an acknowledgement of the date and time of filing.

\* \* \*

§ 1.26. Appeal from Secretary of State's refusal to file document.

(a) If the secretary of state refuses to file a document delivered to his office for filing, the domestic or foreign corporation may appeal the refusal within 30 days after the return of the document to the [name or describe] court [of the county where the corporation's principal office is or will be located (or, if none in this state, ~~its registered office~~) ~~is or will be located~~] [of \_\_\_\_\_ county~~}]~~. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of his refusal to file.

\* \* \*

§ 1.41. Notice.

\* \* \*

(d) Written notice to a domestic or foreign corporation (authorized to transact business in this state) may be addressed to its registered agent ~~at its registered office~~ or to the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

\* \* \*

§ 2.02. Articles of incorporation.

(a) The articles of incorporation must set forth:

\* \* \*

(3) ~~the street address of the corporation's initial registered office and the name of its initial registered agent at that office~~ the information required by [Section 5(a) of the Model Registered Agents Act]; and

\* \* \*

(b) Chapter 5 of the Model Business Corporation Act is repealed.

(c) Sections 7.03, 7.20, 8.09, 10.05, 11.07, 13.30, 14.07, 14.08, 14.20, 14.21, 14.22,

14.23, 14.31, 15.03 and 15.04 of the Model Business Corporation Act are amended to read:

§ 7.03. Court-ordered meeting.

(a) The [name or describe] court of the county where a corporation's principal office is located (or, if none in this state, ~~its registered office~~) is located of \_\_\_\_\_ county may summarily order a meeting to be held:

\* \* \*

§ 7.20. Shareholders' list for meeting.

\* \* \*

(d) If the corporation refuses to allow a shareholder, his agent, or attorney to inspect the shareholders' list before or at the meeting (or copy the list as permitted by subsection (b)), the [name or describe] court of the county where a corporation's principal office is located (or, if none in this state, ~~its registered office~~) is located of \_\_\_\_\_ county, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

\* \* \*

§ 8.09. Removal of directors by judicial proceeding.

(a) The [name or describe] court of the county where a corporation's principal office is located (or, if none in this state, ~~its registered office~~) is located of \_\_\_\_\_ county may remove a director of the corporation from office in a proceeding commenced by or in the right of the corporation if the court finds that (1) the director engaged in fraudulent conduct with respect to the corporation or its shareholders, grossly abused the position of director, or intentionally inflicted harm on the corporation; and (2) considering the director's course of conduct and the inadequacy of other available remedies, removal would be in the best interest of the corporation.

\* \* \*

§ 10.05. Amendment by board of directors.

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of incorporation without shareholder approval:

\* \* \*

(3) ~~to delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state; to change the~~ information required by [section 5(a) of the Model Registered Agents Act];

\* \* \*

§ 11.07. Effect of merger or share exchange.

(d) Upon a merger becoming effective, a foreign corporation, or a foreign eligible entity, that is the survivor of the merger is deemed to:

(1) ~~appoint the secretary of state as its agent for~~ agree that service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights may be made in the manner provided in [Section 13 of the Model Registered Agents Act], and

\* \* \*

§ 13.30. Court action.

\* \* \*

(b) The corporation shall commence the proceeding in the appropriate court of the county where the corporation's principal office is located (or, if none, ~~its registered office~~) ~~in this state is located in this state, of~~ county). If the corporation is a foreign corporation ~~without a registered office in this state~~, it shall commence the proceeding in the county in this state where the principal office ~~or registered office~~ of the domestic corporation merged with the foreign corporation was located or, if the domestic corporation did not have its principal office in this state at the time of the transaction, in county.

\* \* \*

§ 14.07. Other claims against dissolved corporation.

\* \* \*

(b) The notice must:

(1) be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office is or was last located (or, if none in this state, ~~its registered office~~) ~~is or was last located~~ of county).

\* \* \*

§ 14.08. Court proceedings.

(a) A dissolved corporation that has published a notice under section 14.07 may file an application with the [name or describe] court of the county where the dissolved corporation's principal office is located (or, if none in this state, ~~its registered office~~) ~~is located~~ of county) for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under section 14.07(c).

\* \* \*

§ 14.20. Grounds for administrative dissolution.

The secretary of state may commence a proceeding under section 14.21 to administratively dissolve a corporation if:

\* \* \*

(3) the corporation is without a registered agent ~~or registered office~~ in this state for 60 days or more;

(4) the corporation does not notify the secretary of state within 60 days that its registered agent ~~or registered office~~ has been changed, or that its registered agent has



~~resigned, or that its registered office has been discontinued; or~~

\* \* \*

§ 14.21. Procedure for and effect of administrative dissolution.

(a) If the secretary of state determines that one or more grounds exist under section 14.20 for dissolving a corporation, he shall serve the corporation with written notice of his determination ~~under section 5.04.~~

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 60 days after service of the notice is perfected ~~under section 5.04,~~ the secretary of state shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation ~~under section 5.04.~~

\* \* \*

§ 14.22. Reinstatement following administrative dissolution.

\* \* \*

(b) If the secretary of state determines that the application contains the information required by subsection (a) and that the information is correct, he shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites his determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation ~~under section 5.04.~~

\* \* \*

§ 14.23. Appeal from denial of reinstatement.

(a) If the secretary of state denies a corporation's application for reinstatement following administrative dissolution, he shall serve the corporation ~~under section 5.04~~ with a written notice that explains the reason or reasons for denial.

\* \* \*

§ 14.31. Procedure for judicial dissolution.

(a) Venue for a proceeding by the attorney general to dissolve a corporation lies in [name the county or counties]. Venue for a proceeding brought by any other party named in section 14.30 lies in the county where a corporation's principal office is or was last located (or, if none in this state, ~~its registered office~~) is or was last located of \_\_\_\_\_ county.

\* \* \*

§ 15.03. Application for certificate of authority.

(a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

\* \* \*

(5) ~~the address of its registered office in this state and the name of its registered agent at that office~~ the information required by [Section 5(a) of the Model Registered Agents Act]; and

\* \* \*

§ 15.04. Amended certificate of authority.

(a) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the secretary of state if it changes:

(1) its corporate name;

- (2) the period of its duration; ~~or~~
- (3) any of the information required by [Section 5(a) of the Model Registered Agents Act]; or
- (4) the state or country of its incorporation.

\* \* \*

(d) Sections 15.07, 15.08, and 15.09 of the Model Business Corporation Act are repealed.

(e) Sections 15.30, 16.04, 16.05, and 16.21 of the Model Business Corporation Act are amended to read:

§ 15.30. Grounds for revocation.

The secretary of state may commence a proceeding under section 15.31 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

\* \* \*

- (3) the foreign corporation is without a registered agent ~~or registered office~~ in this state for 60 days or more;
- (4) the foreign corporation does not inform the secretary of state ~~under section 15.08 or 15.09~~ by an appropriate filing that its registered agent ~~or registered office~~ has changed; or that its registered agent has resigned, ~~or that its registered office has been discontinued~~ within 60 days of the change; or resignation, ~~or discontinuance~~;

\* \* \*

§ 16.04. Court-ordered inspection.

(a) If a corporation does not allow a shareholder who complies with section 16.02(a) to inspect and copy any records required by that subsection to be available for inspection, the [name or describe court] of the county where the corporation's principal office is located (or, if none in this state, ~~its registered office~~) is located of \_\_\_\_\_ county) may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(b) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with sections 16.02(b) and (c) may apply to the [name or describe court] in the county where the corporation's principal office is located (or, if none in this state, ~~its registered office~~) is located of \_\_\_\_\_ county) for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

\* \* \*

§ 16.05. Inspection of records by directors.

\* \* \*

(b) The [name or describe the court] of the county where the corporation's principal office is located (or, if none in this state, ~~its registered office~~) is located of \_\_\_\_\_ county) may order inspection and copying of the books, records and documents at the corporation's expense, upon application of a director who has been refused such inspection rights, unless the

corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

\* \* \*

§ 16.21. Annual report for Secretary of State.

(a) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state for filing an annual report that sets forth:

- (1) the name of the corporation;
- (2) ~~and the state or country~~ the jurisdiction under whose law it is incorporated;
- ~~(2) (3) the address of its registered office and the name of its registered agent at that office in this state~~ the information required by [section 5(a) of the Model Registered Agents Act];
- ~~(3) (4)~~ the address of its principal office, wherever located;
- ~~(4) (5)~~ the names and business addresses of its directors and principal officers;
- and
- ~~(6)~~ the names of its directors, except that in the case of a corporation that has eliminated its board of directors pursuant to section 7.32 the annual report shall set forth the names of the shareholders instead.
- ~~(5) — a brief description of the nature of its business;~~
- ~~(6) — the total number of authorized shares, itemized by class and series, if any, within each class; and~~
- ~~(7) — the total number of issued and outstanding shares, itemized by class and series, if any, within each class.~~

\* \* \*

## SECTION A2. MODEL NONPROFIT CORPORATION ACT

(a) Sections 1.22, 1.25, 1.26, and 2.02 of the Model Nonprofit Corporation Act are amended to read:

§ 1.22. Filing, service, and copying fees.

(a) The secretary of state shall collect the following fees when the documents described in this subsection are delivered ~~to him~~ for filing:

\* \* \*

- ~~(7) — Corporation's statement of change of registered agent or~~  
~~— registered office or both~~ \$\_\_
- ~~(8) — Agent's statement of change of registered office for~~  
~~— each affected corporation not to exceed a total of~~ \$\_\_
- ~~(9) — Agent's statement of resignation~~ no fee

\* \* \*

§ 1.25. Filing duty of Secretary of State.

\* \* \*

(b) The secretary of state files a document by stamping or otherwise endorsing "Filed," together with the secretary of state's name and official title and the date and time of

receipt, on both the original and copy of the document and on the receipt for the filing fee. After filing a document, except as provided in ~~sections 5.03 and~~ section 15.10, the secretary of state shall deliver the document copy, with the filing fee receipt (or acknowledgement of receipt if no fee is required) attached, to the domestic or foreign corporation or its representative.

\* \* \*

§ 1.26. Appeal from Secretary of State's refusal to file document.

(a) If the secretary of state refuses to file a document delivered for filing to the secretary of state's office, the domestic or foreign corporation may appeal the refusal to the [name or describe] court in the county where the corporation's principal office is or will be located, or if there is none in this state, ~~its registered office, is or will be located of~~ county. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of ~~his~~ the refusal to file.

\* \* \*

§ 2.02. Articles of incorporation.

(a) The articles of incorporation must set forth:

\* \* \*

(3) ~~the street address of the corporation's initial registered office and the name of its initial registered agent at that office~~ the information required by [Section 5(a) of the Model Registered Agents Act];

\* \* \*

(b) Chapter 5 of the Model Nonprofit Corporation Act is repealed.

(c) Sections 7.03, 7.20, 10.02, 11.06, 14.08, 14.20, 14.21, 14.22, 14.23, 14.31, 15.03

and 15.04 of the Model Nonprofit Corporation Act are amended to read:

§ 7.03. Court-ordered meeting.

(a) The [name or describe] court of the county where a corporation's principal office is located (or, if none in this state, ~~its registered office~~) is located of \_\_\_\_\_ county) may summarily order a meeting to be held:

\* \* \*

§ 7.20. Members' list for meeting.

\* \* \*

(d) If the corporation refuses to allow a member, a member's agent, or attorney to inspect the list of members before or at the meeting (or copy the list as permitted by subsection (b)), the [name or describe] court of the county where a corporation's principal office is located (or, if none in this state, ~~its registered office~~) is located of \_\_\_\_\_ county), on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete and may order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order.

\* \* \*

§ 10.02. Amendment by directors.

(a) Unless the articles provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles without member approval:

\* \* \*

(3) ~~to delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state;~~ to change the information required by [Section 5(a) of the Model Registered Agents Act];

\* \* \*

§ 11.06. Merger with foreign corporation.

\* \* \*

(b) Upon the merger taking effect, the surviving foreign business or nonprofit corporation ~~is deemed to have irrevocably appointed the secretary of state as its agent for service of process~~ may be served with process in any proceeding brought against it as provided in [Section 13 of the Model Registered Agents Act].

§ 14.08. Unknown claims against dissolved corporation.

\* \* \*

(b) The notice must:

(1) be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office is or was last located (or, if none in this state, ~~its registered office~~) is or was last located of \_\_\_\_\_ county).

\* \* \*

§ 14.20. Grounds for administrative dissolution.

The secretary of state may commence a proceeding under section 14.21 to administratively dissolve a corporation if:

\* \* \*

(3) the corporation is without a registered agent ~~or registered office~~ in this state for 60 days or more;

(4) the corporation does not notify the secretary of state within 120 days that its registered agent ~~or registered office~~ has been changed; or that its registered agent has resigned; ~~or that its registered office has been discontinued;~~ or

\* \* \*

§ 14.21. Procedure for and effect of administrative dissolution.

(a) Upon determining that one or more grounds exist under section 14.20 for dissolving a corporation, the secretary of state shall serve the corporation with written notice of that determination ~~under section 5.04~~, and in the case of a public benefit corporation shall notify the attorney general in writing.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within at least 60 days after service of the notice is perfected ~~under section 5.04~~, the secretary of state may administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation ~~under section 5.04~~, and in the case of a public benefit corporation shall notify the attorney general in writing.

\* \* \*

§ 14.22. Reinstatement following administrative dissolution.

\* \* \*

(b) If the secretary of state determines that the application contains the information required by subsection (a) and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation ~~under section 5.04~~.

\* \* \*

§ 14.23. Appeal from denial of reinstatement.

(a) The secretary of state, upon denying a corporation's application for reinstatement following administrative dissolution, shall serve the corporation ~~under section 5.04~~ with a written notice that explains the reason or reasons for denial.

\* \* \*

§ 14.31. Procedure for judicial dissolution.

(a) Venue for a proceeding by the attorney general to dissolve a corporation lies in [name the county or court]. Venue for a proceeding brought by any other party named in section 14.30 lies in the county where a corporation's principal office is or was last located (or, if none in this state, ~~its registered office~~) is or was last located of \_\_\_\_\_ county.

\* \* \*

§ 15.03. Application for certificate of authority.

(a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state. The application must set forth:

\* \* \*

(5) ~~the address of its registered office in this state and the name of its registered agent at that office~~ the information required by [Section 5(a) of the Model Registered Agents Act]; and

\* \* \*

§ 15.04. Amended certificate of authority.

(a) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the secretary of state if it changes:

(1) its corporate name;

(2) the period of its duration; ~~or~~

(3) any of the information required by [Section 5(a) of the Model Registered Agents Act]; or

(4) the state or country of its incorporation.

\* \* \*

(d) Sections 15.07, 15.08, and 15.09 of the Model Nonprofit Corporation Act are repealed.

(e) Sections 15.30, 16.04 and 16.22 of the Model Nonprofit Corporation Act are amended to read:

§ 15.30. Grounds for revocation.

(a) The secretary of state may commence a proceeding under section 15.31 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

\* \* \*

(3) the foreign corporation is without a registered agent ~~or registered office~~ in this state for 60 days or more;

(4) the foreign corporation does not inform the secretary of state ~~under section 15.08 or 15.09~~ by an appropriate filing that its registered agent ~~or registered office~~ has changed; or that its registered agent has resigned; ~~or that its registered office has been discontinued~~ within 90 days of the change; or resignation; ~~or discontinuance~~;

\* \* \*

§ 16.04. Court-ordered inspection.

(a) If a corporation does not allow a member who complies with section 16.02(a) to inspect and copy any records required by that subsection to be available for inspection, the [name or describe court] of the county where the corporation's principal office is located (or, if none in this state, ~~its registered office~~) is located of \_\_\_\_\_ county may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

(b) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with subsections 16.02(b) and (c) may apply to the [name or describe court] in the county where the corporation's principal office is located (or, if none in this state, ~~its registered office~~) is located of \_\_\_\_\_ county for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

\* \* \*

§ 16.22. Annual report for Secretary of State.

(a) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state an annual report on a form prescribed and furnished by the secretary of state that sets forth:

(1) the name of the corporation;

(2) ~~and the state or country~~ the jurisdiction under whose law it is incorporated;

~~(2) (3) the address of its registered office and the name of its registered agent at the office in this state~~ the information required by [Section 5(a) of the Model Registered Agents Act];

~~(3) (4)~~ the address of its principal office, wherever located;

~~(4) (5) the names and business or residence addresses of its directors and principal officers; and~~

~~(6)~~ the names of its directors.

~~(5)~~ a brief description of the nature of its activities;

~~(6)~~ whether or not it has members;

~~(7)~~ if it is a domestic corporation, whether it is a public benefit, mutual benefit or religious corporation; and

~~(8)~~ if it is a foreign corporation, whether it would be a public benefit, mutual benefit or religious corporation had it been incorporated in this state.

\* \* \*

### SECTION A3. UNIFORM PARTNERSHIP ACT (1997)

Sections 1001, 1003, and 1102 of the Uniform Partnership Act (1997) are amended to read:

#### § 1001. Statement of qualification.

\* \* \*

(c) After the approval required by subsection (b), a partnership may become a limited liability partnership by filing a statement of qualification. The statement must contain:

\* \* \*

(3) if the partnership does not have an office in this State, ~~the name and street address of the partnership's agent for service of process~~ the information required by [Section 5(a) of the Model Registered Agents Act];

\* \* \*

(d) ~~The agent of a limited liability partnership for service of process must be an individual who is a resident of this State or other person authorized to do business in this State. (Repealed.)~~

\* \* \*

#### § 1003. Annual report.

(a) A limited liability partnership, and a foreign limited liability partnership authorized to transact business in this State, shall file an annual report in the office of the [Secretary of State] which contains:

(1) the name of the limited liability partnership and the State or other jurisdiction under whose laws the foreign limited liability partnership is formed;

(2) the street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this State, if any; and

(3) if the partnership does not have an office in this State, ~~the name and street address of the partnership's current agent for service of process~~ information required by [Section 5(a) of the Model Registered Agents Act].

\* \* \*

#### § 1102. Statement of foreign qualification.

(a) Before transacting business in this State, a foreign limited liability partnership must file a statement of foreign qualification. The statement must contain:

\* \* \*

(2) the street address of the partnership's chief executive office ~~and, if different, the street address of an office of the partnership in this State, if any;~~

(3) ~~if there is no office of the partnership in this State, the name and street address of the partnership's agent for service of process~~ the information required by [Section 5(a) of the Model Registered Agents Act]; and

\* \* \*

(b) ~~The agent of a foreign limited liability partnership for service of process must be an individual who is a resident of this State or other person authorized to do business in this State. (Repealed.)~~

\* \* \*



## SECTION A4. UNIFORM LIMITED PARTNERSHIP ACT (2001)

(a) Section 102(4) (“designated office”) of the Uniform Limited Partnership Act (2001) is repealed.

(b) Sections 114, 115, 116, and 117 of the Uniform Limited Partnership Act (2001) are repealed.

(c) Sections 201, 202, 206, 208, and 210 of the Uniform Limited Partnership Act (2001) are amended to read:

§ 201. Formation of limited partnership; certificate of limited partnership.

(a) In order for a limited partnership to be formed, a certificate of limited partnership must be delivered to the [Secretary of State] for filing. The certificate must state:

\* \* \*

(2) ~~the street and mailing address of the initial designated office and the name and street and mailing address of the initial agent for service of process~~ the information required by [Section 5(a) of the Model Registered Agents Act];

\* \* \*

§ 202. Amendment or restatement of certificate.

\* \* \*

(c) A general partner that knows that any information in a filed certificate of limited partnership was false when the certificate was filed or has become false due to changed circumstances shall promptly:

(1) cause the certificate to be amended; or

(2) if appropriate, deliver to the [Secretary of State] for filing ~~a statement of change pursuant to Section 115 or~~ a statement of correction pursuant to Section 207 or [Section 8 of the Model Registered Agents Act].

\* \* \*

§ 206. Delivery to and filing of records by [Secretary of State]; effective time and date.

\* \* \*

(c) Except as otherwise provided in ~~Sections 116 and~~ Section 207, a record delivered to the [Secretary of State] for filing under this [Act] may specify an effective time and a delayed effective date. Except as otherwise provided in this [Act], a record filed by the [Secretary of State] is effective:

\* \* \*

§ 208. Liability for false information in filed record.

(a) If a record delivered to the [Secretary of State] for filing under this [Act] and filed by the [Secretary of State] contains false information, a person that suffers loss by reliance on the information may recover damages for the loss from:

\* \* \*

(2) a general partner that has notice that the information was false when the record was filed or has become false because of changed circumstances, if the general partner has notice for a reasonably sufficient time before the information is relied upon to enable the general partner to effect an amendment under Section 202, file a petition pursuant to Section 205, or deliver to the [Secretary of State] for filing a statement of change pursuant to [Section 115] [Section 8 of the Model Registered Agents Act] or a statement of correction pursuant to Section 207.

\* \* \*

§ 210. Annual report for [Secretary of State].

(a) A limited partnership or a foreign limited partnership authorized to transact business in this State shall deliver to the [Secretary of State] for filing an annual report that states:

- (1) the name of the limited partnership or foreign limited partnership;
- (2) ~~the street and mailing address of its designated office and the name and street and mailing address of its agent for service of process in this State~~ the information required by [Section 5(a) of the Model Registered Agents Act];
- (3) in the case of a limited partnership, the street and mailing address of its principal office; and
- (4) in the case of a foreign limited partnership, the State or other jurisdiction under whose law the foreign limited partnership is formed and any alternate name adopted under Section 905(a).

\* \* \*

(e) If a filed annual report contains ~~an address of a designated office or the name or address of an agent for service of process~~ information provided under subsection (a)(2) which differs from the information shown in the records of the [Secretary of State] immediately before the filing, the differing information in the annual report is considered a statement of change under Section 115 [Section 8 of the Model Registered Agents Act].

(d) Sections 304, 407, 807, 902, 906, 1104, 1105, 1108, and 1109 of the Uniform

Limited Partnership Act (2001) are amended to read:

§ 304. Right of limited partner and former limited partner to information.

(a) On 10 days' demand, made in a record received by the limited partnership, a limited partner may inspect and copy required information during regular business hours in the limited partnership's ~~designated~~ principal office. The limited partner need not have any particular purpose for seeking the information.

\* \* \*

(d) Subject to subsection (f), a person dissociated as a limited partner may inspect and copy required information during regular business hours in the limited partnership's ~~designated~~ principal office if:

\* \* \*

§ 407. Right of general partner and former general partner to information.

(a) A general partner, without having any particular purpose for seeking the information, may inspect and copy during regular business hours:

(1) in the limited partnership's ~~designated~~ principal office, required information; and

\* \* \*

§ 807. Other claims against dissolved limited partnership.

\* \* \*

(b) The notice must:

(1) be published at least once in a newspaper of general circulation in the [county] in which the dissolved limited partnership's principal office is located or, if it has none in this State, in the county in which the limited partnership's designated office is ~~or was last located~~ \_\_\_\_\_ county;

\* \* \*

§ 902. Application for certificate of authority.

(a) A foreign limited partnership may apply for a certificate of authority to transact business in this State by delivering an application to the [Secretary of State] for filing. The application must state:

\* \* \*

(4) ~~the name and street and mailing address of the foreign limited partnership's initial agent for service of process in this State~~ the information required by [Section 5(a) of the Model Registered Agents Act];

\* \* \*

§ 906. Revocation of certificate of authority.

(a) A certificate of authority of a foreign limited partnership to transact business in this State may be revoked by the [Secretary of State] in the manner provided in subsections (b) and (c) if the foreign limited partnership does not:

\* \* \*

(3) appoint and maintain an agent for service of process as required by ~~Section 114(b)~~ [Section 5(a) of the Model Registered Agents Act]; or

(4) deliver for filing a statement of change under ~~Section 115~~ [Section 8 of the Model Registered Agents Act] within 30 days after a change has occurred in the name or address of the agent.

(b) In order to revoke a certificate of authority, the [Secretary of State] must prepare, sign, and file a notice of revocation and send a copy to the foreign limited partnership's agent for service of process in this State, or if the foreign limited partnership does not appoint and maintain a proper agent in this State, to the foreign limited partnership's **[designated]** principal office. The notice must state:

\* \* \*

§ 1104. Filings required for conversion; effective date.

(a) After a plan of conversion is approved:

(1) a converting limited partnership shall deliver to the [Secretary of State] for filing articles of conversion, which must include:

\* \* \*

(F) if the converted organization is a foreign organization not authorized to transact business in this State, the street and mailing address of an office which ~~the Secretary of State may use for the purposes of~~ may be used for service of process under Section 1105(c); and

\* \* \*

§ 1105. Effect of conversion.

\* \* \*

(c) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this State to enforce any obligation owed by the converting limited partnership, if before the conversion the converting limited partnership was subject to suit in this State on the obligation. A converted organization that is a foreign organization and not authorized to transact business in this State ~~appoints the Secretary of State as its agent for service of process for purposes of enforcing an obligation under this subsection. Service on the Secretary of State under this subsection is made in the same manner and with the same consequences as in Section 117(c) and (d) may be served with process at the address required in the articles of conversion~~ under Section 1104(a)(1)(F).

§ 1108. Filings required for merger; effective date.

\* \* \*

(b) The articles of merger must include:

\* \* \*

(7) if the surviving organization is a foreign organization not authorized to transact business in this State, the street and mailing address of an office which ~~the Secretary of State may use for the purposes of~~ may be used for service of process under Section 1109(b); and

\* \* \*

§ 1109. Effect of merger

\* \* \*

(b) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this State to enforce any obligation owed by a constituent organization, if before the merger the constituent organization was subject to suit in this State on the obligation. A surviving organization that is a foreign organization and not authorized to transact business in this State ~~appoints the Secretary of State as its agent for service of process for the purposes of enforcing an obligation under this subsection. Service on the Secretary of State under this subsection is made in the same manner and with the same consequences as in Section 117(c) and (d) may be served with process at the address required in the articles of merger under Section 1108(b)(7).~~

**SECTION A5. UNIFORM LIMITED LIABILITY COMPANY ACT**

(a) Sections 108, 109, 110, and 111 of the Uniform Limited Liability Company Act are repealed.

(b) Sections 203 and 211 of the Uniform Limited Liability Company Act are amended to read:

§ 203. Articles of organization.

(a) Articles of organization of a limited liability company must set forth:

\* \* \*

(2) ~~the address of the initial designated office; (Repealed.)~~

(3) ~~the name and street address of the initial agent for service of process the information required by [Section 5(a) of the Model Registered Agents Act];~~

\* \* \*

§ 211. Annual report for [Secretary of State].

(a) A limited liability company, and a foreign limited liability company authorized to transact business in this State, shall deliver to the [Secretary of State] for filing an annual report that sets forth:

(1) the name of the company;

(2) ~~and the State or country~~ the jurisdiction under whose law it is organized;

~~(2)-(3) the address of its designated office and the name and address of its agent for service of process in this State~~ the information required by [Section 5(a) of the Model Registered Agents Act];

~~(3)-(4)~~ the address of its principal office, wherever located; and

~~(4)-(5)~~ the names ~~and business addresses~~ of any managers.

\* \* \*

(c) Sections 808, 906, 1002, and 1006 of the Uniform Limited Liability Company

Act are amended to read:

§ 808. Other claims against dissolved limited liability company.

\* \* \*

(b) The notice must:

(1) be published at least once in a newspaper of general circulation in the [county] in which the dissolved limited liability company's principal office is or was located or, if none in this State, ~~in which its designated office is or was last located in~~ \_\_\_\_\_ county;

\* \* \*

§ 906. Effect of merger.

\* \* \*

(b) ~~The Secretary of State is an agent for service of process in an action or proceeding against the surviving foreign entity to enforce an obligation of any party to a merger if~~ If the surviving foreign entity fails to appoint or maintain an agent designated for service or process in this State or the agent for service of process cannot with reasonable diligence be found ~~at the designated office. Upon receipt of process, the Secretary of State shall send a copy of the process by registered or certified mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger, service of process may be made on the foreign entity as provided in [Section 13(b) of the Model Registered Agents Act].~~ Service is effected under this subsection at the earliest of:

\* \* \*

§ 1002. Application for certificate of authority.

(a) A foreign limited liability company may apply for a certificate of authority to transact business in this State by delivering an application to the [Secretary of State] for filing. The application must set forth:

\* \* \*

- (4) ~~the address of its initial designated office in this State (Repealed.);~~
  - (5) ~~the name and street address of its initial agent for service of process in this State~~ the information required by [Section 5(a) of the Model Registered Agents Act];
- \* \* \*

§ 1006. Revocation of certificate of authority.

(a) A certificate of authority of a foreign limited liability company to transact business in this State may be revoked by the [Secretary of State] in the manner provided in subsection (b) if:

- (1) the company fails to:
    - (iii) appoint and maintain an agent for service of process as required by ~~this article~~ [Section 5(a) of the Model Registered Agents Act]; or
    - (iv) file a statement of change in the name or business address of the agent as required by ~~this article~~ [Section 8 of the Model Registered Agents Act]; or
- \* \* \*

(b) The [Secretary of State] may not revoke a certificate of authority of a foreign limited liability company unless the [Secretary of State] sends the company notice of the revocation, at least 60 days before its effective date, by a record ~~addressed to its agent for service of process in this State, or if the company fails to appoint and maintain a proper agent in this State, addressed to the office required to be maintained by Section 108~~ served in accordance with [Section 13 of the Model Registered Agents Act]. The notice must specify the cause for the revocation of the certificate of authority. The authority of the company to transact business in this State ceases on the effective date of the revocation unless the foreign limited liability company cures the failure before that date.

## SECTION A6. PROTOTYPE LIMITED LIABILITY COMPANY ACT

(a) Section 105 of the Prototype Limited Liability Company Act is repealed.

(b) Sections 202, 908, and 1002 of the Prototype Limited Liability Company Act are amended to read:

§ 202. Articles of organization.

The articles of organization shall set forth:

- (B) ~~The address of the registered office and the name and business, residence, or mailing address of the registered agent required to be maintain by § 105. The~~ information required by [Section 5(a) of the Model Registered Agents Act].
- \* \* \*

§ 908. Unknown claims against dissolved limited liability company.

\* \* \*

(B) The notice must:

(1) Be published once in a newspaper of general circulation in the county where the limited liability company's principal office ~~(or, if none in this state, its registered office) is located~~ is located or, if none in this state, in \_\_\_\_\_ county;  
\* \* \*

§ 1002. Registration.

Before transacting business in this state, a foreign limited liability company shall register with the Secretary of State by submitting to the Secretary of State an original signed copy of an application for registration as a foreign limited liability company, together with a duplicate copy that may be either a signed, photocopied, or conformed copy, executed by a person with authority to do so under the laws of the state or other jurisdiction of its formation. The application shall set forth:

\* \* \*

(C) ~~The name and address of a registered agent for service of process required to be maintained by § 105~~ the information required by [Section 5(a) of the Model Registered Agents Act];

(D) ~~A statement that the Secretary of State is appointed the agent of the foreign limited liability company for service of process if the foreign limited liability company fails to appoint or maintain a registered agent in satisfaction of the requirements of § 105 (Repealed.);~~  
\* \* \*

## SECTION A7. UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT

Section 10 of the Uniform Unincorporated Nonprofit Association Act is amended to read:

§ 10. Appointment of agent to receive service of process.

\* \* \*

(b) A statement appointing an agent must set forth:  
\* \* \*

(4) ~~the name of the person in this State authorized to receive service of process and the person's address, including the street address, in this State~~ the information required by [Section 5(a) of the Model Registered Agents Act].

(c) A statement appointing an agent, and an amendment or cancellation thereof, must be signed ~~and acknowledged sworn to~~ by a person authorized to manage the affairs of the nonprofit association. ~~The statement must also be signed and acknowledged by the person appointed agent, who thereby accepts the appointment. The appointed agent may resign by filing a resignation in the office of the Secretary of State and giving notice to the nonprofit association.~~

(d) ~~A filing officer may collect a fee for filing a statement appointing an agent to receive service of process, an amendment, a cancellation, or a resignation in the amount charged for filing similar documents. (Repealed.)~~

(e) ~~An amendment to or cancellation of a statement appointing an agent to receive service of process must meet the requirements for execution of an original statement. (Repealed.)~~

## SECTION A8. MODEL ENTITY TRANSACTIONS ACT

Sections 206, 406, and 506 of the Model Entity Transactions Act are amended to read:

Section 206. Effect of merger.

\* \* \*

(e) When a merger becomes effective, a foreign entity that is the surviving entity: ~~(1)~~ may be served with process in this state for the collection and enforcement of any liabilities of a domestic merging entity; and ~~(2) appoints the [Secretary of State] as its agent for service of process for collecting or enforcing those liabilities~~ in the manner provided in [Section 13 of the Model Registered Agents Act].

\* \* \*

Section 406. Effect of conversion.

\* \* \*

(e) When a conversion becomes effective, a foreign entity that is the converted entity: ~~(1)~~ may be served with process in this state for the collection and enforcement of any of its liabilities; and ~~(2) appoints the [Secretary of State] as its agent for service of process for collecting or enforcing those liabilities~~ in the manner provided in [Section 13 of the Model Registered Agents Act].

\* \* \*

Section 506. Effect of domestication.

\* \* \*

(e) When a domestication becomes effective, a foreign entity that is the domesticated entity: ~~(1)~~ may be served with process in this state for the collection and enforcement of any of its liabilities; and ~~(2) appoints the [Secretary of State] as its agent for service of process for collecting or enforcing those liabilities~~ in the manner provided in [Section 13 of the Model Registered Agents Act].

\* \* \*



# **Differences in Current Mississippi Business Entity Statute Registered Agent Provisions**

**Fees—See Attached Fee Schedule Comparison Chart**

**Permitted Types of Registered Agents by Entity—See Attached Entity Type Comparison Chart**

**Change of registered agent and registered office by entity**

- **Mississippi Business Corporations** (Domestic: 79-4-5.02(a); Foreign: 79-4-15.08(a); Form 0010) – In order for a corporation to change its registered agent and/or registered office, this act requires a filing with the Secretary of State’s Office including the following information:
  - entity’s name,
  - street address of the current registered office,
  - street address of the new registered office if it is to change,
  - name of its current registered agent, and
  - name and written consent of its new registered agent if it is to change.
  - It also requires that after the changes are made, the street addresses of the registered office and the business office of its registered agents be identical.
  - Note: Form states that it must be signed by Chairman of the Board or an officer.
- **Mississippi Nonprofit Corporations** (79-11-165(1); Domestic and 79-11-377(1) Foreign) (; Form 0021) – Requirements are the same as for business corporations.
- **Mississippi Limited Liability Companies** – Requirements are the same as for business corporations. (79-29-106(2); Form 0121)
  - Form must be signed by manager of the LLC.
- **Mississippi Limited Partnerships** – No provision.
- **Mississippi Limited Liability Partnerships** – No provision.
- **Foreign Investment Trusts** (79-15-117; NO FORM) **and Foreign Business Trusts** (79-16-119; Form 0062)–Same as for business corporations but:
  - There is no statutory requirement for written consent of the new registered agent.

- It has a requirement that the change of the registered agent was authorized by resolution duly adopted by its trustees.

## Change of registered office by agent

- **Mississippi Business Corporations** (Domestic: 79-4-5.02(b); Foreign: 79-4-15.08(b); Form 0010 (the same form as for entities) – A registered agent for a corporation may change the street address of the registered office of any corporation for which it is the registered agent by:
  - notifying the corporation in writing and
  - filing a statement of change with the Secretary of State's Office that sets forth
    - name of the corporation,
    - current registered office,
    - street address of the new registered office,
    - the agent's current name, and
    - a claim that the corporation has been notified of the change.
- **NOTE:** There is no statutory provision or form for an agent to make a filing to change its registered office for multiple corporations at one time.
- **Mississippi Nonprofit Corporations** (Domestic 79-11-165(2); and Foreign: 79-11-377(2); Form 0021(the same form as for entities))– Same as for business corporations.
- **Mississippi Limited Liability Companies** (79-29-106(3); Form 0122)– This act allows a registered agent for one or more LLCs to change its/their address(es) to another address within the state by filing a certificate with the Secretary of State's Office that:
  - states the names of all the LLCs that it represents,
  - its old address, and
  - its new address.
  - The Secretary of State's Office then delivers a certified copy of the certificate to the registered agent who then in turn is required to send a copy of the certificate to the LLCs for which it is the registered agent.
- **Mississippi Limited Partnerships** (79-14-104(b); NO FORM) –Same as for LLCs.
  - Filing of this certificate is considered an amendment to the certificate of limited partnership of each limited partnership that it affects.
- **Mississippi Limited Liability Partnerships** – No provision.
- **Foreign Investment Trusts** – No Provision.
- **Foreign Business Trusts** – No Provision.

## Waiting period and notice in regards to an agent's resignation of agency

- **Mississippi Business Corporations** (Domestic: 79-4-5.03; Foreign: 79-4-15.09; Form 0038)– This act requires a resigning registered agent to file a signed original and two copies of a statement of resignation with the Secretary of State's Office. The Secretary of State's Office sends one of the copies to the corporation as notice. The resignation is effective on the thirty-first (31<sup>st</sup>) day after the date on which the statement was filed.
- **NOTE:** There is no statutory provision or form for an agent to make a filing to resign for multiple corporations at one time.
- **Mississippi Nonprofit Corporations** (Domestic 79-11-167; and Foreign: 79-11-379; Form 0038)– Same as for Business corporations.
- **Mississippi Limited Liability Companies** (79-29-106(4); Form 0123) – This act requires a resigning registered agent to file a certificate with the Secretary of State's Office stating that it resigns as registered agent for the LLCs identified in the certificate. There must be an affidavit attached to the certificate stating that the registered agent sent notification to each LLC affected by the resignation at least thirty (30) days prior to the filing. The resignation does not become effective until ninety (90) days after the certificate has been filed.
  - Form is to be signed by registered agent, but not by LLC(s).
  - This appears to be a flat fee of \$5 to resign as agent for multiple LLCs.
- **Mississippi Limited Partnerships** – 79-14-104(c); NO FORM; Same as for LLCs.
- **Mississippi Limited Liability Partnerships** – No Provision.
- **Foreign Investment Trusts** (79-15-117; NO FORM) – This act requires a resigning registered agent to file and supply a duplicate of a written notice of resignation with the Secretary of State's Office. The Secretary of State's Office sends a copy to the foreign investment trust. The resignation is effective thirty (30) days after filing.
- **Foreign Business Trusts** – (79-16-19; NO FORM) Same as for Foreign Investment Trusts.

## Default service of process upon entity's lack of registered agent

- **Mississippi Business Corporations** (Domestic: 79-4-5.04; Foreign: 79-4-15.10)– If a corporation does not have a registered agent or its registered agent cannot duly be

served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office.

- Statute also states that this is not the only means or required means of serving a corporation.
- **Mississippi Nonprofit Corporations** (Domestic: 79-11-169 and Foreign: 79-11-381) Same as for business corporations.
- **Mississippi Limited Liability Companies** (79-29-111) – If a limited liability company does not have a registered agent or its registered agent cannot duly be served, service of process will then be served upon the Secretary of State's Office.
- **Mississippi Limited Partnerships** (79-14-104(c))– If a limited partnership does not have a registered agent or its registered agent cannot duly be served, service of process will then be served upon the Secretary of State's Office.
- **Mississippi Limited Liability Partnerships** –No provision.
- **Foreign Investment Trusts** (79-15-119) – If a foreign investment trust does not have a registered agent or its registered agent cannot be duly served, service of process will then be upon the Secretary of State's Office. Service on the Secretary of State shall be made by delivering two copies of such process to the Secretary of State with a fee of five (5) dollars. The Secretary of State shall then forward a copy of the process by mail to the foreign investment trust. No judgment shall be taken in the case until thirty (30) days after the date of the service.
- **Foreign Business Trusts** (79-16-21) – If a foreign business trust does not have a registered agent or its registered agent cannot duly be served, the foreign business trust may be served by registered or certified mail, return receipt requested, addressed to the trustee of the foreign business trust at its principal office. Service is perfected at the earliest of: the date the foreign business trust receives the mail, the date shown on the return receipt, if signed on behalf of the trust, or five (5) days after mailing if properly addressed and postage was paid.

## • Duties of a registered agent

- **Mississippi Business Corporations** – This act states that a registered agent is the corporation's agent for service of process, notice or demand required or permitted by law to be served on the corporation.
- **Mississippi Nonprofit Corporations** –Same as for business corporations
- **Mississippi Foreign Nonprofit Corporations** – Same as for business corporations
- **Mississippi Limited Liability Companies** – Same as for business corporations
- **Mississippi Limited Partnerships** –No provision.
- **Mississippi Limited Liability Partnerships** –No provision
- **Foreign Investment Trusts** –Same as for business corporations
- **Foreign Business Trusts** –Same as for business corporations

## Mississippi's Current Registered Agent Fees Comparison Chart

Prepared by Mississippi Secretary of State's Office

Division of Policy and Research

June 2009

	<b>MS Business Corporations (Domestic and Foreign)</b>	<b>MS Nonprofit Corporations</b>	<b>MS Foreign Nonprofit Corporations</b>	<b>MS Limited Liability Companies</b>	<b>MS Limited Partnerships</b>	<b>MS Limited Liability Partnerships</b>	<b>Foreign Investment Trusts</b>	<b>Foreign Business Trusts</b>
<b>Change of Registered Agent and/or Registered Office for One Entity by the Entity or by the Agent</b>	\$10	\$10	\$10	\$25	\$25 (registered office only)	No Provision	\$5	\$25
<b>Agent's Statement of Change of Registered Office for Each Affected Entity</b>	\$10 (Not to exceed \$1,000)	\$10 (Not to exceed \$1,000)	\$10 (Not to exceed \$1,000)	\$25 Flat Fee (not for each LLC)	No Provision	No Provision	No Provision	No Provision
<b>Agent Resignations</b>	No Fee	No Fee	No Fee	\$5 Flat Fee	\$5	No Provision	No Fee	No Fee
<b>Copies</b>	\$1/page	\$1/per page	\$1/per page	N/A	N/A	No Provision	\$.60/page	\$1
<b>Certificate</b>	\$10	\$10	\$10	N/A	N/A	No Provision	\$2	\$10
<b>Source</b>	MS Code § 79-4-1.22	MS Code § 79-11-109	Ms Code § 79-11-375	MS Code § 79-29-1203	MS Code § 79-14-1104	MS Code § 79-13-1001	MS Code § 79-15-135	MS Code § 79-16-33

**Permitted Types of Registered Agents Comparison Chart**  
**Prepared by Mississippi Secretary of State's Office**  
**Division of Policy and Research**  
**June 2009**

	<b>MS Business Corporations (Domestic and Foreign)</b>	<b>MS Nonprofit Corporations</b>	<b>MS Limited Liability Companies</b>	<b>MS Limited Partnerships</b>	<b>MS Limited Liability Partnerships</b>	<b>Investment Trusts</b>	<b>Foreign Business Trusts</b>
<b>Individual</b>	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Domestic or Foreign Corporation</b>	Yes	Yes	Yes	Yes	?	Yes	Yes
<b>Domestic or Foreign LLC</b>	<b><u>No</u></b>	<b><u>No</u></b>	Yes	<b><u>No</u></b>	?	<b><u>No</u></b>	Yes
<b>Domestic or Foreign Nonprofit Corporation</b>	Yes	Yes	Yes	<b><u>No</u></b>	?	<b><u>No</u></b>	<b><u>No</u></b>
<b>Other</b>	N/A	N/A	N/A	N/A	Other person authorized to do business in this state	N/A	Limited partnership, limited liability partnership, investment trust
<b>Statute</b>	MS Code § 79-4-501	MS Code § 79-11-163	MS Code § 79-29-106	MS Code § 79-14-104	MS Code § 79-13-1001 & 1102	MS Code § 79-15-115	MS Code § 79-16-17

## Methods for Service of Process on Business Entities under Mississippi Law Comparison Chart

Prepared by the Mississippi Secretary of State, Division of Policy and Research  
June 2009

### A. Corporations

<b>Domestic or Registered Foreign (for-profit or nonprofit) Corporation with Registered Agent</b>					
Delivery Methods	Registered Agent	Secretary of State	Secretary of the Entity <sup>1</sup>	Officer of the Entity	Managing Agent, General Agent or Other Agent Authorized by Law
First Class Mail	Yes	No	No	Yes	Yes
Certified Mail	No	No	No	No	No
Process Server	Yes	No	No	Yes	Yes
Sheriff	Yes	No	No	Yes (only within MS)	Yes (only within MS)

<b>Domestic Corporation without Registered Agent or R. Agent Cannot Be Found</b>					
Delivery Methods	Registered Agent	Secretary of State	Secretary of the Entity	Officer of the Entity	Managing Agent, General Agent or Other Agent Authorized by Law
First Class Mail	N/A	No	No	Yes	Yes
Certified Mail	N/A	No	Yes	No	No
Process Server	N/A	No	No	Yes	Yes
Sheriff	N/A	No	No	Yes	Yes

<b>Registered Foreign Corporation without Registered Agent or R. Agent Cannot Be Found</b>					
Delivery Methods	Registered Agent	Secretary of State	Secretary of the Entity	Officer of the Entity	Managing Agent, General Agent or Other Agent Authorized by Law
First Class Mail	N/A	No	No	Yes (only within MS)	Yes (only within MS)
Certified Mail	N/A	No	Yes	Yes (if outside the state)	Yes (if outside the state)
Process Server	N/A	No	No	Yes	Yes
Sheriff	N/A	No	No	Yes (only within MS)	Yes (only within MS)

<sup>1</sup> To avoid potential confusion, all charts assume that the entity's secretary is *not* considered an officer who could potentially be served under Miss. R. Civ. Pro. 4(d)(4).

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<b>Administratively or Voluntarily Dissolved Domestic Corporation</b>					
Delivery Methods	Registered Agent (if company has not revoked agent's authority)	Secretary of State	Secretary of the Entity (if agent cannot be found)	Officer of the Entity	Managing Agent, General Agent or Other Agent Authorized by Law
First Class Mail	Yes	No	No	Yes	Yes
Certified Mail	No	No	Yes	No	No
Process Server	Yes	No	No	Yes	Yes
Sheriff	Yes	No	No	Yes (only within MS)	Yes (only within MS)

<b>Foreign Corporation with Registration to Do Business Withdrawn</b>					
Delivery Methods	Registered Agent	Secretary of State	Secretary of the Entity	Officer of the Entity	Managing Agent, General Agent or Other Agent Authorized by Law
First Class Mail	N/A	Yes	No	Yes	Yes
Certified Mail	N/A	No	No	Yes (if outside the state)	Yes (if outside the state)
Process Server	N/A	Yes	No	Yes	Yes
Sheriff	N/A	Yes	No	Yes (only within MS)	Yes (only within MS)

<b>Foreign Corporation with Authority to Do Business Revoked</b>					
Delivery Methods	Registered Agent	Secretary of State	Secretary of the Entity	Officer of the Entity	Managing Agent, General Agent or Other Agent Authorized by Law
First Class Mail	Yes	Yes	No	Yes	Yes
Certified Mail	No	No	No	Yes (if outside the state)	Yes (if outside the state)
Process Server	Yes	Yes	No	Yes	Yes



Sheriff	Yes	Yes	No	Yes (only within MS)	Yes (only within MS)
<b>Unregistered Foreign Corporation Doing Business in MS</b>					
Delivery Methods	Registered Agent	Secretary of State	Secretary of the Entity	Officer of the Entity	Managing Agent, General Agent or Other Agent Authorized by Law
First Class Mail	N/A	No	No	Yes	Yes
Certified Mail	N/A	No	No	Yes (if outside the state)	Yes (if outside the state)
Process Server	N/A	No	No	Yes	Yes
Sheriff	N/A	No	No	Yes (only within MS)	Yes (only within MS)

## B. LLCs

<b>Domestic or Registered Foreign LLC with Registered Agent</b>					
Delivery Methods	Registered Agent	Secretary of State	Secretary of the Entity	Officer of the Entity	Managing Agent, General Agent or Other Agent Authorized by Law
First Class Mail	Yes	No	No	Yes	Yes
Certified Mail	No	No	No	No	No
Process Server	Yes	No	No	Yes	Yes
Sheriff	Yes	No	No	Yes	Yes

<b>Domestic LLC without Registered Agent or R. Agent Cannot Be Found</b>					
Delivery Methods	Registered Agent	Secretary of State	Secretary of the Entity	Officer of the Entity	Managing Agent, General Agent or Other Agent Authorized by Law
First Class Mail	N/A	Yes	No	Yes	Yes
Certified Mail	N/A	No	No	No	No
Process Server	N/A	Yes	No	Yes	Yes
Sheriff	N/A	Yes	No	Yes	Yes

<b>Registered Foreign LLC without Registered Agent or R. Agent Cannot Be Found / Foreign LLC with Authority to Do Business Withdraw / Foreign LLC with Registration to Do Business Cancelled</b>					
Delivery Methods	Registered Agent	Secretary of State	Secretary of the Entity	Officer of the Entity	Managing Agent, General Agent or Other Agent Authorized by Law
First Class Mail	N/A	Yes	No	Yes	Yes
Certified Mail	N/A	No	No	Yes (if outside the state)	Yes (if outside the state)
Process Server	N/A	Yes	No	Yes	Yes
Sheriff	N/A	Yes	No	Yes (only within MS)	Yes (only within MS)

<b>Unregistered Foreign LLC Doing Business in MS</b>					
Delivery Methods	Registered Agent	Secretary of State	Secretary of the Entity	Officer of the Entity	Managing Agent, General Agent or Other Agent Authorized by Law
First Class Mail	N/A	Yes	No	Yes	Yes
Certified Mail	N/A	No	No	Yes (if outside the state)	Yes (if outside the state)
Process Server	N/A	Yes	No	Yes	Yes
Sheriff	N/A	Yes	No	Yes (only within MS)	Yes (only within MS)

### **C. Limited Partnerships**

<b>Domestic or Registered Foreign Limited Partnership with Registered Agent</b>					
Delivery Methods	Registered Agent	Secretary of State	Secretary of the Entity	Officer of the Entity	Managing Agent, General Agent or Other Agent Authorized by Law
First Class Mail	Yes	No	No	Yes	Yes
Certified Mail	No	No	No	No	No
Process Server	Yes	No	No	Yes	Yes
Sheriff	Yes	No	No	Yes	Yes

<b>Domestic Limited Partnership without Registered Agent or Registered Agent Cannot Be Found</b>					
Delivery Methods	Registered Agent	Secretary of State	Secretary of the Entity	Officer of the Entity	Managing Agent, General Agent or Other Agent Authorized by Law
First Class Mail	N/A	Yes	No	Yes	Yes
Certified Mail	N/A	No	No	No	No
Process Server	N/A	Yes	No	Yes	Yes
Sheriff	N/A	Yes	No	Yes	Yes

<b>Foreign Limited Partnership without Registered Agent or Registered Agent Cannot Be Found</b>					
Delivery Methods	Registered Agent	Secretary of State	Secretary of the Entity	Officer of the Entity	Managing Agent, General Agent or Other Agent Authorized by Law
First Class Mail	N/A	Yes	No	Yes	Yes
Certified Mail	N/A	No	No	Yes (if outside the state)	Yes (if outside the state)
Process Server	N/A	Yes	No	Yes	Yes
Sheriff	N/A	Yes	No	Yes (only within MS)	Yes (only within MS)

<b>Foreign Limited Partnership with Registration to Do Business Cancelled</b>					
Delivery Methods	Registered Agent	Secretary of State	Secretary of the Entity	Officer of the Entity	Managing Agent, General Agent or Other Agent Authorized by Law
First Class Mail	Yes	Yes	No	Yes	Yes
Certified Mail	No	No	No	Yes (if outside the state)	Yes (if outside the state)
Process Server	Yes	Yes	No	Yes	Yes
Sheriff	Yes	Yes	No	Yes (only within MS)	Yes (only within MS)

<b>Unregistered Limited Partnership Doing Business in MS</b>					
Delivery Methods	Registered Agent	Secretary of State	Secretary of the Entity	Officer of the Entity	Managing Agent, General Agent or Other Agent Authorized by Law
First Class Mail	N/A	Yes	No	Yes	Yes
Certified Mail	N/A	No	No	Yes (if outside the state)	Yes (if outside the state)
Process Server	N/A	Yes	No	Yes	Yes
Sheriff	N/A	Yes	No	Yes (only within MS)	Yes (only within MS)

#### **D. Limited Liability Partnerships**

<b>Domestic or Registered Foreign Limited Liability Partnership with Registered Agent</b>					
Delivery Methods	Registered Agent	Secretary of State	Secretary of the Entity	Officer of the Entity	Managing Agent, General Agent or Other Agent Authorized by Law
First Class Mail	Yes	No	No	Yes	Yes
Certified Mail	No	No	No	No	No
Process Server	Yes	No	No	Yes	Yes
Sheriff	Yes	No	No	Yes	Yes

<b>Domestic Limited Liability Partnership without Registered Agent or Registered Agent Cannot Be Found</b>					
Delivery Methods	Registered Agent	Secretary of State	Secretary of the Entity	Officer of the Entity	Managing Agent, General Agent or Other Agent Authorized by Law
First Class Mail	N/A	No	No	Yes	Yes
Certified Mail	N/A	No	No	No	No
Process Server	N/A	No	No	Yes	Yes
Sheriff	N/A	No	No	Yes (only within MS)	Yes (only within MS)

<b>Registered Foreign Limited Liability Partnership without Registered Agent or Registered Agent Cannot Be Found</b>					
Delivery Methods	Registered Agent	Secretary of State	Secretary of the Entity	Officer of the Entity	Managing Agent, General Agent or Other Agent Authorized by Law
First Class Mail	N/A	Yes	No	Yes	Yes
Certified Mail	N/A	No	No	Yes (if outside the state)	Yes (if outside the state)
Process Server	N/A	Yes	No	Yes	Yes
Sheriff	N/A	Yes	No	Yes (only within MS)	Yes (only within MS)

<b>Unregistered Limited Liability Partnership Doing Business in MS</b>					
Delivery Methods	Registered Agent	Secretary of State	Secretary of the Entity	Officer of the Entity	Managing Agent, General Agent or Other Agent Authorized by Law
First Class Mail	N/A	Yes	No	Yes	Yes
Certified Mail	N/A	No	No	Yes (if outside the state)	Yes (if outside the state)
Process Server	N/A	Yes	No	Yes	Yes
Sheriff	N/A	Yes	No	Yes (only within MS)	Yes (only within MS)

## **Service of Process Methods for Business Entities under Mississippi Law**

Prepared by Mississippi Secretary of State, Division of Policy and Research  
June 2009

### **Domestic corporations (for-profit and nonprofit)<sup>1</sup>**

#### *With registered agent*

Service of process is effected on the entity by delivering a copy to the corporation's registered agent, or to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process.<sup>2</sup> Such delivery may be made by a sheriff, by a process server, or through first-class mail.<sup>3</sup>

#### *Without registered agent or if agent cannot be found*

Where a resident corporation does not have an authorized agent (or if the agent cannot with reasonable diligence be served), the corporation may be served by certified mail addressed to the secretary of the corporation.<sup>4</sup> Service may also be effected on the entity by delivering a copy to an officer, managing agent, general agent, or other agent authorized by appointment or by law to receive such process.<sup>5</sup> Such delivery may be made by a sheriff (within the state), by a process server, or through first-class mail.<sup>6</sup>

#### *Administratively dissolved corporations*

The administrative dissolution of a corporation does not terminate the authority of its registered agent;<sup>7</sup> therefore, service on an administratively dissolved corporation may be made in any of the ways mentioned above.

#### *Voluntarily dissolved corporations*

The voluntary dissolution of a corporation does not terminate the authority of its registered agent;<sup>8</sup> therefore, service on an administratively dissolved corporation may be made in any of the ways mentioned above.

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<sup>1</sup> Though the code sections cited below refer to the Mississippi Business Corporation Act, equivalent provisions regarding service on nonprofit corporations can be found in the Mississippi Nonprofit Corporation Act, Miss. Code Ann. § 79-11-101 et seq.

<sup>2</sup> M.R.C.P. 4(d)(4). Pursuant to Miss. Code Ann. § 79-4-5.04, the corporation's registered agent is authorized by law to receive service of process.

<sup>3</sup> M.R.C.P. 4(c)(1)-(3); see also *Public Employees' Retirement Sys. of Mississippi v. Dillon*, 538 So. 2d 327, 328 (Miss. 1989).

<sup>4</sup> Miss. Code Ann. § 79-4-5.04(a).

<sup>5</sup> M.R.C.P. 4(d)(4).

<sup>6</sup> M.R.C.P. 4(c)(1)-(3).

<sup>7</sup> Miss. Code Ann. § 79-4-14.21.

## Foreign corporations (for-profit and nonprofit)

### *Registered to do business in MS with appointed registered agent*

Service of process is effected on the entity by delivering a copy to the corporation's registered agent,<sup>9</sup> or to a person authorized by the law of the entity's state of incorporation to receive process.<sup>10</sup> Such delivery may be made by a sheriff (within the state), by a process server, through first-class mail (within the state), or via certified mail (out of state only).<sup>11</sup>

### *Registered to do business in MS but no registered agent*

Where a foreign corporation does not have an authorized agent (or if the agent cannot with reasonable diligence be served), the corporation may be served by certified mail addressed to the secretary of the corporation.<sup>12</sup> Service may also be effected on the entity by delivering a copy to a person authorized by the law of the entity's state of incorporation to receive process.<sup>13</sup> Such delivery may be made by a sheriff (within the state), by a process server, through first-class mail (within the state), or via certified mail (out of state only).

### *Entity has never registered to do business in MS*

Service on such an entity is effected by delivering a copy to a person authorized by the law of the entity's state of incorporation to receive process.<sup>14</sup> Such delivery may be made by a sheriff (within the state), by a process server, through first-class mail (within the state), or via certified mail (out of state only).<sup>15</sup>

### *Registration to do business withdrawn by the entity*

After the withdrawal of the corporation is effective, service of process on the Secretary of State constitutes service on the foreign corporation.<sup>16</sup> Service may also be effected by delivering a copy to a person authorized by the law of the entity's state of incorporation to receive process.<sup>17</sup> Such delivery may be made by a sheriff (within the state), by a process server, through first-class mail (within the state), or via certified mail (out of state only).<sup>18</sup>

### *Registration to do business revoked by Secretary of State*

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<sup>8</sup> Miss. Code Ann. § 79-4-14.05(b)(7).

<sup>9</sup> See Miss. Code Ann. § 79-4-15.10(a).

<sup>10</sup> M.R.C.P. 4(d)(4). See also *Evans v. Oberon Holding Corp.*, 729 So. 2d 825, 827 (Miss. Ct. App. 1998). Mississippi's long-arm statute, Miss. Code Ann. § 13-3-57, confers personal jurisdiction on foreign corporations doing business in Mississippi.

<sup>11</sup> M.R.C.P. 4(c)(1)-(3), 4(c)(5).

<sup>12</sup> Miss. Code Ann. § 79-4-15.10(a).

<sup>13</sup> M.R.C.P. 4(d)(4); see also *Evans*, 729 So. 2d 825 at 827.

<sup>14</sup> M.R.C.P. 4(d)(4); see also *Evans*, 729 So. 2d 825 at 827.

<sup>15</sup> M.R.C.P. 4(c)(1)-(3), 4(c)(5).

<sup>16</sup> Miss. Code Ann. § 79-4-15.20(c).

<sup>17</sup> M.R.C.P. 4(d)(4); see also *Evans*, 729 So. 2d 825 at 827.

<sup>18</sup> M.R.C.P. 4(c)(1)-(3), 4(c)(5).

The Secretary of State's revocation of a foreign corporation's certificate of authority appoints the Secretary of State to receive process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state; therefore, service may be effected by delivering a copy to the Secretary of State.<sup>19</sup> Such delivery may be made by a sheriff, by a process server, or through first-class mail.<sup>20</sup> Service may also be made upon the corporation's registered agent (as the revocation of a foreign corporation's certificate of authority does not terminate the authority of the corporation's registered agent<sup>21</sup>), or to a person authorized by the law of the entity's state of incorporation to receive process.<sup>22</sup> Such delivery may be made by a sheriff (within the state), by a process server, through first-class mail (within the state), or via certified mail (out of state only).<sup>23</sup>

#### *Administratively dissolved corporations*

The administrative dissolution of a corporation does not terminate the authority of its registered agent;<sup>24</sup> therefore, service on an administratively dissolved corporation may be made in any of the ways mentioned above.

### **Domestic LLCs**

#### *With registered agent*

Service of process is effected on the entity by delivering a copy to the LLC's registered agent,<sup>25</sup> or to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process.<sup>26</sup> Such delivery may be made by a sheriff, by a process server, or through first-class mail.<sup>27</sup>

#### *Without registered agent or if agent cannot be found*

Where an LLC does not have an authorized agent (or if the agent cannot with reasonable diligence be served), the LLC may be served by delivering a summons to the Secretary of State.<sup>28</sup> Service may also be effected on the entity by delivering a copy to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of

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<sup>19</sup> Miss. Code Ann. § 79-1-15.31(d).

<sup>20</sup> M.R.C.P. 4(c)(1)-(3).

<sup>21</sup> Miss. Code Ann. § 79-4-15.31(e).

<sup>22</sup> M.R.C.P. 4(d)(4); *see also Evans*, 729 So. 2d 825 at 827.

<sup>23</sup> M.R.C.P. 4(c)(1)-(3), 4(c)(5).

<sup>24</sup> *See* Miss. Code Ann. § 79-4-14.21.

<sup>25</sup> Miss. Code Ann. § 79-29-111(1).

<sup>26</sup> M.R.C.P. 4(d)(4).

<sup>27</sup> M.R.C.P. 4(c)(1)-(3).

<sup>28</sup> Miss. Code Ann. § 79-29-111(2).



process.<sup>29</sup> Such delivery may be made by a sheriff (within the state), by a process server, or through first-class mail.<sup>30</sup>

## **Foreign LLCs**

### *Registered to do business in MS with appointed registered agent*

Service of process is effected on the entity by delivering a copy to the LLC's registered agent,<sup>31</sup> or to a person authorized by the law of the entity's state of formation to receive process.<sup>32</sup> Such delivery may be made by a sheriff (within the state), by a process server, through first-class mail (within the state), or via certified mail (out of state only).<sup>33</sup>

### *Registered to do business in MS but no registered agent*

Where an LLC does not have an authorized agent (or if the agent cannot with reasonable diligence be served), the Secretary of State is appointed to receive service of process;<sup>34</sup> therefore, the LLC may be served by delivering a summons to the Secretary of State. Such delivery may be made by a sheriff, by a process server, or through first-class mail.<sup>35</sup> Service may also be effected on the entity by delivering a copy to a person authorized by the law of the entity's state of formation to receive process.<sup>36</sup> Such delivery may be made by a sheriff (within the state), by a process server, through first-class mail (within the state), or via certified mail (out of state only).<sup>37</sup>

### *Registration to do business cancelled by the entity*

Upon cancelling its registration to do business, the LLC revokes the authority of its registered agent and consents that the Secretary of State may accept service of process on the LLC with respect to causes of action arising out of the transaction of business in Mississippi;<sup>38</sup> therefore, service may be effected by delivering a copy to the Secretary of State. Such delivery may be made by a sheriff, by a process server, or through first-class mail.<sup>39</sup> Service may also be made upon any person authorized by the law of the entity's state of formation to receive process.<sup>40</sup>

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<sup>29</sup> M.R.C.P. 4(d)(4).

<sup>30</sup> M.R.C.P. 4(c)(1)-(3).

<sup>31</sup> See Miss. Code Ann. § 79-29-111(1).

<sup>32</sup> M.R.C.P. 4(d)(4); see also *Evans*, 729 So. 2d 825 at 827.

<sup>33</sup> M.R.C.P. 4(c)(1)-(3), 4(c)(5).

<sup>34</sup> Miss. Code Ann. § 79-29-1002(1)(d).

<sup>35</sup> M.R.C.P. 4(c)(1)-(3).

<sup>36</sup> M.R.C.P. 4(d)(4); see also *Evans*, 729 So. 2d 825 at 827.

<sup>37</sup> M.R.C.P. 4(c)(1)-(3), 4(c)(5).

<sup>38</sup> Miss. Code Ann. § 79-29-1006(4).

<sup>39</sup> M.R.C.P. 4(c)(1)-(3).

<sup>40</sup> M.R.C.P. 4(d)(4); see also *Evans*, 729 So. 2d 825 at 827.

Such delivery may be made by a sheriff (within the state), by a process server, through first-class mail (within the state), or via certified mail (out of state only).<sup>41</sup>

*Registration to do business revoked by Secretary of State*

Where an LLC's authority to do business has been revoked, the Secretary of State is appointed to receive service of process;<sup>42</sup> therefore, the LLC may be served by delivering a summons to the Secretary of State. Such delivery may be made by a sheriff, by a process server, or through first-class mail.<sup>43</sup> Service may also be effected on the entity by delivering a copy to a person authorized by the law of the entity's state of formation to receive process.<sup>44</sup> Such delivery may be made by a sheriff (within the state), by a process server, through first-class mail (within the state), or via certified mail (out of state only).<sup>45</sup>

*Unregistered foreign LLC doing business in MS*

By transacting business in this state without registration, a foreign limited liability company appoints the Secretary of State as its registered agent for service of process with respect to causes of action arising out of the transaction of business in this state;<sup>46</sup> therefore, the LLC may be served by delivering a summons to the Secretary of State. Such delivery may be made by a sheriff, by a process server, or through first-class mail.<sup>47</sup> Service may also be effected on the entity by delivering a copy to a person authorized by the law of the entity's state of formation to receive process.<sup>48</sup> Such delivery may be made by a sheriff (within the state), by a process server, through first-class mail (within the state), or via certified mail (out of state only).<sup>49</sup>

**Domestic limited partnerships**

*With registered agent*

Service of process is effected on the entity by delivering a copy to the limited partnership's registered agent,<sup>50</sup> or to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process.<sup>51</sup> Such delivery may be made by a sheriff, by a process server, or through first-class mail.<sup>52</sup>

*Without registered agent or if agent cannot be found*

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<sup>41</sup> M.R.C.P. 4(c)(1)-(3), 4(c)(5).

<sup>42</sup> Miss. Code Ann. § 79-29-1002(1)(d).

<sup>43</sup> M.R.C.P. 4(c)(1)-(3).

<sup>44</sup> M.R.C.P. 4(d)(4); *see also Evans*, 729 So. 2d 825 at 827.

<sup>45</sup> M.R.C.P. 4(c)(1)-(3), 4(c)(5).

<sup>46</sup> Miss. Code Ann. § 79-29-1007(4).

<sup>47</sup> M.R.C.P. 4(c)(1)-(3).

<sup>48</sup> M.R.C.P. 4(d)(4); *see also Evans*, 729 So. 2d 825 at 827.

<sup>49</sup> M.R.C.P. 4(c)(1)-(3), 4(c)(5).

<sup>50</sup> *See* Miss. Code Ann. § 79-14-104(a)(2).

<sup>51</sup> M.R.C.P. 4(d)(4).

<sup>52</sup> M.R.C.P. 4(c)(1)-(3).

If the registered agent has resigned and the limited partnership has not appointed a new agent, service of process shall be made upon the Secretary of State.<sup>53</sup> Otherwise, service may be effected on the entity by delivering a copy to any partner,<sup>54</sup> officer, managing or general agent, or any other agent authorized by appointment or by law to receive service of process.<sup>55</sup> Such delivery may be made by a sheriff (within the state), by a process server, or via first-class mail.<sup>56</sup>

### **Foreign limited partnerships**

#### *Registered to do business in MS with appointed registered agent*

Service of process is effected on the entity by delivering a copy to the limited partnership's registered agent,<sup>57</sup> or to a person authorized by the law of the entity's state of formation to receive process.<sup>58</sup> Such delivery may be made by a sheriff (within the state), by a process server, through first-class mail (within the state), or via certified mail (out of state only).<sup>59</sup>

#### *Registered to do business in MS but no registered agent*

If no registered agent has been appointed, if the registered agent's authority has been revoked, or if the registered agent cannot be found with the exercise of reasonable diligence, service shall be made upon the Secretary of State.<sup>60</sup> Such delivery may be made by a sheriff, by a process server, or through first-class mail.<sup>61</sup> The limited partnership may also be served by delivering a copy to any person authorized by the law of the entity's state of formation to receive process.<sup>62</sup> Such delivery may be made by a sheriff (within the state), by a process server, through first-class mail (within the state), or via certified mail (out of state only).<sup>63</sup>

#### *Entity has never registered to do business in MS*

Service upon such an entity is effected by delivering a copy of the summons and of the complaint to any officer or agent authorized by the law of the company's state of formation to receive service of process.<sup>64</sup> Such delivery may be made by a sheriff (within the state), by a process server, through first-class mail (within the state), or via certified mail (out of state only).<sup>65</sup>

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<sup>53</sup> Miss. Code Ann. § 79-14-104(c).

<sup>54</sup> Under Miss. Code Ann. § 13-3-55, service upon any partner constitutes valid service upon the partnership.

<sup>55</sup> M.R.C.P. 4(d)(4).

<sup>56</sup> M.R.C.P. 4(c)(1)-(3).

<sup>57</sup> See Miss. Code Ann. § 79-14-104(a)(2).

<sup>58</sup> M.R.C.P. 4(d)(4); see also *Evans*, 729 So. 2d 825 at 827.

<sup>59</sup> M.R.C.P. 4(c)(1)-(3), 4(c)(5).

<sup>60</sup> See Miss. Code Ann. § 79-14-902(4).

<sup>61</sup> M.R.C.P. 4(c)(1)-(3).

<sup>62</sup> M.R.C.P. 4(d)(4); see also *Evans*, 729 So. 2d 825 at 827.

<sup>63</sup> M.R.C.P. 4(c)(1)-(3), 4(c)(5).

<sup>64</sup> M.R.C.P. 4(d)(4); see also *Evans*, 729 So. 2d 825 at 827.

<sup>65</sup> M.R.C.P. 4(c)(1)-(3), 4(c)(5).

*Registration to do business withdrawn by the entity*

Service upon a foreign limited partnership that has cancelled its registration to do business may be made upon the Secretary of State with respect to causes of action arising out of the transaction of business in Mississippi;<sup>66</sup> therefore, the entity may be served by delivering a summons to the Secretary of State. Such delivery may be made by a sheriff, by a process server, or through first-class mail.<sup>67</sup> Service may also be effected on the limited partnership by delivering a copy to any person authorized by the law of the entity's state of formation to receive process.<sup>68</sup> Such delivery may be made by a sheriff (within the state), by a process server, through first-class mail (within the state), or via certified mail (out of state only).<sup>69</sup>

*Registration to do business revoked by Secretary of State*

There is no statute dealing with revocation of a foreign limited partnership's registration to do business in Mississippi. Service upon such an entity would be effected by delivering a copy to any person authorized by the law of the entity's state of formation to receive process.<sup>70</sup> Such delivery may be made by a sheriff (within the state), by a process server, through first-class mail (within the state), or via certified mail (out of state only).<sup>71</sup>

**Domestic limited liability partnerships**

*With registered agent*

Service of process is effected on the entity by delivering a copy to the limited liability partnership's registered agent,<sup>72</sup> or to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process.<sup>73</sup> Such delivery may be made by a sheriff, by a process server, or through first-class mail.<sup>74</sup>

*Without registered agent or if agent cannot be found*

There is no supplemental statute stating who should be served in this case, so Rule 4(d)(4) applies. Service under Rule 4(d)(4) is effected by delivering a copy of the summons and of the complaint to any officer or agent authorized to receive service of process. Presumably, service

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<sup>66</sup> See Miss. Code Ann. § 79-14-902.

<sup>67</sup> M.R.C.P. 4(c)(1)-(3).

<sup>68</sup> M.R.C.P. 4(d)(4); see also *Evans*, 729 So. 2d 825 at 827.

<sup>69</sup> M.R.C.P. 4(c)(1)-(3), 4(c)(5).

<sup>70</sup> M.R.C.P. 4(d)(4); see also *Evans*, 729 So. 2d 825 at 827.

<sup>71</sup> M.R.C.P. 4(c)(1)-(3), 4(c)(5).

<sup>72</sup> See Miss. Code Ann. § 79-13-1001.

<sup>73</sup> M.R.C.P. 4(d)(4).

<sup>74</sup> M.R.C.P. 4(c)(1)-(3).

may be effected on a limited partnership by delivering a copy to any partner.<sup>75</sup> Such delivery would be made by a sheriff (within the state), by a process server, or via first-class mail.<sup>76</sup>

### **Foreign limited liability partnerships**

#### *Registered to do business in MS with appointed registered agent*

Service of process is effected on the entity by delivering a copy to the limited liability partnership's registered agent,<sup>77</sup> or to a person authorized by the law of the entity's state of formation to receive process.<sup>78</sup> Such delivery may be made by a sheriff (within the state), by a process server, through first-class mail (within the state), or via certified mail (out of state only).<sup>79</sup>

#### *Registered to do business in MS but no registered agent / entity has never registered to do business in MS*

If a foreign limited liability partnership transacts business in this state without qualifying to do business, the Secretary of State is its agent for service of process with respect to a right of action arising out of the transaction of business in this state;<sup>80</sup> therefore, service would be effected on the entity by delivering a copy to the Secretary of State. Such delivery may be made by a sheriff, by a process server, or through first-class mail.<sup>81</sup> Service may also be effected on the entity by delivering a copy to a person authorized by the law of the entity's state of formation to receive process.<sup>82</sup> Such delivery may be made by a sheriff (within the state), by a process server, through first-class mail (within the state), or via certified mail (out of state only).<sup>83</sup>

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<sup>75</sup> See Miss. Code Ann. § 13-3-55, stating that service upon any partner constitutes valid service upon the partnership.

<sup>76</sup> M.R.C.P. 4(c)(1)-(3).

<sup>77</sup> See Miss. Code Ann. § 79-13-1102.

<sup>78</sup> M.R.C.P. 4(d)(4); see also *Evans*, 729 So. 2d 825 at 827.

<sup>79</sup> M.R.C.P. 4(c)(1)-(3), 4(c)(5).

<sup>80</sup> Miss. Code Ann. § 79-13-1103(d).

<sup>81</sup> M.R.C.P. 4(c)(1)-(3).

<sup>82</sup> M.R.C.P. 4(d)(4); see also *Evans*, 729 So. 2d 825 at 827.

<sup>83</sup> M.R.C.P. 4(c)(1)-(3), 4(c)(5).

**Statutes providing for Secretary of State as Default Agent for Service of Process  
June 2009**

1. Aerial Crop Spraying, nonresident herbicide applicators § 69-21-11
2. Athlete Agents § 73-42-5
3. Bank, Trust Company, Mutual Savings Bank, pension fund, insurance company or other type of organization defined in § 81-5-41 (being sued in relation to mortgages or deeds of trust, securities or debts). § 81-5-41(5).
4. Banking and Trust Assns and Corporations, Out-of-State, acting as executors, administrators, trustees and guardians. § 81-5-43
5. Boats, Watercraft, nonresident operators of § 59-21-161
6. Carnivals, circus, fair, or the like, not permanently domiciled within the state § 75-75-1
7. Charitable Organization from out-of-state soliciting funds in state § 79-11-511
8. Commodities, persons engaging in transactions in § 75-89-33
9. Corporations, Foreign – after revocation of certificate of authority § 79-4-15.31
10. Corporations, Foreign – after withdrawal of certificate of authority § 79-4-15.20
11. Investment Trusts, Foreign § 79-15-119
12. Limited Liability Companies, Domestic (if agent cannot be located) § 79-29-111
13. Limited Liability Companies, Foreign (if agent cannot be located or agent's authority has been revoked) § 79-29-1002 (1)(d)
14. Limited Liability Companies, Foreign (if LLC is transacting business in this state without registration) § 79-29-1007(4)
15. Limited Liability Companies, Foreign (if LLC's registration is cancelled) § 79-29-1006(4)
16. Limited Liability Companies, Foreign (that is the survivor of a merger) § 79-29-212(3)(a)
17. Limited Liability Partnerships – without registered agent or agent cannot be found § 79-13-1103(d)
18. Limited Partnerships, Domestic – if agent resigns and no new agent is appointed § 79-14-104(c)
19. Limited Partnerships, Foreign – cancellation of registration § 79-14-906
20. Limited Partnerships, Foreign -- transacting business without registration § 79-14-907(d)
21. Motor Vehicles, defendant nonresident motorists § 13-3-63
22. Partnerships, merger of partnership entities § 79-13-906
23. Pesticide applicators, nonresidents § 69-23-113
24. Pesticide sales, nonresidents § 69-23-23
25. Poultry business licenses § 69-7-201
26. Real Estate Appraisers, nonresident license applicants § 73-34-51
27. Securities Regulation § 75-71-701
28. Textbook Contractors § 37-43-29
29. Trust, resident § 13-3-41 (refers to how foreign corps are served)
30. Trustee, nonresident § 13-3-57

<b>Fees</b>	<b>Arkansas</b>	<b>South Dakota</b>	<b>North Dakota</b>
	<b>§ 4-20-103</b>	<b>59-11-3 and 4</b>	<b>§ 10-01.1-03.</b>
Commercial registered agent listing statement	\$50.00	\$100	\$1,000
Commercial registered agent termination statement	\$50.00	\$10	\$500
Statement of change	no fee	\$10 per filing entity	\$10 except when the change is a change of address and in the secretary of state's opinion that change results from rezoning or postal
Statement of resignation	no fee	no fee	no fee
Statement appointing an agent for service of process	no fee	\$10.00	\$10
copying	\$0.50 a page	\$1 a page	\$1 for every 4 pages
certificate	\$5.00	\$10	\$15
search of records when supplying copies, certification, or written verification of facts.	NA	NA	\$5
Any process, notice, or demand for service	NA	NA	\$25

### **Maine Model Registered Agents Act § 103. Fees**

Commercial clerk or commercial registered agent listing statement \$150;

Commercial clerk or commercial registered agent termination \$150;

Statement of appointment or change of clerk or registered agent by entity as required by section 105, subsection 1 or section 108, \$35; except a statement filed for nonprofit corporations, \$15;

Statement of change of name or address by noncommercial clerk or noncommercial registered agent as required by section 109, \$35; except a statement filed for nonprofit corporations, \$15;

Statement of change of name, address or type of organization by commercial clerk or commercial registered agent as required by section 110, \$50;

Statement of resignation by commercial clerk or commercial registered agent, no fee;

Statement of resignation by noncommercial clerk or noncommercial registered agent \$35; except a statement filed for nonprofit corporations \$15; and

Statement of appointment of agent for service of process for nonfiling domestic entity or nonqualified foreign entity, \$100.

For copying, \$2 a page; and for certifying the copy, \$5 for a certificate.



## Survey of Secretary of State Offices for states which have enacted the Model Registered Agents Act

Prepared by the Mississippi Secretary of State, Division of Policy and Research June 2009

		(1) Arkansas	(2) Idaho	(3) Maine	(4) Montana	(5) Nevada	(6) North Dakota	(7) South Dakota	(8) Utah
1	<b>Adoption Date</b>	March 28, 2007	March 30, 2007	June 19, 2007	April 25, 2007	June 13, 2007	March 16, 2007	19-Feb-08	March 18, 2008
2	<b>Effective Date</b>	September 1, 2007	July 1, 2007	July 1, 2008	October 1, 2008	July 1, 2008	July 1, 2008	July 1, 2008	May 5, 2008
3	<b>Were there any groups that opposed the adoption of this act? Who was opposed to it and why?</b>	No opposed groups to their knowledge.	No.	No.	One registered agent. He thought every other registered agent could see who he was a registered agent for. This isn't the case in Montana.		There wasn't any opposing testimony.	No.	No.
4	<b>What did you do to educate the legislature about this act and persuade them to adopt it?</b>	Charlene Dawkins of CT Corporation came and spoke to the law firm lobbyists.	Apprised the legislative committees reviewing the bill that the SOS supported the legislation. A representative of CT from the West Coast, Garth Jacobson, did most of the testifying	Not a lot of education necessary. He had a trust with the legislative committee and he knew Maine members of NCCUSL that helped. Also knew people who came to the legislative hearings and helped support his efforts.	Staff attorney took care of it.		Our testimony was detailed and we enlisted the support of the ND Bar Association. They offered support for the legislation. Garth Jacobson from CT Corporation also provided testimony. Garth had worked with the Uniform State Laws Commission to develop this model Act.	They just have to explain why they want it enacted.	Garth Jacobsen from CT corporation came to our state to help us educate the legislature and to testify as to the benefits of the act.
5	<b>Did you have any problems getting this passed in your legislature? What were the problems and how did you overcome them?</b>	No problems.	None.	No problems.	No problems.		No problems.	No problems.	No, it went pretty smoothly

## Survey of Secretary of State Offices for states which have enacted the Model Registered Agents Act

Prepared by the Mississippi Secretary of State, Division of Policy and Research June 2009

		Arkansas	Idaho	Maine	Montana	Nevada	North Dakota	South Dakota	Utah
6	How is the adoption of the act going in your state?	It is going fine. Most agents have registered as commercial registered agents.	OK.	It's going well. Have 111 commercial agents listed. They have a mix of local attorneys, smaller service companies, and larger service companies. The local firms have taken advantage of the perks of being listed as a commercial registered agent.	It's going well. The changes required a lot of time due to their ancient mainframes.		For now, we've not experienced any difficulty. We've had 10 companies register as commercial registered agents. (more than we anticipated)	19 people have signed up as commercial agents.	So far we have 14 Commercial Registered agents. We did a soft launch of the system to test the waters. Now that it is fully functioning we will do some marketing to the law firms.
7	Would you recommend other states adopt this act?	Yes.	Yes. It fits in with the pattern to make certain operations the same across all entities.	Yes. It helps with doing more with less efficiency. Not only more cost efficient when a registered agent moves, but also for the Secretary of State's Office when a large registered agent moves.	Yes.		Yes; the advantage for us being that registered agent and service of process provisions for all entities are now the same.	Yes. Not requiring agent consent has made it easier to get online.	Absolutely
8	What changes did you make to the Model Act to fit in how things operate in your state? Or any other changes you made to it?	No changes.	Quite a few provisions of our current laws had to be repealed, there was a fee provision	Made a change to it because Maine domestic corporations must have a clerk that acts as a registered agent. Made list available all the time and for more than 14 days. Has no resignation fee because they felt an accurate public record was more important (agent wouldn't resign because it was too expensive).	Yes. They made it so that every registered agent could not see who the other registered agents' companies are.		Some of the definitions were modified to be consistent with definitions already in business entity laws. Lists for commercial registered agents are not published; they are provided upon request. We did not allow for agent resignations after an entity is dissolved or the authority of a foreign entity is withdrawn or revoked.	A few slight changes - filing fee for commercial agent changing location - pay \$10 per entity - budget concerns - CT complained about it.	We did not have to do much more than created a computer system to manage the commercial agent listings. No real changes to the MoRAA law.

## Survey of Secretary of State Offices for states which have enacted the Model Registered Agents Act

Prepared by the Mississippi Secretary of State, Division of Policy and Research June 2009

		Arkansas	Idaho	Maine	Montana	Nevada	North Dakota	South Dakota	Utah
9	What things did you not change about the Model Act but now would like to change?	Nothing.	None come to mind.	Nothing.	Still too new to say.		We are contemplating an amendment in the upcoming legislative session to enable commercial registered agents to have more than one registration and maintain more than one office in the state.	Wishes there was more uniformity - their statutes require different things for different entities and MoRAA didn't make it easier.	There really isn't anything
10	Have you experienced any problems with this act? What are the problems?	No.	None.	No, maybe a few implementation problems - mostly communications/technology problems.	No.		Our only problem is getting by with minimal programming on our existing system. We made the decision to do this because we're currently developing a new data management system which will have a much more sophisticated process for the registered agent records.	Their statutes require different things for different entities and MoRAA didn't make it easier.	If we could do it again, we would have given ourselves more time to implement it. Right now the biggest problem is informing the courts and law firms that we no longer are the default agent for service of process - good for us, but confusing for the practitioners.
11	Has anyone complained about the new act? Who has complained and what are the complaints? Have you made any changes to address these complaints?	No Complaints.	No one.	No Complaints.	No Complaints.		No complaints.	No Complaints.	So far no complaints, but stay tuned...

## Survey of Secretary of State Offices for states which have enacted the Model Registered Agents Act

Prepared by the Mississippi Secretary of State, Division of Policy and Research June 2009

		Arkansas	Idaho	Maine	Montana	Nevada	North Dakota	South Dakota	Utah
12	Is there anything else you would like to tell us or advice to give us as we look at adopting this act?			<p>Push it to the attorneys/firms in the state. Keep fees low to become listed so people will use it. If people say this will lose revenue, consider how often the bigger commercial agents will move. Technology makes things easier.</p>	<p>Give yourself plenty of time to implement the changes, especially if your mainframe is older.</p>			<p>Had to rewrite old program to accommodate - it would have been easier to do this if they were already web-based.</p>	<p>Utah was fairly easy to manage because we already offered a mass change feature for the registered agents. Those states that charge for each agent change form will see a big change for commercial agents because they only change the commercial agent filing and not the registered agent part of each entity they represent. That could be a revenue problem for some states, but if you put the fees high enough that could compensate.</p>

## Changes to Mississippi Business Acts Required by Adopting the Model Registered Agents Act

Prepared by Mississippi Secretary of State, Division of Policy and Research  
June 2009

- **Generally.** All existing definitions of “registered agents” will be deleted. There will no longer be any restriction on agent’s entity type.
- **Section 3. Fees.** Section 3 offers a place to designate required fees the Secretary of State’s Office would charge for certain services promulgated under this Act.
  - Fees under current Mississippi business acts that relate to registered agents differ in amount from one act to another and in some cases no fees are charged for certain filings. A set of uniform fees would need to be created. See Fee Schedule Comparison Chart.
- **Section 4. Addresses in Filings.** Section 4 requires an agent to state an actual street address and, if applicable, a separate mailing address.
  - Current Mississippi business act registered agent provisions do not require an address to accompany filing for a registered agent. Addresses are required in other portions of the business acts.
- **Section 5. Appointment of Registered Agent.** Section 5 addresses the issue of appointment of a registered agent by the entity.
  - The entity has the option of listing a commercial registered agent without submitting an address or listing a noncommercial agent who may also be a person within the organization.
  - It does not require that the entity file a copy of the commercial or non-commercial registered agent’s written consent to the appointment with the Secretary of State, rather the appointment affirms that the agent has consented.
  - This section requires the Secretary of State’s Office to create and maintain for fourteen (14) days a daily listing of filings that contain the name of the registered agent.
  - **How MS Differs:** This section adds a new category of agents called a “commercial” agent and provides for different requirements for “commercial” and “noncommercial” agents. The current Mississippi statutes only provide for a single type of registered agent and requires the filing of a written consent of the registered agent.
- **Section 6. Listing of Commercial Registered Agent.** Commercial Registered Agents are required to make a special filing with the Secretary of State’s office that is not required by noncommercial registered agents. Section 6 establishes the filing requirements for commercial registered agents.
  - Subsection (a) lists the required filing information.

- A commercial registered agent can list whether it will accept service of process electronically, but this is not required.
  - If a commercial registered agent's name is not distinguishable from another commercial registered agent that has already filed with the Secretary of State's Office then such agent must adopt and go by a different name.
  - A transitional provision explains the conversion process for agents that already represent multiple business entities. It provides for the removal of the agent's address from the files of the entities it represents or it must provide a listing of all the entities that it represents.
- **Section 7. Termination of Listing of Commercial Registered Agent [by the Commercial Registered Agent].** For a commercial registered agent to terminate its representation of an entity or multiple entities under the Model Act there is a thirty-one (31) day waiting period and the agent must provide notice to the entities it represents. The entities that do not obtain a new registered agent will receive service of process through one of two alternative methods described Section 13.
  - **Section 8. Change of Registered Agent by Entity.** If an entity wants to change its registered agent the entity must make a filing with the Secretary of State's Office that includes the name of the entity and the information that is to be changed. It also states that the "governors" (i.e. – directors, general partners, etc.) of the entity do not have to sign off on this change. This applies if the agent is either a commercial agent or a noncommercial registered agent. Appointment under this section also serves as an affirmation that the commercial or non-commercial registered agent has consented to such representation.
    - Current Mississippi registered agent provisions have a variety of requirements regarding an entity changing its registered agent and registered office. They require a filing with the Secretary of State's Office including a statement of the entity's name, the street address of the current registered office, the street address of the new registered office if it is to change, the name of its current registered agent, and the name of its new registered agent if it is to change.
    - **How MS Differs:** Unlike the Model Act, some of the Mississippi acts require "governors" to sign the filing and require written consent from the new registered agent.
      - In addition, currently a corporation cannot change its registered agent by changing it only in the annual report. A separate form must be filed and a separate \$10 fee must be paid. Currently the SOS system is not capable of detecting, accepting and processing changes of agent via the annual report.
  - **Section 9. Change of Name or Address by Noncommercial Registered Agent.** For a noncommercial registered agent to change its name or address it must file a separate document for each entity it represents and provide notice to each of these

entities. The noncommercial registered agent must provide for in the filing: the name of the entity, the name and address of the agent as currently in effect with respect to the entity, and the new name and/or address of the agent if it is to be changed.

- **How MS Differs:** Current Mississippi statutes allow registered agents to change their names and/or registered offices with the Secretary of State's Office by filing a document for each entity it represents and notifying the entity or entities which they represent. Not all business related acts have this provision or charge a fee for this.

- **Section 10. Change of Name, Address, or Type of Organization by Commercial Registered Agent.** This section allows a commercial registered agent to file one document with the SOS which would apply to all of the entities it represents.

- The agent must supply its current name, a new name if it is to change, the new address if it is to change, and the type or jurisdiction of organization of the agent if it is to change.
- The agent must also notify each entity it represents.
- If an agent moves, but fails to file a change of address under this section, the Secretary of State's Office may cancel the listing of the agent under Section 6 which has the same effect as a termination under Section 7.
- The Secretary of State's Office would then provide notice to the agent and any affected entities.
- **How MS Differs:** Current business and non-profit corporation statutes allow registered agents to change their names and/or registered offices with the Secretary of State's Office by filing a separate document for each entity it represents and notifying the entity or entities which they represent. There is a cap on the fees of \$1,000. The LLC statute allows a registered agent to make one single filing to change information for all of the LLCs it represents. The other business entity statutes do not have a separate provision for changes by the agent. The same provision and form is used for changes by the agent or the entity. See Fee Schedule Comparison Chart.

- **Section 11. Resignation of Registered Agent.** A commercial or non-commercial registered agent can resign by filing a statement of resignation with the Secretary of State's Office which must state the name of the entity, the name of the agent, that the agent resigns from serving as agent for service of process for the entity, and the name and address of the person (within the entity) to which the agent will send the required notice.

- This resignation takes effect on the earlier of two dates: the thirty-first (31<sup>st</sup>) day after the day on which resignation is filed or the day the entity appoints a new registered agent.
- This section does not affect any contractual rights that the entity has against the agent or vice versa.

- Resignation is also not affected by whether the entity is in good standing or not.
- **How MS Differs:** Mississippi's current registered agent provisions require a waiting period and notice to the represented entities if the agent wants to resign its agency; however, some of the waiting periods differ from this act's requirement and some of them provide for the Secretary of State to accept service of process if the entity does not appoint a new registered agent.
  - The Mississippi Corporations Act and the Mississippi Nonprofit Corporations Act both require a thirty one (31) day waiting period and have no provision for default service of process on the Secretary of State.
  - The Investment Trusts Act and Mississippi Registration of Foreign Business Trusts Act require a thirty (30) day waiting period and have no default provision for service of process.
  - The Mississippi Limited Partnership Act and the Mississippi Limited Liability Company Act require a ninety (90) day waiting period and an affidavit stating that notice was sent to the represented entities thirty (30) days before filing of termination. They also provide for default service of process to the Secretary of State.

**Section 12. Appointment of Agent by Nonfiling or Nonqualified Foreign Entity.** That section was included by the ABA and NCCUSL. There are some entities in many states that are not required to file with the SOS—such as national banks, unincorporated associations and foundations, out of state insurance companies, General Partnerships, Internet Providers and interstate transactions businesses. The Bar and NCCUSL felt that it might be helpful for there to be a contact named at the SOS. Some states were hesitant to include this as they felt that it would encourage people not to seek authority to transact business. This provision is optional to the entity.

- This section allows a domestic entity that is not a filing entity or a nonqualified foreign entity to file with the Secretary of State's Office to appoint a registered agent.
- The appointment does not qualify a nonqualified foreign entity to do business in Mississippi.
- It is also not sufficient alone to create personal jurisdiction over the nonqualified foreign entity in Mississippi.
- The name of the entity does not need to be distinguishable from the name of another entity and the filing does not make the name of this entity unavailable for filing entities.
- This appointment may be cancelled by filing a statement of cancellation with the Secretary of State's Office. If not cancelled, the appointment lasts for five (5) years after the date of filing.
- If appointing an agent for a nonqualified foreign entity, the appointment terminates automatically on the date the entity becomes a qualified foreign entity.



- This section was adopted by all states that have adopted the Model Act with the exception of South Dakota. However in almost all of these states there have been no filings made under this section and there is no searchable database set up for these filings.
- **How MS Differs:** Mississippi does not have a similar provision.
- **Section 13. Service of Process on Entities.** Section 13 provides the methods of service of process upon a business entity.
  - Service of process, notice, or demand to an entity can be served on an authorized registered agent.
  - Service of process, notice, or demand on a commercial registered agent must be in the form of a written document unless a commercial registered agent has indicated it accepts electronic service of process. There is no provision for non-commercial agents to accept or use electronic service of process. The Mississippi Rules of Civil Procedure Ch. 2 Rule 5 does allow for electronic service of process.
  - Service of process to an entity without a current registered agent may be served by registered or certified mail, return receipt requested, to the “governors” of the entity by name at its principal office. The names of the “governors” and address of the principal office may be obtained from the most recent annual report filed with the Secretary of State’s Office. The Act doesn’t address how names are obtained for entities that don’t file annual reports, such as LLCs and nonprofits. One possibility is that they are obtained by checking their original formation or incorporation document.
  - If service of process can not be served in either of the two foregoing ways, then it may be made by handing a copy to a manager, clerk, or other person in charge at any regular place of business or activity of the entity if the person served is not a plaintiff in the action.
  - NOTE. MORAA does not appear to affect business entity statutes that provide for service of process on the Secretary of State when the registration of an entity is revoked, cancelled or withdrawn. These provisions will stay in place.
  - **How MS Differs:** Not all of Mississippi’s current registered agent provisions give direction for service of process when an entity does not have a registered agent.
    - The Mississippi Corporations Act and the Mississippi Nonprofit Corporation Act allow for service to the corporation’s secretary at its principal office complying nearly exactly with the requirements above.

- The Mississippi Limited Liability Company Act and the Mississippi Limited Partnership Act allow for service of process upon the Secretary of State's Office if an entity does not appoint a new registered agent after the former one has resigned.
  - The registered agent provisions in the Mississippi Investment Trust Act and the Mississippi Registration of Foreign Business Trusts Act do not have any such provision.
- **Section 14. Duties of Registered Agent.** Under this provision, a registered agent is to forward any process, notice, or demand to any entity it represents, to provide notices required by this act to any entity it represents, for a noncommercial registered agent – to keep current the information required by Section 5, and for a commercial registered agent – to keep current the information required by Section 6.
  - **How MS Differs:** Mississippi does not have a separate provision delineating the duties of a registered agent nor does it have a separate section in each act.
    - Duties of a registered agent are mentioned in four of the six business acts that have registered agent provisions.
    - The Mississippi Limited Liability Company Act and the Mississippi Limited Partnership Act mention that the registered agent is for service of process within the requirement that each entity must maintain a registered agent.
    - The Mississippi Corporations Act and the Mississippi Nonprofit Corporations Act both have a provision stating “A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.”
- **Section 15. Jurisdiction and Venue.** This section maintains that the appointment of a registered agent is not sufficient by itself to create the basis for personal jurisdiction over the represented entity in this state. It also maintains that the address of the agent does not determine venue in an action or proceeding involving the entity.
- **Section 16. Consistency of Application.** This section states that consideration must be given to the need to promote consistency of the law with respect to its subject matter among the states that enact it. This is basically an attempt to guide in the search for legislative intent.
- **Section 17. Relation to Electronic Signatures in Global and National Commerce Act.** This section maintains that the Model Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act except for certain provisions of said act. The federal ESIGN Act basically ensures that electronic signatures and documents are provided with the same level of authenticity that their paper counterparts are given. The provisions that are not

modified, limited, or superseded concern consumer consent to electronic records, preservation of consumer protections, verification or acknowledgment, effect of failure to obtain electronic consent, prior consent, oral communications, and exceptions to these rules.

**To:** Model Registered Agent Act Committee

**From:** Division of Policy and Research

**Date:** March 31, 2009

**Issue: Is venue appropriate in the county where the registered agent is located for defendant corporations or LLCs?**

**Answer:**

Under Mississippi's Circuit Court venue statute, venue in a case where the defendant is a nonresident corporation or LLC (i.e., is not chartered in Mississippi) would not necessarily be appropriate in the county where the corporation or LLC maintains a registered agent. However, under the Chancery Court venue statute, venue may indeed be appropriate in the county where a nonresident corporation or LLC maintains a registered agent.

*Circuit Court*

Miss. Code Ann. § 11-11-3 (the Circuit Court venue statute, most recently amended in 2004) reads, in pertinent part:

(1)(a)(i) Civil actions of which the circuit court has original jurisdiction shall be commenced in the county where the defendant resides, or, if a corporation, in the county of its principal place of business, or in the county where a substantial alleged act or omission occurred or where a substantial event that caused the injury occurred.

...

(b) If venue in a civil action against a nonresident defendant cannot be asserted under paragraph (a) of this subsection (1), a civil action against a nonresident may be commenced in the county where the plaintiff resides or is domiciled.

Though the statute is clear, the Mississippi Supreme Court has nonetheless noted that under the current venue statute, "venue for a suit against a corporate defendant would be proper in the county of its principal place of business, or in the county where a substantial alleged act or omission occurred or where a substantial event that caused the injury occurred."<sup>1</sup> Any of these locations would be an appropriate venue for a case against either a domestic or nonresident corporate defendant. However, if none of these locations would provide an appropriate venue, the plaintiff may commence an action in the county in which he or she resides.

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<sup>1</sup> *Canadian Nat./Illinois Cent. R. Co. v. Smith*, 926 So. 2d 839, 846 (Miss. 2006) (internal quotes omitted).

While the Mississippi Supreme Court suggested under a previous version of the statute that the location of a non-resident corporation's registered agent could be a factor in determining venue,<sup>2</sup> more recent precedent suggests that the location of a corporation's registered agent is irrelevant to the analysis.<sup>3</sup> It seems highly likely that a court interpreting the current statute would find venue appropriate in the county of the corporation's principal place of business, regardless of where the corporation's registered agent is located.

There is no Mississippi case law directly on point as to whether the location of an LLC's registered agent has a bearing on venue under the Circuit Court statute. Generally, venue in an action involving an unincorporated association is proper in any county where the plaintiff can find a resident member of the association.<sup>4</sup> Using this approach, venue in a case involving an LLC-defendant would be appropriate in any county where a member of the LLC resides. However, there is a possibility that the Mississippi Supreme Court could revert to its former reasoning<sup>5</sup> and find venue to be proper in the county where the LLC maintains its registered agent. Adopting the Model Registered Agent Act would help to clear up uncertainty in this area.

### *Chancery Court*

After laying out the venue requirements for a number of "local actions," § 11-5-1 (Mississippi's Chancery Court venue statute) states that "all cases not otherwise provided may be brought in the chancery court of any county where the defendant, or any necessary party defendant, may reside or be found[.]" In contrast to the Circuit Court venue statute, the Chancery Court venue statute makes no mention of corporations or other business entities. Therefore, corporations or LLCs may be sued in the county in which they, or any necessary defendant, may reside or be found.<sup>6</sup>

In the case of a domestic corporation, venue would be appropriate in the county of the corporation's principal place of business,<sup>7</sup> not necessarily where it maintains its registered agent. In the case of a nonresident corporation, venue would be appropriate in the county where the corporation "may be found," namely where the corporation maintains its registered agent. If the corporation does not maintain a registered agent, venue would be appropriate in any other location where the corporation (via its agents, presumably) may be found.

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<sup>2</sup> See *Penn National Gaming v. Ratliff*, 954 So. 2d 427 (Miss. 2007).

<sup>3</sup> See *Hedgepeth v. Johnson*, 975 So. 2d 235, 237-39 (Miss. 2008). In this case, the Mississippi Supreme Court found the Circuit Court venue statute to be "plain and unambiguous" and that the plain language of the statute is controlling. Therefore, it seems most likely that in a case involving a corporate defendant, the county of the corporation's principal place of business would be a permissible venue, regardless of where the corporation's registered agent is located.

<sup>4</sup> 77 AM. JUR. 2D VENUE § 40.

<sup>5</sup> See footnote 2.

<sup>6</sup> See 2 MS PRAC. ENCYCLOPEDIA MS LAW § 13:297.

<sup>7</sup> See *Flight Line, Inc. v. Tanksley*, 608 So. 2d 1149, 1155 n.1 (Miss. 1992).

Again, there is no Mississippi case law on point as to whether the location of an LLC's registered agent has a bearing on venue under the Chancery Court statute. Following the more generally accepted approach discussed above, a court would most likely find an LLC's residence to be that of any of its members. However, there remains the possibility that the Mississippi Supreme Court could rule that an LLC resides in the county where it maintains a registered agent.<sup>8</sup> Adopting the Model Registered Agent Act would help to clear up uncertainty in this area as well.

*The effect of adopting the Model Registered Agents Act (MoRAA)*

Section 15 of MoRAA states:

The appointment or maintenance in this state of a registered agent does not by itself create the basis for personal jurisdiction over the represented entity in this state. The address of the agent does not determine venue in an action or proceeding involving the entity.

Adopting this provision would make it clear that under Mississippi law, the location of the address of the corporation's or LLC's registered agent would not be considered when determining whether venue is proper in a civil action. Though there might be some latent tension between this provision and Mississippi's existing venue statutes, it is most likely that this provision of MoRAA would be given full effect if enacted into law. To avoid any potential conflict, it might be wise to add language making to the MoRAA provision making it clear that it would apply notwithstanding any existing venue statutes.

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<sup>8</sup> See footnote 2.

**PROPOSED MS REGISTERED AGENTS ACT**  
**~~SUGGESTED REVISIONS SINCE OCTOBER 16, 2008 MEETING~~ [REVISED AND**  
**UPDATED JUNE 2009]**

**SECTION 1. Short Title.**

This chapter shall be known and may be cited as the Mississippi Registered Agents Act.

**SECTION 2. Definitions.**

As used in this chapter unless the context otherwise requires:

- (1) “Appointment of agent” means a statement appointing an agent for service of process filed by a domestic entity that is not a filing entity or a nonqualified foreign entity under Section 12.
- (2) “Commercial registered agent” means an individual or a domestic or foreign entity listed under Section 6.
- (3) “Domestic entity” means an entity whose internal affairs are governed by the law of this state.
- (4) “Entity” means a person that has a separate legal existence or has the power to acquire an interest in real property in its own name other than:
  - (A) an individual;
  - (B) a testamentary, inter vivos, or charitable trust, with the exception of a business trust, statutory trust, or similar trust;
  - (C) an association or relationship that is not a partnership by reason of Section 79-13-202(c) or a similar provision of the law of any other jurisdiction;
  - (D) a decedent’s estate; or
  - (E) a public corporation, government or governmental subdivision, agency, or instrumentality, or quasi-governmental instrumentality.
- (5) “Filing entity” means an entity that is created by the filing of a public organic document.
- (6) “Foreign entity” means an entity other than a domestic entity.
- (7) “Foreign qualification document” means an application for a certificate of authority or other foreign qualification filing with the Secretary of State by a foreign entity.
- (8) “Governance interest” means the right under the organic law or organic rules of an entity, other than as a governor, agent, assignee, or proxy, to:

- (A) receive or demand access to information concerning, or the books and records of, the entity;
  - (B) vote for the election of the governors of the entity; or
  - (C) receive notice of or vote on any or all issues involving the internal affairs of the entity.
- (9) “Governor” means a person by or under whose authority the powers of an entity are exercised and under whose direction the business and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.
- (10) “Interest” means:
- (A) a governance interest in an unincorporated entity;
  - (B) a transferable interest in an unincorporated entity; or
  - (C) a share or membership in a corporation.
- (11) “Interest holder” means a direct holder of an interest.
- (12) “Jurisdiction of organization,” with respect to an entity, means the jurisdiction whose law includes the organic law of the entity.
- (13) “Noncommercial registered agent” means a person that is not listed as a commercial registered agent under Section 6 and that is:
- (A) an individual or a domestic or foreign entity that serves in this state as the agent for service of process of an entity; or
  - (B) the individual who holds the office or other position in an entity that is designated as the agent for service of process pursuant to Section 5(a)(2)(B).
- (14) “Nonqualified foreign entity” means a foreign entity that is not authorized to transact business in this state pursuant to a filing with the Secretary of State.
- (15) “Nonresident LLP statement” means:
- (A) a statement of qualification of a domestic limited liability partnership that does not have an office in this state; or
  - (B) a statement of foreign qualification of a foreign limited liability partnership that does not have an office in this state.
- (16) “Organic law” means the statutes, if any, other than this chapter, governing the internal affairs of an entity.
- (17) “Organic rules” means the public organic document and private organic rules of an entity.



- (18) “Person” means an individual, corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (19) “Private organic rules” mean the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all of its interest holders, and are not part of its public organic document, if any.
- (20) “Public organic document” means the public record the filing of which creates an entity, and any amendment to or restatement of that record.
- (21) “Qualified foreign entity” means a foreign entity that is authorized to transact business in this state pursuant to a filing with the Secretary of State.
- (22) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (23) “Registered agent” means a commercial registered agent or a noncommercial registered agent.
- (24) “Registered agent filing” means:
- (A) the public organic document of a domestic filing entity;
  - (B) a nonresident LLP statement;
  - (C) a foreign qualification document; or
  - (D) an appointment of agent.
- (25) “Represented entity” means:
- (A) a domestic filing entity;
  - (B) a domestic or qualified foreign limited liability partnership that does not have an office in this state;
  - (C) a qualified foreign entity;
  - (D) a domestic entity that is not a filing entity for which an appointment of agent has been filed; or
  - (E) a nonqualified foreign entity for which an appointment of agent has been filed.
- (26) “Sign” means, with present intent to authenticate or adopt a record:

- (A) to execute or adopt a tangible symbol; or
  - (B) to attach to or logically associate with the record an electronic sound, symbol, or process.
- (27) “Transferable interest” means the right under an entity’s organic law to receive distributions from the entity.
- (28) “Type,” with respect to an entity, means a generic form of entity:
- (A) recognized at common law; or
  - (B) organized under an organic law, whether or not some entities organized under that organic law are subject to provisions of that law that create different categories of the form of entity.

### SECTION 3. Fees.

- (a) The Secretary of State shall collect the following fees when a filing is made under this chapter:

Document	Fee
(1) commercial registered agent listing statement	\$__
(2) commercial registered agent termination statement	\$__
(3) statement of change	\$10, per entity, not to exceed \$1,000
(4) statement of resignation	no fee
(5) statement appointing an agent for service of process pursuant to Section 12	\$__

- (b) The Secretary of State shall collect the following fees for copying and certifying a copy of any document filed under this chapter:

- (1) \$\_\_ a page for copying; and
- (2) \$\_\_ for a certificate.

(c) The Secretary of State may collect a filing fee greater than the fee as prescribed by rule, not to exceed Twenty-five Dollars (\$25.00), if the form for such filings prescribed by the Secretary of State has not been used.

(d) The Secretary of State may promulgate rules to reduce the filing fees set forth in this

Section or provide for discounts of fees as set forth in this Section to encourage online filing of documents or for other reasons as determined by the Secretary.

#### **SECTION 4. Addresses in Filings.**

Whenever a provision of this chapter other than Section 11(a)(4) requires that a filing state an address, the filing must state:

- (1) an actual street address in this state; and
- (2) a mailing address in this state, if different from the address under paragraph (1).

#### **SECTION 5. Appointment of Registered Agent.**

(a) A registered agent filing must state:

- (1) the name of the represented entity's commercial registered agent; or
- (2) if the entity does not have a commercial registered agent, ~~÷~~

~~(A)~~ the name and address of the entity's noncommercial registered agent, ~~÷ or~~

~~(B) the title of an office or other position with the entity if service of process is to be sent to the person holding that office or position, and the address of the business office of that person.~~

- (b) The appointment of a registered agent pursuant to subsection (a)(1) or (a)(2) is an affirmation by the represented entity that the entity has notified the agent of the appointment ~~if the agent is not a commercial agent~~ and that the agent has consented to serve as such.
- (c) The Secretary of State shall make available in a record as soon as practicable a daily list of filings that contain the name of a registered agent. The list must:
  - (1) be available for at least fourteen (14) calendar days;
  - (2) list in alphabetical order the names of the registered agents; and
  - (3) state the type of filing and name of the represented entity making the filing.

**[ STAFF NOTE: NOTE that the SOS has no obligation to send registered agents a notice that they have been appointed as registered agents, either for commercial or non-commercial agents. The entity must notify the agent of the appointment and the entity is affirming under penalty of law that the agent has consented to serve]**

#### **SECTION 6. Listing of Commercial Registered Agent.**

- (a) An individual or a domestic or foreign entity may become listed as a commercial registered agent by filing with the Secretary of State a commercial registered agent listing statement signed by or on behalf of the person which states:
- (1) the name of the individual or the name, type, and jurisdiction of organization of the entity; and
  - ~~(2) that the person is in the business of serving as a commercial registered agent in this state; and~~
  - ~~(3)~~(2) the address of a place of business of the person in this state to which service of process and other notice and documents being served on or sent to entities represented by it may be delivered.
- (b) A commercial registered agent listing statement may include the information regarding acceptance of service of process in a record by the commercial registered agent provided for in Section 13(d).
- (c) If the name of a person filing a commercial registered agent listing statement is not distinguishable on the records of the Secretary of State from the name of another commercial registered agent listed under this section, the person must adopt a fictitious name that is distinguishable and use that name in its statement and when it does business in this state as a commercial registered agent.
- (d) A commercial registered agent listing statement takes effect on filing.
- (e) The commercial registered agent listing statement must be accompanied by a list in alphabetical order of the entities represented by the person. The Secretary of State shall note the filing of the commercial registered agent listing statement in the index of filings maintained by the Secretary of State for each listed entity. The statement has the effect of deleting the address of the registered agent from the registered agent filing of each of those entities.

## **SECTION 7. Termination of Listing of Commercial Registered Agent.**

- (a) A commercial registered agent may terminate its listing as a commercial registered agent by filing with the Secretary of State a commercial registered agent termination statement signed by or on behalf of the agent which states:
- (1) the name of the agent as currently listed under Section 6; and
  - (2) that the agent is no longer in the business of serving as a commercial registered agent in this state.
- (b) A commercial registered agent termination statement takes effect on the 31st day after the day on which it is filed.
- (c) The commercial registered agent shall promptly furnish each entity represented by it with

- notice in a record of the filing of the commercial registered agent termination statement.
- (d) When a commercial registered agent termination statement takes effect, the registered agent ceases to be an agent for service of process on each entity formerly represented by it. Until an entity formerly represented by a terminated commercial registered agent appoints a new registered agent, service of process may be made on the entity as provided in Section 13. Termination of the listing of a commercial registered agent under this section does not affect any contractual rights a represented entity may have against the agent or that the agent may have against the entity.

## **SECTION 8. Change of Registered Agent by Entity.**

- (a) A represented entity may change the information currently on file under Section 5(a) by filing with the Secretary of State a statement of change signed on behalf of the entity which states:
- (1) the name of the entity; and
  - (2) the information that is to be in effect as a result of the filing of the statement of change.
- (b) The interest holders or governors of a domestic entity need not approve the filing of:
- (1) a statement of change under this section; or
  - (2) a similar filing changing the registered agent or registered office of the entity in any other jurisdiction.
- (c) The appointment of a registered agent pursuant to subsection (a) is an affirmation by the represented entity that the entity has notified the agent of the appointment ~~if the agent is not a commercial agent~~ and that the agent has consented to serve as such.
- (d) A statement of change filed under this section takes effect on filing.

## **SECTION 9. Change of Name or Address by Noncommercial Registered Agent.**

- (a) If a noncommercial registered agent changes its name or its address as currently in effect with respect to a represented entity pursuant to Section 5(a), the agent shall file with the Secretary of State, with respect to each entity represented by the agent, a statement of change signed by or on behalf of the agent which states:
- (1) the name of the entity;
  - (2) the name and address of the agent as currently in effect with respect to the entity;
  - (3) if the name of the agent has changed, its new name; and
  - (4) if the address of the agent has changed, the new address.

- (b) A statement of change filed under this section takes effect on filing.
- (c) A noncommercial registered agent shall promptly furnish the represented entity with notice in a record of the filing of a statement of change and the changes made by the filing.

**SECTION 10. Change of Name, Address, or Type of Organization by Commercial Registered Agent.**

- (a) If a commercial registered agent changes its name, its address as currently listed under Section 6(a), or its type or jurisdiction of organization, the agent shall file with the Secretary of State a statement of change signed by or on behalf of the agent which states:
  - (1) the name of the agent as currently listed under Section 6(a);
  - (2) if the name of the agent has changed, its new name;
  - (3) if the address of the agent has changed, the new address; and
  - (4) if the type or jurisdiction of organization of the agent has changed, the new type or jurisdiction of organization.
- (b) The filing of a statement of change under subsection (a) is effective to change the information regarding the commercial registered agent with respect to each entity represented by the agent.
- (c) A statement of change filed under this section takes effect on filing.
- (d) A commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of a statement of change relating to the name or address of the agent and the changes made by the filing.
- (e) If a commercial registered agent changes its address without filing a statement of change as required by this section, the Secretary of State may cancel the listing of the agent under Section 6. A cancellation under this subsection has the same effect as a termination under Section 7. Promptly after canceling the listing of an agent, the Secretary of State shall serve notice in a record in the manner provided in Section 13(b) or (c) on:
  - (1) each entity represented by the agent, stating that the agent has ceased to be an agent for service of process on the entity and that, until the entity appoints a new registered agent, service of process may be made on the entity as provided in Section 13; and
  - (2) the agent, stating that the listing of the agent has been canceled under this section.

**SECTION 11. Resignation of Registered Agent.**

- (a) A registered agent may resign at any time with respect to a represented entity by filing with

the Secretary of State a statement of resignation signed by or on behalf of the agent which states:

- (1) the name of the entity;
  - (2) the name of the agent;
  - (3) that the agent resigns from serving as agent for service of process for the entity; and
  - (4) the name and address of the person to which the agent will send the notice required by subsection (c).
- (b) A statement of resignation takes effect on the earlier of the 31st day after the day on which it is filed or the appointment of a new registered agent for the represented entity.
- (c) The registered agent shall promptly furnish the represented entity written notice in a record of the date on which a statement of resignation was filed. *[ STAFF NOTE: Note that the SOS has no obligation to notify the entity of their agent's resignation. This is the obligation of the resigning agent].*
- (d) When a statement of resignation takes effect, the registered agent ceases to have responsibility for any matter tendered to it as agent for the represented entity. A resignation under this section does not affect any contractual rights the entity has against the agent or that the agent has against the entity.
- (e) A registered agent may resign with respect to a represented entity whether or not the entity is in good standing.

## **SECTION 12. Appointment of Agent by Nonfiling or Nonqualified Foreign Entity.**

- (a) A domestic entity that is not a filing entity or a nonqualified foreign entity may file with the Secretary of State a statement appointing an agent for service of process signed on behalf of the entity which states:
- (1) the name, type, and jurisdiction of organization of the entity; and
  - (2) the information required by Section 5(a).
- (b) A statement appointing an agent for service of process takes effect on filing.
- (c) The appointment of a registered agent under this section does not qualify a nonqualified foreign entity to do business in this state and is not sufficient alone to create personal jurisdiction over the nonqualified foreign entity in this state.
- (d) A statement appointing an agent for service of process may not be rejected for filing because the name of the entity filing the statement is not distinguishable on the records of the Secretary of State from the name of another entity appearing in those records. The filing of a statement appointing an agent for service of process does not make the name of

the entity filing the statement unavailable for use by another entity.

- (e) An entity that has filed a statement appointing an agent for service of process may cancel the statement by filing a statement of cancellation, which shall take effect upon filing, and must state the name of the entity and that the entity is canceling its appointment of an agent for service of process in this state. A statement appointing an agent for service of process which has not been canceled earlier is effective for a period of five (5) years after the date of filing.
- (f) A statement appointing an agent for service of process for a nonqualified foreign entity terminates automatically on the date the entity becomes a qualified foreign entity.

### **SECTION 13. Service of Process on Entities.**

- (a) A registered agent is an agent of the represented entity authorized to receive service of any process, notice, or demand required or permitted by law to be served on the entity.
- (b) If an entity that previously filed a registered agent filing with the Secretary of State no longer has a registered agent, or if its registered agent cannot with reasonable diligence be served, the entity may be served by registered or certified mail, return receipt requested, addressed to the governors of the entity by name at its principal office in accordance with ~~any applicable judicial rules and procedures~~the Mississippi Rules of Civil Procedure. The names of the governors and the address of the principal office may be as shown in the most recent annual report filed with the Secretary of State. Service is perfected under this subsection at the earliest of:
  - (3) the date the entity receives the mail;
  - (4) the date shown on the return receipt, if signed on behalf of the entity; or
  - (5) five (5) days after its deposit with the United States Postal Service, if correctly addressed and with sufficient postage.
- (c) If process, notice, or demand cannot be served on an entity pursuant to subsection (a) or (b), service of process may be made by handing a copy to the manager, ~~clerk,~~ or other ~~person~~individual in charge of any regular place of business or activity of the entity if the ~~person~~individual served is not a plaintiff in the action and the individual is authorized by appointment or by law to receive service of process.
- (d) Service of process, notice, or demand on a registered agent must be in the form of a written document, except that service may be made on a commercial registered agent in such other forms of a record, and subject to such requirements as the agent has stated from time to time in its listing under Section 6 that it will accept.
- (e) Service of process, notice, or demand may be perfected by any other means prescribed by law other than this chapter, including provisions in the organic entity laws that provide for service of process on the Secretary of State in the event that registration of an organic entity has been cancelled, withdrawn or revoked or the domestic organic entity has been



administratively dissolved or voluntarily dissolved under the applicable organic entity statute.

#### **SECTION 14. Duties of Registered Agent.**

The only duties under this chapter of a registered agent that has complied with this chapter are:

- (1) to forward to the represented entity at the address most recently supplied to the agent by the entity any process, notice, or demand that is served on the agent;
- (2) to provide the notices required by this chapter to the entity at the address most recently supplied to the agent by the entity;
- (3) if the agent is a noncommercial registered agent, to keep current the information required by Section 5(a) in the most recent registered agent filing for the entity; and
- (4) if the agent is a commercial registered agent, to keep current the information listed for it under Section 6(a).

#### **SECTION 15. Jurisdiction and Venue.**

The appointment or maintenance in this state of a registered agent does not by itself create the basis for personal jurisdiction over the represented entity in this state. The address of the agent does not determine venue in an action or proceeding involving the entity.

#### **SECTION 16. Consistency of Application.**

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

#### **SECTION 17. 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 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

#### **SECTION 18. Savings Clause.**

This chapter does not affect an action or proceeding commenced or right accrued before the effective date of this chapter.

#### **SECTION 19. Effective Date.**

This chapter takes effect \_\_\_\_\_ .

**PROPOSED MS REGISTERED AGENTS ACT**  
**[REVISED AND UPDATED JUNE 2009]**

**SECTION 1. Short Title.**

This chapter shall be known and may be cited as the Mississippi Registered Agents Act.

**SECTION 2. Definitions.**

As used in this chapter unless the context otherwise requires:

- (1) "Appointment of agent" means a statement appointing an agent for service of process filed by a domestic entity that is not a filing entity or a nonqualified foreign entity under Section 12.
- (2) "Commercial registered agent" means an individual or a domestic or foreign entity listed under Section 6.
- (3) "Domestic entity" means an entity whose internal affairs are governed by the law of this state.
- (4) "Entity" means a person that has a separate legal existence or has the power to acquire an interest in real property in its own name other than:

(A) an individual;

(B) a testamentary, inter vivos, or charitable trust, with the exception of a business trust, statutory trust, or similar trust;

(C) an association or relationship that is not a partnership by reason of Section 79-13-202(c) or a similar provision of the law of any other jurisdiction;

(D) a decedent's estate; or

(E) a public corporation, government or governmental subdivision, agency, or instrumentality, or quasi-governmental instrumentality.

- (5) "Filing entity" means an entity that is created by the filing of a public organic document.
- (6) "Foreign entity" means an entity other than a domestic entity.
- (7) "Foreign qualification document" means an application for a certificate of authority or other foreign qualification filing with the Secretary of State by a foreign entity.
- (8) "Governance interest" means the right under the organic law or organic rules of an entity, other than as a governor, agent, assignee, or proxy, to:

(A) receive or demand access to information concerning, or the books and records of, the

entity;

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

(C) receive notice of or vote on any or all issues involving the internal affairs of the entity.

(9) “Governor” means a person by or under whose authority the powers of an entity are exercised and under whose direction the business and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(10) “Interest” means:

(A) a governance interest in an unincorporated entity;

(B) a transferable interest in an unincorporated entity; or

(C) a share or membership in a corporation.

(11) “Interest holder” means a direct holder of an interest.

(12) “Jurisdiction of organization,” with respect to an entity, means the jurisdiction whose law includes the organic law of the entity.

(13) “Noncommercial registered agent” means a person that is not listed as a commercial registered agent under Section 6 and that is:

(A) an individual or a domestic or foreign entity that serves in this state as the agent for service of process of an entity; or

(B) the individual who holds the office or other position in an entity that is designated as the agent for service of process pursuant to Section 5(a)(2)(B).

(14) “Nonqualified foreign entity” means a foreign entity that is not authorized to transact business in this state pursuant to a filing with the Secretary of State.

(15) “Nonresident LLP statement” means:

(A) a statement of qualification of a domestic limited liability partnership that does not have an office in this state; or

(B) a statement of foreign qualification of a foreign limited liability partnership that does not have an office in this state.

(16) “Organic law” means the statutes, if any, other than this chapter, governing the internal affairs of an entity.

(17) “Organic rules” means the public organic document and private organic rules of an entity.

- (18) “Person” means an individual, corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (19) “Private organic rules” mean the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all of its interest holders, and are not part of its public organic document, if any.
- (20) “Public organic document” means the public record the filing of which creates an entity, and any amendment to or restatement of that record.
- (21) “Qualified foreign entity” means a foreign entity that is authorized to transact business in this state pursuant to a filing with the Secretary of State.
- (22) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (23) “Registered agent” means a commercial registered agent or a noncommercial registered agent.
- (24) “Registered agent filing” means:
- (A) the public organic document of a domestic filing entity;
  - (B) a nonresident LLP statement;
  - (C) a foreign qualification document; or
  - (D) an appointment of agent.
- (25) “Represented entity” means:
- (A) a domestic filing entity;
  - (B) a domestic or qualified foreign limited liability partnership that does not have an office in this state;
  - (C) a qualified foreign entity;
  - (D) a domestic entity that is not a filing entity for which an appointment of agent has been filed; or
  - (E) a nonqualified foreign entity for which an appointment of agent has been filed.
- (26) “Sign” means, with present intent to authenticate or adopt a record:
- (A) to execute or adopt a tangible symbol; or

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

(27) “Transferable interest” means the right under an entity’s organic law to receive distributions from the entity.

(28) “Type,” with respect to an entity, means a generic form of entity:

(A) recognized at common law; or

(B) organized under an organic law, whether or not some entities organized under that organic law are subject to provisions of that law that create different categories of the form of entity.

### **SECTION 3. Fees.**

(a) The Secretary of State shall collect the following fees when a filing is made under this chapter:

<b>Document</b>	<b>Fee</b>
(1) commercial registered agent listing statement	\$__
(2) commercial registered agent termination statement	\$__
(3) statement of change	\$10, per entity, not to exceed \$1,000
(4) statement of resignation	no fee
(5) statement appointing an agent for service of process pursuant to Section 12	\$__

(b) The Secretary of State shall collect the following fees for copying and certifying a copy of any document filed under this chapter:

(1) \$\_\_ a page for copying; and

(2) \$\_\_ for a certificate.

(c) The Secretary of State may collect a filing fee greater than the fee as prescribed by rule, not to exceed Twenty-five Dollars (\$25.00), if the form for such filings prescribed by the Secretary of State has not been used.

(d) The Secretary of State may promulgate rules to reduce the filing fees set forth in this Section or provide for discounts of fees as set forth in this Section to encourage online

#### **SECTION 4. Addresses in Filings.**

Whenever a provision of this chapter other than Section 11(a)(4) requires that a filing state an address, the filing must state:

- (1) an actual street address in this state; and
- (2) a mailing address in this state, if different from the address under paragraph (1).

#### **SECTION 5. Appointment of Registered Agent.**

- (a) A registered agent filing must state:
  - (1) the name of the represented entity's commercial registered agent; or
  - (2) if the entity does not have a commercial registered agent the name and address of the entity's noncommercial registered agent.
- (b) The appointment of a registered agent pursuant to subsection (a)(1) or (a)(2) is an affirmation by the represented entity that the entity has notified the agent of the appointment and that the agent has consented to serve as such.
- (c) The Secretary of State shall make available in a record as soon as practicable a daily list of filings that contain the name of a registered agent. The list must:
  - (1) be available for at least fourteen (14) calendar days;
  - (2) list in alphabetical order the names of the registered agents; and
  - (3) state the type of filing and name of the represented entity making the filing.

**[ STAFF NOTE: NOTE that the SOS has no obligation to send registered agents a notice that they have been appointed as registered agents, either for commercial or non-commercial agents. The entity must notify the agent of the appointment and the entity is affirming under penalty of law that the agent has consented to serve]**

#### **SECTION 6. Listing of Commercial Registered Agent.**

- (a) An individual or a domestic or foreign entity may become listed as a commercial registered agent by filing with the Secretary of State a commercial registered agent listing statement signed by or on behalf of the person which states:
  - (1) the name of the individual or the name, type, and jurisdiction of organization of the entity; and

- (2) the address of a place of business of the person in this state to which service of process and other notice and documents being served on or sent to entities represented by it may be delivered.
- (b) A commercial registered agent listing statement may include the information regarding acceptance of service of process in a record by the commercial registered agent provided for in Section 13(d).
- (c) If the name of a person filing a commercial registered agent listing statement is not distinguishable on the records of the Secretary of State from the name of another commercial registered agent listed under this section, the person must adopt a fictitious name that is distinguishable and use that name in its statement and when it does business in this state as a commercial registered agent.
- (d) A commercial registered agent listing statement takes effect on filing.
- (e) The commercial registered agent listing statement must be accompanied by a list in alphabetical order of the entities represented by the person. The Secretary of State shall note the filing of the commercial registered agent listing statement in the index of filings maintained by the Secretary of State for each listed entity. The statement has the effect of deleting the address of the registered agent from the registered agent filing of each of those entities.

## **SECTION 7. Termination of Listing of Commercial Registered Agent.**

- (a) A commercial registered agent may terminate its listing as a commercial registered agent by filing with the Secretary of State a commercial registered agent termination statement signed by or on behalf of the agent which states:
  - (1) the name of the agent as currently listed under Section 6; and
  - (2) that the agent is no longer in the business of serving as a commercial registered agent in this state.
- (b) A commercial registered agent termination statement takes effect on the 31st day after the day on which it is filed.
- (c) The commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of the commercial registered agent termination statement.
- (d) When a commercial registered agent termination statement takes effect, the registered agent ceases to be an agent for service of process on each entity formerly represented by it. Until an entity formerly represented by a terminated commercial registered agent appoints a new registered agent, service of process may be made on the entity as provided in Section 13. Termination of the listing of a commercial registered agent under this section does not affect any contractual rights a represented entity may have against the agent or that the agent may have against the entity.

## **SECTION 8. Change of Registered Agent by Entity.**

- (a) A represented entity may change the information currently on file under Section 5(a) by filing with the Secretary of State a statement of change signed on behalf of the entity which states:
  - (1) the name of the entity; and
  - (2) the information that is to be in effect as a result of the filing of the statement of change.
- (b) The interest holders or governors of a domestic entity need not approve the filing of:
  - (1) a statement of change under this section; or
  - (2) a similar filing changing the registered agent or registered office of the entity in any other jurisdiction.
- (c) The appointment of a registered agent pursuant to subsection (a) is an affirmation by the represented entity that the entity has notified the agent of the appointment and that the agent has consented to serve as such.
- (d) A statement of change filed under this section takes effect on filing.

## **SECTION 9. Change of Name or Address by Noncommercial Registered Agent.**

- (a) If a noncommercial registered agent changes its name or its address as currently in effect with respect to a represented entity pursuant to Section 5(a), the agent shall file with the Secretary of State, with respect to each entity represented by the agent, a statement of change signed by or on behalf of the agent which states:
  - (1) the name of the entity;
  - (2) the name and address of the agent as currently in effect with respect to the entity;
  - (3) if the name of the agent has changed, its new name; and
  - (4) if the address of the agent has changed, the new address.
- (b) A statement of change filed under this section takes effect on filing.
- (c) A noncommercial registered agent shall promptly furnish the represented entity with notice in a record of the filing of a statement of change and the changes made by the filing.

## **SECTION 10. Change of Name, Address, or Type of Organization by Commercial Registered Agent.**

- (a) If a commercial registered agent changes its name, its address as currently listed under



Section 6(a), or its type or jurisdiction of organization, the agent shall file with the Secretary of State a statement of change signed by or on behalf of the agent which states:

- (1) the name of the agent as currently listed under Section 6(a);
  - (2) if the name of the agent has changed, its new name;
  - (3) if the address of the agent has changed, the new address; and
  - (4) if the type or jurisdiction of organization of the agent has changed, the new type or jurisdiction of organization.
- (b) The filing of a statement of change under subsection (a) is effective to change the information regarding the commercial registered agent with respect to each entity represented by the agent.
- (c) A statement of change filed under this section takes effect on filing.
- (d) A commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of a statement of change relating to the name or address of the agent and the changes made by the filing.
- (e) If a commercial registered agent changes its address without filing a statement of change as required by this section, the Secretary of State may cancel the listing of the agent under Section 6. A cancellation under this subsection has the same effect as a termination under Section 7. Promptly after canceling the listing of an agent, the Secretary of State shall serve notice in a record in the manner provided in Section 13(b) or (c) on:
- (1) each entity represented by the agent, stating that the agent has ceased to be an agent for service of process on the entity and that, until the entity appoints a new registered agent, service of process may be made on the entity as provided in Section 13; and
  - (2) the agent, stating that the listing of the agent has been canceled under this section.

## **SECTION 11. Resignation of Registered Agent.**

- (a) A registered agent may resign at any time with respect to a represented entity by filing with the Secretary of State a statement of resignation signed by or on behalf of the agent which states:
- (1) the name of the entity;
  - (2) the name of the agent;
  - (3) that the agent resigns from serving as agent for service of process for the entity; and

- (4) the name and address of the person to which the agent will send the notice required by subsection (c).
- (b) A statement of resignation takes effect on the earlier of the 31st day after the day on which it is filed or the appointment of a new registered agent for the represented entity.
- (c) The registered agent shall promptly furnish the represented entity written notice in a record of the date on which a statement of resignation was filed. *[ STAFF NOTE: Note that the SOS has no obligation to notify the entity of their agent's resignation. This is the obligation of the resigning agent].*
- (d) When a statement of resignation takes effect, the registered agent ceases to have responsibility for any matter tendered to it as agent for the represented entity. A resignation under this section does not affect any contractual rights the entity has against the agent or that the agent has against the entity.
- (e) A registered agent may resign with respect to a represented entity whether or not the entity is in good standing.

## **SECTION 12. Appointment of Agent by Nonfiling or Nonqualified Foreign Entity.**

- (a) A domestic entity that is not a filing entity or a nonqualified foreign entity may file with the Secretary of State a statement appointing an agent for service of process signed on behalf of the entity which states:
  - (1) the name, type, and jurisdiction of organization of the entity; and
  - (2) the information required by Section 5(a).
- (b) A statement appointing an agent for service of process takes effect on filing.
- (c) The appointment of a registered agent under this section does not qualify a nonqualified foreign entity to do business in this state and is not sufficient alone to create personal jurisdiction over the nonqualified foreign entity in this state.
- (d) A statement appointing an agent for service of process may not be rejected for filing because the name of the entity filing the statement is not distinguishable on the records of the Secretary of State from the name of another entity appearing in those records. The filing of a statement appointing an agent for service of process does not make the name of the entity filing the statement unavailable for use by another entity.
- (e) An entity that has filed a statement appointing an agent for service of process may cancel the statement by filing a statement of cancellation, which shall take effect upon filing, and must state the name of the entity and that the entity is canceling its appointment of an agent for service of process in this state. A statement appointing an agent for service of process which has not been canceled earlier is effective for a period of five (5) years after the date of filing.

- (f) A statement appointing an agent for service of process for a nonqualified foreign entity terminates automatically on the date the entity becomes a qualified foreign entity.

### **SECTION 13. Service of Process on Entities.**

- (a) A registered agent is an agent of the represented entity authorized to receive service of any process, notice, or demand required or permitted by law to be served on the entity.
- (b) If an entity that previously filed a registered agent filing with the Secretary of State no longer has a registered agent, or if its registered agent cannot with reasonable diligence be served, the entity may be served by registered or certified mail, return receipt requested, addressed to the governors of the entity by name at its principal office in accordance with the Mississippi Rules of Civil Procedure. The names of the governors and the address of the principal office may be as shown in the most recent annual report filed with the Secretary of State. Service is perfected under this subsection at the earliest of:
  - (3) the date the entity receives the mail;
  - (4) the date shown on the return receipt, if signed on behalf of the entity; or
  - (5) five (5) days after its deposit with the United States Postal Service, if correctly addressed and with sufficient postage.
- (c) If process, notice, or demand cannot be served on an entity pursuant to subsection (a) or (b), service of process may be made by handing a copy to the manager, or other individual in charge of any regular place of business or activity of the entity if the individual served is not a plaintiff in the action and the individual is authorized by appointment or by law to receive service of process.
- (d) Service of process, notice, or demand on a registered agent must be in the form of a written document, except that service may be made on a commercial registered agent in such other forms of a record, and subject to such requirements as the agent has stated from time to time in its listing under Section 6 that it will accept.
- (e) Service of process, notice, or demand may be perfected by any other means prescribed by law other than this chapter, including provisions in the organic entity laws that provide for service of process on the Secretary of State in the event that registration of an organic entity has been cancelled, withdrawn or revoked or the domestic organic entity has been administratively dissolved or voluntarily dissolved under the applicable organic entity statute.

### **SECTION 14. Duties of Registered Agent.**

The only duties under this chapter of a registered agent that has complied with this chapter are:

- (1) to forward to the represented entity at the address most recently supplied to the agent by the entity any process, notice, or demand that is served on the agent;

- (2) to provide the notices required by this chapter to the entity at the address most recently supplied to the agent by the entity;
- (3) if the agent is a noncommercial registered agent, to keep current the information required by Section 5(a) in the most recent registered agent filing for the entity; and
- (4) if the agent is a commercial registered agent, to keep current the information listed for it under Section 6(a).

#### **SECTION 15. Jurisdiction and Venue.**

The appointment or maintenance in this state of a registered agent does not by itself create the basis for personal jurisdiction over the represented entity in this state. The address of the agent does not determine venue in an action or proceeding involving the entity.

#### **SECTION 16. Consistency of Application.**

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

#### **SECTION 17. 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 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

#### **SECTION 18. Savings Clause.**

This chapter does not affect an action or proceeding commenced or right accrued before the effective date of this chapter.

#### **SECTION 19. Effective Date.**

This chapter takes effect \_\_\_\_\_ .

**PROPOSED MS REGISTERED AGENTS ACT**  
**[REVISED AND UPDATED JUNE 2009]**

**(REDLINED AGAINST THE MODEL REGISTERED AGENTS ACT)**

**SECTION 1. Short Title.**

This chapter shall be known and~~{act}~~ may be cited as the Mississippi~~Model~~ Registered Agents Act.

**SECTION 2. Definitions.**

As used in~~In~~ this chapter unless the context otherwise requires:~~{act}~~:

(1) “Appointment of agent” means a statement appointing an agent for service of process filed by~~;~~

~~————— (A) a domestic or foreign unincorporated nonprofit association under [Section 10 of the Uniform Unincorporated Nonprofit Association Act]; or~~

~~————— (B) a domestic entity that is not a filing entity or a nonqualified foreign entity under Section 12.~~

(2) “Commercial registered agent” means an individual or a domestic or foreign entity listed under Section 6.

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

(4) “Entity” means a person that has a separate legal existence or has the power to acquire an interest in real property in its own name other than:

(A) an individual;

(B) a testamentary, inter vivos, or charitable trust, with the exception of a business trust, statutory trust, or similar trust;

(C) an association or relationship that is not a partnership by reason of ~~{Section 79-13-202(c) of the Uniform Partnership Act (1997)}~~ or a similar provision of the law of any other jurisdiction;

(D) a decedent’s estate; or

(E) a public corporation, government or governmental subdivision, agency, or instrumentality, or quasi-governmental instrumentality.

(5) “Filing entity” means an entity that is created by the filing of a public organic document.

(6) “Foreign entity” means an entity other than a domestic entity.

(7) “Foreign qualification document” means an application for a certificate of authority or other foreign qualification filing with the ~~Secretary of State~~ by a foreign entity.

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

(A) receive or demand access to information concerning, or the books and records of, the entity;

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

(C) receive notice of or vote on any or all issues involving the internal affairs of the entity.

(9) “Governor” means a person by or under whose authority the powers of an entity are exercised and under whose direction the business and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(10) “Interest” means:

(A) a governance interest in an unincorporated entity;

(B) a transferable interest in an unincorporated entity; or

(C) a share or membership in a corporation.

(11) “Interest holder” means a direct holder of an interest.

(12) “Jurisdiction of organization,” with respect to an entity, means the jurisdiction whose law includes the organic law of the entity.

(13) “Noncommercial registered agent” means a person that is not listed as a commercial registered agent under Section 6 and that is:

(A) an individual or a domestic or foreign entity that serves in this state as the agent for service of process of an entity; or

(B) the individual who holds the office or other position in an entity that is designated as the agent for service of process pursuant to Section 5(a)(2)(B).

(14) “Nonqualified foreign entity” means a foreign entity that is not authorized to transact business in this state pursuant to a filing with the ~~Secretary of State~~.

(15) “Nonresident LLP statement” means:

(A) a statement of qualification of a domestic limited liability partnership that does not have an office in this state; or

(B) a statement of foreign qualification of a foreign limited liability partnership that does not have an office in this state.

(16) “Organic law” means the statutes, if any, other than this ~~chapter, [fact](#)~~, governing the internal affairs of an entity.

(17) “Organic rules” means the public organic document and private organic rules of an entity.

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

(19) “Private organic rules” mean the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all of its interest holders, and are not part of its public organic document, if any.

(20) “Public organic document” means the public record the filing of which creates an entity, and any amendment to or restatement of that record.

(21) “Qualified foreign entity” means a foreign entity that is authorized to transact business in this state pursuant to a filing with the ~~{Secretary of [State, State](#)}~~.

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

(23) “Registered agent” means a commercial registered agent or a noncommercial registered agent.

(24) “Registered agent filing” means:

(A) the public organic document of a domestic filing entity;

(B) a nonresident LLP statement;

(C) a foreign qualification document; or

(D) an appointment of agent.

(25) “Represented entity” means:

(A) a domestic filing entity;

(B) a domestic or qualified foreign limited liability partnership that does

not have an office in this state;

(C) a qualified foreign entity;

~~(D) a domestic or foreign unincorporated nonprofit association for which an appointment of agent has been filed;~~

~~(E)~~ (D) a domestic entity that is not a filing entity for which an appointment of agent has been filed; or

~~(F)~~ (E) a nonqualified foreign entity for which an appointment of agent has been filed.

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

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

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

(27) “Transferable interest” means the right under an entity’s organic law to receive distributions from the entity.

(28) “Type,” with respect to an entity, means a generic form of entity:

(A) recognized at common law; or

(B) organized under an organic law, whether or not some entities organized under that organic law are subject to provisions of that law that create different categories of the form of entity.

### SECTION 3. Fees.

(a) The ~~{Secretary of State}~~ shall collect the following fees when a filing is made under this ~~chapter:~~~~{act}:~~

Document	Fee
(1) commercial registered agent listing statement	\$__
(2) commercial registered agent termination statement	\$__
(3) statement of change	<u>\$10, per entity, not to</u>



exceed \$1,000\$—

(4) statement of resignation no fee

(5) statement appointing an agent for service \$\_\_\_\_\_

of process pursuant to Section 12\$—

(b) The ~~{Secretary of State}~~ shall collect the following fees for copying and certifying a copy of any document filed under this chapter:~~{act}:~~

(1) \$\_\_ a page for copying; and

(2) \$\_\_ for a certificate.

(c) The Secretary of State may collect a filing fee greater than the fee as prescribed by rule, not to exceed Twenty-five Dollars (\$25.00), if the form for such filings prescribed by the Secretary of State has not been used.

(d) The Secretary of State may promulgate rules to reduce the filing fees set forth in this Section or provide for discounts of fees as set forth in this Section to encourage online filing of documents or for other reasons as determined by the Secretary.

*~~Legislative note: In a state where filing fees are set by rule making, this section may be replaced with the statement “The {Secretary of State} shall by rule set fees for filings, and the services provided, under this {act}.”~~*

#### **SECTION 4. Addresses in Filings.**

Whenever a provision of this chapter~~{act}~~ other than Section 11(a)(4) requires that a filing state an address, the filing must state:

- (1) an actual street address ~~or rural route box number~~ in this state; and
- (2) a mailing address in this state, if different from the address under paragraph (1).

#### **SECTION 5. Appointment of Registered Agent.**

(a) A registered agent filing must state:

- (1) the name of the represented entity’s commercial registered agent; or
- (2) if the entity does not have a commercial registered agent ~~:~~

~~(A) the name and address of the entity's noncommercial registered agent, or~~

~~(B) the title of an office or other position with the entity if service of process is to be sent to the person holding that office or position, and the address of the business office of that person.~~

(b) The appointment of a registered agent pursuant to subsection (a)(1) or (a)(2)~~(A)~~ is an affirmation by the represented entity that the entity has notified the agent of the appointment and that the agent has consented to serve as such.

(c) The ~~{Secretary of State}~~ shall make available in a record as soon as practicable a daily list of filings that contain the name of a registered agent. The list must:

- (1) be available for at least fourteen (14) calendar days;
- (2) list in alphabetical order the names of the registered agents; and
- (3) state the type of filing and name of the represented entity making the filing.

[ STAFF NOTE: NOTE that the SOS has no obligation to send registered agents a notice that they have been appointed as registered agents, either for commercial or non-commercial agents. The entity must notify the agent of the appointment and the entity is affirming under penalty of law that the agent has consented to serve]

## SECTION 6. Listing of Commercial Registered Agent.

*Legislative note:* Subsection (c) may be omitted if (i) the records of the Secretary of State are searchable electronically in a manner that permits filings to be identified by the date of the filing and by the name of the registered agent named in the filing, and (ii) the searchable database is updated frequently.

(a) An individual or a domestic or foreign entity may become listed as a commercial registered agent by filing with the ~~{Secretary of State}~~ a commercial registered agent listing statement signed by or on behalf of the person which states:

~~(1) the name of the individual or the name, type, and jurisdiction of organization of the~~  
entity;

~~(2) that the person is in the business of serving as a commercial registered agent in this state; and~~

~~(3)~~ (2) the address of a place of business of the person in this state to which service of process and other notice and documents being served on or sent to entities represented by it may be delivered.

(b) A commercial registered agent listing statement may include the information regarding acceptance of service of process in a record by the commercial registered agent provided for in Section 13(d).

(c) If the name of a person filing a commercial registered agent listing statement is not distinguishable on the records of the [Secretary of State] from the name of another commercial registered agent listed under this section, the person must adopt a fictitious name that is distinguishable and use that name in its statement and when it does business in this state as a commercial registered agent.

(d) A commercial registered agent listing statement takes effect on filing.

~~(e) The [Secretary of State] shall note the filing of the commercial registered agent listing statement in the index of filings maintained by the [Secretary of State] for each entity represented by the registered agent at the time of the filing. The statement has the effect of deleting the address of the registered agent from the registered agent filing of each of those entities.~~

~~**Legislative note:** If the Secretary of State is not able to identify from the records maintained by the Secretary of State all of the entities represented by a registered agent, subsection (e) should be amended to read:~~

~~“(e) The commercial registered agent listing statement must be accompanied by a list in alphabetical order of the entities represented by the person. The [Secretary of State] shall note the filing of the commercial registered agent listing statement in the index of filings maintained by the [Secretary of State] for each listed entity. The statement has the effect of deleting the address of the registered agent from the registered agent filing of each of those entities.”~~

## **SECTION 7. Termination of Listing of Commercial Registered Agent.**

(a) A commercial registered agent may terminate its listing as a commercial registered agent by filing with the [Secretary of State] a commercial registered agent termination statement signed by or on behalf of the agent which states:

(1) the name of the agent as currently listed under Section 6; and

(2) that the agent is no longer in the business of serving as a commercial registered agent in this state.

(b) A commercial registered agent termination statement takes effect on the 31st day after the day on which it is filed.

(c) The commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of the commercial registered agent termination statement.

(d) When a commercial registered agent termination statement takes effect, the registered agent ceases to be an agent for service of process on each entity formerly represented by it. Until an entity formerly represented by a terminated commercial registered agent appoints a new registered agent, service of process may be made on the entity as provided in Section 13. Termination of the listing of a commercial registered agent under this section does not affect any contractual rights a represented entity may have against the agent or that the agent may have against the entity.

## **SECTION 8. Change of Registered Agent by Entity.**

(a) A represented entity may change the information currently on file under Section 5(a) by filing with the ~~Secretary of State~~ a statement of change signed on behalf of the entity which states:

(1) the name of the entity; and

(2) the information that is to be in effect as a result of the filing of the statement of change.

(b) The interest holders or governors of a domestic entity need not approve the filing of:

(1) a statement of change under this section; or

(2) a similar filing changing the registered agent or registered office of the entity in any other jurisdiction.

(c) The appointment of a registered agent pursuant to subsection (a) is an affirmation by the represented entity that the entity has notified the agent of the appointment and that the agent has consented to serve as such.

(d) A statement of change filed under this section takes effect on filing.

~~\_\_\_\_\_ (e) As an alternative to using the procedures in this section, a represented entity may change the information currently on file under Section 5(a) by amending its most recent registered agent filing in the manner provided by the laws of this state other than this [act] for amending that filing.~~

## **SECTION 9. Change of Name or Address by Noncommercial Registered Agent.**

(a) If a noncommercial registered agent changes its name or its address as currently in effect with respect to a represented entity pursuant to Section 5(a), the agent shall file with the ~~Secretary of State~~, with respect to each entity represented by the agent, a statement of change signed by or on behalf of the agent which states:

- (1) the name of the entity;
- (2) the name and address of the agent as currently in effect with respect to the entity;
- (3) if the name of the agent has changed, its new name; and
- (4) if the address of the agent has changed, the new address.

(b) A statement of change filed under this section takes effect on filing.

(c) A noncommercial registered agent shall promptly furnish the represented entity with notice in a record of the filing of a statement of change and the changes made by the filing.

#### **SECTION 10. Change of Name, Address, or Type of Organization by Commercial Registered Agent.**

(a) If a commercial registered agent changes its name, its address as currently listed under Section 6(a), or its type or jurisdiction of organization, the agent shall file with the ~~Secretary of State~~ a statement of change signed by or on behalf of the agent which states:

- (1) the name of the agent as currently listed under Section 6(a);
- (2) if the name of the agent has changed, its new name;
- (3) if the address of the agent has changed, the new address; and
- (4) if the type or jurisdiction of organization of the agent has changed, the new type or jurisdiction of organization.

(b) The filing of a statement of change under subsection (a) is effective to change the information regarding the commercial registered agent with respect to each entity represented by the agent.

(c) A statement of change filed under this section takes effect on filing.

(d) A commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of a statement of change relating to the name or address of the agent and the changes made by the filing.

(e) If a commercial registered agent changes its address without filing a statement of change as required by this section, the ~~Secretary of State~~ may cancel the listing of the agent under Section 6. A cancellation under this subsection has the same effect as a termination under Section 7. Promptly after canceling the listing of an agent, the ~~Secretary of State~~ shall serve notice in a record in the manner provided in Section 13(b) or (c) on:

- (1) each entity represented by the agent, stating that the agent has ceased to be

an agent for service of process on the entity and that, until the entity appoints a new registered agent, service of process may be made on the entity as provided in Section 13; and

(2) the agent, stating that the listing of the agent has been canceled under this section.

## **SECTION 11. Resignation of Registered Agent.**

(a) A registered agent may resign at any time with respect to a represented entity by filing with the **{Secretary of State}** a statement of resignation signed by or on behalf of the agent which states:

(1) the name of the entity;

(2) the name of the agent;

(3) that the agent resigns from serving as agent for service of process for the entity; and

(4) the name and address of the person to which the agent will send the notice required by subsection (c).

(b) A statement of resignation takes effect on the earlier of the 31st day after the day on which it is filed or the appointment of a new registered agent for the represented entity.

(c) The registered agent shall promptly furnish the represented entity written notice in a record of the date on which a statement of resignation was filed. [ STAFF NOTE: Note that the SOS has no obligation to notify the entity of their agent's resignation. This is the obligation of the resigning agent].

(d) When a statement of resignation takes effect, the registered agent ceases to have responsibility for any matter tendered to it as agent for the represented entity. A resignation under this section does not affect any contractual rights the entity has against the agent or that the agent has against the entity.

(e) A registered agent may resign with respect to a represented entity whether or not the entity is in good standing.

## **SECTION 12. Appointment of Agent by Nonfiling or Nonqualified Foreign Entity.**

(a) A domestic entity that is not a filing entity or a nonqualified foreign entity may file with the **{Secretary of State}** a statement appointing an agent for service of process signed on behalf of the entity which states:

(1) the name, type, and jurisdiction of organization of the entity; and

(2) the information required by Section 5(a).

(b) A statement appointing an agent for service of process takes effect on filing.

(c) The appointment of a registered agent under this section does not qualify a nonqualified foreign entity to do business in this state and is not sufficient alone to create personal jurisdiction over the nonqualified foreign entity in this state.

(d) A statement appointing an agent for service of process may not be rejected for filing because the name of the entity filing the statement is not distinguishable on the records of the ~~Secretary of State~~ from the name of another entity appearing in those records. The filing of a statement appointing an agent for service of process does not make the name of the entity filing the statement unavailable for use by another entity.

(e) An entity that has filed a statement appointing an agent for service of process may cancel the statement by filing a statement of cancellation, which shall take effect upon filing, and must state the name of the entity and that the entity is canceling its appointment of an agent for service of process in this state. A statement appointing an agent for service of process which has not been canceled earlier is effective for a period of five (5) years after the date of filing.

(f) A statement appointing an agent for service of process for a nonqualified foreign entity terminates automatically on the date the entity becomes a qualified foreign entity.

### **SECTION 13. Service of Process on Entities.**

(a) A registered agent is an agent of the represented entity authorized to receive service of any process, notice, or demand required or permitted by law to be served on the entity.

(b) If an entity that previously filed a registered agent filing with the ~~Secretary of State~~ no longer has a registered agent, or if its registered agent cannot with reasonable diligence be served, the entity may be served by registered or certified mail, return receipt requested, addressed to the governors of the entity by name at its principal office in accordance with the Mississippi Rules of Civil Procedure.~~any applicable judicial rules and procedures.~~ The names of the governors and the address of the principal office may be as shown in the most recent annual report filed with the ~~Secretary of State.~~ Service is perfected under this subsection at the earliest of:

(1) the date the entity receives the mail;

(2) the date shown on the return receipt, if signed on behalf of the entity; or

(3) five (5) days after its deposit with the United States Postal Service, if correctly addressed and with sufficient postage.

(c) If process, notice, or demand cannot be served on an entity pursuant to subsection (a) or (b), service of process may be made by handing a copy to the manager, ~~clerk,~~ or other ~~person~~ individual in charge of any regular place of business or activity of the entity if the ~~person~~ individual served is not a plaintiff in the action and the individual is authorized by appointment or by law to receive service of process.

(d) Service of process, notice, or demand on a registered agent must be in the form of a written document, except that service may be made on a commercial registered agent in such other forms of a record, and subject to such requirements as the agent has stated from time to time in its listing under Section 6 that it will accept.

(e) Service of process, notice, or demand may be perfected by any other means prescribed by law other than this [chapter, including provisions in the organic entity laws that provide for service of process on the Secretary of State in the event that registration of an organic entity has been cancelled, withdrawn or revoked or the domestic organic entity has been administratively dissolved or voluntarily dissolved under the applicable organic entity statute.](#)~~{act}~~.

*~~Legislative Note: The conforming amendments in the Appendix to the Act recommend that provisions similar to subsections (b) through (e) be repealed to the extent they appear in a state's individual entity organic laws. In a state with that statutory scheme, subsections (b) through (e) will be needed to replace the repealed provisions. On the other hand, a state that does not have provisions similar to subsections (b) through (e) in its individual entity organic laws, and instead provides rules for service of process on entities in a statute separate from its entity organic laws or in rules of court, should omit subsections (b) through (e). If subsections (b) through (e) are omitted, a conforming change must be made to Section 10(e).~~*

## **SECTION 14. Duties of Registered Agent.**

The only duties under this [chapter](#)~~{act}~~ of a registered agent that has complied with this [chapter](#)~~{act}~~ are:

- (1) to forward to the represented entity at the address most recently supplied to the agent by the entity any process, notice, or demand that is served on the agent;
- (2) to provide the notices required by this [chapter](#)~~{act}~~ to the entity at the address most recently supplied to the agent by the entity;
- (3) if the agent is a noncommercial registered agent, to keep current the information required by Section 5(a) in the most recent registered agent filing for the entity; and
- (4) if the agent is a commercial registered agent, to keep current the information listed for it under Section 6(a).

## **SECTION 15. Jurisdiction and Venue.**

The appointment or maintenance in this state of a registered agent does not by itself create the basis for personal jurisdiction over the represented entity in this state. The address of the agent does not determine venue in an action or proceeding involving the entity.

## **SECTION 16. Consistency of Application.**

In applying and construing this [chapter](#)~~{act}~~, consideration must be given to the need to promote consistency of the law with respect to its subject matter among states that enact it.



## **SECTION 17. Relation to Electronic Signatures in Global and National Commerce Act.**

This [chapter](#)~~{aet}~~ modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

## **SECTION 18. Savings Clause.**

This [chapter](#)~~{aet}~~ does not affect an action or proceeding commenced or right accrued before the effective date of this [chapter](#)~~{aet}~~.

## **SECTION 19. Effective Date.**

This [chapter](#)~~{aet}~~ takes effect \_\_\_\_\_ .

## **APPENDIX**

### **CONFORMING AMENDMENTS AND REPEALS**

#### **SECTION A1. MODEL BUSINESS CORPORATION ACT**

(a) ~~Sections 1.22, 1.25, 1.26, 1.41, and 2.02 of the Model Business Corporation Act are amended to read:~~

~~§ 1.22. Filing, service, and copying fees.~~

~~(a) The secretary of state shall collect the following fees when the documents described in this subsection are delivered to him for filing:~~

~~\*\*\*~~

~~(7) Corporation's statement of change of registered agent or  
registered office or both \$\_\_~~

~~(8) Agent's statement of change of registered office for  
each affected corporation not to exceed a total of \$\_\_~~

~~(9) Agent's statement of resignation no fee~~

~~\*\*\*~~

~~§ 1.25. Filing duty of Secretary of State.~~

~~\*\*\*~~

~~(b) The secretary of state files a document by recording it as filed on the date and time of receipt. After filing a document, except as provided in sections 5.03 and section 15.10, the secretary of state shall deliver to the domestic or foreign corporation or its representative a copy of the document with an acknowledgement of the date and time of filing.~~

~~\*\*\*~~

~~§ 1.26. Appeal from Secretary of State's refusal to file document.~~

~~(a) If the secretary of state refuses to file a document delivered to his office for filing, the domestic or foreign corporation may appeal the refusal within 30 days after the return of the document to the [name or describe] court [of the county where the corporation's principal office is or will be located (or, if none in this state, its registered office) is or will be located] [of \_\_\_\_\_ county]]. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of his refusal to file.~~

~~\*\*\*~~

~~§ 1.41. Notice.~~

~~\*\*\*~~

~~(d) Written notice to a domestic or foreign corporation (authorized to transact business in this state) may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.~~

~~\*\*\*~~

~~§ 2.02. Articles of incorporation.~~

~~(a) The articles of incorporation must set forth:~~

~~\*\*\*~~

~~(3) — the street address of the corporation’s initial registered office and the name of its initial registered agent at that office the information required by [Section 5(a) of the Model Registered Agents Act]; and~~

~~\*\*\*~~

~~(b) — Chapter 5 of the Model Business Corporation Act is repealed.~~

~~(c) — Sections 7.03, 7.20, 8.09, 10.05, 11.07, 13.30, 14.07, 14.08, 14.20, 14.21, 14.22, 14.23,~~

~~14.31, 15.03 and 15.04 of the Model Business Corporation Act are amended to read:~~

~~§ 7.03. Court ordered meeting.~~

~~(a) — The [name or describe] court of the county where a corporation’s principal office is located (or, if none in this state, its registered office) is located of \_\_\_\_\_ county) may summarily order a meeting to be held:~~

~~\*\*\*~~

~~§ 7.20. Shareholders’ list for meeting.~~

~~\*\*\*~~

~~(d) — If the corporation refuses to allow a shareholder, his agent, or attorney to inspect the shareholders’ list before or at the meeting (or copy the list as permitted by subsection (b)), the [name or describe] court of the county where a corporation’s principal office is located (or, if none in this state, its registered office) is located of \_\_\_\_\_ county), on application of the shareholder, may summarily order the inspection or copying at the corporation’s expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.~~

~~\*\*\*~~

~~§ 8.09. Removal of directors by judicial proceeding.~~

~~(a) — The [name or describe] court of the county where a corporation’s principal office is located (or, if none in this state, its registered office) is located of \_\_\_\_\_ county) may remove a director of the corporation from office in a proceeding commenced by or in the right of the corporation if the court finds that (1) the director engaged in fraudulent conduct with respect to the corporation or its shareholders, grossly abused the position of director, or intentionally inflicted harm on the corporation; and (2) considering the director’s course of conduct and the inadequacy of other available remedies, removal would be in the best interest of the corporation.~~

~~\*\*\*~~

~~§ 10.05. Amendment by board of directors.~~

~~Unless the articles of incorporation provide otherwise, a corporation’s board of directors may adopt amendments to the corporation’s articles of incorporation without shareholder approval:~~

~~\*\*\*~~

~~(3) — to delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state; to change the information required by [section 5(a) of the Model Registered Agents Act];~~

~~\*\*\*~~

~~§ 11.07. Effect of merger or share exchange.~~

~~(d) — Upon a merger becoming effective, a foreign corporation, or a foreign eligible entity, that is the survivor of the merger is deemed to:~~

~~(1) — appoint the secretary of state as its agent for agree that service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to~~

~~the merger who exercise appraisal rights may be made in the manner provided in [Section 13 of the Model Registered Agents Act], and~~

~~\*\*\*~~

~~§ 13.30. Court action.~~

~~\*\*\*~~

~~(b) The corporation shall commence the proceeding in the appropriate court of the county where the corporation's principal office is located (or, if none, its registered office) in this state is located in this state, of \_\_\_\_\_ county). If the corporation is a foreign corporation without a registered office in this state, it shall commence the proceeding in the county in this state where the principal office or registered office of the domestic corporation merged with the foreign corporation was located or, if the domestic corporation did not have its principal office in this state at the time of the transaction, in \_\_\_\_\_ county.~~

~~\*\*\*~~

~~§ 14.07. Other claims against dissolved corporation.~~

~~\*\*\*~~

~~(b) The notice must:~~

~~(1) be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office is or was last located (or, if none in this state, its registered office) is or was last located of \_\_\_\_\_ county).~~

~~\*\*\*~~

~~§ 14.08. Court proceedings.~~

~~(a) A dissolved corporation that has published a notice under section 14.07 may file an application with the [name or describe] court of the county where the dissolved corporation's principal office is located (or, if none in this state, its registered office) is located of \_\_\_\_\_ county) for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under section 14.07(c).~~

~~\*\*\*~~

~~§ 14.20. Grounds for administrative dissolution.~~

~~The secretary of state may commence a proceeding under section 14.21 to administratively dissolve a corporation if:~~

~~\*\*\*~~

~~(3) the corporation is without a registered agent or registered office in this state for 60 days or more;~~

~~(4) the corporation does not notify the secretary of state within 60 days that its registered agent or registered office has been changed, or that its registered agent has resigned, or that its registered office has been discontinued; or~~

~~\*\*\*~~

~~§ 14.21. Procedure for and effect of administrative dissolution.~~

~~(a) If the secretary of state determines that one or more grounds exist under section 14.20 for dissolving a corporation, he shall serve the corporation with written notice of his determination under section 5.04.~~

~~(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 60 days after service of the notice is perfected under section 5.04, the secretary of state shall administratively dissolve the corporation by signing a certificate of dissolution that recites~~

~~the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation under section 5.04.~~

~~\*\*\*~~

~~§ 14.22. Reinstatement following administrative dissolution.~~

~~\*\*\*~~

~~(b)—— If the secretary of state determines that the application contains the information required by subsection (a) and that the information is correct, he shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites his determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 5.04.~~

~~\*\*\*~~

~~§ 14.23. Appeal from denial of reinstatement.~~

~~(a)—— If the secretary of state denies a corporation's application for reinstatement following administrative dissolution, he shall serve the corporation under section 5.04 with a written notice that explains the reason or reasons for denial.~~

~~\*\*\*~~

~~§ 14.31. Procedure for judicial dissolution.~~

~~(a)—— Venue for a proceeding by the attorney general to dissolve a corporation lies in [name the county or counties]. Venue for a proceeding brought by any other party named in section 14.30 lies in the county where a corporation's principal office is or was last located (or, if none in this state, its registered office) is or was last located of \_\_\_\_\_ county).~~

~~\*\*\*~~

~~§ 15.03. Application for certificate of authority.~~

~~(a)—— A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:~~

~~\*\*\*~~

~~(5)—— the address of its registered office in this state and the name of its registered agent at that office the information required by [Section 5(a) of the Model Registered Agents Act]; and~~

~~\*\*\*~~

~~§ 15.04. Amended certificate of authority.~~

~~(a)—— A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the secretary of state if it changes:~~

~~(1)—— its corporate name;~~

~~(2)—— the period of its duration; or~~

~~(3)—— any of the information required by [Section 5(a) of the Model Registered Agents Act]; or~~

~~(4)—— the state or country of its incorporation.~~

~~\*\*\*~~

~~(d)—— Sections 15.07, 15.08, and 15.09 of the Model Business Corporation Act are repealed.~~

~~(e)—— Sections 15.30, 16.04, 16.05, and 16.21 of the Model Business Corporation Act are~~

~~amended to read:~~

~~§ 15.30. Grounds for revocation.~~

The secretary of state may commence a proceeding under section 15.31 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

\* \* \*

(3) — the foreign corporation is without a registered agent or registered office in this state for 60 days or more;

(4) — the foreign corporation does not inform the secretary of state under section 15.08 or 15.09 by an appropriate filing that its registered agent or registered office has changed, or that its registered agent has resigned, or that its registered office has been discontinued within 60 days of the change, or resignation, or discontinuance;

\* \* \*

§ 16.04. ~~Court ordered inspection.~~

(a) — If a corporation does not allow a shareholder who complies with section 16.02(a) to inspect and copy any records required by that subsection to be available for inspection, the [name or describe court] of the county where the corporation's principal office is located (or, if none in this state, its registered office) is located of \_\_\_\_\_ county) may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(b) — If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with sections 16.02(b) and (c) may apply to the [name or describe court] in the county where the corporation's principal office is located (or, if none in this state, its registered office) is located of \_\_\_\_\_ county) for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

\* \* \*

§ 16.05. ~~Inspection of records by directors.~~

\* \* \*

(b) — The [name or describe the court] of the county where the corporation's principal office is located (or, if none in this state, its registered office) is located of \_\_\_\_\_ county) may order inspection and copying of the books, records and documents at the corporation's expense, upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

\* \* \*

§ 16.21. Annual report for Secretary of State.

(a) — Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state for filing an annual report that sets forth:

(1) — the name of the corporation;

(2) — and the state or country the jurisdiction under whose law it is incorporated;

(2) (3) the address of its registered office and the name of its registered agent at that office in this state the information required by [section 5(a) of the Model Registered Agents Act];

(3) (4) the address of its principal office, wherever located;

(4) (5) the names and business addresses of its directors and principal officers; and

(6) — the names of its directors, except that in the case of a corporation that has eliminated its board of directors pursuant to section 7.32 the annual report shall set forth the names of the shareholders instead.

(5) — a brief description of the nature of its business;

(6) — the total number of authorized shares, itemized by class and series, if any, within each class; and

~~(7) the total number of issued and outstanding shares, itemized by class and series, if any, within each class.~~

~~\*\*\*~~

## **~~SECTION A2. MODEL NONPROFIT CORPORATION ACT~~**

~~(a) Sections 1.22, 1.25, 1.26, and 2.02 of the Model Nonprofit Corporation Act are amended to read:~~

### ~~§ 1.22. Filing, service, and copying fees.~~

~~(a) The secretary of state shall collect the following fees when the documents described in this subsection are delivered to him for filing:~~

~~\*\*\*~~

~~(7) Corporation's statement of change of registered agent or  
registered office or both \_\_\_\_\_ \$\_\_~~

~~(8) Agent's statement of change of registered office for  
each affected corporation not to exceed a total of \_\_\_\_\_ \$\_\_~~

~~(9) Agent's statement of resignation \_\_\_\_\_ no fee~~

~~\*\*\*~~

### ~~§ 1.25. Filing duty of Secretary of State.~~

~~\*\*\*~~

~~(b) The secretary of state files a document by stamping or otherwise endorsing "Filed," together with the secretary of state's name and official title and the date and time of receipt, on both the original and copy of the document and on the receipt for the filing fee. After filing a document, except as provided in sections 5.03 and section 15.10, the secretary of state shall deliver the document copy, with the filing fee receipt (or acknowledgement of receipt if no fee is required) attached, to the domestic or foreign corporation or its representative.~~

~~\*\*\*~~

### ~~§ 1.26. Appeal from Secretary of State's refusal to file document.~~

~~(a) If the secretary of state refuses to file a document delivered for filing to the secretary of state's office, the domestic or foreign corporation may appeal the refusal to the [name or describe] court in the county where the corporation's principal office is or will be located, or if there is none in this state, its registered office, is or will be located of \_\_\_\_\_ county. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of his the refusal to file.~~

~~\*\*\*~~

### ~~§ 2.02. Articles of incorporation.~~

~~(a) The articles of incorporation must set forth:~~

~~\*\*\*~~

~~(3) the street address of the corporation's initial registered office and the name of its initial registered agent at that office the information required by [Section 5(a) of the Model Registered Agents Act];~~

~~\*\*\*~~

~~(b) Chapter 5 of the Model Nonprofit Corporation Act is repealed.~~

~~(c) Sections 7.03, 7.20, 10.02, 11.06, 14.08, 14.20, 14.21, 14.22, 14.23, 14.31, 15.03 and~~

~~15.04 of the Model Nonprofit Corporation Act are amended to read:~~

~~§ 7.03. Court-ordered meeting.~~

~~(a) The [name or describe] court of the county where a corporation's principal office is located (or, if none in this state, its registered office) is located of \_\_\_\_\_ county) may summarily order a meeting to be held:~~

~~\*\*\*~~

~~§ 7.20. Members' list for meeting.~~

~~\*\*\*~~

~~(d) If the corporation refuses to allow a member, a member's agent, or attorney to inspect the list of members before or at the meeting (or copy the list as permitted by subsection (b)), the [name or describe] court of the county where a corporation's principal office is located (or, if none in this state, its registered office) is located of \_\_\_\_\_ county), on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete and may order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order.~~

~~\*\*\*~~

~~§ 10.02. Amendment by directors.~~

~~(a) Unless the articles provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles without member approval:~~

~~\*\*\*~~

~~(3) to delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state; to change the information required by [Section 5(a) of the Model Registered Agents Act];~~

~~\*\*\*~~

~~§ 11.06. Merger with foreign corporation.~~

~~\*\*\*~~

~~(b) Upon the merger taking effect, the surviving foreign business or nonprofit corporation is deemed to have irrevocably appointed the secretary of state as its agent for service of process may be served with process in any proceeding brought against it as provided in [Section 13 of the Model Registered Agents Act].~~

~~§ 14.08. Unknown claims against dissolved corporation.~~

~~\*\*\*~~

~~(b) The notice must:~~

~~(1) be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office is or was last located (or, if none in this state, its registered office) is or was last located of \_\_\_\_\_ county);~~

~~\*\*\*~~

~~§ 14.20. Grounds for administrative dissolution.~~

~~The secretary of state may commence a proceeding under section 14.21 to administratively dissolve a corporation if:~~

~~\*\*\*~~

~~(3) the corporation is without a registered agent or registered office in this state for 60 days or more;~~



~~(4) — the corporation does not notify the secretary of state within 120 days that its registered agent or registered office has been changed, or that its registered agent has resigned, or that its registered office has been discontinued; or~~

~~\*\*\*~~

~~§ 14.21. Procedure for and effect of administrative dissolution.~~

~~(a) — Upon determining that one or more grounds exist under section 14.20 for dissolving a corporation, the secretary of state shall serve the corporation with written notice of that determination under section 5.04, and in the case of a public benefit corporation shall notify the attorney general in writing.~~

~~(b) — If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within at least 60 days after service of the notice is perfected under section 5.04, the secretary of state may administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation under section 5.04, and in the case of a public benefit corporation shall notify the attorney general in writing.~~

~~\*\*\*~~

~~§ 14.22. Reinstatement following administrative dissolution.~~

~~\*\*\*~~

~~(b) — If the secretary of state determines that the application contains the information required by subsection (a) and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 5.04.~~

~~\*\*\*~~

~~§ 14.23. Appeal from denial of reinstatement.~~

~~(a) — The secretary of state, upon denying a corporation's application for reinstatement following administrative dissolution, shall serve the corporation under section 5.04 with a written notice that explains the reason or reasons for denial.~~

~~\*\*\*~~

~~§ 14.31. Procedure for judicial dissolution.~~

~~(a) — Venue for a proceeding by the attorney general to dissolve a corporation lies in [name the county or court]. Venue for a proceeding brought by any other party named in section 14.30 lies in the county where a corporation's principal office is or was last located (or, if none in this state, its registered office) is or was last located of \_\_\_\_\_ county).~~

~~\*\*\*~~

~~§ 15.03. Application for certificate of authority.~~

~~(a) — A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state. The application must set forth:~~

~~\*\*\*~~

~~(5) — the address of its registered office in this state and the name of its registered agent at that office the information required by [Section 5(a) of the Model Registered Agents Act]; and~~

~~\*\*\*~~

~~§ 15.04. Amended certificate of authority.~~

~~(a) — A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the secretary of state if it changes:~~

~~(1) — its corporate name;~~

- ~~(2) — the period of its duration; or~~
- ~~(3) — any of the information required by [Section 5(a) of the Model Registered Agents Act]; or~~
- ~~(4) — the state or country of its incorporation.~~

~~\*\*\*~~

~~(d) — Sections 15.07, 15.08, and 15.09 of the Model Nonprofit Corporation Act are repealed.~~

~~(e) — Sections 15.30, 16.04 and 16.22 of the Model Nonprofit Corporation Act are amended~~

to read:

~~§ 15.30. Grounds for revocation.~~

~~(a) — The secretary of state may commence a proceeding under section 15.31 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:~~

~~\*\*\*~~

~~(3) — the foreign corporation is without a registered agent or registered office in this state for 60 days or more;~~

~~(4) — the foreign corporation does not inform the secretary of state under section 15.08 or 15.09 by an appropriate filing that its registered agent or registered office has changed, or that its registered agent has resigned, or that its registered office has been discontinued within 90 days of the change, or resignation, or discontinuance;~~

~~\*\*\*~~

~~§ 16.04. Court ordered inspection.~~

~~(a) — If a corporation does not allow a member who complies with section 16.02(a) to inspect and copy any records required by that subsection to be available for inspection, the [name or describe court] of the county where the corporation's principal office is located (or, if none in this state, its registered office) is located of \_\_\_\_\_ county) may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.~~

~~(b) — If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with subsections 16.02(b) and (c) may apply to the [name or describe court] in the county where the corporation's principal office is located (or, if none in this state, its registered office) is located of \_\_\_\_\_ county) for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.~~

~~\*\*\*~~

~~§ 16.22. Annual report for Secretary of State.~~

~~(a) — Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state an annual report on a form prescribed and furnished by the secretary of state that sets forth:~~

- ~~(1) — the name of the corporation;~~
- ~~(2) — and the state or country the jurisdiction under whose law it is incorporated;~~
- ~~(2) (3) the address of its registered office and the name of its registered agent at the office in this state the information required by [Section 5(a) of the Model Registered Agents Act];~~
- ~~(3) (4) the address of its principal office, wherever located;~~
- ~~(4) (5) the names and business or residence addresses of its directors and principal officers; and~~

- ~~(6) — the names of its directors;~~
  - ~~(5) — a brief description of the nature of its activities;~~
  - ~~(6) — whether or not it has members;~~
  - ~~(7) — if it is a domestic corporation, whether it is a public benefit, mutual benefit or religious corporation; and~~
  - ~~(8) — if it is a foreign corporation, whether it would be a public benefit, mutual benefit or religious corporation had it been incorporated in this state.~~
- ~~\*\*\*~~

### **SECTION A3. ~~UNIFORM PARTNERSHIP ACT (1997)~~**

~~Sections 1001, 1003, and 1102 of the Uniform Partnership Act (1997) are amended to read:~~

#### ~~§ 1001. Statement of qualification.~~

~~\*\*\*~~

~~(c) — After the approval required by subsection (b), a partnership may become a limited liability partnership by filing a statement of qualification. The statement must contain:~~

~~\*\*\*~~

~~(3) — if the partnership does not have an office in this State, the name and street address of the partnership's agent for service of process the information required by [Section 5(a) of the Model Registered Agents Act];~~

~~\*\*\*~~

~~(d) — The agent of a limited liability partnership for service of process must be an individual who is a resident of this State or other person authorized to do business in this State. (Repealed.)~~

~~\*\*\*~~

#### ~~§ 1003. Annual report.~~

~~(a) — A limited liability partnership, and a foreign limited liability partnership authorized to transact business in this State, shall file an annual report in the office of the [Secretary of State] which contains:~~

~~(1) — the name of the limited liability partnership and the State or other jurisdiction under whose laws the foreign limited liability partnership is formed;~~

~~(2) — the street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this State, if any; and~~

~~(3) — if the partnership does not have an office in this State, the name and street address of the partnership's current agent for service of process information required by [Section 5(a) of the Model Registered Agents Act].~~

~~\*\*\*~~

#### ~~§ 1102. Statement of foreign qualification.~~

~~(a) — Before transacting business in this State, a foreign limited liability partnership must file a statement of foreign qualification. The statement must contain:~~

~~\*\*\*~~

~~(2) — the street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this State, if any;~~

(3)——if there is no office of the partnership in this State, the name and street address of the partnership’s agent for service of process the information required by [Section 5(a) of the Model Registered Agents Act]; and

~~\*\*\*~~

(b)——The agent of a foreign limited liability partnership for service of process must be an individual who is a resident of this State or other person authorized to do business in this State.

(Repealed.)

~~\*\*\*~~

#### **~~SECTION A4. UNIFORM LIMITED PARTNERSHIP ACT (2001)~~**

(a)——Section 102(4) (“designated office”) of the Uniform Limited Partnership Act (2001) is repealed.

(b)——Sections 114, 115, 116, and 117 of the Uniform Limited Partnership Act (2001) are repealed.

(c)——Sections 201, 202, 206, 208, and 210 of the Uniform Limited Partnership Act (2001) are amended to read:

~~§ 201. Formation of limited partnership; certificate of limited partnership.~~

(a)——In order for a limited partnership to be formed, a certificate of limited partnership must be delivered to the [Secretary of State] for filing. The certificate must state:

~~\*\*\*~~

(2)——the street and mailing address of the initial designated office and the name and street and mailing address of the initial agent for service of process the information required by [Section 5(a) of the Model Registered Agents Act];

~~\*\*\*~~

~~§ 202. Amendment or restatement of certificate.~~

~~\*\*\*~~

(c)——A general partner that knows that any information in a filed certificate of limited partnership was false when the certificate was filed or has become false due to changed circumstances shall promptly:

(1)——cause the certificate to be amended; or

(2)——if appropriate, deliver to the [Secretary of State] for filing a statement of change pursuant to Section 115 or a statement of correction pursuant to Section 207 or [Section 8 of the Model Registered Agents Act].

~~\*\*\*~~

~~§ 206. Delivery to and filing of records by [Secretary of State]; effective time and date.~~

~~\*\*\*~~

(c)——Except as otherwise provided in Sections 116 and Section 207, a record delivered to the [Secretary of State] for filing under this [Act] may specify an effective time and a delayed effective date. Except as otherwise provided in this [Act], a record filed by the [Secretary of State] is effective:

~~\*\*\*~~

~~§ 208. Liability for false information in filed record.~~

~~(a)—— If a record delivered to the [Secretary of State] for filing under this [Act] and filed by the [Secretary of State] contains false information, a person that suffers loss by reliance on the information may recover damages for the loss from:~~

~~\*\*\*~~

~~(2)—— a general partner that has notice that the information was false when the record was filed or has become false because of changed circumstances, if the general partner has notice for a reasonably sufficient time before the information is relied upon to enable the general partner to effect an amendment under Section 202, file a petition pursuant to Section 205, or deliver to the [Secretary of State] for filing a statement of change pursuant to [Section 115] [Section 8 of the Model Registered Agents Act] or a statement of correction pursuant to Section 207.~~

~~\*\*\*~~

~~§ 210. Annual report for [Secretary of State].~~

~~(a)—— A limited partnership or a foreign limited partnership authorized to transact business in this State shall deliver to the [Secretary of State] for filing an annual report that states:~~

~~(1)—— the name of the limited partnership or foreign limited partnership;~~

~~(2)—— the street and mailing address of its designated office and the name and street and mailing address of its agent for service of process in this State the information required by [Section 5(a) of the Model Registered Agents Act];~~

~~(3)—— in the case of a limited partnership, the street and mailing address of its principal office; and~~

~~(4)—— in the case of a foreign limited partnership, the State or other jurisdiction under whose law the foreign limited partnership is formed and any alternate name adopted under Section 905(a).~~

~~\*\*\*~~

~~(e)—— If a filed annual report contains an address of a designated office or the name or address of an agent for service of process information provided under subsection (a)(2) which differs from the information shown in the records of the [Secretary of State] immediately before the filing, the differing information in the annual report is considered a statement of change under Section 115 [Section 8 of the Model Registered Agents Act].~~

~~(d)—— Sections 304, 407, 807, 902, 906, 1104, 1105, 1108, and 1109 of the Uniform Limited~~

~~Partnership Act (2001) are amended to read:~~

~~§ 304. Right of limited partner and former limited partner to information.~~

~~(a)—— On 10 days' demand, made in a record received by the limited partnership, a limited partner may inspect and copy required information during regular business hours in the limited partnership's designated principal office. The limited partner need not have any particular purpose for seeking the information.~~

~~\*\*\*~~

~~(d)—— Subject to subsection (f), a person dissociated as a limited partner may inspect and copy required information during regular business hours in the limited partnership's designated principal office if:~~

~~\*\*\*~~

~~§ 407. Right of general partner and former general partner to information.~~

(a) ~~—A general partner, without having any particular purpose for seeking the information, may inspect and copy during regular business hours:~~

(1) ~~—in the limited partnership's designated principal office, required information;~~

~~and~~

~~\* \* \*~~

~~§ 807. Other claims against dissolved limited partnership.~~

~~\* \* \*~~

(b) ~~—The notice must:~~

(1) ~~—be published at least once in a newspaper of general circulation in the [county] in which the dissolved limited partnership's principal office is located or, if it has none in this State, in the county in which the limited partnership's designated office is or was last located~~  
~~\_\_\_\_\_ county;~~

~~\* \* \*~~

~~§ 902. Application for certificate of authority.~~

(a) ~~—A foreign limited partnership may apply for a certificate of authority to transact business in this State by delivering an application to the [Secretary of State] for filing. The application must state:~~

~~\* \* \*~~

(4) ~~—the name and street and mailing address of the foreign limited partnership's initial agent for service of process in this State the information required by [Section 5(a) of the Model Registered Agents Act];~~

~~\* \* \*~~

~~§ 906. Revocation of certificate of authority.~~

(a) ~~—A certificate of authority of a foreign limited partnership to transact business in this State may be revoked by the [Secretary of State] in the manner provided in subsections (b) and (c) if the foreign limited partnership does not:~~

~~\* \* \*~~

(3) ~~—appoint and maintain an agent for service of process as required by Section 114(b) [Section 5(a) of the Model Registered Agents Act]; or~~

(4) ~~—deliver for filing a statement of change under Section 115 [Section 8 of the Model Registered Agents Act] within 30 days after a change has occurred in the name or address of the agent.~~

(b) ~~—In order to revoke a certificate of authority, the [Secretary of State] must prepare, sign, and file a notice of revocation and send a copy to the foreign limited partnership's agent for service of process in this State, or if the foreign limited partnership does not appoint and maintain a proper agent in this State, to the foreign limited partnership's **[designated]** principal office. The notice must state:~~

~~\* \* \*~~

~~§ 1104. Filings required for conversion; effective date.~~

(a) ~~—After a plan of conversion is approved:~~

(1) ~~—a converting limited partnership shall deliver to the [Secretary of State] for filing articles of conversion, which must include:~~

~~\* \* \*~~

(F) ~~—if the converted organization is a foreign organization not authorized to transact business in this State, the street and mailing address of an office which the Secretary of State may use for the purposes of may be used for service of process under Section 1105(e); and~~

~~\* \* \*~~

~~§ 1105. Effect of conversion.~~

~~\*\*\*~~

~~(c) — A converted organization that is a foreign organization consents to the jurisdiction of the courts of this State to enforce any obligation owed by the converting limited partnership, if before the conversion the converting limited partnership was subject to suit in this State on the obligation. A converted organization that is a foreign organization and not authorized to transact business in this State appoints the Secretary of State as its agent for service of process for purposes of enforcing an obligation under this subsection. Service on the Secretary of State under this subsection is made in the same manner and with the same consequences as in Section 117(c) and (d) may be served with process at the address required in the articles of conversion under Section 1104(a)(1)(F).~~

~~§ 1108. Filings required for merger; effective date.~~

~~\*\*\*~~

~~(b) — The articles of merger must include:~~

~~\*\*\*~~

~~(7) — if the surviving organization is a foreign organization not authorized to transact business in this State, the street and mailing address of an office which the Secretary of State may use for the purposes of may be used for service of process under Section 1109(b); and~~

~~\*\*\*~~

~~§ 1109. Effect of merger~~

~~\*\*\*~~

~~(b) — A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this State to enforce any obligation owed by a constituent organization, if before the merger the constituent organization was subject to suit in this State on the obligation. A surviving organization that is a foreign organization and not authorized to transact business in this State appoints the Secretary of State as its agent for service of process for the purposes of enforcing an obligation under this subsection. Service on the Secretary of State under this subsection is made in the same manner and with the same consequences as in Section 117(c) and (d) may be served with process at the address required in the articles of merger under Section 1108(b)(7).~~

## ~~SECTION A5. UNIFORM LIMITED LIABILITY COMPANY ACT~~

~~(a) — Sections 108, 109, 110, and 111 of the Uniform Limited Liability Company Act are repealed.~~

~~(b) — Sections 203 and 211 of the Uniform Limited Liability Company Act are amended to read:~~

~~§ 203. Articles of organization.~~

~~(a) — Articles of organization of a limited liability company must set forth:~~

~~\*\*\*~~

~~(2) — the address of the initial designated office; (Repealed.)~~

~~(3) — the name and street address of the initial agent for service of process the information required by [Section 5(a) of the Model Registered Agents Act];~~

~~\*\*\*~~

~~§ 211. Annual report for [Secretary of State].~~

~~(a) — A limited liability company, and a foreign limited liability company authorized to transact business in this State, shall deliver to the [Secretary of State] for filing an annual report that sets forth:~~

- ~~(1) — the name of the company;~~
- ~~(2) — and the State or country the jurisdiction under whose law it is organized;~~
- ~~(2) (3) the address of its designated office and the name and address of its agent for service or process in this State the information required by [Section 5(a) of the Model Registered Agents Act];~~
- ~~(3) (4) the address of its principal office, wherever located; and~~
- ~~(4) (5) the names and business addresses of any managers.~~

~~\*\*\*~~

~~(c) — Sections 808, 906, 1002, and 1006 of the Uniform Limited Liability Company Act are amended to read:~~

~~§ 808. Other claims against dissolved limited liability company.~~

~~\*\*\*~~

~~(b) — The notice must:~~

- ~~(1) — be published at least once in a newspaper of general circulation in the [county] in which the dissolved limited liability company's principal office is or was located or, if none in this State, in which its designated office is or was last located in \_\_\_\_\_ county;~~

~~\*\*\*~~

~~§ 906. Effect of merger.~~

~~\*\*\*~~

~~(b) — The Secretary of State is an agent for service of process in an action or proceeding against the surviving foreign entity to enforce an obligation of any party to a merger if If the surviving foreign entity fails to appoint or maintain an agent designated for service or process in this State or the agent for service of process cannot with reasonable diligence be found at the designated office. Upon receipt of process, the Secretary of State shall send a copy of the process by registered or certified mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger; service of process may be made on the foreign entity as provided in [Section 13(b) of the Model Registered Agents Act]. Service is effected under this subsection at the earliest of:~~

~~\*\*\*~~

~~§ 1002. Application for certificate of authority.~~

~~(a) — A foreign limited liability company may apply for a certificate of authority to transact business in this State by delivering an application to the [Secretary of State] for filing. The application must set forth:~~

~~\*\*\*~~

- ~~(4) — the address of its initial designated office in this State (Repealed.);~~
- ~~(5) — the name and street address of its initial agent for service of process in this State the information required by [Section 5(a) of the Model Registered Agents Act];~~

~~\*\*\*~~

~~§ 1006. Revocation of certificate of authority.~~

~~(a) — A certificate of authority of a foreign limited liability company to transact business in this State may be revoked by the [Secretary of State] in the manner provided in subsection (b) if:~~

- ~~(1) — the company fails to:~~

~~\*\*\*~~



- (iii) ~~—appoint and maintain an agent for service of process as required by this article [Section 5(a) of the Model Registered Agents Act]; or~~
- (iv) ~~—file a statement of change in the name or business address of the agent as required by this article [Section 8 of the Model Registered Agents Act]; or~~

~~\*\*\*~~

~~(b) The [Secretary of State] may not revoke a certificate of authority of a foreign limited liability company unless the [Secretary of State] sends the company notice of the revocation, at least 60 days before its effective date, by a record addressed to its agent for service of process in this State, or if the company fails to appoint and maintain a proper agent in this State, addressed to the office required to be maintained by Section 108 served in accordance with [Section 13 of the Model Registered Agents Act]. The notice must specify the cause for the revocation of the certificate of authority. The authority of the company to transact business in this State ceases on the effective date of the revocation unless the foreign limited liability company cures the failure before that date.~~

## **SECTION A6. ~~PROTOTYPE LIMITED LIABILITY COMPANY ACT~~**

~~(a) Section 105 of the Prototype Limited Liability Company Act is repealed.~~

~~(b) Sections 202, 908, and 1002 of the Prototype Limited Liability Company Act are~~

~~amended to read:~~

~~§ 202. Articles of organization.~~

~~The articles of organization shall set forth:~~

~~\*\*\*~~

~~(B) The address of the registered office and the name and business, residence, or mailing address of the registered agent required to be maintain by § 105. The information required by [Section 5(a) of the Model Registered Agents Act].~~

~~\*\*\*~~

~~§ 908. Unknown claims against dissolved limited liability company.~~

~~\*\*\*~~

~~(B) The notice must:~~

~~(1) Be published once in a newspaper of general circulation in the county where the limited liability company's principal office (or, if none in this state, its registered office) is located is located or, if none in this state, in \_\_\_\_\_ county;~~

~~\*\*\*~~

~~§ 1002. Registration.~~

~~Before transacting business in this state, a foreign limited liability company shall register with the Secretary of State by submitting to the Secretary of State an original signed copy of an application for registration as a foreign limited liability company, together with a duplicate copy that may be either a signed, photocopied, or conformed copy, executed by a person with authority to do so under the laws of the state or other jurisdiction of its formation. The application shall set forth:~~

~~\*\*\*~~

~~(C) The name and address of a registered agent for service of process required to be maintained by § 105 the information required by [Section 5(a) of the Model Registered Agents Act];~~

~~(D) — A statement that the Secretary of State is appointed the agent of the foreign limited liability company for service of process if the foreign limited liability company fails to appoint or maintain a registered agent in satisfaction of the requirements of § 105 (Repealed.);~~  
~~\*\*\*~~

## **~~SECTION A7. UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT~~**

~~Section 10 of the Uniform Unincorporated Nonprofit Association Act is amended to read:~~

~~§ 10. Appointment of agent to receive service of process.~~

~~\*\*\*~~

~~(b) — A statement appointing an agent must set forth:~~

~~\*\*\*~~

~~(4) — the name of the person in this State authorized to receive service of process and the person's address, including the street address, in this State the information required by [Section 5(a) of the Model Registered Agents Act].~~

~~(c) — A statement appointing an agent, and an amendment or cancellation thereof, must be signed and acknowledged sworn to by a person authorized to manage the affairs of the nonprofit association. The statement must also be signed and acknowledged by the person appointed agent, who thereby accepts the appointment. The appointed agent may resign by filing a resignation in the office of the Secretary of State and giving notice to the nonprofit association.~~

~~(d) — A filing officer may collect a fee for filing a statement appointing an agent to receive service of process, an amendment, a cancellation, or a resignation in the amount charged for filing similar documents. (Repealed.)~~

~~(e) — An amendment to or cancellation of a statement appointing an agent to receive service of process must meet the requirements for execution of an original statement. (Repealed.)~~

## **~~SECTION A8. MODEL ENTITY TRANSACTIONS ACT~~**

~~— Sections 206, 406, and 506 of the Model Entity Transactions Act are amended to read:~~

~~— Section 206. Effect of merger.~~

~~\*\*\*~~

~~(e) When a merger becomes effective, a foreign entity that is the surviving entity: (1) may be served with process in this state for the collection and enforcement of any liabilities of a domestic merging entity; and (2) appoints the [Secretary of State] as its agent for service of process for collecting or enforcing those liabilities in the manner provided in [Section 13 of the Model Registered Agents Act].~~

~~\*\*\*~~

~~— Section 406. Effect of conversion.~~

~~\*\*\*~~

~~(e) When a conversion becomes effective, a foreign entity that is the converted entity: (1) may be served with process in this state for the collection and enforcement of any of its liabilities; and (2) appoints the [Secretary of State] as its agent for service of process for collecting or enforcing those liabilities in the manner provided in [Section 13 of the Model Registered Agents Act].~~

~~\*\*\*~~

~~Section 506. Effect of domestication.~~

~~\*\*\*~~

~~(e) When a domestication becomes effective, a foreign entity that is the domesticated entity:~~  
~~(1) may be served with process in this state for the collection and enforcement of any of its liabilities;~~  
~~and (2) appoints the [Secretary of State] as its agent for service of process for collecting or enforcing~~  
~~those liabilities in the manner provided in [Section 13 of the Model Registered Agents Act].~~

~~\*\*\*~~

**Mississippi Business Corporations Act**  
**Conforming Amendments**  
**[REVISED JUNE 17, 2009]**

1. § 79-4-1.20. Filing requirements.
2. § 79-4-1.22. Filing service and copying fees.
3. § 79-4-1.25. Duty of Secretary of State.
4. § 79-4-1.26. Appeal from Secretary of State's refusal to file document.
5. § 79-4-1.41. Notice.
6. § 79-4-2.02. Articles of incorporation.
7. Article 5 of the Mississippi Business Corporation Act is repealed.
8. § 79-4-7.03. Court-ordered meeting.
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10. § 79-4-7.20. Shareholders' list for meeting.
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15. § 79-4-13.30. Court action.
16. § 79-4-14.07. Unknown claims against dissolved corporation.
17. § 79-4-14.08. Dissolved corporations - chancery court proceedings for security payment of claims; notice; guardian ad litem; satisfaction of claim.
18. § 79-4-14.20. Grounds for administrative dissolution.
19. § 79-4-14.21. Procedure for and effect of administrative dissolution.
20. § 79-4-14.22. Reinstatement following administrative dissolution.
21. § 79-4-14.23. Appeal from denial of reinstatement.

- 22. § 79-4-15.03. Application for certificate of authority.
- 23. § 79-4-15.04. Amended certificate of authority.
- 24. §§ 15.07, 15.08 and 15.09 of the Mississippi Business Corporation Act are repealed.
- 25. § 79-4-15.10. Service of foreign corporation.
- 26. § 79-4-15.20. Withdrawal of foreign corporation.
- 27. § 79-4-15.30. Grounds for revocation.
- 28. § 79-4-15.31. Procedure for and effect of revocation.
- 29. § 79-4-15.32. Appeal from revocation.
- 30. § 79-4-15.33. Appeal from denial of reinstatement.
- 31. § 79-4-16.04. Court-ordered inspection.
- 32. § 79-4-16.05. Inspection of records by director.
- 33. § 79-4-16.22. Annual report to secretary of state.

## **§ 79-4-1.20. Filing requirements**

- (a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the Secretary of State.
- (b) Section 79-4-1.01 et seq. must require or permit filing the document in the Office of the Secretary of State.
- (c) The document must contain the information required by Section 79-4-1.01 et seq. It may contain other information as well.
- (d) The document must be typewritten or printed, or, if electronically transmitted, it must be in a format that can be retrieved or reproduced by the Secretary of State in typewritten or printed form.
- (e) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.
- (f) The document must be executed:
  - (1) By the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;
  - (2) If directors have not been selected or the corporation has not been formed, by an incorporator; or
  - (3) If the corporation is in the hands of a receiver, trustee or other court- appointed fiduciary, by that fiduciary.
- (g) The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. The document may but need not contain a corporate seal, an attestation, acknowledgment or verification. A document required or permitted to be filed under this chapter which contains a copy of a signature, however made, is acceptable for filing.
- (h) If the Secretary of State has prescribed a mandatory form for the document under Section 79-4-1.21, the document must be in or on the prescribed form.
- (i) The document must be delivered to the Office of the Secretary of State for filing. Delivery may be made by electronic transmission if, to the extent and in the manner permitted by the Secretary of State. If it is filed in typewritten or printed form and not transmitted electronically, the Secretary of State may require one (1) exact or conformed copy to be delivered with the document. [except as provided in Sections 79-4-5.03 and 79-4-15.09.](#)
- (j) When the document is delivered to the Office of the Secretary of State for filing, the correct filing fee, and any franchise tax, license fee, or penalty required to be paid therewith by this section or any other law must be paid or provision for payment made in a manner permitted by the Secretary of State.
- (k) Whenever a provision of this chapter permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:

- (1) The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document.
- (2) The facts may include, but are not limited to:
  - (i) Any of the following that is available in a nationally recognized news or information medium either in print or electronically: statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data;
  - (ii) A determination or action by any person or body, including the corporation or any other party to a plan or filed document; or
  - (iii) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.
- (3) As used in this subsection:
  - (i) "Filed document" means a document filed with the Secretary of State under any provision of this chapter except Chapter 15 or Section 16.21; and
  - (ii) "Plan" means a plan of domestication, nonprofit conversion, entity conversion, merger or share exchange.
- (4) The following provisions of a plan or filed document may not be made dependent on facts outside the plan or filed document:
  - (i) The name and address of any person required in a filed document.
  - (ii) ~~The registered office of any entity required in a filed document~~ Reserved.
  - (iii) The registered agent of any entity required in a filed document.
  - (iv) The number of authorized shares and designation of each class or series of shares.
  - (v) The effective date of a filed document.
  - (vi) Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.
- (5) If a provision of a filed document is made dependent on a fact ascertainable outside of the filed document, and that fact is not ascertainable by reference to a source described in subsection (k)(2)(i) or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the Secretary of State articles of amendment setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes. Articles of amendment under this subsection (k)(5) are deemed to be authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

#### **§ 79-4-1.22. Filing service and copying fees.**

- (a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him for filing:

Document	Fee
(1) Articles of incorporation.....	\$50.00
(2) Application for use of indistinguishable name.....	25.00

(3) Application for reserved name.....	25.00	
(4) Notice of transfer of reserved name .....	25.00	
(5) Application for registered name.....	50.00	
(6) Application for renewal of registered name .....	50.00	
<del>(7) Corporation's statement of change of registered agent or registered office or both .....</del>	<del>10.00</del>	<u>(7) Reserved.</u>
<del>(8) Agent's statement of change of registered office for each affected corporation .....</del>	<del>10.00</del>	<u>(8) Reserved.</u>
<del>not to exceed a total of .....</del>	<del>1,000.00</del>	
<del>(9) Agent's statement of resignation .....</del>	<del>No fee</del>	<u>(9) Reserved.</u>
(10) Amendment of articles of incorporation .....	0.00	
(11) Restatement of articles of incorporation .....	0.00	
with amendment of articles .....	0.00	
(12) Articles of merger or share exchange .....	0.00	
(13) Articles of dissolution .....	5.00	
(14) Articles of revocation of dissolution .....	25.00	
(15) Certificate of administrative dissolution .....	No fee	
(16) Application for reinstatement following administrative dissolution .....	50.00	
(17) Certificate of reinstatement.....	No fee	
(18) Certificate of judicial dissolution .....	No fee	
(19) Application for certificate of authority.....	500.00	
(20) Application for amended certificate of authority.....	50.00	
(21) Application for certificate of withdrawal .....	25.00	
(22) Certificate of revocation of authority to transact business .....	No fee	
(23) Application for reinstatement following administrative		



revocation .....	100.00
(24) Certificate of reinstatement .....	No fee
(25) Annual report.....	25.00
(26) Articles of correction .....	50.00
(27) Application for certificate of existence or authorization .....	25.00
(28) Any other document required or permitted to be filed by	
Section 79-4-1.01 et seq. ....	5.00

(b) The Secretary of State shall collect a fee of Twenty-five Dollars (\$25.00) each time process is served on him under Section 79-4-1.01 et seq. The party to a proceeding causing service of process is entitled to recover this fee as costs if he prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

(1) One Dollar (\$1.00) a page for copying; and

(2) Ten Dollars (\$10.00) for the certificate.

(d) The Secretary of State may collect a filing fee greater than the fee set out herein, not to exceed the actual costs of processing the filing, if the form for filing as prescribed by the Secretary of State has not been used.

(e) The Secretary of State may promulgate rules to:

(1) Reduce the filing fees prescribed in this section or provide for discounts of fees to encourage online filing of documents or for other reasons as determined by the Secretary of State; and

(2) Provide for documents to be filed and accepted on an expedited basis upon the request of the applicant. The Secretary of State may promulgate rules to provide for an additional reasonable filing fee not to exceed Twenty-five Dollars (\$25.00) to be paid by the applicant and collected by the Secretary of State for the expedited filing services.

#### **§ 79-4-1.25. Duty of Secretary of State.**

(a) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of Section 79-4-1.20, the Secretary of State shall file it.

(b) The Secretary of State files a document by recording it as filed on the date and time of receipt. After filing a document, ~~except as provided in Sections 79-4-5.03 and Section 79-4-15.09,~~ the Secretary of State

shall deliver to the domestic or foreign corporation or its representative a copy of the document with an acknowledgment of the date and time of filing.

(c) If the Secretary of State refuses to file a document, he shall return it to the domestic or foreign corporation or its representative within five (5) days after the document was delivered, together with a brief, written explanation of the reason for his refusal.

(d) The Secretary of State's duty to file documents under this section is ministerial. His filing or refusing to file a document does not:

(1) Affect the validity or invalidity of the document in whole or part;

(2) Relate to the correctness or incorrectness of information contained in the document;

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

#### **§ 79-4-1.26. Appeal from Secretary of State's refusal to file document.**

(a) If the Secretary of State refuses to file a document delivered to his office for filing, the domestic or foreign corporation may appeal the refusal to the chancery court of the county where the corporation's principal office is or will be located or the Hinds County Chancery Court if the corporation does not have a principal office in this state. ~~(or, if none in this state, its registered office) is or will be located.~~ The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Secretary of State's explanation of his refusal to file.

(b) The court may summarily order the Secretary of State to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

#### **§ 79-4-1.41. Notice.**

(a) Notice under Section 79-4-1.01 et seq. shall be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission is written notice.

(b) Notice may be communicated in person; by mail or other method of delivery; or by telephone, voice mail or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television or other form of public broadcast communication.

(c) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective (i) upon deposit in the United States mail, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders, or (ii) when electronically transmitted to the shareholder in a manner authorized by the shareholder.

(d) Written notice to a domestic or foreign corporation (authorized to transact business in this state) may be addressed to its registered agent ~~at its registered office~~ or to the secretary of the corporation at its

principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(e) Except as provided in subsection (c), written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) When received;

(2) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed;

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(f) Oral notice is effective when communicated if communicated in a comprehensible manner.

(g) If Section 79-4-1.01 et seq. prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation, or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of Section 79-4-1.01 et seq., those requirements govern.

#### **§ 79-4-2.02. Articles of incorporation.**

(a) The articles of incorporation must set forth:

(1) A corporate name for the corporation that satisfies the requirements of Section 79-4-4.01;

(2) The number of shares the corporation is authorized to issue and any information concerning the authorized shares as required by Section 79-4-6.01;

(3) ~~The street address of the corporation's initial registered office and the name of its initial registered agent at that office~~ The information required by [Section 5(a) of the Mississippi Registered Agents Act]; and

(4) The name and address of each incorporator.

(b) The articles of incorporation may set forth:

(1) The names and addresses of the individuals who are to serve as the initial directors;

(2) Provisions not inconsistent with law regarding:

(i) The purpose or purposes for which the corporation is organized;

(ii) Managing the business and regulating the affairs of the corporation;

(iii) Defining, limiting and regulating the powers of the corporation, its board of directors and shareholders; and

(iv) A par value for authorized shares or classes of shares;

(3) Any provision that under Section 79-4-1.01 et seq. is required or permitted to be set forth in the bylaws;

(4) A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for:

(i) The amount of a financial benefit received by a director to which he is not entitled;

(ii) An intentional infliction of harm on the corporation or the shareholders;

(iii) A violation of Section 79-4-8.33; or

(iv) An intentional violation of criminal law; and

(5) A provision permitting or making obligatory indemnification of a director for liability as defined in Section 79-4-8.50(5) to any person for any action taken, or any failure to take any action, as a director, except liability for:

(i) Receipt of a financial benefit to which he is not entitled;

(ii) An intentional infliction of harm on the corporation or its shareholders;

(iii) A violation of Section 79-4-8.33; or

(iv) An intentional violation of criminal law.

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in Section 79-4-1.01 et seq.

(d) For the purposes of this section, a "director" shall include any person vested with the discretion or powers of a director under Section 79-4-7.32.

(e) Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with Section 79-4-1.20(k).

**Chapter 5 of the Mississippi Business Corporation Act is repealed.**

**~~§ 79-4-5.01. Registered office and registered agent.~~**

~~Each corporation must continuously maintain in this state:~~

~~(1) A registered office that may be the same as any of its places of business; and~~

~~(2) A registered agent, who may be:~~

~~-(i) An individual who resides in this state and whose business office is identical with the registered office;~~

~~-(ii) A domestic corporation or not for profit domestic corporation whose business office is identical with the registered office; or~~

~~-(iii) A foreign corporation or not for profit foreign corporation authorized to transact business in this state whose business office is identical with the registered office.~~

#### ~~§ 79-4-5.02. Change of registered office or registered agent.~~

~~(a) A corporation may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:~~

~~(1) The name of the corporation;~~

~~—— (2) The street address of its current registered office;~~

~~(3) If the current registered office is to be changed, the street address of the new registered office;~~

~~(4) The name of its current registered agent;~~

~~-(5) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and~~

~~(6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.~~

~~(b) If a registered agent changes the street address of his business office, he may change the street address of the registered office of any corporation for which he is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.~~

#### ~~§ 79-4-5.03. Resignation of registered agent.~~

~~(a) A registered agent may resign his agency appointment by signing and delivering to the Secretary of State for filing the signed original and two (2) exact or conformed copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.~~

~~(b) After filing the statement the Secretary of State shall mail one (1) copy to the registered office (if not discontinued) and the other copy to the corporation at its principal office.~~

~~(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the 31st day after the date on which the statement was filed.~~

#### ~~§ 79-4-5.04. Service on corporation.~~

~~(a) A corporation's registered agent is the corporation's agent for service of process, notice or demand required or permitted by law to be served on the corporation.~~

~~(b) If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service is perfected under this subsection at the earliest of:~~

~~—— (1) The date the corporation receives the mail;~~

~~—— (2) The date shown on the return receipt, if signed on behalf of the corporation; or~~

~~(3) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed.~~

~~(c) This section does not prescribe the only means, or necessarily the required means, of serving a corporation.~~

#### **§ 79-4-7.03. Court-ordered meeting.**

(a) The chancery court of the county where a corporation's principal office is located or the Hinds County Chancery Court if the corporation does not have a principal office in this state ~~(or, if none in this state, its registered office) is located~~ may summarily order a meeting to be held:

(1) On application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held or action by written consent in lieu thereof did not become effective within the earlier of six (6) months after the end of the corporation's fiscal year or fifteen (15) months after its last annual meeting or written consent in lieu thereof; or

(2) On application of a shareholder who signed a demand for a special meeting valid under Section 79-4-7.02 if:

(i) Notice of the special meeting was not given within thirty (30) days after the date the demand was delivered to the corporation's secretary; or

(ii) The special meeting was not held in accordance with the notice.

(b) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting (or direct that the votes represented at the meeting constitute a

quorum for action on those matters), and enter other orders necessary to accomplish the purpose or purposes of the meeting.

#### **79-4-7.04. Action without meeting.**

(a) Action required or permitted by Section 79-4-1.01 et seq. to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents describing the action taken, signed by all the shareholders entitled to vote on the action and delivered to the corporation for inclusion in the minutes or filing with the corporate records. A unanimous consent signed under this subsection is the act of the shareholders when consents signed by all shareholders have been delivered to the corporation.

(b) The articles of incorporation may provide that any action required or permitted by Section 79-4-1.01 et seq. to be taken at a shareholder's meeting may be taken without a meeting and without prior notice, if consents in writing setting forth the action so taken are signed by the holders of outstanding shares having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. The written consent shall bear the date of signature of the shareholder who signs the consent and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(c) If not otherwise fixed under Section 79-4-7.03 or 79-4-7.07, and if prior board action is not required respecting the action to be taken without a meeting, the record date for determining the shareholders entitled to take action without a meeting shall be the first date on which a signed written consent is delivered to the corporation. If not otherwise fixed under Section 79-4-7.03 or 79-4-7.07, and if prior board action is required respecting the action to be taken without a meeting, the record date shall be the close of business on the day the resolution of the board taking such prior action is adopted. No written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest date on which a consent delivered to the corporation as required by this section was signed, written consents signed by the holders of shares having sufficient votes to take the action have been delivered to the corporation. A written consent may be revoked by a writing to that effect delivered to the corporation before unrevoked written consents sufficient in number to take the corporation action are delivered to the corporation.

(d) A consent signed pursuant to the provisions of this section has the effect of a vote taken at a meeting and may be described as such in any document. Unless the articles of incorporation, bylaws, or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by less than unanimous written consent shall be effective when written consents signed by the holders of shares having sufficient votes to take the action are delivered to the corporation.

(e) If Section 79-4-1.01 et seq. requires that notice of a proposed action be given to nonvoting shareholders and the action is to be taken by written consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the action not more than ten (10) days after (i) written consents sufficient to take the action have been delivered to the corporation, or (ii) such later date that tabulation of consents is completed pursuant to an authorization under subsection (d). The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under Section 79-4-1.01 et seq., would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

(f) If action is taken by less than unanimous written consent of the voting shareholders, the corporation must give its nonconsenting voting shareholders written notice of the action not more than ten (10) days after (i) written consents sufficient to take the action have been delivered to the corporation, or (ii) such later date that tabulation of consents is completed pursuant to an authorization under subsection (d). The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under Section 79-4-1.01 et seq., would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

(g) The notice requirements in subsections (e) and (f) shall not delay the effectiveness of actions taken by written consent, and a failure to comply with such notice requirements shall not invalidate actions taken by written consent, provided that this subsection shall not be deemed to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give such notice within the required time period.

(h) An electronic transmission may be used to consent to an action, if the electronic transmission contains or is accompanied by information from which the corporation can determine the date on which the electronic transmission was signed and that the electronic transmission was authorized by the shareholder, the shareholder's agent, or the shareholder's attorney-in-fact.

(i) Delivery of a written consent to the corporation under this section is delivery to the corporation's registered agent ~~at its registered office~~ or to the secretary of the corporation at its principal office.

#### **§ 79-4-7.20. Shareholders' list for meeting.**

(a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list must be arranged by voting group (and within each voting group by class or series of shares) and show the address of and number of shares held by each shareholder.

(b) The shareholders' list must be available for inspection by any shareholder beginning two (2) business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, his agent or attorney is entitled on written demand to inspect and, subject to the requirements of Section 79-4-16.02(c), to copy the list during regular business hours and at his expense, during the period it is available for inspection.

(c) The corporation shall make the shareholders' list available at the meeting, and any shareholder, his agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a shareholder, his agent or attorney to inspect the shareholders' list before or at the meeting (or copy the list as permitted by subsection (b)), the chancery court of the county where a corporation's principal office is located or the Hinds County Chancery Court if the corporation does not have a principal office in this state ~~(or, if none in this state, its registered office) is located~~, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.



- (e) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

**§ 79-4-7.48. Shareholder action to appoint custodian or receiver.**

(a) The chancery court of the county where a corporation's principal office is located or the Hinds County Chancery Court if the corporation does not have a principal office in this state ~~(or, if none in this state, its registered office) is located~~ may appoint one or more persons to be custodians, or, if the corporation is insolvent, to be receivers, of and for a corporation in a proceeding by a shareholder where it is established that:

- (1) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered; or
- (2) The directors or those in control of the corporation are acting fraudulently and irreparable injury to the corporation is threatened or being suffered.

(b) The court:

- (1) May issue injunctions, appoint a temporary custodian or temporary receiver with all the powers and duties the court directs, take other action to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing is held;
- (2) Shall hold a full hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a custodian or receiver; and
- (3) Has jurisdiction over the corporation and all of its property, wherever located.

(c) The court may appoint an individual or domestic or foreign corporation (authorized to transact business in this state) as a custodian or receiver and may require the custodian or receiver to post bond, with or without sureties, in an amount the court directs.

(d) The court shall describe the powers and duties of the custodian or receiver in its appointing order, which may be amended from time to time. Among other powers,

- (1) A custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the business and affairs of the corporation; and
- (2) A receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and (ii) may sue and defend in the receiver's own name as receiver in all courts of this state.

(e) The court during a custodianship may redesignate the custodian a receiver, and during a receivership may redesignate the receiver a custodian, if doing so is in the best interests of the corporation.

(f) The court from time to time during the custodianship or receivership may order compensation paid and expense disbursements or reimbursements made to the custodian or receiver from the assets of the corporation or proceeds from the sale of its assets.

**§ 79-4-8.09. Removal of directors by judicial proceeding.**

(a) The chancery court of the county where a corporation's principal office is located or the Hinds County Chancery Court if the corporation does not have a principal office in this state ~~(or, if none in this state, its registered office) is located~~ may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders holding at least ten percent (10%) of the outstanding shares of any class if the court finds that (1) the director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation and (2) removal is in the best interest of the corporation.

(b) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(c) If shareholders commence a proceeding under subsection (a), they shall make the corporation a party defendant.

#### **§ 79-4-10.05. Amendment by board of directors.**

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of incorporation without shareholder approval:

(1) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) To delete the names and addresses of the initial directors;

(3) ~~To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Secretary of State;~~ To change the information required by [Section 5(a) of the Mississippi Registered Agents Act];

(4) If the corporation has only one (1) class of shares outstanding:

(a) To change each issued and unissued authorized share of the class into a greater number of whole shares of that class; or

(b) To increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend;

(5) To change the corporate name by substituting the word "corporation," "incorporated," "company," "limited" or the abbreviation "corp.," "inc.," "co." or "Ltd." for a similar word or abbreviation in the name, or by adding, deleting or changing a geographical attribution for the name;

(6) To reflect a reduction in authorized shares, as a result of the operation of Section 79-4-6.31(b), when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares;

(7) To delete a class of shares from the articles of incorporation, as a result of the operation of Section 79-4-6.31(b), when there are no remaining shares of the class because the corporation has acquired all shares of the class and the articles of incorporation prohibit the reissue of the acquired shares; or

(8) To make any change expressly permitted by Section 79-4-6.02(a) or (b) to be made without shareholder approval.

**§ 79-4-11.07. Effect of merger or share exchange.**

(a) When a merger becomes effective:

(1) The corporation or other entity that is designated in the plan of merger as the survivor continues or comes into existence, as the case may be;

(2) The separate existence of every corporation or other entity that is merged into the survivor ceases;

(3) All property owned by, and every contract right possessed by, each corporation or other entity that merges into the survivor is vested in the survivor without reversion or impairment;

(4) All liabilities of each corporation or other entity that is merged into the survivor are vested in the survivor subject to the limitations as provided in Sections 79-33-1 through 79-33-9.

(5) The name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

(6) The articles of incorporation or organizational documents of the survivor are amended to the extent provided in the plan of merger;

(7) The articles of incorporation or organizational documents of a survivor that is created by the merger become effective; and

(8) The shares of each corporation that is a party to the merger, and the interests in an other entity that is a party to a merger, that are to be converted under the plan of merger into shares, interests, obligations, rights to acquire securities, other securities, cash, other property, or any combination of the foregoing, are converted and the former holders of such shares or interests are entitled only to the rights provided to them in the plan of merger or to any rights they may have under Title 79, Chapter 4, Article 13.

(b) When a share exchange becomes effective, the shares of each domestic corporation that are to be exchanged for shares or other securities, interests, obligations, rights to acquire shares or securities, other securities, cash, other property, or any combination of the foregoing, are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under Title 79, Chapter 4, Article 13.

(c) Any shareholder of a domestic corporation that is a party to a merger or share exchange who, prior to the merger or share exchange, was liable for the liabilities or obligations of such corporation, shall not be released from such liabilities or obligations by reason of the merger or share exchange.

(d) Upon a merger becoming effective, a foreign corporation, or a foreign other entity, that is the survivor of the merger is deemed to:

(1) ~~Appoint the Secretary of State as its agent for~~ Agree that service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights may be made in the manner provided in [Section 13 of the Mississippi Registered Agents Act]; and

(2) Agree that it will promptly pay the amount, if any, to which such shareholders are entitled under Title 79, Chapter 4, Article 13.

#### **§ 79-4-13.30. Court action.**

(a) If a shareholder makes demand for payment under Section 79-4-13.26 which remains unsettled, the corporation shall commence a proceeding within sixty (60) days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay in cash to each shareholder the amount the shareholder demanded pursuant to Section 79-4-13.26 plus interest.

(b) The corporation shall commence the proceeding in the appropriate court of the county where the corporation's principal office is located or the Hinds County Chancery Court if the corporation does not have a principal office in this state. ~~(or, if none, its registered office) in this state is located.~~ If the corporation is a foreign corporation ~~without a registered office in this state~~, it shall commence the proceeding in the county in this state where the principal office ~~or registered office~~ of the domestic corporation merged with the foreign corporation was located or, if the domestic corporation did not have its principal office in this state at the time of the transaction in Hinds County Chancery Court.

(c) The corporation shall make all shareholders (whether or not residents of this state) whose demands remain unsettled parties to the proceeding as in an action against their shares, and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (b) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them, or in any amendment to it. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

(e) Each shareholder made a party to the proceeding is entitled to judgment (i) for the amount, if any, by which the court finds the fair value of the shareholder's shares, plus interest, exceeds the amount paid by the corporation to the shareholder for such shares or (ii) for the fair value, plus interest, of the shareholder's shares for which the corporation elected to withhold payment under Section 79-4-13.25.

#### **§ 79-4-14.07. Unknown claims against dissolved corporation.**

(a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.

(b) The notice must:

(1) Be published one (1) time in a newspaper of general circulation in the county where the dissolved corporation's principal office is or was located or in Hinds County if the corporation does not have a principal office in this state; ~~(or, if none in this state, its registered office) is or was last located;~~

(2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) State that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within three (3) years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within the lesser of three (3) years after the publication date of the newspaper notice, or any other applicable limitations period established by applicable law:

(1) A claimant who was not given written notice under Section 79-4-14.06;

(2) A claimant whose claim was timely sent to the dissolved corporation but not acted on;

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim that is not barred by Section 79-4-14.06(c) or Section 79-4-14.07(c) may be enforced:

(1) Against the dissolved corporation, to the extent of its undistributed assets; or

(2) Except as provided in Section 79-4-14.08(d), if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

**§ 79-4-14.08. Dissolved corporations - chancery court proceedings for security payment of claims; notice; guardian ad litem; satisfaction of claim.**

(a) A dissolved corporation that has published a notice under Section 79-4-14.07 may file an application with the chancery court of the county where the dissolved corporation's principal office is located or the Hinds County Chancery Court if the corporation does not have a principal office in this state ~~(or, if none in this state, its registered office) is located~~ for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under Section 79-4-14.07(c).

(b) Within ten (10) days after the filing of the application, notice of the proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on

the records of the dissolved corporation.

(c) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.

(d) Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection (a) of this section shall satisfy the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a shareholder who received assets in liquidation.

#### **§ 79-4-14.20. Grounds for administrative dissolution.**

The Secretary of State may commence a proceeding under Section 79-4-14.21 to administratively dissolve a corporation if:

- (1) The corporation does not pay within sixty (60) days after they are due any franchise taxes or penalties imposed by Sections 79-4-1.01 et seq. or other law;
- (2) The corporation does not deliver its annual report to the Secretary of State within sixty (60) days after it is due;
- (3) The corporation is without registered agent ~~or registered office~~ in this state for sixty (60) days or more;
- (4) The corporation does not notify the Secretary of State within sixty (60) days that its registered agent ~~or registered office~~ has been changed, or that its registered agent has resigned; ~~or that its registered office has been discontinued~~; or
- (5) The corporation's period of duration stated in its articles of incorporation expires.

#### **§ 79-4-14.21. Procedure for and effect of administrative dissolution.**

(a) If the Secretary of State determines that one or more grounds exist under Section 79-4-14.20 for dissolving a corporation, he shall serve the corporation with written notice of his determination ~~under Section 79-4-5.04~~, except that such determination may be served by first class mail.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after service of the notice is perfected ~~under Section 79-4-5.04~~, the Secretary of State shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation ~~under Section 79-4-5.04~~, except that such certificate may be served by first class mail.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under Section 79-4-14.05 and notify claimants under Sections 79-4-14.06 and 79-4-14.07.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

**§ 79-4-14.22. Reinstatement following administrative dissolution.**

(a) A corporation administratively dissolved under Section 79-4-14.21 may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The applicant must:

- (1) Recite the name of the corporation and the effective date of its administrative dissolution;
- (2) State that the ground or grounds for dissolution either did not exist or have been eliminated;
- (3) State that the corporation's name satisfies the requirements of Section 79-4-4.01; and
- (4) Contain a certificate from the Mississippi State Tax Commission reciting that all taxes owed by the corporation have been paid.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) and that the information is correct, he shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites his determination and the effective date of reinstatement, file the original of the certificate and serve a copy on the corporation ~~under Section 79-4-5.04~~.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

**§ 79-4-14.23. Appeal from denial of reinstatement.**

(a) If the Secretary of State denies a corporation's application for reinstatement following administrative dissolution, he shall serve the corporation ~~under Section 79-4-5.04~~ with a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the Chancery Court of the First Judicial District of Hinds County, Mississippi, or the chancery court of the county where [the corporation's principal office is located or where](#) the corporation is domiciled within thirty (30) days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement and the Secretary of State's notice of denial.

(c) The court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

**§ 79-4-14.31. Procedure for judicial dissolution.**

(a) Venue for a proceeding brought by any party named in Section 79-4-14.30 lies in the county where a corporation's principal office is or was located or the Hinds County Chancery Court if the corporation does not have a principal office in this state. ~~(or, if none in this state, its registered office) is or was last located.~~

(b) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(d) Within ten (10) days of the commencement of a proceeding under Section 79-4-14.30(2) to dissolve a corporation that is not a public corporation, the corporation shall send to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under Section 79-4-14.34 and accompanied by a copy of Section 79-4-14.34.

#### **§ 79-4-15.03. Application for certificate of authority.**

(a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State for filing. The application must set forth:

(1) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of Section 79-4-15.06;

(2) The name of the state or country under whose law it is incorporated;

(3) Its date of incorporation and period of duration;

(4) The street address of its principal office;

(5) ~~The address of its registered office in this state and the name of its registered agent at that office~~ The information required by [Section 5(a) of the Mississippi Registered Agents Act]; and

(6) The names and usual business addresses of its current directors and officers.

(b) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose law it is incorporated.

#### **§ 79-4-15.04. Amended certificate of authority.**

(a) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the Secretary of State if it changes:

(1) Its corporate name;



(2) The period of its duration;~~or~~

(3) Any of the information required by [Section 5(a) of the Mississippi Registered Agents Act]; or

~~(3)~~(4) The state or country of its incorporation.

(b) The requirements of Section 79-4-15.03 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

**Sections 15.07, 15.08 and 15.09 of the Mississippi Business Corporation Act are repealed.**

**~~§ 79-4-15.07. Registered office and registered agent of foreign corporation.~~**

~~Each foreign corporation authorized to transact business in this state must continuously maintain in this state:~~

~~(1) A registered office that may be the same as any of its places of business; and~~

~~(2) A registered agent, who may be:~~

~~(i) An individual who resides in this state and whose business office is identical with the registered office;~~

~~(ii) A domestic corporation or not for profit domestic corporation whose business office is identical with the registered office; or~~

~~(iii) A foreign corporation or foreign not for profit corporation authorized to transact business in this state whose business office is identical with the registered office.~~

**~~§ 79-4-15.08. Change of registered officer or registered agent of foreign corporation.~~**

~~(a) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:~~

~~(1) Its name;~~

~~(2) The street address of its current registered office;~~

~~(3) If the current registered office is to be changed, the street address of its new registered office;~~

~~(4) The name of its current registered agent;~~

~~(5) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and~~

~~(6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.~~

~~(b) If a registered agent changes the street address of his business office, he may change the street address of the registered office of any foreign corporation for which he is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.~~

#### **~~§ 79-4-15.09. Resignation of registered agent of foreign corporation.~~**

~~(a) The registered agent of a foreign corporation may resign his agency appointment by signing and delivering to the Secretary of State for filing the original and two (2) exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.~~

~~(b) After filing the statement, the Secretary of State shall attach the filing receipt to one (1) copy and mail the copy and receipt to the registered office if not discontinued. The Secretary of State shall mail the other copy to the foreign corporation at its principal office address shown in its most recent annual report.~~

~~(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the 31st day after the date on which the statement was filed.~~

#### **§ 79-4-15.10. Service of foreign corporation.**

~~(a) The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice or demand required or permitted by law to be served on the foreign corporation.~~

~~(b) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent annual report if the foreign corporation:~~

~~(1) Has no registered agent or its registered agent cannot with reasonable diligence be served;~~

~~(2) Has withdrawn from transacting business in this state under Section 79-4-15.20; or~~

~~(3) Has had its certificate of authority revoked under Section 79-4-15.31.~~

~~(c) Service is perfected under subsection (b) at the earliest of:~~

~~(1) The date the foreign corporation receives the mail;~~

~~(2) The date shown on the return receipt, if signed on behalf of the foreign corporation; or~~

~~(3) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed.~~

~~(d) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.~~

Service of process, notice or demand required or permitted by law on a foreign corporation authorized to

transact business in this State is governed by *[Section 13 of the Mississippi Registered Agents Act]*.

**§ 79-4-15.20. Withdrawal of foreign corporation.**

(a) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Secretary of State.

(b) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

(1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(3) That it revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary of State as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(4) A mailing address to which the Secretary of State may mail a copy of any process served on him under subdivision (3) of this subsection; and

(5) A commitment to notify the Secretary of State in the future of any change in its mailing address.

(c) After the withdrawal of the corporation is effective, service of process on the Secretary of State under ~~this~~ *[Section 13 of the Mississippi Registered Agents Act]* ~~section~~ is service on the foreign corporation.

Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign corporation at the mailing address set forth in its application for withdrawal.

**§ 79-4-15.30. Grounds for revocation.**

The Secretary of State may commence a proceeding under Section 79-4-15.31 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The foreign corporation does not deliver its annual report to the Secretary of State within sixty (60) days after it is due;

(2) The foreign corporation does not pay within sixty (60) days after they are due any franchise taxes or penalties imposed by Sections 79-4-1.01 et seq. or other law;

(3) The foreign corporation is without a registered agent ~~or registered office~~ in this state for sixty (60) days or more;

(4) The foreign corporation does not inform the Secretary of State ~~under Section 79-4-15.08 or 79-4-15.09~~ by an appropriate filing that its registered agent ~~or registered office~~ has changed, or that its registered agent has resigned, ~~or that its registered office has been discontinued~~ within sixty (60) days of the change; or resignation ~~or discontinuance~~;

(5) An incorporator, director, officer or agent of the foreign corporation signed a document he knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing;

(6) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

#### **§ 79-4-15.31. Procedure and effect**

(a) If the Secretary of State determines that one or more grounds exist under Section 79-4-15.30 for revocation of a certificate of authority, he shall serve the foreign corporation with written notice of his determination under Section 79-4-15.10, except that such determination may be served by first class mail.

(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after service of the notice is perfected under Section 79-4-15.10, the Secretary of State may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation under Section 79-4-15.10, except that such certificate may be served by first class mail.

(c) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(d) The Secretary of State's revocation of a foreign corporation's certificate of authority appoints the Secretary of State the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the Secretary of State under this [\[Section 13 of the Mississippi Registered Agents Act\]](#)~~subsection~~ is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.

(e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

#### **§ 79-4-15.32. Appeal from revocation.**

(a) A foreign corporation whose certificate of authority is administratively revoked under Section 79-4-15.31 may apply to the Secretary of State for reinstatement at any time after the effective date of such revocation. The application must:

- (1) Recite the name of the corporation and the effective date of the administrative revocation;
- (2) State that the ground or grounds for revocation either did not exist or have been eliminated;
- (3) State that the corporation's name satisfies the requirements of Section 79-4-4.01; and
- (4) Contain a certificate from the Mississippi State Tax Commission reciting that the corporation has properly filed all reports and paid all taxes and penalties required by revenue laws of this state.

(b) If the Secretary of State determines that the application contains the information required by

subsection (a) and that the information is correct, he shall reinstate the certificate of authority, prepare a certificate that recites his determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under [Section 79-4-5.04, \[Section 13 of the Mississippi Registered Agents Act\]](#).

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative revocation and the corporation resumes carrying on its business as if the administrative revocation had never occurred.

#### **§ 79-4-15.33. Appeal from denial of restatement.**

(a) If the Secretary of State denies a foreign corporation's application for reinstatement following administrative revocation, he shall serve the corporation under [Section 79-4-5.04, Mississippi Code of 1972, \[Section 13 of the Mississippi Registered Agents Act\]](#) with a written communication that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the Chancery Court of the First Judicial District of Hinds County or the chancery court of the county where the corporation is domiciled [or the corporation's principal office is located](#) within thirty (30) days after service of the communication of denial is perfected. The corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of the Secretary of State's communication of denial.

(c) The court may summarily order the Secretary of State to reinstate the revoked corporation or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

#### **§ 79-4-16.04. Court-ordered inspection.**

(a) If a corporation does not allow a shareholder who complies with Section 79-4-16.02(a) to inspect and copy any records required by that subsection to be available for inspection, the chancery court of the county where the corporation's principal office [is located or the Hinds County Chancery Court if the corporation does not have a principal office in this state](#) ~~(or, if none in this state, its registered office) is located~~ may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(b) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with Section 79-4-16.02(b) and (c) may apply to the chancery court in the county where the corporation's principal office [is located or the Hinds County Chancery Court if the corporation does not have a principal office in this state](#) ~~(or, if none in this state, its registered office) is located~~ for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(c) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs (including reasonable counsel fees) incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(d) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

#### **§ 79-4-16.05. Inspection of records by director.**

(a) A director of a corporation is entitled to inspect and copy the books, records and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(b) The chancery court of the county where the corporation's principal office is located or the Hinds County Chancery Court if the corporation does not have a principal office in this state~~(or if none in the state, its registered office) is located~~ may order inspection and copying of the books, records and documents at the corporation's expense, upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

(c) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's costs (including reasonable counsel fees) incurred in connection with the application.

#### **§ 79-4-16.22. Annual report to secretary of state.**

(a) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver within sixty (60) days of each anniversary date of its incorporation with respect to a domestic corporation or its authorization to transact business in this state with respect to a foreign corporation, or such other date as may be established by the Secretary of State, to the Secretary of State for filing an annual report that sets forth:

- (1) The name of the corporation and the state or country under whose law it is incorporated;
- (2) ~~The address of its registered office and the name of its registered agent at that office in this state~~ The information required by [sSection 5(a) of the Mississippi Registered Agents Act];
- (3) The address of its principal office;
- (4) The names and business addresses of its directors and principal officers;
- (5) A brief description of the nature of its business;
- (6) The total number of authorized shares, itemized by class and series, if any, within each class; and
- (7) The total number of issued and outstanding shares, itemized by class and series, if any, within each class.

(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(c) If an annual report does not contain the information required by this section, the Secretary of State shall notify promptly the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within thirty (30) days after the effective date of notice, it is deemed to be timely filed.

**Mississippi Nonprofit Corporations Act**  
**Conforming Amendments**  
**[REVISED June 17, 2009]**

1. §79-11-109. Filing fees; fee for serving process upon Secretary of State; fees for copying and certifying copy of filed document.
2. §79-11-115. Secretary of State to file document; refusal to file documents; filing of documents as ministerial.
3. §79-11-117. Appeal of refusal to file document.
4. §79-11-131. Petition to chancery court for alternative method for calling or conducting meeting of corporation members, delegates, or directors, or for obtaining their consent. [added]
5. §79-11-137. Contents of articles of incorporation.
6. Chapter 5 is repealed:
  - a. §79-11-163. Registered office and agent required.
  - b. §79-11-165. Change of registered office or registered agent of corporation.
  - c. §79-11-167. Resignation of registered agent's agency.
  - d. §79-11-169. Registered agent as agent for service of process, notice, or demand; service upon secretary of corporation at principal office; when service perfected.
7. §79-11-201. Court-ordered meeting of members.
8. §79-11-213. Preparation of list of members entitled to notice of meeting and members entitled to vote at meeting; list to be open for inspection; court may order inspection and copying of lists.
9. §79-11-289. Court-ordered inspection where corporation does not allow member to inspect and copy records.
10. §79-11-299. Amendments to articles of incorporation which may be adopted by board of directors without action by members.
11. §79-11-327. Merger or foreign corporation with domestic corporation.
12. §79-11-345. Notice of dissolution and request for presentation of claims against corporation; statute of limitations; enforcement of claims.
13. §79-11-347. Administrative dissolution by Secretary of State, grounds for.
14. §79-11-349. Administrative dissolution, procedures.
15. §79-11-351. Reinstatement after administrative dissolution.
16. §79-11-353. Denial of application for reinstatement following administrative dissolution; appeals. [revised]
17. § 79-11-355. Dissolution by court order; parties who may bring action; grounds for court-ordered dissolution. [ added]
18. §79-11-357. Court-ordered dissolution, venue; appropriate party defendants; authority of court with respect to.
19. §79-11-367. Foreign corporation, application for certificate of authority.
20. §79-11-369. Foreign corporation, amended certificate of authority.
21. Sections 375, 377 and 379 of the Mississippi Nonprofit Corporations Act are repealed.
22. §79-11-381. Service of process on foreign corporation.
23. §79-11-383. Certificate of withdrawal required.
24. §79-11- 385. Revocation of certificate of authority of foreign corporation, grounds.
25. § 79-11-389. Appeal of revocation. [added]
26. §79-11-391. Status report of corporation.



**§ 79-11-109. Filing fees; fee for serving process upon Secretary of State; fees for copying and certifying copy of filed document.**

(1) Except as otherwise provided in subsection (4) of this section, the Secretary of State shall collect the following fees when the documents described in this subsection are delivered for filing:

Document	Fee
(a) Articles of incorporation .....	\$50.00
(b) Application for use of indistinguishable name .....	25.00
(c) Application for reserved name .....	25.00
(d) Notice of transfer of reserved name .....	25.00
(e) Application for registered name .....	50.00
(f) Application for renewal of registered name .....	50.00
<del>(g) Corporation's statement of change of registered agent or registered office or both.....</del>	<del>10.00</del> <u>(g) Reserved.</u>
<del>(h) Agent's statement of change of registered office for each affected corporation.....</del>	<del>10.00</del> <u>(h) Reserved.</u>
<del>not to exceed a total of.....</del>	<del>1,000.00</del>
<del>(i) Agent's statement of resignation.....</del>	<del>No Fee</del> <u>(i) Reserved.</u>
(j) Amendment of articles of incorporation .....	50.00
(k) Restatement of articles of incorporation with amendments .....	50.00
(l) Articles of merger .....	50.00
(m) Articles of dissolution.....	25.00
(n) Articles of revocation of dissolution .....	25.00
(o) Certificate of administrative dissolution .....	No Fee
(p) Application for reinstatement following administrative dissolution ...	50.00
(q) Certificate of reinstatement .....	No Fee
(r) Certificate of judicial dissolution .....	No Fee

- (s) Application for certificate of authority ..... 100.00
- (t) Application for amended certificate of authority ..... 50.00
- (u) Application for certificate of withdrawal ..... 25.00
- (v) Certificate of revocation of authority to transact business ..... No Fee
- (w) Status report ..... 25.00
- (x) Articles of correction ..... 50.00
- (y) Application for certificate of existence or authorization..... 25.00
- (z) Any other document required or permitted to be filed by  
Sections 79-11-101 et seq..... 25.00

(2) Except as otherwise provided in subsection (4) of this section, the Secretary of State shall collect a fee of Twenty-five Dollars (\$ 25.00) upon being served with process under Sections 79-11-101 et seq. The party to a proceeding causing service of process is entitled to recover the fee paid the Secretary of State as costs if the party prevails in the proceeding.

(3) Except as otherwise provided in subsection (4) of this section, the Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- (a) One Dollar (\$ 1.00) a page for copying; and
- (b) Ten Dollars (\$ 10.00) for the certificate.

(4) The Secretary of State may collect a filing fee greater than the fee set forth in subsections (1), (2) and (3) in an amount not to exceed twice the fee set forth in subsections (1), (2) and (3) of processing the filing, if the form prescribed by the Secretary of State for such filing has not been used.

**§ 79-11-115. Secretary of State to file document; refusal to file document; filing of documents as ministerial .**

(1) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of Section 79-11-105, the Secretary of State shall file it.

(2) The Secretary of State files a document by recording it as filed on the date and time of receipt. After filing a document, except as provided in [\[Section 11 of the Mississippi Registered Agents Act\]](#)~~Sections 79-11-167 and Section 79-11-379~~, the Secretary of State shall deliver to the domestic or foreign corporation or its representative a copy of the document with an acknowledgement of the date and time of filing.

(3) Upon refusing to file a document, the Secretary of State shall return it to the domestic or foreign

corporation or its representative within five (5) days after the document was delivered, together with a brief, written explanation of the reason or reasons for the refusal.

(4) The Secretary of State's duty to file documents under this section is ministerial. Filing or refusal to file a document does not:

- (a) Affect the validity or invalidity of the document in whole or in part;
- (b) Relate to the correctness or incorrectness of information contained in the document; or
- (c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

#### **§ 79-11-117. Appeal of refusal to file document.**

(1) If the Secretary of State refuses to file a document delivered for filing to the Secretary of State's office, the domestic or foreign corporation may appeal the refusal to the chancery court in the county where the corporation's principal office is or will be located or the Hinds County Chancery court if the corporation does not have a principal office in this state ~~(or, if there is none in this state, its registered office) is or will be located~~. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Secretary of State's explanation of the refusal to file.

(2) The court may summarily order the Secretary of State to file the document or take other action the court considered appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

#### **§ 79-11-137. Contents of articles of incorporation.**

- (1) The articles of incorporation must set forth:
  - (a) A corporate name for the corporation that satisfies the requirements of Section 79-11-157;
  - (b) The period of duration, which may be perpetual;
  - (c) ~~The street address of the corporation's initial registered office and the name of its initial registered agent at that office~~ The information required by [Section 5(a) of the Mississippi Registered Agents Act]; and
  - (d) The name and address of each incorporator.
- (2) The articles of incorporation may set forth:
  - (a) The names and addresses of the individuals who are to serve as the initial directors;
  - (b) Provisions not inconsistent with law regarding:

- (i) The purpose or purposes for which the corporation is organized;
  - (ii) Managing the business and regulating the affairs of the corporation;
  - (iii) Defining, limiting and regulating the powers of the corporation, its board of directors and members; and
- (c) Any provision that under Sections 79-11-101 et seq. is required or permitted to be set forth in the bylaws.
- (3) The articles of incorporation need not set forth any of the corporate powers enumerated in Sections 79-11-101 et seq.

**~~⇒§ 79-11-163. Registered office and agent required.~~**

~~Each corporation must continuously maintain in this state:~~

- ~~(a) A registered office that may be the same as its principal office; and~~
- ~~(b) A registered agent, who may be:~~
  - ~~(i) An individual who resides in this state and whose principal office is identical with the registered office;~~
  - ~~(ii) A domestic corporation or domestic business corporation whose principal office is identical with the registered office;~~
  - ~~(iii) A foreign corporation or foreign business corporation authorized to transact business or to conduct affairs in this state whose principal office is identical with the registered office; or~~
  - ~~(iv) A resident agent designated prior to January 1, 1988.~~

**~~⇒§ 79-11-165. Changing registered office or agent.~~**

~~(1) A corporation may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:~~

- ~~(a) The name of the corporation;~~
- ~~(b) The street address of its current registered office;~~
- ~~(c) If the current registered office is to be changed, the street address of the new registered office;~~
- ~~(d) The name of its current registered agent;~~
- ~~(e) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and~~

~~(f) A representation that after the change or changes are made, the street addresses of its registered office and the principal office of its registered agent will be identical.~~

~~(2) If a registered agent changes the street address of his business office, he may change the street address of the registered office of any corporation for which he is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.~~

**⇒§ 79-11-167. Resignation of registered agent.**

~~(1) A registered agent may resign his agency appointment by signing and delivering to the Secretary of State for filing the signed original and two (2) exact or conformed copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.~~

~~(2) After filing the statement the Secretary of State shall mail one (1) copy to the registered office (if not discontinued) and the other copy to the corporation at its principal office.~~

~~(3) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.~~

**⇒§ 79-11-169. Service on corporation.**

~~(1) A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.~~

~~(2) If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service is perfected under this subsection at the earliest of:~~

~~(a) The date the corporation receives the mail;~~

~~(b) The date shown on the return receipt, if signed on behalf of the corporation; or~~

~~(c) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed.~~

~~(3) This section does not prescribe the only means, or necessarily the required means, of serving a corporation.~~

**§ 79-11-201. Court-ordered meeting of members.**

(1) The chancery court of the county where a corporation's principal office is or will be located or the Hinds County Chancery court if the corporation does not have a principal office in this state~~(or, if none in this state, its registered office) is located~~ may summarily order a meeting to be held:

(a) On application of any member or other person entitled to participate in the annual meeting, if

an annual meeting was not held within the earlier of six (6) months after the end of the corporation's fiscal year or fifteen (15) months after its last annual meeting; or

(b) On application of a member who signed a demand for a special meeting valid under Section 79-11-199, or a person or persons entitled to call a special meeting, if:

(i) Notice of the special meeting was not given within thirty (30) days after the date the demand was delivered to a corporate officer; or

(ii) The special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting (or direct that the votes represented at the meeting constitute a quorum for action on those matters), and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(3) If the court orders a meeting, it may also order the corporation to pay the member's cost (including reasonable counsel fees) incurred to obtain the order.

**§ 79-11-213. Preparation of list of members entitled to notice of meeting and members entitled to vote at meeting; list to be open for inspection; court may order inspection and copying of lists.**

(1) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting, but not entitled to notice of the meeting. This list shall be prepared on the same basis and be part of the list of members.

(2) The list of members must be available for inspection by any member for the purpose of communication with other members concerning the meeting, beginning two (2) business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A member, a member's agent, or attorney is entitled on written demand to inspect and, subject to the limitations of Sections 79-11-285(c) and 79-11-291, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(3) The corporation shall make the list of members available at the meeting, and any member, a member's agent, or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a member, a member's agent, or attorney to inspect the list of members before or at the meeting (or copy the list as permitted by subsection (2) of this section); the chancery court of the county where a corporation's principal office is located or the Hinds County Chancery Court if the corporation does not have a principal office in this state ~~(or if none in~~

~~this state, its registered office) is located,~~ on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete and may order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order.

(5) Unless a written demand to inspect and copy a membership list has been made under subsection (2) of this section prior to the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.

**§ 79-11-289. Court-ordered inspection where corporation does not allow member to inspect and copy records.**

(1) If a corporation does not allow a member who complies with Section 79-11-285(1) to inspect and copy any records required by that subsection to be available for inspection, the chancery court in the county where the corporation's principal office is located or the Hinds County Chancery Court if the corporation does not have a principal office in this state ~~(or, if none in this state, its registered office) is located~~ may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

(2) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with Section 79-11-285(2) and (3) may apply to the chancery court in the county where the corporation's principal office is located or the Hinds County Chancery Court if the corporation does not have a principal office in this state ~~(or, if none in this state, its registered office) is located~~ for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member's costs (including reasonable attorney's fees) incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded.

(4) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

**§ 79-11-299. Amendments to articles of incorporation which may be adopted by board of directors without action by members.**

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without action by members:

(a) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(b) To delete the names and addresses of the initial directors;

(c) ~~To delete the name and address of the initial registered agent or registered office, if a statement~~

~~of change is on file with the Secretary of State;~~ To change the information required by [Section 5(a) of the Mississippi Registered Agents Act];

(d) To make any other change expressly permitted by Sections 79-11-101 et seq. to be made without member action.

#### **§ 79-11-327. Merger of foreign corporation with domestic corporation.**

(1) One or more foreign business or nonprofit corporations may merge with one or more domestic nonprofit corporations if:

(a) The merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(b) The foreign corporation complies with Section 79-11-323 if it is the surviving corporation of the merger; and

(c) Each domestic nonprofit corporation complies with the applicable provisions of Sections 79-11-319 and 79-11-321 and, if it is the surviving corporation of the merger, with Section 79-11-323.

(2) Upon the merger taking effect, the surviving foreign business or nonprofit corporation ~~is deemed to have irrevocably appointed the Secretary of State as its agent for service of process~~ may be served with process in any proceeding brought against it as provided in [Section 13 of the Mississippi Registered Agents Act].

#### **79-11-345. Notice of dissolution and request for presentation of claims against corporation; statute of limitations; enforcement of claims.**

(1) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(2) The notice must:

(a) Be published one (1) time in a newspaper of general circulation in the county where the dissolved corporation's principal office is or was located or in Hinds County if the corporation does not have a principal office in this state; ~~(or, if none in this state, its registered office) is or was last located;~~

(b) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(c) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within two (2) years after publication of this notice.

(3) If the dissolved corporation publishes a newspaper notice in accordance with subsection (2) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within two (2) years after the publication date of the newspaper notice:



- (a) A claimant who did not receive written notice under Section 79-11-343;
- (b) A claimant whose claim was timely sent to the dissolved corporation but not acted on; and
- (c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim may be enforced under this section:

- (a) Against the dissolved corporation, to the extent of its undistributed assets; or
- (b) If the assets have been distributed in liquidation, against any person, other than a creditor of the corporation, to whom the corporation distributed its property to the extent of the distributee's pro rata share of the claim or the corporate assets distributed to such person in liquidation, whichever is less, but the distributee's total liability for all claims under this section may not exceed the total amount of assets distributed to the distributee.

#### **§ 79-11-347. Administrative dissolution by Secretary of State, grounds for.**

The Secretary of State may commence a proceeding under Section 79-11-349 to administratively dissolve a corporation if:

- (a) The corporation does not pay within sixty (60) days after they are due any taxes or penalties imposed by Sections 79-11-101 et seq. or other law;
- (b) The corporation does not deliver a requested status report to the Secretary of State within sixty (60) days after it is due;
- (c) The corporation is without a registered agent ~~or registered office~~ in this state for sixty (60) days or more;
- (d) The corporation does not notify the Secretary of State within one hundred twenty (120) days that its registered agent ~~or registered office~~ has been changed, or that its registered agent has resigned ~~or that its registered office has been discontinued~~; or
- (e) The corporation's period of duration, if any, stated in its articles of incorporation expires.

#### **§ 79-11-349. Administrative dissolution, procedures.**

(1) Upon determining that one or more grounds exist under Section 79-11-347 for dissolving a corporation, the Secretary of State shall serve the corporation with written notice of that determination. ~~under Section 79-11-169.~~

(2) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within at least sixty (60) days after service of the notice is perfected, ~~under Section 79-11-169,~~ the Secretary of State may administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation. ~~under Section 79-11-169.~~

(3) A corporation administratively dissolved continues its corporate existence but may not carry on any activities except those necessary to wind up and liquidate its affairs under Section 79-11-341 and notify its claimants under Sections 79-11-343 and 79-11-345.

(4) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

**§ 79-11-351. Reinstatement after administrative dissolution.**

(1) A corporation administratively dissolved under Section 79-11-349 may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The application must:

(a) Recite the name of the corporation and the effective date of its administrative dissolution;

(b) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(c) State that the corporation's name satisfies the requirements of Section 79-11-157; and

(d) Contain a certificate from the State Tax Commission reciting that all taxes owed by the corporation have been paid.

(2) If the Secretary of State determines that the application contains the information required by subsection (1) of this section and that the information is correct, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate and serve a copy on the corporation. ~~under Section 79-11-169.~~

(3) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its activities as if the administrative dissolution had never occurred.

**§ 79-11-353. Denial of application for reinstatement following administrative dissolution; appeals.**

(1) The Secretary of State, upon denying a corporation's application for reinstatement following administrative dissolution, shall serve the corporation ~~under Section 79-11-169~~ with a written notice that explains the reason or reasons for denial.

(2) The corporation may appeal the denial of reinstatement to the chancery court of the county where the corporation's principal office is or was located or in Hinds County Chancery Court if the corporation does not have a principal office in this state ~~(or, if none in this state, its registered office) is located~~ within ninety (90) days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

**§ 79-11-355. Dissolution by court order; parties who may bring action; grounds for court-ordered dissolution.**

(1) The chancery court of the county where the corporation's principal office is or was located or in Hinds County Chancery Court if the corporation does not have a principal office in this state ~~(or, if none in this state, its registered office) is located~~ may dissolve a corporation:

(a) In a proceeding by the Attorney General or the Secretary of State if it is established that:

- (i) The corporation obtained its articles of incorporation through fraud;
- (ii) The corporation has continued to exceed or abuse the authority conferred upon it by law; or
- (iii) If the corporation is a charitable organization, as defined in Section 79-11-501, that:
  - 1. The corporate assets are being misapplied or wasted;
  - 2. The corporation is unable to carry out its purpose(s); or
  - 3. The corporation has violated the laws regulating the solicitation of charitable contributions, Section 79-11-501 et seq.

(b) In a proceeding by fifty (50) members or members holding five percent (5%) of the voting power, whichever is less, or by a director if it is established that:

- (i) The directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to breach the deadlock;
- (ii) The directors or those in control of the corporation have acted, are acting or will act in a manner that is illegal, oppressive or fraudulent;
- (iii) The members are deadlocked in voting power and have failed, for a period that includes at least two (2) consecutive annual meeting dates, to elect successors to directors whose terms have, or would otherwise have, expired; or
- (iv) The corporate assets are being misapplied or wasted;

(c) In a proceeding by a creditor if it is established that:

- (i) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied and the corporation is insolvent; or
- (ii) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(d) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

(2) Prior to dissolving a corporation, the court shall consider whether there are reasonable alternatives to dissolution.

**§ 79-11-357. Court-ordered dissolution, venue; appropriate party defendants; authority of court with respect to.**

(1) Venue for a proceeding to dissolve a corporation lies in the county where a corporation's principal office is or was last located or the Hinds County Chancery Court if the corporation does not have a principal office in this state. ~~(or, if none in this state, its registered office) is or was last located.~~

(2) It is not necessary to make directors or members parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located and carry on the activities of the corporation until a full hearing can be held.

**§ 79-11-367. Foreign corporation, application for certificate of authority.**

(1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State. The application must set forth:

(a) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of Section 79-11-373;

(b) The name of the state or country under whose law it is incorporated;

(c) The date of incorporation and period of duration;

(d) The street address of its principal office;

(e) ~~The address of its registered office in this state and the name of its registered agent at that office;~~ The information required by [Section 5(a) of the Mississippi Registered Agents Act]; or

(f) The names and usual business or home addresses of its current directors and officers; and

(g) Whether the foreign corporation has members.

(2) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import), dated not more than sixty (60) days prior to the date the application is filed in this state, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose law it is incorporated.

**§ 79-11-369. Foreign corporation, amended certificate of authority.**

(1) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the Secretary of State if it changes:

- (a) Its corporate name;
- (b) The period of its duration; ~~or~~
- (c) Any of the information required by [Section 5(a) of the Mississippi Registered Agents Act]; or
- (d) The state or country of its incorporation.

(2) The requirements of Section 79-11-367 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

**~~§ 79-11-375. Registered office and registered agent of foreign corporation~~**

~~—Each foreign corporation authorized to transact business in this state must continuously maintain in this state:~~

~~—(a) A registered office with the same address as that of its registered agent; and~~

~~—(b) A registered agent, who may be:~~

~~—(i) An individual who resides in this state and whose office is identical with the registered office;~~

~~—(ii) A domestic business or nonprofit corporation whose office is identical with the registered office;~~

~~—(iii) A foreign business or nonprofit corporation authorized to transact business in this state whose office is identical with the registered office; or~~

~~—(iv) A resident agent designated prior to January 1, 1988.~~

**~~§ 79-11-377. Change of registered office or registered agent of foreign corporation~~**

~~—(1) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:~~

~~—(a) Its name;~~

~~—(b) The street address of its current registered office;~~

~~—(c) If the current registered office is to be changed, the street address of its new registered office;~~

~~—(d) The name of its current registered agent;~~

~~—(e) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and~~

~~—(f) A representation that after the change or changes are made, the street address of its registered office and the office of its registered agent will be identical.~~

~~(2) If a registered agent changes the street address of its business office, the agent may change the address of the registered office of any foreign corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.~~

### **§ 79-11-379. Resignation of registered agent of foreign corporation**

~~—(1) The registered agent of a foreign corporation may resign as agent by signing and delivering to the Secretary of State for filing the original and two (2) exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.~~

~~(2) After filing the statement, the Secretary of State shall attach the filing receipt to one (1) copy and mail the copy and receipt to the registered office if not discontinued. The Secretary of State shall mail the other copy to the foreign corporation at its principal office address shown in its most recent status report or, in the case of a foreign corporation that has not yet filed a status report, in its application for a certificate of authority.~~

~~(3) The agency is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.~~

### **→ § 79-11-381. Service of process on foreign corporation.**

~~(1) The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.~~

~~(2) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent status report filed under Section 79-11-391 if the foreign corporation:~~

~~(a) Has no registered agent or its registered agent cannot with reasonable diligence be served;~~

~~(b) Has withdrawn from transacting business in this state under Section 79-11-383; or~~

~~(c) Has had its certificate of authority revoked under Section 79-11-387.~~

~~(3) Service is perfected under subsection (2) of this section at the earliest of:~~

~~(a) The date the foreign corporation receives the mail;~~

~~(b) The date shown on the return receipt, if signed on behalf of the foreign corporation; or~~

~~(c) Five (5) days after its deposit in the United States mail, as evidenced by the postmark if mailed postpaid and correctly addressed.~~

~~(4) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.~~

Service of process, notice or demand required or permitted by law on a foreign corporation authorized to transact business in this State is governed by [Section 13 of the Mississippi Registered Agents Act].

### **§ 79-11-383. Certificate of withdrawal required.**

(1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Secretary of State.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

(a) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(b) A representation that it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) A representation that it revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary of State as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to do business in this state;

(d) A mailing address to which the Secretary of State may mail a copy of any process served on him or her under paragraph (c) of this subsection; and

(e) A commitment to notify the Secretary of State in the future of any change in the mailing address.

(3) After the withdrawal of the corporation is effective, service of process on the Secretary of State under ~~this s~~[Section 13 of the Mississippi Registered Agents Act] is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign corporation at the ~~post-office~~ address set forth in its application for withdrawal.

### **§ 79-11-385. Revocation of certificate of authority of foreign corporation, grounds.**

(1) The Secretary of State may commence a proceeding under Section 79-11-387 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(a) The foreign corporation does not deliver the status report to the Secretary of State within sixty (60) days after it is due;

(b) The foreign corporation does not pay within sixty (60) days after they are due any franchise taxes or penalties imposed by Sections 79-11-101 et seq. or other law;

(c) The foreign corporation is without a registered agent ~~or registered office~~ in this state for sixty (60) days or more;

(d) The foreign corporation does not inform the Secretary of State ~~under Section 79-11-377 or 79-11-379~~ by an appropriate filing that its registered agent ~~or registered office~~ has changed; or that its registered agent has resigned; ~~or that its registered office has been discontinued~~ within ninety (90) days of the change; or resignation; ~~or discontinuance~~;

(e) An incorporator, director, officer or agent of the foreign corporation signed a document such person knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing; or

(f) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or has disappeared as the result of a merger.

(2) The Attorney General may commence a proceeding under Section 79-11-387 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if the corporation has continued to exceed or abuse the authority conferred upon it by law.

#### **§ 79-11-389. Appeal of revocation.**

(1) A foreign corporation may appeal the Secretary of State's revocation of its certificate of authority to the Hinds County eChancery eCourt or the chancery court of the county where the corporation's principal office is located ~~of the county in which its registered office in this state is located~~ within thirty (30) days after the service of the certificate of revocation is perfected under Section 79-11- 381. The foreign corporation applies by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the Secretary of State's certificate of revocation.

(2) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

#### **§ 79-11-391. Status report of corporation.**

(1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall upon request deliver to the Secretary of State a status report on a form prescribed and furnished by the Secretary of State that sets forth:



(a) The name of the corporation and ~~the state or country~~ the jurisdiction under whose law it is incorporated;

(b) ~~The address of its registered office and the name of its registered agent at the office in this state or the address and name of the person designated as its resident agent prior to January 1, 1988;~~  
The information required by [Section 5(a) of the Mississippi Registered Agents Act];

(c) The address of its principal office;

(d) The names and business or residence addresses of its directors and principal officers;

(e) A brief description of the nature of its activities; and

(f) Whether or not it has members.

(2) Upon receiving the request for a status report, a domestic or foreign corporation shall have ninety (90) days to deliver the report to the Secretary of State.

(3) The information in the status report must be current on the date the status report is executed on behalf of the corporation.

(4) The Secretary of State may request a status report from time to time, but not more frequently than once every five (5) years, beginning five (5) years from the date upon which a domestic corporation was incorporated or a foreign corporation was authorized to transact business.

(5) If a status report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within thirty (30) days after the effective date of notice, it is deemed to be timely filed.

**Mississippi Foreign Investments Trusts Act**  
**Conforming Amendments**  
**[REVISED JUNE 2009]**

1. § 79-15-109. Certificate of authority; application.
2. § 79-15-115. Registered office and registered agent; requirement of maintenance in state.  
Repealed.
3. § 79-15-117. Registered office and registered agent; change; resignation of registered agent.  
Repealed.
4. § 79-15-119. Service of process. Repealed.
5. § 79-15-129. Revoking certificate of authority.
6. § 79-15-131. Revocation process.
7. § 79-15-135. Fees.

### **§ 79-15-109. Certificate of authority; application**

A foreign investment trust, in order to procure a certificate of authority to transact business in this state, shall make application therefor to the secretary of state, which application shall set forth:

(a) the name of the foreign investment trust and the state or country under the laws of which it is organized.

(b) if the name of the foreign investment trust does not contain the words "investment trust", then the name containing the words "investment trust" which it elects to use in this state.

(c) the date of declaration of trust and the period of duration of the trust.

(d) the address of the principal office of the foreign investment trust in the state or country under the laws of which it is organized.

(e) ~~the address of the proposed registered office of the foreign investment trust in this state, and the name of its proposed registered agent in this state at such address;~~ the information required by [Section 5(a) of the Mississippi Registered Agents Act].

(f) the purpose or purposes of the foreign investment trust which it proposes to pursue in the transaction of business in this state.

(g) the names and respective addresses of the trustees of the foreign investment trust.

(h) a statement of the aggregate number of shares of beneficial interest which the foreign investment trust has authority to issue and the unit value in dollars to be received by the trust for the issuance of each of such shares.

(i) a statement of the aggregate number of issued shares of beneficial interest.

(j) such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to transact business in this state and to determine and assess the fees payable as in Section 79-15-135 prescribed.

Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed in duplicate by at least three (3) of the trustees and verified.

### **~~§ 79-15-115. Registered office and registered agent; requirement of maintenance in state~~**

~~—Each foreign investment trust authorized to transact business in this state shall have and continuously maintain in this state:~~

~~—(a) A registered office which may be, but need not be, the same as its place of business in this~~

~~state.~~

~~—(b) A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this state, having a business office identical with such registered office.~~

#### **~~§ 79-15-117. Registered office and registered agent; change; resignation of registered agent~~**

~~—A foreign investment trust authorized to transact business in this state may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:~~

~~—(a) the name of the foreign investment trust.~~

~~—(b) the address of its then registered office.~~

~~—(c) if the address of its registered office be changed, the address to which the registered office is to be changed.~~

~~—(d) the name of its then registered agent.~~

~~—(e) if its registered agent be changed, the name of its successor registered agent.~~

~~—(f) that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.~~

~~—(g) that such change was authorized by resolution duly adopted by its trustees.~~

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~~—Such statement shall be executed by the foreign investment trust by at least three (3) of its trustees, and verified by them, and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this section, he shall file such statement in his office, and upon such filing the change of address of the registered office, or the appointment of new registered agent, or both, as the case may be, shall become effective.~~

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~~—Any registered agent of a foreign investment trust may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall forthwith mail a copy thereof to the foreign investment trust at its principal office in the state or country under the laws of which it is organized. The appointment of such agent shall terminate upon the expiration of thirty (30) days after receipt of such notice by the secretary of state.~~

#### **~~§ 79-15-119. Service of process~~**

~~—The registered agent so appointed by a foreign investment trust authorized to transact business in this state shall be an agent of such foreign investment trust upon whom any process, notice or demand required or permitted by law to be served upon the foreign investment trust may be served.~~

~~—If the registered agent be a corporation, service of process upon it as such agent may be made at its registered office in this state by service on the president, a vice president, an assistant vice president, the secretary or an assistant secretary of such registered agent.~~

~~—Whenever a foreign investment trust authorized to transact business in this state shall fail to appoint or maintain a registered agent in this state, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign investment trust shall be suspended or revoked, then the secretary of state shall be an agent of such foreign investment trust upon whom any such process, notice or demand may be served. Service on the secretary of state of any such process, notice or demand shall be made by delivering to and leaving with him, or with a person in his office designated by him, two (2) true copies of such process, notice or demand and on payment of a fee of five dollars (\$ 5.00). In the event any such process, notice or demand is served on the secretary of state, he shall immediately cause one (1) of such copies thereof to be forwarded by registered mail, addressed to the foreign investment trust at its principal office in the state or country under the laws of which it is organized.~~

~~—When service is had on the secretary of state, no judgment shall be taken in the case until thirty (30) days after the date of such service.~~

~~—The secretary of state shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.~~

~~—Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon an investment trust in any other manner now or hereafter permitted by law.~~

### **§ 79-15-129. Revoking certificate of authority**

The certificate of authority of a foreign investment trust to transact business in this state may be revoked by the secretary of state upon the conditions prescribed in this section when:

- (a) The foreign investment trust has failed to pay any fees prescribed by sections 79-15-101 to 79-15-139 when they have become due and payable; or
- (b) The foreign investment trust has failed to appoint and maintain a registered agent in this state as required by section 79-15-115; or
- (c) The foreign investment trust has failed, after change of its ~~registered office or~~ registered agent, to file in the office of the secretary of state a statement of such change as required by [\[Section 8 of the Mississippi Registered Agents Act\]](#) ~~section 79-15-117; or; or~~
- (d) The foreign investment trust has failed to file in the office of the secretary of state any amendment to its declaration of trust within the time prescribed by section 79-15-121; or

(e) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such foreign investment trust pursuant to sections 79-15-101 to 79-15-139.

No certificate of authority of a foreign investment trust shall be revoked by the secretary of state unless (1) he shall have given the foreign investment trust not less than sixty (60) days' notice thereof by mail ~~addressed as provided in [Section 13 of the Mississippi Registered Agents Act] to its registered office in this state~~, and (2) the foreign investment trust shall fail prior to revocation to pay such fees, or file the required statement of change of registered agent ~~as provided in Section 8 of the Mississippi Registered Agents Act~~ ~~or registered office~~, or file such articles of amendment or correct such misrepresentation.

#### **§ 79-15-131. Revocation process.**

Upon revoking any such certificate of authority, the secretary of state shall:

- (a) Issue a certificate of revocation in duplicate.
- (b) File one (1) of such certificates in his office.
- (c) Mail to such foreign investment trust as provided in [Section 13 of the Mississippi Registered Agents Act] ~~at its registered office in this state~~ a notice of such revocation accompanied by one (1) of such certificates.

Upon issuance of such certificate of revocation, the authority of the foreign investment trust to transact business in this state shall cease.

#### **§ 79-15-135. Fees.**

The secretary of state shall charge and collect from foreign investment trust for:

~~—(a) Filing a statement of change of address of registered office or change of registered agent, or both, five dollars (\$ 5.00).~~

(a) The fees required by Section 3 of the Mississippi Registered Agents Act.

(b) Filing an application of a foreign investment trust for a certificate of authority to transact business in this state and issuing a certificate of authority, one hundred dollars (\$ 100.00).

(c) Filing an application of a foreign investment trust for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, twenty dollars (\$ 20.00).

(d) Filing a copy of an amendment to the articles of incorporation of a foreign investment trust holding a certificate of authority to transact business in this state, twenty dollars (\$ 20.00).

(e) Filing an application for withdrawal of a foreign investment trust and issuing a certificate of withdrawal, five dollars (\$ 5.00).

(f) Filing any other statement or report of a foreign investment trust, five dollars (\$ 5.00).

(g) For furnishing a certified copy of any document, instrument, or paper relating to a foreign investment trust, sixty cents (60 cent(s) ) per page and two dollars (\$ 2.00) for the certificate and affixing the seal thereto, with a minimum charge of three dollars (\$ 3.00).

(h) At the time of any service of process on him as resident agent of a foreign investment trust, five dollars (\$ 5.00), which amount may be recovered as taxable cost by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

**Mississippi Registration of Foreign Business Trusts Act**  
**Conforming Amendments**  
**[REVISED JUNE 2009]**

1. § 79-16-11. Application for certificate of authority
2. § 79-16-17 Registered office and registered agent; requirement of maintenance in state. Repealed.
3. § 79-16-19 Registered office and registered agent; change; resignation of registered agent. Repealed.
4. § 79-16- 21 Service of process. Repealed.
5. § 79-16-27. Certificate of authority; revocation; causes. [added]
6. § 79-16-29. Certificate of withdrawal; revocation procedure.
7. § 79-16-33. Fees.



## **§ 79-16-11. Application for certificate of authority**

(1) A foreign business trust, in order to procure a certificate of authority to transact business in this state, shall make application therefor to the Secretary of State, which application shall set forth:

(a) The name of the foreign business trust and the state or country under the laws of which it is organized;

(b) The date of declaration of trust and the period of duration of the trust;

(c) The address of the principal office of the foreign business trust in the state or country under the laws of which it is organized;

(d) ~~The address of the registered office of the foreign business trust in this state and the name of its registered agent in this state at such address;~~ The information required by [Section 5(a) of the Mississippi Registered Agents Act];

(e) The purpose or purposes of the foreign business trust which it proposes to pursue in the transaction of business in this state;

(f) The names and respective addresses of the trustees of the foreign business trust; and

(g) A statement of the aggregate number of shares of beneficial interest which the foreign business trust has authority to issue and the unit value in dollars to be received by the trust for the issuance of each of such shares.

(2) Such application shall be made on forms prescribed and furnished by the Secretary of State and shall be executed by at least one (1) of the trustees.

(3) A business trust shall deliver with the completed application a certificate of existence, or a document of similar import, duly authenticated by the Secretary of State or other official having custody of trust records in the state or country under whose law it is created.

## **~~§ 79-16-17. Registered office and registered agent; requirement of maintenance in state~~**

~~—Each foreign business trust authorized to transact business in this state shall have and continuously maintain in this state:~~

~~—(a) A registered office which may be, but need not be, the same as its place of business in this state.~~

~~—(b) A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic or foreign corporation, limited partnership, limited liability company, limited liability partnership, or investment trust authorized to transact business in this state, having a business office identical with such registered office.~~

#### **~~§ 79-16-19. Registered office and registered agent; change; resignation of registered agent~~**

~~—A foreign business trust authorized to transact business in this state may change its registered office or change its registered agent, or both, upon filing in the Office of the Secretary of State a statement setting forth:~~

~~—(a) The name of the foreign business trust;~~

~~—(b) The address of its then registered office;~~

~~—(c) If the address of its registered office be changed, the address to which the registered office is to be changed;~~

~~—(d) The name of its then registered agent;~~

~~—(e) If its registered agent be changed, the name of its successor registered agent;~~

~~—(f) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical;~~

~~—(g) That such change was authorized by resolution duly adopted by its trustees.~~

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~~—Such statement shall be executed by the foreign business trust by at least one (1) of its trustees, and verified and delivered to the Secretary of State. If the Secretary of State finds that such statement meets the requirements of this section, he shall file such statement in his office, and upon such filing the change of address of the registered office, or the appointment of new registered agent, or both, as the case may be, shall become effective.~~

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~~—Any registered agent of a foreign business trust may resign as such agent upon filing a written notice thereof, executed in duplicate, with the Secretary of State, who shall forthwith mail a copy thereof to the foreign business trust at its principal office in the state or country under the laws of which it is organized. The appointment of such agent shall terminate upon the expiration of thirty (30) days after receipt of such notice by the Secretary of State.~~

#### **~~§ 79-16-21. Service of process~~**

~~—(1) The registered agent so appointed by a foreign business trust authorized to transact in this state shall be an agent of such foreign business trust upon whom any process, notice or demand required or permitted by law to be served upon the foreign business trust may be served.~~

~~(2) A foreign business trust may be served by registered or certified mail, return receipt requested, addressed to a trustee of the foreign business trust at its principal office shown on its application for a certificate of authority if the foreign business trust:~~

~~—(a) Has no registered agent or its registered agent cannot with reasonable diligence be served;~~

~~—(b) Has withdrawn from transacting business in the State of Mississippi; or~~

~~—(c) Has had its certificate of authority revoked.~~

~~(3) Service is perfected under subsection (2) at the earliest of:~~

~~—(a) The date the foreign business trust receives the mail;~~

~~—(b) The date shown on the return receipt, if signed on behalf of the foreign business trust; or~~

~~—(c) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed.~~

~~(4) This section does not prescribe the only means, or necessarily the required means, of serving a foreign business trust.~~

#### **§ 79-16-27. Certificate of authority; revocation; causes.**

(1) The certificate of authority of a foreign business trust to transact business in this state may be revoked by the Secretary of State upon the condition prescribed in this section when:

(a) The foreign business trust has failed to pay any fees prescribed by law when they become due and payable;

(b) The foreign business trust has failed to appoint and maintain a registered agent in this state;

(c) The foreign business trust has failed, after change of its ~~registered office or~~ registered agent or address of its registered agent, to file in the Office of Secretary of State an appropriate filing a statement of such change as required by the Mississippi Registered Agents Act~~law~~; or

(d) A misrepresentation has been made of any material matter in an application, report, affidavit or other document submitted by such foreign business trust pursuant to law.

(2) No certificate of authority of a foreign business trust shall be revoked by the Secretary of State unless:

- (a) He shall have given the foreign business trust not less than sixty (60) days' notice thereof by mail addressed to its registered ~~agent-office in this state~~; and
- (b) The foreign business trust shall fail prior to revocation to pay such fees, any taxes owed or file the required appropriate filing as required by the Mississippi Registered Agents Act to report ~~statement of a~~ change of registered agent or address of registered agent ~~or registered office~~, or file such amendment or correct such misrepresentation.

#### **§ 79-16-29. Certificate of withdrawal; revocation procedure**

(1) Upon revoking such certificate of authority, the Secretary of State shall:

- (a) Issue a certificate of revocation;
- (b) File one (1) of such certificates in his office; and
- (c) Mail to such foreign business trust to its registered agent as provided in [Section 13 of the Mississippi Registered Agents Act] ~~at its registered office in this state~~ a notice of such revocation accompanied by one (1) of such certificates.

(2) Upon issuance of such certificate of revocation, the authority of the foreign business trust to transact business in this state shall cease.

#### **§ 79-16-33. Fees**

The Secretary of State shall charge and collect from foreign business trust for:

~~—(1) Filing a statement of change of address of registered office or change of registered agent, or both, Twenty-five Dollars (\$ 25.00);~~

(1) Filings required by the [Mississippi Registered Agents Act], ~~the fees required by [Section 3 of the Mississippi Registered Agents Act]~~;

(2) Filing an application of a foreign business trust for a certificate of authority to transact business in this state and issuing a certificate of authority, Two Hundred Fifty Dollars (\$ 250.00);

(3) Filing a certificate of correction or amendment of a foreign business trust authorized to transact business in this state, Fifty Dollars (\$ 50.00);

(4) Filing an application for withdrawal of a foreign business trust and issuing a certificate of withdrawal, Twenty-five Dollars (\$ 25.00);

(5) Filing any other statement or report of a foreign business trust, Twenty-five Dollars (\$ 25.00);

(6) For furnishing a certified copy of any document, instrument or paper relating to a foreign business trust, One Dollar (\$ 1.00) per page and Ten Dollars (\$ 10.00) for the certificate and affixing the seal thereto; and

(7) At the time of any service of process on him as resident agent of a foreign business trust, Twenty-five Dollars (\$ 25.00), which amount may be recovered as taxable cost by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

**Uniform Limited Liability Company Act**  
**Conforming Amendments**  
**[REVISED 6-17-2009]**

1. §79-29-106. Registered office and registered agent. Repealed
2. §79-29-111 Service on Limited Liability Company. Repealed.
3. §79-29-201. Certificate of formation.
4. § 79-29-206. Amendment, dissolution or cancellation by judicial act.  
[added]
5. § 79-29-214. Appraisal rights. [added]
6. § 79-29-802. Judicial dissolution. [added]
7. § 79-29-803. Winding up. [added]
8. §79-29-807. Unknown claims against dissolved limited liability company.
9. § 79-29-913. Court action to appraise membership interests. [added]
10. §79-29-1002. Registration; application to registered foreign limited liability companies.
11. §79-29-1203. Fees.

**~~§ 79-29-106. Registered office and registered agent.~~**

~~—(1) Each limited liability company must continuously maintain in this state:~~

~~—(a) A registered office which may be the same as any of its places of business~~;~~; and~~

~~—(b) A registered agent for service of process on the limited liability company, which agent must be either an individual resident of this state, a domestic corporation, nonprofit corporation or limited liability company or a foreign corporation, nonprofit corporation or limited liability company authorized to transact business in this state; in each case whose business office is identical with the registered office.~~

~~(2) A limited liability company may change its registered office or registered agent by delivering to the office of the Secretary of State for filing a certificate that sets forth:~~

~~—(a) The name of the limited liability company;~~

~~—(b) The street address of its current registered office;~~

~~—(c) If the current registered office is to be changed, the street address of the new registered office;~~

~~—(d) The name of its current registered agent;~~

~~—(e) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent (either on the certificate or a statement attached to it) to the appointment; and~~

~~—(f) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.~~

~~(3) A registered agent may change its address to another address in this state by delivering to the office of the Secretary of State for filing a certificate, signed by such registered agent, setting forth: (a) the names of all the limited liability companies represented by such registered agent, (b) the address at which such registered agent has maintained its office for each of such limited liability companies, and (c) its new address which such registered agent will thereafter maintain for each of the limited liability companies recited in the certificate.~~

~~Upon filing this certificate, the Secretary of State will deliver to the registered agent a certified copy of the same and thereafter, or until further change of address, as authorized by law, the registered office of each of the limited liability companies recited in the certificate shall be located at the new address of the registered agent as given in the certificate. The filing by the Secretary of State of such certificate shall be deemed to be an amendment of the certificate of formation of each limited liability company affected thereby. Any registered agent delivering a certificate to the office of the Secretary of State under this section shall promptly, upon such~~

~~filing by the Secretary of State, deliver a copy of any such certificate to each limited liability company affected thereby.~~

~~(4) The registered agent of one or more limited liability companies may resign its agency appointment by delivering a certificate to the office of the Secretary of State for filing stating that it resigns as registered agent for the limited liability companies identified in the certificate, but the resignation shall not become effective until ninety (90) days after the certificate is filed by the Secretary of State. There shall be attached to such certificate an affidavit of the registered agent that at least thirty (30) days prior to the filing of the certificate notices were sent by certified or registered mail to each limited liability company for which such registered agent is resigning as registered agent of the resignation of such registered agent. This notice shall be delivered to the last known principal office of each limited liability company identified in the certificate. After receipt of the notice of resignation of its registered agent, the limited liability company for which such registered agent was acting shall obtain and designate a new registered agent. After the resignation of the registered agent has become effective, if the limited liability company fails to obtain and designate a new registered agent, service of legal process against the limited liability company for which the resigned registered agent had been acting shall thereafter be upon the Secretary of State in accordance with subsection (2) of 79-29-111.~~

#### **~~§ 79-29-111. Service on limited liability company~~**

~~—(1) A limited liability company's registered agent is the limited liability company's agent for service of process, notice or demand required or permitted by law to be served on the limited liability company.~~

~~(2) If a limited liability company has no registered agent, or the agent cannot with reasonable diligence be served, service of legal process against the limited liability company shall be upon the Secretary of State in accordance with the Rules of Civil Procedure of this state. Service is perfected under this subsection at the earliest of:~~

~~—(a) The date the limited liability company receives the mail;~~

~~—(b) The date shown on the return receipt, if signed on behalf of the limited liability company;  
or~~

~~—(c) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed.~~

~~(3) This section does not prescribe the only means, or necessarily the required means, of serving a limited liability company.~~

#### **§ 79-29-201. Certificate of Formation.**

(1) In order to form a limited liability company, a certificate of formation must be signed and delivered to the office of the Secretary of State. The certificate must set forth:



- (a) The name of the limited liability company;
  - (b) ~~The street and mailing address of the registered office and the name and the street and mailing address of the registered agent for service of process, required to be maintained by Section 79-29-106~~The information required by [Section 5(a) of the Mississippi Registered Agents Act];
  - (c) If the limited liability company is to have a specific date of dissolution, the latest date upon which the limited liability company is to dissolve;
  - (d) If full or partial management of the limited liability company is vested in a manager or managers, a statement to that effect;
  - (e) Any other matters the managers or members determine to include therein.
- (2) A limited liability company is formed at the date and time of the filing of the certificate of formation by the Secretary of State, as evidenced by such means as the Secretary of State may use for the purpose of recording the date and time of filing, or at any later time specified in the certificate of formation if, in either case, the certificate of formation so filed substantially complies with the requirements of this chapter. A delayed effective date specified in a certificate of formation may not be later than the ninetieth day after the date and time it is filed by the Secretary of State.
- (3) For all purposes, a copy of the certificate of formation duly certified by the Secretary of State is conclusive evidence of the formation of a limited liability company and prima facie evidence of its existence.

**§ 79-29-206. Amendment, dissolution or cancellation by judicial act.**

If a person required by this Article 2 to sign a certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the chancery court of the county in which the principal office is located or the Hinds County Chancery Court if the limited liability company does not have a principal office in this state ~~(or, if none in this state, the registered office) of the limited liability company is located~~ to direct the signing of the certificate. If the court finds that it is proper for the certificate to be signed and that any person so designated has failed or refused to sign the certificate, it shall order appropriate relief, including an order to the Secretary of State to file an appropriate certificate.

**§ 79-29-214. Appraisal rights.**

(1) Definitions. In this section:

- (a) "Beneficial holder" means a person who is the beneficial owner of interests held in a voting trust or by a nominee on the beneficial owner's behalf.
- (b) "Fair value" means the value of the limited liability company's interests determined:
  - (i) Immediately before the effectuation of the action to which the member or owner of a limited liability company interest objects;

- (ii) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and
- (iii) Without discounting for lack of marketability or minority status.
- (c) "Record holder" means the person in whose name interests are registered in the records of the entity or the beneficial owner of interests to the extent of the rights granted by a nominee certificate on file with the entity.
- (d) "Holder" means both a record holder and a beneficial holder.

(2) Right to appraisal. (a) Unless otherwise provided in the certificate of formation or limited liability company agreement, each member and owner of a limited liability company interest is entitled to appraisal rights, and to obtain payment of the fair value of that member or owner of a limited liability company's interest, in the event of any of the following actions:

- (i) Consummation of a merger to which the limited liability company is a party;
  - (ii) Consummation of a sale, lease, exchange, or other disposition of assets if the disposition would leave the limited liability company without a significant continuing business activity. If a limited liability company retains a business activity that represented at least twenty-five percent (25%) of total assets at the end of the most recently completed fiscal year, and twenty-five percent (25%) of either income from continuing operations or revenues from continuing operations for that fiscal year, in each case of the limited liability company and its subsidiaries on a consolidated basis, the limited liability company will conclusively be deemed to have retained a significant continuing business activity;
  - (iii) Any other action to the extent provided by the certificate of formation or limited liability company agreement.
- (b) A member or owner of a limited liability company interest entitled to appraisal rights under this section may not challenge a completed action for which appraisal rights are available unless such action:
- (i) Was not effectuated in accordance with the applicable provisions of the Mississippi Limited Liability Company Act or the limited liability company's certificate of formation or limited liability company agreement; or
  - (ii) Was procured as a result of fraud or material misrepresentation.

(3) Notice of appraisal rights. If a proposed action described in subsection (2) of this section is to be submitted to a vote, the meeting notice must state that the limited liability company has concluded that members and owners of limited liability company interests are entitled to assert appraisal rights under this section and a copy of this section must accompany the meeting notice sent to the members and owners of limited liability company interests.

(4) Notice of intent to demand payment. (a) If a proposed action requiring appraisal rights under subsection (2)(a) of this section is submitted to a vote, members and owners of limited liability company interests who wish to assert appraisal rights with respect to any class or series of interests:

- (i) Must deliver to the limited liability company before the vote is taken written notice of the person's intent to demand payment if the proposed action is effectuated; and
- (ii) Must not vote, or cause or permit to be voted, any of the person's interests in favor of the proposed action.

(b) A member or owner of a limited liability company interest who does not satisfy the requirements of subsection (4)(a) of this section is not entitled to payment under this section.

(5) Appraisal notice and form. (a) If a proposed action requiring appraisal rights under subsection (2) of this section becomes effective, the limited liability company must deliver a written appraisal notice and form required by this subsection (5) to all members and owners of limited liability company interests who satisfied the requirements of subsection (4) of this section.

(b) The appraisal notice must be sent no earlier than the date the action became effective and no later than ten (10) days after such date and must:

(i) Supply a form that specifies the date of the first announcement to members and owners of limited liability company interests of the principal terms of the proposed action and requires the person asserting appraisal rights to certify (A) whether beneficial ownership of those interests for which appraisal rights are asserted was acquired before that date, and (B) that the person did not vote for the transaction;

(ii) State:

(A) Where the form must be sent and where certificates for certificated interests must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subsection (5)(b)(ii)(B) of this section;

(B) A date by which the limited liability company must receive the form which date may not be fewer than forty (40) nor more than sixty (60) days after the date the subsection (5)(a) appraisal notice and form are sent, and state that the person shall have waived the right to demand appraisal with respect to the interests unless the form is received by the limited liability company by such specified date;

(C) The limited liability company's estimate of the fair value of the interests;

(D) That, if requested in writing, the limited liability company will provide to the person so requesting, within ten (10) days after the date specified in subsection (5)(b)(ii)(B), the number of persons who return the forms by the specified date and the aggregate interests owned by them; and

(E) The date by which the notice to withdraw under subsection (6) must be received, which date must be within twenty (20) days after the date specified in subsection (5)(b)(ii)(B) of this section; and

(c) Be accompanied by a copy of this section.

(6) Perfection of rights; right to withdraw. (a) A person who receives notice pursuant to subsection (5) and who wishes to exercise appraisal rights must certify on the form sent by the limited liability company whether the beneficial owner of such interests acquired beneficial ownership thereof before the date required to be set forth in the notice pursuant to subsection (5)(b) of this section. If a person fails to make this certification, the limited liability company may elect to treat the person's interests as after-acquired interests under subsection (8). In addition, a person who wishes to exercise appraisal rights must execute and return the form and, in the case of certificated interests, deposit the person's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to subsection (5)(b)(ii)(B) of this section. Once a person deposits that person's certificates or, in the case of uncertificated interests, returns the executed forms, that member or owner of a limited liability company interest loses all

rights as a member or owner of a limited liability company interest, unless the person withdraws pursuant to subsection (6)(b) of this section.

(b) A person who has complied with subsection (6)(a) of this section may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the limited liability company in writing by the date set forth in the appraisal notice pursuant to subsection (5)(b)(ii)(E) of this section. A person who fails to so withdraw from the appraisal process may not thereafter withdraw without the limited liability company's written consent.

(c) A person who does not execute and return the form and, in the case of certificated interests, deposit that person's certificates where required, each by the date set forth in the notice described in subsection (5)(b)(ii)(B) of this section, shall not be entitled to payment under this subsection.

(7) Payment. (a) Except as provided in subsection (6), within thirty (30) days after the form required by subsection (5)(b)(ii)(B) of this section is due, the limited liability company shall pay in cash to those persons who complied with subsection (6)(a) of this section the amount the limited liability company estimates to be the fair value of their interests, plus interest at the legal rate.

(b) The payment to each person pursuant to subsection (7)(a) of this section must be accompanied by:

(i) Financial statements of the limited liability company that issued the interests to be appraised, consisting of a balance sheet as of the end of a fiscal year ending not more than sixteen (16) months before the date of payment, an income statement for that year, a statement of changes in equity for that year, and the latest available interim financial statements, if any;

(ii) A statement of the limited liability company's estimate of the fair value of the interests, which estimate must equal or exceed the limited liability company's estimate given pursuant to subsection (5)(b)(ii)(C) of this section;

(iii) A statement that persons described in this subsection (7) have the right to demand further payment under subsection (9) and that if any such person does not do so within the time period specified therein, such person shall be deemed to have accepted such payment in full satisfaction of the limited liability company's obligations under this section.

(8) After-acquired interests. (a) A limited liability company may elect to withhold payment required by subsection (7) of this section from any person who did not certify that beneficial ownership of all of the person's interests for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to subsection (5)(b)(i) of this section.

(b) If the limited liability company elected to withhold payment under subsection (8)(a) of this section, it must, within thirty (30) days after the form required by subsection (5)(b)(ii)(B) of this section is due, notify all persons who are described in subsection (8)(a) of this section:

(i) Of the information required by subsection (7)(b)(i) of this section;

(ii) Of the limited liability company's estimate of fair value pursuant to subsection (7)(b)(ii) of this section;

(iii) That they may accept the limited liability company's estimate of fair value, plus interest at the legal rate, in full satisfaction of their demands or demand appraisal under subsection (9) of this section,

(iv) That those persons who wish to accept such offer must so notify the limited liability company of their acceptance of the limited liability company's offer within thirty (30) days after receiving the offer; and

(v) That those persons who do not satisfy the requirements for demanding appraisal under subsection (9) of this section shall be deemed to have accepted the limited liability company's offer.

(c) Within ten (10) days after receiving the person's acceptance pursuant to subsection (8)(b) of this section, the limited liability company must pay in cash the amount it offered under subsection (8)(b)(ii) of this section to each person who agreed to accept the limited liability company's offer in full satisfaction of the person's demand.

(d) Within forty (40) days after sending the notice described in subsection (8)(b) of this section, the limited liability company must pay in cash the amount it offered to pay under subsection (7)(b) of this section to each person described in subsection (8)(b)(ii) of this section.

(9) Procedure if person dissatisfied with payment or offer. (a) A person paid pursuant to subsection (7) of this section who is dissatisfied with the amount of the payment must notify the limited liability company in writing of that person's estimate of the fair value of the interests and demand payment of that estimate plus interest at the legal rate less any payment under subsection (7) of this section. A person offered payment under subsection (8) who is dissatisfied with that offer must reject the offer and demand payment of the person's stated estimate of the fair value of the shares plus interest at the legal rate.

(b) A person who fails to notify the limited liability company in writing of that person's demand to be paid the person's stated estimate of the fair value plus interest at the legal rate under subsection (9)(a) of this section within thirty (30) days after receiving the limited liability company's payment or offer of payment under subsections (7) or (8) of this section, respectively, waives the right to demand payment under this subsection (9) and shall be entitled only to the payment made or offered pursuant to those respective subsections.

(10) Court action. (a) If a person makes demand for payment under subsection (9) of this section which remains unsettled, the limited liability company shall commence a proceeding within sixty (60) days after receiving the payment demand and petition the court to determine the fair value of the interests and accrued interest at the legal rate. If the limited liability company does not commence the proceeding within the sixty (60) day period, it shall pay in cash to each such person the amount the person demanded pursuant to subsection (9)(a) of this section plus interest at the legal rate.

(b) The limited liability company shall commence the proceeding in the chancery court of the county where the limited liability company's ~~principal~~~~registered~~ office is located. If the limited liability company is a foreign limited liability company ~~without a registered office in this state~~, it shall commence the proceeding in the county in this state where the ~~principal~~~~registered~~ office of the domestic limited liability company merged with the foreign limited liability company was located at the time of the transaction.

(c) The limited liability company shall make all persons whose demands remain unsettled, whether or not residents of this state, parties to the proceeding as in an action against their interests, and all parties must be served with a copy of the complaint. Nonresidents may be served as otherwise provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (10)(b) of this section is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them, or in any amendment to it. The persons demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

(e) Each person made a party to the proceeding is entitled to judgment: (i) for the amount, if any, by which the court finds the fair value of the person's interests, plus interest at the legal rate, exceeds the amount paid by the limited liability company to the person for such interests, or (ii) for the fair value, plus interest at the legal rate, of the person's interests for which the limited liability company elected to withhold payment under subsection (8) of this section.

(11) Court costs and counsel fees. (a) The court in an appraisal proceeding commenced under subsection (10) of this section shall determine all costs of the proceeding including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the limited liability company, except that the court may assess costs against all or some of the persons demanding appraisal, in amounts the court finds equitable, to the extent the court finds such persons acted arbitrarily, vexatiously or not in good faith with respect to the rights provided by this subsection.

(b) The court in an appraisal proceeding may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(i) Against the limited liability company and in favor of any or all persons demanding appraisal if the court finds the limited liability company did not substantially comply with the requirements of subsections (3) (5), (7) or (8) of this section; or

(ii) Against either the limited liability company or a person demanding appraisal, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this subsection.

(c) If the court in an appraisal proceeding finds that the services of counsel for any member or owner of a limited liability company interest were of substantial benefit to other persons similarly situated, and that the fees for those services should not be assessed against the limited liability company, the court may award to such counsel reasonable fees to be paid out of the amounts awarded the persons who were benefited.

(d) To the extent the limited liability company fails to make a required payment pursuant to subsections (7), (8) or (9) of this section, the person may sue directly for the amount owed and, to the extent successful, shall be entitled to recover from the limited liability company all costs and expenses of the suit, including counsel fees.

#### **§ 79-29-802. Judicial dissolution.**

On application by or for a member, the chancery court for the county in which the ~~principal~~~~registered~~ office of the limited liability company is located or the Hinds County Chancery Court if the limited liability company does not have a principal office in this state may decree dissolution of a limited liability company whenever any of the following occurs:

- (a) It is not reasonably practicable to carry on the business in conformity with the certificate of formation or the limited liability company agreement; or
- (b) The managers or the members in control of the limited liability company have been guilty of or have knowingly countenanced persistent and pervasive fraud or abuse of authority or persistent unfairness toward any member, or the property of the limited liability company is being misapplied or wasted by such persons.

#### **§ 79-29-803. Winding up.**

- (1) Unless otherwise provided in the certificate of formation or limited liability company agreement, the manager or managers, or, if management of the limited liability company is not vested in a manager or managers, the members who have not wrongfully dissolved a limited liability company, may wind up the limited liability company's affairs; but the chancery court for the county in which the ~~principal registered~~ office of the limited liability company is located or the Hinds County Chancery Court if the limited liability company does not have a principal office in this state, upon cause shown, may wind up the limited liability company's affairs upon application of any member or manager, his legal representative or assignee, and in connection therewith, may appoint a liquidating trustee or receiver.
- (2) Upon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in Section 79-29-204, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge the limited liability company's liabilities, and distribute to the members any remaining assets of the limited liability company, all without affecting the liability of the members.
- (3) Unless otherwise provided in the certificate of formation or limited liability company agreement, the persons winding up the affairs of the limited liability company pursuant to this section shall be entitled to reasonable compensation.

#### **§ 79-29-807. Unknown claims against dissolved limited liability company.**

- (1) A dissolved limited liability company may publish notice of its dissolution pursuant to this section which requests that persons with claims against the limited liability company present them in accordance with the notice.
- (2) The notice must:
  - (a) Be published one (1) time in a newspaper of general circulation in the county where the dissolved limited liability company's principal office is or was located or in Hinds County if the corporation does not have a principal office in this state ~~(or, if none in this state, its registered office) is or was last located;~~

(b) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(c) State that a claim against the limited liability company not otherwise barred will be barred unless a proceeding to enforce the claim is commenced within five (5) years after the latter of the publication of the notice or the filing of a certificate of dissolution with respect to the limited liability company.

(3) If the dissolved limited liability company publishes a newspaper notice in accordance with subsection (2) and files a certificate of dissolution pursuant to Section 79-29-204, the claim of each of the following claimants which is not otherwise barred is barred unless the claimant commences a proceeding to enforce the claim against the dissolved limited liability company within five (5) years after the latter of the publication date of the newspaper notice or the filing of the certificate of dissolution:

(a) A claimant who did not receive written notice under Section 79-29-806;

(b) A claimant whose claim was timely sent to the dissolved limited liability company but not acted on within such five-year period; and

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim may be enforced under this section:

(a) Against the dissolved limited liability company, to the extent of its undistributed assets; or

(b) If the assets have been distributed in liquidation, against a member of the dissolved limited liability company to the extent of the member's pro rata share of the claim or the assets of the limited liability company distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.

#### **§ 79-29-913. Court action to appraise membership interests.**

(1) If the disqualified member does not accept the professional limited liability company's offer under Section 79-29-912(2) within the thirty-day period, the member during the following thirty-day period may deliver a written notice to the limited liability company demanding that it commence a proceeding to determine the fair value of the membership interest. The limited liability company may commence a proceeding at any time during the sixty (60) days following the effective date of its offer notice. If it does not do so, the member may commence a proceeding against the limited liability company to determine the fair value of his membership interest.

(2) The limited liability company or disqualified member shall commence the proceeding in the chancery court of the county where the limited liability company's principal office [is located or](#)



the Hinds County Chancery Court if the limited liability company does not have a principal office in this state~~(or, if none in this state, its registered office) is located.~~ The limited liability company shall make the disqualified person a party to the proceeding as in an action against his membership interest. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

(3) The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the power described in the order appointing them, or in any amendment to it.

(4) The disqualified member is entitled to judgment for the fair value of his membership interest determined by the court as of the date of death, disqualification or transfer, together with interest from that date at a rate found by the court to be fair and equitable.

(5) The court may order the judgment paid in installments determined by the court.

#### **§ 79-29-1002. Registration; application to registered foreign limited liability companies.**

(1) Before transacting business in this state, a foreign limited liability company, including a foreign limited liability company formed to render professional services, shall register with the Secretary of State. In order to register, a foreign limited liability company shall deliver to the office of the Secretary of State for filing one (1) original application for registration as a foreign limited liability company, signed by a person with authority to do so under the laws of the state or other jurisdiction of its formation and setting forth:

(a) The name of the foreign limited liability company and, if different, the name under which it proposes to transact business in this state;

(b) The state or other jurisdiction and date of its formation;

(c) ~~The name and street and mailing address of the registered agent for service of process on the foreign limited liability company which the foreign limited liability company has elected to appoint and who meets the requirements of subsection (1)(b) of Section 79-29-106~~ The information required by [Section 5(a) of the Mississippi Registered Agents Act];

(d) ~~A statement that the Secretary of State is appointed the registered agent of the foreign limited liability company for service of process if the registered agent's authority has been revoked or if the registered agent cannot be found or served with the exercise of reasonable diligence;~~ Reserved.

(e) The address of the office required to be maintained in the state or other jurisdiction of its organization by the laws of that state or other jurisdiction or, if not so required, the address of the principal office of the foreign limited liability company; and

(f) If the limited liability company is to have a specific date of dissolution, the latest date upon

which the foreign limited liability company is to dissolve; and

(g) If management of the limited liability company is vested in a manager or managers, a statement to that effect; and

(h) Any other matters the manager or members determine to include therein.

(2) A foreign limited liability company properly registered as such with the Secretary of State before July 1, 1994, shall not be required to submit a new application for registration, nor to pay any related application fee, in order to continue to transact business in this state, but shall otherwise be subject to the provisions of this chapter, including but not limited to Section 79-29-1005.

### **§ 79-29-1203. Fees.**

The Secretary of State shall charge and collect a fee for:

- (a) Filing of Reservation of Limited Liability Company Name, Twenty-Five Dollars (\$25.00).
- (b) ~~Filing of Change of Address of Registered Agent, Twenty-Five Dollars (\$25.00).~~ Reserved.
- (c) ~~Filing of Resignation of Registered Agent, Five Dollars (\$5.00).~~ Reserved.
- (d) Filing of Certificate of Formation, Fifty Dollars (\$50.00).
- (e) Filing of Amendment to Certificate of Formation, Fifty Dollars (\$50.00).
- (f) Filing of Certificate of Dissolution, Twenty-Five Dollars (\$25.00).
- (g) Filing of Certificate of Cancellation, Twenty-Five Dollars (\$25.00).
- (h) Filing of Restated Certificate of Formation or Amended and Restated Certificate of Formation, Twenty-Five Dollars (\$25.00).
- (i) Filing of Certificate of Withdrawal, Twenty-Five Dollars (\$25.00).
- (j) Filing of Application for Registration of Foreign Limited Liability Company, Two Hundred Fifty Dollars (\$250.00).
- (k) Filing of Certificate Correcting Application for Registration of Foreign Limited Liability Company, Fifty Dollars (\$50.00).
- (l) Filing of Certificate of Cancellation of Registration of Foreign Limited Liability Company, Twenty-Five Dollars (\$25.00).
- (m) Any other document required or permitted to be filed under this chapter, Twenty-Five Dollars (\$25.00).

# **Uniform Partnership Act**

## **Article 10. Limited Liability Partnership Conforming Amendments [REVISED 6-17-2009]**

1. § 79-13-1001. Statement of qualification.
2. § 79-13-1102. Statement of foreign qualification.

### **§ 79-13-1001. Statement of qualification.**

- (a) A partnership may become a limited liability partnership pursuant to this section.
- (b) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions.
- (c) After the approval required by subsection (b), a partnership may become a limited liability partnership by filing a statement of qualification. The statement must contain:
- (1) The name of the partnership;
  - (2) The street address of the partnership's chief executive office and, if different, the street address of an office in this state, if any;
  - (3) If the partnership does not have an office in this state, ~~the name and street address of the partnership's agent for service of process~~ the information required by [Section 5(a) of the Mississippi Registered Agents Act];
  - (4) A statement that the partnership elects to be a limited liability partnership; and
  - (5) A deferred effective date, if any.
- ~~(d) The agent of a limited liability partnership for service of process must be an individual who is a resident of this state or other person authorized to do business in this state.~~
- ~~(e)~~ (d) The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to Section 79-13-105(d).
- ~~(f)~~ (e) The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under subsection (c).
- ~~(g)~~ (f) The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.
- ~~(h)~~ (g) An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

### **§ 79-13-1102. Statement of foreign qualification.**

(a) Before transacting business in this state, a foreign limited liability partnership must file a statement of foreign qualification. The statement must contain:

(1) The name of the foreign limited liability partnership which satisfies the requirements of the state or other jurisdiction under whose law it is formed and ends with "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP" or "LLP";

(2) The street address of the partnership's chief executive office ~~and, if different, the street address of an office of the partnership in this state, if any;~~

~~(3) If there is no office of the partnership in this state, the name and street address of the partnership's agent for service of process~~ The information required by [Section 5(a) of the Mississippi Registered Agents Act]; and

(4) A deferred effective date, if any.

~~(b) The agent of a foreign limited liability company for service of process must be an individual who is a resident of this state or other person authorized to do business in this state.~~

~~(e)~~ b The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to Section 79-13-105(d).

~~(d)~~ c An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

**Mississippi Limited Partnership Act**  
**Conforming Amendments**  
**[REVISED JUNE 2009]**

1. §79-14-104. Office and registered agent.
2. §79-14-201. Certificate of limited partnership.
3. §79-14-202. Amendment to certificate.
4. §79-14-207. Liability for false statement in certificate.
5. §79-14-1104. Fees.
6. §79-14-902. Registration [of foreign limited partnership].

**§ 79-14-104. Office ~~and registered agent~~**

~~—(a) Each limited partnership shall have and maintain continuously in the State of Mississippi:~~

~~—(1) A~~an office, which may but need not be a place of its business in the State of Mississippi, at which shall be kept the records required by Section 79-14-105 to be maintained;~~and.~~

~~—(2) A registered agent for service of process on the limited partnership, which agent must be either an individual resident of the State of Mississippi, a domestic business corporation, or a foreign corporation authorized to do business in the State of Mississippi.~~

~~(b) A registered agent may change his address to another address in the State of Mississippi by paying a fee as set forth in Section 79-14-1104 and filing with the Secretary of State a certificate, executed by such registered agent, setting forth the names of all the limited partnerships represented by such registered agent, and the address at which such registered agent has maintained his office for each of such limited partnerships, and further certifying to his new address which will be effective on a given day, and which new address such registered agent will thereafter maintain for each of the limited partnerships recited in the certificate. Upon the filing of such certificate, the Secretary of State will furnish to the registered agent a certified copy of the same under his hand and seal of office, and thereafter, or until further change of address, as authorized by law, the registered agent's office in the State of Mississippi of each of the limited partnerships recited in the certificate shall be located at the new address of the registered agent thereof as given in the certificate. Filing of such certificate shall be deemed to be an amendment of the certificate of limited partnership of each limited partnership affected thereby, and each such limited partnership shall not be required to take any further action with respect thereto to amend its certificate of limited partnership under Section 79-14-202. Any registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each limited partnership affected thereby.~~

~~(c) The registered agent of one or more limited partnerships may resign his agency appointment by paying a fee as set forth in Section 79-14-1104 and filing a certificate with the Secretary of State stating that it resigns as registered agent for such limited partnerships as are identified in the certificate, but such resignation shall not become effective until ninety (90) days after the certificate is filed. There shall be attached to such certificate an affidavit of such registered agent, if an individual, or of the president, a vice president or the secretary thereof if a corporation, that at least thirty (30) days prior and on or about the date of the filing of said certificate, notices were sent by certified or registered mail to each limited partnership for which such registered agent is resigning as registered agent, at the principal place of business thereof within or without the State of Mississippi if known to such registered agent or, if not, to the last known address of the attorney or other individual at whose request such registered agent was appointed for such limited partnership, of the resignation of such registered agent. Additionally, if the registered agent does not know of the principal place of business of the limited partnership, the registered agent shall send notice to the office of the limited partnership in the State of Mississippi as designated in subsection (a) of this section, if its address is different from that of the registered~~

~~agent so resigning. After receipt of the notice of resignation of its registered agent, the limited partnership for which such registered agent was acting shall obtain and designate a new registered agent, to take the place of the registered agent so resigning. After the resignation of the registered agent shall have become effective as provided in this section and if no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against the limited partnership for which the resigned registered agent had been acting shall thereafter be upon the Secretary of State in accordance with the Mississippi Rules of Civil Procedure.~~

#### **§ 79-14-201. Certificate of limited partnership**

(a) In order to form a limited partnership, a certificate of limited partnership must be signed and delivered to the office of the Secretary of State for filing. The certificate must set forth:

- (1) The name of the limited partnership;
- (2) ~~The street and mailing address of the office and the name and the street and mailing address of the registered agent for service of process, required to be maintained by Section 79-14-104~~  
The information required by [Section 5(a) of the Mississippi Registered Agents Act];
- (3) The name and the street and mailing address of each general partner;
- (4) The latest date upon which the limited partnership is to dissolve; and
- (5) Any other matters the general partners determine to include therein.

(b) A limited partnership is formed at the date and time of the filing of the certificate of limited partnership in the office of the Secretary of State, as evidenced by such means as the Secretary of State may use for the purpose of recording the date and time of filing, or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

(c) For all purposes, a copy of the certificate of limited partnership duly certified by the Secretary of State is conclusive evidence of the formation of a limited partnership and prima facie evidence of its existence.

#### **§ 79-14-202. Amendment to certificate**

(a) A certificate of limited partnership is amended by delivery of a certificate of amendment thereto to the office of the Secretary of State for filing. The certificate shall set forth:

- (1) The name of the limited partnership;
- (2) The future effective date of the amendment, which must be a date certain, unless it is effective upon the filing of the certificate of amendment; and



(3) The amendment to the certificate.

(b) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate, or if appropriate, deliver to the Secretary of State for filing a statement of change of agent pursuant to [Section 8 of the Mississippi Registered Agents Act].

(c) Notwithstanding the requirements of subsection (b) of this section, within thirty (30) days after the happening of any of the following events an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be delivered to the office of the Secretary of State for filing:

(1) The admission of a new general partner;

(2) The withdrawal of a general partner;

(3) The continuation of the business under Section 79-14-801 after an event of withdrawal of a general partner;

(4) A change in the name of the limited partnership; or

(5) A change in the street or mailing address of the office of the limited partnership; ~~or~~

~~—(6) A change in the name or the street or mailing address of the registered agent of the limited partnership.~~

(d) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners may determine.

(e) Except as provided in Section 79-14-402(b), if an amendment to a certificate of limited partnership is delivered to the office of the Secretary of State in compliance with subsection (c) of this section, no person is subject to liability because the amendment was not filed earlier.

#### **§ 79-14-207. Liability for false statement in certificate**

(a) If a certificate of limited partnership or certificate of amendment, dissolution or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

(1) A person who signed the certificate, or caused another to sign it on his behalf, and knew, and a general partner who knew or should have known, the statement to be false at the time the certificate was signed; and

(2) A general partner who knew or should have known after the filing of the certificate that an

arrangement or other fact described in the certificate had changed, making the statement in the filed certificate inaccurate in any respect, within a reasonably sufficient time before the statements were relied upon to have enabled that general partner to amend, dissolve or cancel the certificate, ~~or~~ to file a petition for its amendment, dissolution or cancellation under Section 79-14-205 or to file a statement of change of agent pursuant to [Section 8 of the Mississippi Registered Agents Act].

(b) Except as provided in Section 79-14-402(b), no person shall have any liability for failing pursuant to subsection (a)(2) of this section to cause the amendment, dissolution or cancellation of a certificate to be filed or failing to file a petition for its amendment, dissolution or cancellation pursuant to subsection (a)(2) of this section if the certificate of amendment, certificate of dissolution, certificate of cancellation or petition is filed by the Secretary of State within thirty (30) days of when that person knew or should have known to the extent provided in subsection (a)(2) of this section that the statement in the certificate was inaccurate in any respect.

#### **§ 79-14-1104. Fees.**

Pursuant to this chapter, the Secretary of State shall charge and collect a fee for:

- (a) Filing of Reservation of Partnership Name ..... \$25.00
- (b) ~~Filing of Change of Address of Registered Agent ..... 25.00~~ Reserved.
- (c) ~~Filing of Resignation of Registered Agent ..... 5.00~~ Reserved.
- (d) Filing of Certificate of Limited Partnership ..... 50.00
- (e) Filing of Amendment to Certificate of Limited Partnership ..... 50.00
- (f) Filing of Certificate of Dissolution ..... 25.00
- (g) Filing of Certificate of Cancellation ..... 25.00
- (h) Filing of Restated Certificate of Limited Partnership or  
Amended and Restated Certificate of Limited Partnership..... 25.00
- (i) Filing of Certificate of Withdrawal ..... 25.00
- (j) Filing of Application for Registration of Foreign Limited  
Partnership ..... 250.00
- (k) Filing of Certificate Correcting Application for Registration  
of Foreign Limited Partnership ..... 50.00
- (l) Filing of Certificate of Cancellation of Registration of  
Foreign Limited Partnership ..... 25.00

#### **§ 79-14-902. Registration.** [Foreign Limited Partnerships]

Before transacting business in this state, a foreign limited partnership shall register with the Secretary of State. In order to register, a foreign limited partnership shall deliver to the office of the Secretary of State for filing one (1) original of an application for registration as a foreign limited partnership, signed by a general partner and setting forth:

- (1) The name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this state;
- (2) The state and date of its formation;

- (3) [The information required by \[Section 5\(a\) of the Mississippi Registered Agents Act\]](#);  
~~The name and street and mailing address of any registered agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; the registered agent must be an individual resident of this state, a domestic corporation or a foreign corporation having a place of business in and authorized to do business in this state;~~
- (4) ~~A statement that the Secretary of State is appointed the registered agent of the foreign limited partnership for service of process if no registered agent has been appointed under paragraph (3) of this section or, if appointed, the registered agent's authority has been revoked or if the registered agent cannot be found or served with the exercise of reasonable diligence;~~ [Reserved.](#)
- (5) The address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, the address of the principal office of the foreign limited partnership;
- (6) The name and mailing and street address of each general partner; and
- (7) The mailing and street address of the office at which is kept a list of the names and addresses of the limited partners and their contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is cancelled.

# MoRAA 2009 STUDY GROUP

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# Model Registered Agents Act



Delbert Hosemann  
Mississippi Secretary of State  
Policy & Research Division  
June 2009



# *The Model Registered Agents Act*

- MoRAA is a model act for states to adopt concerning business entity registered agents.

# MoRAA

- Background
- Goals
- Contents
- Comparison of Fees of States that have adopted MoRAA
- Conclusion and Next Steps



# *Background*



- The MoRAA was adopted in 2006.
- Groups that participated in drafting, reviewing and approving the MoRAA: NCCUSL, ABA, the National Registered Agent Association, the International Association of Commercial Administrators and the National Association of Secretaries of State.
- These groups, with the exception of NASS, reviewed all the states' RA laws and drafted what they felt was a reasonable solution to conforming the business entity registered agent statutes.



# *Background*

MoRAA has been Adopted by 9 states so far:

- Arkansas
- Hawaii
- Idaho
- Maine
- Montana
- Nevada
- North Dakota
- South Dakota
- Utah





# *Goals*

- To change all of a state's business entity statutes to create one uniform body of law that would govern the registered agent processes for all types of business entities.



# Goals

## Uniformity

- Standardizes and creates one set of laws, filings and fees for registered agents of all entities.
- Clarifies and makes consistent service of process procedures for all business entities.
- Clears up diversity among the various business entity laws.
- Includes definitions that apply throughout the business entity laws.



# *Contents*

## In General

MoRAA contains:

- The provisions of MoRAA itself, which deal with registered agent issues and apply to all forms of business entities; and
- Conforming changes to all of the existing business entity laws that integrate the entity laws with the new registered agent provisions.



# *Contents*

## Agents

- Creates two categories of agents: commercial registered agents and non-commercial registered agents.
- Allows registered agents to represent their clients in the same manner as they did under previous laws.
- Serving as the registered agent does not cause the agent to be liable for the actions of the represented organization.



# *Contents*

## Elimination of Need to file Agents' consent to appointment

- Eliminates the requirement to file with the Secretary of State's office the written consent of the appointed registered agent.
- Entity is still required to obtain the agent's consent, but the entity no longer has to file the signed consent form with the Secretary of State's office.



# *Contents*

## “Commercial Agent”

- Will receive and deliver service of process and any filings or notices for various and sundry business entities.
- A commercial registered agent must file a Commercial Registered Agent Listing with the Secretary of State that contains its address. (Some states charge a fee for this service)
- The Listing Statement is a voluntary filing and it has no bearing on the agent's ability to charge for the service.
- States are not required to publish the list of commercial agents but some states do publish it on their websites.
- Commercial agents can specify that they will accept electronic service of process. Noncommercial agents do not have this option.
- Because its address is on file in the Listing Statement, it only has to make a single filing when it changes its address, which becomes effective for all represented entities. States vary on how to charge for this.



# *Contents*

## “Noncommercial Agent”

- Either an individual or a business that serves as the registered agent for an entity
- Does not have a Commercial Registered Agent Listing filed with the Secretary of State
- If its address changes, it must file an address change form for each represented entity.





# *Contents*

## Procedures

Sets out uniform procedures for each business entity for:

- ☐ Who can be a registered agent
- ☐ appointing and changing a registered agent.
- ☐ changing the name and address of a registered agent.
- ☐ filing as a commercial agent.
- ☐ terminating a commercial agent listing.
- ☐ resigning as a commercial agent.
- ☐ serving process on a business entity.



# *Contents*

## Agent can resign if appointed without its approval

- If an individual or entity is appointed as a registered agent without the agent's knowledge or approval and the agent does not agree to the appointment, the agent may file a statement of resignation with the Secretary of State.
- A fee is not required for filing the resignation statement.
- The agent (not the Secretary of State) must also notify the business entity that the agent has resigned.

# *Contents*

## Service of Process

- The Act eliminates some of the provisions found in some entity organic laws that make the Secretary of State the default agent for service of process under certain circumstances.





# *Contents*

## Elimination of the term “registered office”

- Eliminates the term “registered office.”
- More businesses are using their registered agent’s office address as their “registered office” 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 to this Act eliminate the function of the registered office address as a means of determining where publication or venue for certain actions under the entity’s organic law is appropriate.



# *Contents*

## MoRAA Forms and Fees

- Currently registered agent fees in MS differ according to the type of business entity represented. MoRAA makes the fees consistent across entities.
- Under MoRAA no additional filings or fees will be required by business entities already registered with the Secretary of State's office with respect to their registered agents.
- Registered agents will have new forms and new fees. In some cases fees will be reduced.



# *State Comparisons*

- Listing Statement Fees vary from no fee to \$1,000
- Some States list the Commercial Agents on their website, some do not
- Change fees vary from no fee to one flat fee to unlimited per-entity fee to a tiered per-entity fee (i.e., per entity fee is lower if greater than 200 filings)
- Some states post the “14 day list” on their website for public viewing, some require the C.A. to have a password to see the list, some provide the list on request.



## *Other States' MoRAA Experience and Feedback*

# *Conclusion*

- QUESTIONS?
- NEXT STEPS





## **Reasons to Adopt MORAA**

### **Reasons for Secretary of State's Office to Adopt MORAA**

- MoRAA will allow SOS to have one set of registered agent forms and one set of fees for all registered agents. Currently each entity type has its own set of agent forms and its own fees, which vary widely from entity to entity.
- SOS will be uniform with at least 9 other states so far and more states will adopt it.
- Improved Integrity of SOS Database, because commercial agents will have one single name and address used for every represented entity. Multiple variations of the names and addresses of the commercial agent will be eliminated.
- Less paperwork and mailouts to process for the SOS Office because:
  - The permitted types of agents will be expanded. All business entity types will be eligible to act as registered agents, so the SOS won't have to reject a filing based on the reason the agent is the wrong entity type (LLC cannot act as agent of a corporation under current law, for example).
  - SOS office will no longer be required to notify entities of an agent's termination of representation.
  - There will be fewer instances of the SOS being the default agent for service of process
  - Assuming software can be created to accomplish this, it will be easier administratively and less paperwork to process a change of address form for a commercial registered agent.

### **Reasons for Business Entities to Support Adoption of MORAA**

- Less confusion for business entity on which is the correct form to use and what is the correct fee, because they will be uniform for all business entities
- There will also be less confusion for business entities that do business in multiple states because the registered agent laws will be uniform with other states where they do business
- Plaintiff business entities will have a uniform method of service of process for all entity types they need to serve process on
- Easier for an entity to appoint a registered agent because entity no longer has to file the agent's written consent
- Entity appointing a commercial agent doesn't have to include the address of the agent in the filing
- Business entities can appoint any business entity type to be their agent, even if entity is a corporation and the agent they want to appoint is an LLC

### **Reasons for Registered Agents to Support Adoption of MORAA**

- Less confusion for agents on which is the correct form to use and what is the correct fee, because they will be uniform for all business entities
- Less confusion for agents that do business in multiple states because the registered agent laws will be uniform with other states where they do business
- Less paperwork involved in changing their address or name if they are a commercial agent
- If they are a commercial agent, all business entities will have their correct legal name and correct mailing address.
- Commercial agents can specify if they will accept electronic service of process
- Agents can act as agent for any business type

