UNIFORM LAW ENFORCEMENT ACCESS TO ENTITY INFORMATION ACT

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-EIGHTEENTH YEAR
IN SANTA FE, NEW MEXICO
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WITH PREFATORY NOTE AND COMMENTS

October 9, 2009

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Prefatory Note

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

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

> "In response to mounting concern over money laundering, the Financial Action Task Force on Money Laundering (FATF) was established by the G-7 Summit that was held in Paris in 1989. Recognizing the threat posed to the banking system and to financial institutions, the G-7 Heads of State or Government and President of the European Commission convened the Task Force from the G-7 member States, the European Commission and eight other countries.
>
> "The Task Force was given the responsibility of examining money laundering techniques and trends, reviewing the action which had already been taken at a national or international level, and setting out the measures that still needed to be taken to combat money laundering. In April 1990, less than one year after its creation, the FATF issued a report containing a set of Forty Recommendations, which provide a comprehensive plan of action needed to fight against money laundering."

Recommendation 33 of the Forty Recommendations provides that:

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

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

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

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

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

UNIFORM LAW ENFORCEMENT ACCESS TO ENTITY INFORMATION ACT

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

SECTION 2. DEFINITIONS. In this [act]:

(1) "Appropriate request" means:

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

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

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

(ii) 28 U.S.C. Section 1782.

(2) "Beneficial ownership and control information" means the information described in Section 7(a).

(3) "Conventional privately held entity" means a domestic filing entity that has, or will have on the effective date of its initial public organic record, no more than 50 interest holders; but the term does not include a domestic filing entity:

(A) in which one or more domestic or foreign entities with more than 50 interest holders holds, directly or indirectly, a majority of the outstanding interests entitled to vote on any issue;

(B) that is licensed or otherwise authorized to conduct business as a bank or other depository institution, trust company, insurance company, public utility, or securities or commodities broker or dealer, or has filed with the appropriate federal or state agency an

application, which has not been denied, to conduct such business;

(C) that is registered, or has filed an application for registration which has not been denied, as an investment company under the Investment Company Act of 1940, 15 U.S.C. § 80a-1, et seq.;

(D) that is registered, or has filed an application for registration which has not been denied, as an investment advisor under the Investment Advisors Act of 1940, 15 U.S.C. § 80b-1, et seq., or the law of any state;

(E) in which one or more domestic or foreign entities of the types described in subparagraph (B), (C), or (D) holds, directly or indirectly, a majority of the outstanding interests entitled to vote on any issue;

(F) that holds, directly or indirectly, a majority of the outstanding interests entitled to vote on any issue in a domestic or foreign entity of a type described in subparagraph (B), (C), or (D);

(G) that has filed with the Internal Revenue Service a current annual information return as an exempt organization; or

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

(4) "Domestic", with respect to an entity, means governed as to its internal affairs by the law of this state.

(5) "Domestic filing entity" means:

(A) a domestic business corporation;

(B) a domestic nonprofit corporation;

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

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

(E) a domestic limited liability company;

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

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

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

(6) "Entity information statement" means the initial or amended statement described in Section 4(a) or (c).

(7) "Foreign", with respect to an entity, means governed as to its internal affairs by the law of a jurisdiction other than this state.

(8) "Governance interest" means the right under the organic law or organic rules of an entity that is not a corporation, other than as a governor, agent, assignee, or proxy, to:

(A) receive or demand access to:

(i) information concerning the entity; or

(ii) the books and records of the entity;

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

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

(9) "Governor" means:

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

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

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

(D) a general partner of a limited partnership;

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

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

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

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

(10) "Interest" means:

(A) a governance interest;

(B) a transferable interest;

(C) a share of a business corporation; or

(D) a membership in a nonprofit corporation.

(11) "Interest holder" means:

(A) a shareholder of a business corporation;

(B) a member of a nonprofit corporation;

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

(D) a general partner of a limited partnership;

(E) a limited partner of a limited partnership;

(F) a member of a limited liability company;

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

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

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

(12) "Non-US entity" means an entity whose internal affairs are governed by the laws of a jurisdiction other than a state or the United States.

(13) "Organic law" means the statutes of an entity's jurisdiction of incorporation, organization, or other formation which govern the internal affairs of the entity.

(14) "Organic rules" means the public organic record and private organic rules of an entity.

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

(16) "Private organic rules" means:

(A) the bylaws of a business corporation;

(B) the bylaws of a nonprofit corporation;

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

(D) the partnership agreement of a limited partnership;

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

(F) the bylaws of a limited cooperative association;

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

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

state; and

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

(17) "Public organic record" means:

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

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

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

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

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

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

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

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

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

(19) "Records contact" means an individual whose principal residence is in the United States and who has access to and can produce within the United States on a timely basis on appropriate request the beneficial ownership and control information for an entity.

(20) "Responsible individual" means an individual who:

(A) is generally familiar with the affairs of the conventional privately held entity;

(B) participates, directly or indirectly, in the control or management of the entity

or, if an entity is being formed, will participate in the control or management of the entity; and

(C) does not participate in the control or management of the entity as a nominee of another person solely for the purpose of satisfying the requirement of this [act] that the entity designate a responsible individual.

(21) "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.

(22) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(23) "Transferable interest" means the right under the organic law of an entity that is not a corporation to receive distributions from the entity.

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

Legislative Note:

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

(3) "Conventional privately held entity": The list of exceptions should be revised to omit any of the types of entities listed that are formed under a law that applies only to that type of entity, for example a banking corporation act or insurance company act. Those entities should also not be included in the definition of "domestic filing entity" because this act does not need to include those entities for any purpose.

(5) "Domestic filing entity": The entities referred to in this definition are illustrative only. The list as enacted by a state should include all the types of non-governmental entities that may be created under the state's laws where a filing must be made with the Secretary of State to create or confirm the status or existence of the entity. An enacting state should revise this

definition so that (i) the entities are referred to in the manner they are referred to in the state's other laws and (ii) it includes all of the types of entities that fit within the concept and are recognized by the laws of the state.

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

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

(9) "Governor": An enacting state should revise this definition so that it refers to the appropriate persons with respect to each type of entity listed in the definition of "domestic filing entity."

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

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

(11) "Interest holder": An enacting state should revise this definition so that it includes references to the appropriate persons with respect to each type of entity listed in the definition of "domestic filing entity."

(16) "Private organic rules": An enacting state should revise this definition so that it refers to the appropriate item with respect to each type of entity listed in the definition of "domestic filing entity."

(17) "Public organic record": An enacting state should revise this definition so that it refers to the appropriate document with respect to each type of entity listed in the definition of "domestic filing entity."

Comment

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

"Beneficial ownership and control information." The information that Section 7(a) requires as part of the beneficial ownership and control information for an entity includes information on several subjects. Information is required that will help law enforcement trace the beneficial ownership of the entity. For example, where an interest holder of an entity is itself an entity, the beneficial ownership and control information must include information on where the interest holder is organized so that beneficial ownership and control information for the interest holder may be requested if desired. The beneficial ownership and control information for an entity must also include information about the persons in control of the entity (referred to in the act as "governors"), how those persons are selected, and the way voting power in the entity is distributed.

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

If a nonprofit corporation does not have any members, it will fall within this definition because it will have fewer than 50 interest holders, i.e., none.

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

"Interest holder." Under the organic laws of the entities included in this definition, the persons listed in this definition are the persons shown in the records of the entity as the holders of an interest in the entity. In corporate law terms, for example, they are the shareholders of "record." Thus they may or may not be the ultimate beneficial owners of the outstanding interests in the entity.

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

"Records contact." The records contact for an entity may be its agent for service of

process, but that is not required. Many entities may choose to name an officer, such as the secretary, as their records contact, but that is also not required. Any individual may serve as records contact so long as the individual satisfies the requirements of this definition.

"Responsible individual." A responsible individual may be an individual who is a governor of the entity, an agent of another person, or an agent or officer of the entity itself, or who meets the requirements of this definition because of ownership of an interest in the entity or other factors. The requirement in paragraph (A) that the individual be generally familiar with the affairs of the entity means that the individual should be generally familiar with, among other things, how the entity is controlled or managed. A responsible individual may have sole responsibility for the management of the entity or may share that responsibility with others.

The responsible individual may be the same as the records contact, or an entity may name different individuals to fulfill those functions.

The term "responsible individual" has been created for use in this act and is not intended to change the law with respect to the governance of any form of entity.

SECTION 3. PUBLIC ORGANIC RECORD.

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

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

(c) If the statement required by subsection (a) becomes incorrect, the entity shall deliver promptly to the [Secretary of State] for filing an amendment of its public organic record correcting the statement. [The amendment need not be approved by the governors or interest holders.] [The [Secretary of State] may not charge a fee for filing the amendment.]

(d) An amendment filed under subsection (c) indicating that an entity has become a

conventional privately held entity must be accompanied by an entity information statement.

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

Legislative Note:

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

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

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

Comment

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

If a domestic filing entity ceases to be a conventional privately held entity, for example because it conducts a public offering of its equity securities, it will need to amend its public organic record to reflect the change in its status. Entity information statements previously delivered to the Secretary of State will remain in the records of the Secretary of State, but the

entity will no longer have an obligation to update the information in the statements. The individuals previously identified as its records contact and responsible individual will cease to have that status.

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

SECTION 4. ENTITY INFORMATION STATEMENT.

(a) An entity information statement must set forth:

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

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

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

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

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

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

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

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

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

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

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

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

(e) A records contact or responsible individual must keep the name and address of the records contact or responsible individual as shown in the records of the [Secretary of State] current and complete. A records contact or responsible individual may resign at any time, and must resign when no longer qualified to serve as such or when otherwise required by this [act]. To change the name or address or resign, a records contact or responsible individual shall deliver to the [Secretary of State] for filing a statement of change signed by the records contact or responsible individual that sets forth:

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

(2) either:

(A) the new name or address; or

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

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

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

(h) The signing by a records contact or responsible individual of an initial or amended

entity information statement or a statement of change that reflects a change of name or address constitutes an affirmation under the penalties of perjury that:

(1) the name and address of the signer are complete and correct; and

(2) the signer either:

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

(B) is a responsible individual.

(i) Every signature of a records contact on an entity information statement or statement of change must be attested by a notary public or other person authorized to take acknowledgements.

(j) The responsible individual identified in the current entity information statement shall provide to the records contact a legible and facially legitimate copy of a passport, driver's license, or other government-issued photographic identification credential for the responsible individual. If the principal residence of the responsible individual is outside the United States, the photographic identification credential must be a passport.

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

Legislative Note:

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

Subsection (k): Subsection (k) is optional because an enacting state may choose to require a fee for filing an amended entity information statement or statement of change. It will

be preferable, however, for states not to require a fee as a way of encouraging filings that keep the public records up to date. If a state chooses to impose a fee, the fee should be included in Section 13.

Comment

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

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

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

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

5. The purpose of subsection (i) is to use the notarial process to verify the identity of the records contact since notarization requires the notary to know or verify the identity of the individual whose signature is being notarized.

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

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

Subsection (i) does not address the duty of the Secretary of State to verify that the notarization of a signature on an entity information statement is valid. The procedures for acceptance of notarized documents by the Secretary of State will be governed by other law of the state. That law often deals separately with notarizations performed within the state, outside of the state, under federal authority, or in foreign countries. *See, e.g.*, Uniform Law on Notarial Acts (1982) §§ 3-6.

6. See Section 11 with respect to the address information that must be included in an entity information statement.

SECTION 5. DUTIES OF RECORDS CONTACT.

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

(1) resign under Section 4(e) if the responsible individual does not comply with Section 4(j) within five business days after the [Secretary of State] files the initial or amended entity information statement first naming the responsible individual;

(2) request promptly from the entity its beneficial ownership and control information when the records contact receives an appropriate request for the information;

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

(A) a copy of the photographic identification credential for the entity's current responsible individual required by Section 4(j);

(B) any beneficial ownership and control information that is provided by the entity to the records contact; and

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

(4) resign under Section 4(e) if the records contact acquires actual knowledge,

before receiving an appropriate request, that a request by the records contact to the entity for its beneficial ownership and control information will not be honored by the entity on a timely basis;

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

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

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

(6) retain all copies of photo identification credentials supplied by responsible individuals under Section 4(j) for five years after the later of the date:

(A) the records contact resigns; or

(B) the winding up of the entity following its dissolution is completed.

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

Comment

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

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

The requirement in subsection (a)(3) that information be produced on a "timely basis" is

intended to satisfy Recommendation 33 of the 40 Recommendations of the Financial Action Task Force. In the case of a subpoena, what will be a timely response will be controlled by the response date in the subpoena and whether an appropriate challenge to the subpoena is made. A response date in a request made under a treaty, however, does not have the force of law and will not necessarily be binding.

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

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

A records contact is defined in Section 2(19) as an individual who has access to the information required by Section 7, and when a records contact signs an entity information statement under Section 4 that signature constitutes an affirmation that the individual understands the duties of a records contact.

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

SECTION 6. INTEREST HOLDERS FROM OUTSIDE UNITED STATES.

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

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

(c) A certification provided under subsection (a) or (b) that is incorrect or incomplete, or

the failure of a conventional privately held entity to obtain a required certification, does not affect the existence of the conventional privately held entity, the validity of an act of the entity, the interest of any interest holder or transferee, or the status of a person as an interest holder or transferee.

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

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

Comment

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

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

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

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

See Section 11 with respect to the address information that must be included in a certification required by this section.

SECTION 7. RECORDS OF CONVENTIONAL PRIVATELY HELD ENTITIES.

(a) A conventional privately held entity shall have a records contact. If the records contact notifies the entity that an appropriate request has been received, the entity shall provide on a timely basis to the records contact information in a record that:

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

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

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

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

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

(B) its current responsible individual;

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

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

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

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

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

Comment

The interest holders of an entity are those persons shown in its records as owning an interest in the entity. In corporate law terms, for example, they are the shareholders of "record." An entity does not have a duty under this act to enquire as to who are the beneficial owners of the interests in the entity held by its interest holders of record.

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

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

See Section 11 with respect to the address information that must be provided under this section.

SECTION 8. JUDICIAL DISSOLUTION.

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

(b) It is not necessary to make an interest holder or transferee a party to a proceeding to dissolve a conventional privately held entity under this section unless relief is sought against the

interest holder or transferee.

(c) During the pendency of the proceedings, the court may issue injunctions, appoint a receiver or custodian with the powers and duties the court directs, and issue other orders required to preserve the assets and carry on the business of the conventional privately held entity.

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

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

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

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

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

(g) The court periodically during the receivership may order compensation paid and expense disbursements or reimbursements made to a receiver and lawyer for the receiver from the assets of the conventional privately held entity or from proceeds from the sale of the assets.

(h) If after a hearing the court determines that a ground under this section exists for judicial dissolution of a conventional privately held entity, the court shall order dissolution of the

entity and specify the effective date of the dissolution. The clerk of the court shall deliver a certified copy of the decree to the [Secretary of State] for filing.

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

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

Comment

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

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

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

SECTION 9. ADMINISTRATIVE DISSOLUTION.

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

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

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

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

entity with a copy of the filed record.

(c) If, not later than [60] days after service of the copy pursuant to subsection (b), the entity 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, the [Secretary of State] shall administratively dissolve the entity by preparing, signing, and filing a declaration of dissolution stating the grounds for dissolution. The [Secretary of State] shall serve the entity with a copy of the filed declaration.

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

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

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

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

(2) either:

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

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

(3) if the entity's name is no longer available, a new name that satisfies the

requirements of the entity's organic law.

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

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

(i) A reinstatement under subsection (h) relates back to and is effective on the date of the administrative dissolution and the entity may resume its activities as if the dissolution had not occurred.

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

Legislative Note: *If an enacting state has existing administrative dissolution procedures, or procedures for voiding or cancelling an entity that is not in compliance with tax obligations or requirements of its organic law (any of the foregoing, "pre-existing procedures") for some or all of the entities included in the definition of "domestic filing entity" in Section 2(5), this section may be revised so that it only applies to those entities for which the state does not already have pre-existing procedures. For those entities so excluded from the scope of this section, subsection (a) will need to be added to the pre-existing procedures in the organic laws of those entities as an additional basis for dissolution, voiding, or cancellation.*

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

Some state administrative dissolution statutes may include a time limit on reinstatement,

unlike this section which does not impose a time limit on reinstatement. States should decide whether they wish to impose such a limit under this section.

The 60 day time periods in this section have been marked as optional because states are encouraged to shorten those periods.

Comment

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

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

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

SECTION 10. LIMITATION OF LIABILITY.

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

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

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

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

Comment

Identifying an individual as a responsible individual does not by itself confer on the individual any power, or impose any duties, with respect to the control or management of the conventional privately held entity. The individual must have, however, whatever powers or duties are the basis for the determination that the individual participates in the control or management of the entity in a manner that satisfies the definition of "responsible individual" in Section 2(20). Similarly, identifying an individual as a responsible individual does not by itself make the individual liable for any of the debts, obligations, or liabilities of the entity.

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

SECTION 11. ADDRESS. Whenever this [act] requires that an address be provided, the following information must be provided:

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

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

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

Legislative Note: *In states that require legislation to be limited to a single subject, a question may arise as to whether this section deals with the same subject as the rest of the act. As discussed in the Prefatory Note, an important purpose of this act is to comply with FATF Recommendation 33, which requires both disclosure of ownership and control of entities and also the prohibition of bearer shares. When a purpose of the act is seen as complying with FATF Recommendation 33, the inclusion of this section should be within that single subject. If a state nonetheless believes that including this section in the act may make the act unconstitutional, the substance of this section should be enacted by separate legislation. Even if a state is not concerned that including this section will violate the state's single subject rule, the state may choose to omit this section and instead prohibit the issuance of bearer certificates in the individual organic laws for each type of entity listed in the definition of "domestic filing entity" in Section 2(5).*

SECTION 13. FEES.

Alternative A

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

(1) initial entity information statement, $ [ ].

(2) [amended entity information statement, $ [ ].

(3) statement of change, $ [ ].

(4)] application for reinstatement following administrative dissolution, $ [ ].

Alternative B

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

End of Alternatives

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

***Legislative Note**:*

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

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

SECTION 14. PROCESSING OF RECORDS. The [Secretary of State] may not file a record if the record does not comply with this [act].

[SECTION 15. CONFIDENTIALITY.

(a) The [Secretary of State] shall keep confidential the initial information statement, and any amended statement or statement of change, of a conventional privately held entity, and may disclose them only:

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

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

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

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

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

(b) The [Secretary of State] shall keep confidential the fact that a request has been made pursuant to subsection (a)(1) or (2) and may disclose that fact only to, and on the request of, another person to which disclosure under subsection (a)(1) or (2) may be made.]

Legislative Note: *With respect to the provisions marked as optional in subsection (a)(1), see the Legislative Note to Section 2(1).*

Comment

This section is optional because it implicates policy concerns beyond the scope of this act. Enactment or omission of this section will not affect the purpose of this act to provide law enforcement with important sources of information about conventional privately held entities. Some states may decide that it is appropriate to keep entity information statements confidential as permitted by this section. Other states may conclude that it is appropriate to make the contents of entity information statements publicly available. See the Legislative Note to Section 19.

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

SECTION 16. TRANSITIONAL PROVISION.

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

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

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

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

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

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

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

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

Legislative Note: *Optional subsection (d) is intended to simplify the procedure for approving an amendment of the public organic record so that, for example, an amendment to the articles of incorporation of a business corporation to adopt the statement as to whether the corporation is a conventional privately held entity may be filed without action by the board of directors or shareholders. As with the similar optional provision in Section 3(c), an enacting state may*

choose to place that provision in the individual organic laws for each type of entity listed in the definition of "domestic filing entity" in Section 2(5) or may decide to vary the rule of subsection (d) for some types of entities by requiring, for example, approval by the governors.

Comment

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

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

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

SECTION 19. REPEALS. The following are repealed ... .

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

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