

D R A F T

FOR DISCUSSION ONLY

HARMONIZED
BUSINESS ORGANIZATIONS ACT
(Amendments to Business Organizations Act)

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

AMERICAN BAR ASSOCIATION

For January 28-30, 2011 Drafting Committee Meeting
on Harmonization of Business Entity Acts

Without Comments, but with Reporters' Notes

Strike and Score Version

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and

AMERICAN BAR ASSOCIATION

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January 10, 2011

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HARMONIZED BUSINESS ORGANIZATIONS ACT

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Introductory Reporters' Note

The proposed revisions to the text of the act set forth in this document have been prepared as part of a project that has two purposes: (i) to harmonize the language of all of the unincorporated entity laws, and (ii) to revise the language of each of those acts in a manner that permits their integration into a single code of entity laws.

The Reporters' Notes in this document are limited to explaining the source of certain of the proposed changes. Following the approval of the changes in this document by the Conference, the Reporters' Notes will be replaced with more usual comments that explain the provisions of the act.

The harmonization process has involved the revision of the following acts, some of which are referred to in the Reporters' Notes by the abbreviations listed below:

HUB	Business Organizations Act
META	Model Entity Transactions Act
MORAA	Model Registered Agents Act
UPA	Uniform Partnership Act (1997)
ULPA	Uniform Limited Partnership Act (2001)
ULLCA	Uniform Limited Liability Company Act (200_)
USTEA	Uniform Statutory Trust Entity Act
Coop Act	Uniform Limited Cooperative Association Act
UUNAA	Uniform Unincorporated Nonprofit Association Act (200_)

Changes to the currently effective text of the act are shown by ~~striking through text to be deleted~~ and underlining text to be added. Changes that adopt language from the META or MORAA, or are merely relocations of current language or corrections to cross references, are shown in black type. Changes that adopt language from other unincorporated entity laws are shown in blue type. Changes that do not have a source in one of the existing unincorporated entity laws are shown in red type.

1 **HARMONIZED BUSINESS ORGANIZATIONS ACT**

2
3 **[ARTICLE] 1**

4 **GENERAL PROVISIONS**

5 **[PART] 1**

6 **GENERAL PROVISIONS**

7 **SECTION 1-101. SHORT TITLES.**

8 (a) This [act] may be cited as the Business Organizations Act.

9 (b) This [article] may be cited as the Business Organizations Act - General Provisions.

10 (c) Part 4 may be cited as the Model Registered Agents Act.

11 **SECTION 1-102. DEFINITIONS.** In this [act], except as otherwise provided in
12 definitions of the same terms in other articles of this [act]:

13 (1) “[Annual] [Biennial] report” means the report required by Section 1-211.

14 (2) “Business corporation” means a domestic business corporation incorporated under or
15 subject to [Article] 3 or a foreign business corporation.

16 (3) “Commercial registered agent” means a person listed under Section 1-405.

17 (4) “Debtor in bankruptcy” means a person that is the subject of:

18 (A) an order for relief under Title 11 of the United States Code or a comparable
19 order under a successor statute of general application; or

20 (B) a comparable order under federal, state, or foreign law governing insolvency.

21 (5) “Distributional interest” means the right under an unincorporated entity’s organic law
22 and organic rules to receive distributions from the entity.

23 ~~(5)(6)~~ “Domestic”, with respect to an entity, means governed as to its internal affairs by
24 the law of this state.

1 ~~(6)~~(7) “Effective date”, when referring to a record filed by the [Secretary of State], means
2 the time and date determined in accordance with Section 1-203.

3 ~~(7)~~(8) “Entity”:

4 (A) means:

- 5 (i) a business corporation;
- 6 (ii) a nonprofit corporation;
- 7 (iii) a general partnership;
- 8 (iv) a limited partnership;
- 9 (v) a limited liability company;
- 10 [(vi) a general cooperative association;]
- 11 (vii) a limited cooperative association;
- 12 (viii) an unincorporated nonprofit association;
- 13 (ix) a statutory trust, business trust, or common-law business trust; or
- 14 (x) any other person that has a legal existence separate from any interest
15 holder of that person or that has the power to acquire an interest in real property in its own name;
16 and

17 (B) does not include:

- 18 (i) an individual;
- 19 (ii) a testamentary, inter vivos, or charitable trust, except a statutory trust,
20 business trust, or common-law business trust;
- 21 (iii) an association or relationship that is not a partnership solely by reason
22 of [Section 202(c) of the Revised Uniform Partnership Act] [Section 7 of the Uniform
23 Partnership Act] or a similar provision of the law of another jurisdiction;

1 (iv) a decedent's estate; [or]

2 (v) a government or a governmental subdivision, agency, or
3 instrumentality [; or] [.]

4 [(vi) ~~an entity~~ a person excluded under Section 1-106.]

5 ~~(8)(9)~~ "Entity filing" means a record delivered for filing to the [Secretary of State]
6 pursuant to this [act].

7 ~~(9)(10)~~ "Filed record" means a record filed by the [Secretary of State] pursuant to this
8 [article].

9 ~~(10)(11)~~ "Filing entity" means an entity that is formed by filing a public organic record.

10 ~~(11)(12)~~ "Foreign", with respect to an entity, means governed as to its internal affairs by
11 the law of a jurisdiction other than this state.

12 ~~(12)(13)~~ "General cooperative association" means a domestic general cooperative
13 association formed under or subject to [cite statute of this state under which an incorporated
14 cooperative association is formed] or a foreign general cooperative association.]

15 ~~(13)(14)~~ "General partnership" means a domestic general partnership formed under or
16 subject to [Article] 5 or a foreign general partnership. The term includes a limited liability
17 partnership.

18 ~~(14)(15)~~ "Governance interest" means a right under the organic law or organic rules of an
19 unincorporated entity, other than as a governor, agent, assignee, or proxy, to:

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

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

23 (C) receive notice of or vote on ~~issues~~ any issue involving the internal affairs of

1 the entity.

2 ~~(15)~~(16) “Governor” means:

3 (A) a director of a business corporation;

4 (B) a director or trustee of a nonprofit corporation;

5 (C) a general partner of a general partnership;

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

7 (E) a manager of a manager-managed limited liability company;

8 (F) a member of a member-managed limited liability company;

9 [(G) a director of a general cooperative association;]

10 (H) a director of a limited cooperative association;

11 (I) a manager of an unincorporated nonprofit association;

12 (J) a trustee of a statutory trust, business trust, or common-law business trust; or

13 (K) any other person under whose authority the powers of an entity are exercised

14 and under whose direction the ~~business activities~~ and affairs of the entity are managed pursuant to
15 the ~~entity’s~~ organic law and organic rules of the entity.

16 ~~(16)~~(17) “Interest” means:

17 (A) a share in a business corporation;

18 (B) a membership in a nonprofit corporation;

19 (C) a partnership interest in a general partnership;

20 (D) a partnership interest in a limited partnership;

21 (E) a membership interest in a limited liability company;

22 [(F) a share in a general cooperative association;]

23 (G) a member’s interest in a limited cooperative association;

- 1 (H) a membership in an unincorporated nonprofit association;
- 2 (I) a beneficial interest in a statutory trust, business trust, or common-law business
- 3 trust; ~~or~~
- 4 (J) a governance interest ~~or transferable interest~~ in any other type of
- 5 unincorporated entity; or
- 6 (K) a distributional interest in an unincorporated entity.

7 ~~(17)~~(18) “Interest holder” means:

- 8 (A) a shareholder of a business corporation;
- 9 (B) a member of a nonprofit corporation;
- 10 (C) a general partner of a general partnership;
- 11 (D) a general partner of a limited partnership;
- 12 (E) a limited partner of a limited partnership;
- 13 (F) a member of a limited liability company;
- 14 [(G) a shareholder of a general cooperative association;]
- 15 (H) a member of a limited cooperative association;
- 16 (I) a member of an unincorporated nonprofit association;
- 17 (J) a beneficiary of a statutory trust, business trust, or common-law business trust;
- 18 or
- 19 (K) any other direct holder of an interest.

20 ~~(18)~~(19) “Jurisdiction”, used to refer to a political entity, means the United States, a state,

21 a foreign country, or a political subdivision of a foreign country.

22 ~~(19)~~(20) “Jurisdiction of formation” means the jurisdiction whose law includes the

23 organic law of an entity.

(20)(21) “Limited cooperative association” means a domestic limited cooperative association formed under or subject to [Article] 8 or a foreign limited cooperative association.

(24)(22) “Limited liability company” means a domestic limited liability company formed under or subject to [Article] 7 or a foreign limited liability company.

(22)(23) “Limited liability limited partnership” means a domestic limited liability limited partnership formed under or subject to [Article] 6 or a foreign limited liability limited partnership.

(23)(24) “Limited liability partnership” means a domestic limited liability partnership registered under or subject to [Article] 5 or a foreign limited liability partnership.

(24)(25) “Limited partnership” means a domestic limited partnership formed under or subject to [Article] 6 or a foreign limited partnership. The term includes a limited liability limited partnership.

(25)(26) “Noncommercial registered agent” means a person that is not a commercial registered agent and is:

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

(B) ~~an~~the individual who holds the office or other position in an entity ~~who~~that is designated as the registered agent ~~for service of process~~ pursuant to Section 1-404(a)(2)(B).

(26)(27) “Nonfiling entity” means an entity that is formed other than by filing a public organic record.

(27)(28) “Nonprofit corporation” means a domestic nonprofit corporation incorporated under or subject to [Article] 4 or a foreign nonprofit corporation.

(29) “Nonqualified foreign entity” means a foreign entity that is not registered to do

1 business in this state pursuant to a statement of registration filed by the [Secretary of State].

2 ~~(28)~~(30) “Organic law” means the law of an entity’s jurisdiction of formation ~~which~~
3 ~~governs~~governing the internal affairs of the entity.

4 ~~(29)~~(31) “Organic rules” means the public organic record and private organic rules of an
5 entity.

6 ~~(30)~~(32) “Person” means an individual, business corporation, nonprofit corporation,
7 partnership, limited partnership, limited liability company, [general cooperative association,]
8 limited cooperative association, unincorporated nonprofit association, statutory trust, business
9 trust, or common-law business trust, estate, trust, association, joint venture, public corporation,
10 government or governmental subdivision, agency, or instrumentality, or any other legal or
11 commercial entity.

12 ~~(31)~~(33) “Principal office” means the principal executive office of an entity, whether or
13 not the office is located in or outside this state, designated by a filing entity as its principal office
14 in the most recent filed record that contains that designation.

15 ~~(32)~~(34) “Private organic rules” means the rules, whether or not in a record, that govern
16 the internal affairs of an entity, are binding on all of its interest holders, and are not part of its
17 public organic record, if any. The term includes:

18 (A) the bylaws of a business corporation;

19 (B) the bylaws of a nonprofit corporation;

20 (C) the partnership agreement of a general partnership;

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

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

23 [(F) the bylaws of a general cooperative association;]

(G) the bylaws of a limited cooperative association;

(H) the governing principles of an unincorporated nonprofit association; and

(I) the governing instrument of a statutory trust, business trust, or common-law business trust.

~~(33)~~(35) “Proceeding” includes a civil action, arbitration, mediation, administrative proceeding, criminal prosecution, and investigatory action.

~~(34)~~(36) “Property” means all property, real, personal, or mixed, or tangible or intangible, or any interest therein.

~~(35)~~(37) “Public organic record” means the record the ~~public~~ filing of which by the [Secretary of State] forms an entity and any amendment to or restatement of that record. The term includes:

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

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

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

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

[(E) the articles of incorporation of a general cooperative association;]

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

(G) the certificate of trust of a statutory trust, business trust, or common-law business trust.

~~(36) “Qualified foreign entity” means a foreign entity that is authorized to do business in this state pursuant to a statement of registration filed by the [Secretary of State].~~

~~(37)~~(38) “Receipt”, as used in this [article], means actual receipt. “Receive” has a corresponding meaning.

(38)(39) “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.

(39)(40) “Registered agent” means an agent of an entity which is authorized to receive service of any process, notice, or demand required or permitted by law to be served on the entity. The term includes a commercial registered agent and a noncommercial registered agent.

(41) “Registered foreign entity” means a foreign entity that is registered to do business in this state pursuant to a statement of registration filed by the [Secretary of State].

(40)(42) “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 symbol, sound, or process.

(41)(43) “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.

(42)(44) “Statutory trust” means a domestic statutory trust formed under or subject to [Article] 10 or a foreign statutory trust.”

(43)(45) “Transfer” includes an assignment, conveyance, sale, lease, mortgage, and encumbrance, including by mortgaging or granting a security interest, gift, and transfer by operation of law.

~~(44) “Transferable interest” means the right under an unincorporated entity’s organic law to receive distributions from the entity.~~

(45)(46) “Type of entity” means a generic form of entity:

(A) recognized at common law; or

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

~~(46)~~(47) “Unincorporated nonprofit association” means a domestic unincorporated nonprofit association formed under or subject to [Article] 9 or a foreign unincorporated nonprofit association.

Reporters’ Note

Substitution of “distributional interest” for “transferable interest” made for purposes of clarity. Similar changes have been made in META § 1-102, MORAA § 2, UPA § __, ULPA § __, and ULLCA § __.

“Entity” changed to “person” in paragraph (B)(vi) of the definition of “entity” to reflect the scope of Section 1-106.

“Governance interest.” Change in paragraph (C) is intended to clarify the language.

“Governor.” “Business” changed to “activities” in paragraph (K) to reflect that nonprofit entities are included within the scope of the definition.

“Interest.” Paragraph (J) picks up governance interests in any type of unincorporated entity that is not included by name in paragraphs (C) – (I). Paragraph (K), in contrast, includes distributional interests in all unincorporated entities.

“Noncommercial registered agent.” References to an “agent for service of process” have been changed to “registered agent” throughout the acts because an agent may also receive notices and demands under the organic law of a represented entity.

“Nonqualified foreign entity.” This definition has been added to simplify the language of other provisions of the act and is patterned after MORAA § 2.

“Principal office.” Change is intended to avoid the possibility that an entity could designate an office where significant activities are not conducted.

“Registered foreign entity” substituted for “qualified foreign entity” to reflect the usage in Part 5.

“Transfer.” Patterned after harmonized ULLCA § 102.

SECTION 1-103. APPLICABILITY OF [ARTICLE]. This [article] applies to an

entity formed under or subject to this [act].

SECTION 1-104. DELIVERY OF RECORD.

(a) Except as otherwise provided in this [act], permissible means of delivery of a record include delivery by hand, mail by the United States Postal Service, commercial delivery, and electronic transmission.

(b) Delivery to the [Secretary of State] is effective only when the record is received by the [Secretary of State].

SECTION 1-105. RULES AND PROCEDURES. The [Secretary of State] may adopt rules in accordance with [this state’s administrative procedure act] and may prescribe procedures not required to be adopted as rules which are reasonably necessary to perform the duties required of the [Secretary of State] under this [act].

[SECTION 1-106. ~~ENTITIES~~EXCLUSIONS. This [act] does not apply to the following entities:

(1) _____;

(2) _____;

(3) _____.]

Reporters’ Note

References to “entities” have been deleted because the purpose of this section is to exclude from the scope of the act legal persons that may not be “entities” as defined in Section 1-102.

[PART] 2

FILING

SECTION 1-201. ENTITY FILING REQUIREMENTS.

(a) To be filed by the [Secretary of State] pursuant to this [article], an entity filing must

1 be received by the [Secretary of State] and must comply with this [act] and satisfy the following:

2 (1) The entity filing must be required or permitted by this [act].

3 (2) The entity filing must be physically delivered in written form unless and to the
4 extent the [Secretary of State] permits electronic delivery of entity filings in other than written
5 form.

6 (3) The words in the entity filing must be in English, and numbers must be in
7 Arabic or Roman numerals, but the name of the entity need not be in English if written in
8 English letters or Arabic or Roman numerals.

9 (4) The entity filing must be signed by ~~an individual~~ a person authorized under this
10 [act] to sign the filing.

11 (5) The entity filing must state the name and capacity, if any, of the individual
12 who signed it, either on his or her own behalf or on behalf of a person authorized to sign the
13 filing, but need not contain a seal, attestation, acknowledgment, or verification.

14 (b) If law other than this [act] prohibits the disclosure by the [Secretary of State] of
15 information contained in an entity filing, the [Secretary of State] shall accept the filing if the
16 filing otherwise complies with this section but may redact the information.

17 (c) When an entity filing is delivered to the [Secretary of State] for filing, any fee
18 required under this [article] and any fee, tax, or penalty required to be paid under this [article] or
19 law other than this [act] must be paid in a manner permitted by the [Secretary of State] or by that
20 law.

21 (d) The [Secretary of State] may require that an entity filing delivered in written form be
22 accompanied by an identical or conformed copy.

1 **Reporters' Note**

2 Changes to subsection (a)(4) and (5) reflect the fact that entity filings may be signed by
3 persons who are not individuals (e.g., a certificate of limited partnership signed by a general
4 partner that is a limited liability company). Where an entity filing is signed by an entity, the
5 name and address of the individual signing on behalf of the entity is required (e.g., the name and
6 address of the individual signing on behalf of the limited liability company that is the general
7 partner signing a certificate of limited partnership).

8
9 **SECTION 1-202. FORMS.**

10 (a) The [Secretary of State] may provide forms for entity filings required or permitted to
11 be made by this [act], but, except as otherwise provided in subsection (b), their use is not
12 required.

13 (b) The [Secretary of State] may require that a cover sheet for an entity filing and [an
14 annual] [a biennial] report be on forms prescribed by the [Secretary of State].

15 **SECTION 1-203. EFFECTIVE TIME AND DATE.** Except as otherwise provided in
16 ~~Section 1-204~~this [act] and subject to Section 1-205~~(e)~~(d), an entity filing is effective:

17 (1) on the date and at the time of its filing by the [Secretary of State] as provided in
18 Section 1-206;

19 (2) on the date of filing and at the time specified in the entity filing as its effective time, if
20 later than the time under paragraph (1);

21 (3) if permitted by this [act], at a specified delayed effective time and date, which may
22 not be more than 90 days after the date of filing; or

23 (4) if a delayed effective date as permitted by this [act] is specified, but no time is
24 specified, at 12:01 a.m. on the date specified.

25 **Reporters' Note**

26 Change to the lead-in language reflects the fact that other sections of the act have special
27 rules on the effectiveness of entity filings. See §§ 1-406(b) and 1-410(b).

1 **SECTION 1-204. WITHDRAWAL OF FILED RECORD BEFORE**
2 **EFFECTIVENESS.**

3 (a) ~~The parties to a filed record may withdraw the record~~A filed record may be
4 withdrawn before it takes effect by delivering to the [Secretary of State] for filing a statement of
5 withdrawal.

6 ~~(b) To withdraw a filed record, the parties to the record must deliver to the [Secretary of~~
7 ~~State] for filing a statement of withdrawal.~~

8 ~~(c)~~(b) A statement of withdrawal must:

9 (1) ~~except as otherwise agreed by the parties,~~ be signed ~~on behalf of~~by each
10 partyperson that signed the ~~filed~~ record being withdrawn, except as otherwise agreed by those
11 persons;

12 (2) identify the filed record to be withdrawn; and the date of its filing; ~~and the~~
13 ~~parties to it;~~ and

14 (3) if ~~filed by fewer than all parties~~not signed by each person that signed the
15 record being withdrawn, state that the ~~filed~~ record ~~has been~~is withdrawn in accordance with the
16 agreement of all the ~~parties~~persons who signed the record.

17 ~~(d)~~(c) On ~~the delivery for~~ filing ~~to~~by the [Secretary of State] of a statement of
18 withdrawal, the action or transaction evidenced by the original filed record does not take effect.

19 **Reporters' Note**

20 The changes conform the language of this section to harmonized ULLCA § 207.

21 **SECTION 1-205. CORRECTING FILED RECORD.**

22 (a) A person on whose behalf a filed record was delivered to the [Secretary of State] for
23 filing may correct the record if:

(1) the record at the time of filing ~~contained an inaccuracy~~was inaccurate;

(2) the record was defectively signed; or

(3) the electronic transmission of the record to the [Secretary of State] was defective.

(b) To correct a filed record, ~~the parties to the record must deliver~~a person on whose behalf the record was delivered to the [Secretary of State] must deliver to the [Secretary of State] for filing a statement of correction.

(c) A statement of correction:

(1) may not state a delayed effective date;

(2) must be signed ~~on behalf of~~by the person correcting the filed record;

(3) must identify the filed record to be corrected or have attached a copy and state the date of its filing;

(4) must specify the inaccuracy or defect to be corrected; and

(5) must correct the inaccuracy or defect.

(d) A statement of correction is effective as of the effective date of the filed record that it corrects except as to persons relying on the uncorrected filed record and adversely affected by the correction. As to those persons, the statement of correction is effective when filed.

Reporters' Note

Changes are intended to clarify the language of the section and conform to § 1-204 as revised. Conforming changes have been made to other acts.

SECTION 1-206. DUTY OF [SECRETARY OF STATE] TO FILE; REVIEW OF REFUSAL TO FILE.

(a) The [Secretary of State] shall file an entity filing delivered to the [Secretary of State] for filing which satisfies Section 1-201. The duty of the [Secretary of State] under this section is

1 ministerial.

2 (b) When the [Secretary of State] files an entity filing, the [Secretary of State] shall
3 record it as filed on the date and time of its delivery. After filing an entity filing, the [Secretary
4 of State] shall deliver to the domestic or foreign entity or its representative a copy of the filing
5 with an acknowledgment of the date and time of filing.

6 (c) If the [Secretary of State] refuses to file an entity filing, the [Secretary of State] shall
7 return the entity filing or notify the person that submitted the filing not later than [15] business
8 days after the filing is delivered, together with a brief explanation in a record of the reason for
9 the refusal.

10 (d) If the [Secretary of State] refuses to file an entity filing, the person that submitted the
11 filing may seek review of the refusal by the [appropriate court] under the following procedures:

12 (1) The review proceeding is commenced by petitioning the court to compel filing
13 of the filing and by attaching to the petition the filing and the explanation of the [Secretary of
14 State] of the refusal to file.

15 (2) The court may summarily order the [Secretary of State] to file the filing or
16 take other action the court considers appropriate.

17 (3) The final decision of the court may be appealed as in other civil proceedings.

18 (e) The filing of or refusal to file an entity filing does not:

19 (1) affect the validity or invalidity of the filing in whole or in part;

20 (2) affect the correctness or incorrectness of information contained in the filing; or

21 (3) create a presumption that the filing is valid or invalid or that information
22 contained in the filing is correct or incorrect.

23 **SECTION 1-207. EVIDENTIARY EFFECT OF COPY OF FILED RECORD. A**

1 certification from the [Secretary of State] accompanying a copy of a filed record is conclusive
2 evidence that the copy is an accurate representation of the original record on file with the
3 [Secretary of State].

4 **SECTION 1-208. CERTIFICATE OF GOOD STANDING OR REGISTRATION.**

5 (a) On request of any person, the [Secretary of State] shall issue a certificate of good
6 standing for a domestic filing entity or a certificate of registration for a ~~qualified~~registered
7 foreign entity.

8 (b) A certificate under subsection (a) must state:

9 (1) the domestic filing entity's name or the ~~qualified~~registered foreign entity's
10 name used in this state;

11 (2) that:

12 (A) in the case of a~~the~~ domestic filing entity, it is formed under the law of
13 this state, the date of its formation, and the period of its duration if the records of the [Secretary
14 of State] indicate that its period of duration is less than perpetual, or

15 (B) that the~~qualified~~in the case of a registered foreign entity, it is
16 registered to do business in this state;

17 (3) that all fees, taxes, interest, and penalties owed to this state collected through
18 the [Secretary of State] have been paid, if:

19 (A) payment is reflected in the records of the [Secretary of State]; and

20 (B) nonpayment affects the good standing or registration of the domestic
21 or foreign entity;

22 (4) that the entity's most recent [annual] [biennial] report required by Section 1-
23 211 has been delivered for filing to the [Secretary of State];

(5) that the records of the [Secretary of State] do not indicate that the entity has
not been dissolved; and

(6) other facts of record pertaining to the entity with the [Secretary of State]
which the person requesting the certificate reasonably requests.

(c) Subject to any qualification stated in the certificate, a certificate issued by the
[Secretary of State] under subsection (a) may be relied upon as conclusive evidence ~~that the~~
~~domestic filing entity is in existence or the qualified foreign entity is registered to do business in~~
~~this state~~ of the facts stated in the certificate.

Reporters' Note

Changes are intended to clarify the language of the section. Conforming changes have
been made to other acts.

SECTION 1-209. SIGNING CONSTITUTES AFFIRMATION. Signing an entity
filing is an affirmation under the penalties of perjury that the facts stated in the filing are true in
all material respects.

SECTION 1-210. DELIVERY BY [SECRETARY OF STATE]. Except as otherwise
provided by Section 1-602 or by law other than this [act], the [Secretary of State] may deliver
any record to a person by delivering it to the person that submitted it, to the address of the
person's registered agent, to the principal office address of the person, or to another address the
person provides to the [Secretary of State] for delivery.

**SECTION 1-211. [ANNUAL] [BIENNIAL] REPORT FOR [SECRETARY OF
STATE].**

(a) Each domestic filing entity and qualified foreign entity shall deliver to the [Secretary
of State] for filing [an annual] [a biennial] report that sets forth:

(1) the name of the entity and its jurisdiction of formation;

(2) the name and street and mailing address of the entity's registered agent in this state;

(3) the street and mailing address of the entity's principal office; and

(4) the ~~names of governors~~ name of at least one governor.

(b) Information in the [annual] [biennial] report must be current as of the date the report is signed ~~on behalf of~~ by the entity.

(c) The first [annual] [biennial] report must be delivered to the [Secretary of State] after [January 1] and before [April 1] of the year following the calendar year in which the domestic filing entity was formed or the foreign filing entity registered to do business in this state.

Subsequent [annual] [biennial] reports must be delivered to the [Secretary of State] after [January 1] and before [April 1] of each [second] calendar year thereafter.

(d) If [an annual] [a biennial] report does not contain the information required by this [part], the [Secretary of State] promptly shall notify the reporting domestic or qualified foreign entity in a record and return the report for correction.

(e) If [an annual] [a biennial] report under this section contains the name or address of a registered agent which differs from the information shown in the records of the [Secretary of State] immediately before the [annual] [biennial] report becomes effective, the differing information in the [annual] [biennial] report is considered a statement of change under Section 1-407.

Reporters' Note

Subsection (a)(4). Change reflects the fact that it is sometimes difficult to determine who all of the governors of an unincorporated entity are. The new language is a compromise between the former provisions of the HUB which required all governors to be listed and ULLCA which did not require any governors to be listed.

Subsection (e). Patterned after harmonized ULLCA § 212(e)

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- 1 (16) Articles of organization of a limited cooperative association, \$ [].
- 2 (17) Certificate of trust of a statutory trust, \$ [].
- 3 (18) Other public organic document, \$ [].
- 4 (19) Commercial-registered-agent listing statement, \$ [].
- 5 (20) Commercial-registered-agent termination statement, \$ [].
- 6 (21) Registered agent statement of change, \$ [].
- 7 (22) Registered agent statement of resignation, no fee
- 8 (23) Statement appointing ~~an~~ a registered agent ~~for service of process~~, \$ [].
- 9 (24) Foreign entity registration statement, \$ [].
- 10 (25) Amendment of foreign entity registration statement, \$ [].
- 11 (26) Notice of cancellation of foreign entity registration statement, \$ [].
- 12 [(27) Other entity filings, \$ [].]

13 (c) The withdrawal under Section 1-204 of a filed record before it is effective or the

14 correction of a filed record under Section 1-205 does not entitle the person on whose behalf the

15 record was filed to a refund of the filing fee.

16 **Alternative B**

17 (a) The [Secretary of State] shall adopt rules in accordance with [this state's

18 administrative procedure act] setting fees for entity filings authorized to be delivered to the

19 [Secretary of State] for filing under this [act] and for copying and certifying a copy of any entity

20 filing under this [act].

21 (b) There is no fee for filing a registered agent's statement of resignation.

22 (c) The withdrawal under Section 1-204 of a filed record before it is effective or the

23 correction of a filed record under Section 1-205 does not entitle the person on whose behalf the

record was filed to a refund of the filing fee.

End of Alternatives]

[PART] 3

NAME OF ENTITY

SECTION 1-301. PERMITTED NAMES.

(a) Except as otherwise provided in subsections (b) and (d), the name of a domestic filing entity or domestic limited liability partnership, and the name under which a foreign filing entity or foreign limited liability partnership may register to do business in this state, must be distinguishable on the records of the [Secretary of State] from any:

(1) name of another domestic filing entity or limited liability partnership;

(2) name of a foreign filing entity or foreign limited liability partnership that is registered to do business in this state under [Part] 5;

(3) name that is reserved under Section 1-303;

(4) name that is registered under Section 1-304; or

(5) assumed name registered under [this state's assumed name statute].

(b) Subsection (a) does not apply if the other entity or the person for which the name is reserved or registered consents in a record to the use of the name and submits an undertaking in a form satisfactory to the [Secretary of State] to change its name to a name that is distinguishable on the records of the [Secretary of State] from any name in any category of names in subsection (a).

(c) Except as otherwise provided in subsection (d), in determining whether a name is the same as or not distinguishable on the records of the [Secretary of State] from the name of another entity, words, phrases, or abbreviations indicating the type of entity, such as "corporation",

1 “corp.”, “incorporated”, “Inc.”, “professional corporation”, “PC”, “professional association”,
2 “PA”, “Limited”, “Ltd.”, “limited partnership”, “limited liability partnership”, “LLP”,
3 “registered limited liability partnership”, “RLLP”, “limited liability limited partnership”,
4 “LLLLP”, “registered limited liability limited partnership”, “RLLLLP”, “limited liability
5 company”, or “LLC”, may not be taken into account.

6 (d) The holder of a name under subsection (a) may consent in a record to the use of a
7 name that is not distinguishable on the records of the [Secretary of State] from its name except
8 for the addition of a word, phrase, or abbreviation indicating the type of entity described in
9 subsection (c). In such a case, the holder need not change its name pursuant to subsection (b).

10 (e) An entity name may not contain the words [insert prohibited words or words that may
11 be used only with approval by the appropriate state agency].

12 **SECTION 1-302. NAME REQUIREMENTS FOR CERTAIN TYPES OF**
13 **ENTITIES.**

14 (a) The name of a business corporation must contain the word "corporation",
15 "incorporated", "company", or "limited", or the abbreviation "Corp.", "Inc.", "Co.", or "Ltd.", or
16 words or abbreviations of similar import in another language.

17 (b) The name of a limited partnership may contain the name of any partner. If the limited
18 partnership is not a limited liability limited partnership, the name must contain the phrase
19 “limited partnership” or the abbreviation “L.P.” or “LP” and may not contain the phrase “limited
20 liability limited partnership” or “registered limited liability partnership” or the abbreviation
21 “L.L.L.P.”, “LLLLP”, “R.L.L.L.P.” or RLLLLP”. If the limited partnership is a limited liability
22 limited partnership, the name must contain the phrase “limited liability limited partnership” or
23 the abbreviation “L.L.L.P.”, “LLLLP” “R.L.L.L.P.”, or “RLLLLP” and may not contain the

1 abbreviation “L.P.” or “LP”.

2 (c) The name of a limited liability partnership that is not a limited liability limited
3 partnership must contain the words “limited liability partnership” or “registered limited liability
4 partnership” or the abbreviation “L.L.P.”, “R.L.L.P.”, “LLP”, or “RLLP”.

5 (d) The name of a limited liability company must contain the words “limited liability
6 company” or “limited company” or the abbreviation “L.L.C.”, “LLC”, “L.C.”, or “LC”.
7 “Limited” may be abbreviated as “Ltd.”, and “company” may be abbreviated as “Co.”.

8 (e) The name of a limited cooperative association must contain the words “limited
9 cooperative association” or “limited cooperative” or the abbreviation “L.C.A.” or “LCA”.
10 “Limited” may be abbreviated as “Ltd.”. “Cooperative” may be abbreviated as “Co-op.”,
11 “Coop.”, “Co-op”, or “Coop”. “Association” may be abbreviated as “Assoc.”, “Assoc”, “Assn.”,
12 or “Assn”.

13 (f) The name of a statutory trust may contain the words “company”, “association”,
14 “club”, “foundation”, “fund”, “institute”, “society”, “union”, “syndicate”, “limited”, or “trust”,
15 or words of similar import, and may contain the name of a beneficial owner, a trustee, or any
16 other person.

17 [(g) Insert requirements for names of other types of entities that may be included in this
18 [act], such as general cooperative associations.]

19 **SECTION 1-303. RESERVATION OF NAME.**

20 (a) A person may reserve the exclusive use of an entity name by delivering an application
21 to the [Secretary of State] for filing. The application must state the name and address of the
22 applicant and the name proposed to be reserved. If the [Secretary of State] finds that the entity
23 name applied for is available, the [Secretary of State] shall reserve the name for the applicant’s

1 exclusive use for a [120]-day period.

2 (b) The owner of a reserved entity name may transfer the reservation to another person by
3 delivering to the [Secretary of State] a signed notice in a record of the transfer which states the
4 name and address of the transferee.

5 **SECTION 1-304. REGISTRATION OF NAME.**

6 (a) A foreign filing entity or foreign limited liability partnership not registered to do
7 business in this state under [Part] 5 may register its name, or an alternate name required by
8 Section 1-506, if the name is distinguishable upon the records of the [Secretary of State] from the
9 names that are not available under Section 1-301.

10 (b) To register its name or an alternate name required by Section 1-506, a foreign filing
11 entity or foreign limited liability partnership must deliver to the [Secretary of State] for filing an
12 application stating its name, or its name with any addition required by Section 1-506, and the
13 jurisdiction and date of its formation. If the [Secretary of State] finds that the name applied for is
14 available, the [Secretary of State] shall register the name for the applicant's exclusive use.

15 (c) The registration of a name under this section is effective for [one year] after the date
16 of filing.

17 (d) A foreign filing entity or foreign limited liability partnership whose name registration
18 is effective may renew the registration for successive one-year periods by delivering, not earlier
19 than [three months] before the expiration of the registration year, to the [Secretary of State] for
20 filing a renewal application that complies with this section. When filed, the renewal application
21 renews the registration for a succeeding one-year period.

22 (e) A foreign filing entity or foreign limited liability partnership whose name registration
23 is effective may register as a foreign filing entity or foreign limited liability partnership under the

1 registered name or consent in a signed record to the use of that name by:

2 (1) a domestic filing entity formed under this [act];

3 (2) a limited liability partnership subject to this [act]; or

4 (3) another foreign filing entity or foreign limited liability partnership authorized
5 to do business in this state.

6
7 **[PART] 4**

8 **REGISTERED AGENT OF ENTITY**

9 **SECTION 1-401. DEFINITIONS.** In this [part]:

10 (1) “Appointment of agent” means a statement appointing ~~an~~ a registered agent ~~for service~~
11 ~~of process~~ filed under Section 1-411 by a nonqualified foreign entity or domestic nonfiling
12 entity.

13 (2) “Nonqualified foreign entity” means a foreign entity that is not a qualified foreign
14 entity.

15 (3) “Nonresident limited liability partnership statement” means:

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

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

20 (4) “Registered agent filing” means:

21 (A) the public organic record of a domestic filing entity;

22 (B) a nonresident limited liability partnership statement;

23 (C) a registration statement filed pursuant to Section 1-503; or

24 (D) an appointment of a registered agent.

1 (5) “Represented entity” means:

2 (A) a domestic filing entity;

3 (B) a domestic or qualified foreign limited liability partnership that does not have
4 an office in this state;

5 (C) a ~~qualified~~registered foreign entity;

6 (D) a domestic or foreign unincorporated nonprofit association for which an
7 appointment of an agent has been filed;

8 (E) a domestic nonfiling entity for which an appointment of an agent has been
9 filed; or

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

12 **Reporters’ Note**

13 “Nonresident limited liability partnership statement.” This definition is limited to those
14 LLPs that do not have an office in the state because LLPs that have an in-state office are not
15 required to designate a registered agent. See UPA §§ 1001(c)(3) and 1102(a)(3). Consideration
16 should be given to requiring a registered agent for all LLPs.

17 **SECTION 1-402. ENTITIES REQUIRED TO DESIGNATE AND MAINTAIN**

18 **REGISTERED AGENT.** The following shall designate and maintain a registered agent in this
19 state:
20

21 (1) a domestic filing entity;

22 (2) a domestic limited liability partnership that does not maintain a place of business in
23 this state; and

24 (3) a qualified foreign entity.

25 **SECTION 1-403. ADDRESSES IN FILINGS.** If a provision of this [part] other than
26 Section 1-410(a)(4) requires that a record state an address, the record must state:

1 (1) a street address in this state; and

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

3 **SECTION 1-404. ~~APPOINTMENT~~DESIGNATION OF REGISTERED AGENT.**

4 (a) A registered agent filing must state:

5 (1) the name of the represented entity's commercial registered agent; or

6 (2) if the entity does not have a commercial registered agent:

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

8 or

9 (B) ~~if the entity designates an officer or employee to accept service of~~
10 ~~process,~~ the title of ~~the~~an office or other position with the entity if service of process, notices and
11 demands are to be sent to the individual holding that office or position, and the address of the
12 business office of that ~~person~~individual.

13 (b) The ~~appointment~~designation of a registered agent pursuant to subsection (a)(1) or
14 (2)(A) is an affirmation ~~under Section 1-209~~of fact by the represented entity that the agent has
15 consented to serve.

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

18 (1) be available for at least 14 calendar days;

19 (2) list in alphabetical order the names of the registered agents; and

20 (3) state the type of filing and name of the represented entity making the filing.

21 **Reporters' Note**

22 Change from "appointment" to "designation" conforms to the usage in Section 1-402.

23
24 *Subsection (a).* Changes conform to MORA § 5.

1 *Subsection (b).* Reference to Section 1-209 deleted because it does not correctly reflect
2 the effect of Section 1-209.

3
4 **SECTION 1-405. LISTING OF COMMERCIAL REGISTERED AGENT.**

5 (a) A person may become listed as a commercial registered agent by filing with the
6 [Secretary of State] a commercial-registered-agent listing statement signed by ~~or on behalf of the~~
7 person which states:

8 (1) the name of the individual or the name of the entity, type of entity, and
9 jurisdiction of formation of the entity;

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

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

15 (b) A commercial-registered-agent listing statement may include the information
16 regarding acceptance ~~by the agent~~ of service of process, notices, and demands in a form other
17 than a written record as provided for in Section 1-412(d).

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

23 ~~(d) A listing statement takes effect on filing by the [Secretary of State].~~

24 ~~(e)~~(d) The [Secretary of State] shall note the filing of the commercial-registered-agent
25 listing statement in the index of filings maintained by the [Secretary of State] for each entity

1 represented by the agent at the time of the filing. The statement has the effect of deleting the
2 address of the agent from the filing of each of those entities.

3 **Reporters' Note**

4 Subsection (d) deleted because it duplicates Section 1-203.

5 **SECTION 1-406. TERMINATION OF LISTING OF COMMERCIAL** 6 **REGISTERED AGENT.**

7 (a) A commercial registered agent may terminate its listing as a commercial registered
8 agent by delivering to the [Secretary of State] for filing a commercial-registered-agent
9 termination statement signed by ~~or on behalf of~~ the agent which states:

10 (1) the name of the agent as listed under Section 1-405; and

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

13 (b) A commercial-registered-agent termination statement takes effect at 12:01 a.m. on the
14 31st day after the day on which it is delivered to the [Secretary of State] for filing.

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

17 (d) When a commercial-registered-agent termination statement takes effect, the
18 commercial registered agent ceases to be an the registered agent for ~~service of process on~~ each
19 entity formerly represented by it. Until an entity formerly represented by a terminated
20 commercial registered agent appoints a new registered agent, service of process may be made on
21 the entity pursuant to Section 1-412. Termination of the listing of a commercial registered agent
22 under this section does not affect any contractual rights a represented entity has against the agent
23 or that the agent has against the entity.

1 **Reporters' Note**

2 Section 1-203 has been changed to conform to subsection (b).

3 **SECTION 1-407. CHANGE OF REGISTERED AGENT BY ENTITY.**

4 (a) A represented entity may change the information on file under Section 1-404(a) by
5 delivering to the [Secretary of State] for filing a statement of change signed ~~on behalf of~~ by the
6 entity which states:

7 (1) the name of the entity; and

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

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

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

12 (2) a similar filing changing the registered agent or registered office of the entity
13 in any other jurisdiction.

14 (c) A statement of change under this section appointing a new registered agent is an
15 affirmation ~~under Section 1-209~~ of fact by the represented entity that the agent has consented to
16 serve.

17 ~~(d) A statement of change under this section takes effect on delivery to the [Secretary of~~
18 ~~State] for filing.~~

19 ~~(e)~~ (d) As an alternative to using the procedure in this section, a represented entity may
20 change the information on file under Section 1-404(a) by amending its most recent registered
21 agent filing in a manner provided by law of this state other than this [act] for amending the filing.

22 **Reporters' Note**

23 Subsection (d) deleted because it duplicates Section 1-203.

1 **SECTION 1-408. CHANGE OF NAME OR ADDRESS BY NONCOMMERCIAL**
2 **REGISTERED AGENT.**

3 (a) If a noncommercial registered agent changes its name or its address in effect with
4 respect to a represented entity under Section 1-404(a), the agent shall deliver to the [Secretary of
5 State] for filing, with respect to each entity represented by the agent, a statement of change
6 signed by ~~or on behalf of~~ the agent which states:

7 (1) the name of the entity;

8 (2) the name and address of the agent in effect with respect to the entity;

9 (3) if the name of the agent has changed, the new name; and

10 (4) if the address of the agent has changed, the new address.

11 ~~(b) A statement of change under this section takes effect on delivery to the [Secretary of~~
12 ~~State] for filing.~~

13 ~~(e)~~(b) A noncommercial registered agent promptly shall furnish the represented entity
14 with notice in a record of the delivery of the [Secretary of State] for filing of a statement of
15 change and the changes made in the statement.

16 **Reporters' Note**

17 Subsection (b) deleted because it duplicates Section 1-203.

18 **SECTION 1-409. CHANGE OF NAME, ADDRESS, TYPE OF ENTITY, OR**
19 **JURISDICTION OF FORMATION BY COMMERCIAL REGISTERED AGENT.**

20 (a) If a commercial registered agent changes its name, its address as listed under Section
21 1-405(a), its type of entity, or its jurisdiction of formation, the agent shall deliver to the
22 [Secretary of State] for filing a statement of change signed by ~~or on behalf of~~ the agent which
23 states:

- (1) the name of the agent as listed under Section 1-405(a);
- (2) if the name of the agent has changed, the new name;
- (3) if the address of the agent has changed, the new address;
- (4) if the type of entity of the agent has changed, the new type of entity; and
- (5) if the jurisdiction of formation of the ~~entity~~agent has changed, the new jurisdiction of formation.

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

(c) A commercial registered agent promptly shall furnish each entity represented by it notice in a record of the delivery to the [Secretary of State] for filing of a statement of change relating to the name or address of the agent and the changes made in the statement.

(d) If a commercial registered agent changes its address without delivering for filing a statement of change as required by this section, the [Secretary of State] may cancel the listing of the agent under Section 1-405. A cancellation under this subsection has the same effect as a termination under Section 1-406. Promptly after canceling the listing of an agent, the [Secretary of State] shall serve notice in a record in the manner provided in Section 1-412(b) or (c) on:

(1) each entity represented by the agent, stating that the agent has ceased to be ~~an the registered 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 1-412; and

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

1 **Reporters' Note**

2 Should subsection (a)(4) also be a requirement for noncommercial registered agents?

3 **SECTION 1-410. RESIGNATION OF REGISTERED AGENT.**

4 (a) A registered agent may resign as agent for a represented entity by delivering to the
5 [Secretary of State] for filing a statement of resignation signed by ~~or on behalf of~~ the agent
6 which states:

7 (1) the name of the entity;

8 (2) the name of the agent;

9 (3) that the agent resigns from serving as registered agent ~~for service of process~~
10 for the entity; and

11 (4) the address of the entity to which the agent will send the notice required by
12 subsection (c).

13 (b) A statement of resignation takes effect on the earlier of the 31st day after the day on
14 which it is ~~delivered to~~ filed by the [Secretary of State] ~~for filing or the appointment~~ designation
15 of a new registered agent for the represented entity.

16 (c) A registered agent promptly shall furnish the represented entity notice in a record of
17 the date on which a statement of resignation was ~~delivered to the [Secretary of State] for~~
18 filing ~~filed~~.

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

23 (e) A registered agent may resign with respect to a represented entity whether or not the

entity is in good standing.

**SECTION 1-411. APPOINTMENT OF REGISTERED AGENT BY
NONQUALIFIED FOREIGN ENTITY OR NONFILING DOMESTIC ENTITY.**

(a) A nonqualified foreign entity or domestic nonfiling entity may deliver to the [Secretary of State] for filing a statement appointing a registered agent signed ~~on behalf of~~ by the entity which states:

(1) the name, type of entity, and jurisdiction of formation of the entity; and

(2) the information required by Section 1-404(a).

(b) A statement appointing a registered agent ~~takes effect on filing by the [Secretary of State]~~ and is effective for five years after the date of filing unless canceled or terminated earlier.

(c) Appointment of a registered agent under this section does not qualify a nonqualified foreign entity to do business in this state.

(d) A statement appointing a registered agent may not be rejected for filing because the name of the entity ~~filling~~ signing 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 such a statement does not make the name of the entity ~~filling~~ signing the statement unavailable for use by another entity.

(e) An entity that delivers to the [Secretary of State] for filing a statement under subsection (a) appointing a registered agent may cancel the statement by delivering to the [Secretary of State] for filing a statement of cancellation that states the name of the entity and that the entity is canceling its appointment of ~~an~~ a registered agent ~~for service of process~~ in this state. ~~The statement takes effect on filing by the [Secretary of State].~~

(f) A statement appointing a registered agent for a nonqualified foreign entity terminates

on the date the entity becomes a ~~qualified~~ registered foreign entity.

Reporters' Note

References to effectiveness of filings deleted because they duplicate Section 1-203.

SECTION 1-412. SERVICE OF PROCESS, NOTICE, OR DEMAND ON ENTITY.

(a) A represented entity may be served with any process, notice, or demand required or permitted by law by serving its registered agent.

(b) If ~~ana represented~~ entity ~~that delivered to the [Secretary of State] for filing a registered agent filing no longer has~~ ceases to have 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, or by similar commercial delivery service, 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] [biennial] report filed with the [Secretary of State].

~~Service~~ Except as provided by any applicable judicial rules and procedures, service is effected under this subsection on the earliest of:

(1) the date the entity receives the mail or delivery by a similar commercial delivery service;

(2) the date shown on the return receipt, if signed ~~on behalf of~~ by the entity; or

(3) five days after its deposit with the United States Postal Service, or similar commercial delivery service, if correctly addressed and with sufficient postage or payment.

(c) If process, notice, or demand cannot be served on an entity pursuant to subsection (a) or (b), service may be made by handing a copy to the ~~manager, clerk, or other~~ individual in

1 charge of any regular place of business or activity of the entity if the individual served is not a
2 plaintiff in the action.

3 (d) Service of process, notice, or demand on a registered agent must be in a written
4 record, but service may be made on a commercial registered agent in other forms, and subject to
5 such requirements, as the agent has stated in its listing under Section 1-405 that it will accept.

6 (e) Service of process, notice, or demand may be made by other means under law other
7 than this [act].

8 **Reporters' Note**

9 Subsection (c) has been revised to track more closely the language of Fed. R. Civ. Proc.
10 4(h)(1).

11
12 **SECTION 1-413. DUTIES OF REGISTERED AGENT.** The only duties under this
13 [part] of a registered agent that has complied with this [part] are:

14 (1) to forward to the represented entity at the address most recently supplied to the agent
15 by the entity any process, notice, or demand ~~that~~ pertaining to the entity which is served on or
16 received by the agent;

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

19 (3) if the agent is a noncommercial registered agent, to keep current the information
20 required by Section 1-404(a) in the most recent registered agent filing for the entity; and

21 (4) if the agent is a commercial registered agent, to keep current the information listed for
22 it under Section 1-405(a).

23 **Reporters' Note**

24 The changes to the introductory paragraph are patterned after MORA § 14. The rule
25 stated in this section relates only to duties under Part 4 and does not preclude duties being
26 imposed on a registered agent by other law, contract with a represented entity, etc.

SECTION 1-414. 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 a proceeding involving the entity.

[PART] 5

FOREIGN ENTITIES

SECTION 1-501. GOVERNING LAW.

(a) The law of the jurisdiction of formation of an entity governs:

(1) the internal affairs of the entity;

(2) the liability that a person has as an interest holder or governor for a debt, obligation, or other liability of the entity; [and]

(3) [the liability of a series of a series limited liability company; and

(4)] the liability of a series of a statutory trust.

(b) A foreign entity is not precluded from registering to do business in this state because of any difference between the ~~laws~~law of the entity's jurisdiction of formation and the ~~laws~~law of this state.

(c) Registration of a foreign entity to do business in this state does not authorize it to engage in any activity or exercise any power that a domestic entity of the same type may not engage in or exercise in this state.

Reporters' Note

A Legislative Note will explain that a state may choose to include (a)(3) if it wishes to recognize series entities.

1 **SECTION 1-502. REGISTRATION TO DO BUSINESS IN THIS STATE.**

2 (a) A foreign filing entity or foreign limited liability partnership may not do business in
3 this state until it registers with the [Secretary of State] under this [article].

4 (b) A foreign filing entity or foreign limited liability partnership doing business in this
5 state may not maintain an action in this state unless it is registered to do business in this state.

6 (c) The failure of a foreign filing entity or foreign limited liability partnership to register
7 to do business in this state does not impair the validity of a contract or act of the foreign filing
8 entity or foreign limited liability partnership or preclude it from defending an action or
9 proceeding in this state.

10 (d) The liability of an interest holder or governor of a foreign filing entity or of a partner
11 of a foreign limited liability partnership is governed by the laws of its jurisdiction of formation.
12 Any limitation on that liability is not waived solely because the foreign filing entity or foreign
13 limited liability partnership does business in this state without registering.

14 (e) Section 1-501(a) and (b) applies even if a foreign entity fails to register under this
15 [article].

16 **SECTION 1-503. FOREIGN REGISTRATION STATEMENT.** To register to do
17 business in this state, a foreign filing entity or foreign limited liability partnership must deliver a
18 foreign registration statement to the [Secretary of State] for filing. The statement must state:

19 (1) the name of the foreign filing entity or foreign limited liability partnership and, if the
20 name does not comply with Section 1-301, an alternate name adopted pursuant to Section 1-
21 506(a);

22 (2) the type of entity and, if it is a limited partnership, whether it is a limited liability
23 limited partnership;

1 (3) the entity’s jurisdiction of formation;

2 (4) the street and mailing address of the principal office of the foreign filing entity or
3 foreign limited liability partnership and, if the ~~laws~~law of its jurisdiction of formation
4 ~~require~~requires it to maintain an office in that jurisdiction, the street and mailing address of the
5 office; and

6 (5) the information required by Section 1-404(a).

7 **SECTION 1-504. AMENDMENT OF FOREIGN REGISTRATION STATEMENT.**

8 (a) A registered foreign entity ~~registered to do business in this state~~ shall deliver to the
9 [Secretary of State] for filing an amendment to its foreign registration statement if there is a
10 change in:

11 (1) the name of the entity;

12 (2) the type of entity, including, if it is a limited partnership, whether the entity
13 became or ceased to be a limited liability limited partnership;

14 (3) the jurisdiction of formation;

15 (4) the address or addresses required by Section 1-503(4); or

16 (5) the information required by Section 1-404(a).

17 (b) The requirements of Section 1-503 for an original foreign registration statement apply
18 to an amendment of a foreign registration statement under this section.

19 **Reporters’ Note**

20 See the new definition of “registered foreign entity” in Section 1-102.

21 **SECTION 1-505. ACTIVITIES NOT CONSTITUTING DOING BUSINESS.**

22 (a) Activities of a foreign filing entity or foreign limited liability partnership which do not
23 constitute doing business in this state under this [article] include:

1 (1) maintaining, defending, mediating, arbitrating, or settling an action or
2 proceeding;

3 (2) carrying on any activity concerning its internal affairs, including holding
4 meetings of its interest holders or governors;

5 (3) maintaining accounts in financial institutions;

6 (4) maintaining offices or agencies for the transfer, exchange, and registration of
7 ~~interests in~~securities of the entity or maintaining trustees or depositories with respect to those
8 ~~interests~~securities;

9 (5) selling through independent contractors;

10 (6) soliciting or obtaining orders by any means if the orders require acceptance
11 outside this state before they become contracts;

12 (7) creating or acquiring indebtedness, mortgages, or security interests in
13 property;

14 (8) securing or collecting debts or enforcing mortgages or other security interests
15 in property securing the debts and holding, protecting, or maintaining property so acquired;

16 (9) conducting an isolated transaction that is not in the course of similar
17 transactions; ~~and~~

18 (10) owning, without more, real or personal property; and

19 (11) doing business in interstate commerce.

20 (b) This section does not apply in determining the contacts or activities that may subject a
21 foreign filing entity or foreign limited liability partnership to service of process, taxation, or
22 regulation under law of this state other than this [act].

1 **Reporters' Note**

2 New paragraph (a)(10) patterned after harmonized ULLCA § 805(a)(10).

3 **SECTION 1-506. NONCOMPLYING NAME OF FOREIGN ENTITY.**

4 (a) A foreign filing entity or foreign limited liability partnership whose name does not
5 comply with Section 1-301 for an entity of its type may not register to do business in this state
6 until it adopts, for the purpose of doing business in this state, an alternate name that complies
7 with Section 1-301. A foreign filing entity or foreign limited liability partnership that registers
8 under an alternate name under this subsection need not comply with [this state's fictitious or
9 assumed name statute]. After registering to do business in this state with an alternate name, a
10 foreign filing entity or foreign limited liability partnership may do business in this state under:

11 (1) the alternate name;

12 (2) its entity name, with the addition of its jurisdiction of formation clearly
13 identified; or

14 (3) an assumed or fictitious name the entity is authorized to use under [this state's
15 fictitious or assumed name statute].

16 (b) If a registered foreign filing entity ~~registered to do business in this state~~ changes its
17 name to one that does not comply with Section 1-301, it may not do business in this state until it
18 complies with subsection (a) by amending its registration to adopt an alternate name that
19 complies with Section 1-301.

20 **Reporters' Note**

21 Subsection (b). See the new definition of "registered foreign entity" in Section 1-102.

1 **SECTION 1-507. WITHDRAWAL OF REGISTRATION OF REGISTERED**
2 **FOREIGN ENTITY.**

3 (a) A registered foreign entity ~~registered to do business in this state~~ may withdraw its
4 registration by delivering a statement of withdrawal to the [Secretary of State] for filing. The
5 statement of withdrawal must state:

6 (1) the name of the foreign entity and the name of the jurisdiction under whose
7 law it is formed;

8 (2) the type of entity including, if it is a limited partnership, whether it is a limited
9 liability limited partnership;

10 (3) that the entity is not doing business in this state and that it withdraws its
11 registration to do business in this state;

12 (4) that the entity revokes the authority of its registered agent to accept service on
13 its behalf; and

14 (5) an address to which service of process may be made under subsection (b).

15 (b) After the withdrawal of the registration of an entity, service of process in any action
16 or proceeding based on a cause of action arising during the time it was registered to do business
17 in this state may be made pursuant to Section 1-412.

18 **Reporters' Note**

19 Subsection (a). See the new definition of “registered foreign entity” in Section 1-102.

20 **SECTION 1-508. WITHDRAWAL DEEMED ON CONVERSION TO**
21 **DOMESTIC FILING ENTITY OR DOMESTIC LIMITED LIABILITY PARTNERSHIP.**

22 A ~~qualified~~registered foreign entity ~~registered to do business in this state~~ which converts to any
23 type of domestic filing entity or to a domestic registered limited liability partnership is deemed to

1 have withdrawn its registration on the effective date of the conversion.

2 **Reporters' Note**

3 See the new definition of “registered foreign entity” in Section 1-102.

4 **SECTION 1-509. WITHDRAWAL ON DISSOLUTION OR CONVERSION TO** 5 **NONFILING ENTITY OTHER THAN LIMITED LIABILITY PARTNERSHIP.**

6 (a) A registered foreign entity ~~registered to do business in this state which dissolves~~
7 has dissolved and completed winding up or converts~~that has converted~~ to a domestic or foreign
8 nonfiling entity other than a limited liability partnership shall deliver a statement of withdrawal
9 to the [Secretary of State] for filing. The statement must state:

10 (1) the name of the foreign entity and the name of the jurisdiction under
11 whose law it was formed before the dissolution or conversion;

12 (2) the type of entity the foreign entity was before the dissolution or conversion;

13 (3) that the foreign entity surrenders its registration to do business in this state as a
14 qualified entity; and

15 (4) if the foreign entity has converted to a foreign nonfiling entity other than a
16 foreign limited liability partnership:

17 (A) the type of nonfiling entity to which it has converted and the
18 jurisdiction whose laws govern its internal affairs;

19 (B) that it revokes the authority of its registered agent to accept service on
20 its behalf; and

21 (C) a mailing address to which service of process may be made under
22 subsection (b).

23 (b) After the withdrawal under this section of a foreign filing entity that has converted to

1 a foreign nonfiling entity is effective, service of process in any proceeding based on a cause of
2 action arising during the time it was registered to do business in this state may be made pursuant
3 to Section 1-412.

4 (c) After the withdrawal under this section of a foreign filing entity that has converted to
5 a domestic nonfiling entity other than a limited liability partnership is effective, service of
6 process may be made on the nonfiling entity pursuant to Section 1-412.

7 **Reporters' Note**

8 See the new definition of "registered foreign entity" in Section 1-102. Reference to a
9 dissolved entity revised to make clear that the requirement to file a statement of withdrawal only
10 applies when the entity has completed winding up.

11 **SECTION 1-510. TRANSFER OF REGISTRATION.**

12 (a) ~~A~~When a registered foreign filing entity or foreign limited liability partnership
13 ~~registered to do business in this state that merges with~~has merged into a nonqualified foreign
14 ~~entity or convert~~has converted to a foreign entity required to register with the [Secretary of
15 State] to do business in this state, the foreign entity shall deliver to the [Secretary of State] for
16 filing an application for transfer of registration. The application must state:

17 (1) the name of the applicant entity;

18 (2) the type of entity it was before the merger or conversion;

19 (3) the name of the entity into which it has merged or to which it has been
20 converted, and, if the name does not comply with Section 1-301, an alternate name adopted
21 pursuant to Section 1-506(a);

22 (4) the type of entity into which it has merged or to which it has been converted
23 and the jurisdiction whose law governs its internal affairs; and

24 (5) the following information regarding the entity into which it has merged or to
25

1 which it has been converted, if different than the information for the applicant entity:

2 (A) the street and mailing address of the principal office of the entity and,
3 if the law of the entity's jurisdiction of formation requires it to maintain an office in that
4 jurisdiction, the street and mailing address of that office; and

5 (B) the name and street and mailing address of its registered agent in this
6 state.

7 ~~(b) An application for transfer of registration must be delivered to the [Secretary of State]~~
8 ~~for filing and takes effect at the time provided in Section 1-203.~~

9 ~~(e)(b)~~ When an application for transfer of registration takes effect, the registration of the
10 applicant entity to do business in this state is transferred without interruption to the entity into
11 which it has merged or to which it has been converted.

12 **Reporters' Note**

13 *Subsection (a).* See the new definition of "registered foreign entity" in Section 1-102.

14 Subsection (b) deleted because it duplicates Section 1-203.

15 **SECTION 1-511. TERMINATION OF REGISTRATION.**

16
17
18 (a) The [Secretary of State] may terminate the registration of a foreign filing entity or
19 foreign limited liability partnership to do business in this state in the manner provided in
20 subsections (b) and (c) if the entity does not:

21 (1) pay, not later than [60 days] after the due date, any fee, tax, or penalty
22 required to be paid to the [Secretary of State] under this [article] or law other than this [act];

23 (2) deliver to the [Secretary of State] for filing, not later than [60 days] after the
24 due date, the [annual] [biennial] report, if any, required of foreign entities of its type; ~~or~~

25 (3) have a registered agent as required by Section 1-402; or

1 (4) deliver to the [Secretary of State] for filing a statement of change under
2 Section 1-407 within 30 days after a change has occurred in the name or address of the registered
3 agent.

4 (b) The [Secretary of State] may terminate the registration of a foreign filing entity or
5 foreign limited liability partnership, by filing a notice of termination or noting the termination in
6 the records of the [Secretary of State] and by delivering a copy of the notice or the information in
7 the notation to the entity's registered agent in this state, or if the entity does not have a registered
8 agent in this state, to the entity's principal office as designated in Section 1-503(4). The notice
9 must state or the information in the notation must include:

10 (1) the effective date of the termination, which must be at least [60 days] after the
11 date the [Secretary of State] delivers the copy; and

12 (2) the grounds for termination under subsection (a).

13 (c) The authority of a foreign filing entity or foreign limited liability partnership to do
14 business in this state ceases on the effective date of the notice of termination unless before that
15 date the entity cures each ground for termination stated in the notice filed under subsection (b). If
16 the entity cures each ground, the [Secretary of State] shall file a record so stating.

17 **Reporters' Note**

18 Subsection (a)(4) patterned after harmonized ULLCA § 810(a)(4).

19 **[SECTION 1-512. ACTION BY [ATTORNEY GENERAL].** The [Attorney General]
20 may maintain an action to enjoin a foreign filing entity or foreign limited liability partnership
21 from doing business in this state in violation of this [act].]

1 [PART] 6

2 ADMINISTRATIVE DISSOLUTION

3 SECTION 1-601. GROUNDS. The [Secretary of State] may commence a proceeding
4 under Section 1-602 to dissolve a domestic filing entity administratively if the entity does not:

5 (1) pay any fee, tax, or penalty required to be paid to the [Secretary of State] not later
6 than [six months] after it is due;

7 (2) deliver [an annual] [a biennial] report to the [Secretary of State] not later than [six
8 months] after it is due; or

9 (3) have a registered agent in this state for [60] consecutive days.

10 Reporters' Note

11 Change intended as a clarification.

12 SECTION 1-602. PROCEDURE AND EFFECT.

13 (a) If the [Secretary of State] determines that one or more grounds exist under Section 1-
14 601 for dissolving a domestic filing entity, the [Secretary of State] shall serve the entity pursuant
15 to Section 1-412 with notice in a record of the [Secretary of State's] determination.

16 (b) If a domestic filing entity, not later than [60] days after service of the notice is
17 effected under Section 1-412, does not correct each ground for dissolution or demonstrate to the
18 satisfaction of the [Secretary of State] that each ground determined by the [Secretary of State]
19 does not exist, the [Secretary of State] shall dissolve the entity administratively by signing a
20 statement of dissolution that recites the ground or grounds for dissolution and its effective date.
21 The [Secretary of State] shall file the original of the statement and serve a copy on the entity
22 pursuant to Section 1-412.

23 (c) A domestic filing entity that is dissolved administratively continues its existence as an

entity but may not carry on any ~~business~~activities except as necessary to wind up its activities and liquidate its ~~business and affairs~~assets in the manner provided in its organic law or to apply for reinstatement under Section 1-603.

(d) The administrative dissolution of a domestic filing entity does not terminate the authority of its registered agent.

SECTION 1-603. REINSTATEMENT.

(a) A domestic filing entity that is dissolved administratively under Section 1-602 may apply to the [Secretary of State] for reinstatement [not later than [two] years after the effective date of dissolution]. The application must state:

(1) the name of the entity at the time of its administrative dissolution and, if needed, a different name that satisfies Section 1-301;

(2) the address of the principal office of the entity and the name and address of the registered agent;

(3) the effective date of the entity's administrative dissolution; and

(4) that the grounds for dissolution either did not exist or have been eliminated.

(b) To be reinstated, an entity must pay all fees, taxes, and penalties that were due to the [Secretary of State] at the time of its administrative dissolution and all fees, taxes, and penalties that would have been due to the [Secretary of State] while the entity was dissolved administratively.

(c) If the [Secretary of State] determines that the application contains the information required by subsection (a), is satisfied that the information is correct, and determines that all payments required to be made to the [Secretary of State] by subsection (b) have been made, the [Secretary of State] shall cancel the statement of dissolution and prepare a statement of

1 reinstatement that states the [Secretary of State's] determination and the effective date of
2 reinstatement, file the original of the statement, and serve a copy on the entity pursuant to
3 Section 1-412.

4 (d) When reinstatement under this section is effective, it relates back to and takes effect
5 as of the effective date of the administrative dissolution, and the domestic filing entity resumes
6 carrying on its business as if the administrative dissolution had never occurred, except for the
7 rights of a person arising out of an act or omission in reliance on the dissolution before the
8 person knew or had reason to know of the reinstatement.

9 **Reporters' Note**

10 Legislative Note will discuss the policy issue of whether to limit the time within which
11 reinstatement may be sought and, if such a time limit is imposed, what the limit should be.

12 **SECTION 1-604. JUDICIAL REVIEW OF DENIAL OF REINSTATEMENT.**

13
14 (a) If the [Secretary of State] denies a domestic filing entity's application for
15 reinstatement following administrative dissolution, the [Secretary of State] shall serve the entity
16 pursuant to Section 1-412 with a notice in a record that explains the reason or reasons for denial.

17 (b) An entity may seek judicial review of denial of reinstatement in the [appropriate
18 court] not later than [30] days after service of the notice of denial.

19 **[PART] 7**

20 **MISCELLANEOUS PROVISIONS**

21
22 **SECTION 1-701. RESERVATION OF POWER TO AMEND OR REPEAL.** The
23 [legislature of this state] has power to amend or repeal all or part of this [act] at any time, and all
24 domestic and foreign entities subject to this [act] are governed by the amendment or repeal.

25 **SECTION 1-702. SUPPLEMENTAL PRINCIPLES OF LAW.** Unless displaced by

1 particular provisions of this [act] the principles of law and equity supplement this [act].

2 **SECTION 1-703. UNIFORMITY OR CONSISTENCY OF APPLICATION AND**
3 **CONSTRUCTION.** In applying and construing the [articles] of this [act] based on uniform or
4 model acts, consideration must be given to the need to promote uniformity or consistency of the
5 law with respect to its subject matter among states that enact it.

6 **SECTION 1-704. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**
7 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
8 Electronic Signatures in Global and National Commerce act, 15 U.S.C. Section 7001 et seq., but
9 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
10 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
11 U.S.C. Section 7003(b).

12 **SECTION 1-705. SAVINGS CLAUSE.** The repeal of a statute by this [act] does not
13 affect:

- 14 (1) the operation of the statute or any action taken under it before its repeal;
- 15 (2) any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or
16 incurred under the statute before its repeal;
- 17 (3) any violation of the statute or any penalty, forfeiture, or punishment incurred because
18 of the violation before its repeal; or
- 19 (4) any proceeding, reorganization, or dissolution commenced under the statute before its
20 repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with
21 the statute as if it had not been repealed.

22 **SECTION 1-706. EFFECTIVE DATE.** This [act] takes effect

1	[ARTICLE] 2
2	ENTITY TRANSACTIONS
3	
4	[ARTICLE] 3
5	BUSINESS CORPORATIONS
6	
7	[ARTICLE] 4
8	NONPROFIT CORPORATIONS
9	
10	[ARTICLE] 5
11	GENERAL PARTNERSHIPS
12	
13	[ARTICLE] 6
14	LIMITED PARTNERSHIPS
15	
16	[ARTICLE] 7
17	LIMITED LIABILITY COMPANIES
18	
19	[ARTICLE] 8
20	LIMITED COOPERATIVE ASSOCIATIONS
21	
22	[ARTICLE] 9
23	UNINCORPORATED NONPROFIT ASSOCIATIONS
24	
25	[ARTICLE] 10
26	STATUTORY TRUST ENTITIES