

JOINT EDITORIAL BOARD ON UNIFORM UNINCORPORATED ORGANIZATIONS ACT

April 21, 2007
9:30 am Mountain Daylight Time
11:30 Eastern D
Call-in number: 800/207-6717
Participant Code: 183683

- I. Approval of Minutes November 11, 2006 Meeting (Mr. Keatinge)
- II. Enactments Review (John Sebert/ Michael Kerr)
 - A. Uniform Limited Partnership Act (2001) (“ULPA (2001)”)
 - B. Uniform Partnership Act (1997) (“UPA (1997)”)
 - C. Uniform Limited Liability Company Act (1995)
 - D. Revised Uniform Limited Liability Company Act (2006)
 - E. Uniform Unincorporated Nonprofit Association Act (“UUNAA”)
 - F. Model Entity Transactions Act (“META”)
- III. New Business
 - A. Relationship between ABA and NCCUSL (Mssrs. Small and Donn (by telephone if possible), Keatinge, Frost and Professor Conaway).
 - B. Privacy and Accountability in Business Organization Acts (the “Beneficial Owner Issue”) (Mssrs. Small, (by telephone if possible) Keatinge, and Prof. Conaway). See Attachments.
- IV. Old Business
 - A. Permanent Editorial Board on the Uniform Commercial Code (“PEB”) consideration of the relationship of the Revised Uniform Commercial Code (“UCC”) Article 9 and unincorporated entities regarding transferability and creditor’s rights. (Mssrs. Donn (by telephone if possible) and Keatinge)
 - B. Comparison of corresponding provisions of Uniform Unincorporated Acts (Mr. Keatinge)
 - C. Rules Governing Wrongful Distributions in LLPs (Prof. Conaway)
- V. Recently Completed Projects (All)
 - A. META
 - B. RULLCA
 - C. IACA Registered Agents Act

VI. Current Projects.

A. Drafting Committee on a Uniform Statutory Entity Trust Act (Prof. Conaway)

B. Drafting Committee on a Uniform Cooperative Association Act

C. Drafting Committee on a Business Organization Act (Harry Haynsworth (by phone) or others on committee).

VII. NCCUSL Study Committees.

A. Project to Create a Harmonized Legal Framework for Unincorporated Nonprofit Associations in North America (John Small)

VIII. ABA projects.

A. Model LLC Act (Mr. Keatinge)

IX. Date and site of next meeting

X. Adjournment.

Attachment I

110th CONGRESS

1st Session

S. 681

IN THE SENATE OF THE UNITED STATES

February 17, 2007

Mr. LEVIN (for himself, Mr. COLEMAN, and Mr. OBAMA) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To restrict the use of offshore tax havens and abusive tax shelters to inappropriately avoid Federal taxation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * *

SEC. 203. ANTI-MONEY LAUNDERING REQUIREMENTS FOR FORMATION AGENTS.

(a) Anti-Money Laundering Obligations for Formation Agents- Section 5312(a)(2) of title 31, United States Code, is amended, by--

- (1) in subparagraph (Y), by striking `or' at the end;
- (2) by redesignating subparagraph (Z) as subparagraph (AA); and
- (3) by inserting after subparagraph (Y) the following:

`(Z) persons involved in forming new corporations, limited liability companies, partnerships, trusts, or other legal entities; or'.

(b) Deadline for Anti-Money Laundering Rule for Formation Agents- Not later than 90 days after the date of the enactment of this Act, after consulting with the Attorney General of the United States, the Commissioner of the Internal Revenue Service, and Chairman of the Securities and Exchange Commission, the Secretary of the Treasury shall publish a proposed rule in the Federal Register requiring persons described in section 5312(a)(2)(Z) of title 31, United States Code, as added by this section, to establish anti-money laundering programs under subsection (h) of section 5318 of that title. The Secretary shall publish such rule in final form in the Federal Register not later than 180 days after the date of the enactment of this Act.

Attachment III

HOUSE OF REPRESENTATIVES

143rd GENERAL ASSEMBLY

HOUSE BILL NO. 414

AN ACT TO AMEND CHAPTER 18, TITLE 6 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION AND DISSOLUTION OF DOMESTIC LIMITED LIABILITY COMPANIES AND THE REGISTRATION AND REGULATION OF FOREIGN LIMITED LIABILITY COMPANIES.

* * *

Section 2. Amend § 18-104(a), Chapter 18, Title 6 of the Delaware Code by deleting said subsection in its entirety and substituting in lieu thereof the following:

- “(a) Each limited liability company shall have and maintain in the State of Delaware:
- (1) A registered office, which may but need not be a place of its business in the State of Delaware;
- and
- (2) A registered agent for service of process on the limited liability company, which agent may be any of
 - a. the limited liability company itself,
 - b. an individual resident in the State of Delaware,
 - c. a domestic limited liability company (other than the limited liability company itself), a domestic corporation, a domestic partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), or a domestic statutory trust, or
 - d. a foreign corporation, a foreign partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), a foreign limited liability company, or a foreign statutory trust.”.

Section 3. Amend § 18-104, Chapter 18, Title 6 of the Delaware Code by inserting new subsections (e), (f), (g), (h), (i) and (j) as follows:

“(e) Every registered agent shall:

- (1) If an entity, maintain a business office in the State of Delaware which is generally open, or if an individual, be generally present at a designated location in the State of Delaware, at sufficiently frequent times to accept service of process and otherwise perform the functions of a registered agent;
- (2) If a foreign entity, be authorized to transact business in the State of Delaware;
- (3) Accept service of process and other communications directed to the limited liability companies for which it serves as registered agent and forward same to the limited liability company to which the service or communication is directed; and
- (4) Forward to the limited liability companies for which it serves as registered agent the statement for the annual tax described in § 18-1107 of this Title or an electronic notification of same in a form satisfactory to the Secretary of State.

(f) Any registered agent who at any time serves as registered agent for more than fifty entities (a “Commercial Registered Agent”), whether domestic or foreign, shall satisfy and comply with the following qualifications:

- (1) A natural person serving as a Commercial Registered Agent shall:
 - a. Maintain a principal residence or a principal place of business in the State of Delaware;
 - b. Maintain a Delaware business license;
 - c. Be generally present at a designated location within the State of Delaware during normal business hours to accept service of process and otherwise perform the functions of a registered agent as specified in subsection (e); and
 - d. Provide the Secretary of State upon request with such information identifying and enabling communication with such Commercial Registered Agent as the Secretary of State shall require.
- (2) A domestic or foreign corporation, a domestic or foreign partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), a domestic or foreign limited

liability company, or a domestic or foreign statutory trust serving as a Commercial Registered Agent shall:

- a. Have a business office within the State of Delaware which is generally open during normal business hours to accept service of process and otherwise perform the functions of a registered agent as specified in subsection (e);
- b. Maintain a Delaware business license;
- c. Have generally present at such office during normal business hours an officer, director or managing agent who is a natural person; and
- d. Provide the Secretary of State upon request with such information identifying and enabling communication with such Commercial Registered Agent as the Secretary of State shall require.

(3) For purposes of this subsection and subsection (i)(2)a., a Commercial Registered Agent shall also include any registered agent which has an officer, director or managing agent in common with any other registered agent or agents if such registered agents at any time during such common service as officer, director or managing agent collectively served as registered agents for more than fifty entities, whether domestic or foreign.

(g) Every limited liability company formed under the laws of the State of Delaware or qualified to do business in the State of Delaware shall provide to its registered agent and update from time to time as necessary the name, business address and business telephone number of a natural person who is a member, manager, officer, employee or designated agent of the limited liability company, who is then authorized to receive communications from the registered agent. Such person shall be deemed the communications contact for the limited liability company. Every registered agent shall retain (in paper or electronic form) the above information concerning the current communications contact for each limited liability company for which he, she, or it serves as registered agent. If the limited liability company fails to provide the registered agent with a current communications contact, the registered agent may resign as the registered agent for such limited liability company pursuant to this section.

(h) The Secretary of State is authorized to issue such rules and regulations as may be necessary or appropriate to carry out the enforcement of subsections (e), (f) and (g) of this Section, and to take actions reasonable and necessary to assure registered agents' compliance with subsections (e), (f) and (g). Such actions may include refusal to file documents submitted by a registered agent.

(i) Upon application of the Secretary of State, the Court of Chancery may enjoin any person or entity from serving as a registered agent or as an officer, director or managing agent of a registered agent.

(1) Upon the filing of a complaint by the Secretary of State pursuant to this Section, the Court may make such orders respecting such proceeding as it deems appropriate, and may enter such orders granting interim or final relief as it deems proper under the circumstances.

(2) Any one (1) or more of the following grounds shall be a sufficient basis to grant an injunction pursuant to this Section:

- a. With respect to any registered agent who at any time within one (1) year immediately prior to the filing of the Secretary of State's complaint is a Commercial Registered Agent, failure after notice and warning to comply with the qualifications set forth in subsection (e) and/or the requirements of subsections (f) or (g) above;
- b. The person serving as a registered agent, or any person who is an officer, director or managing agent of an entity registered agent, has been convicted of a felony or any crime which includes an element of dishonesty or fraud or involves moral turpitude; or
- c. The registered agent has engaged in conduct in connection with acting as a registered agent that is intended to or likely to deceive or defraud the public.

(3) With respect to any order the Court enters pursuant to this Section with respect to an entity that has acted as a registered agent, the Court may also direct such order to any person who has served as an officer, director or managing agent of such registered agent. Any person who, on or after January 1, 2007, serves as an officer, director or managing agent of an entity acting as a registered agent in the State of Delaware shall be deemed thereby to have consented to the appointment of such registered agent as agent upon whom service of process may be made in any action brought pursuant to this Section, and service as an officer, director or managing agent of an entity acting as a registered agent in the State of Delaware shall be a signification of the consent of such person that any process when so served shall be of the same legal force and validity as if served upon such person within the State of Delaware, and such appointment of the registered agent shall be irrevocable.

(4) Upon the entry of an order by the Court enjoining any person or entity from acting as a registered agent, the Secretary of State shall mail or deliver notice of such order to each affected limited liability company

- a. that has specified the address of a place of business in a record of the Secretary of State, to the address specified, or
- b. an address of which the Secretary of State has obtained from the limited liability company's former registered agent, to the address obtained.

If such a limited liability company is a domestic limited liability company and fails to obtain and designate a new registered agent within thirty (30) days after such notice is given, the certificate of formation of such limited liability company shall be deemed to be cancelled. If such a limited liability company is a foreign limited liability company and fails to obtain and designate a new registered agent within thirty (30) days after such notice is given, such foreign limited liability company shall not be permitted to do business in the State of Delaware and its registration shall be deemed to be cancelled. If any other affected limited liability company is a domestic limited liability company and fails to obtain and designate a new registered agent within sixty (60) days after entry of an order by the Court enjoining such limited liability company's registered agent from acting as a registered agent, the certificate of formation of such limited liability company shall be deemed to be cancelled. If any other affected limited liability company is a foreign limited liability company and fails to obtain and designate a new registered agent within sixty (60) days after entry of an order by Court enjoining such limited liability company's registered agent from acting as a registered agent, such foreign limited liability company shall not be permitted to do business in the State of Delaware and its registration shall be deemed to be cancelled. If the Court enjoins a person or entity from acting as a registered agent as provided in this Section and no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against the limited liability company for which the registered agent had been acting shall thereafter be upon the Secretary of State in accordance with § 18-105 or § 18-911 of this Title. The Court of Chancery may, upon application of the Secretary of State on notice to the former registered agent, enter such orders as it deems appropriate to give the Secretary of State access to information in the former registered agent's possession in order to facilitate communication with the limited liability companies the former registered agent served.

(j) The Secretary of State is authorized to make a list of registered agents available to the public, and to establish such qualifications and issue such rules and regulations with respect to such listing as the Secretary of State deems necessary or appropriate.”.

Attachment II

The following is a press release issued by Senator Levin's Office on February 17, 2007:

Levin, Coleman, Obama Introduce Stop Tax Haven Abuse Act

Bill targets \$100 billion in lost tax revenue each year from offshore tax dodges

WASHINGTON – Today, citing \$100 billion in revenue drained from the U.S. Treasury at the expense of honest, hardworking American families who pay their fair share, Sen. Carl Levin, D-Mich., Sen. Norm Coleman, R-Minn., and Sen. Barack Obama, D-Ill., introduced comprehensive **legislation** to stop offshore tax haven and tax shelter abuses.

For more than four years, Levin and Coleman, the Chairman and senior Republican of the Permanent Subcommittee on Investigations, have led an in-depth Subcommittee investigation into offshore tax havens, abusive tax shelters, and the professionals who design, market, and implement these tax dodges. Experts have estimated that the total loss to the Treasury from offshore tax evasion alone approaches \$100 billion per year, including \$40 to \$70 billion from individuals and another \$30 billion from corporations engaging in offshore tax evasion. Abusive tax shelters add tens of billions of dollars more.

"With a \$345 billion annual tax gap and a \$248 billion annual deficit," said Levin, "we cannot tolerate a \$100 billion drain on our Treasury each year from offshore tax abuses. We cannot tolerate tax cheats offloading their unpaid taxes onto the backs of honest taxpayers. Offshore tax havens have declared economic war on honest U.S. taxpayers by helping tax cheats hide income and assets that should be taxed in the same way as other Americans. This bill provides a powerful set of new tools to clamp down on offshore tax and tax shelter abuses."

"It is simply unacceptable that some individuals are using offshore tax havens and secrecy jurisdictions to shelter trillions of dollars in assets from taxation," said Coleman. "These tax schemes cause a massive revenue shortfall and, sadly, it is the honest American taxpayer who must bear a disproportionate burden of investing in areas like education and healthcare. We are introducing this bill to close these

loopholes, shut down offshore tax schemes, and ensure that every American pays their fair share of taxes.”

“This is a basic issue of fairness and integrity,” said Obama. “We need to crack down on individuals and businesses that abuse our tax laws so that those who work hard and play by the rules aren’t disadvantaged.”

The Stop Tax Haven Abuse Act is a strengthened version of a tax reform bill that Levin, Coleman, and Obama introduced in the last Congress. The legislation was strengthened as a result of a year-long Subcommittee investigation which resulted in a hearing and report on August 1, 2006, examining a series of case studies showing how U.S. taxpayers are using offshore secrecy jurisdictions to dodge U.S. taxes.

“None of these offshore schemes would work,” said Levin, “without the secrecy that prevents U.S. agencies from enforcing our laws. Our bill offers innovative ways to combat offshore secrecy. We can’t let the offshore tax havens hide \$100 billion in U.S. tax revenues which are needed to protect our troops, fund health care and education, and meet the other needs of American families.”

Among other measures, the 68-page bill would:

- ESTABLISH PRESUMPTIONS TO COMBAT OFFSHORE SECRECY by allowing U.S. tax and securities law enforcement to presume that non-publicly traded, offshore corporations and trusts are controlled by the U.S. taxpayers who formed them or sent them assets, unless the taxpayer proves otherwise;
- IMPOSE TOUGHER REQUIREMENTS ON U.S. TAXPAYERS USING OFFSHORE SECRECY JURISDICTIONS by listing 34 jurisdictions which have already been named in IRS court filings as probable locations for U.S. tax evasion;
- AUTHORIZE SPECIAL MEASURES TO STOP OFFSHORE TAX ABUSES by giving Treasury authority to take special measures against foreign jurisdictions and financial institutions that impede U.S. tax enforcement;
- STRENGTHEN DETECTION OF OFFSHORE ACTIVITIES by requiring U.S. financial institutions that open accounts for foreign entities controlled by U.S. clients, open accounts in offshore secrecy jurisdictions for U.S. clients, or establish entities in offshore secrecy jurisdictions for U.S. clients, to report such actions to the IRS;

- **CLOSE OFFSHORE TRUST LOOPHOLES** by taxing offshore trust income used to buy real estate, artwork and jewelry for U.S. persons, and treating as trust beneficiaries those persons who actually receive offshore trust assets;
- **STRENGTHEN PENALTIES** on tax shelter promoters by increasing the maximum fine to 150% of their ill-gotten gains, and on corporate insiders who hide offshore stock holdings by increasing the maximum fine on them to \$1 million per violation of U.S. securities laws;
- **STOP TAX SHELTER PATENTS** by prohibiting the U.S. Patent and Trademark Office from issuing patents for “inventions designed to minimize, avoid, defer, or otherwise affect liability for Federal, State, local, or foreign tax”; and
- **REQUIRE HEDGE FUNDS AND COMPANY FORMATION AGENTS TO KNOW THEIR OFFSHORE CLIENTS** by requiring them to establish anti-money laundering programs like other U.S. financial institutions, under regulations to be issued by the Treasury Department.