

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2153

2007 SENATE JUDICIARY

SB 2153

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2153**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 31, 2007

Recorder Job Number: 2418

Committee Clerk Signature

Maria L. Solby

Minutes: Relating to registered agents.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of Bill:

Mr. Secretary, Al Jeager, Introduced the bill – Att. #1

Clara Jenkins Director of Business Division, Secretary of States office. (meter 4:59) – Att. #2a and submitted an amendment – Att. #2b.

Sen. Fiebiger questioned (meter 9:00) the fees. What were the past fees and is it consistent with the Uniform Act? This is a new registration, not a re-registration. The Uniform Act model did not state fees. Discussion of the structure and how fees are accumulated. This will help for people who have over a 100 applications or the smaller agencies. Discussion of corporate farming and how this does not effect it.

Sen Fiebiger questioned on page 18 (meter 12:30) section 4b, how is resignation to take place? It is in current law? On page 12 line 4 is the process.

Garth Jacobson, CT Corporation (meter 13:44) gave testimony – Att. #3.

Testimony in Opposition of the Bill:

None

Testimony Neutral to the Bill:

Bill Neumann, State Bar Assoc. (meter 19:55) Gave testimony – Att. #4

Senator David Nething, Chairman closed the hearing.

Sen. Nelson made the motion to Do Pass Amendment Att. # 2b and **Sen. Fiebiger** seconded the motion. All members were in favor and the motion passes.

Sen. Nelson made the motion to Do Pass As Amended SB 2153 and **Sen. Fiebiger** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Nelson**

Senator David Nething, Chairman closed the hearing.

HH #26

1-31-07

PROPOSED AMENDMENTS TO SENATE BILL NO. 2153

Page 10, line 23, remove "The name and address of the agent as currently in effect with respect to the"

Page 10, remove line 24

Page 10, line 25, remove "c."

Page 10, line 26, replace "d." with "c."

Page 13, line 21, after the period, insert "The secretary of state may destroy a statement provided for in this section after the statement has been on file for six years."

Page 17, line 9, remove the overstrike over "agent"

Page 29, line 18, overstrike "upon the occurrence of either of these"

Page 29, line 19, overstrike "events" and insert immediately thereafter "if"

Page 47, line 19, overstrike "upon the occurrence of either"

Page 47, line 20, overstrike "of these events" and insert immediately thereafter "if"

Page 54, line 28, after "10-01.1", insert "and if a noncommercial registered agent, then the address of the noncommercial registered agent in this state"

Page 77, line 20, overstrike "upon the occurrence of either of "

Page 77, line 21, overstrike "these events" and insert immediately thereafter "if"

Page 93, line 23, overstrike "upon the occurrence of either of these events" and insert immediately thereafter "if"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2153: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2153 was placed on the Sixth order on the calendar.

Page 10, remove lines 23 and 24

Page 10, line 25, replace "c." with "b."

Page 10, line 26, replace "d." with "c."

Page 13, line 21, after the underscored period insert "The secretary of state may destroy a statement provided for in this section after the statement has been on file for six years."

Page 17, line 9, remove the overstrike over "~~agent~~"

Page 29, line 18, overstrike "upon the occurrence of either of these"

Page 29, line 19, overstrike "events" and insert immediately thereafter "if"

Page 47, line 19, overstrike "upon the occurrence of either"

Page 47, line 20, overstrike "of these events" and insert immediately thereafter "if"

Page 54, line 28, after "10-01.1" insert ", and if a noncommercial registered agent, then the address of the noncommercial registered agent in this state"

Page 77, line 20, overstrike "upon the occurrence of either of"

Page 77, line 21, overstrike "these events" and insert immediately thereafter "if"

Page 93, line 23, overstrike "upon the occurrence of any of these events" and insert immediately thereafter "if"

Renumber accordingly

2007 HOUSE JUDICIARY

SB 2153

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2153

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/6/07

Recorder Job Number: 4453, 4454

Committee Clerk Signature

Demose

Minutes:

Chairman DeKrey: We will open the hearing on SB 2153.

Al Jaeger, Secretary of State: (see attached testimony).

Rep. Koppelman: The \$1,000 fee is only for those who want to be a commercial registered agent, why is that fee so high.

Al Jaeger: To make a change in registered agent now, you pay a fee for each time you change it. The reason for the \$1,000 it is a flat fee.

Rep. Koppelman: Is there a limit to how many.

Al Jaeger: No, there isn't. This is very agreeable to the industry. We're not being excessive. This is something that would cover the cost rather than us doing it piecemeal, which also involves staff intervention every time. This is a flat fee where they can come in and make one address change and take care of all of their accounts. Because staff time will be reduced, it will be a gain in productivity for our office, so even though we might lose a little revenue, we still gain it in other areas.

Chairman DeKrey: Thank you. Further testimony in support.

Clara Jenkins, Director, Business Division, Secretary of State's office: (see attached testimony). This would probably be an advantage for a company that has in excess of 100

clients, because right now they are paying \$10 a pop to file a change and if they have more than 100, obviously there would be a savings.

Rep. Koppelman: So does this kind of create a new professional designation in terms of a registered agent. Do those folks exist already.

Clara Jenkins: They exist already. We have registered agents that have in excess of 7,000 clients, for them to move, is a costly adventure.

Rep. Koppelman: So do most companies have in-house registered agents, or do most pay someone externally to do this.

Clara Jenkins: We're finding that from our records, a majority of those that are approaching, what we would classify as a commercial registered agent, the companies don't have personnel. The registered agent has to be a resident, so an out-of-state company needs a registered agent to do business in ND.

Rep. Kretschmar: Under current corporate law, in your Articles you have to put down the address of your registered office. In Section 12, you are removing that from that area, does a domestic corporation still need a registered office.

Clara Jenkins: The address of the registered agent would only be eliminated in the Articles if they are choosing a commercial registered agent. All other agents would have to list the address.

Rep. Kretschmar: Then on page 35, to file the Articles, you are changing it from \$30 to \$100. Is that an increase.

Clara Jenkins: These fees were carried over from HB 1241, and what this will result in a consolidation of fees. We tacked the \$10 registered agent fee on to the origination fee. So it's a wash, they aren't going to be paying anymore than what they pay right now.

Rep. Delmore: The resignation listed in several sections, now it just says they may resign.

Clara Jenkins: That language appeared in every single entity chapter, and as a matter of fact you had to pay \$10 to resign as the registered agent. We wanted to leave it in the entity chapter to make them aware that the provision still exists, but we eliminated the resignation fee, so if somebody needs to bail out of that situation, for whatever reason, that it won't be a monetary burden on them to resign.

Rep. Delmore: The money collected through this stays with the Secretary of State's office or goes into the General Fund.

Clara Jenkins: Those fees go to the general fund. The only fees that would come back from special funds, would be in the event that someone were to request a special.

Chairman DeKrey: Thank you. Further testimony in support.

Garth Jacobson, CT Corporation: (see attached testimony).

Rep. Klemin: The bill doesn't become effective until July 1, 2008, do you know the reason for the delayed effective date.

Garth Jacobson: I believe the Secretary of State's office could better answer that question. My answer is that it is an opportunity for a slower approach for getting into the new legislation and also enables them to develop their computer system that would adapt to this.

Al Jaeger: We have the migration program under way, so until it is completed, that is when it is projected to be completed, then we can work it. Until then, we'd operate the way we are now. It will be out there and available when the migration is complete.

Rep. Meyer: On page 7, where one of the fees is the commercial registered agent termination fee is \$500. Is he fired or is he resigning, who pays the \$500 and who decides who is going to be terminated.

Clara Jenkins: That would be solely the choice of the registered agent. That could occur for a variety of reasons. Let's say you had an attorney that was acting as a registered agent, and

he retires and he may want to resign as registered agent and quit the business, he would then file a termination statement and all of his clients would be faced with having to go to a new registered agent. That's not a decision we made in the Secretary of State's office that was made by the agent.

Rep. Meyer: Is there anything in here that is going to mandate that they have to have a registered agent, or is that going to be left up to the different companies and entities.

Clara Jenkins: Every one of these entities, when they registered with the Secretary of State, must name a registered agent and must continue to maintain that registered agent for the duration of the life span of that entity. Now they can choose to use this commercial registered agent or they can use their individual resident of the state as a registered agent as they do right now.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. Testimony in neutral.

Bill Neumann, ND State Bar Association: (see attached testimony). We offer technical assistance, we are neutral.

Chairman DeKrey: Thank you. Further testimony neutral. We will close the hearing.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2153

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/6/07

Recorder Job Number: 4489

Committee Clerk Signature *D Penrose*

Minutes:

Chairman DeKrey: We will take a look at SB 2153. What are the committee's wishes.

Rep. Griffin: I move a Do Pass.

Rep. Wolf: Second.

10 YES 0 NO 4 ABSENT

DO PASS

CARRIER: Rep. Dahl

Date: 3/6/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2153

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Griffin Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin			Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging			Rep. Onstad	✓	
Rep. Dahl			Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury					
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 10 No 0

Absent 4

Floor Assignment Rep. Dahl

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 6, 2007 4:39 p.m.

Module No: HR-42-4587
Carrier: Dahl
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2153, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS (10 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING). Engrossed SB 2153 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2153

HH #1
1-31-07

ALVIN A. JAEGER
SECRETARY OF STATE

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SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

January 31, 2007

TO: Senator Nething, Chairman, and Members of the Senate Judiciary Committee
FR: Al Jaeger, Secretary of State
RE: SB 2153 – Model Registered Agent's Act

The National Council of Commissioners on Uniform State Laws adopted the Model Registered Agent's Act in July 2006.

It was a collaborative effort of the Commissioners, the International Association of Commercial Administrators (IACA), and registered agent service providers.

SB 2153 contains the Model Act modified to North Dakota law. Clara Jenkins, Director of the Secretary of State's Business Division, and William L. Guy III, on behalf of the State Bar Association, drafted the bill.

The Model Act is under consideration for adoption in five other states, i.e., Montana, Nevada, Idaho, Arkansas, and Maine. Other sates have scheduled it for consideration next year.

This bill will update and simplify North Dakota's business entity laws. Its adoption in North Dakota is very timely since the Secretary of State's office is migrating to new application software. With the new software and the passage of this Act, it will be possible for registered agents to change their addresses without any human intervention by the Secretary of State. This will save time, increase efficiency, and reduce the possibility of errors.

ALVIN A. JAEGER
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January 31, 2007

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HTT # 2a
1-31-07

TO: Sen. Nething, Chairman, and Members of the Senate Judiciary Committee
FR: Clara Jenkins, Director, Business Division, on behalf of Al Jaeger, Secretary of State
RE: SB 2153 and Proposed Amendments – Registered Agent's Act

1. Creates Chapter 10-01.1, which consolidates into one Chapter of the Century Code all provisions pertaining to registered agents for all of the business entities administered by the Secretary of State as well as the procedures for service of process for those entities. The new chapter establishes consistent requirements for registered agents regardless of the type of entity. Users of the law will have easier access to the applicable law related to registered agents. It will also provide consistent application of the service of process procedures for all business entities, which are drafted to coincide with accepted court practices in North Dakota.
2. Allows registered agents to represent their clients in exactly the same manner as they do now under current law.
3. Allows for the optional registration of a commercial registered agent serving as a registered agent for numerous business entities in North Dakota. To register as a commercial registered agent is a choice of the registered agent. It is not a determination made by the Secretary of State or required by law. When doing so, the names and addresses of the commercial registered agent is consistently on record for all business entities represented by them. If the commercial registered agent moves or undergoes a change of name, a single filing of that change will update the registered agent records for all of the clients they represent. Therefore, it reduces the risk of an annual report notice being mailed to an incorrect address.
4. Establishes the duties of a registered agent, which are now not covered in current state law. It makes it clear that a registered agent does not assume any liability for the activities of a business entity they represent in the capacity of a registered agent.
5. Enables entities without a registration requirement with the Secretary of State to voluntarily name a registered agent and establish a public record with the Secretary of State. Examples of these entities are national banks, trusts, or unincorporated nonprofit organizations. This record allows for easier service of process, which makes the entity aware of it allowing them to respond accordingly.
6. The statutory framework is created to allow for the electronic maintenance of registered agent records filed with the Secretary of State, which will enable registered agents to maintain their client's registered agent records with minimal resources required by the Secretary of State's office.

The attached amendments are not substantive. They make several technical corrections to the bill.

HM #3
1-3-07

Testimony in Support of North Dakota Senate Bill 2153
Model Registered Agent Act
Garth Jacobson
Senior Government Relations Attorney
CT Corporation

Before the Senate Judiciary Committee

Mr. Chairman and Members of the Senate Judiciary Committee:

For the Record, I am Garth Jacobson, representing CT Corporation. CT provides business regulation compliance assistance, serves as a registered agent for over 500,000 business entities nationwide, and represents over 8,000 entities in North Dakota. CT and our affiliates assist attorneys and businesses with document filing, UCC filings and searches, due diligence assistance, copywrite searches, tax information and notice alerts, Securities Exchange Commissions (SEC) compliance filings, electronic discovery, case management and numerous other related activities. In a nutshell, we are in the business law business.

I served as an advisor to the National Conference of Commissioners on Uniform State Laws (NCCUSL) Model Registered Agent Act (MoRAA) Committee. I attended all of the committee meetings and the session when NCCUSL adopted the model act. I also served as chief legal counsel to the Montana Secretary of State from 1989 until 1996 and also served on the Montana Bar committees that drafted the Montana version of Revised Model Business Corporations Act, Nonprofit Business Corporation Act, the Montana Limited Liability Company Act. [While I know Montana is not North Dakota, we do share some of the same attitude about business entities.] Nearly my entire career has involved business regulation in both the private and public sector.

I am here today to testify in support of SB 2153.

SB 2153 is one of those "Trust Me" bills. Many eyes have reviewed and refined this legislation. The International Association of Commercial Administrators (IACA) initiated and developed this legislation. The American Bar Association, Business Law Section further refined the act and referred it to NCCUSL. NCCUSL organized the MoRAA committee and developed the legislation into its final form. The North Dakota Secretary of State's office tweaked MoRAA to meet its concerns for North Dakota's businesses and consumers. Also, note that MoRAA will be introduced in six states this year.

This bill focuses on one of the things that all liability-protected businesses have in common, namely registered agents. This legislation serves as the junction box for all business entities that must maintain registered agents. MoRAA establishes commonality and uniform application of the laws.

Initially it is important to understand the function of a registered agent. A registered agent is the person or entity designated to receive serve of process on behalf of a business entity. Because business entities are treated as separate from the people who own and operate them, there is a need to establish who and where the entity can be found and served. It is a duty of business to maintain a registered agent in order to enjoy their liability protections. All states require business entities to have agents for service of process. With that background, MoRAA better defines the requirement for registered agents.

The following is quick analysis of the important sections and their application.

Section 10-01.1-02 the definitions section provides the common language for all business entities. The reason that the definitions section seems so long is that it applies to all business entities. By analogy, the definitions are like the scene in the movie Apollo 13 where the engineers had to adjust a square air filter to fit a round air filter slot. These definitions enable the act to fit for all business entities. These definitions permit corporations and LLCs to have their registered agents treated the same way. It is the junction box of definitions for common parts of business entities.

Section 10-01.1-04 requires registered agent to maintain a physical address. This is important so the registered agent can be located.

Section 10-01.1-05 establishes the means of appointing a registered agent. Unlike the present method, the registered agent grants an implied consent to serve as a registered agent. This happens when an entity forms and submits its formation documents that name its registered agent. The Secretary of State then makes available the listing of registered agents. If the registered agent did not agree to serve in that capacity then it can resign and let the business entity select another agent. Section 05 also introduces the concept of commercial registered agent and noncommercial registered agent. The commercial registered agent is registered with the Secretary of State's office. It generally represents multiple business entities. The noncommercial registered agent likely is the person who represents his company or represents a few business entities. There is no mandate to be either a commercial or a noncommercial registered agent. A business entity naming a commercial registered agent need only list its name without its address. That address is already of file. Therefore, this makes it easier to file accurate documents and promotes electronic filing.

Section 10-01.1-06 provides for the filing of commercial registered agents. The section specifies the information required for becoming a commercial registered agent. This filing also permits existing registered agents who represent many entities to convert to commercial registered agents by making one filing. This makes for a smooth transition to the new system.

Section 10-01.1-07 establishes the procedure for termination of listing as a registered agent. This is one single filing and provides for notice to the entities of the change in status. It also gives those business entities time to find a new registered agent.

Section 10-01.1-08 provides for the change of registered agents by the business entity. It makes it much easier to change registered agents because the change does not need approval by the directors, shareholders or members. This reduces the red tape.

Section 10-01.1-09 is the procedure for a noncommercial registered agent to change its name or address.

Section 10-01.1-10 permits a commercial registered agent to change its name or address and only have one filing instead of possibly many filings. Again, this eliminates red tape with the need for only one filing.

Section 10-01.1-11 provides for the resignation of a registered agent. The registered agent must give notice to the business entity and then it has 31 days to find a new registered agent.

Section 10-01.1-12 establishes the ability for entities that are not otherwise required to register to do business with the state to name a registered agent. Examples of this are internet companies, catalog sales companies and other entities that are not required to file with the state. They can name a registered agent but not grant the state person jurisdiction by virtue of the filing. This provides some consumer protection by making internet companies easier to find.

Section 10-01.1-13 specifies service of process on business entities. It maintains the status quo methods established by the courts. Likewise, it preserves the Secretary of State's role by making it the agent of last resort. Another words if you cannot find the business entities registered agent, you can still make service through the Secretary of State.

Section 10-01.1-14 establishes the duties of the registered agent. This states what was assumed before.

Section 10-01.1-15 provides that the location of the registered agent does not create jurisdiction or venue for legal actions.

Section 86 provides for a delayed effective date of July 1, 2008. This enables a well-prepared and smooth transition into this legislation.

Ultimately, HB 2153 benefits North Dakota by making its business entity laws better. It will do this through well-defined, predictable, uniform, neutral laws related to registered agent. It reduces paperwork. It makes it easier for the Secretary of State's office to set up electronic filing of business entity documents. All of this makes North Dakota a better place to do business.

Thank you for your consideration of this testimony. I urge your favorable treatment of House Bill 153.

AH # 4
1-31-07

January 31, 2007

Sixtieth Legislative Assembly
Senate Judiciary Committee

SB 2153

CHAIRMAN NETHING AND COMMITTEE MEMBERS:

My name is Bill Neumann, and I am appearing on behalf of the State Bar Association of North Dakota regarding Senate Bill 2153.

The State Bar Association neither supports nor opposes SB 2153. We do, however, offer technical assistance, because of a concern a few of our members have regarding the fees to be charged registered agents.

At page 7, line 11, the bill permits the Secretary of State to collect a fee of one thousand dollars for filing a listing as a commercial registered agent; elsewhere in the bill the fee to file as a non-commercial registered agent is just ten dollars. Some of our members were concerned that the decision as to who must file as a registered agent owing ten dollars and who must file as a commercial registered agent owing one thousand dollars might be made arbitrarily, a decision that would have a heavy impact on their practices and their clients.

I spoke to Clara Jenkins at the Secretary of State's office, who pointed out the word "may" on page 8, line 17 of the bill. That section says an individual may become listed as a commercial registered agent. She assured me the intent of the bill is for the choice to be made by the agent applying for registration, and not by anyone in the Secretary of State's office. The bill merely offers the option of filing as a commercial registered agent as a strictly voluntary thing, a money-saving device for persons who act as agent for more than one hundred entities.

With that assurance and understanding, I appear here for the sole purpose of making this explanation and interpretation of the bill a part of the legislative history of this bill, to forestall any future misunderstanding.

Thank you for your time. If you have any questions, I will be happy to try to answer them.

ALVIN A. JAEGER
SECRETARY OF STATE

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SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

March 6, 2007

TO: Rep. DeKrey, Chairman, and Members of the House Judiciary Committee

FR: Al Jaeger, Secretary of State

RE: SB 2153 – Model Registered Agent's Act

The National Council of Commissioners on Uniform State Laws adopted the Model Registered Agent's Act in July 2006.

It was a collaborative effort of the Commissioners, the International Association of Commercial Administrators (IACA), and registered agent service providers.

SB 2153 contains the Model Act modified to North Dakota law. Clara Jenkins, Director of the Secretary of State's Business Division, and William L. Guy III worked on the drafting.

The Model Act is under consideration for adoption in five other states, i.e., Montana, Nevada, Idaho, Arkansas, and Maine. Other states have scheduled it for consideration next year.

This bill will update and simplify North Dakota's business entity laws as they relate to registered agents. It does not change the status of anyone who is currently a registered agent nor does it require any changes in how they currently operate or fees that are paid. Rather, it makes it easier for them and better defines the duties of a registered agent. At the same, it provides an option for those companies whose volume of registered agent business merits paying the registration fee to become a commercial registered agent.

Its adoption in North Dakota is very timely because the Secretary of State's office is planning to migrate to new application software during the upcoming biennium (project included in Governor's recommended budget). When the migration is completed and with the passage of this Act, it will be possible for registered agents to change their addresses without any human intervention by the Secretary of State. This will save time, increase efficiency, and reduce the possibility of errors.



SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

March 6, 2007

TO: Rep. DeKrey, Chairman, and Members of the House Judiciary Committee

FR: Clara Jenkins, Director, Business Division, on behalf of Al Jaeger, Secretary of State

RE: SB 2153 – Registered Agent's Act

Senate Bill 2153:

1. Creates a Chapter 10-01.1, which consolidates into one Chapter of the Century Code all provisions pertaining to registered agents for all of the business entities administered by the Secretary of State as well as the procedures for service of process for those entities. The new chapter establishes consistent requirements for registered agents regardless of the type of entity. Users of the law will have easier access to the applicable law related to registered agents. It will also provide consistent application of the service of process procedures for all business entities, which are drafted to coincide with accepted court practices in North Dakota.
2. Allows registered agents to represent their clients in exactly the same manner as they do now under current law.
3. Allows for the optional registration of a commercial registered agent serving as a registered agent for numerous business entities in North Dakota. To register as a commercial registered agent is a choice of the registered agent; it is not a determination made by the Secretary of State. When doing so, the name and address of the commercial registered agent is consistently on record for all business entities represented by them. If the commercial registered agent moves or undergoes a change of name, a single filing of that change will update the registered agent records for all of the clients they represent. Therefore, it reduces the risk of annual report notices mailed to an incorrect address.
4. Establishes the duties of a registered agent, which are now not covered in current state law. It makes it clear that a registered agent does not assume any liability for the activities of a business entity they represent in the capacity of a registered agent.
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Model Registered Agent Act
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Senior Government Relations Attorney
CT Corporation

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Initially it is important to understand the function of a registered agent. A registered agent is the person or entity designated to receive serve of process on behalf of a business entity. Because business entities are treated as separate from the people who own and

operate them, there is a need to establish who and where the entity can be found and served. It is a duty of business to maintain a registered agent in order to enjoy their liability protections. All states require business entities to have agents for service of process. With that background, MoRAA better defines the requirement for registered agents.

The following is quick analysis of the important sections and their application.

Section 10-01.1-02 the definitions section provides the common language for all business entities. The reason that the definitions section seems so long is that it applies to all business entities. By analogy, the definitions are like the scene in the movie Apollo 13 where the engineers had to adjust a square air filter to fit a round air filter slot. These definitions enable the act to fit for all business entities. These definitions permit corporations and LLCs to have their registered agents treated the same way. It is the junction box of definitions for common parts of business entities.

Section 10-01.1-04 requires registered agent to maintain a physical address. This is important so the registered agent can be located.

Section 10-01.1-05 establishes the means of appointing a registered agent. Unlike the present method, the registered agent grants an implied consent to serve as a registered agent. This happens when an entity forms and submits its formation documents that name its registered agent. The Secretary of State then makes available the listing of registered agents. If the registered agent did not agree to serve in that capacity then it can resign and let the business entity select another agent. Section 05 also introduces the concept of commercial registered agent and noncommercial registered agent. The commercial registered agent is registered with the Secretary of State's office. It generally represents multiple business entities. The noncommercial registered agent likely is the person who represents his company or represents a few business entities. There is no mandate to be either a commercial or a noncommercial registered agent. A business entity naming a commercial registered agent need only list its name without its address. That address is already of file. Therefore, this makes it easier to file accurate documents and promotes electronic filing.

Section 10-01.1-06 provides for the filing of commercial registered agents. The section specifies the information required for becoming a commercial registered agent. This filing also permits existing registered agents who represent many entities to convert to commercial registered agents by making one filing. This makes for a smooth transition to the new system.

Section 10-01.1-07 establishes the procedure for termination of listing as a registered agent. This is one single filing and provides for notice to the entities of the change in status. It also gives those business entities time to find a new registered agent.

Section 10-01.1-08 provides for the change of registered agents by the business entity. It makes it much easier to change registered agents because the change does not need approval by the directors, shareholders or members. This reduces the red tape.

Section 10-01.1-09 is the procedure for a noncommercial registered agent to change its name or address.

Section 10-01.1-10 permits a commercial registered agent to change its name or address and only have one filing instead of possibly many filings. Again, this eliminates red tape with the need for only one filing.

Section 10-01.1-11 provides for the resignation of a registered agent. The registered agent must give notice to the business entity and then it has 31 days to find a new registered agent.

Section 10-01.1-12 establishes the ability for entities that are not otherwise required to register to do business with the state to name a registered agent. Examples of this are internet companies, catalog sales companies and other entities that are not required to file with the state. They can name a registered agent but not grant the state person jurisdiction by virtue of the filing. This provides some consumer protection by making internet companies easier to find.

Section 10-01.1-13 specifies service of process on business entities. It maintains the status quo methods established by the courts. Likewise, it preserves the Secretary of State's role by making it the agent of last resort. Another words if you cannot find the business entities registered agent, you can still make service through the Secretary of State.

Section 10-01.1-14 establishes the duties of the registered agent. This states what was assumed before.

Section 10-01.1-15 provides that the location of the registered agent does not create jurisdiction or venue for legal actions.

Section 86 provides for a delayed effective date of July 1, 2008. This enables a well-prepared and smooth transition into this legislation.

Ultimately, SB 2153 benefits North Dakota by making its business entity laws better. It will do this through well-defined, predictable, uniform, neutral laws related to registered agent. It reduces paperwork. It makes it easier for the Secretary of State's office to set up electronic filing of business entity documents. All of this makes North Dakota a better place to do business.

Thank you for your consideration of this testimony. I urge your favorable treatment of SB 2153.

March 6, 2007

Sixtieth Legislative Assembly
House Judiciary Committee

SB 2153

CHAIRMAN DeKREY AND COMMITTEE MEMBERS:

My name is Bill Neumann, and I am appearing on behalf of the State Bar Association of North Dakota regarding Senate Bill 2153.

The State Bar Association neither supports nor opposes SB 2153. We do, however, offer technical assistance, because of a concern a few of our members have regarding the fees to be charged registered agents.

At page 7, line 11, the bill permits the Secretary of State to collect a fee of one thousand dollars for filing a listing as a commercial registered agent; elsewhere in the bill the fee to file as a non-commercial registered agent is just ten dollars. Some of our members were concerned that the decision as to who must file as a registered agent owing ten dollars and who must file as a commercial registered agent owing one thousand dollars might be made arbitrarily, a decision that would have a heavy impact on their practices and their clients.

I spoke to Clara Jenkins at the Secretary of State's office, who pointed out the word "may" on page 8, line 17 of the bill. That section says an individual may become listed as a commercial registered agent. She assured me the intent of the bill is for the choice to be made by the agent applying for registration, and not by anyone in the Secretary of State's office. The bill merely offers the option of filing as a commercial registered agent as a strictly voluntary thing, a money-saving device for persons who act as agent for more than one hundred entities.

With that assurance and understanding, I appear here for the sole purpose of making this explanation and interpretation of the bill a part of the legislative history of this bill, to forestall any future misunderstanding.

Thank you for your time. If you have any questions, I will be happy to try to answer them.