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January 10, 2012

TO: Senator Dave Nething, Chairman, and Members of the Judiciary Committee

FR: Al Jaeger, Secretary of State

RE: Revised Uniform Limited Liability Company (LLC) Act

Very little has changed since I appeared before this committee on July 26, 2011. According to the Uniform Law Commission's website checked yesterday and as I reported last year, this Act has still only been adopted in six jurisdictions albeit with many amendments to the version recommended. They are Iowa, Idaho, Nebraska, District of Columbia, Utah, and Wyoming. If the adopted Act has been amended a lot, it will, of course, lose its uniformity.

According to the Commission's website, the legislation is listed in a pending status in only two states. However, whether they are still "alive" is not known. In checking the respective legislative websites for those two states, the last action listed in Minnesota on HF 1274 was March 23, 2011 and the last action in Kansas on HB 2261 was on February 10, 2011.

In communicating recently with counterparts in Minnesota, they indicated that they did not expect any action would be taken by their legislature on the Act during 2012. Also, throughout my tenure, my office has been an active participant in the International Association of Commercial Administrators (IACA). Yesterday, a list serve message was received through IACA in which it was disclosed that serious concerns about the Act have been raised in Kansas.

Under the circumstances, it continues to be the recommendation of William L Guy III and my office that North Dakota not move ahead on this bill until it is more widely accepted in other states, especially in Minnesota. As Mr. Guy has stated before, "This legislation is simply too important to be enacted without careful consideration."

I think it is important to consider the following statistics. They seem to imply that the current North Dakota law is functioning very well for the state's business community.

I reported last year that the Secretary of State's office had 10,222 active domestic limited liability companies on record as of July 25, 2011. Today, the number is 11,895, an increase of 16% in five and one-half months.

Last year, I reported that on July 25, 2011, the Secretary of State's office had 5,424 foreign limited liability companies registered as being authorized to do business in North Dakota. Today, that number is 6,225, an increase of 15% during the five and one-half month period.