

Memorandum

TO: Drafting Committee on Record Owners of Businesses Act

FROM: Harry J. Haynsworth, Chair
Bill Clark, Reporter

DATE: January 7, 2009

RE: February 6-7 Meeting Draft

The revised draft, now designated as the Uniform Access to Entity Information Act, is substantially different from the draft considered at the July 2008 NCCUSL Annual Meeting. Rather than being a series of similar amendments to all the filing entity statutes, the Act has been redesigned as a freestanding act that contains a uniform set of minimum standards and requirements that apply to all filing entities. Legislative notes and a detailed appendix (which will not be drafted until the Act is in final form) will provide guidance on the specific amendments to state entity statutes. Thus, the design of the new draft is similar to the Model Registered Agents Act approved by NCCUSL in 2006; and like MORAA, this Act will ultimately be incorporated as part of the hub of the Business Organizations Code.

In addition to a new design format and a new name, this draft contains several new definitions, expanded noncompliance penalty provisions and other changes that reflect comments received at the 2008 Annual Meeting and from a broad range of government officials and organizations that have reviewed the 2008 Annual Meeting draft.

Substantially, the new draft is not radically different from the Annual Meeting draft. For example, the prohibition against the issuance of bearer shares is in both drafts; and every closely held filing entity (“unregulated privately-owned entity”) must have a records contact person who must provide specified information about the owners (“interest holders”), voting rights, and managers (“governors”) of the entity to governmental officials upon receipt of a valid subpoena. The special requirements applicable to a foreign country closely held entity (a U.S. resident records contact who can produce the required records of the foreign entity in the U.S.) and governors whose principal residences are outside the U.S. (a government-issued photo identification document) are also essentially the same. Moreover, the responsibilities of organizers (“formation agents”) are the same. In addition, the new draft contains the same two alternatives for what information is filed in the office of the Secretary of State. The principal difference is that under Alternative 1 only the name of entity’s records contact is filed, whereas in Alternative 2 both the name of the records contact and the name and address of at least one of the entity’s governors (the Annual Meeting draft required disclosure of all the governors) are required to be filed in the office of the Secretary of State. One of the most important decisions we will have to make at the February 6-7 meeting is determining which of those alternatives the 2009 Annual Meeting draft will incorporate.

This is the only meeting of the Drafting Committee we are authorized to have this year. Therefore, it is imperative that all members of the Drafting Committee review the draft carefully before the meeting. This draft is also being distributed to other organizations that have expressed an interest in reviewing the Act with a request that any comments or suggestions they have be submitted before the Drafting Committee meeting.

We look forward to seeing all of you in Washington, D.C. the first weekend in February.