



LINDA LINGLE
GOVERNOR
JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

LAWRENCE M. REIFURTH
DIRECTOR
RONALD BOYER
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON FINANCE

THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009

Monday, March 2, 2009
12:30 pm
Conference Room 308

**TESTIMONY ON HOUSE BILL NO. 272
RELATING TO THE HAWAII REGISTERED AGENTS ACT**

TO THE HONORABLE MARCUS R. OSHIRO, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Tung Chan, Commissioner of Securities and head of the Business Registration Division, Department of Commerce and Consumer Affairs ("Department"). The Department appreciates the opportunity to testify on House Bill No. 272, relating to the Hawaii Registered Agents Act. We strongly support this measure and respectfully request that the Committee pass House Bill No. 272, with some amendments consistent with those proposed by the Senate Committee on Commerce and Consumer Protection in their S.D. 1 and as suggested below.

The purpose of this bill is to allow registered agents to choose to register as a new designation, a "Commercial Registered Agent" ("CRA"). CRAs will then be provided a number of services, including the right to make single filings under certain circumstances and to coordinate entity representation through the internet.

As background, it should be noted that every entity filed with the Department must have a registered agent for service of process. Almost all the states in the country require agents because of the critical nature of timely service of process and this has created a cottage industry where companies act as registered agents for multiple entities. When a registered agent changes its address, name or jurisdiction, under current Hawaii law, it must file an application of change for each entity it represents. For example, in August, a registered agent was required by the U.S. Post Office to revise its address and had to file change of address applications for each of the entities it represented. The agent filed over 3,000 applications with the Department and it took almost 3 months for staff to process all the filings, burdening staff and slowing down the other registry work.

Under this bill, agents who choose to be registered as a CRA are able to file one single change application online that would change their address, name or type of entity for each of the entities they represent, thus streamlining the change process for them and increasing efficiency for the Department. This new bill also requires the CRAs to keep their records current. The idea is that any registered agent that is representing many other entities has a greater responsibility to keep its information accurate. If a CRA does not do so, they can be deregistered as agents by the Director. The converse is that the bill requires the Department to make the CRA information and list of represented entities available to the CRA at regular intervals. The Department expects to develop an IT system that creates the new designation and provides CRAs with online information.

To ensure that the CRAs are funding the cost of developing the Department's IT changes to accommodate this bill, the bill includes CRA fees that the Department also supports. The savings provided by increased efficiency together with the fees will make this service revenue-neutral in several years and the fees will subsequently provide a modest source of income going forward.

The bill also cleans up provisions in our current law. In particular, our current law does not permit an agent to resign from a dissolved entity even if the entity has stopped paying the agent for its services. Under this bill, agents can resign from a dissolved entity. The Department also appreciates adopting a model act that provides more uniformity of our business registration laws while also improving the Department's efficiency and increasing the accuracy of agent information collected in our databases.

PROPOSED AMENDMENTS FOR A HOUSE DRAFT 1

The companion to this bill, Senate Bill No. 301, was heard by the Senate Committee on Commerce & Consumer Protection, which passed a S.D. 1 version of the bill. We have reviewed the amendments and recommend that the amendments made by the Senate also be adopted by this House Committee. While most changes made by the S.D. 1 are non-substantive, a provision clarifying how commercial registered agent information will be handled in DCCA's business registry was also added in new section ___-6(d) of the Hawaii Registered Agents Act. This additional language will give the Division clear authority to change a commercial registered agent's business address in the records of all the business entities it represents with just one filing.

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I respectfully request your support of House Bill No. 272 and the adoption of the changes reflected in the companion bill, Senate Bill No. 301, S.D. 1, which will help improve the business climate in Hawaii. Thank you for the opportunity to testify. I will be happy to answer any questions the committee may have.

**TESTIMONY OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION**

**ON H.B. No. 272
RELATING TO THE HAWAII REGISTERED AGENTS ACT.**

BEFORE THE HOUSE COMMITTEE ON FINANCE

DATE: Monday, March 2, 2009, at 12:30 p.m.
Conference Room 308, State Capitol

PERSON(S) TESTIFYING: PETER HAMASAKI or KEN TAKAYAMA
Commission to Promote Uniform Legislation

WEB: <http://www.capitol.hawaii.gov/emailtestimony>

Chair Oshiro, Vice-Chair Lee and Members of the House Committee on Finance:

On behalf of the State of Hawai'i Commission to Promote Uniform Legislation (CPUL), thank you very much for this opportunity to testify in support of H.B. No. 272, relating to the Hawaii Registered Agents Act.

We understand that the Department of Commerce and Consumer Affairs (DCCA) recommends adding to Section 6 of the chapter to be added a new subsection (d) that provides, in substance, as follows:

(d) The director shall note the filing of the commercial registered agent listing statement in the business registry maintained by the director for each entity represented by the registered agent at the time of the filing. The statement has the effect of deleting the address of the registered agent from the registered agent filing of each of those entities.

This revision was made in Senate Draft 1 of Senate Bill 301, and we support the proposed revision.

H.B. No. 272 enacts, with some modifications, the Model Registered Agents Act that was developed by the National Conference of Commissioners on Uniform State

Laws (NCCUSL) in 2006. A summary of the Model Registered Agents Act prepared by the NCCUSL is appended to this testimony.

Although H.B. No. 272 appears lengthy, the primary purpose of the bill is straight-forward. Every domestic or foreign entity registered to do business in the State of Hawaii is required to have a registered agent who is located in the State to accept service of process. In many cases, the agent is a company that acts as the registered agent for many entities in the State. The Model Registered Agents Act creates a registry of commercial agents, so that if there are any changes in the name, address, or other information of the commercial agent, the change need only be noted in registration for the commercial agent and not in the registration for each of the entities for whom the commercial agent acts as a registered agent. This simple change will save both the registrants and the Department of Commerce and Consumer Affairs significant amounts of time and cost when there is a change in the commercial agent. In addition, the Model Registered Agents Act clarifies the duties of registered agents.

The Model Registered Agents Act has been adopted in eight (8) states since it was approved by NCCUSL in 2006.

Because it is based upon a model act, the Hawaii Registered Agents Act can help to facilitate interstate commerce by being part of a uniform system of business registration among the different States.

In summary, we support H.B. No. 272, together with the DCCA's proposed amendment thereto.

Thank you very much for this opportunity to testify.



Uniform Law Commissioners

The National Conference of Commissioners on Uniform State Laws

SUMMARY

Model Registered Agents Act

Any business entity other than an individual proprietorship in every state may register an agent for three purposes: to receive service of process; establish venue for any legal action; and for publication of notices required by the entity's organic law. Partnerships, limited partnerships, limited liability companies and corporations are entities that all have provisions for registering agents in their organic statutes in every state. Nonprofit entities also have provisions for registering agents in their organic statutes in many states.

These organic statutes also include registration of agents for foreign entities, those entities which are formed under an organic statute in another state. Generally, the foreign entity avails itself of registration when it enters another state to do business. The penalty for not registering is submission to jurisdiction when service of process is made upon a state agency.

Because registering of agents is virtually the same for every type of entity, the efficiency of one statute governing registration of an agent, no matter the kind of entity, has become apparent. If a state's organic statutes governing partnerships, limited partnerships, limited liability companies or corporations, for example, have slightly different provisions for agent registration, the result is an unnecessary administrative headache. Usually the same office is responsible for registering every kind of entity in every state. Having one statute with one set of registration provisions for every kind of entity just makes common sense.

The initial interest in such a statute came from the International Association of Commercial Administrators (IACA), to which the administrators of entity statutes in every state belong. It began an initial draft and then began to work with the Ad Hoc Committee on Entity Rationalization of the American Bar Association Business Law Section. That Committee then approached the Uniform Law Commission about a joint project. The result is the **Model Registered Agents Act and Amendments to Entity Acts to Rationalize Annual Filings**, promulgated at the 2006 Annual Meeting of the Uniform Law Commission.

The Model Act governs the procedures for registering, including contents of a registration application, changing a prior filing, or resigning as a registered agent. Many entities utilize commercial registered agents, that is, businesses that provide registered agent services to any entity that wants to engage an agent. The Model Act accommodates commercial registered agents with simplified procedures for listing and terminating a listing of a commercial registered agent. Fees for registering an agent may be set in the statute. The Model Act does not suggest fee amounts, leaving that to each state. In some states fees are set by administrative rule. These states would not use the section on fees in their enactment of the Model Act.

No entity is required to register an agent under the Model Act and most current law. The registration is purely voluntary. There is no penalty for not registering an agent. If an entity does not register an agent or a registration lapses completely, service of process first may be made on the principal office of the entity by registered or certified mail, return receipt requested. Service perfects (sets jurisdiction) upon the date the entity receives the mailed process documents, the date shown on the return receipt for delivery, or, if neither of these two, five days after deposit with the U.S. Postal Service. If service cannot be made on the principal office, any place of business the entity maintains in a state will do. Further, any other method for perfection

under other law will also perfect service under the Model Act.

A foreign entity that is not doing business in a state and an entity that is not a filing entity (general partnership with no liability shield or an individual proprietorship) may also register an agent under the Model Act. The Act makes the distinction between filing entities and non-filing entities because the information that must be provided in a filing differs. A filing entity already has a legal presence and identity because it has filed a document in a state that establishes its existence. Non-filing entities do not have that characteristic.

A registered agent has one principal duty, to provide an entity with notice of any service, and of notice required by law or other demand made upon the agent on behalf of the entity. Agents must also keep the registration records current under the Model Act.

An Appendix containing conforming amendments to the common uniform and model acts under which guide the states in enacting their organic statutes for each kind of entity. This is done in an appendix because the organic law, with the exception of partnership and limited partnership law, in each state has substantial variations on the issue of agent registration and annual reports. The Appendix, therefore, stands as a guide to those who must consider their local law in enacting the Model Act. This is why these amendments are presented as an appendix and not as part of the Model Act itself.

The **Model Registered Agents Act and Amendments to Entity Acts to Rationalize Annual Filings** advance the efficiency of administration of entity law in every state. Simply putting the rules in one statute no matter the kind of entity, and repealing the registration provisions in each entity statute, will improve efficiency without more. But the Model Act strives to enact the best practices for registration and extends the potential efficiencies to be obtained much further. The Model Act should be considered in every state as soon as possible.

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111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602

tel: (312) 450-6600 | fax: (312) 450-6601