

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

**ON S.B. NO. 301, S.D. 2,
RELATING TO THE HAWAII REGISTERED AGENTS ACT.**

**BEFORE THE HOUSE COMMITTEE ON CONSUMER PROTECTION &
COMMERCE and COMMITTEE ON JUDICIARY**

DATE: Monday, March 16, 2009, at 2:00 p.m.
Conference Room 325, State Capitol

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

E-MAIL to CPCtestimony@capitol.hawaii.gov.

Chairs Herkes and Karamatsu, Vice Chairs Wakai and Ito, and Members of the House Committees on Consumer Protection & Commerce, and on Judiciary:

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 S.B. No. 301, S.D. 2, relating to the Hawaii Registered Agents Act. S.B. No. 301, S.D. 2, is substantially similar to H.B. No. 272, H.D. 1, which was passed by your Committees and by the House.

S.B. No. 301, S.D. 2, 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 S.B. No. 301, S.D. 2, 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 DCCA 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 S.B. No. 301, S.D. 2.

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.

© Uniform Law Commission
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602

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

Representative Robert N. Herkes, Chair
Representative Glenn Wakai Vice-chair
Committee on Consumer Protection and Commerce Committee

Representative Jon Riki Karamatsu. Chair
Representative Ken Ito, Vice-chair
Committee on Judiciary

Testimony in Support of SB 301, Model Registered Agent Act (MoRAA)

Garth Jacobson
Senior Government Relations Attorney
CT Corporation
520 Pike Street. Suite 985
Seattle, WA 98101
206 622-4511

Members of the House Committees on Consumer Protection and Commerce and
Judiciary:

Members of the Senate Committee on Consumer Protection and Commerce:

For the Record, I am Garth Jacobson, representing CT Corporation. CT provides business regulation compliance assistance and serves as a registered agent for over Nearly 500,000 business entities nationwide and represents over 6,000 entities in Hawaii. 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 (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 State Bar committees that drafted the Montana version of Revised Model Business Corporations Act, Nonprofit Business Corporation Act, the Montana Limited Liability Company Act. I hold BA, JD and MPA degrees from the University of Montana and a LLM in tax law from the University of Washington. Nearly my entire career has involved business regulation in both the private and public sector.

I submit this testimony in support of SB 301.

SB 301 is very well vetted legislation. 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. Likewise the Hawaii NCCUSL Commissioners Lani Ewart and Peter Hamasaki served on the MoRAA committee. The Hawaii Department of Commerce and Consumer Affairs, Business Registration Division tweaked MoRAA to meet its concerns for Hawaii businesses and consumers. It should be noted that MoRAA is enacted in eight states (ID, MT, NV, AK, ND, SD, UT, ME) and is supported by both Republicans and Democrats. For example, the Republican Senate President Pro-tem was the sponsor in North Dakota and the then Democrat President of the Senate sponsored the legislation in Montana.

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. The law in all states requires the business entity to have an agent for service of process. With that background, MoRAA better defines the rules of that duty.

It should be noted that a technical amended added in the Senate Committee on Commerce and Consumer Protection added back in a transition provision that inadvertently was dropped from the MoRAA act. Other than that amendment, SB 301 is the same as HB 272 which your committees previously heard and approved.

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

Section 2 the definitions section provides the common language for all business entities. The reason that the definitions section seems so long is that it can apply for 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 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 4 requires registered agent to maintain both a post office and physical address. This is important so the registered agent can be located. It should be noted that the concept of registered office is gone but there still must be a physical findable location of the registered agent.

Section 5 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 Business Registration Division 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 5 also introduces the

concept of commercial registered agent and noncommercial registered agent. The commercial registered agent is registered with the Business Registration Division'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 6 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 7 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 8 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 9 is the procedure for a noncommercial registered agent to change its name or address.

Section 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 11 provides for the resignation of a registered agent. Notice will be given to the business entity and it has 31 days to find a new registered agent.

Section 12 establishes the duties of the registered agent. This states what was assumed before.

Section 13 provides that the location of the registered agent does not create jurisdiction or venue for legal actions. The location of the registered agent is not a factor for judicial determinations. It should be noted in the many conforming amendments in the remaining sections the reference to venue in the City and County of Honolulu when the Hawaii domestic entity does not have a principal office located in the state. I hope that this means one less thing to litigate.

Ultimately, SB 301 benefits Hawaii by making its business entity laws friendlier. It will do this through well-defined and neutral laws related to registered agent. Likewise it makes Hawaii more business friendly by making it easier to enable electronically file

documents with the Business Registration Division. It will reduce the number of required filings when a commercial registered agent changes address. However the cost of filing remains the same but the paper mostly goes away. All of this makes Hawaii a more attractive place to do business.

Thank you for your consideration of this testimony. I urge your favorable treatment of Senate Bill 301.