

HB1446/409337/1

BY: Budget and Taxation Committee

AMENDMENTS TO HOUSE BILL 1446
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in lines 2 and 3, strike “Registering Entity Names – Limitations” and substitute “Recordation of Governing and Charter Documents - Prohibitions”; strike beginning with “certain” in line 4 down through “with” in line 10 and substitute “a person from causing to be recorded a governing document or charter document of an entity that the person knows is not authorized by a certain individual or that otherwise does not conform to State law; authorizing a person who believes that a governing document or charter document was recorded in violation of a certain provision of this Act to submit a certain affidavit to the State Department of Assessments and Taxation; requiring the Department to send a certain notice, in a certain manner, to a certain resident agent under certain circumstances; requiring the Department to adopt by regulation and make available forms of certain affidavits; authorizing the Department to void a governing document or charter document under certain circumstances; requiring the Department to send a certain notice to certain persons, in a certain manner, if the Department voids a governing document or charter document and if the Department receives a certain affidavit; authorizing a person who disagrees with a certain determination made by the Department to file a certain petition in a certain circuit court; prohibiting the Department from being joined as a party to a certain proceeding; requiring the prevailing party in a certain proceeding and the Department to take certain actions if the circuit court determines that the governing document or charter document was recorded in violation of a certain provision of this Act; authorizing the circuit court to award certain damages, fees, and costs to the prevailing party in a certain proceeding; prohibiting the Department from charging a certain fee or refunding a certain fee; authorizing the Department to adopt certain regulations; and generally relating to the recordation of governing documents and charter documents by”; and in line 13, strike “1-509” and substitute “1-201.1”.

AMENDMENT NO. 2

(Over)

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On pages 1 and 2, strike in their entirety the lines beginning with line 19 on page 1 through line 10 on page 2, inclusive.

On page 2, after line 14, insert:

“1-201.1.

(A) A PERSON MAY NOT CAUSE TO BE RECORDED UNDER THIS SUBTITLE A GOVERNING DOCUMENT OR CHARTER DOCUMENT OF AN ENTITY THAT THE PERSON KNOWS:

(1) IS NOT AUTHORIZED BY AT LEAST ONE INDIVIDUAL WHOSE NAME IS INCLUDED IN THE ENTITY NAME; OR

(2) DOES NOT OTHERWISE CONFORM TO STATE LAW.

(B) (1) A PERSON WHO BELIEVES THAT A GOVERNING DOCUMENT OR CHARTER DOCUMENT WAS RECORDED IN VIOLATION OF SUBSECTION (A) OF THIS SECTION MAY SUBMIT TO THE DEPARTMENT AN AFFIDAVIT STATING THE FACTUAL BASIS FOR THE PERSON’S BELIEF.

(2) IF THE DEPARTMENT RECEIVES AN AFFIDAVIT FROM A PERSON UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE DEPARTMENT SHALL SEND TO THE RESIDENT AGENT OF THE ENTITY FOR WHICH THE GOVERNING DOCUMENT OR CHARTER DOCUMENT WAS FILED FOR RECORDATION A NOTICE THAT:

(1) INCLUDES A COPY OF THE GOVERNING DOCUMENT OR CHARTER DOCUMENT;

(II) INDICATES THE DEPARTMENT IDENTIFICATION NUMBER ASSOCIATED WITH THE ENTITY;

(III) STATES THE PROHIBITION UNDER SUBSECTION (A) OF THIS SECTION;

(IV) STATES THAT THE DEPARTMENT HAS REASON TO BELIEVE THAT THE GOVERNING DOCUMENT OR CHARTER DOCUMENT HAS BEEN FILED FOR RECORDATION IN VIOLATION OF SUBSECTION (A) OF THIS SECTION AND DESCRIBES THE FACTUAL BASIS FOR THAT BELIEF; AND

(V) ADVISES THAT THE GOVERNING DOCUMENT OR CHARTER DOCUMENT MAY BE VOIDED BY THE DEPARTMENT UNLESS, WITHIN 45 DAYS AFTER THE NOTICE IS SENT BY THE DEPARTMENT, THE RESIDENT AGENT OR OTHER AUTHORIZED PERSON SUBMITS TO THE DEPARTMENT AN AFFIDAVIT THAT:

1. STATES THE RESIDENT AGENT'S OR OTHER AUTHORIZED PERSON'S BELIEF THAT THE GOVERNING DOCUMENT OR CHARTER DOCUMENT DOES NOT VIOLATE SUBSECTION (A) OF THIS SECTION; AND

2. PROVIDES THE FACTUAL BASIS FOR THAT BELIEF.

(3) THE NOTICE REQUIRED UNDER THIS SUBSECTION SHALL BE SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND BY FIRST-CLASS MAIL, TO THE ENTITY'S RESIDENT AGENT AT THE ADDRESS PROVIDED FOR THE RESIDENT AGENT IN THE GOVERNING DOCUMENT OR CHARTER DOCUMENT.

(Over)

(C) (1) THE DEPARTMENT SHALL ADOPT BY REGULATION AND MAKE AVAILABLE FORMS OF THE AFFIDAVITS THAT MUST BE USED FOR THE PURPOSES DESCRIBED IN SUBSECTION (B)(1) AND (B)(2)(V) OF THIS SECTION.

(2) THE FORMS SHALL REQUIRE THAT THE AFFIDAVITS BE SWORN UNDER THE PENALTIES OF PERJURY.

(D) (1) THE DEPARTMENT MAY VOID A GOVERNING DOCUMENT OR CHARTER DOCUMENT AFTER THE EXPIRATION OF THE 45-DAY PERIOD SPECIFIED IN THE NOTICE REQUIRED UNDER SUBSECTION (B)(2)(V) OF THIS SECTION IF THE DEPARTMENT DOES NOT RECEIVE FROM THE ENTITY'S RESIDENT AGENT OR OTHER AUTHORIZED PERSON AN AFFIDAVIT THAT:

(I) STATES THE RESIDENT AGENT'S OR OTHER AUTHORIZED PERSON'S BELIEF THAT THE GOVERNING DOCUMENT OR CHARTER DOCUMENT DOES NOT VIOLATE SUBSECTION (A) OF THIS SECTION; AND

(II) PROVIDES THE FACTUAL BASIS FOR THAT BELIEF.

(2) IF THE DEPARTMENT VOIDS A GOVERNING DOCUMENT OR CHARTER DOCUMENT UNDER THIS SUBSECTION, THE DEPARTMENT PROMPTLY SHALL SEND NOTICE OF THE VOIDING TO ALL PERSONS WHO SUBMITTED AFFIDAVITS IN ACCORDANCE WITH SUBSECTION (B)(1) OF THIS SECTION.

(E) (1) IF THE DEPARTMENT RECEIVES AN AFFIDAVIT IN RESPONSE TO THE NOTICE SENT BY THE DEPARTMENT UNDER SUBSECTION (B)(2) OF THIS SECTION, THE DEPARTMENT SHALL SEND A NOTICE STATING THAT THE DEPARTMENT WILL TAKE NO FURTHER ACTION UNLESS A COURT OF COMPETENT JURISDICTION ORDERS THE DEPARTMENT TO TAKE FURTHER ACTION.

(2) THE NOTICE REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE SENT IN THE SAME MANNER REQUIRED FOR THE NOTICE SENT UNDER SUBSECTION (B)(2)(V) OF THIS SECTION TO:

(I) THE PERSON WHO FILED THE AFFIDAVIT DESCRIBED IN SUBSECTION (B)(1) OF THIS SECTION; AND

(II) THE ENTITY'S RESIDENT AGENT.

(F) (1) A PERSON WHO DISAGREES WITH A DETERMINATION MADE BY THE DEPARTMENT UNDER SUBSECTION (E)(1) OF THIS SECTION MAY FILE A PETITION IN THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE PERSON RESIDES OR IN WHICH THE RESIDENT AGENT IS LOCATED, SEEKING A DETERMINATION OF THE VALIDITY OF THE GOVERNING DOCUMENT OR CHARTER DOCUMENT.

(2) THE DEPARTMENT MAY NOT BE JOINED AS A PARTY TO A PROCEEDING UNDER THIS SUBSECTION.

(3) IF THE COURT DETERMINES THAT THE GOVERNING DOCUMENT OR CHARTER DOCUMENT WAS RECORDED IN VIOLATION OF SUBSECTION (A) OF THIS SECTION:

(I) THE COURT SHALL ORDER THAT THE RECORDED GOVERNING DOCUMENT OR CHARTER DOCUMENT BE VOIDED; AND

(II) THE PREVAILING PARTY SHALL PROVIDE A COPY OF THE ORDER TO THE DEPARTMENT.

(Over)

(4) ON RECEIPT OF A COURT ORDER REQUIRING VOIDING OF A RECORDED GOVERNING DOCUMENT OR CHARTER DOCUMENT, THE DEPARTMENT SHALL:

(I) VOID THE GOVERNING DOCUMENT OR CHARTER DOCUMENT; AND

(II) FILE A RECORD INDICATING THAT THE GOVERNING DOCUMENT OR CHARTER DOCUMENT WAS VOIDED IN ACCORDANCE WITH A COURT ORDER.

(5) THE COURT MAY AWARD TO THE PREVAILING PARTY IN A PROCEEDING UNDER THIS SUBSECTION:

(I) DAMAGES SUSTAINED BY THE PREVAILING PARTY; AND

(II) REASONABLE ATTORNEY'S FEES AND COSTS.

(G) THE DEPARTMENT MAY NOT:

(1) CHARGE A FEE TO CARRY OUT ITS OBLIGATIONS UNDER THIS SECTION, INCLUDING FOR THE SENDING OF ANY NOTICES REQUIRED UNDER THIS SECTION; OR

(2) REFUND ANY FEE PAID FOR RECORDING A GOVERNING DOCUMENT OR CHARTER DOCUMENT VOIDED UNDER THIS SECTION.

(H) THE DEPARTMENT MAY ADOPT REGULATIONS TO CARRY OUT THIS SECTION."