

Testimony in Opposition of HB 891

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Chairman Davis and Members of the House Economic Matters Committee

For the Record I am Garth Jacobson, Senior Government Relations Attorney, CT Corporation. CT is a compliance company that provides services (including register agent representation) to Law Firms, entrepreneurs and businesses throughout the USA and beyond. I served as Chair of the, L.L.C., Partnership and Unincorporated Entities committee of the Section of Business Law of the American Bar Association (ABA). I participated on many drafting committees with the Uniform Law Commission (ULC) including the Model Registered Agent Act, the Law Enforcement Access to Entity Information Act and the Harmonization of Entities Act. I also serve on the Gatekeeper Task force for the ABA which addresses business entity beneficial ownership concerns related to money laundering and terrorist financing. While I am not representing any of those ABA or ULC groups or entities, I refer to them because my participation has enabled me to gain a clear understanding of the business entities throughout the country the information and filing concerns of those business entities.

HB 891 is like a cactus. From a distance it looks nice but up close there are clearly sharp edges that make it hard to embrace. The problem with HB 891 is that there are many more moving parts that need to be addressed than contained in the legislation. The legislation specifies that foreign entities can simply certify that the State Department of Assessments and Taxation, (filing office) serves as its registered agent. But hidden from view are issues of beneficial ownership and Office of Foreign Asset control (OFAC) concerns. In 2005 the US Department of Treasury Financial Crimes Enforcement Network (FinCEN) issued a warning to business formation agents and all who serve as registered agents that they need to be concerned about the OFAC because some business entities are being used for illicit purposes related to money laundering and terrorist financing. This edict makes it clear that if you are serving in the capacity of registered agent you need to screen your customers against the OFAC specified designated nationals (SDN) and potentially create a know your customer program. These requirements and other concerns drove Delaware, Nevada, Wyoming and Oregon to pass legislation opposite of HB 891's direction. That is to force registered agents to take greater responsibility in ensuring the integrity of the entities filed in their jurisdictions. Your neighbor, Delaware has gone so far as to require all registered agents to vet their clients and screen them against the OFAC SDN list before submitting a business filing or providing RA services. Even the US House of Representatives passed legislation related to beneficial ownership disclosure of business entities. See HR 2513, Rep. Maloney. If this legislation passes, it reinforces the need to establish an OFAC SDN screening program.

If the purpose of this legislation is to make registering a foreign corporation easier then it misses an element that needs addressing. Under MD Code Ann., Corps. & Ass'ns Section 705, a foreign corporation may identify its principal office which must be located within the state of Maryland. This provision is contrary to the requirements of other filing offices throughout the US. That is the other jurisdictions simply require foreign corporations seeking a certificate of authority to identify the location of the principal office wherever located. Maryland specifies it to be identified as being in Maryland.

This language often results in entities naming the registered agent's office as their principal office in the state. I would suggest amending this language. But if you don't do so then you can anticipate that some entities under this act this may name the filing office as their principal office in the state.

To complicate matters more, venue in Maryland is established by the location of the named principal office in the state. As mentioned above, foreign entities whose actual principal offices are not located in Maryland, sometimes, are using a fictitious principal office location. Often, they place venue where at the location of their registered agent's office. But if you clean up the statute to be consistent with the rest of the country you will need to meet concerns of the attorneys in Maryland about where venue for litigation should be placed. I have had that conversation with members of the Maryland Business Law Section.

Given the issues surrounding this legislation, I request that you table this legislation and direct the filing office to work with the Maryland Bar Association Business Law section to more globally address these issues. I would suggest using the Model Registered Agent Act (MoRAA) as the template for modernizing the statutes. The Uniform Law Commission developed this legislation through a process of working with many filing offices administrators, business law attorneys and service companies to strike a balance of best practices procedures for registered agent filings. MoRAA specifies an alternative means of service of process for entities whose RA can't be located. That is service of process doesn't go through the filing office because service that may result in the failure of delivery of service of process. MoRAA addresses the venue issues and how to serve entities when the RA can't be found and so much more. I would also suggest modernizing your corporate and LLC statutes at least regarding the issue of principal office and identification information for foreign entities. While I won't speak in general to the business entity laws, I do note that Maryland lawyers have told me that updates are needed.

Therefore, I respectfully request that you vote do not pass or table this legislation. Then please address the issues I raised. Otherwise you will be creating or continuing more problems that should be solved.

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