

HUB Official Comments Introductory Note

On April 21, 2017, Governor Eric Holcomb signed Public Law No. 118-2017, an enactment of the General Assembly that consolidated in the Indiana Code and harmonized certain administrative provisions and provisions governing transactions that had previously been contained in five different business entity statutes. Although the new law did not bring about much substantive change, it contained an unprecedented amount of procedural simplification.

The new law added two principal articles to Title 23 of the Indiana Code: Ind. Code § 23-05, called the Uniform Business Organizations Administrative Provisions Act and nicknamed the “HUB”; and Ind. Code § 23-0.6, the Uniform Business Organization Transactions Act and nicknamed “META.” This web page sets forth the provisions of and Official Comments to the HUB. A counterpart web page sets forth the provisions of and Official Comments to META.

The new law was enacted by the Indiana General Assembly at the recommendation of the Indiana Business Law Survey Commission, a body established by the Legislature in 1988 to make recommendations for improvements to the state’s corporation and other business entity statutes. The Survey Commission was chaired during the relevant period of time first by Richard Thrapp and later by Marci Reddick. The draft was developed by a subcommittee of the Commission chaired by Frank Sullivan, Jr., and also consisting of Mallory Long and Janet Monroe.

Staff work connected with the development of the bill and its passage through the Legislature was provided by the Business Services Division in the Office of Indiana Secretary of State Connie Lawson, including Rebecca Longfellow, Director and Counsel of the Business Services Division, and Mallory Long, Attorney and Special Counsel. Long was succeeded by Samantha Chapman as Attorney and Special Counsel for the Business Services Division following enactment of the new law, handling outreach and technical corrections.

Following adoption of the new law in 2017, the Survey Commission appointed a working group to prepare Official Comments. The working group was again chaired by Frank Sullivan, Jr., and consisted of Mallory Long (succeeded by Samantha Chapman) and Janet Monroe. They were assisted by attorneys Andrew E. Podgorny and Kyle Montrose. Marci Reddick, Samantha Chapman, and Rebecca Longfellow had multiple meetings to review and finalize the Official Comments. The Official Comments were adopted by the Survey Commission effective June 17, 2019.

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1-Short Title

IC 23-0.5-1-1 Short title

Sec. 1. This article may be cited as the Uniform Business Organizations Administrative Provisions Act (2018).

Comments

1. This article consolidates and harmonizes to the extent appropriate certain administrative provisions governing filing, entity name, registered agents, foreign entities, and administrative dissolution for business corporations, professional corporations, benefit corporations, limited liability partnerships, limited partnerships, non-profit corporations, limited liability companies, and series limited liability companies previously set forth in IC 23-1, 23-1.3, 23-1.5, 23-4-1, 23-16, 23-17, 23-18, and 23-18.1, respectively. It also contains definitions, fees, and other provisions that are generally applicable to all business entities.

2. This article is based on Article 1 of the Uniform Business Organizations Code, adopted by the Uniform Law Commission in 2011 (last amended in 2013), which will be referred to in these Comments as the “Uniform Act.”

3. These Comments have been prepared by the Indiana Business Law Survey Commission (“BLSC”) based on Comments to the Uniform Act adopted by the Uniform Law Commission with such changes as the BLSC deemed necessary or appropriate. Unless a Comment indicates otherwise, the language of the statute to which the Comment relates is that of the Uniform Act or follows it closely.

4. These Comments should be read in conjunction with the Derivation Table also prepared by the BLSC. The Derivation Table shows, with respect to the provisions of this article: (a) that they constitute new law; or (b) the provisions of the former law from which they

were derived or relate. Some but not all such derivation information is included in these Comments.

IC 23-0.5-1-2 Application

Sec. 2. This article applies to an entity formed under or subject to [IC 23-1](#), [IC 23-1.3](#), [IC 23-1.5](#), [IC 23-4-1](#), [IC 23-16](#), [IC 23-17](#), [IC 23-18](#), or [IC 23-18.1](#).

Comment

See Comment to IC 23-0.5-1.5-8 (Definition of “Entity”).

IC 23-0.5-1-3 Application; exceptions

Sec. 3. This article does not apply to:

- (1) an agricultural cooperative formed under [IC 15-12](#), except for purposes of [IC 23-0.5-4](#);
- (2) a business trust formed under [IC 23-5-1](#), except for purposes of [IC 23-0.5-4](#);
- (3) an insurance company formed under [IC 27-1-6](#); or
- (4) a credit union formed under [IC 28-7-1](#).

Comment

See Comment to IC 23-0.5-1.5-8 (Definition of “Entity”).

IC 23-0.5-1-4 Delivery of record

Sec. 4. (a) Except as otherwise provided in this article, permissible means of delivery of a record include delivery by hand, the United States Postal Service, commercial delivery service, and electronic transmission.

(b) Delivery to the secretary of state is effective only when a record is received by the secretary of state.

Comment

Subsection (a) lists permissible means of delivery but, except for delivery to the secretary of state’s office, does not determine when delivery occurs. Permissible means of delivery are not limited to those listed in subsection (a) because subsection (a) by its terms is a non-exclusive list.

IC 23-0.5-1-5 Rules and procedures

Sec. 5. The secretary of state may:

- (1) adopt rules under [IC 4-22-2](#) to administer this article; and
- (2) prescribe procedures that are reasonably necessary to perform the duties required of the secretary of state under this article.

IC 23-0.5-1-6 Terms dependent on facts ascertainable outside the plan or filed document; articles of amendment

Sec. 6. (a) If a:

- (1) provision under this article permits any of the terms of a filed document to be dependent on facts objectively ascertainable outside the filed document; and
- (2) filed document includes terms that are dependent on facts described in subdivision (1); the manner in which the facts will operate upon the terms of the filed document and the manner in which the facts will become operative must be set forth in the filed document.
- (b) The facts described in subsection (a) may include any of the following:
 - (1) Any of the following that are available in a nationally recognized news or information medium either in print or electronically:
 - (A) Statistical or market indices.
 - (B) Market prices of any security or group of securities.
 - (C) Interest rates.
 - (D) Currency exchange rates.
 - (E) Similar economic or financial data.
 - (2) A determination made or action taken by any person, including the entity or any other party to a filed document.
 - (3) The terms of or actions taken under an agreement to which the entity is a party or any other agreement or document.
- (c) The following provisions of a filed document may not be made dependent on facts outside the filed document:
 - (1) The name and address of any person required in a filed document.
 - (2) The registered office of any entity required in a filed document.
 - (3) The registered agent of any entity required in a filed document.
 - (4) The number of authorized interests and designation of each class or series of interests.
 - (5) The effective date of a filed document.
 - (6) Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.
- (d) If a provision of a filed document is made dependent on a fact ascertainable outside the filed document and:
 - (1) the fact is not ascertainable by reference to a source described in subsection (b)(1) or a document that is a matter of public record; and
 - (2) the affected interest holders have not received notice of the fact from the entity;
 the entity shall file with the secretary of state articles of amendment setting forth the fact promptly after the time the fact referred to is first ascertainable or changes.
- (e) Articles of amendment filed under subsection (d):
 - (1) are considered to be authorized by the authorization of the original filed document; and
 - (2) may be filed by the entity without further action by the governing person.

Comment

This section is not contained in the Uniform Act. It is language from former IC 23-1-18-1.2, 23-4-1-45.7, 23-16-3-7.2, 23-17-29-1.2, and 23-18-12-1.2. Provisions relating to plans previously set forth in those five sections are now in IC 23-0.6-1-6.

1.5-Definitions

IC 23-0.5-1.5-1 Application of definitions

Sec. 1. Except as otherwise provided by this article, the definitions set forth in this chapter apply throughout this article.

Comment

Some of the definitions in this chapter describe attributes that are significant in some forms of entities and not in others. For example, the concepts of separate “economic” and “governance” interests are inherent in unincorporated entities but have no counterpart in corporations.

IC 23-0.5-1.5-2 "Biennial report"

Sec. 2. "Biennial report" means the report required by [IC 23-0.5-2-13](#).

IC 23-0.5-1.5-3 "Business corporation"

Sec. 3. "Business corporation" means a domestic business corporation incorporated under or subject to [IC 23-1](#), [IC 23-1.3](#), or [IC 23-1.5](#) or a foreign business corporation.

IC 23-0.5-1.5-4 "Commercial registered agent"

Sec. 4. "Commercial registered agent" means a person listed under [IC 23-0.5-4-4](#).

Comments

1. This provision has been derived from the Uniform Act and constitutes a new concept in Indiana law.

2. A commercial registered agent is an individual or entity that is in the business of serving as a registered agent in Indiana and that files a listing statement under IC 23-0.5-4-4.

3. Being listed as a commercial registered agent is voluntary and persons serving as registered agents are not required to be listed under IC 23-0.5-4-4.

IC 23-0.5-1.5-5 "Domestic"

Sec. 5. "Domestic", with respect to an entity, means governed as to its internal affairs by the law of Indiana.

IC 23-0.5-1.5-6 "Economic interest"

Sec. 6. "Economic interest" means an interest holder's economic rights in an entity, including the interest holder's share of the profits and losses of the entity and the right to receive distributions from the entity.

Comment

In the usual case, the interest held by an interest holder will include both a governance interest and an economic interest.

The Uniform Act uses the term “distributional interest” to reflect this concept. The BLSC recommended, and the Indiana General Assembly adopted, the term “economic interest” interest instead. It is derived from the definitions of a partner’s “partnership interest” in a limited partnership set forth in IC 23-16-1-12 and of a member's “economic rights” in a limited liability company set forth in IC 23-18-1-10.

IC 23-0.5-1.5-7 "Effective date"

Sec. 7. "Effective date", when referring to a record filed by the secretary of state, means the time and date determined in accordance with [IC 23-0.5-2-3](#).

IC 23-0.5-1.5-8 "Entity"

Sec. 8. (a) "Entity" means:

- (1) a business corporation;
- (2) a nonprofit corporation;
- (3) a general partnership, including a limited liability partnership;
- (4) a limited partnership; or
- (5) a limited liability company.

(b) The term does not include:

- (1) an individual;
- (2) a business trust, a trust with a predominately donative purpose, or a charitable trust;
- (3) an association or relationship that:
 - (A) is not listed in subsection (a); and
 - (B) is not a partnership under the rules stated in [IC 23-4-1-7](#) or a similar provision of the law of another jurisdiction;
- (4) a decedent's estate;
- (5) a government or a governmental subdivision, agency, or instrumentality; or
- (6) any other person that has:
 - (A) a legal existence separate from any interest holder of that person; or
 - (B) the power to acquire an interest in real property in its own name.

Comments

1. A limited liability partnership is not a separate type of entity from a general partnership and for that reason, a general partnership represents a special case. This is because many provisions of the article apply only to general partnerships that are limited liability partnerships. In general, this distinction is made by defining “entity” in this section to include all general partnerships and defining “filing entity” in IC 23-0.5-1.5-11 to include only limited liability partnerships and not all general partnerships.

2. The Uniform Act as adopted by the Uniform Law Commission assumes the adoption of the Uniform Partnership Act of 1997 (last amended in 2013) and the Uniform Limited Partnership Act of 2001 (last amended in 2013). Current Indiana law consists of earlier versions of these two uniform acts (Uniform Partnership Act of 1914 and Uniform Limited Partnership Act of 1976). To the extent necessary and appropriate, this article conforms to the substantive provisions of current Indiana law.

3. This section defines “entity” to establish the scope of this article and not for any other purpose. *See. Rice v. Strunk*, 670 N.E.2d 1280 (Ind. 1996) (considering whether a general partnership was a separate legal entity or an aggregate of the individuals who formed it).

IC 23-0.5-1.5-9 "Entity filing"

Sec. 9. "Entity filing" means a record delivered to the secretary of state for filing under this article.

IC 23-0.5-1.5-10 "Filed record"

Sec. 10. "Filed record" means a record filed by the secretary of state under this article.

IC 23-0.5-1.5-11 "Filing entity"

Sec. 11. "Filing entity" means a business corporation, a nonprofit corporation, a limited liability partnership, a limited partnership, or a limited liability company.

Comments

1. Whether an entity is a filing entity is determined by reference to whether its legal existence or, in the case of a limited liability partnership, its limited liability status, requires the filing of a record with the secretary of state. It is intended to encompass corporations which are “incorporated” and limited liability companies which are “organized” as well as entities such as limited partnerships which are “formed” and limited liability partnerships which elect limited liability status under their organic law.

2. See Comment 2 to IC 23-0.5-1.5-8 for a discussion of the difference in the treatment of general partnerships and limited liability partnerships in this article.

IC 23-0.5-1.5-12 "Foreign"

Sec. 12. "Foreign", with respect to an entity, means governed as to its internal affairs by the law of a jurisdiction other than Indiana.

Comment

The term “foreign,” when used in the article with respect to an entity, includes any non-domestic entity of any type. Where a foreign entity is a filing entity, the entity is governed by the laws of the state of filing.

IC 23-0.5-1.5-13 "General partnership"

Sec. 13. "General partnership" means a domestic general partnership formed under or subject to [IC 23-4-1](#) or a foreign general partnership. The term includes a limited liability partnership except for the purposes of [IC 23-0.5-3-4](#).

Comment

See Comment 2 to IC 23-0.5-1.5-8 for a discussion of the difference in the treatment of general partnerships and limited liability partnerships in this article.

IC 23-0.5-1.5-14 "Governance interest"

Sec. 14. "Governance interest" means a right under the organic law or organic rules of an unincorporated entity, other than as a governing person, agent, assignee, or proxy, to:

- (1) receive or demand access to information concerning, or the books and records of, the entity;
- (2) vote for or consent to the election of the governing persons of the entity; or
- (3) receive notice of or vote on or consent to an issue involving the internal affairs of the entity.

Comments

1. In the usual case, the interest held by an interest holder will include both a governance interest and an economic interest.

2. Memberships in some nonprofit corporations consist solely of governance interests and memberships in other entities may include only governance interests or economic interests. In some unincorporated business entities, there is a more limited right to transfer governance interests than there is to transfer economic interests. An interest holder in such an unincorporated business entity who transfers only an economic interest and retains the governance interest will also retain the status of an interest holder. Whether a transferee who acquires only an economic interest will acquire the status of an interest holder is determined by the definition of "interest holder."

3. Governing persons of an entity have the kinds of rights listed in the definition of "governance interest" by reason of their position with the entity.

IC 23-0.5-1.5-15 "Governing person"

Sec. 15. "Governing person" means:

- (1) a director of a business corporation;
- (2) a director or trustee of a nonprofit corporation;
- (3) a general partner of a general partnership;
- (4) a general partner of a limited partnership;
- (5) a manager of a manager-managed limited liability company;
- (6) a member of a member-managed limited liability company; or
- (7) any other person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed under the organic law and organic rules of the entity.

Comments

1. The Uniform Act uses the term "governor." The BLSC recommended and the General Assembly adopted the term "governing person" to provide a way of referring to a person who has the authority under an entity's organic law to make management decisions regarding the entity that is different from any of the existing terms used in connection with particular types of entities.

2. Depending on the type of entity or its organic rules, the governing persons of an entity may have the power to act on their own authority, or they may be organized as a board or similar group and only have the power to act collectively, and then only through a designated agent. In other words, a person having only the power to bind the organization pursuant to the instruction of the governing persons, is not a governing person.

IC 23-0.5-1.5-16 "Interest"

Sec. 16. "Interest" means:

- (1) a share in a business corporation;
- (2) a membership in a nonprofit corporation; or
- (3) a governance interest or economic interest in any other type of unincorporated entity.

Comment

In the usual case, the interest held by an interest holder will include both a governance interest and an economic interest. Members in nonprofit corporations do not have any economic interest because they do not receive distributions, but they may hold a governance interest pursuant to the organic rules of the nonprofit corporation, in which case they have the status of interest holders for purposes of the article.

IC 23-0.5-1.5-17 "Interest holder"

Sec. 17. "Interest holder" means:

- (1) a shareholder of a business corporation;
- (2) a member of a nonprofit corporation;
- (3) a general partner of a general partnership;
- (4) a general partner of a limited partnership;
- (5) a limited partner of a limited partnership;
- (6) a member of a limited liability company; or
- (7) any other direct holder of an interest.

IC 23-0.5-1.5-18 "Jurisdiction"

Sec. 18. "Jurisdiction", used to refer to a political entity, means the United States, a state, a foreign country, or a political subdivision of a foreign country.

IC 23-0.5-1.5-19 "Jurisdiction of formation"

Sec. 19. "Jurisdiction of formation" means the jurisdiction whose law includes the law for formation of an entity.

IC 23-0.5-1.5-20 "Limited liability company"

Sec. 20. "Limited liability company" means a domestic limited liability company formed under or subject to [IC 23-18](#), a domestic series limited liability company formed under or subject to [IC 23-18.1](#), a foreign limited liability company, or a foreign series limited liability company.

IC 23-0.5-1.5-21 "Limited liability partnership"

Sec. 21. "Limited liability partnership" means a domestic limited liability partnership registered under or subject to [IC 23-4-1-45](#) through [IC 23-4-1-46](#) or a foreign limited liability partnership.

Comment

A limited liability partnership is not a separate type of entity from a general partnership. See Comment to IC 23-0.5-1.5-8 ("entity").

IC 23-0.5-1.5-22 "Limited partnership"

Sec. 22. "Limited partnership" means a domestic limited partnership formed under or subject to [IC 23-16](#) or a foreign limited partnership.

IC 23-0.5-1.5-23 "Noncommercial registered agent"

Sec. 23. "Noncommercial registered agent" means a person that is not a commercial registered agent and is:

- (1) an individual or domestic or foreign entity that serves in this state as the registered agent of an entity; or
- (2) an individual who holds the office or other position in an entity which is designated as the registered agent under [IC 23-0.5-4-3\(b\)\(2\)](#).

Comment

A noncommercial registered agent is a person that serves as an agent for service of process but that is not listed under IC 23-0.5-4-4. All agents for service of process that are not commercial registered agents are noncommercial registered agents.

IC 23-0.5-1.5-24 "Nonprofit corporation"

Sec. 24. "Nonprofit corporation" means a domestic nonprofit corporation incorporated under or subject to [IC 23-17](#) or a foreign nonprofit corporation.

IC 23-0.5-1.5-25 "Nonregistered foreign entity"

Sec. 25. "Nonregistered foreign entity" means a foreign entity that is not registered to do business in Indiana under a statement of registration filed by the secretary of state.

IC 23-0.5-1.5-26 "Organic law"

Sec. 26. "Organic law" means the law of an entity's jurisdiction of formation governing the internal affairs of the entity.

IC 23-0.5-1.5-27 "Organic rules"

Sec. 27. "Organic rules" means the public organic record and private organic rules or governing agreements of an entity.

IC 23-0.5-1.5-28 "Person"

Sec. 28. "Person" means an individual, business corporation, nonprofit corporation, general partnership, limited partnership, limited liability company, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

IC 23-0.5-1.5-29 "Principal office"

Sec. 29. "Principal office" means the principal executive office of an entity, whether or not the office is located in Indiana.

IC 23-0.5-1.5-30 "Private organic rules"

Sec. 30. "Private organic rules" means the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all its interest holders, and are not part of its public organic record, if any. The term includes:

- (1) the bylaws of a business corporation;
- (2) the bylaws of a nonprofit corporation;
- (3) the partnership agreement of a general partnership;
- (4) the partnership agreement of a limited partnership; and
- (5) the operating agreement of a limited liability company.

Comment

The term "private organic rules" means all governing rules of an entity that are binding on all of its interest holders, whether or not in record form, except for the provisions of the entity's public organic document, if any. The term includes agreements in "record" form as well as oral partnership agreements and oral operating agreements among LLC members.

IC 23-0.5-1.5-31 "Proceeding"

Sec. 31. "Proceeding" includes a civil action, arbitration, mediation, administrative proceeding, criminal prosecution, and investigatory action.

IC 23-0.5-1.5-32 "Property"

Sec. 32. "Property" means all property, whether real, personal, or mixed or tangible or intangible, or any right or interest in such property.

IC 23-0.5-1.5-33 "Public organic record"

Sec. 33. "Public organic record" means:

- (1) the articles of incorporation of a business corporation;
 - (2) the articles of incorporation of a nonprofit corporation;
 - (3) the certificate of limited partnership of a limited partnership;
 - (4) the certificate of registration of a limited liability partnership; and
 - (5) the articles of organization of a limited liability company;
- filed by the secretary of state and any amendment or restatement of that record.

IC 23-0.5-1.5-34 "Receipt"

Sec. 34. "Receipt" means actual receipt as distinguished from constructive receipt. "Receive" has a corresponding meaning.

Comment

The Uniform Electronic Transactions Act, IC 26-2-8, which provides rules as to when an electronic record is sent and received, applies to electronic records under this Article.

IC 23-0.5-1.5-35 "Record"

Sec. 35. "Record", used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

IC 23-0.5-1.5-36 "Registered agent"

Sec. 36. "Registered agent" means an agent of an entity which is authorized to receive service of any process, notice, or demand required or permitted by law to be served on the entity. The term includes a commercial registered agent and a noncommercial registered agent.

Comment

This term is used in this article to refer to agents for service of process in contexts where it is not necessary to differentiate between commercial registered agents and noncommercial registered agents.

IC 23-0.5-1.5-37 "Registered agent filing"

Sec. 37. "Registered agent filing" means:

- (1) the public organic record of a domestic filing entity;
- (2) a registration statement filed under [IC 23-0.5-5-3](#); or
- (3) a designation of agent.

IC 23-0.5-1.5-38 "Registered foreign entity"

Sec. 38. "Registered foreign entity" means a foreign entity that is registered to do business in Indiana under a statement of registration filed by the secretary of state.

IC 23-0.5-1.5-39 "Regulated entity"

Sec. 39. "Regulated entity" means a bank, a savings bank, a savings association, a corporate fiduciary, a credit union, an industrial loan and investment company, a surety company, a trust company, a safe deposit company, a railroad corporation, an insurance company, and a building and loan association.

Comment

This section is not contained in the Uniform Act. Former IC 23-1-49-1(a) provided that the business organizations listed in this section were not subject to the requirement of obtaining a certificate of authority from the secretary of state before transacting business in Indiana. That provision is now IC 23-0.5-5-2.

IC 23-0.5-1.5-40 "Represented entity"

Sec. 40. "Represented entity" means:

- (1) a domestic filing entity; or
- (2) a registered foreign entity.

Comment

IC 23-0.5-4-1(a) requires several types of business organizations in addition to filing entities to designate and maintain a registered agent. This definition is used in this article as a way of referring to all of the various types of business organizations that have registered agents.

IC 23-0.5-1.5-41 "Sign"

Sec. 41. "Sign" means, with present intent to authenticate or adopt a record:

- (1) to execute or adopt a tangible symbol; or
- (2) to attach to or logically associate with the record an electronic symbol, sound, or process.

IC 23-0.5-1.5-42 "State"

Sec. 42. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

IC 23-0.5-1.5-43 "Transfer"

Sec. 43. "Transfer" includes:

- (1) an assignment;
- (2) a conveyance;
- (3) a sale;
- (4) a lease;
- (5) an encumbrance, including a mortgage or security interest;
- (6) a gift; and
- (7) a transfer by operation of law.

Comment

The term "transfer" is broadly defined to include all types of conveyances of interests in property.

IC 23-0.5-1.5-44 "Written"

Sec. 44. "Written" means inscribed on a tangible medium. "Writing" has a corresponding meaning.

2-Filing

IC 23-0.5-2-1 Requirements; filing fee

Sec. 1. (a) To be filed by the secretary of state under this article, an entity filing must be received by the secretary of state, comply with this article, and satisfy the following:

- (1) The entity filing must be required or permitted by this article.
- (2) The entity filing must be transferred to the secretary of state by hand, mail, or a form of electronic transmission meeting the requirements established by the secretary of state.
- (3) The entity filing must be legible, typewritten or printed, or, if electronically transmitted, in a format that can be retrieved in a reproduced or typewritten form, and otherwise suitable for processing. The words in the entity filing must be in English, and numbers must be in Arabic or Roman numerals, but the name of the entity need not be in English if written in English letters or Arabic or Roman numerals.
- (4) The entity filing must be signed by or on behalf of a person authorized to sign the filing.
- (5) The entity filing must state the name and capacity, if any, of each individual who signed it, either on behalf of the individual or the person authorized or required to sign the filing, but need not contain a seal, attestation, acknowledgment, or verification.
- (6) The entity filing may contain other information as well.

(b) If law other than this article prohibits the disclosure by the secretary of state of information contained in an entity filing, the secretary of state shall file the entity filing if the filing otherwise complies with this article but may redact the information.

(c) When an entity filing is delivered to the secretary of state for filing, any fee required under this article must be paid in a manner permitted by the secretary of state.

(d) The secretary of state may require that an entity filing delivered in written form be accompanied by an identical or conformed copy.

Comments

1. The records filed under this article are referred to as “entity filings” in order to encompass filings under corporation laws, which are typically referred to as “articles,” and filings under limited partnership and other unincorporated entity laws, which are typically referred to as “certificates.”

2. IC 23-0.5-1-4(b) provides that delivery of an entity filing to the secretary of state is effective only upon actual receipt by the secretary of state. The types of electronic transmission that may be used will be determined by the secretary of state and are intended to include the evolving methods of electronic delivery. The text of an entity filing must be in the English language (except to the limited extent permitted by IC 23-0.5-2-1(a)(3)). The secretary of state has limited authority to prescribe forms (pursuant to IC 23-0.5-2) and as a result may not reject entity filings on the basis of form if they contain the information called for by the specific statutory requirement and meet the requirements of this section.

3. To be filed a record must be signed by the appropriate person. Who is an appropriate person will be determined by an entity’s organic law. See the definition of “sign” in IC 23-0.5-1.5-41 for a description of the manner in which a record may be “signed.” This article does not require that entity filings must be acknowledged or verified as a condition for filing. Other law or private agreement may require acknowledgements, verifications, or seals. Subsection (a)(4) does

not prohibit the addition of these forms of execution and their use is not intended to affect the eligibility of the record for filing.

4. A record must be filed by the secretary of state if it contains the information required by applicable law. In view of the very limited discretion granted to the secretary of state under this section and IC 23-0.5-2-6 which defines the role of the secretary of state as “ministerial,” IC 23-0.5-2-6(e) provides that no presumption arises from the fact that the secretary of state accepted a document or filing. *See* Comment 5 to IC 23-0.5-2-6.

5. Subsection (a)(2) has been modified from the Uniform Act to add language to the same effect as former IC 23-1-18-1.1, IC 23-16-12-5.1, 23-17-29-1.1, and 23-18-12-1.1.

6. Subsection (a)(3) has been modified from the Uniform Act to add language regarding legibility to the same effect as former IC 23-1-18-1(d), IC 23-16-12-5(e), 23-17-29-1(a)(5), and 23-18-12-1(a)(4).

7. Subsection (a)(6), which permits entity filings to contain information in addition to that required, has no equivalent in the Uniform Act. It is language from former IC 23-1-18-1(c), IC 23-4-1-45(a)(1)(F), and IC 23-16-12-5(b).

IC 23-0.5-2-2 Forms

Sec. 2. (a) The secretary of state may provide forms for entity filings required or permitted to be made by this article, but, except as otherwise provided in subsection (b), their use is not required.

(b) The secretary of state may require that a cover sheet for an entity filing and a biennial report be on forms prescribed by the secretary of state.

Comment

As described in the Comments to IC 23-0.5-2-1, records are entitled to filing if they meet the substantive requirements of applicable law. As a result, the secretary of state does not have the general authority to establish mandatory forms. This section authorizes (but does not require) the secretary of state to prepare forms suitable for filing. However, the use of these forms is permissive and cannot be required by the secretary of state.

IC 23-0.5-2-3 Effective date and time of filing

Sec. 3. Except as otherwise provided in this article and subject to section 5(d) of this chapter, an entity filing is effective:

- (1) on the date and at the time of its filing by the secretary of state as provided in section 6(b) of this chapter;
- (2) on the date of filing and at the time specified in the entity filing as its effective time, if later than the time under subdivision (1);
- (3) if permitted by this article, at a specified delayed effective date and time, which may not be more than ninety (90) days after the date of filing; or

(4) if a delayed effective date as permitted by this article is specified but no time is specified, at 12:01 a.m. on the date specified which may not be more than ninety (90) days after the date of filing.

IC 23-0.5-2-4 Withdrawal of filed record; requirements

Sec. 4. (a) Except as otherwise provided in this article, a record delivered to the secretary of state for filing may be withdrawn before it takes effect by delivering to the secretary of state for filing a statement of withdrawal.

(b) A statement of withdrawal must:

- (1) identify the record to be withdrawn;
- (2) be signed by each person that signed the record being withdrawn, except as otherwise agreed by those persons; and
- (3) if signed by fewer than all the persons that signed the record being withdrawn, state that the record is withdrawn in accordance with the agreement of all the persons that signed the record.

(c) On filing by the secretary of state of a statement of withdrawal, the action or transaction evidenced by the original filed record does not take effect.

Comments

1. Only records that have not yet taken effect may be withdrawn under this section. If a record has taken effect, it may be corrected under IC 23-0.5-2-5 if the requirements of that section are satisfied. Otherwise, the record must be amended in accordance with applicable law or, if the record relates to the formation of an entity, the existence of the entity may be terminated in accordance with applicable law.

2. If a signatory of a record being withdrawn has died or is incompetent, IC 23-0.5-2-9 provides for a substitute signatory.

IC 23-0.5-2-5 Correcting the record; effective date

Sec. 5. (a) A person on whose behalf a filed record was delivered to the secretary of state for filing may correct the record if:

- (1) the record at the time of filing was inaccurate;
- (2) the record was defectively signed; or
- (3) the electronic transmission of the record to the secretary of state was defective.

(b) To correct a filed record, a person on whose behalf the record was delivered to the secretary of state must deliver to the secretary of state for filing articles of correction.

(c) Articles of correction:

- (1) may not state a delayed effective date;
- (2) must be signed by the person correcting the filed record;
- (3) must identify the filed record to be corrected;
- (4) must specify the inaccuracy or defect to be corrected; and
- (5) must correct the inaccuracy or defect.

- (d) The articles of correction are effective:
 - (1) except as described in subdivision (2), as of the effective date of the filed record corrected by the articles of correction; and
 - (2) with respect to a person that:
 - (A) relies on the uncorrected filed record; and
 - (B) is adversely affected by the correction;when filed or when the reliance ceases to be reasonable, whichever occurs first.

Comments

1. This section permits making corrections in entity filings without re-filing the entire record. Under subsection (d), the correction relates back to the original effective date of the entity filing being corrected, except as to persons relying on the original entity filing and adversely affected by the correction. As to these persons, the effective date of the articles of correction is the date the statement is filed. An entity filing may be corrected either because it contains an inaccuracy or because it was defectively executed (including defects in optional forms of execution that do not affect the eligibility of the original record for filing). In addition, an entity filing may be corrected if its electronic transmission was defective. This is intended to cover the situation where an electronic filing is made but, due to a defect in transmission, the filed record is later discovered to be inconsistent with the record intended to be filed. If no filing is made because of a defect in transmission, articles of correction may not be used to make a retroactive filing. Therefore, an entity making an electronic filing should take steps to confirm that the filing was received by the secretary of state.

2. A provision in an entity filing setting an effective date may be corrected under this section, but the corrected effective date must comply with the requirements of this article limiting delayed effective dates to within 90 days after filing. A corrected effective date is thus measured from the date of the original filing of the record being corrected, i.e., it cannot be before the date of filing of the record or more than 90 days thereafter.

3. If a signatory of a record being withdrawn has died or is incompetent, IC 23-0.5-2-9 provides for a substitute signatory.

IC 23-0.5-2-6 Filing of documents by secretary of state; refusal to file; appeal

Sec. 6. (a) The secretary of state shall file an entity filing delivered to the secretary of state for filing which satisfies this article. The duty of the secretary of state under this section is ministerial.

(b) When the secretary of state files an entity filing, the secretary of state shall record it as filed on the date and at the time of its delivery. After filing an entity filing, the secretary of state shall deliver to the person that submitted the filing an electronic copy of the filing with an acknowledgment of the date and time of filing.

(c) If the secretary of state refuses to file an entity filing, the secretary of state, not later than ten (10) business days after the filing is delivered, shall:

- (1) return the entity filing or notify the person that submitted the filing of the refusal; and
- (2) provide a brief explanation in a record of the reason for the refusal.

(d) If the secretary of state refuses to file an entity filing, the person that submitted the filing may petition the circuit or superior court of the county where the entity's principal office (or, if

none in Indiana, its registered office) is or will be located to compel its filing. The filing and the explanation of the secretary of state of the refusal to file must be attached to the petition. The court may decide the matter in a proceeding.

- (e) The secretary of state's filing or refusing to file a document does not:
 - (1) affect the validity or invalidity of the document in whole or in part;
 - (2) relate to the correctness or incorrectness of information contained in the document; or
 - (3) create presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

Comments

1. This section differs from the Uniform Act in its scope but not in its effect. Under the Uniform Act, the secretary of state is required to file an entity filing if it “satisfies” both this article and the article that constitutes the organic law of the entity. As enacted, the secretary of state’s duty is to file an entity filing if it satisfies this article, without reference to the organic law of the entity. The purpose of the language in both the Uniform Act and the statute as enacted is to limit the discretion of the secretary of state to a ministerial role in reviewing the contents of entity filings.

If the entity filing submitted contains the information required by IC 23-0.5-2-1, the secretary of state must file it; the secretary of state has no responsibility (as the secretary of state would under the Uniform Act’s formulation) to determine if a filing satisfies the article that constitutes the organic law of the entity. Consistent with this approach, subsection (a) states explicitly that the filing duty of the secretary of state is ministerial and subsection (e) provides that the filing of an entity filing by the secretary of state does not affect the validity or invalidity of any provision contained in the filing, does not relate to the correctness or incorrectness of information contained in the document, and does not create any presumption with respect to any provision. The secretary of state has analogous ministerial responsibilities under other statutes, e.g., IC 23-0.6-2-5. Persons adversely affected by provisions in an entity filing may test their validity in a proceeding appropriate for that purpose. A presumption should not be drawn about the validity of the provision from the fact that the secretary of state accepted the entity filing for filing.

2. Subsection (b) provides that when the secretary of state files an entity filing, the secretary of state records it as filed on the date and time of delivery to the secretary of state, retains the original record for the state’s records, and delivers a copy of the record to the entity or its representative with an acknowledgement of the date and time of filing. In the case of a record transmitted electronically, delivery may be made by electronic transmission. The copy returned will be a copy made by the secretary of state.

3. Subsection (b) provides that acceptance of a filing is evidenced by the delivery by the secretary of state of a copy of the entity filing with an acknowledgment of the date and time of filing. This article does not provide for the secretary of state to issue a formal certificate of filing. A copy of the filed record together with an acknowledgment of the date and time of filing sufficiently indicates that the entity filing has been accepted for filing.

4. Because of the simplification of formal filing requirements and the limited discretion granted to the secretary of state by this article, it is probable that rejection of entity filings will occur only rarely. Subsection (c) provides that if the secretary of state does reject an entity filing, the secretary of state must return it to the person that submitted the filing within 10 days together with a brief written explanation of the reason for rejection. In the case of an entity filing delivered by electronic transmission, rejection of the filing may be made electronically by the secretary of state or by a mailing to the entity.

5. Subsection (e) provides that the filing of a record by the secretary of state does not affect the validity or invalidity of any provision contained in the record, relate to the correctness or incorrectness of information contained in the document, or create a presumption with respect to any information in the record. Likewise, the refusal of the secretary of state to file a record creates no presumption that any of the information in the record is incorrect. Persons adversely affected by a statement in a filed record may contest the statement in a proceeding appropriate for that purpose.

6. Subsection (e)(1) and (2) have no equivalents in the Uniform Act. It is language from former IC 23-1-18-6(d)(1) and (2), 23-17-29-6(d)(1) and (2), and 23-18-12-6(d)(1) and (2).

IC 23-0.5-2-7 Certification of filed record

Sec. 7. A certification from the secretary of state accompanying a copy of a filed record is conclusive evidence that the copy is an accurate representation of the original record on file with the secretary of state.

Comment

The limited effect of a certificate issued by the secretary of state under this section is consistent with the ministerial filing obligation imposed on the secretary of state under this article. See IC 23-0.5-2-6(a) which states the ministerial nature of the duties of the secretary of state under this article, but contrast IC 23-0.5-2-8(c) which provides for a broader effect for a certificate of existence or fact.

IC 23-0.5-2-8 Certificate of existence or fact; contents

Sec. 8. (a) On request of any person, the secretary of state shall issue a certificate of existence for a domestic filing entity or a certificate of registration for a registered foreign entity.

(b) A certificate issued under subsection (a) must state:

- (1) the domestic filing entity's name or the registered foreign entity's name used in Indiana;
- (2) in the case of a domestic filing entity:
 - (A) that its public organic record has been filed and has taken effect;
 - (B) the date the public organic record became effective; and
 - (C) that the records of the secretary of state do not reflect that the entity has been dissolved;
- (3) in the case of a registered foreign entity, that it is registered to do business in Indiana;
- (4) that the most recent biennial report required by section 13 of this chapter has been delivered to the secretary of state for filing; and
- (5) that a proceeding is not pending under [IC 23-0.5-5-11](#) or [IC 23-0.5-6-2](#).

(c) Subject to any qualification stated in the certificate, a certificate issued by the secretary of state under subsection (a) may be relied on as conclusive evidence of the facts stated in the certificate.

(d) On the request from any person, the secretary of state shall issue a certificate of fact for a domestic filing entity or registered foreign entity. A certificate issued under this subsection must set forth any facts of record in the office of the secretary of state that may be requested by the applicant.

Comments

1. The Uniform Act uses the name “Certificate of Good Standing” for domestic filing entities. The BLSC recommended, and the General Assembly elected, to retain the traditional Indiana nomenclature for domestic filing entities first established in 1985 with the enactment of the Indiana Business Corporation Law. For foreign entities, the BLSC adopted, and the General Assembly elected to use the name in the Uniform Act, “Certificate of Registration.”

2. This section establishes a procedure by which anyone may obtain a conclusive certificate from the secretary of state that the records of the secretary of state either (i) do not indicate that a particular domestic entity has ceased to exist or (ii) indicate that a particular foreign entity is registered to do business in the state. The certificate historically has been a standardized form. The secretary of state makes those determinations from public records only and is not expected to make a more extensive investigation.

IC 23-0.5-2-9 Execution of Documents; Intentional signing of false document; sanctions

Sec. 9. (a) A person commits a Class A misdemeanor if the person signs a document that the person knows is false in a material respect with the intent that the document be delivered to the secretary of state for filing.

(b) Any record filed under this article may be signed by an agent. Whenever this article requires a particular individual to sign an entity filing and the individual is deceased or incompetent, the filing may be signed by a personal representative of the individual on behalf of the individual.

(c) A person that signs a record as an agent or legal representative thereby affirms as a fact that the person is authorized to sign the record.

(d) A signature on a filing may be a facsimile.

(e) A signature on a filing that is transmitted and filed electronically is sufficient if the person transmitting and filing the document:

(1) has the intent to file the document as evidenced by a symbol executed or adopted by a party with present intention to authenticate the filing; and

(2) enters the filing party's name on the electronic form in a signature box or other place indicated by the secretary of state.

Comments

1. Subsection (c) reflects agency law: a person who signs in a representative capacity gives a “warranty of authority.” Restatement (Third) of Agency § 6.10 (2006) (Agent’s Implied Warranty of Authority).

2. Subsection (d) is not contained in the Uniform Act. It is language from former IC 23-1-18-1(g)(1), 23-16-12-5(f), 23-17-29-1(a)(7), and 23-18-12-1(a)(6).
3. Subsection (e) is not contained in the Uniform Act. It is language from former IC 23-1-18-1(m), 23-4-1-45(a)(1)(A), 23-16-12-5(f), 23-17-29-1(a)(7), and 23-18-12-1(a)(6).

IC 23-0.5-2-10 Failure to sign or deliver record; appeal

Sec. 10. (a) If a person required by this article to sign or deliver a record to the secretary of state for filing under this article does not do so, any other person that is aggrieved may petition the circuit or superior court of the county where the entity's principal office (or, if none in Indiana, its registered office) is or will be located to order:

- (1) the person to sign the record;
- (2) the person to deliver the record to the secretary of state for filing; or
- (3) the secretary of state to file the record unsigned.

(b) If the petitioner under subsection (a) is not the entity to which the record pertains, the petitioner shall make the entity a party to the action.

(c) A record filed under subsection (a)(3) is effective without being signed.

Comment

This section gives the court the flexibility to order either that a record be signed or that the record be filed by the secretary of state unsigned. The latter circumstance may arise, for example, in a situation where the person who should sign the record is not subject to the jurisdiction of the court. This section also makes clear that the court may order a person with control over a record that has been signed to deliver the record to the secretary of state for filing.

IC 23-0.5-2-11 Liability; recovery of damages

Sec. 11. If a record delivered to the secretary of state for filing under this article and filed by the secretary of state contains inaccurate information, a person that suffers a loss by reliance on the information may recover damages for the loss from a person that signed the record or caused another to sign it on the person's behalf and knew at the time the record was signed that the information was inaccurate.

Comment

This section relates to liability to third parties for inaccurate information in a filed record. IC 23-0.5-2-9 provides for criminal liability in certain circumstances where the facts in a filed record are not true in all material respects. In addition, an aggrieved person may seek a remedy under IC 23-0.5-2-10.

IC 23-0.5-2-12 Delivery of records

Sec. 12. Except as otherwise provided by [IC 23-0.5-4-11](#) or by law of Indiana other than this article, the secretary of state may deliver a record to a person by delivering it:

- (1) in person to the person that submitted it for filing;
- (2) to the address of the person's registered agent;
- (3) to the principal office address of the person; or
- (4) to another address the person provides to the secretary of state for delivery.

IC 23-0.5-2-13 Biennial report; contents; delivery; statement of change

Sec. 13. (a) A domestic filing entity or registered foreign entity shall deliver to the secretary of state for filing a biennial report that states:

- (1) the name of the entity and, if a registered foreign entity, its jurisdiction of formation;
- (2) the information required by IC 23-0.5-4-3(b);
- (3) the street address of the entity's principal office;
- (4) for a corporation, the names and business addresses of its directors, secretary, and the highest executive office of the corporation; and
- (5) for a nonprofit corporation, the names and business or resident addresses of its directors, secretary, and highest executive office.

(b) Information in a biennial report must be current as of the date the report is signed by the entity.

(c) The biennial report must be delivered to the secretary of state for filing every two (2) calendar years on a schedule determined by the secretary of state. The secretary of state may accept biennial reports during the ninety (90) days before the month in which the biennial report is due.

(d) If a biennial report does not contain the information required by this section, the secretary of state promptly shall notify the reporting entity in a record and return the report for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within thirty (30) days after the effective date of notice, the report is considered to be timely filed.

(e) If a biennial report contains information required by IC 23-0.5-4-3(b) which differs from the information shown in the records of the secretary of state immediately before the report becomes effective, the differing information is considered a statement of change under [IC 23-0.5-4-7](#).

(f) A biennial report filed under this section may not specify a future effective date.

Comments

This section contains an important change, effective January 1, 2018, from prior Indiana law concerning biennial reports. Under prior law, limited liability partnerships and limited partnerships were not required to file biennial or other periodic reports. As such, this article imposes biennial reporting obligations on limited liability partnerships and limited partnerships for the first time.

The Uniform Act requires that each entity's biennial report state the name of at least one governing person. As enacted, the article does not require an unincorporated entity to state the name of a governing person. The requirements for naming governing persons for incorporated entities are as set forth in IC 23-0.5-2-13(a)(4) and (5).

3-Names

IC 23-0.5-3-1 Permitted names

Sec. 1. (a) Except as otherwise provided in subsection (d), after December 31, 2017, the name under which a domestic filing entity may be formed, the name under which a foreign entity may register to do business in Indiana, a name reserved under section 3 of this chapter, or an assumed name registered under section 4 of this chapter must be distinguishable on the records of the secretary of state from any:

- (1) name of an existing domestic filing entity;
- (2) name of a domestic filing entity that has not been administratively dissolved for more than one hundred twenty (120) days;
- (3) name of a foreign entity registered to do business in this state under [IC 23-0.5-5](#);
- (4) name reserved under section 3 of this chapter, [IC 23-1-23](#) (before its repeal), [IC 23-16-2-2](#) (before its repeal), [IC 23-17-5](#) (before its repeal), or [IC 23-18-2-9](#) (before its repeal);
- (5) assumed name registered under [IC 23-15-1-1](#)(e) (before that chapter's repeal); or
- (6) assumed name registered under section 4(e) of this chapter.

(b) If an entity consents in a record to the use of its name in a form satisfactory to the secretary of state, the name of the consenting entity may be used by the entity to which the consent was given. Consent may not be given for the use of a reserved name.

(c) Except as otherwise provided in subsection (d), in determining whether a name is the same as or not distinguishable on the records of the secretary of state from the name of another entity, words, phrases, or abbreviations indicating the type of entity, such as "corporation", "corp.", "incorporated", "Inc.", "company", "co", "professional corporation", "PC", "P.C.", "professional service corporation", "PSC", "P.S.C.", "Limited", "Ltd.", "limited partnership", "LP", "L.P.", "limited liability partnership", "LLP", "L.L.P.", "limited liability company", "LLC", "L.L.C.", "limited liability company-s", "LLC-s", or "L.L.C.-s", may not be taken into account.

(d) Consent is not needed in the following cases in which an entity's name is no longer distinguishable on the records of the secretary of state from an assumed business name of another entity:

- (1) In the case of an entity that files an entity filing that changes only the word, phrase, or abbreviation described in subsection (c) that indicates what type of entity the entity is.
- (2) In the case of an entity that files its public organic record or certificate of registration using a name the entity has reserved under this title before January 1, 2018.
- (3) In the case of an entity that files an application for reinstatement not more than one hundred twenty (120) days after the effective date of a dissolution under [IC 23-0.5-6](#).

Comments

1. This section continues from prior Indiana law the "distinguishable on the records of the secretary of state" test for availability of an entity name.

2. This section contains an important change, effective January 1, 2018, from prior Indiana law concerning permitted names. Under prior law, a name under which a domestic entity could be formed or a foreign entity registered, or a name reserved or an assumed name registered under former IC 23-15-1-1(e), was not required to be distinguishable from any registered assumed names. Effective January 1, 2018, any such name must be distinguishable from any assumed name registered under prior law (IC 23-15-1-1(e) before its repeal) and section 4(e) of this chapter; the secretary of state will search the record of assumed names in determining the distinguishability of a name.

3. IC 23-0.5-3-4 provides a different system of registering with county recorders assumed names used by individuals and general partnerships that are not limited liability partnerships. A name under which a domestic filing entity can be formed, or under which a foreign entity may register to do business in Indiana, reserved under IC 23-0.5-3-3, or registered under IC 23-0.5-3-4(e), is not required to be distinguishable from assumed names registered with county recorders. The secretary of state does not search the records of assumed names registered with county recorders in determining the distinguishability of names under this section.

4. Pursuant to subsection (a)(2), the secretary of state will hold the business entity name, available for use by the business entity for 120 days following an administrative dissolution. If the business entity does not reinstate within 120 days, the name will be available for use in Indiana. See also subsection (d)(3) for a corollary to this rule. The Uniform Act permits a new entity to file using the name of an entity that has been administratively dissolved.

5. Under former IC 23-1-23-1(d) and 23-17-5-1(d), a corporation and nonprofit corporation, respectively, were entitled to use the name of another corporation or nonprofit corporation with which it has merged, which has been formed by reorganization with, or from which it has acquired all or substantially of its assets (including corporate name). This language does not appear in the Uniform Act and was repealed as unnecessary as the same result can be achieved using the consent procedure in subsection (b).

6. Under former IC 23-1-23-1(c)(2), 23-16-2-1(b)(2), 23-17-5-1(c)(2), and 23-18-2-8(b)(2), an applicant was entitled to use a particular name upon delivery to the secretary of state of “a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant’s right to use the name applied for.” This language does not appear in the Uniform Act and was repealed as unnecessary as the secretary of state already has a duty to comply with such a court order.

7. The Uniform Act contains a subsection prohibiting entity names that may be used only with approval by an appropriate state agency. This language has not been included because there are no names that are prohibited under current Indiana law; however, the use of certain words in names may be limited (e.g. “bank”).

IC 23-0.5-3-2 Required words or phrases

Sec. 2. (a) The name of a business corporation or nonprofit corporation must contain the word "corporation", "incorporated", "company", or "limited", or the abbreviation "Corp.", "Inc.", "Co.", or "Ltd.", or words or abbreviations of similar import in another language. The name of a business corporation that is a professional corporation must contain the words "Professional Service Corporation" or "Professional Corporation" or abbreviations of these words. In addition, only a professional corporation in which all shareholders are physicians licensed under [IC 25-22.5](#) may use the term "medical" in its corporate name. A licensing authority may by rule adopt further requirements than those specified in this subsection as to the names of professional corporations organized under this article.

(b) The name of a limited partnership must contain the words "limited partnership" or the abbreviation "L.P.". The name of a limited partnership may not contain the name of a limited partner unless:

- (1) it is also the name of a general partner or the corporate name of a corporate general partner; or
- (2) the business of the limited partnership had been carried on under that name before the admission of that limited partner.

(c) The name of a limited liability partnership must contain the phrase "limited liability partnership" or the abbreviation "L.L.P." or "LLP".

(d) The name of a limited liability company must contain the phrase "limited liability company" or the abbreviation "L.L.C." or "LLC". The name of a master limited liability company must comply with [IC 23-18.1-6-7\(b\)](#). The name of a series with limited liability must comply with [IC 23-18.1-6-7\(c\)](#) and [IC 23-18.1-6-7\(d\)](#).

(e) A filing entity may use the name, including an assumed name, of another filing entity if the filing entity proposing to use the name:

- (1) has merged with the other filing entity that was already using the name;
- (2) has been formed by the reorganization of the other filing entity that was already using the name; or
- (3) has acquired all or substantially all of the assets, including the name, of the other filing entity that was already using the name.

Comments

1. Subsection (a) adds standard requirements for the names of professional corporations from former IC 23-1.5-2-8(a) and (b).

2. Subsection (b) revises the provisions of the Uniform Act to reflect current Indiana law. It is language from former IC 23-16-2-(1)(a).

3. Subsection (d) adds standard requirements for the names of master limited liability companies and series with limited liability from former IC 23-18.1-6-7(b), (c), and (d).

4. Because current Indiana law does not authorize the use of "Ltd." or "Co." in the names of limited liability companies and does not recognize Limited Cooperative Societies or Statutory Trusts, language concerning such names in subsections (d), (e), and (f) of the Uniform Act has not been included.

IC 23-0.5-3-3 Reservation of exclusive use of name

Sec. 3. (a) A person may reserve the exclusive right to the use of a name by delivering an electronic application to the secretary of state for filing. The application must state the name and address of the applicant and the name to be reserved, excluding any word, phrase, or abbreviation described in section (1)(c) of this chapter. If the secretary of state finds that the name is available, the secretary of state shall reserve the name for the applicant's exclusive use for renewable one hundred twenty (120) day periods.

(b) The owner of a reserved entity name may transfer the reservation to another person that is not an individual by delivering to the secretary of state, electronically, a signed notice in a record of the transfer which states the name and address of the transferee.

Comment

The provisions of this section differ from those of the Uniform Act. This section provides for the renewal of a name reservation for successive 120 day periods; the Uniform Act does not.

IC 23-0.5-3-4 Filing of certificate of assumed name; fees; notice of discontinuance of use; violation

Sec. 4. (a) Except as otherwise provided in subsection (i), an individual or a general partnership, other than a limited liability partnership, conducting or transacting business in Indiana under a name, designation, or title other than the real name of the individual or general partnership conducting or transacting the business shall file for record, in the office of the recorder of each county in which a place of business or an office of the individual or general partnership is situated, a certificate stating the assumed name or names to be used and the full name and address of the individual or general partnership engaged in or transacting business.

(b) The recorder shall keep a record of the certificates filed under this section and shall keep an index of the certificates showing, in alphabetical order, the names of the persons and general partnerships having certificates on file in the recorder's office, and the assumed name or names that they intend to use in carrying on their businesses as shown by the certificates.

(c) Before the dissolution of any business for which a certificate is on file with the recorder, the person or general partnership to which the certificate appertains shall file a notice of dissolution for record in the recorder's office.

(d) The county recorder shall charge a fee in accordance with [IC 36-2-7-10](#) for each certificate, notice of dissolution, and notice of discontinuance of use filed with the recorder's office and recorded under this chapter. The funds received shall be receipted as county funds the same as other money received by the recorders.

(e) Except as provided in subsection (i), a filing entity conducting business in Indiana under a name, designation, or title other than the name shown in its organic record shall file with the secretary of state a certificate stating the assumed name or names to be used and the full name and address of the entity's principal office in Indiana.

(f) A filing entity may not include an entity indicator, such as "Inc.", "Corp.", "LLC", "LP", or "LLP" or a similar description in an assumed business name filing, that is inconsistent with the entity type for which the assumed business name is being filed. However, if the entity filing the assumed business name has filed articles of conversion, domestication, or merger that change the entity type, the entity indicator in the assumed business name filing may be inconsistent with the entity type if the conversion, domestication, or merger occurred within the twelve (12) months before the date of the assumed business name filing.

(g) An individual, a general partnership, a corporation, a limited partnership, a limited liability company, or a limited liability partnership, foreign or domestic, that has filed a certificate of assumed business name or names under subsection (a) or (e) may file a notice of discontinuance of use of assumed business name or names with the secretary of state or with the recorder's office in which the certificate was filed or transferred. The secretary of state or the recorder shall keep a record of notices filed under this subsection.

(h) This subsection applies to a foreign or domestic corporation, limited partnership, limited liability company, or limited liability partnership that, before July 1, 2009:

- (1) filed a certificate stating the assumed name or names to be used in carrying out the entity's business; and
- (2) filed the certificate:
 - (A) with the secretary of state; and
 - (B) in the recorder's office.

The entity shall file a notice of dissolution or notice of discontinuance of use of the assumed business name or names with the secretary of state and with the recorder's office in which the certificate was filed or transferred.

(i) This section does not apply to:

- (1) an individual doing business under a name, designation, or title that includes the true surname of the individual;
- (2) a person other an individual doing business under a name, designation, or title that includes some or all of the true surnames of the individuals comprising the person; or
- (3) a church, a lodge, or an association the business of which is conducted or transacted by trustees under a written instrument or declaration of trust that is recorded in the recorder's office of each county in which the business is conducted or transacted.

(j) A person, corporation, foreign corporation, limited liability company, foreign limited liability company, limited partnership, or foreign limited partnership that violates this section commits a Class B infraction.

(k) Compliance with the requirements of Acts 1941, c.192, before July 8, 1965, is considered compliant with this section.

Comments

1. This section is former IC 23-15-1-1 through 5; it has no counterpart in the Uniform Act. It continues the longstanding filing of assumed business names of individuals and general partnerships (other than limited liability partnerships) with county recorders (subsection (a)) and those of other business entities with the secretary of state (subsection e)). The secretary of state does not search the records of assumed names registered with county recorders in determining the distinguishability of names under IC 23-0.5-3-1. See comment 3.

2. Subsection (e) has been amended from prior law to remove references to specific entity types and replace them with a generic reference to any "filing entity."

3. Subsection (i) exempts certain individuals and persons from assumed business name filing requirements altogether.

IC 23-0.5-3-5 Use of the word "bank"; notice of violation; administrative dissolution proceedings; appeals; other penalties

Sec. 5. (a) If a new filing or an amendment changing the name of the filing entity is received by the secretary of state and the new filing or the amendment contains "bank", or any derivative of "bank", in the filing entity's name, the filing must be forwarded to the department of financial institutions for review and a determination concerning whether the use of the term "bank" (or the derivative) violates IC 28-1-20-4.

(b) A document under subsection (a) may be filed by the secretary of state only after the filing has been approved by the department of financial institutions.

(c) The department of financial institutions shall review each filing forwarded to the department of financial institutions under subsection (a) and provide notice of the results of the review to the secretary of state.

(d) If the department of financial institutions determines that a filing entity has violated [IC 28-1-20-4](#), the department of financial institutions shall notify the secretary of state of the violation.

(e) The secretary of state shall commence a proceeding under this section to administratively dissolve a filing entity if:

(1) the name of the filing entity contains the word, or a derivation of the word, "bank", "banc", "banco", or "bankcor"; and

(2) the department of financial institutions determines that the filing entity violates [IC 28-1-20-4](#).

(f) If the secretary of state commences an administrative dissolution under subsection (e), the secretary of state shall provide to the filing entity written notice of the determination under subsection (e)(2). The secretary of state shall, at the same time notice is sent to the filing entity, provide a copy of the notice to the department of financial institutions.

(g) If a filing entity that receives a notice under subsection (f) does not:

(1) correct the grounds for dissolution; or

(2) demonstrate to the reasonable satisfaction of the department of financial institutions that the grounds for dissolution do not exist;

at any time after sixty (60) days after the notice is provided, the department of financial institutions shall notify the secretary of state in writing of the continuing violation. After receiving the written notice from the department of financial institutions, the secretary of state shall administratively dissolve the filing entity by signing a certificate of administrative dissolution that recites the grounds for dissolution and the effective date of the dissolution. The secretary of state shall file the original certificate of administrative dissolution and provide a copy of the certificate of administrative dissolution to the filing entity.

(h) A filing entity administratively dissolved under this section may carry on only those activities necessary to wind up and liquidate the filing entity's affairs.

(i) The filing entity may appeal the administrative dissolution to the circuit court or superior court of the county:

(1) where the filing entity's principal office is located; or

(2) if the principal office is not located in Indiana, where the filing entity's registered office is located;

not later than thirty (30) days after service of the notice of denial is perfected.

(j) The court may do the following:

(1) Order the secretary of state to reinstate the dissolved filing entity.

(2) Take other action the court considers appropriate.

(k) The court's final decision may be appealed as in other civil proceedings.

(l) Dissolution under this section is in addition to any penalties imposed upon the filing entity under [IC 28-1-20-4\(j\)](#), as well as any other penalties under [IC 28](#).

Comment

This section is from former IC §§ 23-15-8-1 through 5; it has no counterpart in the

Uniform Act.

4-Registered Agents

IC 23-0.5-4-1 Entities required to designate and maintain a registered agent

Sec. 1. (a) The following entities shall designate and maintain a registered agent in this state:

- (1) A domestic filing entity.
- (2) A registered foreign entity.
- (3) An agricultural cooperative formed under [IC 15-12](#).
- (4) A business trust formed under [IC 23-5-1](#).

(b) An eligible entity (as defined by [IC 28-1-22-1.5\(a\)](#)) may file a notice concerning the eligible entity's:

- (1) registered office; and
- (2) registered agent.

Comment

This section requires several types of business organizations in addition to filing entities to designate and maintain a registered agent. These types of business organizations are defined in IC 23-0.5-1.5-40 as “represented entities.”

IC 23-0.5-4-2 Street address

Sec. 2. If a provision of this chapter other than section 9(a)(4) of this chapter requires that a record state an address, the record must state a street address in this state.

Comment

When this chapter requires that a filing state an address, the address used must always be a geographic location.

IC 23-0.5-4-3 Designation of registered agent; required filings

Sec. 3. (a) A registered agent must be an individual, a general partnership, a domestic filing entity, or a registered foreign entity.

(b) A registered agent filing must provide either:

- (1) if the entity has a commercial registered agent, the name of the entity's commercial registered agent; or
- (2) if the entity does not have a commercial registered agent:
 - (A) the name of the individual, general partnership, domestic filing entity, or registered foreign entity;
 - (B) the address of the entity's registered agent; and
 - (C) the electronic mail address of the registered agent at which the registered agent will accept electronic service of process only in the manner prescribed by the Indiana supreme court in the Indiana trial rules.

(c) A registered agent filing must state:

- (1) the registered agent's consent; or
- (2) a representation that the registered agent has consented.

(d) Each entity registered under the laws of Indiana shall provide to the entity's registered agent, and update from time to time as necessary, the name, business address, and business telephone number of an individual who is:

- (1) an officer, a director, an employee, or a designated agent of the entity; and
- (2) authorized to receive communications from the registered agent.

The individual is considered to be the communications contact for the entity.

(e) A registered agent shall retain, in paper or electronic form, the information provided by an entity under subsection (d).

(f) If an entity fails to provide the registered agent with the information required under subsection (d), the registered agent may resign, as provided in section 9 of this chapter, as the registered agent for the entity.

Comments

1. Subsection (a) requires that a registered agent that is an entity be registered with the secretary of state's office. This provision is not contained in the Uniform Act.

2. Subsection (b)(1) gives an entity the option of listing just the name of its commercial registered agent in a registered agent filing and omitting the address of the registered agent. If the commercial registered agent subsequently changes its address, that change will be reflected in the filing made by the agent under IC 23-0.5-4-4, as amended under IC 23-0.5-4-8, but no change will be necessary in the registered agent filing of any of the entities represented by the commercial registered agent. The address of an entity's commercial registered agent may be ascertained from the records of the secretary of state or other state filing office by consulting its listing under IC 23-0.5-4-4.

3. The addresses required by subsections (b)(1) and (2) to be stated in a registered agent filing must satisfy the requirements in IC 23-0.5-4-2.

4. Subsections (c), (d), (e), and (f) do not appear in the Uniform Act. They are from former IC 23-1-24-1(b) through (e), 23-4-1-50(b) through (e), 23-16-10-4(d) through (g), 23-17-6-1(b) through (e), and 23-18-2-10(b) through (e), each respectively.

IC 23-0.5-4-4 Listing statement; contents; delivery to secretary of state

Sec. 4. (a) A person may become listed as a commercial registered agent by delivering to the secretary of state for filing a commercial registered agent listing statement signed by the person which states:

- (1) the name of the individual or the name of the entity, type of entity, and jurisdiction of formation of the entity;
- (2) that the person is in the business of serving as a commercial registered agent in this state;
- (3) the address of a place of business of the person in this state to which service of process, notices, and demands being served on or sent to entities represented by the person may be delivered;
- (4) the name of any entity represented or known to be represented by the commercial registered agent; and

(5) the electronic mail address of the registered agent at which the registered agent will accept electronic service of process only in the manner prescribed by the Indiana supreme court in the Indiana trial rules.

(b) A commercial registered agent listing statement may include the information regarding acceptance by the agent of service of process, notices, and demands in a form other than a written record as provided in section 10(d) of this chapter.

(c) If the name of a person delivering to the secretary of state for filing a commercial registered agent listing statement is not distinguishable on the records of the secretary of state from the name of another commercial registered agent listed under this section, the person shall adopt an alternate name that is distinguishable and use that name in its statement and when it does business in Indiana as a commercial registered agent.

(d) The secretary of state shall note the filing of a commercial registered agent listing statement in the index of filings records maintained by the secretary of state for each entity represented by the agent at the time of the filing. The statement amends the registered agent filing for each of those entities to:

- (1) designate the person becoming listed as a commercial registered agent as the commercial registered agent of each of those entities; and
- (2) delete the name and address of the former agent.

Comments

1. This provision has been derived from the Uniform Act and constitutes a new concept in Indiana law. It represents a substantial simplification of practice because it removes the need to amend the filed record of every entity represented by a commercial registered agent when the agent changes its address.

2. Subsection (a)(3) requires a commercial registered agent to list one address in Indiana where service of process and other notices may be sent to entities represented by the agent.

3. The address required by subsection (a)(3) to be stated in a commercial registered agent listing statement must satisfy the requirements of IC 23-0.5-4-2.

4. Subsection (d) is a transitional provision that deals with the effect on the entities represented by a registered agent at the time the agent is first listed under this section. The effect is to amend the registered agent filing of each such entity to delete the address of the registered agent consistent with IC 23-0.5-4-3(b)(1).

IC 23-0.5-4-5 Termination of listing as a commercial registered agent

Sec. 5. (a) A commercial registered agent may terminate its listing as a commercial registered agent by delivering to the secretary of state for filing a commercial registered agent termination statement signed by the agent which states:

- (1) the name of the agent as listed under section 4 of this chapter; and
- (2) that the agent is no longer in the business of serving as a commercial registered agent in Indiana.

(b) A commercial registered agent termination statement takes effect at 12:01 a.m. on the thirty-first day after the day on which it is delivered to the secretary of state for filing.

(c) The commercial registered agent promptly shall furnish each entity represented by the agent notice in a record of the date on which the commercial registered agent termination statement was filed.

(d) When a commercial registered agent termination statement takes effect, the commercial registered agent ceases to be the registered agent for each entity formerly represented by it. Until an entity formerly represented by a terminated commercial registered agent designates a new registered agent, service of process may be made on the entity under section 10 of this chapter. Termination of the listing of a commercial registered agent under this section does not affect any contractual rights a represented entity has against the agent or that the agent has against the entity.

Comment

This section provides a procedure only for commercial registered agents to withdraw from the business of providing registered agent services. Use of the procedure in this section will terminate the status of the registered agent as the agent for service of process for the entities represented by the agent. Thus, the procedure in this section differs from the procedure in IC 23-0.5-4-9, which permits a registered agent to resign with respect to just a single represented entity instead of resigning generally with respect to all of its represented entities.

IC 23-0.5-4-6 Change of information

Sec. 6. (a) A represented entity may change the information on file under section 3(b) of this chapter by delivering to the secretary of state for filing a statement of change signed by the entity which states:

- (1) the name of the entity; and
- (2) the information that is to be in effect as a result of the filing of the statement of change.

(b) The interest holders or governing persons of a domestic entity need not approve the filing of:

- (1) a statement of change under this section; or
- (2) a similar filing changing the registered agent or registered office, if any, of the entity in any other jurisdiction.

(c) A statement of change under this section designating a new registered agent must state:

- (1) the registered agent's consent; or
- (2) a representation that the registered agent has consented.

(d) As an alternative to using the procedure in this section, a represented entity may change the information on file under section 3(b) of this chapter by amending its most recent registered agent filing in a manner provided by the law of Indiana other than this section for amending the filing.

Comment

A change in the identity of the registered agent of a represented entity or a change of the office address of a registered agent are usually routine matters that do not affect the rights of the interest holders of the represented entity. This section permits those changes to be made without a formal amendment of an entity's public organic document, without approval of its interest holders, and, indeed, even without formal approval by its governing persons (*i.e.*, the persons managing the entity's affairs, such as the board of directors of a corporation).

IC 23-0.5-4-7 Noncommercial registered agent; statement of change

Sec. 7. (a) If a noncommercial registered agent changes its name, address, or electronic mail address in effect with respect to a represented entity under section 3(b) of this chapter, the agent shall deliver to the secretary of state for filing, with respect to each entity represented by the agent, a statement of change signed by the agent which states:

- (1) the name of the entity;
- (2) the name and address of the agent in effect with respect to the entity;
- (3) if the name of the agent has changed, the new name; and
- (4) if the address or electronic mail address of the agent has changed, the new address or electronic mail address.

(b) A noncommercial registered agent promptly shall furnish the represented entity with notice in a record of the delivery to the secretary of state for filing of a statement of change and the changes made in the statement.

Comments

1. Because a noncommercial registered agent is not listed under IC 23-0.5-4-4, the agent will not be able to use the procedures in IC 23-0.5-4-8 which permit commercial registered agents to make only one filing to change their name and address for all entities represented by them. Thus the noncommercial registered agent will need to make a filing under this section for each entity represented by the agent.

2. An address included in a statement of change must satisfy the requirements in IC 23-0.5-4-2.

IC 23-0.5-4-8 Commercial registered agent; statement of change; cancellation by secretary of state

Sec. 8. (a) If a commercial registered agent changes its name, address, or electronic mail address as listed under section 4(a) of this chapter, type of entity, or jurisdiction of formation, the agent shall deliver to the secretary of state for filing a statement of change signed by the agent which states:

- (1) the name of the agent as listed under section 4(a) of this chapter;
- (2) if the name of the agent has changed, the new name;
- (3) if the address or electronic mail address of the agent has changed, the new address or electronic mail address; and
- (4) if the agent is an entity:
 - (A) if the type of entity of the agent has changed, the new type of entity; and
 - (B) if the jurisdiction of formation of the agent has changed, the new jurisdiction of formation.

(b) The filing by the secretary of state of a statement of change under subsection (a) is effective to change the information regarding the agent with respect to each entity represented by the agent.

(c) A commercial registered agent promptly shall furnish to each entity represented by it a notice in a record of the filing by the secretary of state of a statement of change relating to the name or address of the agent and the changes made in the statement.

(d) If a commercial registered agent changes its address without delivering for filing a statement of change as required by this section, the secretary of state may cancel the listing of the

agent under section 4 of this chapter. A cancellation under this subsection has the same effect as a termination under section 5 of this chapter. Promptly after canceling the listing of an agent, the secretary of state shall provide notice in a record in the manner provided in section 10(b) or 10(c) of this chapter on:

- (1) each entity represented by the agent, stating that the agent has ceased to be the registered agent for the entity and that, until the entity designates a new registered agent, service of process may be made on the entity as provided in section 10 of this chapter; and
- (2) the agent, stating that the listing of the agent has been canceled under this section.

Comments

1. This section permits a commercial registered agent to make a single filing that has the effect of changing the name or address of the agent for all of the entities represented by it.

2. An address included in a statement of change must satisfy the requirements in IC 23-0.5-4-2.

3. Subsection (d) provides a procedure by which the secretary of state may cancel the listing of a commercial registered agent when the secretary of state learns that the agent has changed its address without amending its listing as a commercial registered agent. When the secretary of state acts to cancel the listing of a commercial registered agent, the secretary of state is required to notify both (i) the entities represented by the agent that they no longer have a valid registered agent and (ii) the agent that it no longer is listed as a commercial registered agent. Unlike in the case of a resignation under IC 23-0.5-4-9, which is initiated by the registered agent and thus does not require a notice from the secretary of state to the agent, notice by the secretary of state to the agent is needed under this section so that the agent has notice that its representation of the entities it previously represented has been terminated.

IC 23-0.5-4-9 Resignation of registered agent

Sec. 9. (a) A registered agent may resign as agent for a represented entity by delivering to the secretary of state for filing a statement of resignation signed by the agent which states:

- (1) the name of the entity;
- (2) the name of the agent;
- (3) that the agent resigns from serving as registered agent for the entity; and
- (4) the address of the entity to which the agent will send the notice required by subsection (c).

(b) A statement of resignation takes effect on the earlier of:

- (1) the thirty-first day after the day on which it is filed by the secretary of state; or
- (2) the designation of a new registered agent for the represented entity.

(c) A registered agent promptly shall furnish to the represented entity notice in a record of the date on which a statement of resignation was filed.

(d) When a statement of resignation takes effect, the person that resigned ceases to have responsibility under this chapter for any matter thereafter tendered to it as agent for the represented entity. The resignation does not affect any contractual rights the entity has against the agent or that the agent has against the entity.

(e) A registered agent may resign with respect to a represented entity regardless of the entity's status with the secretary of state.

Comment

Resignation under this section may be accomplished solely by action of the registered agent and does not require the cooperation or consent of the represented entity. Whether a resignation violates a contract between the registered agent and the represented entity is beyond the scope of this chapter and subsection (d) preserves whatever claims a represented entity may have against its registered agent for a wrongful termination. Even if a resignation were to violate such a contract, the resignation would still be effective if the provisions of this section are followed.

IC 23-0.5-4-10 Service of process, notice, or demand on entity

Sec. 10. (a) A represented entity may be served with any process, notice, or demand required or permitted by law by serving its registered agent.

(b) If a represented entity ceases to have a registered agent, or if its registered agent cannot with reasonable diligence be served, the entity may be served by registered or certified mail, return receipt requested, or by similar commercial delivery service, addressed to the entity at the entity's principal office. The address of the principal office of a domestic filing entity or registered foreign entity must be as shown in the entity's most recent biennial report filed by the secretary of state. Service is effective under this subsection on the earliest of:

- (1) the date the entity receives the mail or delivery by the commercial delivery service;
- (2) the date shown on the return receipt, if signed by the entity; or
- (3) five (5) days after its deposit with the United States Postal Service or commercial delivery service, if correctly addressed and with sufficient postage or payment.

(c) If process, notice, or demand cannot be served on an entity under subsection (a) or (b), service may be made by handing a copy to the individual in charge of any regular place of business or activity of the entity if the individual served is not a plaintiff in the action.

(d) Service of process, notice, or demand on a registered agent must be in a written record, but service may be made on a commercial registered agent in other forms, and subject to such requirements, as the agent has stated in its listing under section 4 of this chapter that it will accept.

(e) Service of process, notice, or demand may be made by other means under law other than this article.

Comment

Subsection (c) provides a means for serving process on an entity that cannot be served under subsection (a) or (b). Indiana Trial Rule 4.6(C) allows for: "(C) Service at organization's office. When shown upon an affidavit or in the return, that service upon an organization cannot be made as provided in subdivision (A) or (B) of this rule, service may be made by leaving a copy of the summons and complaint at any office of such organization located within this state with the person in charge of such office." Compare Fed. R.Civ.Proc. 4(h)(1) which permits service to be made on an officer or managing or general agent of an entity.

IC 23-0.5-4-11 Duties

Sec. 11. The only duties under this chapter of a registered agent that has complied with this chapter are:

- (1) to forward to the represented entity at the address most recently supplied to the agent by the entity any process, notice, or demand pertaining to the entity which is served on or received by the agent;
- (2) to provide the notices required by this article to the entity at the address most recently supplied to the agent by the entity;
- (3) if the agent is a noncommercial registered agent, to keep current the information required by section 3(b) of this chapter in the most recent registered agent filing for the entity; and
- (4) if the agent is a commercial registered agent, to keep current the information listed for it under section 4(a) of this chapter.

Comment

This section is limited to prescribing the duties of a registered agent under this chapter. An agent may undertake other responsibilities to a represented entity, such as by contract or course of dealing, but those duties will be determined under other law.

IC 23-0.5-4-12 Jurisdiction

Sec. 12. The designation or maintenance in Indiana of a registered agent does not by itself create the basis for personal jurisdiction over the represented entity in Indiana. The address of the agent does not determine venue in an action or a proceeding involving the entity.

5-Foreign Registration

IC 23-0.5-5-1 Law governing; registration

Sec. 1. (a) The law of the jurisdiction of formation of an entity governs:

- (1) the internal affairs of the entity;
- (2) the liability that a person has as an interest holder or governing person for a debt, obligation, or other liability of the entity; and
- (3) the liability of a series of a limited liability company.

(b) A foreign entity is not precluded from registering to do business in Indiana because of any difference between the law of the entity's jurisdiction of formation and the law of Indiana.

(c) Registration of a foreign entity to do business in Indiana does not authorize the foreign entity to engage in any activities and affairs or exercise any power that a domestic entity of the same type may not engage in or exercise in Indiana.

Comments

Subsection (a)(2) provides that the laws of the jurisdiction of formation of a foreign entity, rather than the laws of Indiana, govern the liability of its interest holders and governing persons for the obligations of the entity. This is a provision from the Uniform Act and has not heretofore been including in Indiana statutory law. While no Indiana appellate decisions address this issue, a number of federal courts applying Indiana law have so held. See, e.g., *Garmin Wurzburg GmbH v. Auto. Imagineering & Mfg., LLC*, No. 3:14-cv-02006-PPS-CAN, 2016 WL 3072011, 2016 U.S. Dist. LEXIS 71106 (N.D. Ind. June 1, 2016) (citing cases).

IC 23-0.5-5-2 Foreign entity registration to do business in Indiana

Sec. 2. (a) A foreign entity may not do business in Indiana until it registers with the secretary of state under this article. However, this requirement does not apply to foreign regulated entities.

(b) A foreign entity doing business in Indiana may not maintain an action or proceeding in this state unless it is registered to do business in Indiana.

(c) The failure of a foreign entity to register to do business in Indiana does not impair the validity of a contract or act of the foreign entity or preclude it from defending an action or proceeding in Indiana.

(d) A limitation on the liability of an interest holder or governing person of a foreign entity is not waived solely because the foreign entity does business in Indiana without registering.

(e) Section 1(a) of this chapter applies to a foreign entity even if the foreign entity fails to register under this chapter.

(f) A foreign entity is liable for a civil penalty of not more than ten thousand dollars (\$10,000) if it transacts business in Indiana without a certificate of authority. The attorney general may collect all penalties due under this subsection.

Comments

1. The second sentence of subsection (a) is not from the Uniform Act; it is language from IC 23-1-49-1(a). “Regulated entities” are defined in IC 23-0.5-1.5-39.

2. The purpose of subsection (b) is to induce foreign entities to register without imposing harsh or subjective sanctions. Often the failure to register is a result of inadvertence or bona fide disagreement as to the scope of IC 23-0.5-5-5 and its predecessor entity statutes which are necessarily imprecise; and the imposition of harsh or subjective sanctions in those situations is inappropriate.

3. Subsection (f) is not contained in the Uniform Act. It is language from former IC 23-1-49-2(d), 23-17-26-2(d), and 23-18-11-3(d).

IC 23-0.5-5-3 Requirement for registering to do business in Indiana

Sec. 3. To register to do business in Indiana, a foreign entity must deliver a foreign registration statement to the secretary of state for filing. The statement must be signed by the entity and state or be accompanied by:

- (1) the name of the foreign entity and, if the name does not comply with [IC 23-0.5-3-1](#), an alternate name adopted under section 6(a) of this chapter;
- (2) the type of entity;
- (3) the entity's jurisdiction of formation;
- (4) the date of formation in the jurisdiction described in subdivision (3);
- (5) the street address of the entity's principal office;
- (6) the information required by [IC 23-0.5-4-3\(b\)](#);
- (7) if the entity is a nonprofit corporation, whether the corporation has members;
- (8) if the entity is a nonprofit corporation, whether the corporation, if the corporation had been incorporated in Indiana, would be a public benefit, mutual benefit, or religious corporation;
- (9) if the entity is a limited liability company and if the organizational documents of the entity provide for a manager or managers, a statement to that effect; and

(10) a certificate of existence or similar document authenticated by the secretary of state or other official having custody of business records of the entity in the state or country where the entity was organized.

Comments

1. The term “foreign registration statement” is a new term in Indiana law. Under prior statutory law, foreign business corporations and nonprofit corporations registered using “applications for certificates of authority” containing specified information; foreign limited partnerships and limited liability companies registered using “applications for registration” containing specified information; and foreign limited liability partnerships registered using a “form determined by the secretary of state.”

2. The requirement in the preamble to this section that a foreign registration statement be signed by the entity is new to Indiana law.

3. Subsections 3(7) and (8) are not contained in the Uniform Act. It is language from former IC 23-17-26-3(a)(7) and (8).

4. Subsection 3(9) is not contained in the Uniform Act. It is language from former IC 23-18-11-4(b).

5. Subsection 3(10) is not contained in the Uniform Act. It is language from former IC 23-1-49-3(b), 23-17-26-3(b), and 23-18-11-4(b).

IC 23-0.5-5-4 Amended foreign registration statement

Sec. 4. A registered foreign entity shall deliver to the secretary of state for filing an amendment to its foreign registration statement if there is a change in:

- (1) the name of the entity;
- (2) the entity's jurisdiction of formation;
- (3) an address required by section 3(5) of this chapter; or
- (4) the information required by [IC 23-0.5-4-3\(b\)](#).

Comment

This section works in tandem with the biennial report required by IC 23-0.5-2-13 to keep the information of record in the office of the secretary of state about a registered foreign entity up to date.

IC 23-0.5-5-5 Activities not constituting doing business in Indiana

Sec. 5. (a) Activities of a foreign filing entity which do not constitute doing business in Indiana under this article include:

- (1) maintaining, defending, mediating, arbitrating, or settling an action or proceeding;
- (2) carrying on any activity concerning its internal affairs, including holding meetings of its interest holders or governing persons;
- (3) maintaining accounts in financial institutions;

- (4) maintaining offices or agencies for the transfer, exchange, and registration of securities of the entity or maintaining trustees or depositories with respect to those securities;
- (5) selling through independent contractors;
- (6) soliciting or obtaining orders by any means if the orders require acceptance outside Indiana before they become contracts;
- (7) making loans or otherwise creating or acquiring indebtedness, mortgages, or security interests in real or personal property;
- (8) securing or collecting debts or enforcing mortgages or security interests in property securing the debts, and holding, protecting, or maintaining property so acquired;
- (9) conducting an isolated transaction completed within thirty (30) days that is not conducted in the course of repeated transactions of a like nature;
- (10) owning, without more, property;
- (11) doing business in interstate commerce; and
- (12) if the entity is a nonprofit corporation, soliciting funds if otherwise authorized by Indiana law.

(b) A person does not do business in Indiana solely by being an interest holder or governing person of a foreign entity that does business in Indiana.

(c) This section does not apply in determining the contacts or activities that may subject a foreign filing entity to service of process, taxation, or regulation under law of Indiana other than this article.

(d) The list of activities in subsection (a) is not exhaustive and recodifies, not repeals, those activities previously listed in [IC 23-1-49-1](#), [IC 23-16-10-2](#), [IC 23-17-26-1](#), and [IC 23-18-11-2](#).

Comments

1. This section does not attempt to formulate an inclusive definition of what constitutes doing business in a state. Rather, the concept is defined in a negative fashion by subsections (a) and (b), which state that certain activities do not constitute doing business. Indiana courts have explained this issue in related cases citing the prior statutes listed under IC 23-0.5-5-5(d).

2. Subsection (a)(9) differs from the “isolated transaction” language of the Uniform Act. It is language from IC 23-16-10-2(b)(10), 23-17-26-1(b)(10), and 23-18-11-2(b)(10).

3. Subsection (a)(12) is not contained in the Uniform Act. It is language from IC 23-17-26-1(b)(12).

IC 23-0.5-5-6 Naming requirements for a foreign filing entity registering to do business in Indiana

Sec. 6. (a) A foreign entity whose name does not comply with [IC 23-0.5-3-1](#) for an entity of its type may not register to do business in Indiana until it adopts, for the purpose of doing business in Indiana, an alternate name that complies with [IC 23-0.5-3-1](#). A registered foreign entity that registers under an alternate name under this subsection need not comply with [IC 23-0.5-3-4](#). After registering to do business in Indiana with an alternate name, a registered foreign entity shall do business in Indiana under:

- (1) the alternate name; or

(2) a name the entity is authorized to use under [IC 23-0.5-3-4](#).

(b) If a registered foreign entity changes its name to a name that does not comply with [IC 23-0.5-3-1](#), it may not do business in Indiana until it complies with subsection (a) by amending its registration to adopt an alternate name that complies with [IC 23-0.5-3-1](#).

Comments

1. A foreign entity must register under its true name according to its state of formation, if that name satisfies the requirements of IC 23-0.5-3-1. If the foreign entity's true name is unavailable because it is not distinguishable upon the records of the secretary of state from a name already in use or reserved, the foreign entity may use an alternate name.

2. Because the alternate name under which a foreign entity registers will be part of the records of the secretary of state, subsection (a) provides that an assumed or fictitious name filing with respect to the alternate name is not required. However, the assumed name statute will apply to any other name under which the foreign entity does business in the state.

3. A foreign entity that registers to do business in Indiana may do business under an alternate name to the same extent as a domestic entity.

IC 23-0.5-5-7 Withdrawal of registration

Sec. 7. (a) A registered foreign entity may withdraw its registration by delivering a statement of withdrawal to the secretary of state for filing. The statement of withdrawal must be signed by the entity and state:

- (1) the name of the entity and its jurisdiction of formation;
- (2) that the entity is not doing business in Indiana and that it withdraws its registration to do business in Indiana;
- (3) that the entity revokes the authority of its registered agent to accept service of process on its behalf in Indiana;
- (4) an address and electronic mail address to which service of process may be made under subsection (b); and
- (5) a commitment to notify the secretary of state in the future of any change in its street or electronic mail address.

(b) After the withdrawal of the registration of an entity, service of process in any action or proceeding based on a cause of action arising during the time the entity was registered to do business in Indiana may be made under [IC 23-0.5-4-10](#).

IC 23-0.5-5-8 Conversion to domestic filing entity

Sec. 8. A registered foreign entity that converts to any type of domestic filing entity is deemed to have canceled its registration on the effective date of the conversion.

Comment

When a registered foreign entity has converted to a domestic filing entity, information about the entity in its capacity as a domestic entity will continue to be of record in the office of

the Secretary of State. At that point, there is no further reason for it to be registered and this section automatically treats its prior registration as cancelled.

IC 23-0.5-5-9 Dissolution; statement of withdrawal; service of process

Sec. 9. (a) A registered foreign entity that has dissolved and completed winding up or has converted to a domestic or foreign entity that is not a filing entity shall deliver a statement of withdrawal to the secretary of state for filing. The statement must be signed by the dissolved or converted entity and state:

- (1) in the case of a foreign entity that has completed winding up:
 - (A) its name and jurisdiction of formation; and
 - (B) that the foreign entity surrenders its registration to do business in Indiana; and
- (2) in the case of a foreign entity that has converted to a domestic or foreign entity that is not a filing entity:
 - (A) the name of the converting foreign entity and its jurisdiction of formation;
 - (B) the type of entity other than a filing entity to which it has converted and its jurisdiction of formation;
 - (C) that it surrenders its registration to do business in Indiana and revokes the authority of its registered agent to accept service on its behalf; and
 - (D) a street or electronic mail address to which service of process may be made under subsection (b).

(b) After a withdrawal under this section is effective, service of process in any action or proceeding based on a cause of action arising during the time the foreign entity was registered to do business in Indiana may be made under [IC 23-0.5-4-10](#).

IC 23-0.5-5-10 Merger; notice

Sec. 10. (a) If a registered foreign entity merges into a nonregistered foreign entity or converts to a foreign entity required to register with the secretary of state to do business in Indiana, the foreign entity shall deliver to the secretary of state for filing a notice of merger or conversion.

The notice must be signed by the surviving or converted entity and state:

- (1) the name of the registered foreign entity before the merger or conversion;
- (2) the type of full entity it was before the merger or conversion;
- (3) the name of the applicant entity and, if the name does not comply with [IC 23-0.5-3-1](#), an alternate name adopted under section 6(a) of this chapter;
- (4) the type of entity of the applicant entity and its jurisdiction of formation; and
- (5) the following information regarding the entity, if different than the information for the foreign entity before the merger or conversion:
 - (A) The street address of the principal office of the entity.
 - (B) The information required under [IC 23-0.5-4-3\(b\)](#).

(b) When a notice of merger or conversion takes effect, the registration of the registered foreign entity to do business in Indiana is transferred without interruption to the entity into which it has merged or to which it has been converted.

Comment

The purpose of this section is to clarify the status of the registered foreign entity in the public records of the secretary of state. A notice of merger filing under this section has the effect

of canceling the registration of the nonsurviving foreign entity to transact business in Indiana. A notice of conversion filing under this section has the effect of changing the entity type of the foreign entity while continuing its record. The requirements of this section are in addition to those required by IC 23-0.6-2.

IC 23-0.5-5-11 Revocation of registration; grounds; notice of revocation; service of process

Sec. 11. (a) The secretary of state may revoke the registration of a registered foreign entity if:

- (1) the entity does not pay, not later than sixty (60) days after the due date, any fee, tax, interest, or penalty required to be paid to the secretary of state under this article or law of Indiana other than this article;
- (2) the entity does not deliver to the secretary of state for filing, not later than sixty (60) days after the due date, a biennial report;
- (3) the entity does not have a registered agent as required by [IC 23-0.5-4-1](#);
- (4) the entity does not deliver to the secretary of state for filing a statement of change under [IC 23-0.5-4-6](#) not later than thirty (30) days after a change occurs in the name or address of the entity's registered agent; or
- (5) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of entity filings in the state or country under whose law the entity is registered stating that it has been dissolved or disappeared as the result of a merger.

(b) If the secretary of state determines that one (1) or more grounds exists under subsection (a) for revocation of a registration, the secretary of state shall provide to the foreign entity written notice of the determination, unless the secretary of state:

- (1) receives a receipt showing failure of a previous attempt of service of process upon the entity's registered agent at the address of the registered office; and
- (2) determines that the secretary of state's office has no record of the entity's principal office address.

(c) The notice under subsection (b) must state:

- (1) the effective date of the revocation, which must be at least sixty (60) days after the date the secretary of state delivers the copy; and
- (2) the grounds for revocation under subsection (a).

(d) The authority of a registered foreign entity to do business in Indiana ceases on the effective date of the notice of revocation under subsection (b), unless before that date the entity cures each ground for revocation stated in the notice. If the entity cures each ground, the secretary of state shall file a record so stating.

(e) The secretary of state's revocation of a registration appoints the secretary of state the entity's agent for service of process in any proceeding based on a cause of action that arose during the time the entity was authorized to transact business in Indiana. Service of process on the secretary of state under this subsection is service on the entity. Upon receipt of process, the secretary of state shall mail a copy of the process to the entity at its principal office shown in its most recent biennial report or in any subsequent communication received from the entity stating the current mailing address of its principal office, unless the secretary of state:

- (1) receives a receipt showing failure of a previous attempt of service of process upon the entity's registered agent at the address of the registered office; and
- (2) determines that the secretary of state's office has no record of the entity's principal office address.

(f) Revocation of an entity's registration does not terminate the authority of the registered agent of the entity.

Comment

This section is analogous to the procedures for administrative dissolution under IC 23-0.5-6-1 and 23-0.5-6-2.

IC 23-0.5-5-12 Application for reinstatement; effective date

Sec. 12. (a) An entity that has had its registration revoked under section 11(b) of this chapter may, not later than five (5) years after the effective date of the revocation, apply to the secretary of state for reinstatement. The application for reinstatement must include all the following:

- (1) The name of the entity.
- (2) The effective date of the revocation of the entity's registration.
- (3) A statement that the ground or grounds for revocation of the entity's registration either did not exist or have been eliminated.
- (4) A statement that the entity's name satisfies the requirements of [IC 23-0.5-3-1](#) or section 6 of this chapter.
- (5) A certificate from the department of state revenue stating that all taxes owed by the entity have been paid.

(b) If the secretary of state determines that the application contains the information required under subsection (a) and that the information is correct, the secretary of state shall:

- (1) cancel the certificate of revocation of the entity's registration;
- (2) prepare a certificate of reinstatement that specifies:
 - (A) that the revocation of the entity's registration has been canceled; and
 - (B) the date that the reinstatement is effective; and
- (3) file the original certificate of reinstatement.

(c) When the certificate of reinstatement is effective, the certificate of reinstatement relates back to and is considered to take effect as of the effective date of the revocation of the entity's registration and the entity resumes carrying on its business as if the revocation of the entity's registration had never occurred.

Comment

This section is from former IC 23-1-51-2.5, 23-17-26-13.5, and 23-18-11-16.5(a). It is counterpart language applicable to the procedures for reinstatement of a domestic entity contained in IC 23-0.5-6-3.

IC 23-0.5-5-13 Denial of application for reinstatement; written notice; appeal

Sec. 13. (a) If the secretary of state denies an entity's application for reinstatement under section 12(a) and 12(b) of this chapter, the secretary of state shall serve the entity with a written notice that explains the reason or reasons for denial.

(b) The entity may appeal the denial of reinstatement to the circuit or superior court of the county in which its registered agent is located not later than thirty (30) days after service of the denial of reinstatement is perfected. The entity appeals by petitioning the court to set aside the revocation and attaching to the petition copies of all the following:

- (1) The secretary of state's notice of revocation provided under section 11(b) of this chapter.
- (2) The entity's application for reinstatement described in section 12(a) of this chapter.

- (3) The secretary of state's notice of denial described in subsection (a).
- (c) The court may order the secretary of state to reinstate the registration or may take any other action the court considers appropriate.
- (d) The court's final decision may be appealed as in other civil proceedings.

Comment

This section does not appear in the Uniform Act. It is from former IC 23-1-51-3, 23-17-26-14, and 23-18-11-17. It is counterpart language applicable to denial of an application for reinstatement for a domestic entity contained in IC 23-0.5-6-4.

IC 23-0.5-5-14 Action by attorney general

Sec. 14. The attorney general may maintain an action to enjoin a foreign entity from doing business in Indiana in violation of this article.

Comment

This is language from the Uniform Act. Its counterpart in prior Indiana law was IC 23-16-10-9.

6-Administrative Dissolution

IC 23-0.5-6-1 Grounds

Sec. 1. The secretary of state may commence a proceeding under section 2 of this chapter to dissolve a domestic filing entity administratively if the entity does not:

- (1) pay any fee, tax, interest, or penalty required to be paid by this article or other law not later than sixty (60) days after it is due;
- (2) deliver a biennial report to the secretary of state not later than sixty (60) days after it is due;
- (3) have a registered agent in this state for sixty (60) consecutive days; or
- (4) notify the secretary of state within sixty (60) days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

Comments

1. Prior law authorized administrative dissolution of corporations (IC 23-1-46-3), nonprofit corporations (IC 23-27-23-3), and limited liability companies (IC 23-18-10-4) but not limited liability partnerships or limited partnerships.

2. Subsection 1(4) does not appear in the Uniform Act. It is from former IC 23-1-46-1(4), 23-17-23-1(4), and 23-18-10-1(3).

IC 23-0.5-6-2 Procedure for dissolution; winding up affairs; authority of registered agent

(a) If the secretary of state determines that one (1) or more grounds exist under section 1 of this chapter for administratively dissolving an entity, the secretary of state shall provide to the entity written notice of the determination unless the secretary of state:

- (1) receives a receipt showing failure of a previous attempt of service of process upon the entity's registered agent at the address of the registered office; and
- (2) determines that the secretary of state's office has no record of the filing entity's principal office address.

(b) If a domestic filing entity, not later than sixty (60) days after receiving the notice provided under subsection (a), does not cure or demonstrate to the satisfaction of the secretary of state the nonexistence of each ground determined by the secretary of state, the secretary of state shall administratively dissolve the entity by signing a certificate of administrative dissolution that recites the grounds for dissolution and the effective date of dissolution. The secretary of state shall file the certificate and provide to the entity a copy of the certificate.

(c) A domestic filing entity that is dissolved administratively continues its existence as the same type of entity but may not carry on any activities except as necessary to wind up its activities and affairs and liquidate its assets in the manner provided in its organic law or to apply for reinstatement under section 3 of this chapter.

(d) The administrative dissolution of a domestic filing entity does not terminate the authority of its registered agent.

Comments

1. Subsection (a) does not appear in the Uniform Act. It is from former IC 23-1-46-2(a), 23-17-23-2(a), and 23-18-10-2(a).

2. Many failures to comply with statutory requirements giving rise to administrative dissolution occur because of oversight or inadvertence and are usually corrected promptly when brought to the entity's attention. Subsections (a) and (b) therefore provide a mandatory notice by the secretary of state to each entity subject to administrative dissolution, unless the secretary of state receives a notice that service failed and the secretary of state determines that the office has no record of the filing entity's principal office address, and a 60-day grace period following the notice before the statement of administrative dissolution may be filed.

3. In most instances, the issue whether the entity is subject to administrative dissolution will not be controverted. If an entity is administratively dissolved, it may petition the secretary of state for reinstatement under IC 23-0.5-6-3 and, if reinstatement is denied, the entity may seek judicial review under IC 23-0.5-6-4.

IC 23-0.5-6-3 Reinstatement; effect

Sec. 3. (a) A domestic filing entity that is dissolved administratively under IC 23-1-46 (before its repeal), IC 23-17-23 (before its repeal), IC 23-18-10-4 (before its repeal), or section 2 of this chapter may apply to the secretary of state for reinstatement not later than five (5) years after the effective date of dissolution. The application must be signed by the entity and state or contain:

- (1) the name of the entity at the time of its administrative dissolution and, if needed, a different name that satisfies [IC 23-0.5-3-1](#);
- (2) the street address of the principal office of the entity and the name and address of its registered agent;
- (3) the effective date of the entity's administrative dissolution;
- (4) that the grounds for dissolution did not exist or have been cured; and

- (5) a certificate of clearance from the department of state revenue reciting that taxes owed by the entity have been paid.
- (b) To be reinstated, an entity must pay all fees, taxes, interest, and penalties that were due to the secretary of state at the time of the entity's administrative dissolution and all fees, taxes, interest, and penalties that would have been due to the secretary of state while the entity was dissolved administratively.
- (c) If the secretary of state determines that an application under subsection (a) contains the required information, is satisfied that the information is correct, and determines that all payments required to be made to the secretary of state by subsection (b) have been made, the secretary of state shall:
 - (1) cancel the certificate of administrative dissolution and prepare a certificate of reinstatement that states the secretary of state's determination and the effective date of reinstatement; and
 - (2) file the certificate of reinstatement.
- (d) When reinstatement under this section is effective, the following rules apply:
 - (1) The reinstatement relates back to and takes effect as of the effective date of the administrative dissolution.
 - (2) The domestic filing entity resumes carrying on its activities and affairs as if the administrative dissolution had never occurred.
 - (3) The rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had notice of the reinstatement are not affected.

Comments

1. A reinstatement must be sought within five years of administrative dissolution. Under prior law, there was no time limit on seeking reinstatement. See former IC 23-1-46-3, 23-17-23-3, and 23-18-10-4. Reinstatement of an entity dissolved under prior law is subject to this section.

2. Subsection (a)(1) will apply if, before an entity is reinstated, another entity has taken the name of the entity seeking reinstatement. See Comment 4 to IC 23-0.5-3-1 for the rule on the availability of the name of an entity that has been administratively dissolved.

3. Subsection (a)(5) is not in the Uniform Act. It is language from former IC 23-1-46-3(a)(5), 23-17-23-3(a)(5), and 23-18-10-4(a)(5).

IC 23-0.5-6-4 Denial of application for reinstatement; notice; appeal

Sec. 4. (a) If the secretary of state denies a domestic filing entity's application for reinstatement following administrative dissolution, the secretary of state shall serve the entity with a notice in a record that explains the reasons for denial.

(b) An entity may seek judicial review of denial of reinstatement in the circuit or superior court of the county where the entity's principal office (or, if none in Indiana, its registered office) is located not later than thirty (30) days after service of the notice of denial.

(c) An entity appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the following:

- (1) The secretary of state's certificate of administrative dissolution.
- (2) The filing entity's application for reinstatement.

- (3) The secretary of state's notice of denial.
- (d) The court may do the following:
 - (1) Order the secretary of state to reinstate the entity.
 - (2) Take other action the court considers appropriate.
- (e) The court's final decision may be appealed as in other civil proceedings.

Comment

Subsections (b) through (e) are from former IC 23-1-46-4(c) and (d), 23-17-23-4(c), (d), and (e), and 23-18-10-5(b)(1) and (2), (c), and (d).

7-Interrogatories

IC 23-0.5-7-1 Written interrogatories

Sec. 1. The secretary of state may propound to any:

- (1) domestic or foreign entity that the secretary of state has reason to believe is subject to the provisions of this title under which the domestic entity was created or foreign entity is permitted to transact business in Indiana; and
- (2) any governing person of the entity described in subdivision (1);

any written interrogatories as may be reasonably necessary and proper to enable the secretary of state to ascertain whether the entity was formed using suspected fraudulent or alternate filings or is being used to commit fraud.

Comment

This section does not appear in the Uniform Act. It is from former IC 23-15-10-2 and 23-7-1.1.

IC 23-0.5-7-2 Requests to answer interrogatories

Sec. 2. (a) The interrogatories under section 1 of this chapter must be answered not later than thirty (30) days after the date the interrogatories are mailed or within an additional period approved, in writing, by the secretary of state. The answers to the interrogatories must be:

- (1) full and complete; and
- (2) made in writing and under oath.

(b) If the interrogatories under section 1 of this chapter are directed to an individual, the individual shall answer the interrogatories.

(c) If the interrogatories under section 1 of this chapter are directed to an entity, a governing person of the entity shall answer the interrogatories.

Comment

This section does not appear in the Uniform Act. It is from former IC 23-15-10-3 and 23-7-1.1.

IC 23-0.5-7-3 Certification to attorney general

Sec. 3. The secretary of state shall certify to the attorney general, for an action as the attorney general reasonably considers appropriate, all interrogatories and answers to the interrogatories that disclose a violation of any of the provisions of this title under which the entity was created, requiring or permitting action by the attorney general.

Comment

This section does not appear in the Uniform Act. It is from former IC 23-15-10-4.

IC 23-0.5-7-4 Failure to respond

Sec. 4. The secretary of state may:

- (1) remove fraudulent filings from the secretary of state's record for the entity; or
 - (2) administratively dissolve or revoke the registration;
- for failure to timely and adequately respond to interrogatories under section 3 of this chapter.

Comment

This section does not appear in the Uniform Act. It is from former IC 23-15-10-5.

IC 23-0.5-7-5 Administrative rules

Sec. 5. The secretary of state may adopt rules under [IC 4-22-2](#) that are necessary to carry out this chapter.

Comment

This section does not appear in the Uniform Act. It is from former IC 23-15-10-6.

IC 23-0.5-7-6 Disclosure of information

Sec. 6. Interrogatories propounded by the secretary of state and the answers received are not open to public inspection. The secretary of state may not disclose any facts or information obtained from the interrogatories unless:

- (1) the secretary of state's official duty requires the information to be made public; or
- (2) the interrogatories or the answers received are required for evidence in a criminal proceeding or in any other action or proceeding by or against the state of Indiana.

Comment

This section constitutes new law.

8-Miscellaneous

IC 23-0.5-8-1 Facsimile signatures on corporate bonds and notes

Sec. 1. Subject to any restrictions contained in its organic rules, the signatures of the governing persons of any entity organized under any law of Indiana, on the bonds, notes, debentures, or other evidences of indebtedness of the entity may be facsimiles, and the facsimiles on such instruments are deemed the equivalent of and constitute the written signatures of the governing persons for all purposes, including the full satisfaction of any signature requirements

of the laws of Indiana on the negotiable bonds, notes, debentures, and other evidences of indebtedness of the entity.

Comment

This section does not appear in the Uniform Act. It is from former IC 23-15-4-1.

IC 23-0.5-8-2 Right to make charitable contributions

Sec. 2. Every railroad company, rural loan and saving association, credit union, or corporation organized for the conduct of a banking, insurance, surety, trust, safe deposit, mortgage guarantee, or building and loan business organized under any law of Indiana may, subject to any restrictions contained in the articles of incorporation, make contributions out of the gross income of the corporation to such entities, and for any one (1) or more of such purposes, as the board of directors may reasonably believe will constitute deductions from gross income in computing the net income of the corporation subject to tax, under the Internal Revenue Code.

Comment

This section does not appear in the Uniform Act. It is from former IC 23-15-5-1.

IC 23-0.5-8-3 File or transfer case to business or commercial court or docket

Sec. 3. Notwithstanding any law that requires that a case must be filed in a specific court, a case, if otherwise eligible, may also be filed in or transferred to a business or commercial court or docket established or designated by law or supreme court rule.

Comment

This section does not appear in the Uniform Act. It is from former IC 23-15-9-3.

9-Fees

IC 23-0.5-9-1 Articles of incorporation; domestic business corporation

Sec. 1. The secretary of state shall collect the following fees for filing the articles of incorporation of a domestic business corporation:

- (1) Seventy-five dollars (\$75) for an electronic filing.
- (2) One hundred dollars (\$100) for filing in a manner other than electronically.

IC 23-0.5-9-2 Articles of amendment; domestic business corporation

Sec. 2. The secretary of state shall collect the following fees for filing articles of amendment to the articles of incorporation of a domestic business corporation:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-3 Restatement of articles of incorporation; domestic business corporation

Sec. 3. The secretary of state shall collect the following fees for filing a restatement of the articles of incorporation of a domestic business corporation or restatement of the articles of incorporation of a domestic business corporation with amendment:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-4 Articles of dissolution; domestic business corporation

Sec. 4. The secretary of state shall collect the following fees for filing articles of dissolution of a domestic business corporation:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-5 Articles of revocation of dissolution; domestic business corporation

Sec. 5. The secretary of state shall collect the following fees for filing articles of revocation of dissolution of a domestic business corporation:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-6 Annual benefit report; benefit corporation

Sec. 6. The secretary of state shall collect the following fees for filing an annual benefit report for a benefit corporation:

- (1) Ten dollars (\$10) for an electronic filing.
- (2) Fifteen dollars (\$15) for filing in a manner other than electronically.

IC 23-0.5-9-7 Registration; domestic limited liability partnership

Sec. 7. The secretary of state shall collect the following fees for filing a registration for a domestic limited liability partnership:

- (1) Seventy-five dollars (\$75) for an electronic filing.
- (2) One hundred dollars (\$100) for filing in a manner other than electronically.

IC 23-0.5-9-8 Certificate of amendment; domestic limited liability partnership

Sec. 8. The secretary of state shall collect the following fees for filing a certificate of amendment for a domestic limited liability partnership:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-9 Withdrawal notice; domestic limited liability partnership

Sec. 9. The secretary of state shall collect the following fees for filing a withdrawal notice for a domestic limited liability partnership:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-10 Certificate of limited partnership; domestic limited partnership

Sec. 10. The secretary of state shall collect the following fees for filing a certificate of limited partnership of a domestic limited partnership:

- (1) Seventy-five dollars (\$75) for an electronic filing.
- (2) One hundred dollars (\$100) for filing in a manner other than electronically.

IC 23-0.5-9-11 Certificate of amendment; domestic limited partnership

Sec. 11. The secretary of state shall collect the following fees for filing a certificate of amendment for a domestic limited partnership:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-12 Restated certificate of limited partnership; domestic limited partnership

Sec. 12. The secretary of state shall collect the following fees for filing a restated certificate of limited partnership or a restated certificate of limited partnership with amendments for a domestic limited partnership:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-13 Certificate of cancellation; limited partnership

Sec. 13. The secretary of state shall collect the following fees for filing a certificate of cancellation for a limited partnership:

- (1) Seventy-five dollars (\$75) for an electronic filing.
- (2) Ninety dollars (\$90) for filing in a manner other than electronically.

IC 23-0.5-9-14 Articles of incorporation; domestic nonprofit corporation

Sec. 14. The secretary of state shall collect the following fees for filing the articles of incorporation of a domestic nonprofit corporation:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Fifty dollars (\$50) for filing in a manner other than electronically.

IC 23-0.5-9-15 Articles of amendment to articles of incorporation; domestic nonprofit corporation

Sec. 15. The secretary of state shall collect the following fees for filing articles of amendment to the articles of incorporation of a domestic nonprofit corporation:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-16 Restatement of articles of incorporation; domestic nonprofit corporation

Sec. 16. The secretary of state shall collect the following fees for filing a restatement of the articles of incorporation of a domestic nonprofit corporation or restatement of the articles of incorporation of a domestic nonprofit corporation with amendment:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-17 Articles of dissolution; domestic nonprofit corporation

Sec. 17. The secretary of state shall collect the following fees for filing articles of dissolution of a domestic nonprofit corporation:

- (1) Twenty dollars (\$20) for an electronic filing.

- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-18 Articles of revocation of dissolution; domestic nonprofit corporation

Sec. 18. The secretary of state shall collect the following fees for filing articles of revocation of dissolution of a domestic nonprofit corporation:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-19 Articles of organization; domestic limited liability company

Sec. 19. The secretary of state shall collect the following fees for filing the articles of organization of a domestic limited liability company:

- (1) Seventy-five dollars (\$75) for an electronic filing.
- (2) One hundred dollars (\$100) for filing in a manner other than electronically.

IC 23-0.5-9-20 Articles of amendment to articles of organization; domestic limited liability company

Sec. 20. The secretary of state shall collect the following fees for filing articles of amendment to the articles of organization of a domestic limited liability company:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-21 Restatement of articles of organization; domestic limited liability company

Sec. 21. The secretary of state shall collect the following fees for filing a restatement of the articles of organization of a domestic limited liability company or restatement of the articles of organization of a domestic limited liability company with amendment:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-22 Articles of dissolution; domestic limited liability company

Sec. 22. The secretary of state shall collect the following fees for filing articles of dissolution of a domestic limited liability company:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-23 Articles of revocation of dissolution; domestic limited liability company

Sec. 23. The secretary of state shall collect the following fees for filing articles of revocation of dissolution of a domestic limited liability company:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-24 Articles of organization; domestic master limited liability company

Sec. 24. The secretary of state shall collect the following fees for filing the articles of organization of a domestic master limited liability company:

- (1) Two hundred twenty-five dollars (\$225) for an electronic filing.
- (2) Two hundred fifty dollars (\$250) for filing in a manner other than electronically.

IC 23-0.5-9-25 Articles of designation

Sec. 25. The secretary of state shall collect the following fees for filing articles of designation:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-26 Foreign registration statement

Sec. 26. (a) The secretary of state shall collect the following fees for filing a foreign registration statement electronically:

- (1) Seventy-five dollars (\$75) for a for-profit entity.
- (2) Twenty dollars (\$20) for a nonprofit corporation.

(b) The secretary of state shall collect the following fees for filing a foreign registration statement in a manner other than electronically:

- (1) One hundred twenty-five dollars (\$125) for a for-profit entity.
- (2) Seventy-five dollars (\$75) for a nonprofit corporation.

IC 23-0.5-9-27 Amendment to foreign registration statement

Sec. 27. The secretary of state shall collect the following fees for filing an amendment to a foreign registration statement:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-28 Statement of withdrawal

Sec. 28. The secretary of state shall collect the following fees for filing a statement of withdrawal:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-29 Foreign registration statement; foreign master limited liability company

Sec. 29. The secretary of state shall collect the following fees for filing a foreign registration statement for a foreign master limited liability company:

- (1) Two hundred twenty-five dollars (\$225) for an electronic filing.
- (2) Two hundred fifty dollars (\$250) for filing in a manner other than electronically.

IC 23-0.5-9-30 Commercial registered agent listing statement

Sec. 30. The secretary of state shall collect the following fees for filing a commercial registered agent listing statement:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-31 Commercial registered agent termination statement

Sec. 31. The secretary of state shall collect the following fees for filing a commercial registered agent termination statement:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-32 No fee for filing a registered agent or office statement of change

Sec. 32. There is no fee for filing a registered agent or office statement of change.

IC 23-0.5-9-33 No fee for filing a registered agent statement of resignation

Sec. 33. There is no fee for filing a registered agent statement of resignation.

IC 23-0.5-9-34 Biennial report

Sec. 34. (a) The secretary of state shall collect the following fees for filing a biennial report electronically:

- (1) Twenty dollars (\$20), in the case of a for-profit entity.
- (2) Ten dollars (\$10), in the case of a nonprofit corporation.

(b) The secretary of state shall collect the following fees for filing a biennial report in a manner other than electronically:

- (1) Fifty dollars (\$50), in the case of a for-profit entity.
- (2) Twenty dollars (\$20), in the case of a nonprofit corporation.

IC 23-0.5-9-35 Articles of correction

Sec. 35. The secretary of state shall collect the following fees for filing articles of correction:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-36 Electronic application for reserved name

Sec. 36. The secretary of state shall collect a fee of ten dollars (\$10) for filing an electronic application for reserved name.

IC 23-0.5-9-37 Electronic application for renewal of reserved name

Sec. 37. The secretary of state shall collect a fee of ten dollars (\$10) for filing an electronic application for renewal of reserved name.

IC 23-0.5-9-38 Electronic notice of transfer of reserved name

Sec. 38. The secretary of state shall collect a fee of ten dollars (\$10) for filing an electronic notice of transfer of reserved name.

IC 23-0.5-9-39 No fee for filing cancellation of reserved name

Sec. 39. There is no filing fee for filing a cancellation of reserved name.

IC 23-0.5-9-40 Application for assumed business name

Sec. 40. (a) The secretary of state shall collect the following fees for filing an application for assumed business name electronically:

- (1) In the case of a for-profit entity, twenty dollars (\$20) multiplied by the number of assumed business names stated in the application.
- (2) In the case of a nonprofit corporation, ten dollars (\$10) multiplied by the number of assumed business names stated in the application.

(b) The secretary of state shall collect the following fees for filing an application for assumed business name in a manner other than electronically:

- (1) In the case of a for-profit entity, thirty dollars (\$30) multiplied by the number of assumed business names stated in the application.

(2) In the case of a nonprofit corporation, twenty-six dollars (\$26) multiplied by the number of assumed business names stated in the application.

IC 23-0.5-9-41 Cancellation of assumed business name

Sec. 41. (a) There is no fee for filing a cancellation of assumed business name.

IC 23-0.5-9-42 Application for reinstatement following administrative dissolution or revocation

Sec. 42. The secretary of state shall collect the following fees for filing an application for reinstatement following administrative dissolution or revocation:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-43 Application for certificate of existence

Sec. 43. The secretary of state shall collect the following fees for filing an application for certificate of existence:

- (1) Fifteen dollars (\$15) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-44 Preclearance of filing

Sec. 44. The secretary of state shall collect a fee of ten dollars (\$10) for a preclearance of a filing.

IC 23-0.5-9-45 Articles of merger

Sec. 45. (a) The secretary of state shall collect the following fees for filing articles of merger electronically:

- (1) Seventy-five dollars (\$75), in the case of a for-profit entity.
- (2) Twenty dollars (\$20), in the case of a nonprofit corporation.

(b) The secretary of state shall collect the following fees for filing articles of merger in a manner other than electronically:

- (1) Ninety dollars (\$90), in the case of a for-profit entity.
- (2) Thirty dollars (\$30), in the case of a nonprofit corporation.

IC 23-0.5-9-46 Articles of abandonment of merger

Sec. 46. The secretary of state shall collect the following fees for filing articles of abandonment of merger:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-47 Articles of interest exchange

Sec. 47. The secretary of state shall collect the following fees for filing articles of interest exchange:

- (1) Seventy-five dollars (\$75) for an electronic filing.
- (2) Ninety dollars (\$90) for filing in a manner other than electronically.

IC 23-0.5-9-48 Articles of abandonment of interest exchange

Sec. 48. The secretary of state shall collect the following fees for filing articles of abandonment of interest exchange:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-49 Articles of conversion

Sec. 49. The secretary of state shall collect the following fees for filing articles of conversion:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-50 Articles of abandonment of conversion

Sec. 50. The secretary of state shall collect the following fees for filing articles of abandonment of conversion:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-51 Articles of domestication

Sec. 51. (a) The secretary of state shall collect the following fees for filing articles of domestication:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-52 Articles of abandonment of domestication

Sec. 52. The secretary of state shall collect the following fees for filing articles of abandonment of domestication:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-53 Notice of merger or conversion

Sec. 53. The secretary of state shall collect the following fees for filing a notice of merger or conversion:

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-54 Other filings permitted; requests for other facts of record

Sec. 54. The secretary of state shall collect the following fees for filing any other filing required or permitted to be filed by this article, including an application for any other certificates or certification certificate (except for any such other certificates that the secretary of state may determine to issue without additional fee in connection with particular filings) and a request for other facts of record under [IC 23-0.5-2-8](#):

- (1) Twenty dollars (\$20) for an electronic filing.
- (2) Thirty dollars (\$30) for filing in a manner other than electronically.

IC 23-0.5-9-55 Copying and certifying copy of filed record

Sec. 55. The secretary of state shall collect the following fees for copying and certifying the copy of any filed record:

(1) One dollar (\$1) per page for copying.

(2) Fifteen dollars (\$15) for certification.

The fees imposed under this section do not apply to any copies or certifications that are processed on the secretary of state's Internet web site.

IC 23-0.5-9-56 Service of process on secretary of state

Sec. 56. The secretary of state shall collect a fee of ten dollars (\$10) each time process is served on the secretary of state under this article. If the party to a proceeding causing service of process prevails in the proceeding, then that party is entitled to recover this fee as costs from the nonprevailing party.

IC 23-0.5-9-57 Electronic filing

Sec. 57. The secretary of state shall prescribe the electronic means of filing documents to which the electronic filing fees set forth in this chapter apply.

IC 23-0.5-9-58 Forms of payment

Sec. 58. The secretary of state may accept payment of the correct filing fee by credit card, debit card, charge card, or similar method. However, if the filing fee is paid by credit card, debit card, charge card, or similar method, the liability is not finally discharged until the secretary of state receives payment or credit from the institution responsible for making the payment or credit. The secretary of state may contract with a bank or credit card vendor for acceptance of bank or credit cards. However, if there is a vendor transaction charge or discount fee, whether billed to the secretary of state or charged directly to the secretary of state's account, the secretary of state or the credit card vendor may collect from the person using the bank or credit card a fee that may not exceed the highest transaction charge or discount fee charged to the secretary of state by the bank or credit card vendor during the most recent collection period. This fee may be collected regardless of any agreement between the bank and a credit card vendor or regardless of any internal policy of the credit card vendor that may prohibit this type of fee. The fee is a permitted additional charge under [IC 24-4.5-3-202](#).

IC 23-0.5-9-59 Filing fees are not refundable upon withdrawal or correction of a filed record

Sec. 59. The withdrawal under [IC 23-0.5-2-4](#) of a filed record before it is effective or the correction of a filed record under [IC 23-0.5-2-5](#) does not entitle the person on whose behalf the record was filed to a refund of the filing fee.