

2015 HOUSE INDUSTRY, BUSINESS, AND LABOR

HB 1071

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1071
1/7/2015
21733

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the appointment and affirmation of a registered agent.

Minutes:

Attachments 1-2

Chairman Keiser: Opens the hearing on HB 1071. Anyone here to testify in favor of?

Representative Hanson: District 16 in Fargo & West Fargo. (Attachment 1)

Representative M Nelson: 2:43-Would this apply to non-profits?

Representative Hanson: This only applies to those entities that have a business agent.

Chairman Keiser: Would this be affective at the time of the filing once it's notarized.

Representative Hanson: That's correct.

Chairman Keiser: Is this the second change in this bill?

Representative Hanson: That correct.

(3:39)

Representative Kasper: Would this cover people who are already involved in the situation where they will have to go out and get notarized?

Representative Hanson: I believe this will apply for the future. There is nothing in the bill to make it retroactive.

Opposition:

Claira Jenkins~On behalf of Al Jaeger, Secretary of State: (See attachment 2).

Representative Beadle: Have you submitted this bill for the session?

Jenkins: No, it's not completed yet.

Representative Beadle: Would it be amending the same section of statute?

Jenkins: It's going to be amending the same chapter, not the same section.

Representative Beadle: This happened to me. This is an issue but I have some hesitation discarding a bill, even if it's not a perfect bill.

(12:02)

Jenkins: A question, can you delay action on this bill until our bill is finished? That would be an alternative.

Chairman Keiser : Yes

Representative Kasper: This bill would not be retroactive, so therefore, it would be only for new filings of new corporations & partnerships. About how many new filings does your office receive per year?

Jenkin: We have averaged about 875 filings a month.

(13:20)

Representative Kasper: The involuntary disillusion in your bill would be for corporations that who are already here and partnerships that is part of your annual filing requirement. When you are going to dissolve the entity, why did you choose 60 days?

Jenkins: Sixty days is the statutory provision right now to revoke a foreign corporation, so we placed that 60 days on the domestic.

Representative Kasper: Are you able to differentiate.

Jenkins: Legislative Council has always advised us to apply equal provision for the same action.

Representative Kasper: Isn't there a method with the new technology, where the notary be obtained on line to solve your dilemma?

Jenkins: There are some states that have adopted these electronic notarizations, but they have not used them very much, because there is an extra expensive on the notary themselves. Only alternative we have is we could upload the image of the filing that come in, but it will come from two different places.

Representative Ruby: In your bill, the penalty for designation an agent without permission, what would that be?

Jenkins: We did not put in a penalty for naming someone without consent. We put in the penalty for involuntary disillusion if they don't replace that agent with a valid agent within 60 days.

Representative Ruby: It says "penalize organizations that designated a registered agent without having permission to do so".

Jenkins: That penalty would be the equivalent to the involuntary disillusion if they don't replace them. I would not be against putting a penalty on they people to pay in addition to replacing their agent.

Representative M Nelson: When a company is registering with the Secretary of State, is it put into a data base or is it fact check.

Jenkins: It's fact check to the extent that we look at the address and recognize that it's not a Post Office box. We are not in a position to validate that it's a valid address.

Representative M Nelson: When a person is voting using an address from UPS store, don't they flag that? Non-profit is required to have a physical address to get forms. I was wondering why Burleigh County has that capability, but the Secretary of State doesn't seem to.

Jenkins: I don't know how to respond to that, I don't know what software they are using. In our new software, that there are commercial and non-commercial registered agents, they pay \$1,000.

Chairman Keiser: We will be expecting a bill. We will not continue to hear this bill until we need to see the bill, then we will have a full hearing and take this bill under consideration relative to that bill.

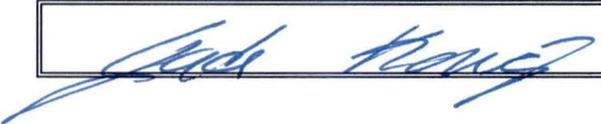
Chairman Keiser: Closes the hearing.

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1071
1/26/2015
Job Number # 22520

- Subcommittee
 Conference Committee



Minutes:

Rep Rick C. Becker: We are going to go ahead and kill this bill for simplicity sake I assume.

Rep Keiser: That would be a normal action but let's try and amend it or do something else with it.

Rep Rick C. Becker: I wish I could conform but if up front what they are saying is true and I'm sure it is, I find it so bizarre that you can register a business in any of the states without conform of a business agent is just weird.

Rep Keiser: The only argument was if we do it up front then electronic registration can be done but we can't activate it until we now contact the individual and get confirmation.

Rep Ruby: Do not pass

Rep Rick C Becker: I second

Recommended a do not pass. Motion made by Rep. Ruby. Seconded by Rep. Rick C. Becker.

Floor Assignment is Rep. Hanson.

Total 12 yes, 0 No, 3 Absent

Date: Jan 26, 2015

Roll Call Vote: 1

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1071**

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider _____

Motion Made By Rep Ruby Seconded By Rep Rick C. Becker

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Representative Lefor	x	
Vice Chairman Sukut	x		Representative Louser	x	
Representative Beadle	x		Representative Ruby	x	
Representative Becker	x		Representative Amerman	x	
Representative Devlin	Ab		Representative Boschee	x	
Representative Frantsvog	Ab		Representative Hanson	x	
Representative Kasper	x		Representative M Nelson	Ab	
Representative Laning	x				

Total (Yes) 12 No 0

Absent 3

Floor Assignment Rep Hanson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1071: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO NOT PASS** (12 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING).
HB 1071 was placed on the Eleventh order on the calendar.

2015 TESTIMONY

HB 1071

HB 1071 Testimony; Rep. Ben Hanson

House Committee on Industry, Business and Labor:

January 7th, 2015 testimony in regards to HB 1071; A BILL for an Act to amend and reenact section 10-01.1-05 of the North Dakota Century Code, relating to the appointment and affirmation of a registered agent.

Mr. Chair, fellow committee members, for the record my name is Ben Hanson and I am a representative from District 16 in Fargo and West Fargo. I stand before you today to testify in favor HB 1071.

Currently when a business, LLC, etc. is being registered with the Secretary of State a "business agent" has to be filed. The business registering in the North Dakota does not have to get confirmation from said business agent. It only has to list a name and address.

HB 1071 simply requires the Secretary of State's office to require that said business agent also confirms that they are the business agent. A signature and notarization fulfill the requirements with no extra cost to the state. In this time of economic expansion we have had the blessing of many new business entities being formed in North Dakota. HB 1071 will help ensure that these entities are above board and that all parties are fully aware of their roles.

ALVIN A. JAEGER
SECRETARY OF STATE

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SECRETARY OF STATE

STATE OF NORTH DAKOTA
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January 7, 2014

TO: Rep. Kaiser, Chairman, and Members of the House Industry, Business and Labor Committee

FR: Clara Jenkins on behalf of Al Jaeger, Secretary of State

RE: HB 1071 – Appointment and Affirmation of a Registered Agent

The Secretary of State recommends a "Do Not Pass" on this bill. Since the last legislative session, the Secretary of State has been aware of the problem this bill attempts to address. Therefore, the Secretary of State's office has been drafting text to insert into a broader business related bill for introduction in this session. It will address the problem of individuals being named as registered agents without their consent. The passage of the HB 1071 as introduced would place an administrative burden on the filers of business entity documents and on the Secretary of State's office to efficiently process those documents in a timely manner.

The Secretary of State currently maintains 74,782 corporate records and 5,997 partnership records with a registered agent listed as a part of each individual record. Annually, the Secretary of State mails a notice to each of these registered agents reminding them of the annual report due from each entity, as required by state law. Of the 80,779 notices mailed from September 13, 2013 to August 14, 2014, only nine of the registered agents on record with the Secretary of State had indicated that they had been named as an agent without their consent. This is a very small percentage (.01.1%) as compared to the number of mailed notices.

Because the registered agent of an entity is often someone not directly associated with the filing entity, a notarized statement of the registered agent, as proposed in this bill, would most likely be submitted by a third party other than the actual filer of the documents. If the notarized registered agent statement was not received along with the documents to be filed, the entity file would be placed into a pending status until the notarized agent statement of affirmation was received. None of the other documents related to a business filing requires a notarized signature. Potentially, the delay in receiving the notarized registered agent statement could increase the processing time and delay the issuing of the charter.

More important, the requirement of having a notarized statement would negate the advantages of online electronic filing of business related documents. When the North Dakota Registered Agents Act was adopted in 2007, the consent of registered agent was removed from the requirements to allow electronic filing in the future of business filings with the Secretary of State. The Secretary of State is currently engaged in a software development project that will eventually enable electronic filing of business entity documents with the Secretary of State. Adding a notarization requirement for the appointment of an agent will eliminate these documents from electronic filing since the agent consent form would have to be submitted separately in a paper format.

The adoption of N.D.C.C., Chapter 10-01.1, the North Dakota Registered Agents Act, in 2007 also eliminated the \$10 filing fee for the resignation of a registered agent. Elimination of the fee was to enable someone that was named as agent without knowledge or consent to be able to remove their name as the agent of record without incurring an expense.

The Secretary of State's draft will do the following:

- eliminate the requirement of a formal resignation by an improperly named agent. Rather, the agent would be removed from the public record immediately upon receipt by the Secretary of State of a written notice of an improper appointment of an agent, and
- subject the filing entity to involuntary dissolution for failure to maintain a registered agent unless an alternate agent is named within 60 days.

In our opinion, this proposed legislation by the Secretary of State will:

- address the issue of improper appointment of a registered agent,
- penalize organizations that designate a registered agent without having permission to do so,
- and preserve the current law that will allow a business entity to file online all of the required documents for registering a business.