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Deanna Hallworth
Operator's Signature

10/3/03
Date

2003 HOUSE JUDICIARY

HB 1362

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1362

House Judiciary Committee

Conference Committee

Hearing Date 2-10-03

Tape Number	Side A	Side B	Meter #
1	xx		0-end
1		xx	0-9.3
Committee Clerk Signature <i>D Penrose</i>			

Minutes: 13 members present.

Chairman DeKrey: We will open the hearing on HB 1362.

Al Jaeger, Secretary of State: Introduced the bill.

William L. Guy, III, Chairman, ND Business Entity Drafting Task Force: Support (see attached testimony, tape 1, side a, # 4.6-43).

Rep. Klemin: In a number of places, there are references to registered mail, I understand that to mean either registered or certified mail. Registered mail has a dollar value, certified mail - you get a receipt to show that it's been mailed.

Mr. Jaeger: We attempted to get that changed, but there was a lot of opposition. So it was left the same, but registered mail means certified mail.

Rep. Klemin: On pg. 142, service on the Secretary of State by registered mail or personal delivery, but then the Secretary of State shall forward by certified mail to the limited partnership

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Page 2
House Judiciary Committee
Bill/Resolution Number HB 1362
Hearing Date 2-10-03

a copy of the process. How come it doesn't say that the Secretary of State is going to send by registered mail.

Mr. Jaeger: I will defer to Clara Jenkins.

Clara Jenkins: Actually the change was asked by the Attorney General.

Rep. Klemm: I have a question in regard to exempt records vs. confidential records. There are references to the Secretary of State deleting the social security numbers and tax ID numbers. Has this been dealt with in another bills, the records being confidential rather than exempt.

Mr. Jaeger: I guess I am not sure of the other places where it might be, but I know the bills are working through in our office.

Rep. Klemm: On page 125, section 106, regarding the fees to the attorney general, he is entitled to not only attorney's fees but also to investigation fees, costs, and expenses of any investigation and action brought by the attorney general, but the other side is only entitled to attorney's fees. They have costs just like the attorney general, why are they not entitled to recover the same costs. Why is it much more broader for the attorney general than the other side.

Mr. Guy: Court may grant equitable relief, which could include the costs as talked about by the attorney general as well. There is a disparity in the language.

Rep. Klemm: I know that the terms of costs and disbursements are specifically defined in other sections and chapter relating to costs and disbursements.

Mr. Guy: No, but it does say that the court may award such other costs.

Rep. Klemm: It seems to me that investigation fees and expenses of any investigation could be substantial. It is appropriate to include fees on line 10 or take out on line 11. I don't remember

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Page 3
House Judiciary Committee
Bill/Resolution Number HB 1362
Hearing Date 2-10-03

any other place where it talks about civil action, where parties can't be awarded investigation fees. Is this an expansion.

Mr. Guy: It does appear to me to be an expansion as well. I don't know if it would be better to add it to all parties or to delete it for the attorney general.

Mr. Jaeger: We could certainly follow up with the attorney general's office.

Rep. Grande: I'm not real familiar with the non-profit corporate act, you talk about changing the term hearing, and going from doing business to conducting activities, and I can't find a definition of activities. Is this defined somewhere?

Mr. Guy: We alternately referred to transacting business or conducting activities. Conducting activities on page 103 is definition of activities. Activities is equivalent of business.

Rep. Kretschmar: Are the substantive provisions of the bill based on the laws of some other states.

Mr. Guy: The changes that we have made parallel to identical changes in the statutes in the state of North Dakota, and they in turn are largely based on model acts, but are generally more comprehensive.

Rep. Kretschmar: Will any provisions in the bill require a currently operating corporation to LLC, etc. to force them to do something under the new laws, require them to do something they don't want to.

Mr. Guy: Corporations don't have to do anything, but if want to do business with remote communications, for example, they will have to adopt the changes in their by-laws.

Chairman DeKrey: Thank you.

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Page 4
House Judiciary Committee
Bill/Resolution Number HB 1362
Hearing Date 2-10-03

Clara Jenkins, Business Division Director, Secretary of State's office: (see testimony and proposed amendments) Support.

Rep. Onstad: Regarding the fees, were they based on time that is required to process.

Ms. Jenkins: The fees have been in place for many years, part of it was relative to time, research required to maintain permanent records and also in comparison to fees charged by other states.

Rep. Grande: My question for Mr. Guy was for a definition of activities, and now you just deleted that. So where are we going to bring new life to that.

Ms. Jenkins: If a term in the statute is not defined, it goes by the definition found in the dictionary. There was an issue raised with our definition of activities, because they felt that someone might misconstrue that to mean that the non-profit corporation can do anything that a business corporation can do. That is not the impression we wanted to leave.

Rep. Krestchmar: I am a member of the board of a non-profit corporation, a hospital; we engage in business just like the for-profits. Will this prevent a non-profit corporation from engaging in business activities which are normal to their operation.

Ms. Jenkins: There is a section in the non-profit act, that gives them the powers they need.

Chairman DeKrey: Thank you. Any further testimony in support.

Christine Hogan, Exec. Dir., State Bar Association of ND: Support this bill and we want to thank Mr. Guy for all his hard work.

Chairman DeKrey: Thank you. Any further testimony in support of HB 1362, opposition? We will close the hearing.

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1362

House Judiciary Committee

Conference Committee

Hearing Date 2-11-03

Tape Number	Side A	Side B	Meter #
3	xx		37.9-43.6
Committee Clerk Signature <i>APenrose</i>			

Minutes: 13 members present.

Chairman DeKrey: What are the committee's wishes in regard to HB 1362.

Rep. Grande: I move the Secretary of State's amendments.

Rep. Delmore: Seconded.

Voice vote: Carried.

Rep. Klemin: I move the Klemin's amendments.

Rep. Wrangham: Seconded.

Voice vote: Carried.

Rep. Maragos: I move a Do Pass as amended.

Rep. De'more: Seconded.

13 YES 0 NO 0 ABSENT DO PASS AS AMENDED CARRIER: Rep. DeKrey

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10/3/03
Date

38272.0101
Title.0200

Adopted by the Judiciary Committee
February 11, 2003

VK
2/13/03
1003

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03

Page 1, line 14, after the first comma insert "subsection 10 of section 10-31-01,"

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03

Page 2, line 27, after the first comma insert "professional corporations,"

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03

Page 34, line 5, replace "of" with "or"

Page 34, after line 10, insert:

"SECTION 23. AMENDMENT. Subsection 10 of section 10-31-01 of the North Dakota Century Code is amended and reenacted as follows:

10. "Professional service" means the personal service to the public which requires a license as a condition precedent to the rendering of such service and which ~~before the passage of this chapter could not be performed by a corporation, limited liability company, or a limited liability partnership~~ requires as a condition of licensure an undergraduate or advanced college degree in the specific field.

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03

Page 103, line 7, remove "Activity" or "activities" means, in a corporation organized under this chapter, the"

Page 103, remove lines 8 and 9

Page 103, line 10, remove "2."

Page 103, line 15, remove the overstrike over "2." and remove "3."

Page 103, line 26, remove the overstrike over "3." and remove "4."

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03

Page 104, line 4, replace "5." with "4."

Page 104, line 5, replace "6." with "5."

Page 104, line 6, replace "7." with "6."

Page 104, line 8, replace "8." with "7."

Page 104, line 10, replace "9." with "8."

Page 104, line 11, replace "10." with "9."

Page 104, line 13, replace "11." with "10."

Page 104, line 15, replace "12." with "11."

Page No. 1

38272.0101

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HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03
Page 104, line 21, replace "13." with "12."

Page 104, line 23, replace "14." with "13."

Page 104, line 26, replace "15." with "14."

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03

Page 105, line 12, replace "16." with "15."

Page 105, line 15, replace "17." with "16."

Page 105, line 18, replace "18." with "17."

Page 105, line 19, replace "19." with "18."

Page 105, line 28, replace "20." with "19."

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03

Page 106, line 1, replace "21." with "20."

Page 106, line 4, replace "22." with "21."

Page 106, line 8, replace "23." with "22."

Page 106, line 10, replace "24." with "23."

Page 106, line 12, replace "25." with "24."

Page 106, line 16, replace "26." with "25."

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03

Page 107, line 31, replace "27." with "26."

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03

Page 108, line 4, replace "28." with "27."

Page 108, line 9, replace "29." with "28."

Page 108, line 14, replace "30." with "29."

Page 108, line 16, replace "31." with "30."

Page 108, line 18, replace "32." with "31."

Page 108, line 28, replace "33." with "32."

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03

Page 109, line 1, replace "34." with "33."

Page 109, line 19, replace "35." with "34."

Page 109, line 28, replace "36." with "35."

Page 109, line 30, replace "37." with "36."

