Chapter 13 (Foreign Corporations) of the
MNCA Fourth Edition December 13, 2019 Exposure Draft compared with
MNCA Third Edition Chapters 15 (Foreign Corporations)
(with amendments adopted through those published at 70 Bus. Law 467 (Spring 2015) and
also includes amendments approved on second reading
on April 18, 2015 but not published)

NOTE: The policy and contents of this document have not been
approved by the Board of Governors or the House of Delegates of the
American Bar Association, nor by any of its Taskforces, Sections,
Committees, or Subcommittees, and they do not necessarily represent
the views of the Board of Governors or the House of Delegates of the
ABA, any Section, Committee, or Subcommittee of the ABA, or the
Chair or Reporter of the Task Force to Revise the MNCA.

Additions in Exposure Draft shown in blue with double underline]
Deletions from Third Edition shown in red with strikeout

* * *

[Chapter] 1513
FOREIGN CORPORATIONS

Subchapter
§ 1301. Governing law.
§ 1302. Registration to do business in this state.
A. Certificate of Authority
B. Withdrawal or Transfer of Authority
C. Revocation of Certificate of Authority
§ 1303. Foreign registration statement.
[Subchapter] A
CERTIFICATE OF AUTHORITY
§ 1304. Amendment of foreign registration statement.
§ 1305. Activities not constituting doing business.
§ 15.01. Registration1306. Noncomplying name of foreign corporation.
§ 15.02. Consequences of conducting activities without1307. Withdrawal of registration of
registered foreign corporation.
§ 15.03. Registration to conduct activities1308. Deemed withdrawal upon domestication or
conversion to certain domestic entities.
§ 1309. Withdrawal upon dissolution or conversion to certain nonfiling entities.
§ 15.04. Amendment1310. Transfer of registration to conduct activities.
§ 15.05. Effect1311. Administrative termination of registration.
§ 1312. Action by [attorney general].

§ 1301. GOVERNING LAW
(a) The law of the governing jurisdiction of a foreign nonprofit corporation governs:

(1) the internal affairs of the foreign corporation; and

(2) the interest holder liability of its members.

(b) A foreign nonprofit corporation is not precluded from registering to do business in this state because of any difference between the law of the corporation’s governing jurisdiction and the law of this state.

(c) Registration of a foreign nonprofit corporation to do business in this state does not permit the foreign corporation to engage in any business or affairs or exercise any power that a domestic nonprofit corporation may not engage in or exercise in this state.

Source Note: Model Business Corporation Act (2016 Revision), § 15.01.

CROSS-REFERENCES

§ 15.06........................................................................................................................Name of Application of Act to existing foreign corporation, § 1302.
§ 15.07. Registered office and registered agent of foreign corporation.
§ 15.08. Change of registered office or registered agent of foreign corporation.
§ 15.09. Resignation of registered agent of foreign corporation.

§ 15.011302. REGISTRATION OF FOREIGN CORPORATION TO DO BUSINESS IN THIS STATE

(a) A foreign nonprofit corporation may not conduct activities do business in this state until it registers with the secretary of state under this [Chapter].

§ 15.011302. REGISTRATION OF FOREIGN CORPORATION TO DO BUSINESS IN THIS STATE

(a) A foreign nonprofit corporation may not conduct activities do business in this state until it registers with the secretary of state under this [Chapter].
A foreign nonprofit corporation doing business in this state may not maintain a proceeding in any court of this state until it is registered to do business in this state.

The failure of a foreign nonprofit corporation to register to do business in this state does not impair the validity of a contract or act of the corporation or preclude it from defending a proceeding in this state.

A limitation on the liability of a member or director of a foreign nonprofit corporation is not waived solely because the corporation does business in this state without registering.

Section 1301(a) (governing law) applies even if a foreign nonprofit corporation fails to register under this [Chapter].

Source Note: Model Business Corporation Act (2016 Revision), § 15.02.

CROSS-REFERENCES

Activities not constituting doing business, § 1305.
Foreign registration statement, § 1303.
“Proceeding” defined, § 102.

OFFICIAL COMMENT

Section 1302(b) closes the courts of this state to suits brought by a foreign nonprofit corporation that should have registered. Section 1302(c) makes clear, however, that the failure to register does not impair the validity of the corporation’s acts, and Section 1302(d) preserves the effectiveness of any liability shields applicable under the corporation’s organic law. If a corporation should have registered and failed to do so, it may still enforce its contracts in the courts of this state by registering.

Although Section 1302(b) prevents a foreign nonprofit corporation that is not registered but should from maintaining a proceeding in this state, section 1302(c) makes clear that the corporation may still defend a proceeding. The distinction between “maintaining” and “defending” an action or proceeding is determined on the basis of whether affirmative relief is sought. Such a nonregistered corporation may interpose any defense or permissive or mandatory counterclaim to defeat a claimed recovery, but may not obtain a judgment based on the counterclaim until it has registered.

§ 1303. FOREIGN REGISTRATION STATEMENT

To register to do business in this state, a foreign nonprofit corporation must deliver a foreign registration statement to the secretary of state for filing. The registration statement must be signed by the corporation and state:
(1) the corporate name of the corporation and, if the name does not comply with Section 210 (corporate name), an alternate name as required by Section 1306 (noncomplying name of foreign corporation);

(2) the corporation’s governing jurisdiction;

(3) the street and mailing addresses of the corporation’s principal office and, if the law of the corporation’s governing jurisdiction requires the corporation to maintain an office in that jurisdiction, the street and mailing addresses of that office;

(4) the street and mailing addresses of the corporation’s registered office in this state and the name of its registered agent at that office;

(5) the names and business addresses of its directors and principal officers; and

(6) a brief description of the nature of its activities to be conducted in this state.

Source Note: Model Business Corporation Act (2016 Revision), § 15.03.

CROSS-REFERENCES

Alternate name, § 1306.
Amendment to foreign registration statement, § 1304.
Annual report, § 421.
Application of Act to existing qualified foreign corporation, § 1302.
Corporate name, § 1306 and Ch. 2.
Filing requirements, § 160.
“Principal office”: defined, § 102.
designated in annual report, § 421.
Registered office and agent, Ch. 2.

OFFICIAL COMMENT

The foreign registration statement assures that certain basic information about the foreign nonprofit corporation will be publicly available and that citizens of the state will have access to that information in their dealings with the corporation. The foreign registration statement also provides information that facilitates service of process on the corporation. A registered corporation also must file an annual report as provided in section 421.

§ 1304. AMENDMENT OF FOREIGN REGISTRATION STATEMENT
A registered foreign nonprofit corporation must sign and deliver to the secretary of state for filing an amendment to its foreign registration statement if there is a change in:

(1) its name or alternate name;

(2) its governing jurisdiction, unless its registration is deemed to have been withdrawn under Section 1308 (deemed withdrawal upon domestication or conversion to certain domestic entities) or transferred under Section 1310 (transfer of registration); or

(3) an address required by Section 1303(c) (foreign registration statement).

Source Note: Model Business Corporation Act (2016 Revision), § 15.04.

CROSS-REFERENCES

Change of registered office or agent, § 221.
Corporate name, § 1306 and Ch. 2.
Filing requirements, § 102.
Foreign registration statement, § 1303.
Resignation of registered agent, § 222.

OFFICIAL COMMENT

Section 1304 requires that certain information of record in the office of the secretary of state about a registered foreign nonprofit corporation be kept current. Filings for changes in the corporation’s registered office or agent are required by sections 221 and 222, and need not be duplicated by an amendment to the registration statement.

§ 1305. ACTIVITIES NOT CONSTITUTING DOING BUSINESS

(ba) The following activities, among others, Activities of a foreign nonprofit corporation that do not constitute conducting activities within the meaning of subsection (a) of doing business in this state for purposes of this [Chapter] include:

(1) maintaining, defending, mediating, arbitrating, or settling an action or proceeding;

(2) holding meetings of the board of directors, a designated body, members, or delegates or carrying on other activities concerning internal corporate affairs;

(2) carrying on any activity concerning the internal affairs of the foreign corporation, including holding meetings of its members or board of directors;

(3) maintaining accounts in financial institutions or securities intermediaries;
(4) maintaining offices or agencies for the transfer, exchange, and registration of memberships or securities of the corporation or maintaining trustees or depositaries with respect to those memberships or securities;

(5) selling through independent contractors;

(6) soliciting or obtaining orders by any means if the orders require acceptance outside this state before they become contracts;

(7) creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(8) securing or collecting debts or enforcing mortgages and security interests in property securing the debts, and holding, protecting, or maintaining property so acquired;

(9) owning, without more, real or personal property;

(10) conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated similar transactions of a like nature;

(11) soliciting or accepting contributions; or

(12) conducting activities in interstate commerce.

(c) The list of activities in subsection (b) is not exhaustive.

(db) A person does not conduct activities or do business in this state solely by being an interest holder or governor of a domestic unincorporated entity or a foreign unincorporated entity that does business or conducts activities in this state or foreign entity or exercising the powers or duties of an interest holder or governor.

(ec) This section is not a limitation on does not apply in determining the contacts or activities that may subject a foreign nonprofit corporation to service of process, taxation, registration as a charity, regulation of charitable solicitations, or other regulation under the laws of this state other than this act.

(f) The law of the jurisdiction under which a foreign nonprofit corporation is incorporated governs:

(1) the internal affairs of the corporation;

(2) the liability that a person has as a member, director, or member of a designated body for a debt, obligation, or other liability of the corporation.

(g) A foreign nonprofit corporation is not precluded from registering to conduct activities in this state because of any difference between the law of its jurisdiction of incorporation and the law of this state.

(h) Registration of a foreign nonprofit corporation to conduct activities in this state does not authorize the corporation to engage in any activity or exercise any power that a domestic
corporation may not engage in or exercise in this state.

Source Note: Patterned after Article 1 of the Model Business Corporation Act (2016 Revision), § 15.05. Subsection (b) is patterned in part after Uniform Business Organizations Code (2011) (Last Amended 2013) §§ 1-501 and 1-505(b).

CROSS-REFERENCES

Application of act to existing qualified foreign corporation, see § 17.02.
Certificate of authorityCorporate powers, see § 15.03.02.
“Foreign corporation” definedCorporate purposes, see § 1.40.01.
Penalty for conducting activities without authorityGoverning law, see § 15.02.1301.
“Proceeding” defined, see § 1.40.102.

OFFICIAL COMMENT

A state may prescribe the terms and conditions upon which a foreign nonprofit corporation is permitted to conduct activities within the state, subject, of course, to the restrictions of the United States Constitution. Chapter 15 requires that a foreign corporation seeking to conduct activities within the state must (1) register with the secretary of state, and (2) maintain a registered office and appoint a registered agent within the state.

Section 15.01(a) states the basic requirement that a foreign nonprofit corporation must register before it conducts activities within the state. Section 15.05 describes the scope of the privilege obtained by registration while Section 15.02 describes the consequences of conducting activities in the state without first registering.

The act does not attempt to formulate an inclusive definition of what constitutes the conduct of activities in a state. Rather, the concept is illustrated in a negative fashion by the non-exclusive list of examples in Section 15.01.1305(b), which states that certain of activities that do not constitute the conduct of activities do not constitute doing business. In general terms, any conduct more regular, systematic, or extensive than that described in Section 15.01.1305(b) constitutes the conduct of activities and requires the foreign nonprofit corporation to register to do business. Typical conduct requiring registration includes maintaining an office to conduct local intrastate activities, selling personal property not in interstate commerce, entering into contracts relating to the local business, and owning or using real estate for general corporate purposes. But the passive owning of real estate for investment purposes does not constitute conducting activities and does not require registration. See Section 15.01. Sections 1305(b)(98) and (a)(10).

The test of “conducting activities” defined in a negative way applies only under Chapter 13, and only to the question whether the foreign nonprofit corporation’s contacts with the activities in this state are such that it must register under Chapter 13. It is not applicable to other questions, such as whether the corporation is subject to service of process under state “long-arm” statutes or liable for state or local taxes. A corporation that has registered (or is required to register) to conduct activities under Chapter 15 will generally be subject to suit and state taxation in the state, while a
corporation that is subject to service of process or state taxation in a state will not necessarily be
required to register under Chapter 15.

The list of activities set forth in Section 15.01(b) is not exhaustive. See Section 15.01(c).
The list excludes several different types of activities from the definition of “conducting
activities,” which are discussed below.

The following provides additional guidance with respect to some of the activities listed in
section 1305(a) that will not, in and of themselves, constitute doing business in this state.

1. Engaging in Litigation and Other Proceedings

Under Section 15.01.1305(ba)(1) excludes “... a foreign nonprofit corporation is not doing
business by maintaining, defending, mediating, arbitrating, or settling an action or a proceeding...”
The word “proceeding” is, which as defined in Section 1.40 to include all includes civil, suits
and criminal, administrative, or investigative suits or and investigatory actions. Thus, a foreign
nonprofit Accordingly, a corporation is not “conducting activities” doing business solely because
it resorts to the courts of the this state to recover an, for example, collect indebtedness, enforce an
obligation, recover possession of personal property, obtain the appointment of a receiver,
intervene in a pending proceeding, bring a petition to compel arbitration, file an appeal bond, or
pursue appellate remedies. Similarly, a foreign corporation is not required to register merely
because it files a complaint with a governmental agency or participates in an administrative
proceeding within the this state.

2. Internal Affairs of the Corporation

As provided in Section 1305(a)(2), a foreign nonprofit corporation does not “conduct
activities” within a state under Section 15.01 do business in this state merely because some of its
internal affairs occur within the state. Thus, a corporation may hold it holds meetings of its
members or board of directors, a designated body, members, or delegates within this state
without first obtaining a certificate of authority (Section 15.01(b)(2)). It also may maintain
offices or agencies within a state relating solely to the transfer, registration, or exchange of its
memberships without registering (Section 15.01(b)(4)). Other activities relating to the internal
affairs of the corporation that do not constitute the conduct of activities under Section
15.01(b) doing business under this section include having officers or representatives of a
corporation who reside within or are physically present in the this state; while while there, the
officers or representatives may make executive decisions relating to the affairs of the corporation
without imposing on the corporation the requirement that it register in the state, so long as if
these activities are not so regular and systematic as to cause the residence to be viewed as a
business office.

3. Maintaining Bank Accounts

A foreign nonprofit corporation may maintain accounts with financial institutions or
securities intermediaries within the state, make deposits, and write checks on the account without
registering (Section 15.01(b)(3)).

4. Interstate Transactions

A foreign nonprofit corporation is not “conducting activities” within the meaning of
Section 15.01(a) if it is conducting activities in interstate commerce (Section 15.01(b)(12)) or soliciting or obtaining orders that must be accepted outside the state before they become contracts (Section 15.01(b)(6)). These limitations reflect the provisions of the United States Constitution that grant to the United States Congress exclusive power over interstate commerce, and preclude states from imposing restrictions or conditions upon this commerce. These sections should be construed in a manner consistent with judicial decisions under the United States Constitution. Under these decisions, a foreign corporation is not required to register even though it sells goods within the state if they are shipped to the purchasers in interstate commerce. A corporation need not register even if it also does work and performs acts within the state incidental to the interstate business, e.g., if it takes or enforces a security interest incidental to these transactions. Nor is it required to register merely because it sends traveling salesmen or solicitors into a state so long as contracts are not made within the state. Similarly, an office may be maintained by a corporation in a state without registering if the office’s functions relate solely to interstate commerce.

Purchases of goods may of course be in interstate commerce as readily as sales. Thus, the purchase of personal property by a foreign nonprofit corporation for shipment in interstate commerce out of the state does not require the corporation to register.

53. Sales through Independent Contractors

Under Section 1305(a)(5), a foreign nonprofit corporation does not need to register if it sells goods in this state through independent contractors (Section 15.01(b)(5)). These transactions are viewed as transactions by the independent contractors, not by the corporation itself, even though the corporation sets some limits or controls for its contractors. If these limits or rules are sufficiently pervasive, however, the corporation may be deemed to be selling for itself in intrastate commerce, and not through the independent contractors and therefore engaged in the conduct of activities in this state.

64. Creating, Acquiring, or Collecting Debts

The mere act of making a loan by a foreign nonprofit corporation that is not in the business of making loans does not constitute conducting activities in the state in which the loan is made. On the same theory, a foreign corporation may obtain security for the repayment of a loan, and foreclose or enforce the lien or security interest to collect the loan, without being deemed to be conducting activities. See Section 15.01(b)(7) and (8). Similariy, a refunding or “roll over” of a loan or its adjustment or compromise does not involve the conduct of activities.

75. Isolated Transactions

The concept of “conducting activities” involves regular, repeated, and continuing business contacts of a local nature. A single agreement or isolated transaction within a state does not constitute the conduct of activities if there is no intention to repeat the transaction or engage in similar transactions. Since the question is entirely one of fact, Section 15.01(b)(10) has a partially objective test that a transaction completed within 30 days does not constitute “conducting activities” if it is not one in the course of “repeated transactions of a like nature.” A continuing transaction that is not completed within 30 days will likely require registering.
whether or not it is one of a number of repeated transactions, but that issue is not addressed by
the act. The 30-day provision is, in other words, a “safe harbor” for not requiring registration.

The concept of doing business involves regular, repeated, and continuing business
activities in this state. A single agreement or isolated transaction within the state does not
constitute doing business. An isolated transaction does not constitute “doing business” regardless
of how long the transaction takes to complete.

8. CONTRIBUTIONS

Although Section 15.01(b)(11) provides that soliciting or accepting contributions is not
an activity that requires a foreign nonprofit corporation to register to conduct activities in the
state, those activities in many states require registration with the secretary of state or another
official under laws regulating the solicitation of charitable contributions.

96. OTHER Interstate Transactions

A foreign nonprofit corporation is not doing business within the meaning of Chapter 13 if
it is transacting business in interstate commerce (Section 1305 (a)(11)). This limitation reflects
the provisions of the United States Constitution that grant to the United States Congress
exclusive power over interstate commerce, and preclude states from imposing restrictions or
conditions upon this commerce.

7. Other Activities

Section 15.01(c) makes clear that the list of transactions in Section 15.01(b) is not
exhaustive. Among the large number of other transactions which do not give rise to the requirement of
a registration statement by a foreign nonprofit corporation are the ownership of all the shares of stock in a corporation that is engaged in local business within activities in the state or as a limited partner in a limited partnership engaged in local business activities in the state, or taking ministerial actions such as filing financing statements or registering trademarks.

§ 15.02. CONSEQUENCES OF CONDUCTING ACTIVITIES WITHOUT
REGISTRATION

(a) A foreign nonprofit corporation conducting activities in this state without registering to
conduct activities may not maintain a proceeding in any court in this state until it
registers.

(b) The successor to a foreign nonprofit corporation that conducted activities in this state
without registering to conduct activities and the assignee of a cause of action arising out
of those activities may not maintain a proceeding based on that cause of action in any
court in this state until the foreign corporation or its successor registers.

(e) A court may stay a proceeding commenced by a foreign nonprofit corporation, its
successor, or assignee until it determines whether the foreign corporation or its successor
is required to register to conduct activities. If it so determines, the court may further stay
the proceeding until the foreign corporation or its successor registers.

(d) Notwithstanding subsections (a) and (b), the failure of a foreign corporation to register to
conduct activities does not impair the validity of its corporate acts or prevent it from
defending any proceeding in this state.

Source Note: Patterned after Model Business Corporation Act, 3d Ed. (2002) § 15.02(a) (c) and (e). Reenactment of Revised Model Nonprofit Corporation Act (1987) § 15.02(a)-(c) and (e). Prior subsection (d) providing for a civil penalty for noncompliance omitted.

CROSS-REFERENCES

Certificate of authority, see § 15.03.
“Foreign corporation” defined, see § 1.40.
“Proceeding” defined, see § 1.40.
Conducting activities, see § 15.01.

OFFICIAL COMMENT

The purpose of Section 15.02 is to induce foreign nonprofit corporations that are required to register, but have not, to register promptly, without imposing harsh or erratic sanctions. The act rejects the provisions adopted in a few states that make unenforceable intrastate transactions by nonregistered corporations or that impose punitive sanctions or forfeitures on nonregistering corporations. Often the failure to register is a result of inadvertance or bona fide disagreement as to the scope of the provisions of Section 15.01, which are necessarily imprecise; the imposition of harsh sanctions in these situations is inappropriate. Further, as a matter of state policy it is generally preferable to encourage registration in case of doubt rather than to impose severe sanctions that may cause corporations to resist registering in doubtful situations.

Section 15.02 closes the courts of the state to suits maintained by foreign nonprofit corporations that should have, but have not, registered. However, this sanction is not a punitive one. Section 15.02(e) states that the failure of the corporation to register does not affect the validity of corporate acts, including contracts. Thus, a contract made by a nonregistered corporation may be enforced by the corporation simply by registering. Further, Section 15.02(c) authorizes a court to stay a proceeding to determine whether a corporation should have registered to conduct activities and, if it concludes that registration is necessary, it may grant a further stay to permit the corporation to do so. Thus, the corporation will not be compelled to refile a suit if the corporation registers to conduct activities within a reasonable period. The purpose of these provisions is to encourage corporations to register and to eliminate the temptation to raise Section 15.02 defenses only after applicable statutes of limitation have run.

Section 15.02(d) does not prevent a foreign nonprofit corporation that has failed to register from “defending any proceeding.” The distinction between “maintaining” a proceeding under Section 15.02(a) and “defending any proceeding” under Section 15.02(d) is determined on the basis of whether affirmative relief is sought. A nonregistered corporation may interpose any defense or permissive or mandatory counterclaim to defeat a claimed recovery, but may not obtain an affirmative judgment or decree based on the counterclaim unless it has registered.

In addition to closing the courts of the state to a nonregistered foreign nonprofit corporation, some states impose a penalty equal to all fees and franchise taxes that the foreign corporation would have been liable for if it had registered to conduct activities when it was first required to do so. This penalty is usually defined to equal the sum of fees and franchise taxes for each year or part thereof the corporation conducted activities in the state without registering. A similar provision has not been included in the act.

Section 15.02(b) prevents evasion of Section 15.02(a) by an assignment of a claim on which the foreign nonprofit corporation is barred from bringing suit under Section 15.02(a). If
the successor has acquired all or substantially all of the assets of the foreign corporation, the
successor may maintain suit after it has registered. In the case of all other assignments, the
foreign corporation itself must register before the assignees may maintain suit on the claim. The
phrase "all or substantially all" has the meaning set forth in the Official Comment to Section
12.01. Subsection (b) only applies to successors that are foreign entities.

§ 15.03. REGISTRATION TO CONDUCT ACTIVITIES
A foreign nonprofit corporation may register to conduct activities in this state by delivering a
registration statement to the secretary of state for filing. The statement must set forth:

1. the name of the foreign corporation or, if its name is unavailable for use in this
   state, a name that satisfies the requirements of Section 15.06;
2. the name of the state or country under whose law it is incorporated;
3. its date of incorporation and period of duration, if any;
4. the street address of its principal office; and
5. the address of its registered office in this state and the name of its registered agent
   at that office; and
6. the names and usual business addresses of its current directors and officers.

Source Note: Patterned after Model Business Corporation
Act, 3d Ed. (2002) § 15.03(a). Reenactment of Revised
Model Nonprofit Corporation Act (1987) § 15.03(a), except
paragraphs (a)(7) and (8) which have been omitted.

CROSS-REFERENCES
Amended certificate of authority, see § 15.04.
Application of act to existing qualified foreign corporation, see § 17.02.
Corporate name, see § 15.06, Ch. 4.
"Deliver," see § 1.40.
Filing fees, see § 1.22.
Filing and signature requirements, see § 1.20.
Forms, see § 1.21.
"Principal office":
   defined, see § 1.40.
   designated in annual report, see § 16.21.
Registered office and agent, see §§ 2.02, 5.01, and 15.07.
Report to secretary of state, see § 16.21.

OFFICIAL COMMENT
I. Disclosure Requirements in General
Section 15.03 provides that a foreign nonprofit corporation seeking to register to conduct
activities in the state must file a statement that contains the information set forth in this section.
These disclosure requirements are supplemented by the requirements of other sections in this
chapter—15.04, 15.06, and 15.07—which require amended or supplemental filings in certain
circumstances, and by Section 16.21, which requires every registered foreign corporation to file
annual reports containing specified information. Generally, the act eliminates repetitious filings,
so that information need be submitted to the secretary of state in only one document.
The purposes of these disclosure requirements are: (1) to ensure that citizens of the state
have adequate information about foreign nonprofit corporations in their transactions with them;
(2) to put foreign corporations in a status of equality with domestic corporations with respect to
information required to be furnished; (3) to facilitate the subjection of foreign corporations to the
jurisdiction of the state’s courts, thereby removing any disadvantage citizens of the state may
have when dealing with them; and (4) to provide readily accessible evidence of the existence of
foreign corporations. Other statutes relating to franchise taxes and regulatory matters may
require a registered foreign corporation to provide additional information.

2. REGISTRATION STATEMENT
The information required to be included in registration statement by Section 15.03 is the
minimum needed to administer the filing requirements of the act. The statement must also be
accompanied by the filing fee required by Section 1.22. A corporation that registers to conduct
activities in a state must comply with the requirements of other applicable statutes. See Section
15.05.

§ 15.04. AMENDMENT OF REGISTRATION TO CONDUCT ACTIVITIES
(a) A foreign nonprofit corporation registered to conduct activities in this state must amend
its registration if it changes:
   (1) its name;
   (2) the period of its duration;
   (3) the state or country of its incorporation; or
   (4) an address required by Section 15.03(a)(4) or (5).
(b) A foreign nonprofit corporation amends its registration to conduct activities by delivering
to the secretary of state a statement of amendment that states:
   (1) the name under which the corporation is registered as shown in the records of the
       secretary of state;
   (2) the date on which the corporation’s statement of registration was first filed; and
   (3) the changes to be made to the information shown in the records of the secretary of
       state.

Source Note: Derived from Revised Model Nonprofit

CROSS-REFERENCES
   Change of registered office or agent, see § 15.08.
   Corporate name, see § 15.06, Ch. 4.
   Duration, see § 3.02.
   Filing fees, see § 1.22.
   Filing requirements, see § 1.20.
   Forms, see § 1.21.
   Registration to conduct activities, see § 15.03.
   Resignation of registered agent, see § 15.09.

OFFICIAL COMMENT
Section 15.04 requires a foreign nonprofit corporation to amend its registration to
conduct activities in the state if it changes its corporate name, its duration, the state or country of
its incorporation, or an address it has on file. An amendment is not necessary to reflect changes
in its current officers or directors since that information is supplied in the annual report.
Other fundamental changes by a foreign nonprofit corporation do not require
amendments to the certificate of authority. The secretary of state will be advised of most of
these changes through the annual report. See Section 16.21. Thus, a person seeking to obtain
current information about a foreign corporation should examine the annual reports of the
procedure of requiring most changes to be reported in the annual reports rather than as amendments to the certificate of authority should eliminate many unnecessary filings with the secretary of state without reducing the information available through the secretary of state’s office.

§ 15.05. EFFECT OF REGISTRATION

(a) Registration to conduct activities authorizes the foreign nonprofit corporation to conduct activities in this state, subject to the right of the state to revoke the registration as provided in this [act].

(b) A foreign nonprofit corporation that is registered to conduct activities has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided by this [act] is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic nonprofit corporation.


CROSS-REFERENCES
Corporate powers, see § 3.02.
Corporate purposes, see § 3.01.
Law governing internal affairs, see § 15.01(f).
Revocation of registration, see §§ 15.30-15.32.
Withdrawal of foreign corporations, see § 15.20.

OFFICIAL COMMENT

Registration authorizes a foreign nonprofit corporation to conduct activities in the state subject to the right of the state to revoke the registration. The privileges of this status are defined in Section 15.05(b): a registered foreign corporation has the same (but no greater) privileges as a domestic corporation.

Section 15.05(b), by granting to registered foreign nonprofit corporations all of the rights and privileges enjoyed by a domestic nonprofit corporations, avoids discrimination that might otherwise be subject to constitutional challenge. On the other hand, Section 15.05(b) also contains a restriction or limitation: a registered foreign corporation is subject to the same restrictions as a domestic corporation, including the same duties, penalties, and liabilities. This latter aspect of Section 15.05(b) has declined in importance as states have eliminated unnecessary or outdated restrictions on domestic corporations and, as a consequence of Section 15.05(b), on registered foreign corporations as well. In particular, Section 15.05(b) makes Section 3.01 (corporate purposes) applicable to a registered foreign corporation, and grants substantially the same powers to it as are possessed by a domestic corporation.

Section 15.05(c) preserves the judicially developed doctrine that internal corporate affairs are governed by the state of incorporation even when the foreign nonprofit corporation’s activities and assets are located primarily in other states.

Registering under this subchapter is independent of compliance with a state’s laws on the solicitation of charitable contributions and possibly attendant registration requirements.

§ 15.061306. NONCOMPLYING NAME OF FOREIGN CORPORATION

(a) A foreign nonprofit corporation whose name does not comply with section 4.01 Section 210 (corporate name) may not register to conduct activities do business in this state
until it adopts, for the purpose of conducting activities doing business in this state, an alternate name that complies with section 4.01. A foreign corporation by filing a foreign registration statement under Section 1303 (foreign registration statement), or if applicable, a transfer of registration statement under Section 1310 (transfer of registration), setting forth that alternate name. A corporation that registers under adopting an alternate name under as provided in this subsection need not comply with file under this state’s assumed or fictitious name statute with respect to that alternate name. After registering to conduct activities doing business in this state under with an alternate name, a foreign entity corporation shall conduct activities doing business in this state under:

(1) the alternate name;
(2) the foreign corporation’s name, with the addition of its governing jurisdiction of incorporation; or
(3) a name the foreign corporation is authorized to use under [this state’s the assumed or fictitious name statute] of this state.

(b) If a registered foreign nonprofit corporation authorized to conduct activities in this state changes its name to one after registration to a name that does not satisfy the requirements of comply with Section 4.01, it may not conduct activities doing business in this state under the changed name until it adopts a name satisfying the requirements of Section 4.01 and amends complies with subsection (a) by amending its registration under statement to adopt an alternate name that complies with Section 4.04.

Source Note: Patterned after Article 1 of the Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-506. Derived from Revised Model Nonprofit Model Business Corporation Act (19872016 Revision), § 15.06.

CROSS-REFERENCES

Amended certificate of authority Amendment of foreign registration statement, see § 45.04 1304.
Corporate names generally, see Ch. 42.
“Deliver,” see § 1.40.
Effective time and date of filing, see § 1.23 163.
Filing fees, see § 1.22.
Filing requirements, see § 1.23 160.
Foreign registration statement, § 1303.
Registered name, see § 4.03 212.
Reserved name, see § 4.02 211.

OFFICIAL COMMENT
The purpose of Section 15.06, like that of Section 4.01 relating to the name of a domestic nonprofit corporation, is to ensure that names are distinguishable from one another upon the records of the secretary of state. Like Section 4.01, it does not impose upon the secretary of state the responsibility of deciding issues of unfair competition or commercial similarity of names.

A foreign nonprofit corporation registering to conduct activities must apply register under its true name if that name qualifies under Section 4.01. If the true name is unavailable because it is indistinguishable upon satisfies the requirements of Section 210. If that name cannot be used because it does not comply with Section 210, the corporation may adopt and use an alternate name as provided in this section. Because the alternate name will be part of the records of the secretary of state from a name already in use or reserved, the corporation may use a fictitious name (if available) under Section 15.06(a) simply by delivering to the secretary of state for filing a registration statement that uses an available name. An otherwise unavailable name of a foreign corporation may be used if the name is augmented by the name of the state of its incorporation so as to make it distinguishable upon the records of the secretary of state. For example, a Delaware corporation, “Utopian Products, Inc.” which finds that a domestic corporation is using that name, may qualify under the name “Utopian Products, Inc. (Delaware).” by reason of the foreign registration statement, Section 1306(a) provides that an assumed or fictitious name filing with respect to the alternate name is not required. However, the assumed or fictitious name statute will apply to any other name under which the foreign nonprofit corporation does business in this state.

A foreign nonprofit corporation that registers to conduct activities in the state may use an assumed name to the same extent as a domestic corporation. The name requirements of Sections 4.01 and 15.06, including the fictitious name of a corporation whose real name is unavailable, are designed to ensure that each corporation qualified to conduct activities in this state has a unique official name. For a fuller description of the policies underlying Section 15.06, see the Official Comment to Section 4.01.

If a foreign nonprofit corporation changes its name it may (1) file an amended certificate of authority under its new name or, if the new name is not available, (2) continue to conduct activities under its former name as an assumed name, or (3) adopt a new assumed name, by amending its registration to use the new assumed name.

§ 15.07. REGISTERED OFFICE AND REGISTERED AGENT OF FOREIGN CORPORATION

Each foreign nonprofit corporation registered to conduct activities in this state must continuously maintain in this state:

(1) a registered office that may be the same as any of its places of business; and

(2) a registered agent, who may be:

(i) an individual who resides in this state and whose business office is identical with the registered office;

(ii) a domestic nonprofit or business corporation or unincorporated entity whose business office is identical with the registered office; or

(iii) a foreign nonprofit or business corporation or unincorporated entity registered that registers to do business or conduct activities in this state whose business office is identical with the registered office may do business under a fictitious name to the same extent as a domestic nonprofit corporation.
CROSS-REFERENCES

Changing registered office or agent, see § 15.08.
Registered office and agent generally, see Ch. 5.
Resignation of registered agent, see § 15.09.
Revocation of registration does not affect authority of registered agent, see § 15.31.
Revocation of registration for failure to appoint and maintain registered office and agent, see § 15.30.
Service on foreign corporation, see §§ 15.10, 15.20, 15.31.

OFFICIAL COMMENT

A foreign nonprofit corporation that registers in a state thereby agrees that it is amenable to suit in the state. Section 15.07 requires every such corporation continuously to maintain a registered office and registered agent within the state upon whom service of process may be made. As is the case with a domestic nonprofit corporation, the registered office may, but need not be, a business office of the foreign corporation.

Section 15.07 is patterned after Section 5.01, relating to the registered office and registered agent of a domestic nonprofit corporation. For a fuller description of the policies underlying Section 15.07, see the Official Comment to Section 5.01.

§ 15.08. CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT OF FOREIGN CORPORATION

(a) A foreign nonprofit corporation registered to conduct activities in this state may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

(1) its name;
(2) the street address of its current registered office;
(3) if the current registered office is to be changed, the street address of its new registered office;
(4) the name of its current registered agent;
(5) if the current registered agent is to be changed, the name of its new registered agent and the new agent’s written consent (either on the statement or attached to it) to the appointment; and
(6) that after the changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the street address of its business office, the agent shall change the street address of the registered office of any foreign nonprofit corporation for which the person is the registered agent by delivering notice to the corporation in the form of a record of the change and signing and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection (a) and states that the corporation has been notified of the change.

CROSS-REFERENCES
“Deliver” defined, see § 1.40.
Effective time and date of filing, see § 1.23.
Filing fees, see § 1.22.
Filing requirements, see § 1.20.
Notice, see § 1.41.
Resignation of registered agent, see § 15.09.
Revocation of registration for failure to file notice of change of registered office or agent, see § 15.30.

**OFFICIAL COMMENT**

A foreign nonprofit corporation that changes its registered agent or registered office, or both, must file a statement with the secretary of state containing the information set forth in Section 15.08(a). A registered agent, typically a corporation service company, that changes the street address of its business office (and thereby the street address of the registered office of all corporations for which it serves as registered agent) may notify the secretary of state by complying with Section 15.08(b).

This section is patterned after Section 5.02, relating to changes of registered office or registered agent of a domestic nonprofit corporation. For a fuller description of the policies underlying Section 15.08, see the Official Comment to Section 5.02.

§ 15.09. RESIGNATION

WITHDRAWAL OF REGISTRATION OF REGISTERED AGENT OF FOREIGN CORPORATION

(a) A registered agent may resign as agent for a registered foreign nonprofit corporation by delivering to the secretary of state for filing a statement of resignation signed by the agent which states:

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

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

(1) 12:01 a.m. on the 31st 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 registered foreign nonprofit corporation.

(c) A registered agent promptly shall furnish to the registered foreign nonprofit corporation notice in record form 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 [act] for any matter thereafter tendered to it as agent for the registered foreign nonprofit corporation. The resignation does not affect any contractual rights the foreign corporation has against the agent or that the agent has against the foreign corporation.

(e) A registered agent may resign with respect to a registered foreign nonprofit corporation whether or not the foreign corporation is in good standing.

Source Note: Patterned after Article 1 of the Uniform Business Organizations Code (2011) (Last Amended 2013)
§ 1-410. Derived from Revised Model Nonprofit

CROSS-REFERENCES
Change of registered agent, see § 15.08.
“Deliver,” see § 1.40.
Filing fees, see § 1.22.
Filing requirements, see § 1.20.

OFFICIAL COMMENT
Section 15.09 permits the registered agent of a foreign nonprofit corporation to resign by following the procedure set forth in the section, which is designed to maximize the probabilities that the corporation is advised of the resignation of the agent. This section is principally used by compensated registered agents who are corporation service companies and who desire to resign as registered agent as a result of nonpayment of fees. Section 15.09 is patterned after Section 5.03, relating to the resignation of a registered agent of a domestic corporation. For a fuller description of the policies underlying Section 15.09, see the Official Comment to Section 5.03.

§ 15.10. SERVICE ON FOREIGN CORPORATION
(a) The registered agent of a foreign nonprofit corporation registered to conduct activities in this state is the corporation’s agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.
(b) If a foreign nonprofit corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by delivery of the process in record form to the secretary of the corporation at its principal office. Service is effective under this subsection as provided in Section 1.41(e).
(c) If process, notice, or demand cannot be served on a foreign nonprofit corporation pursuant to subsection (a) or (b), service may be made by handing a copy to the individual in charge of any regular place of activity of the foreign corporation if the individual served is not a plaintiff in the action.
(d) If process, notice, or demand cannot be served on a foreign nonprofit corporation pursuant to subsection (a), (b), or (c), the secretary of state shall be an agent of the corporation upon whom process, notice, or demand may be served. Service of any process, notice, or demand on the secretary of state as agent for a corporation may be made by delivering to the secretary of state duplicate copies of the process, notice, or demand. If process, notice, or demand is served on the secretary of state, the secretary of state shall forward one of the copies by registered or certified mail, return receipt requested, to the corporation at the last address shown in the records of the secretary of state. Service is effected under this subsection (c) at the earliest of:
(1) the date the corporation receives the process, notice, or demand;
(2) the date shown on the return receipt, if signed on behalf of the corporation; or
(3) five days after the process, notice, or demand is deposited with the United States Postal Service by the secretary of state.
(e) This section does not prescribe the only means, or necessarily the required means, of serving a foreign nonprofit corporation.

OFFICIAL COMMENT

Service on the registered agent is the typical method of service of process on a registered foreign nonprofit corporation. Section 15.10(a). But if the corporation does not have a registered agent, or if the agent cannot be found at the registered office, Section 15.10(b) authorizes service on the secretary of the corporation at its principal office. Service may be effected in the same way on a corporation which has withdrawn from the state or whose registration has been revoked. Section 15.10(c) establishes the date on which service is effective under Section 15.10(b), while Section 15.10(d) makes clear that the method of service provided by this section does not preclude the use of other means of effecting service of process. Service of process may also be effected, for example, under a "long-arm" statute or under other special statutes authorizing service in some other manner.

Section 15.10 is patterned after Section 5.04, relating to service of process on domestic nonprofit corporations. For a fuller description of the policies underlying Section 15.10, see the Official Comment to Section 5.04.

§ 15.20. Withdrawal of foreign corporation.
§ 15.21. Automatic withdrawal upon certain conversions.
§ 15.22. Withdrawal upon certain fundamental transactions.
§ 15.23. Transfer of registration.

§ 15.20. WITHDRAWAL OF FOREIGN CORPORATION

(a) A registered foreign nonprofit corporation registered to conduct activities in this state 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 corporation and state:

(1) the name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) that it is not conducting activities or doing business in this state and that it withdraws its registration to conduct activities or do business in this state; and

(3) that it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was registered to conduct activities in this state;

(4) a mailing address to which the secretary of state may mail a copy of any process served on him under paragraph (3).
(b) After the withdrawal of the registration of a foreign nonprofit corporation is effective, service of process on the secretary of state under this section with respect to activities of the foreign corporation in this state prior to withdrawal is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection (a)(4). May be made as provided in Section 223 (service on domestic and foreign nonprofit corporations).


CROSS-REFERENCES

“Deliver” defined Administrative termination of foreign registration, see § 1.40 1311.
Changing registered office or agent, § 221.
Effective time and date of filing, see § 1.23 163.
Filing fees, see § 1.22.
Filing requirements, see § 1.20 160.
Foreign corporation included in definition of “corporation” for purposes of Ch. 2, § 220.
Forms, see § 1.21.
Registered office and agent, see § 15.07 Ch. 2.
Service of process fees Resignation of registered agent, see § 1.22 222.
Service of process on foreign corporation, see § 15.10 223.

Conducting activities, see § 15.01.

OFFICIAL COMMENT

A foreign nonprofit corporation that ceases to conduct activities within a state may withdraw from the state only by delivering a of withdrawal to the secretary of state for filing.

The statement of withdrawal must appoint set forth an address where service of process may be sent to the foreign nonprofit corporation by the secretary of state as the withdrawing corporation’s agent for service of process in any proceeding based on a cause of action which arose during the time it was registered to conduct activities in the state. The statement must also set forth a mailing address to which the secretary of state may forward any process received, and the corporation must agree to notify the secretary of state of any change in that address. There is no time limit on the obligation to advise the secretary of state of changes of mailing address pursuant to section 223(c).

Service of process on the secretary of state pursuant to the statements in the statement of withdrawal effects service on the corporation under Section 15.20(b). The secretary of state must then mail the process to the corporation at the mailing address specified in the statement or in a subsequent communication to the secretary of state advising the secretary of state of a change in mailing address.
§ 15.21. AUTOMATIC DEEMED WITHDRAWAL UPON DOMESTICATION OR CONVERSION TO CERTAIN DOMESTIC ENTITIES

The registration statement of a registered foreign nonprofit corporation registered to conduct activities in this state that domesticates to a domestic nonprofit corporation or converts to a domestic business corporation or any form of domestic filing entity shall be deemed to have withdrawn its registration on the effective date of the conversion or to a domestic limited liability partnership is cancelled automatically on the effectiveness of such event.


CROSS-REFERENCES

“Domestic business corporation” defined, see § 1.40.
Conversion, Ch. 9E.
Domestication, Ch. 9D.
“Filing entity” defined, see § 1.40.102.

“Foreign nonprofit corporation” defined, see § 1.40.

OFFICIAL COMMENT

The procedures by which a foreign nonprofit corporation may convert to a domestic business corporation or a domestic filing entity are outside the scope of this act. The purpose of this section is simply to coordinate the foreign corporation provisions of this act with those other procedures.

States that authorize a When a registered foreign nonprofit corporation to convert has domesticated or converted to a domestic business corporation or a domestic filing entity may wish to include the rule of this section in the statute or statutes providing for those conversions and, in that event, this section may be omitted. Entity of the type set forth in this section, information about that 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 withdrawn.

§ 15.22. WITHDRAWAL UPON DISSOLUTION OR CONVERSION TO CERTAIN FUNDAMENTAL TRANSACTIONS NONFILING ENTITIES

(a) A foreign nonprofit corporation registered to conduct activities in this state shall withdraw its registration if it:

(1) is not the surviving entity in a merger;

(2) is dissolved; or

(3) converts to a domestic or foreign nonfiling entity.
(b) The registered foreign nonprofit corporation shall deliver a statement of withdrawal that has dissolved and completed winding up or has converted to a domestic or foreign nonfiling entity other than a limited liability partnership must deliver to the secretary of state for filing a statement of withdrawal. The statement must be signed by the dissolved corporation or the converted nonfiling entity and state:

(1) in the name of the foreign nonprofit case of a corporation and the name of the state or country under whose law it was incorporated before the conversion that has completed winding up:

(i) its name and governing jurisdiction; and

(ii) that it withdraws its registration to conduct activities to do business in this state as a foreign nonprofit corporation and revokes the authority of its registered agent to accept service on its behalf; or

(2) in the case of a corporation that has converted to a domestic or foreign nonfiling entity other than a limited liability partnership:

(i) the name of the converting corporation and its governing jurisdiction;

(ii) the type of unincorporated nonfiling entity to which it has been converted and its name and governing jurisdiction whose laws govern its internal affairs; and

(iii) if it has been converted to a foreign unincorporated entity:

(a) that it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was registered to conduct activities in this state;

(b) a mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under paragraph (i); and

(c) a commitment to notify the secretary of state in the future of any change in its mailing address that it withdraws its registration to do business in this state and revokes the authority of its registered agent to accept service on its behalf.

(c) After the withdrawal under this section of a corporation that has converted to a foreign unincorporated entity is effective, service of process on the secretary of state is service on the foreign unincorporated entity. Upon receipt of process, the secretary of state must mail a copy of the process to the foreign unincorporated entity at the mailing address set forth under subsection (b)(4).

(db) After the withdrawal under this section of a corporation that has converted to a domestic unincorporated entity is effective, service of process must be made on the unincorporated entity in accordance with the regular procedures for service of process on the form of unincorporated entity to which the corporation was converted.
foreign nonprofit corporation, service may be made as provided in Section 223 (service on
domestic and foreign nonprofit corporations).

Source Note: Patterned after Model Business
15.2215.09.

CROSS-REFERENCES

“Domestic unincorporated entity” defined, see § 1.40 421.
Change of registered agent, § 221.
Conversion, Ch. 9E.
Effective time and date of filing, see § 1.23 163.
Filing requirements, § 160.
“Foreign nonprofit corporation” defined or foreign corporation included in definition of
“corporation” for purposes of Ch. 2, see § 1.40.220
“Foreign unincorporated entity” defined, see § 1.40.
“Nonfiling entity” defined, see § 1.40 102.
Registered agent, §§ 220 through 222.
“Unincorporated entity” defined, see § 1.40 223.

OFFICIAL COMMENT

The procedures by which a foreign nonprofit corporation may convert
to a domestic or foreign entity are outside the scope of this act. Other than a limited liability partnership, there is no further
reason for information about it to appear in the records of the secretary of state. This section thus
requires delivery of a statement of withdrawal for the purpose of removing the entity from the
rolls of active entities.

In the case of a conversion of a foreign nonprofit corporation to a domestic business
corporation or a domestic filing entity, a filing with the secretary of state will be necessary to
effectuate the conversion, and thus it is possible for Section 15.21 to provide that the previous
filing by the converting entity as a foreign nonprofit corporation will be cancelled automatically.
In the case of a conversion that is the subject of this section, however, a filing with the secretary of state is not necessary to effectuate the conversion. Thus, absent the procedures in this section,
there would be no document of public record indicating that the conversion has occurred and the
converted entity would incorrectly continue to appear in the public records as a foreign nonprofit
corporation.

§ 15.231310. TRANSFER OF REGISTRATION

(a) A foreign nonprofit corporation registered to conduct activities in this state that converts
to a foreign business corporation or to any form of foreign unincorporated entity that is
required to register to conduct activities with the secretary of state if it conducts activities
in this state must deliver to the secretary of state for filing an application for transfer of
registration executed by any officer or other duly authorized representative. The application must set forth:

(a) If a registered foreign nonprofit corporation merges into a nonregistered foreign filing entity or converts to a foreign filing entity, the surviving or converted entity must deliver to the secretary of state for filing a transfer of registration statement. The transfer of registration statement must be signed by the surviving or converted entity and state:

   (1) the name of the registered foreign nonprofit corporation and its governing jurisdiction before the merger or conversion;

   (2) the type of entity to which it has been converted and the jurisdiction whose laws govern its internal affairs; name of the surviving or converted entity and its governing jurisdiction after the merger or conversion and, if the name does not comply with Section 210 (corporate name), an alternate name adopted pursuant to Section 1306 (noncomplying name of foreign corporation); and

   (3) any other information that would be required in a filing under the laws of this state by an entity of the type the corporation has become seeking to register to conduct activities in this state regarding the surviving or converted entity after the merger or conversion:

      (i) the street and mailing addresses of the principal office of the entity and, if the law of the foreign entity’s governing jurisdiction requires it to maintain an office in that jurisdiction, the street and mailing addresses of that office; and

      (ii) the street and mailing addresses of the foreign entity’s registered office in this state and the name of its registered agent at that office.

(b) The application for transfer of registration shall be delivered to the secretary of state for filing and shall take effect at the effective time provided in Section 1.23, statement as determined in accordance with Section 163 (effective time and date of filing), the registration of the registered foreign corporation to do business in this state is transferred without interruption to the foreign entity into which it has merged or to which it has been converted.

(c) Upon the effectiveness of the application for transfer of registration, the registration of the corporation under this [chapter] to conduct activities in this state shall be transferred without interruption to the converted entity which shall thereafter be registered to conduct activities in this state under the laws of this state applicable to that type of entity.


CROSS-REFERENCES

“Deliver” defined, see § 1.40.
Filing fees Annual report, see § 1.22 421.
Corporate name, Ch. 2. Notices and other communications, see § 1.20.

“Principal office” defined, § 102.

designated in annual report, § 421.

“Foreign business Service on foreign corporation” defined, see § 1.40.

“Foreign nonprofit corporation” defined, see § 1.40.

“Foreign unincorporated entity” defined, see § 1.40.

“Unincorporated entity” defined, see § 1.40.

OFFICIAL COMMENT

The procedures by which a foreign nonprofit corporation may convert to a foreign business corporation or a foreign unincorporated entity required to register to transact business in this state are outside the scope of this act.

The purpose of this section is to clarify the status of the merged or converted registered foreign nonprofit corporation in the public records of this state, and to reflect the status of the surviving or converted entity. A filing under this section has the two-fold effect of canceling the registration of the foreign nonprofit corporation to conduct activities in this state while at the same time reregistering it as the new foreign entity under the appropriate law of this state. If the nonprofit corporation, if the reregistered foreign entity nonprofit corporation subsequently wishes to cancel its registration to transact business in this state, it may do so under the foreign entity provisions to which it has become subject as provided in Section 15.23(c).

§ 1311. ADMINISTRATIVE TERMINATION OF REGISTRATION

[Subchapter] C

REVOCATION OF CERTIFICATE OF AUTHORITY

§ 15.30. Grounds for revocation.

§ 15.31. Procedure for and effect of revocation.

§ 15.32. Appeal from revocation.

§ 15.30. GROUNDS FOR REVOCATION

(a) The secretary of state may commence a proceeding under Section 15.31 to revoke the registration of a registered foreign nonprofit corporation to conduct activities in this state in the manner provided in subsections (b) and (c) if:

(1) the foreign corporation does not deliver its annual report to the secretary of state within 120 days after it is due;

(2) the foreign corporation does not pay within 120 days after they are due any fees, taxes, interest or penalties imposed by this Act or other laws of this state that are collected by the secretary of state;

(2) the corporation does not deliver its annual report to the secretary of state within 60 days after it is due;
(3) the foreign corporation is without a registered agent or registered office in this state for 120 days or more; or

(4) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or did not survive a merger, has not been notified within 60 days that the foreign corporation’s registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.


CROSS-REFERENCES

Annual report, see § 16.21.
Appeal from revocation, see § 15.32.
“Deliver,” see § 1.40.
Delivery of false document to secretary of state, see § 1.29.
Procedure for revocation, see § 15.31.
Registered office and agent, see §§ 15.07 and 15.08.

OFFICIAL COMMENT

Section 15.30 authorizes the administrative revocation of the registration of a foreign nonprofit corporation on the grounds specified. Administrative revocation is effective only upon compliance with the procedure specified in Section 15.31. A foreign corporation that believes the administrative revocation is unwarranted may obtain judicial review of the secretary of state’s determination pursuant to Section 15.32.

If a registered foreign nonprofit corporation has dissolved or merged into another corporation, the secretary of state may proceed to revoke its registration to conduct activities solely on the basis of a certificate from the secretary of state or other official of the state of incorporation. Section 15.30(6). This subdivision provides a simple and inexpensive method to eliminate the names of corporations that are no longer in existence from the records of the secretary of state, thereby making the corporate names available for use by other entities.

Section 15.30 is patterned after Section 14.20, relating to the administrative dissolution of domestic corporations. See the Official Comment to Section 14.20 for a fuller description of the policies underlying Section 15.30.

§ 15.31. PROCEDURE FOR AND EFFECT OF REVOCATION

(a) The secretary of state, upon determining that one or more grounds exist under Section 15.30 for revocation of a registration to conduct activities, shall serve the foreign nonprofit corporation with notice of that determination under Section 15.10.

(b) If the foreign nonprofit corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 120 days after service of the notice is perfected under Section 15.10, the secretary of state may revoke the foreign nonprofit corporation’s registration to conduct activities by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The
secretary of state shall file the original of the certificate and serve a copy on the foreign
corporation under Section 15.10.

(c) The secretary of state may terminate the registration of a registered foreign
nonprofit corporation to conduct activities in this state ceases on the date shown on the certificate
revoking its registration by:

(1) filing a statement of termination; and

(2) delivering a copy of the statement of termination to the corporation’s
registered agent or, if the corporation does not have a registered agent, to the corporation’s
principal office.

(c) The statement of termination must state:

(1) the effective date of the termination, which must be not less than [60] days
after the secretary of state delivers the copy of the statement of termination as prescribed in
subsection (b)(2); and

(2) the grounds for termination under subsection (a).

(d) The secretary of state’s revocation of a registered foreign
nonprofit corporation’s registration to conduct activities appoints the secretary of state the
foreign corporation’s agent for service of process in any proceeding based on a cause of action
that arose during the time the foreign corporation was registered to do business in this state.
Service of process on the secretary of state under this subsection is service on the foreign
corporation. Upon receipt of process, service may be made as provided in Section 223 (service on domestic
and foreign nonprofit corporation’s registration to conduct activities does not terminate the
authority of the registered agent of the corporation).

(e) Revocation of a registered foreign nonprofit corporation’s registration terminates the
corporation’s authority to conduct activities in this state.

Source Note: Patterned after Model Business
from Revised Model Nonprofit Corporation Act
(1987) § 15.31(a) and (c) (e). (2016 Revision), § 15.11.

CROSS-REFERENCES

Activities not constituting doing business, § 1305.
OFFICIAL COMMENT

The procedure for revocation of a registration in Section 15.31 establishes a simple method of completing the revocation while at the same time ensuring that the foreign nonprofit corporation is advised of the contemplated action and has an opportunity to contest it in appropriate situations. In most situations, revocation by the secretary of state will not be contested.

This section describes the circumstances under and manner in which the secretary of state may terminate the registration of a foreign corporation.

After revocation, the secretary of state is appointed the foreign nonprofit corporation’s agent for service of process; upon receipt of service, the secretary of state must forward the process to the foreign corporation’s principal address, as shown in its last filing. Revocation, however, does not of itself terminate the authority of the foreign corporation’s registered agent, so that process served on that agent by a third person who was unaware of the revocation may be effective.

Section 15.31 is patterned after Section 14.21, relating to the administrative dissolution of a domestic corporation. See the Official Comment to Section 14.21 for a fuller statement of the policies underlying Section 15.31.

§ 15.32. ACTION BY ATTORNEY GENERAL

The attorney general may maintain an action to enjoin a foreign nonprofit corporation from doing business in this state in violation of this [Act].

§ 15.32. APPEAL FROM REVOCATION

(a) A foreign nonprofit corporation may petition the [name or describe] court after service of the certificate of revocation is perfected under Section 15.10 to set aside the revocation. The petition must have attached to it copies of the foreign corporation’s statement of registration and the secretary of state’s certificate of revocation.

(b) The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

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

CROSS-REFERENCES

Effective date of service, see § 15.10.
Grounds for revocation Activities not constituting doing business in this state, see § 15.30.
Procedure for revocation, see § 15.31.

OFFICIAL COMMENT

A foreign nonprofit corporation whose registration is revoked may obtain judicial review of the revocation decision. In the review proceeding the court may summarily order the secretary of state to reinstate the corporation or take other action it deems appropriate.

Although the act provides no fines or penalties for failure to register to do business when required, Section 1312 confirms that the attorney general can nevertheless bring an action to enforce the laws of the state.

The court with jurisdiction over an appeal should be specified; it is typically either a court in the state capital or a court in the county in which the corporation’s principal office is located. Moreover, states adopting this section of the act should specify who has the burden of proof on appeal and the standard for judicial review. See the Official Comment to Section 1.26.
Summary report:
Litera® Change-Pro for Word 10.2.0.10 Document comparison done on 12/31/2019 12:37:37 PM

Style name: Default Style
Intelligent Table Comparison: Active
Original DMS: iw://imanage.blankrome.com/BRMATTERS/122418732/1
Modified DMS: iw://imanage.blankrome.com/BRMATTERS/122417840/1

Changes:
<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Add</td>
<td>425</td>
</tr>
<tr>
<td>Delete</td>
<td>623</td>
</tr>
<tr>
<td>Move From</td>
<td>0</td>
</tr>
<tr>
<td>Move To</td>
<td>0</td>
</tr>
<tr>
<td>Table Insert</td>
<td>0</td>
</tr>
<tr>
<td>Table Delete</td>
<td>0</td>
</tr>
<tr>
<td>Table moves to</td>
<td>0</td>
</tr>
<tr>
<td>Table moves from</td>
<td>0</td>
</tr>
<tr>
<td>Embedded Graphics (Visio, ChemDraw, Images etc.)</td>
<td>0</td>
</tr>
<tr>
<td>Embedded Excel</td>
<td>0</td>
</tr>
<tr>
<td>Format changes</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total Changes:</strong></td>
<td><strong>1048</strong></td>
</tr>
</tbody>
</table>