Ohio Legislative Service Commission

Bill Analysis

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Am. S.B. 98
130th General Assembly
(As Reported by S. Civil Justice)

Sens. Obhof and Kearney, Eklund, Schiavoni, Seitz, Skindell, LaRose, Brown, Uecker

BILL SUMMARY

- Modifies existing law regarding statutory agents or designated agents for corporations, nonprofit corporations, foreign corporations, limited liability companies, foreign limited liability companies, associations, credit unions, unincorporated nonprofit associations, business trusts, real estate investment trusts, health insuring corporations, partnerships, foreign limited liability partnerships, limited partnerships, and foreign limited partnerships.

CONTENT AND OPERATION

Statutory agents

Background

A statutory agent or designated agent is an agent designated by law to receive litigation documents and other legal notices for a nonresident corporation or other nonresident business entity.

Operation of the bill

The bill modifies existing law regarding the appointment of statutory or designated agents for corporations, nonprofit corporations, foreign corporations, limited liability companies, foreign limited liability companies, associations, credit unions, unincorporated nonprofit associations, business trusts, real estate investment trusts, health insuring corporations, partnerships, foreign limited liability partnerships, limited partnerships, and foreign limited partnerships. The bill provides that for all of these entities, the agent must be one of the following:[1]

(1) A natural person who is an Ohio resident;

(2) A domestic or foreign corporation, nonprofit corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited partnership association, professional association, business trust, or unincorporated nonprofit association that has a business address in Ohio. If the agent is an entity other than a domestic corporation, the agent must meet the requirements of R.C. Title XVII for an entity of the agent's type to transact business or exercise privileges in Ohio.

Under existing law, any legal process, notice, or demand required or permitted by law to be served upon a limited liability company or upon a partnership with an effective statement of partnership may be served upon the company or partnership as follows:[2]

(1) If the agent is an individual, by delivering a copy of the process, notice, or demand to the agent;

(2) If the agent is a corporation, by delivering a copy of the process, notice, or demand to the address of the agent in Ohio as contained in the records of the Secretary of State.

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[1] R.C. 1701.07(A), 1702.06(A), 1703.041(A), 1705.06(A), 1705.54(A)(3), 1729.06(B)(1), 1733.06, 1745.13(A), 1746.04(F), 1747.03(E), 1751.03(D), 1776.07(A), 1776.86(B), 1782.04(A), and 1782.49(C).

[2] R.C. 1705.06(H)(1) and R.C. 1776.07(G)(1).

The bill makes two modifications to this provision. First, in (1) above, it replaces "individual" with "natural person." Second, in (2) above, it provides that if the agent is *not a natural person*, the notice may be served by delivering a copy of the process, notice, or demand to the address of the agent in Ohio as contained in the records of the Secretary of State.

The bill does not otherwise amend any procedures related to statutory agents.

Existing law

The following table describes existing law regarding the appointment of a statutory agent or designated agent by a corporation, nonprofit corporation, foreign corporation, limited liability company, foreign limited liability company, association, credit union, unincorporated nonprofit association, business trust, real estate investment trust, health insuring corporation, partnership, foreign limited liability partnership, limited partnership, or foreign limited partnership.

Revised Code Section	Entity	Existing law regarding appointment of "statutory agents" or "designated agents"
R.C. 1701.07(A) and 1702.06(A)	Corporations and nonprofit corporations	Every corporation and nonprofit corporation must have and maintain an agent, sometimes referred to as the "statutory agent," upon whom any process, notice, or demand required or permitted by statute to be served upon a corporation may be served. The agent may be a natural person who is an Ohio resident or may be a domestic corporation or a foreign corporation holding a license as such under the laws of Ohio, that is authorized by its articles of incorporation to act as such agent and that has a business address in Ohio.
R.C. 1703.041(A)	Foreign corporations	Every foreign corporation for profit that is licensed to transact business in Ohio, and every foreign nonprofit corporation that is licensed to exercise its corporate privileges in Ohio, must have and maintain an agent, sometimes referred to as the "designated agent," upon whom process against the corporation may be served within Ohio. The agent may be a natural person who is a resident of Ohio or may be a domestic corporation for profit or a foreign corporation for profit holding a license under the laws of Ohio that is authorized by its articles of incorporation to act as an agent and that has a business address in Ohio.

Revised Code Section	Entity	Existing law regarding appointment of "statutory agents" or "designated agents"
R.C. 1705.06(A)	Limited liability companies	Each limited liability company must maintain continuously in Ohio an agent for service of process on the company. The agent must be an individual who is a resident of Ohio, a domestic corporation, or a foreign corporation holding a license as a foreign corporation under the laws of Ohio.
R.C. 1705.54(A)	Foreign limited liability companies	Before transacting business in Ohio, a foreign limited liability company must register with the Secretary of State. The application for registration must set forth the name and address of an agent for service of any process, notice, or demand on the foreign limited liability company. The appointed agent must be an individual who is a resident of Ohio, a domestic corporation, or a foreign corporation that has a place of business and is authorized to do business in Ohio.
R.C. 1729.06(B)(1)	Associations	Every association must have and maintain a statutory agent upon whom any process, notice, or demand against the association may be served. The agent may be a natural person who is a resident of Ohio or a corporation that is authorized by its articles of incorporation to act as such agent and has a business address in Ohio.
R.C. 1733.06	Credit unions	Every credit union must have and maintain a statutory agent in accordance with R.C. 1701.07 (see Corporations and nonprofit corporations above).
R.C. 1745.13(A)	Unincorporated nonprofit associations	An unincorporated nonprofit association may file in the office of the Secretary of State a statement appointing an agent authorized to receive service of process. The agent may be a natural person who is an Ohio resident or may be a for-profit domestic corporation or a for-profit foreign corporation holding a license as such under the laws of Ohio and that has a business address in Ohio.
R.C. 1746.04(A)(5)	Business trusts	Generally, a business trust, before conducting business in Ohio, is required to file in the office of the Secretary of State a report containing, among other things, the name and address within Ohio of a designated agent upon whom process against the business trust may be served.
R.C. 1747.03(A)(6)	Real estate investment trusts	Before transacting business in Ohio, a real estate investment trust must file a report with the Secretary of State with, among other things, the name and address within Ohio of a designated agent upon whom process against the trust may be served.

Revised Code Section	Entity	Existing law regarding appointment of "statutory agents" or "designated agents"
R.C. 1751.03(A)(21)	Health insuring corporations	Each application for a certificate of authority for a health insuring corporation must be verified by an officer or authorized representative of the health insuring corporation, must be in a format prescribed by the Superintendent of Insurance, and must include, among other things, the name and address of the health insuring corporation's Ohio statutory agent for service of process, notice, or demand.
R.C. 1776.07(A)	Partnerships	Any partnership that maintains an effective statement of partnership authority must maintain continuously in Ohio an agent for service of process on the partnership. The agent must be an individual who is an Ohio resident, a domestic corporation, or a foreign corporation holding a license as a foreign corporation under the laws of Ohio. (See "**Operation of the bill**" above.)
R.C. 1776.86 (A)(3) and (B)	Foreign limited liability partnerships	A foreign limited liability partnership must file a statement of foreign qualification with the Secretary of State prior to transacting business in Ohio. The statement must contain, among other things if there is no office of the partnership in Ohio, the name and address of the partnership's agent for service of process. The agent for service of process must be an individual who is a resident of Ohio or another person authorized to do business in Ohio.
R.C. 1782.04(A)	Limited partnerships	Each limited partnership must maintain continuously in Ohio an agent for service of process on the limited partnership. The agent must be a natural person who is an Ohio resident, a domestic corporation, or a foreign corporation holding a license as such under the laws of Ohio.
R.C. 1782.49(C)	Foreign limited partnership	A foreign limited partnership must include in its application for registration as a foreign limited partnership to the Secretary of State the name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint. The agent must be an individual who is an Ohio resident, a domestic corporation, or a foreign corporation having a place of business in, and authorized to do business in, Ohio.

HISTORY

ACTION	DATE
Introduced	04-09-13
Reported, S. Civil Justice	06-19-13

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