

CHAPTER 170
SB 197-FN - FINAL VERSION

2023 SESSION

23-0952
05/10

SENATE BILL

197-FN

AN ACT relative to the operation and regulation of certain business entities within the state.

SPONSORS: Sen. Gannon, Dist 23; Sen. Soucy, Dist 18; Sen. Ricciardi, Dist 9; Rep. Hunt, Ches. 14

COMMITTEE: Commerce

ANALYSIS

This bill:

1. Allows domestic nonprofit organizations, nonfiling entities, and nonqualified foreign entities to appoint an agent for service of process in this state.
2. Requires foreign business entities to affirm in their application to transact business in New Hampshire that they are "in good standing" in their state of incorporation or formation.
3. Allows foreign benefit corporations to use the ending "PBC" in their name when qualifying to do business in this state; and allows domestic benefit corporations to use the ending "PBC" in their name.
4. Simplifies the process for limited partnerships to change their registered agent and registered office address, using the same form/procedure used by other types of business entities.
5. Changes the fee charged by the secretary of state to certify a corporate document from \$1.00 per page to \$1.00 per document, and allows the secretary of state to establish fees for bulk registered office address changes filed electronically.

The bill is a request of the department of state.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struck through.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to the operation and regulation of certain business entities within the state.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 170:1 New Section; Department and Secretary of State; Appointment of Agent for Service of Process
2 by Voluntary Corporations and Nonfiling Entities. Amend RSA 5 by inserting after section 15-b the
3 following new section:

4 5:15-c Appointment of Agent for Service of Process by Voluntary Corporations and Nonfiling Entities.

5 I. A domestic entity that is not a filing entity, entities formed under RSA 292, or a nonqualified
6 foreign entity may file with the secretary of state a statement appointing an agent for service of process
7 signed on behalf of the entity which states:

8 (a) The name, type, and jurisdiction of organization of the represented entity;

9 (b) The name of the agent, the agent's mailing address, and agent's physical street address
10 in this state; and

11 (c) An affirmation by the represented entity that the agent has consented to serve as such.

12 II. A statement appointing an agent for service of process shall take effect on the date of filing.

13 III. The appointment of a registered agent under this section does not qualify a nonqualified
14 foreign entity to do business in this state and is not sufficient alone to create personal jurisdiction over the
15 nonqualified foreign entity in this state.

16 IV. A statement appointing an agent for service of process may not be rejected for filing because
17 the name of the entity filing the statement is not legally distinguishable on the records of the secretary of
18 state from the name of another entity appearing in those records. The filing of a statement appointing an
19 agent for service of process does not make the name of the entity filing the statement unavailable for use
20 by another entity.

21 V. An entity that has filed a statement appointing an agent for service of process may cancel the
22 statement by filing a statement of cancellation, which shall take effect upon filing, and must state the
23 name of the entity and that the entity is canceling its appointment of an agent for service of process in this
24 state. A statement appointing an agent for service of process which has not been cancelled earlier is
25 effective for a period of 5 years after the date of filing.

26 VI. A statement appointing an agent for service of process for a nonqualified foreign entity
27 terminates automatically on the date the entity becomes a qualified foreign entity.

28 VII. A registered agent may resign at any time with respect to a represented entity by filing with
29 the secretary of state a statement of resignation signed by or on behalf of the agent which states:

30 (a) The name of the entity;

31 (b) The name of the agent;

32 (c) That the agent resigns from serving as agent for service of process for the entity; and

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(d) A statement that the agent has provided written notice of the resignation.

VIII. A statement of resignation takes effect on the earlier of the 31st day after the day on which it is filed or the appointment of a new registered agent for the represented entity.

IX. The registered agent shall promptly furnish the represented entity with notice in a record of the date on which a statement of resignation was filed.

X. The fee for filing a statement of appointment of agent shall be \$15. There shall be no fee to file a statement of resignation of agent.

170:2 New Section; Appointment of Agent for Service of Process by Voluntary Corporations. Amend RSA 292 by inserting after section 5-c the following new section:

292:5-d Appointment of Agent for Service of Process by Voluntary Corporations.

I. Entities formed under this chapter may voluntarily file with the secretary of state a statement appointing an agent for service of process pursuant to RSA 5:15-c.

II. Failure to appoint and maintain an agent for service of process in this state shall have no effect on validity of the charter of the corporation.

170:3 New Subparagraph; Application for Certificate of Authority. Amend RSA 293-A:15.03 to read as follows:

293-A:15.03 Application for Certificate of Authority.

(a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

(1) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of RSA 293-A: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;

(4) the street address of its principal office;

(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; *and*

(7) an affirmation that the corporation is in good standing with the agency where its articles of incorporation are filed in its home jurisdiction.

170:4 Requirement of Registration by Foreign Limited Liability Companies; Application for Registration. Amend RSA 304-C:175, IV and V to read as follows:

IV. The address of the registered office and name and address of the registered agent for service of process required to be maintained under RSA 304-C:177, IV; ~~[and]~~

V. *An affirmation that the entity is in good standing with the agency where its certificate of formation is filed in its home jurisdiction; and*

VI. The name and address of any manager or member signing the application.

170:5 New Subparagraph; Corporate Name of Foreign Corporation; PBC. Amend RSA 293-A:15.06,(a) by inserting after subparagraph (2) the following new subparagraph:

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(3) may use the ending "PBC" if it is part of its true name and the entity is incorporated for a general public benefit.

170:6 Incorporation of Benefit Corporation. Amend RSA 293-C:3 to read as follows:

293-C:3 Incorporation of Benefit Corporation. A benefit corporation shall be incorporated in accordance with RSA 293-A:2.01 through RSA 293-A:2.07, but its articles of incorporation shall also state that it is a benefit corporation. ***The name of a benefit corporation must meet the requirements of RSA 293-A:4.01, but may use the abbreviation "PBC" in lieu of "corp.", "inc.", or "ltd."***

170:7 Resignation or Change of Registered Agent. RSA 304-B:9-a is repealed and reenacted to read as follows:

304-B:9-a Change of Registered Agent or Registered Office.

I. Each limited partnership shall have and maintain in the state of New Hampshire:

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

(b) A registered agent, which agent may be:

(1) An individual who resides in this state and whose residential or business office is identical with the registered office; or

(2) A corporation organized or authorized under RSA 292, RSA 293-A, or RSA 294-A whose business office is identical with the registered office; or

(3) A limited liability company formed or authorized under this act or a professional limited liability company formed or authorized under RSA 304-D whose business office is identical with the registered office; or

(4) A limited liability partnership formed or authorized under RSA 304-A:44 whose business office is identical with the registered office.

II. A limited partnership may change its registered office or registered agent, or both, by filing with the secretary of state a statement, signed by the general partner or other authorized party, setting forth:

(a) The name of the limited partnership;

(b) The street address of its current registered office;

(c) If the street address of its registered office is to be changed, the street address to which the registered office is to be changed;

(d) The name and address of its current registered agent;

(e) If its registered agent is to be changed, the name and address of its successor registered agent; and

(f) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

III. A registered agent of a limited liability company may resign as registered agent by signing and filing a written notice of resignation with the secretary of state. The secretary of state shall mail a copy of the notice to the limited liability company at its principal office.

IV. The appointment of the registered agent shall terminate 31 days after filing of the notice of resignation with the secretary of state or on the appointment of a successor registered agent, whichever

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occurs first. The notice of resignation may include a statement that the registered office is also discontinued.

V. If a registered agent changes its address to another place in this state, it may change the address of the registered office of any limited liability company for which it is a registered agent by filing a statement with the secretary of state as required by paragraph II, except that the statement need be signed only by the registered agent. The statement shall recite that a copy of it has been mailed to the limited liability company.

170:8 Filing, Service, and Copying Fees. Amend RSA 293-A:1.22(d) to read as follows:

(d) The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

(1) \$1 ~~[a page for copying]~~ **per document**, and

(2) \$5 for the certificate.

170:9 New Subparagraph; Filing, Service, and Copying Fees. Amend RSA 293-A:1.22(e) by inserting after subparagraph (8) the following new subparagraph:

(9) electronic filing of bulk registered agent and registered office address changes.

170:10 Limited Liability Company Fees. Amend RSA 304-C:191, II(g) to read as follows:

(g) For certifying copies of any ~~[paper]~~ **document** on file as provided for by this act, a fee in the amount of \$1 per ~~[page]~~ **document** and \$5 for the certificate.

170:11 New Hampshire Investment Trust Fees. Amend RSA 293-B:15, VI to read as follows:

VI. The secretary of state shall collect the following fees for ~~[copying and]~~ certifying ~~[the copy of]~~ any filed document relating to a ~~[domestic or foreign corporation]~~ **New Hampshire investment trust**.

(a) ~~[\$2 a page for copying]~~ **\$1 per document**, and

(b) ~~[\$10]~~ **\$5** for the certificate.

170:12 New Hampshire Foundation Act; Fees. Amend RSA 564-F:22-2205 (c) to read as follows:

(c) The secretary of state shall collect the following fees for ~~[copying and]~~ certifying ~~[the copy of]~~ any filed document relating to a foundation or foreign foundation:

(1) \$1 ~~[a page for copying]~~ **per document**, and

(2) \$5 for the certificate.

170:13 Effective Date. This act shall take effect November 1, 2023.

Approved: July 28, 2023

Effective Date: November 01, 2023

