

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4
5 By: Senator D. Johnson
6
7

A Bill

SENATE BILL 972

For An Act To Be Entitled

9 AN ACT TO MAKE TECHNICAL CORRECTIONS TO CERTAIN
10 BUSINESS ENTITY STATUTES AND THE MODEL REGISTERED
11 AGENTS ACT, § 4-20-101 ET SEQ., CONCERNING THE
12 ESTABLISHMENT OF DESIGNATED OFFICES AND SERVICE
13 UPON A FOREIGN ENTITY; AND FOR OTHER PURPOSES.
14

Subtitle

15 TO MAKE TECHNICAL CORRECTIONS TO CERTAIN
16 BUSINESS ENTITY STATUTES AND THE MODEL
17 REGISTERED AGENTS ACT CONCERNING THE
18 ESTABLISHMENT OF DESIGNATED OFFICES AND
19 SERVICE UPON A FOREIGN ENTITY.
20
21
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code § 4-20-113(b), concerning service upon an
26 entity rather than the registered agent for the entity, is amended to read as
27 follows:

28 (b) If an entity fails to appoint an agent under this subchapter or if
29 an entity that previously filed a registered agent filing with the Secretary
30 of State no longer has a registered agent, or if its registered agent cannot
31 with reasonable diligence be served, the entity may be served by registered
32 or certified mail, return receipt requested, addressed to one or more of the
33 governors of the entity by name at its principal office in accordance with
34 any applicable judicial rules and procedures. The names of the governors and
35 the address of the principal office shall be as shown in the most recent
36 annual report filed with the Secretary of State. If the entity is not



1 required to file an annual report with the Secretary of State, the names of
 2 the governors and the address of the principal office shall be as shown in
 3 the entity's public organic document. Service is perfected under this
 4 subsection at the earliest of:

- 5 (1) the date the entity receives the mail;
- 6 (2) the date shown on the return receipt, if signed on behalf of
 7 the entity; or
- 8 (3) five days after its deposit with the United States Postal
 9 Service, if correctly addressed and with sufficient postage.

10
 11 SECTION 2. Arkansas Code § 4-28-308(c)(3), concerning service upon a
 12 foreign corporation after a merger, is amended to read as follows:

13 (3) If the surviving or new corporation, as the case may be, is
 14 a foreign corporation, it shall comply with the provisions of the Arkansas
 15 Nonprofit Corporation Act, § 4-28-201 et seq., with respect to foreign
 16 corporations if it is to transact business in this state, and in every case
 17 it shall file with the Secretary of State of this state+

18 ~~(A) An agreement that it may be served with process in~~
 19 ~~this state in any proceeding for the enforcement of any obligation of any~~
 20 ~~domestic corporation which was a party to the merger or consolidation;~~

21 ~~(B) An irrevocable appointment of the Secretary of State~~
 22 ~~of this state as its agent to accept service of process in any such~~
 23 proceeding a statement confirming that the foreign corporation has filed a
 24 statement appointing an agent for service of process under § 4-20-112 and may
 25 be served with process under § 4-20-113 if the foreign corporation fails to
 26 appoint or maintain a registered agent for service of process; and

27
 28 SECTION 3. Arkansas Code § 4-31-204 is amended to read as follows:

29 4-31-204. Actions – Service of process – Venue.

30 (a)(1) Any bank, trust company, foreign mutual savings bank, pension
 31 fund, foreign mutual savings fund society, mutual banking association,
 32 foreign insurance company, or any other type of organization defined in this
 33 subchapter and investing funds in Arkansas may sue or be sued within this
 34 state in relation to such mortgages or deeds of trust on real properties,
 35 securities, or debts, and service of process may be performed by service upon
 36 any custodian or agent appointed within the state.

1 (2) If no custodian or agent has been appointed, the Secretary
 2 ~~of State shall be and is appointed and shall remain as the duly authorized~~
 3 ~~agent of the organization upon whom the service of process may be had~~ bank,
 4 trust company, foreign mutual savings bank, pension fund, foreign mutual
 5 savings fund society, mutual banking association, foreign insurance company,
 6 or other type of organization may be served with process under § 4-20-113.

7 (b) ~~The Secretary of State, upon the receipt of process by him or her~~
 8 ~~on the organization, shall forthwith forward notice of the receipt by~~
 9 ~~registered mail, with return receipt requested, to the post office of the~~
 10 ~~nonresident corporation, mutual savings bank, or association and shall make a~~
 11 ~~notation of that fact upon his or her process record to that effect.~~

12 (c) ~~In cases where the organization is sued, the~~ The venue of the an
 13 action under subsection (a) of this section shall be is:

14 (1) ~~in~~ In the county of the residence of the plaintiffs, or any
 15 ~~of them,~~ a plaintiff; or

16 (2) ~~except where land is involved, in which case venue shall be~~
 17 ~~in~~ If a subject of the action is land, the county in which ~~the~~ any part of
 18 the land, or any part of it, is located.

19
 20 SECTION 4. Arkansas Code § 4-31-405(b)(2)(G), concerning service of
 21 process upon the surviving or resulting entity after a merger or
 22 consolidation involving a foreign business trust, is amended to read as
 23 follows:

24 (G)~~(i)~~ If the surviving or resulting entity is not a
 25 business trust or other business entity formed or organized or existing under
 26 the laws of the State of Arkansas, that the surviving or resulting ~~other~~
 27 ~~business entity agrees that it may be served with process in the state in any~~
 28 ~~action, suit, or proceeding for the enforcement of any business trust which~~
 29 ~~is to merge or consolidate, irrevocably appointing the Secretary of State as~~
 30 ~~its agent to accept service of process in any action, suit, or proceeding and~~
 31 ~~specifying the address to which a copy of the process shall be mailed to it~~
 32 ~~by the Secretary of State.~~

33 ~~(ii)(a)~~ ~~In the event of service under subdivision~~
 34 ~~(b)(2)(G)(i) of this section upon the Secretary of State, the plaintiff in~~
 35 ~~any such action, suit, or proceeding shall furnish the Secretary of State~~
 36 ~~with the address specified in the certificate of merger or consolidation~~

1 provided for in this section and any other address which the plaintiff may
 2 elect to furnish, together with copies of such process as required by the
 3 Secretary of State, and the Secretary of State shall notify the surviving or
 4 resulting other business entity thereof at all addresses furnished by the
 5 plaintiff by letter.

6 (b) ~~The letter shall enclose a copy of the~~
 7 ~~process and any other papers served upon the Secretary of State.~~

8 (c) ~~It shall be the duty of the plaintiff in~~
 9 ~~the event of service to serve process and any other papers in duplicate, to~~
 10 ~~notify the Secretary of State that service is being made pursuant to~~
 11 ~~subdivision (b)(2)(G)(i) of this section, and to pay the Secretary of State~~
 12 ~~the sum of twenty five dollars (\$25.00) for use of the state, which sum shall~~
 13 ~~be taxed as part of the costs in the proceeding, if the plaintiff shall~~
 14 ~~prevail therein~~ has filed a statement appointing an agent for service of
 15 process under § 4-20-112 and may be served with process under § 4-20-113 if
 16 the surviving or resulting entity fails to appoint or maintain a registered
 17 agent for service of process.

18
 19 SECTION 5. Arkansas Code § 4-32-1002(4), concerning the application
 20 for registration of a foreign limited liability company, is amended to read
 21 as follows:

22 (4) ~~A statement that the Secretary of State is appointed the~~
 23 ~~agent of the foreign limited liability company for service of process~~
 24 confirming that the foreign limited liability company has filed a statement
 25 appointing an agent for service of process under § 4-20-112 and may be served
 26 with process under § 4-20-113 if the foreign limited liability company fails
 27 to appoint or maintain a registered agent in satisfaction of the requirements
 28 of § 4-20-105(a) for service of process;

29
 30 SECTION 6. Arkansas Code § 4-32-1007(c), concerning service upon a
 31 foreign limited liability company, is amended to read as follows:

32 (c) ~~A foreign limited liability company, by transacting business in~~
 33 ~~this state without registration, appoints the Secretary of State as its agent~~
 34 ~~for service of process with respect to a cause of action arising out of the~~
 35 ~~transaction of business in this state~~ may be served with process under § 4-
 36 20-113 if the foreign limited liability company:

- 1 (A) Fails to appoint an agent for service of process under
- 2 § 4-20-112;
- 3 (B) No longer has an agent for service of process; or
- 4 (C) Has an agent for service of process that can not with
- 5 reasonable diligence be served.

6

7 SECTION 7. Arkansas Code § 4-47-102 is amended to read as follows:

8 4-47-102. Definitions.

9 In this chapter:

10 (1) “Certificate of limited partnership” means the certificate

11 required by § 4-47-201. The term includes the certificate as amended or

12 restated.

13 (2) “Contribution”, except in the phrase “right of

14 contribution,” means any benefit provided by a person to a limited

15 partnership in order to become a partner or in the person’s capacity as a

16 partner.

17 (3) “Debtor in bankruptcy” means a person that is the subject

18 of:

19 (A) an order for relief under Title 11 of the United

20 States Code or a comparable order under a successor statute of general

21 application; or

22 (B) a comparable order under federal, state, or foreign

23 law governing insolvency.

24 (4) “Designated office” means:

25 (A) with respect to a limited partnership, the office that

26 the limited partnership is required to designate and maintain under § 4-47-

27 114; and

28 (B) with respect to a foreign limited partnership, its

29 principal office.

30 ~~(4)~~(5) “Distribution” means a transfer of money or other

31 property from a limited partnership to a partner in the partner’s capacity as

32 a partner or to a transferee on account of a transferable interest owned by

33 the transferee.

34 ~~(5)~~(6) “Foreign limited liability limited partnership” means a

35 foreign limited partnership whose general partners have limited liability for

36 the obligations of the foreign limited partnership under a provision similar

1 to § 4-47-404(c).

2 ~~(6)~~(7) “Foreign limited partnership” means a partnership formed
3 under the laws of a jurisdiction other than this State and required by those
4 laws to have one or more general partners and one or more limited partners.
5 The term includes a foreign limited liability limited partnership.

6 ~~(7)~~(8) “General partner” means:

7 (A) with respect to a limited partnership, a person that:

8 (i) becomes a general partner under § 4-47-401; or

9 (ii) was a general partner in a limited partnership

10 when the limited partnership became subject to this chapter under § 4-47-
11 1206(a) or (b); and

12 (B) with respect to a foreign limited partnership, a

13 person that has rights, powers, and obligations similar to those of a general
14 partner in a limited partnership.

15 ~~(8)~~(9) “Limited liability limited partnership”, except in the
16 phrase “foreign limited liability limited partnership”, means a limited
17 partnership whose certificate of limited partnership states that the limited
18 partnership is a limited liability limited partnership.

19 ~~(9)~~(10) “Limited partner” means:

20 (A) with respect to a limited partnership, a person that:

21 (i) becomes a limited partner under § 4-47-301; or

22 (ii) was a limited partner in a limited partnership

23 when the limited partnership became subject to this chapter under § 4-47-
24 1206(a) or (b); and

25 (B) with respect to a foreign limited partnership, a

26 person that has rights, powers, and obligations similar to those of a limited
27 partner in a limited partnership.

28 ~~(10)~~(11) “Limited partnership”, except in the phrases “foreign
29 limited partnership” and “foreign limited liability limited partnership”,
30 means an entity, having one or more general partners and one or more limited
31 partners, which is formed under this chapter by two or more persons or
32 becomes subject to this chapter under subchapter 11 or § 4-47-1206(a) or (b).
33 The term includes a limited liability limited partnership.

34 ~~(11)~~(12) “Partner” means a limited partner or general partner.

35 ~~(12)~~(13) “Partnership agreement” means the partners’ agreement,
36 whether oral, implied, in a record, or in any combination, concerning the

1 limited partnership. The term includes the agreement as amended.

2 ~~(13)~~(14) "Person" means an individual, corporation, business
3 trust, estate, trust, partnership, limited liability company, association,
4 joint venture, government; governmental subdivision, agency, or
5 instrumentality; public corporation, or any other legal or commercial entity.

6 ~~(14)~~(15) "Person dissociated as a general partner" means a
7 person dissociated as a general partner of a limited partnership.

8 ~~(15)~~(16) "Principal office" means the office where the principal
9 executive office of a limited partnership or foreign limited partnership is
10 located, whether or not the office is located in this State.

11 ~~(16)~~(17) "Record" means information that is inscribed on a
12 tangible medium or that is stored in an electronic or other medium and is
13 retrievable in perceivable form.

14 ~~(17)~~(18) "Required information" means the information that a
15 limited partnership is required to maintain under § 4-47-111.

16 ~~(18)~~(19) "Sign" means:

17 (A) to execute or adopt a tangible symbol with the present
18 intent to authenticate a record; or

19 (B) to attach or logically associate an electronic symbol,
20 sound, or process to or with a record with the present intent to authenticate
21 the record.

22 ~~(19)~~(20) "State" means a State of the United States, the
23 District of Columbia, Puerto Rico, the United States Virgin Islands, or any
24 territory or insular possession subject to the jurisdiction of the United
25 States.

26 ~~(20)~~(21) "Transfer" includes an assignment, conveyance, deed,
27 bill of sale, lease, mortgage, security interest, encumbrance, gift, and
28 transfer by operation of law.

29 ~~(21)~~(22) "Transferable interest" means a partner's right to
30 receive distributions.

31 ~~(22)~~(23) "Transferee" means a person to which all or part of a
32 transferable interest has been transferred, whether or not the transferor is
33 a partner.

34
35 SECTION 8. Arkansas Code Title 4, Chapter 47, Subchapter 1 is amended
36 to add additional sections to read as follows:

1 4-47-114. Office and agent for service of process.

2 (a) A limited partnership shall designate and continuously maintain in
 3 this State:

4 (1) an office, which need not be a place of its activity in this
 5 State; and

6 (2) an agent for service of process.

7 (b) A foreign limited partnership shall designate and continuously
 8 maintain in this State an agent for service of process.

9 (c) The Model Registered Agents Act, § 4-20-101 et seq.:

10 (1) Governs the appointment, authority, powers, duties,
 11 termination of appointment, and all other provisions concerning an agent for
 12 service of process of a limited partnership or foreign limited partnership;
 13 and

14 (2) May be used to obtain service of process upon a limited
 15 partnership or foreign limited partnership.

16
 17 4-47-115. Change of designated office.

18 (a) In order to change its designated office, a limited partnership or
 19 a foreign limited partnership may deliver to the Secretary of State for
 20 filing a statement of change containing:

21 (1) the name of the limited partnership or foreign limited
 22 partnership;

23 (2) the street and mailing address of its current designated
 24 office; and

25 (3) if the current designated office is to be changed, the
 26 street and mailing address of the new designated office.

27 (4) [Reserved.]

28 (5) [Reserved.]

29 (b) Subject to § 4-47-206(c), a statement of change is effective when
 30 filed by the Secretary of State.

31
 32 4-47-116. [Reserved.]

33
 34 4-47-117. [Reserved.]

35
 36 SECTION 9. Arkansas Code § 4-47-201(a), concerning the formation and

1 certificate of a limited partnership, is amended to read as follows:

2 (a) In order for a limited partnership to be formed, a certificate of
3 limited partnership must be delivered to the Secretary of State for filing.

4 The certificate must state:

5 (1) the name of the limited partnership, which must comply with
6 § 4-47-108;

7 (2) the street and mailing address of the initial designated
8 office and the information concerning the limited partnership's agent for
9 service of process required by § 4-20-105(a);

10 (3) the name and the street and mailing address of each general
11 partner;

12 (4) whether the limited partnership is a limited liability
13 limited partnership; and

14 (5) any additional information required by subchapter 11.

15

16 SECTION 10. Arkansas Code § 4-47-210 is amended to read as follows:

17 (a) A limited partnership or a foreign limited partnership authorized
18 to transact business in this State shall deliver to the Secretary of State
19 for filing an annual report that states:

20 (1) the name of the limited partnership or foreign limited
21 partnership;

22 (2) the street and mailing address of its designated office and
23 the information concerning its agent for service of process required by § 4-
24 20-105(a);

25 (3) in the case of a foreign limited partnership, the street and
26 mailing address of its principal office; and

27 (4) in the case of a foreign limited partnership, the State or
28 other jurisdiction under whose law the foreign limited partnership is formed
29 and any alternate name adopted under § 4-47-905(a).

30 (b) Information in an annual report must be current as of the date the
31 annual report is delivered to the Secretary of State for filing.

32 (c) The first annual report must be delivered to the Secretary of
33 State between January 1 and May 1 of the year following the calendar year in
34 which a limited partnership was formed or a foreign limited partnership was
35 authorized to transact business. An annual report must be delivered to the
36 Secretary of State between January 1 and May 1 of each subsequent calendar

1 year.

2 (d) If an annual report does not contain the information required in
3 subsection (a), the Secretary of State shall promptly notify the reporting
4 limited partnership or foreign limited partnership and return the report to
5 it for correction. If the report is corrected to contain the information
6 required in subsection (a) and delivered to the Secretary of State within 30
7 days after the effective date of the notice, it is timely delivered.

8 (e) If a filed annual report contains an address of the designated
9 office or information provided under subdivision (a)(2) of this section which
10 differs from the information shown in the records of the Secretary of State
11 immediately before the filing, the differing information in the annual report
12 is considered a statement of change under § 4-20-108.

13

14 SECTION 11. Arkansas Code § 4-47-304(a), concerning a limited
15 partner's right to information, is amended to read as follows:

16 (a) On 10 days' demand, made in a record received by the limited
17 partnership, a limited partner may inspect and copy required information
18 during regular business hours in the limited partnership's ~~principal~~
19 designated office. The limited partner need not have any particular purpose
20 for seeking the information.

21

22 SECTION 12. Arkansas Code § 4-47-304(d), concerning a dissociated
23 limited partner's right to information, is amended to read as follows:

24 (d) Subject to subsection (f), a person dissociated as a limited
25 partner may inspect and copy required information during regular business
26 hours in the limited partnership's ~~principal~~ designated office if:

27 (1) the information pertains to the period during which the
28 person was a limited partner;

29 (2) the person seeks the information in good faith; and

30 (3) the person meets the requirements of subsection (b).

31

32 SECTION 13. Arkansas Code § 4-47-807(b), concerning notice of claims
33 against a dissolved limited partnership, is amended to read as follows:

34 (b) The notice must:

35 (1) be published at least once in a newspaper of general
36 circulation in the county in which the dissolved limited partnership's

1 ~~principal~~ designated office is located or, if it has none in this State, in
 2 the county in which the limited partnership's designated office is or was
 3 last located;

4 (2) describe the information required to be contained in a claim
 5 and provide a mailing address to which the claim is to be sent;

6 (3) state that a claim against the limited partnership is barred
 7 unless an action to enforce the claim is commenced within five years after
 8 publication of the notice; and

9 (4) unless the limited partnership has been throughout its
 10 existence a limited liability limited partnership, state that the barring of
 11 a claim against the limited partnership will also bar any corresponding claim
 12 against any general partner or person dissociated as a general partner which
 13 is based on § 4-47-404.

14
 15 SECTION 14. Arkansas Code § 4-47-902 is amended to read as follows:
 16 4-47-902. Application for certificate of authority.

17 (a) A Before transacting business in this State, a foreign limited
 18 partnership ~~may~~ shall apply for a certificate of authority to transact
 19 business in this State by delivering an application to the Secretary of State
 20 for filing. The application must state:

21 (1) the name of the foreign limited partnership and, if the name
 22 does not comply with § 4-47-108, an alternate name adopted pursuant to § 4-
 23 47-905(a);

24 (2) the name of the State or other jurisdiction under whose law
 25 the foreign limited partnership is organized;

26 (3) the street and mailing address of the foreign limited
 27 partnership's principal office and, if the laws of the jurisdiction under
 28 which the foreign limited partnership is organized require the foreign
 29 limited partnership to maintain an office in that jurisdiction, the street
 30 and mailing address of the required office;

31 (4) ~~the name and street and mailing address of~~ information
 32 required by § 4-20-105(a) concerning the foreign limited partnership's
 33 initial agent for service of process in this State;

34 (5) the name and street and mailing address of each of the
 35 foreign limited partnership's general partners; and

36 (6) whether the foreign limited partnership is a foreign limited

1 liability limited partnership.

2 (b) A foreign limited partnership shall deliver with the completed
3 application a certificate of existence or a record of similar import signed
4 by the Secretary of State or other official having custody of the foreign
5 limited partnership's publicly filed records in the State or other
6 jurisdiction under whose law the foreign limited partnership is organized.

7
8 SECTION 15. Arkansas Code § 4-47-906(a), concerning the revocation of
9 a foreign limited partnership's certificate of authority, is amended to read
10 as follows:

11 (a) A certificate of authority of a foreign limited partnership to
12 transact business in this State may be revoked by the Secretary of State in
13 the manner provided in subsections (b) and (c) if the foreign limited
14 partnership does not:

15 (1) pay, within 60 days after the due date, any fee, tax or
16 penalty due to the Secretary of State under this chapter or other law;

17 (2) deliver, within 60 days after the due date, its annual
18 report required under § 4-47-210;

19 (3) appoint and maintain an agent for service of process ~~as~~
20 ~~required by § 4-20-108~~ under the Model Registered Agents Act, § 4-20-101 et
21 seq.; or

22 (4) deliver for filing a statement of a change under § 4-20-108
23 within 30 days after a change has occurred in the name or address of the
24 agent.

25
26 SECTION 16. Arkansas Code § 4-47-1104 is amended to read as follows:
27 4-47-1104. Filings required for conversion – Effective date.

28 (a) After a plan of conversion is approved:

29 (1) a converting limited partnership shall deliver to the
30 Secretary of State for filing articles of conversion, which must include:

31 (A) a statement that the limited partnership has been
32 converted into another organization;

33 (B) the name and form of the organization and the
34 jurisdiction of its governing statute;

35 (C) the date the conversion is effective under the
36 governing statute of the converted organization;

1 (D) a statement that the conversion was approved as
 2 required by this chapter;

3 (E) a statement that the conversion was approved as
 4 required by the governing statute of the converted organization; and

5 (F) a statement confirming that the converted organization
 6 has filed a statement appointing an agent for service of process under § 4-
 7 20-112 if the converted organization is a foreign organization not authorized
 8 to transact business in this State, the street and mailing address of an
 9 office which may be used for service of process under § 4-47-1105(c); and

10 (2) if the converting organization is not a converting limited
 11 partnership, the converting organization shall deliver to the Secretary of
 12 State for filing a certificate of limited partnership, which must include, in
 13 addition to the information required by § 4-47-201:

14 (A) a statement that the limited partnership was converted
 15 from another organization;

16 (B) the name and form of the organization and the
 17 jurisdiction of its governing statute; and

18 (C) a statement that the conversion was approved in a
 19 manner that complied with the organization's governing statute.

20 (b) A conversion becomes effective:

21 (1) if the converted organization is a limited partnership, when
 22 the certificate of limited partnership takes effect; and

23 (2) if the converted organization is not a limited partnership,
 24 as provided by the governing statute of the converted organization.

25
 26 SECTION 17. Arkansas Code § 4-47-1105(c), concerning service upon a
 27 converted organization not authorized to transact business in this state, is
 28 amended to read as follows:

29 (c) A converted organization that is a foreign organization consents
 30 to the jurisdiction of the courts of this State to enforce any obligation
 31 owed by the converting limited partnership, if before the conversion the
 32 converting limited partnership was subject to suit in this State on the
 33 obligation. A converted organization that is a foreign organization and not
 34 authorized to transact business in this State may be served with process ~~at~~
 35 ~~the address required in the articles of conversion under § 4-47-1104(a)(1)(F)~~
 36 under § 4-20-113 if the converted organization:

- 1 (1) fails to appoint an agent for service of process under § 4-
- 2 20-112;
- 3 (2) no longer has an agent for service of process; or
- 4 (3) has an agent for service of process that can not with
- 5 reasonable diligence be served.

6

7 SECTION 18. Arkansas Code § 4-47-1108(b)(7), concerning information

8 required in articles of merger, is amended to read as follows:

9 (7) a statement confirming that the surviving organization has

10 filed a statement appointing an agent for service of process under § 4-20-112

11 if the surviving organization is a foreign organization not authorized to

12 transact business in this State, ~~the street and mailing address of an office~~

13 ~~which may be used for service of process under § 4-47-1109(b); and~~

14

15 SECTION 19. Arkansas Code § 4-47-1109(b), concerning service upon a

16 foreign organization not authorized to transact business in this state, is

17 amended to read as follows:

18 (b) A surviving organization that is a foreign organization consents

19 to the jurisdiction of the courts of this State to enforce any obligation

20 owed by a constituent organization, if before the merger the constituent

21 organization was subject to suit in this State on the obligation. A surviving

22 organization that is a foreign organization and not authorized to transact

23 business in this State may be served with process ~~at the address required in~~

24 ~~the articles of merger under § 4-47-1108(b)(7) under § 4-20-113 if the~~

25 surviving organization:

- 26 (A) Fails to appoint an agent for service of process under
- 27 § 4-20-112;
- 28 (B) No longer has an agent for service of process; or
- 29 (C) Has an agent for service of process that cannot with
- 30 reasonable diligence be served.