

2014 Legislative Update

Mississippi Secretary of State's Office

June 2014

Contents

BUDGET	1
SB 2907: Secretary of State Budget*	1
BUSINESS LAW AND INCENTIVES	1
HB 914: Agricultural Cooperative Marketing Association Amendments*	1
SB 2322: Conversion and Domestication.*	2
SB 2511: Name Reservation and Registration Amendments.*	3
SB 2017: Electric Power Associations; revise procedure to amend the certificate of incorporation.	3
SB 2018: Electric Power Associations; allow corporation to include word “electric cooperative”.	4
SB 2021: Electric Power Associations; bylaws may allow members to vote electrically.....	4
HB 785: Headquarters Relocation Credit.*	4
ELECTIONS.....	5
HB 624: Elections; revise the definition of “absent voter.”*	5
HB 874: Executive Committee; prohibit certain person from serving on municipal, county and state.	5
SB 2288: School Board elections in certain municipal school districts; provide uniform procedure for nominating petition.	5
HB 222: Municipal Judges; revise qualification requirements for certain.	5
HB 1185: Municipal Judges; revise maximum number for certain municipalities.	5
LANDS	6
SB 2394: Public Lands; allow corporations to purchase lands sold or forfeited to the state for delinquent taxes.*	6
HB 1485: Department of Marine Resource’s Budget.....	6
MISCELLANEOUS	7
HB 1317: State agency purchasing; require procurement portal to provide information to vendors and include on Transparency MS website.....	7
SB 2681: Mississippi Religious Freedom Restoration Act; enact and modify the great seal.....	7
HB 689: State and School Employees Health Insurance Plan; prohibit from restricting covered employee from assigning benefits to provider.....	7

HB 928: Public records; limit cost to respond to records request and provide civil penalty.....	7
SB 2084: State employees authorized to use earned medical leave for adoption and foster care placement	8
SB 2291: State Auditor authorized to audit agencies as deemed necessary/revise charges for performing audits	8
SB 2507: Mississippi Public Records Act; authorize Ethics Commission to enforce.....	8
SB 2521: Public contracts for energy efficiency services; authorize entities to enter into energy performance and shared-savings contracts.	8
SB 2547: Embezzlers; prohibit public employment.	9
SB 2797: Mississippi Employment Fairness Act.....	9
TRUSTS.....	9
SB 2727: Mississippi Uniform Trust Code.*	9
HB 846: Mississippi Qualified Disposition in Trust Act.*.....	12
CONTACT.....	13

LEGISLATIVE UPDATE

BUDGET

SB 2907: Secretary of State Budget*

SB 2907 provides funding to the Secretary of State's Office for the 2015 Fiscal Year. Effective 7/1/14. Signed 4/23/14.

BUSINESS LAW AND INCENTIVES

HB 914: Agricultural Cooperative Marketing Association Amendments*

HB 914 amends various sections of Chapter 19, Title 79, Mississippi Code of 1972, which pertain to the Agricultural Cooperative Marketing Associations.

First, the bill amends Section 79-19-9 to revise the powers and duties of incorporated agricultural marketing associations by removing the prohibition imposed on the association from handling agricultural products of nonmembers, and allowing the handling of nonmember products provided that the value of those products do not exceed the value of members' products handled by the association.

Section 79-19-13 is amended to require the association to state in its articles of association the term for which it is to exist, if other than a perpetual existence, from the previously required limitation of 99 years.

The bill amends Section 79-19-15 to require any amendments to the articles of association be approved by a vote of not less than 2/3 of all the members of the board of directors and then adopted by a vote representing a majority of all the members of the association. This section is further amended to require members of the association to recess the meeting to a certain time and place not sooner than three weeks from the time of recess if a majority of the members are not present at a meeting to a proposed amendment that has been submitted. Before the reconvening of the recessed meeting, the association must publish notices of the time, place and purpose of the recessed meeting for three consecutive weeks in a newspaper of general circulation in the place where the principal office of the association is located. When the meeting reconvenes, the members present shall constitute a quorum, and may take action on the proposed amendment by a majority vote of those present without regard to the total membership of the association.

The election of officers' provisions contained in Section 79-19-23 is amended to require the directors of the association to elect a chairman or board president and a chief operating officer of the association, in addition to the existent requirement to elect one or more vice presidents of the association.

Lastly, the bill amends Sections 79-19-25 and 79-19-55 to require the association to issue a certificate of membership to members who have paid his or her membership fee in full, if a fee is required for membership in the association. The latter section is amended to bring the fee for filing articles of association into compliance with the filing fee charged by the Secretary of State for other for-profit and not-for-profit business entities and organizations. The new filing fee charged an agricultural marketing association is increased from \$20.00 to \$50.00. Effective 7/1/14. Signed 4/23/14.

SB 2322: Conversion and Domestication.*

This bill creates a single step process to change a business entity form (known as conversion) or change location by moving to Mississippi (known as domestication) that is simple, efficient and inexpensive. Under current Mississippi law, business entities face complex and cumbersome steps to carry out either of these objectives. Most states already have statutory provisions authorizing domestication or conversion or both.

CONVERSION. A conversion occurs when one kind of entity converts to another kind, e.g., a limited liability company converts into a business corporation. This bill requires that a plan of conversion must be approved by the interest holders in the pre-existing entity desiring to convert. The plan generally describes the conversion and its effect in detail. Mandatory provisions required to be included in the plan are:

- The name and type of the pre-existing entity;
- The name, jurisdiction of organization, and type of the new converted entity;
- The manner for converting the interests in the pre-existing entity;
- The proposed public organic document of the new converted entity if it will be a filing entity;
- The private organic rules of the new converted entity.

After approval of the plan, a statement of conversion must be signed on behalf of the converting entity and filed with the Secretary of State's Office. This filing makes the transaction a matter of public record. It becomes effective upon the date and time of filing, unless a later date and time are specified. The new converted entity is the same entity as it was before the conversion; it just has a different legal form.

DOMESTICATION. "Domestication" refers to an entity discontinuing its organization in a foreign state and reorganizing under the laws of Mississippi or vice versa. A domesticated entity has all of the powers, privileges, and rights granted to entities originally incorporated in the subject state, as well as all duties, liabilities, and limitations imposed upon them.

Domestication requires approval of a plan of domestication by the interest holders in the entity. The plan requires the same information as a plan of conversion: a general description of the transaction and its effect in detail. Mandatory provisions required to be included in the plan are:

- The name and type of the pre-existing entity desiring to domesticate;
- The name and jurisdiction of organization of the new domesticated entity;
- The manner for converting the interests in the pre-existing entity;
- The proposed public organic document of the new domesticated entity if it will be a filing entity;
- The private organic rules of the new domesticated entity.

After approval of the plan, a statement of domestication must be signed on behalf of the pre-existing entity and filed with the Secretary of State's Office. This filing makes the transaction a matter of public record. It becomes effective upon the date and time of filing, unless a later date and time is specified.

A new domesticated entity is the same entity as the pre-existing entity; it has merely changed its jurisdiction of organization. Effective 1/1/15. Signed 3/19/14.

SB 2511: Name Reservation and Registration Amendments.*

Under current law, if the Secretary of State finds that a corporate name applied for is available, then he will reserve the name for the applicant's exclusive use for a 180 day period. SB 2511 allows the 180 day period to be renewed once by the applicant by filing a renewal application within 30 days before the expiration of the initial 180 day period. The bill also conforms the fee sections for business corporations, nonprofit corporations, limited partnerships and limited liability companies. Finally, the bill repeals Sections 79-4-4.03 and 79-11-161, which provided for the registration of corporate names with the Secretary of State. Effective 7/1/14. Signed 3/31/14.

SB 2017: Electric Power Associations; revise procedure to amend the certificate of incorporation.

SB 2017 revises the procedure by which any electric power association may amend its certificate of incorporation. An EPA may amend its certificate of incorporation if (a) the amendment is authorized by the board of directors by 2/3 vote of the directors, and (b) the amendment is ratified by 60% of the corporation's members voting, in person or by proxy, at either the corporation's annual meeting or at a meeting of the members called for the special purpose of considering and voting on the amendment. The certificate of amendment must be filed by the corporation with the Secretary of State, and the amendment of the corporation's

certificate is effective on the date in which the amendment is filed stamped by the Secretary of State. Effective on passage. Signed 3/13/14.

SB 2018: Electric Power Associations; allow corporation to include word "electric cooperative".

SB 2018 provides that the name of a corporation under the Electric Power Association Law shall include the words "electric power association" or "electric cooperative." The bill also prohibits the use of the words "electric cooperative" in the corporate name of any corporation other than those formed pursuant to the provisions of this article. Effective on passage. Signed 3/13/14.

SB 2021: Electric Power Associations; bylaws may allow members to vote electronically.

SB 2021 provides that bylaws of electric power associations may allow members to vote electronically. Effective on passage. Signed 3/13/14.

HB 785: Headquarters Relocation Credit.*

This bill authorizes an income tax credit for any company that transfers or relocates its national or regional headquarters to Mississippi from outside the state in an amount equal to the actual relocation costs paid by the company. A minimum of 20 jobs must be created in order to qualify for the tax credit. Relocation costs for which a credit may be claimed are determined by the Department of Revenue and include nondepreciable expenses necessary to relocate headquarters employees to the national or regional headquarters such as costs for travel expenses for employees and members of their households to and from Mississippi in search of homes and moving expenses to relocate furnishings, household goods and personal property of the employees and members of their households.

The tax credit applies to the taxable year in which the relocation costs are paid. The maximum cumulative amount of tax credits that may be claimed by all taxpayers claiming a credit in a state fiscal year cannot exceed \$1,000,000.00, exclusive of credits carried forward from previous taxable years. A company cannot receive a credit for the relocation of an employee more than one time in a 12 month period.

In order to be eligible to receive a tax credit, a company must certify to the Department of Revenue that it complies with the equal pay provisions of the federal Equal Pay Act of 1963, the Americans with Disabilities Act of 1990 and the fair pay provisions of the Civil Rights Act of 1964. The bill was recommended by the Secretary of State's Business Incentive Study Group. Effective 7/1/14. Signed 3/27/14.

ELECTIONS

HB 624: Elections; revise the definition of “absent voter.”*

HB 624 expands the definition of “absent voter” within Section 23-15-73 to include (1) any trained or certified emergency response provider who is deployed during the time period authorized by law for absentee voting on election day, or during any state of emergency declared by the President of the United States or any Governor of any state within the United States; and (2) Any citizen of Mississippi enrolled as a student at the United States Naval Academy, the United States Coast Guard Academy, the United States Merchant Marine Academy, and the United States Air Force Academy. Effective 7/1/14. Signed 3/26/14.

HB 874: Executive Committee; prohibit certain person from serving on municipal, county and state.

HB 874 amends Section 25-1-115 to prohibit any person who has been convicted of any felony in this state or in any other state from serving on any municipal executive committee, county executive committee or state executive committee. It also prohibits any person, who has been convicted of any election crime in this state or in any other state, from serving on any municipal executive committee, county executive committee or state executive committee. Effective 7/1/14. Signed 3/17/14.

SB 2288: School Board elections in certain municipal school districts; provide uniform procedure for nominating petition.

This bill provides a uniform procedure for nominating petitions and a uniform number of signatures on said petitions of nomination to run for the elected office of board of trustees of certain municipal school districts. Effective 7/1/14. Signed 3/24/14.

HB 222: Municipal Judges; revise qualification requirements for certain.

This bill amends Section 21-23-5 to revise the qualifications required for a person who is appointed as a municipal judge in a municipality having a population of less than 20,000 residents according to the latest available federal census. The person appointed must be an attorney licensed in the State of Mississippi or a justice court judge of the county in which the municipality is located. The law is amended to codify case law that the mayor or mayor pro tempore may not serve as a municipal judge. Effective 7/1/14. Signed 3/17/14.

HB 1185: Municipal Judges; revise maximum number for certain municipalities.

This bill amends Section 21-23-3 to allow a municipality that has a population in excess of 50,000 according to the latest federal decennial census to appoint not more than 10 municipal judges. Effective 7/1/14. Signed 3/17/14.

HB 1226: Justice Court Judges; revise population requirements for.

Section 9-11-2, which specifies the required number of justice court judges per county according to population, is amended by this bill. Each county currently is required to have at least two justice court judges, and the number goes up to three for a county when it reaches 35,000 in population, to four when a county passes 70,000 in population, and to five justice court judges for counties that have a population of 150,000 or more.

Population increase is determined by the latest decennial census. The creation of new justice court judgeships and redistricting of single member election districts does not occur until the next regular election cycle for justice court judges.

This bill allows a board of supervisors to retain the same number of judges after a population increase if they find that the lower number of judges is adequate for the needs of that county.

The bill specifically prohibits lowering the number of justice court judges, even if a population decrease occurs. If a county's population should decrease below one of the thresholds, new legislation would be required to authorize any decrease in the number of justice court judges in any county. Effective 7/1/14. Signed 4/23/14.

LANDS

SB 2394: Public Lands; allow corporations to purchase lands sold or forfeited to the state for delinquent taxes.*

This bill amends Section 29-1-75 to authorize any nonbanking corporation to purchase lands sold or forfeited to the state for delinquent taxes under any section of Chapter 1, Title 29, that specifically relates to the sale of tax-forfeited lands by the Secretary of State. The nonbanking corporation purchasing land sold or forfeited to the state will be subject to certain acreage limitations. Finally, the bill adds a repeal date of July 1, 2016, for this code section. Effective 7/1/14. Signed 3/31/14.

HB 1485: Department of Marine Resource's Budget

HB 1485 provides funding to the Department of Marine Resource for the 2015 Fiscal Year. The bill prohibits the Secretary of State's Office from reserving more than five percent (5%) of the total tidelands funds collected for administrative purposes. Effective 7/1/14. Signed 4/21/14.

MISCELLANEOUS

HB 1317: State agency purchasing; require procurement portal to provide information to vendors and include on Transparency MS website.

HB 1317 amends Section 25-53-151 to require the Secretary of State and other members comprising the Electronic Government Oversight Committee to advise the Department of Finance and Administration to develop a state procurement portal that will provide potential vendors of certain types of goods and services specified in the bill with information necessary to assist them in procuring contracts with the state. The bill requires the procurement portal to be linked to the Transparency Mississippi website. The Department of Finance and Administration may develop a phased in plan that ensures that the procurement portal is fully functional by July 1, 2015. Effective 7/1/14. Signed 3/27/14.

SB 2681: Mississippi Religious Freedom Restoration Act; enact and modify the great seal.

Senate Bill 2681 enacts the Mississippi Religious Freedom Restoration Act and codifies the official seal of the state. Section 2 requires the Secretary of State to procure the official seal of the state and specifies the features of the seal, including the addition of the phrase "In God We Trust." Effective 7/1/14. Signed 4/3/14.

HB 689: State and School Employees Health Insurance Plan; prohibit from restricting covered employee from assigning benefits to provider.

HB 689 prohibits the State and School Employees Health Insurance Plan from restricting a covered employee's ability to assign benefits to a licensed health care provider. Any such plan provision in violation of this prohibition shall be invalid.

The bill provides that if the covered employee provides the board with written direction that all or a portion of any indemnities or benefits provided by the plan be paid to a licensed health care provider rendering hospital, nursing, medical or surgical services, then the plan shall pay directly the licensed health care provider rendering such services. That payment shall be considered payment in full to the provider, who may not bill or collect from the covered employee any amount above that payment, other than the deductible, coinsurance, copayment or other charges for equipment or services requested by the covered employee that are noncovered benefits after the signing of an explanatory document about the noncovered benefit by the covered employee. Effective 7/1/14. Signed 3/17/14.

HB 928: Public records; limit cost to respond to records request and provide civil penalty.

HB 928 amends Section 25 61 7 to require that whenever a public body establishes a fee for responding to records requests and the actual cost of staff time or contractual services is a component of the fee, the pay scale of the lowest level employee or contractor competent to

respond to requests must be used in determining such actual cost. The bill also amends Section 25-61-15 to authorize a civil penalty to be assessed against any person who charges an unreasonable fee for providing a public record. Effective 7/1/14. Signed 3/24/14.

SB 2084: State employees authorized to use earned medical leave for adoption and foster care placement

SB 2084 authorizes state employees to use earned major medical leave for adoption or foster care placement. An employee may use up to six weeks of earned major medical leave for the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement. Effective 7/1/14. Signed 3/14/14.

SB 2291: State Auditor authorized to audit agencies as deemed necessary/revise charges for performing audits

SB 2291 authorizes the State Auditor to perform audits of state agencies as deemed necessary by the State Auditor. The bill also increases the fee charged by the State Auditor for performing audits and other services from \$30.00 per man hour to \$35.00 per man hour. Effective 7/1/14. Signed 3/24/14.

SB 2507: Mississippi Public Records Act; authorize Ethics Commission to enforce.

Section 25-61-13 is amended to create a nonexclusive administrative procedure before the Ethics Commission for the enforcement of public records requests; this will be similar to what is provided for open meetings law complaints. The bill provides for appeal de novo from the orders of the commission and authorizes the commission to impose the penalties otherwise provided by law for a person who goes to court. The person seeking to enforce a public records request has the option of skipping the Ethics Commission step and going straight to court.

The commission may order a public body to produce records for private review by the commission, its staff or a designee, and must complete its private review of the records within 30 days after receipt of the records from the public body. Effective 7/1/14. Signed 4/11/14.

SB 2521: Public contracts for energy efficiency services; authorize entities to enter into energy performance and shared-savings contracts.

SB 2521 authorizes public entities to enter into energy performance contracts and shared savings contracts for energy efficiency equipment and services relating to the installation, operation and maintenance of equipment. The bill also revises the definition of the terms "energy services" or "energy efficient services" to include alternative fuel motor vehicles. Finally, the bill revises the term of lease purchase agreements for energy efficiency services or equipment as well as the terms of shared savings, energy services contract and energy performance contracts. Effective 7/1/14. Signed 4/11/14.

SB 2547: Embezzlers; prohibit public employment.

Senate Bill 2625 of the 2013 Regular Session provided that from and after July 1, 2013, the state and any county, municipality or other political subdivision may not employ a person who has been convicted or pled guilty in any court of this state, another state, or in federal court of any felony in which public funds were unlawfully taken, obtained or misappropriated in the abuse or misuse of the person's office or employment or money coming into the person's hands by virtue of the person's office or employment. It was codified as Section 25 1 113.

This bill amends Section 25 1 113 to provide that from and after July 1, 2014, the state and any county, municipality or any other political subdivision shall not employ or continue to employ a person who has been convicted or pled guilty in any court of this state, another state, or in federal court of any felony in which public funds were unlawfully taken, obtained or misappropriated in the abuse or misuse of the person's office or employment or money coming into the person's hands by virtue of the person's office or employment. Effective on passage. Signed 3/14/14.

SB 2797: Mississippi Employment Fairness Act.

SB 2797 creates the "Mississippi Employment Fairness Act." The bill provides that no law, ordinance, or regulation shall impose any contractual, zoning, permitting, licensing or other condition that requires any employer or employee to waive their rights under the National Labor Relations Act. The bill also provides that any agreement, contract, understanding or practice, written or oral, implied or expressed, between any employer and any labor organization required in violation of this section is declared to be unlawful, null and void, and of no legal effect. Effective 7/1/14. Signed 4/16/14.

TRUSTS

SB 2727: Mississippi Uniform Trust Code.*

The Secretary of State's Trust Law Reform Study Group recommended the adoption of the Mississippi Uniform Trust Code. SB2727 is adapted from a uniform act proposed by the Uniform Law Commission for enactment by all the states. The uniform act is divided into 11 articles, and the Mississippi law generally follows that format. Article 9 of the uniform act already exists in Mississippi law as the Uniform Prudent Investor Act, which is codified in Sections 91-9-601 through 91-9-627. Article 5 of the uniform act addresses creditors' rights and was not adopted in this bill; Mississippi will instead rely on the current creditors' rights laws. The bill also adds an Article 12, which addresses trust advisors and trust protectors.

The Uniform Trust Code is intended to be supplemental to the common law of trusts and principles of equity; therefore, it does not contain language on every trust issue. It does not try to incorporate detailed rules for every conceivable kind of trust, nor does it incorporate all of the kinds of trusts there are. It provides a set of basic default rules that fairly, consistently and

clearly govern voluntary trusts. It is a default statute for the most part, because the terms of a trust instrument will govern even if inconsistent with the statutory rules.

Article 1 (beginning at Section 91-8-101) contains general provisions and definitions.

Article 2 (beginning at Section 91-8-201) provides guidance on judicial proceedings, and clarifies that courts in the trust's principal place of administration have jurisdiction over both the trustee and beneficiaries regarding matters related to the trust. The act does not attempt to address most issues surrounding jurisdiction or procedure.

Article 3 (beginning at Section 91-8-301) governs representation, both by a fiduciary (personal representatives, guardians, conservators) and through virtual representation. This article also confirms the court's authority to appoint representatives to represent and approve settlements for minors, individuals whose identity or location is not reasonably ascertainable, and the incapacitated or unborn.

Article 4 (beginning at Section 91-8-401) provides statutory framework for creating, modifying and terminating trusts. The requirements do not generally depart from traditional doctrine. The trust code utilizes a three part classification of trusts: charitable, noncharitable, and honorary. The most common trust is the noncharitable trust. Noncharitable trusts require a valid purpose and ascertainable beneficiary or beneficiaries. Charitable trusts have the opposite purpose, which is to benefit the public as a whole. The honorary trust was unenforceable at common law but is recognized under the trust code. An honorary trust lacks an ascertainable beneficiary. The most common example is a trust to care for an animal.

In addition to the terms on creation and validity, Article 4 provides terms on modification and termination of a trust. The modification provisions are intended to help preserve the intent of the settlor, but provide flexibility if a provision of the trust no longer serves a material purpose. It also provides for termination of trusts, if properly approved, when the size of the trust is insufficient to justify continued administration.

Article 5 incorporates by reference the Uniform Prudent Investor Act, codified at Sections 91-9-601 through 91-9-627.

Article 6 (beginning at Section 91-8-601) addresses revocable trusts. Generally, revocable trusts are treated as the equivalent of a will under the trust code. Trusts are presumed revocable unless the terms provide otherwise. The article also provides the procedure to amend or revoke the trust.

Article 7 (beginning at Section 91-8-701) covers the office of the trustee. All of the default rules found in Article 7 may be modified by the trust terms. The rules address acceptance of the office, the role of co trustees, changes in trusteeship, resignation, removal, appointing successor trustees, and compensation.

Article 8 (beginning at Section 91-8-801) governs the duties and powers of trustees.

Article 9 is omitted as the Uniform Prudent Investor Act is already enacted in Mississippi and codified in Sections 91-9-601 through 91-9-627. These provisions could be incorporated into the Mississippi Uniform Trust Code at a later time.

Article 10 (beginning at Section 91-8-1001) provides for the liability of trustees and rights of those dealing with trustees.

Article 11 (beginning at Section 91-8-1101) is the miscellaneous provisions section of the act; it provides for the effective date and that the act will apply to all trusts created before or after the effective date.

Article 12 (beginning at Section 91-8-1201) addresses trust advisors and trust protectors as follows:

- Lists a nonexhaustive enumeration of powers that may be given to trust advisors and protectors;
- Places fiduciary responsibilities on trust advisors and protectors, to the extent the trust advisor or trust protector is granted power in the trust instrument;
- States that a trustee, trust advisor, or trust protector is considered an excluded fiduciary with respect to each power granted or reserved exclusively to another individual;
- Provides that trust advisors and trust protectors consent to personal jurisdiction in Mississippi by accepting their roles in the trust;
- Provides that an individual who is an excluded fiduciary is under no duty to review actions by other individuals or to recommend to, report to, or communicate with beneficiaries, or take any other action, unless the terms of the trust provide otherwise;
- Provides that administrative activities or recordkeeping required by an individual's role with a trust will not give rise to any duty when the power is exclusively held by another;
- Provides that an excluded fiduciary is not liable for the actions of other individuals. Only the individuals who hold the power may be liable for the failure to exercise a power or for the results of exercising that power.

A claim against a trust advisor or trust protector must be brought within one year of the date the trust beneficiary or representative of the trust beneficiary received a report indicating the existence of a potential claim, or if no such report was provided, within three years of the removal, resignation or death of the trust advisor or trust protector, the termination of the beneficiary's interest, or the termination of the trust.

Repeals. In order to avoid conflicting and overlapping provisions, the following trust provisions in Title 91, Chapter 9, Mississippi Code of 1972, are repealed:

- Article 1, General Provisions, found at Sections 91-9-1 through 91-9-9;
 - Article 3, Uniform Trustees' Powers, found at Sections 91-9-101 through 91-9-119;
 - Article 5, Resignation and Succession of Trustees, found at Sections 91-9-201 through 91-9-213; and
 - Article 7, Removal of Trustees, found at Sections 91-9-301 through 91-9-305.
- Effective 7/1/14. Signed 3/24/14.

HB 846: Mississippi Qualified Disposition in Trust Act.*

The Secretary of State's Trust Law Reform Study Group recommended the adoption of the Mississippi Qualified Disposition in Trust Act. A qualified disposition trust is an irrevocable trust in which the person who puts the property in trust is also a beneficiary but still receives protections from creditors.

Current law only allows protection of assets placed in trust for the benefit of a separate beneficiary or beneficiaries who are not the creators of the trust. This bill, the Mississippi Qualified Disposition in Trust Act, provides protection to the creator of an irrevocable trust who is also a beneficiary of the trust. The impetus of the bill is that Tennessee has adopted a similar law and it is believed that a Mississippian wanting to create a qualified disposition trust will do so in Tennessee, which will send those assets and related trust business out of state.

To take advantage of the act, the trust creator must first sign a qualified affidavit stating that the trust creator is solvent, has title and authority to transfer the assets being put in trust, is not taking any action to defraud creditors, is not aware of any undisclosed pending or threatened court action, is not involved in any undisclosed administrative proceeding, does not plan to file bankruptcy, and that the assets being transferred were not derived from any unlawful activity. The transferor is required to secure a liability policy of at least \$1 Million.

The only way to attack the trust is under the Uniform Fraudulent Transfer Act (Section 15-3-101 et seq.) and the action must be commenced within two years of the qualified disposition or within six months after the creditor knows or should have known that the property had been transferred into trust. If the person becomes a creditor after the trust is created, the action must be brought within two years after the qualified disposition was made. The creditor must prove by clear and convincing evidence that the transfer of the property was made with intent to defraud that specific creditor.

A creditor's right to trust assets can prevail if a court orders payment for one of the following:

- Alimony, child support, or equitable distribution of marital property.
- Compensation for death, personal injury or property damage occurring before the date of a qualified disposition.
- Judgments payable to the state or a political subdivision, including court ordered restitution.
- Any creditor's claim if the transferor failed to maintain a \$1 Million liability policy (recovery not to exceed \$1.5 Million). Effective 7/1/14. Signed 4/23/14.

CONTACT

If you have any comments on or questions about the revisions or the effect of the revisions in the legislation, please contact Nathan Upchurch at nathan.upchurch@sos.ms.gov or 601-359-2975.

** - Indicates the bill was a legislative priority of the Secretary of State's Office.*