



DELBERT HOSEMANN  
*Secretary of State*

**2013 Business Law Reform Study Groups**  
**Minutes of the Business Organizations Study Group, Meeting #1**  
**June 12, 2013**

This meeting of the Business Organization Study Group (hereinafter the “Study Group” or the “Committee”) was called to order on Wednesday, June 12, 2013 at 11:02 a.m. at the Office of the Secretary of State, 700 North Street, Jackson, Mississippi.

**Welcome and Introduction**

Drew Snyder, Assistant Secretary of State of Policy and Research, welcomed everyone and thanked all participants for their service. Snyder reviewed past study group efforts to reform Mississippi’s corporation, nonprofit corporation, LLC, and other business laws. This Study Group would address new or outstanding issues in Title 79 of the Mississippi Code and other business-related issues members raised.

**Entity Domestication and Conversion**

In 2012, a study group was formed to examine entity domestication and conversion. The Domestication and Conversion Study Group recommended developing proposed legislation to give to the Legislature. The proposed legislation could be based on Chapter 9 of the Model Business Corporation Act (“MBCA”) or the Uniform Law Commission’s Model Entity Transaction Act (“META”). Some of the strengths and drawbacks of these approaches were discussed. Chapter 9 of the MBCA does not offer as much flexibility and concentrates on corporations, but META is still relatively new and is undergoing additional amendments as part of the Uniform Law Commission’s Harmonized Business Organizations Code. Even though the most common conversion is from a corporation to LLC, participants liked having the option to include other cross-entity transactions.

Members were asked if the lack of conversion and domestication laws is enough of a problem to proceed into the drafting phase. And if so, should the Study Group develop a standalone, “junction box” statute or weave provisions into existing code sections?

Gina Jacobs, who also served on the 2012 Domestication and Conversion Study Group, recommended moving forward with legislation. To remain competitive, Mississippi needs to offer services like domestication and conversion that are available in other leading business-friendly states. Members discussed non-profit to for-profit conversion. Jacobs reminded the group that the 2012 study group cautioned against non-profit to for-profit conversion.

Tom Byrne touched on some of the tax issues involved with conversion. While domestication does not have the potential tax consequences of conversion, there is less demand for domestication.

It was agreed the Secretary of State's Office would continue to prepare a preliminary draft for members to review and discuss.

### **Professional Entities**

Preston Goff directed the Group to a handout outlining some of the inconsistencies between the Professional Limited Liability Company and Professional Corporation laws.

Questions arose over the treatment of a single owner professional entity when that owner dies. Tom Riley explained when a single owner of a PLLC dies, the PLLC dies along with him/her. The statute needs to define who gets the PC or PLLC in this situation. Another member indicated that the statutes provide for valuation of interest and the business would have been sold.

A question was also raised regarding who should be considered a "professional" under the professional entities statutes. Secretary of State Delbert Hosemann pointed out his concern that definitions might exclude persons, like a contractor.

### **Marketing Cooperatives**

Preston Goff discussed Mississippi's agricultural marketing cooperative association laws (Section 79-19-1 et seq.) These laws have not been updated since the 1930s. At least one leading marketing cooperative has organized in a neighboring state because of Mississippi's out-of-date provisions. Group members were asked to provide comments on a draft bill to update the marketing cooperative laws. The discussion of marketing cooperatives led to a broader discussion of cooperatives and whether there was a need for legislation to allow cooperatives not currently authorized under state law.

### **Charities**

Tanya Webber addressed two issues. First, the Charities Division is having difficulty with non-religious organizations claiming to be religious institutions to get an exemption from certain Charities laws. Webber asked the group to consider whether the definition of religious organization could be amended to clarify who qualifies for the exemption. Second, Webber addressed a recent amendment exempting the American Legion and Veterans of Foreign Wars organizations from reporting requirements. Since the exemption was added, several issues have arisen, but the Charities Division has no oversight authority. Jon Turner suggested continuing the exemption for smaller organizations with oversight for larger organizations. For instance, organizations generating between \$250,000 and \$500,000 are subject to review and organizations over \$500,000 are subject to audit.

## **Small Business Investment Companies**

Snyder next asked the group to consider whether the Small Business Investment Companies statutes (Section 79-7-1 et seq.) should be repealed. There was little discussion on this subject and no one voiced opposition to repealing the statute.

## **Recognition of Out-of-State Series LLCs**

Snyder gave an overview of the Series LLC. How should Mississippi respond to recognizing these as separate entities? Why would we recognize it? The advantage here is that it is like an investment company that eliminates a regulatory burden. Only one registration is needed. The difference between “holding” and “series” are the requirements involved, i.e. holding companies require a separate bank account. The filing advantage is there is only one annual report. Generally, the Group did not have a preference regarding out-of-state recognition and wanted to wait until more information was available.

## **Benefit Corporations**

Snyder next addressed Benefit Corporations or “B-Corps”, entities which are intended to promote a social or public benefit. Snyder stated that last year a study group reviewed a similar business entity, the Low-Profit Limited Liability Company (L3C), but did not recommend legislation allowing L3Cs to be created in Mississippi. A white paper from the American Bar Association was included in the study group materials and Snyder asked the group to review the information on B-Corps and determine if they are a business entity Mississippi should consider.

## **Adopting Recent Amendments to Model Business Corporation Act**

Snyder asked the Group to review the ABA’s recent amendments to the Model Business Corporation Act.

## **Closing**

Snyder encouraged everyone to ask questions whenever assistance is needed and thanked them for their time and effort. He reminded everyone all the materials discussed are available on the website. The meeting was adjourned at 12:55 P.M. The committee agreed to meet again Wednesday, June 26 at 11 A.M in the Ladner Building.

**EXHIBIT A**  
**Business Organizations Study Group, Meeting #1**  
**June 12, 2013**

**Participants**

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**Members:**

1. Tom Byrne
2. Tammra Cascio
3. Ken Farmer
4. Chuck Goldberg
5. Brad Hathaway (phone)
6. Gina Jacobs
7. Wendy Mullins
8. Charlie Penick
9. Kap Primos
10. Ben Roberson
11. Tommy Shepherd (phone)
12. Joe Stevens (phone)
13. Jon Turner

**Secretary of State's Office:**

1. Secretary of State Delbert Hosemann
2. Justin Fitch, Senior Attorney, Policy and Research Division
3. Preston Goff, Attorney, Policy and Research Division
4. Martin Hegwood, Senior Policy Advisor and Elections Attorney
5. Cheryn Netz, Assistant Secretary of State of Securities
6. Tom Riley, Assistant Secretary of State of Business Services
7. Drew Snyder, Assistant Secretary of State of Policy and Research
8. Leann Thompson, Attorney, Policy and Research Division
9. Nathan Upchurch, Special Assistant
10. Tanya Webber, Assistant Secretary of State of Charities