



DELBERT HOSEMANN  
*Secretary of State*

## **NOTABLE BUSINESS REFORM LEGISLATION**

### **2013 Legislative Session**

**Strengthening Mississippi Academic Research Through Business (“SMART Business”) Act – [House Bill 826](#)** (effective July 1, 2013). The SMART Business Act is intended to encourage private businesses to invest in Mississippi universities. Under the Act, an investor entering into a research agreement with a university can qualify to receive a rebate equal to 25% of the investor’s contracted research costs. To receive a rebate, the investor submits an application to the Board of Trustees of State Institutions of Higher Learning in Mississippi (“IHL”) containing a description of the qualified research to be conducted, a proposed budget, and the estimated date of completion. IHL will issue or refuse to issue a SMART Business certificate. If IHL issues the certificate, the investor can claim the rebate by submitting to the Department of Revenue (“DOR”) the certificate and proof of payment to the university. DOR allocates rebates to investors in the order the certificates are issued by IHL and will issue rebates from current income tax collections. The legislation authorizes IHL and DOR to promulgate rules, regulations, and any necessary forms. An investor incurring research costs may not claim a rebate greater than \$1 million in any fiscal year. The total amount of rebates issued under the Act in any fiscal year may not exceed \$5 million [2012 Business Incentives / 2010 Technology and Intellectual Property]

**Uniform Commercial Code: Amendments to Articles 9 and 4A – [Senate Bill 2609](#)** (effective July 1, 2013) adopts the 2010 amendments to Article 9 of the UCC as well as the 2012 amendments to Article 4A governing remittance transfers. Of note, under the amended Article 9, an individual debtor’s name will be the name that appears on his or her driver’s license or non-driver’s state identification. For organizations, the name will be as it appears on the organization’s public organic record. These amendments are intended to provide secured parties more confidence that they are properly perfected, and to make searching for other filings easier. [2012 UCC]

**Uniform Commercial Code: Combating Fraudulent Filings** – [House Bill 1008](#) (effective July 1, 2013) gives the Secretary of State's Office the authority to reject materially false UCC filings and provides an avenue for victims of fraudulent filings to file a statement attesting to the false filing. An exception is included for regulated financial institutions.

### **2012 Legislative Session**

**The Uniform Principal and Income Act of 2013** – [House Bill 732](#) (effective January 1, 2013), the Uniform Principal and Income Act of 2013 (UPAIA), provides procedures for trustees administering an estate in separating principal from income. The revisions better ensure the intention of the person who created the trust is the guiding principle for trustees. The Act allows a trustee to make adjustments between principal and income in the event the trust's income in a particular year is too low. This provides a way to ensure the trustee is treating income and remainder beneficiaries in an impartial manner. The Act conforms our Principal and Income Act with the State's adoption of the Uniform Prudent Investor Act which was signed into law in 2006. The Uniform Prudent Investor Act allows trustees to maximize trust value by investing for total return. The 1962 version of the UPAIA had conflicted with the Uniform Prudent Investor Act by requiring trustees to allocate assets to maximize trust income at the expense of total return. Furthermore, The UPAIA clears up confusion about whether certain types of receipts should be allocated to principal or to income. [2009 Trust Law]

**Amendments to Mississippi Business Corporation Act** – [House Bill 789](#) (effective January 1, 2013) was amended to conform to the ABA's Model Business Corporation Act and the Mississippi's Revised LLC Act. The amendments authorize a company's board of directors to allow remote participation in shareholder meetings. A "force the vote" mechanism is also permitted. The new law adopts a "reasonably attentive director" standard whereas previously oversight was not a specified role of the board. Under the new law, the penalty for signing a false document is increased from \$500 to \$1000. The bill also gives corporations the ability to cancel a name reservation and clarifies that a corporation's name must be distinguishable from LLCs and other business entities, not just other corporations. [2010 Corporations, 2011 Corporations]

**Amendments to Public Improvement District Act** – [House Bill 1261](#) (effective April 24, 2012) updates Mississippi's laws governing Public

Improvement District (“PID”), a type of financing vehicle for economic development projects. First authorized by the Public Improvement District Act in 2002, PIDs have been created for various notable real estate developments in Metro Jackson, including Reunion, Colony Park, and Lost Rabbit. Amendments to the 2002 Act will provide greater transparency for PID bond issues and greater accountability to the public. Under amended voting procedures, board members’ terms are extended from 4 to 6 years, public hearing deadlines are extended from 45 to 60 days, the county can select a member of a 5-member PID governing board, and members missing three consecutive meetings can be removed. Further, notice is now required to every landowner prior to issuing bonds, and a public hearing and independent appraisal are required before a contribution agreement is considered valid. [2011 Public Finance]

**Mississippi Registered Agents Act (“MoRAA”)** – [House Bill 1162](#) (effective January 1, 2013) creates one filing process and one set of forms and fees to govern the registered agent process for Mississippi’s seven business entities: Corporations, Partnerships, Limited Partnerships, Foreign Investment Trusts, Foreign Business Trusts, Nonprofit Corporations, and LLCs. The Act also harmonizes service of process procedures for all business entities. Additionally, MoRAA creates two types of registered agents: commercial and non-commercial agents. By choosing to be a commercial registered agent and paying the nominal fee to be listed as a commercial agent, a commercial registered agent will be able to make one filing with the Secretary of State’s office when it changes its address. This filing will count for all the entities it represents, making it easier for agents with hundreds or thousands of clients to change their address. Currently, when changing addresses for multiple clients, a registered agent has to file a separate form for each client. To make fees consistent across all entities, Limited Partnerships and Limited Liability Companies now have to pay only \$10 instead of \$25 when a registered agent changes its address, and a statement of resignation is now free instead of \$5. The legislation is based on the Model Registered Agents drafted by the Uniform Laws Commission in 2006.

**Uniform Prudent Management of Institutional Funds Act (“UPMIFA”)** – [House Bill 1104](#) (effective July 1, 2012) provides statutory guidelines and greater flexibility for the management, investment, and expenditures of endowment funds held by charitable institutions. Charitable institutions are now allowed to spend from the principal of an endowment if deemed prudent by the governing board.

## **2011 Legislative Session**

**Amendments to Nonprofit Corporation Act – [Senate Bill 2444](#)** (effective January 1, 2012). The amendments add a definition of a “nonprofit corporation” consistent with common law and with definitions of nonprofit corporations in other states. Consequently, the definition of “distribution” clarifies payments to officers, directors and members for reasonable compensation for services provided are permitted. The amendments permit an automatic liability shield from personal liability (with exceptions for criminal law violations, receipt of unentitled financial benefit, etc.) for directors of charitable nonprofit corporations (referred to below as “charitable nonprofits”). Likewise, an optional liability shield for nonprofit corporations which are not charitable nonprofits can be included in their articles of incorporation. Last, the amendments implement electronic technology concepts in communications among nonprofit corporations, their members and in membership meetings.

**Extension of Expiration of Corporate Charters – [Senate Bill 2408](#)**(effective April 14, 2011). Before the Model Business Corporation Act and Model Nonprofit Corporation Act were adopted in Mississippi in 1988, state law in effect from 1892 to 1911 limited the duration of corporations formed in Mississippi to fifty (50) years. In 1950, the charter extension statute extended the duration of corporations formed under prior law from fifty (50) years to ninety-nine (99) years. The Secretary of State’s Office took no action to dissolve the extended charter corporations which still appear in the Agency’s database as active corporations. The amendment automatically changed the duration of the extended charter corporations to perpetual, with no filing required, so long as they continue to stay in business for thirty (30) days after March 14, 2011, the date the amendment took effect.

**Uniform Real Property Electronic Recording Act – [House Bill 599](#)** (effective July 1, 2011). In 2009, the Legislature established a task force to study the merits of a uniform statewide system for the recording of real property documents. The task force included chancery clerks, tax assessors, tax collectors, legislators, computer experts, and individuals in the private sector who regularly handle real property records. The task force proposed adoption of the Uniform Real Property Electronic Recording Act (“URPERA”). Under URPERA, electronic documents with electronic signatures satisfy the legal requirements of filing original, signed, real property instruments. URPERA establishes uniform

standards for the electronic filing and retrieval of real property instruments. Furthermore, URPERA authorizes electronic filing and retrieval of such documents, but does not mandate electronic filing.

**Real Property Instruments - First Page Information and Font Size – [House Bill 600](#)** (effective July 1, 2012). The Real Property Task Force proposed increasing the font size of indexing instructions, as well as including additional contact information on the first page of real property instruments. HB 600 increases font size from eight (8) points to ten (10) points in size for any document presented to a chancery clerk for filing. HB 600 also requires certain contact information of all parties named in a real property instrument to be included on the first page of the instrument, including the current mailing address, business telephone number, and the current residential telephone number.

#### **2010 Legislative Session**

**Revisions to Mississippi Limited Liability Company Act – [House Bill 683](#)** (effective January 1, 2011). The Limited Liability Companies Study Group recommended the adoption of a comprehensive revised act, based in part on Delaware's LLC Act. This act also requires LLCs to file annual reports and pay an annual fee, similar to the reports and fees corporations pay. The only difference from the bill recommended by the study group was the amount of annual report fees to be paid by LLCs (which will be no fee for domestic LLCs and \$250 for foreign LLCs).

**Trade Names – [Senate Bill 2003](#)** (effective July 1, 2010) creates a system for the registration of trade names (also called fictitious names, assumed names, or DBAs). A trade name is a fictitious or assumed name other than an individual's or business entity's legal name that one business uses to distinguish itself from another. Most states have adopted laws governing the registration and use of trade names, as these laws generally impose little burden on businesses while protecting the public from unscrupulous parties. The Act, as adopted, was identical to the version recommended by the Secretary of State's Trade Names Study Group.

**Uniform Commercial Code (UCC) and Debtor-Creditor Laws – [Senate Bill 2419](#)** (effective July 1, 2010). The Uniform Commercial Code Study Group recommended the adoption of revised Article 1 and amendments to Articles 3 and

4 (as set forth in the official text of the UCC by the Uniform Law Commission). In addition, the group recommended some other changes to the state's UCC laws and the adoption of some non-uniform choice of law language. The adopted version contains some changes from the bill proposed by the study group, including the removal of the non-uniform choice of law language and some other changes to Articles 3 and 4.

### **2009 Legislative Session**

**Charities and Nonprofits** – [House Bill 680](#) (effective July 1, 2009) makes several significant changes to the Mississippi's charitable solicitation laws. The new provisions ease regulatory burdens on charities but also strengthen our ability to enforce the law against dishonest charities. These changes include increasing the annual revenue threshold for charity registration with our office from \$4,000 a year to \$25,000 a year. This law also expands our office's enforcement authority by allowing us to subpoena witnesses and documents during investigations and to bring actions in Chancery Court to stop illegal activities, collect fines, and remove charitable corporate status.

**Corporations** – [Senate Bill 3060](#) and [House Bill 515](#) (effective July 1, 2009) amends the business corporation and nonprofit corporation laws. The corporate reinstatement laws have been revised to make it much easier and quicker for administratively dissolved corporations to become reinstated. Senate Bill 3060 also gives our office the authority to adopt rules to reduce the cost of online corporate filings and to provide for expedited filing services for corporations.

**Securities** – [House Bill 781](#), the Mississippi Securities Act (effective January 1, 2010) adopts the Uniform Securities Act of 2002 in Mississippi to replace our existing, outdated securities act and will bring Mississippi into uniformity with federal law and the most current securities laws in other states. Like the changes to the charities laws, this act will enhance the enforcement powers for our office to investigate and enforce the law against dishonest companies and salespeople. It will also ease regulatory burdens on multi-state companies that sell securities in Mississippi.

**Trademarks** – [Senate Bill 2641](#) (effective July 1, 2009) makes changes to the Mississippi's trademark laws to include the most current protections under federal law and make it easier for businesses that have Mississippi registered trademarks to prove claims of trademark dilution. The amendments allow

businesses that have famous trademarks to enforce their trademark rights against those businesses that would damage the mark's reputation. In addition, the changes to the trademark law provide greater protections both to businesses that use competitors' trademarks in comparative advertising and to media outlets that use trademarks in news reporting.