



**DELBERT HOSEMANN**  
*Secretary of State*

**Mississippi Secretary of State  
2010 Business Reform Study Groups  
Minutes of the Third Meeting of the Nonprofit Corporation Laws Study Group  
September 15, 2010**

The third meeting of the Nonprofit Corporation Laws Study Group was called to order on Wednesday, September 15, 2010 at 11:00 A.M. at the Office of the Secretary of State, 401 Mississippi Street, Jackson, Mississippi. A list of the persons who were present in person or by telephone is attached at Exhibit A.

**Welcome and Introduction**

Cheryn Baker, Assistant Secretary of State for the Division of Policy and Research, welcomed the members and called the roll of those members attending by telephone.

**Approval of Minutes**

The study group unanimously approved the minutes from the second meeting held on August 26, 2010.

**Business Services Update**

Tom Riley, Assistant Secretary of State for the Division of Business Services, updated the study group on the activities of the Business Services Division. He reminded the group that the Secretary of State is currently attempting to locate the addresses of some of the older nonprofits in Mississippi. Upon that completion, the Secretary of State's Office will be sending out status reports to nonprofit corporations.

**Expired Charter Report**

Ms. Baker discussed the report of a group that has recommended a proposed statutory fix to the expired charter issue (See Exhibit B). She explained to the members that the proposed legislation will convert the period of duration of nonprofit and business corporations which were formed before 1988 with a limited period of duration to a perpetual duration. This change will apply to existing corporations and will also apply to corporations who are currently active in the Secretary of State's database but whose charters have expired.

## Subgroup Reports

### A. Subgroup 1 – Definitions

Subgroup Chair Kendall Moore presented his subgroup's report (See Exhibit C). He reported that his subgroup would not be recommending the adoption of amendments to the Mississippi Nonprofit Corporation Act that would establish different categories of nonprofit corporations. Moore said the subgroup instead would be proposing amended definitions of "nonprofit corporation" and "corporation." The group has also discussed recommending a requirement for nonprofit corporations to state their planned, primary nonprofit activity when filing articles of incorporation.

### B. Subgroup 2 – Amendments

Barry Jones, chair of the subgroup, presented the report of his subgroup (See Exhibit D). He stated that the group had discussed several potential amendments to the Nonprofit Corporation Act. He began by explaining how amendments to incorporate concepts of electronic technology would affect the Act, and stated that these amendments were needed in order to keep the Act up-to-date with current business practices. Jones next explained that increasing the minimum required number of directors for nonprofit corporations will help decrease the number of fraudulent nonprofits operating in Mississippi. Finally, Jones said, the subgroup is discussing adding a liability shield for directors of nonprofit corporations similar to those that are in place for for-profit corporations.

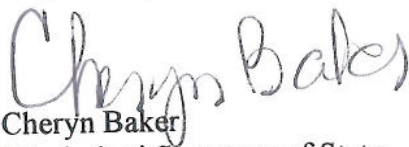
### C. Subgroup 3 – Forms and Filings

Cheryn Baker spoke on behalf of this subgroup for Mark McCrary, the Subgroup Chair who was unable to attend the meeting. She stated that the group had decided to divide itself into two groups: one to examine the Secretary of State's website in an effort to make it more user-friendly, and another to examine the existing forms and instructions used by nonprofit corporations when filing with the Secretary of State. Ms. Baker said the group would soon be making recommendations to ensure user friendliness as well.

## Other Business

There being no additional business, the meeting was adjourned at 11:35 A.M.

Respectfully submitted,



Cheryn Baker  
Mississippi Secretary of State  
Assistant Secretary of State, Division of Policy & Research

## EXHIBIT A

### Minutes of the Nonprofit Corporation Laws Study Group Meeting, September 15, 2010

#### In Attendance:

1. Larry Christian
2. Julia Daily
3. Barry Jones
4. Darrell Galey
5. Matthew McLaughlin
6. Kendall Moore
7. Chris Savell
8. Genie Thomas
9. Karen Wagner
10. Primus Wheeler
11. Will Wilkins

#### By Telephone:

12. Joe Akanji
13. Ivey Allen
14. Doug Boone
15. Tom Byrne
16. Jim Greenlee
17. Joel Hill
18. Susan Riley
19. Deanne Tanksley
20. Jack Turner
21. Eric Wooten

#### Secretary of State Personnel in Attendance:

22. Cheryn Baker, Assistant Secretary of State, Division of Policy and Research
23. Tom Riley, Assistant Secretary of State, Division of Business Services
24. Tanya Webber, Assistant Secretary of State, Division of Securities and Charities
25. Richard Lee, Legal Intern, Division of Policy and Research

## **Exhibit B**

### **Corporation Laws Study Group Workgroup Reviewing Expired Charter Issue Report and Recommendation to the Full Study Group September 8, 2010**

This workgroup consists of members of the Corporations Law Study Group, Nonprofit Corporations law Study Group, the Legislature, the staff of the Secretary of State's Office and the Drafting Attorney for the Mississippi Senate. The workgroup has met and considered proposed legislation to address the expired charter issue discussed at previous Corporations and Nonprofit Corporations Study Group meetings. After review and discussion, this workgroup hereby recommends the adoption of the attached proposed revision to Section 79-1-1.

Members of this workgroup:

Senator Briggs Hopson, Stephen Burrow, Henry Chatham, Cecile Edwards, Dan Hise, Cliff Hodge, Barry Jones, Cheryn Baker, Tom Riley, Caryn Quilter

1 AN ACT TO AMEND SECTION 79-1-1, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE FOR THE STATUTORY AUTOMATIC EXTENSION OF CORPORATE  
3 CHARTER FOR CERTAIN CORPORATIONS UNDER CERTAIN CIRCUMSTANCES;  
4 AND FOR RELATED PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF  
6 MISSISSIPPI:

7 SECTION 1. Section 79-1-1, Mississippi Code of 1972, is  
8 amended as follows:

9 79-1-1. (1) (a) If a business corporation was created  
10 (i) for a limited period of existence, and (ii) before April 18,  
11 1988, the life of the business corporation shall be perpetual if  
12 the business corporation continues to do business for thirty  
13 (30) days after the effective date of this act.

14 (b) If a nonprofit corporation was created (i) for a  
15 limited period of existence, and (ii) before January 1, 1988,  
16 the life of the nonprofit corporation shall be perpetual if the  
17 nonprofit corporation continues to do business for thirty (30)  
18 days after the effective date of this act.

19 (2) If \* \* \* a business or nonprofit corporation \* \* \* (a)  
20 has a limited period of existence that expired before the  
21 effective date of this act, and (b) the business or nonprofit

22 corporation \* \* \* continues to do business for thirty (30) days  
23 after the effective date of this act, \* \* \* the \* \* \* life of  
24 that corporation \* \* \* shall be perpetual. The corporation's  
25 charter and articles of incorporation shall be deemed to have  
26 been automatically amended before the end of the limited period  
27 of existence to state that the corporation's life shall be  
28 perpetual. No further action on the part of the corporation is  
29 necessary to execute the provisions of this subsection. \* \* \*

30 \* \* \*

31 (3) Any corporation may, after the effective date of this  
32 act, amend its articles of incorporation to provide for a  
33 limited period of existence.

34 **SECTION 2.** This act shall take effect and be in force from  
35 and after its passage.

## Exhibit C

### Nonprofit Corporation Laws Study Group Subgroup Reviewing Definition of Nonprofit Corporation Report and Recommendation to the Full Study Group September 15, 2010

This subgroup has met and discussed various matters related to defining a nonprofit corporation and nonprofit purposes and activities.

**1. Definition of Nonprofit Corporation.** The subgroup has agreed to recommend a meaningful definition for “nonprofit corporation.” The definition currently under consideration is set forth below. This definition uses language used in other state nonprofit corporation acts.

(f) “Corporation” means a nonprofit corporation (i) subject to the provisions of Section 79-11-101 et seq. (except a foreign corporation) which is organized for any lawful activity, and (ii)

- no part of
  - the assets,
  - income or
  - profit of which is
- distributable to, or enures to
  - the benefit of,
    - its members*
    - directors or*
    - officers*
- [Exceptions:][exceptions will be written in legislative form. Language below is a summary of the exceptions]
  - except to the extent permitted under this chapter
  - reasonable compensation
  - distributions to nonprofit members

The group is also looking at incorporating the IRS concept of “35% controlled entities” into the list of prohibited enurement groups set forth above (*see italics above*).

**2. Proposed Activity.** The subgroup has also discussed recommending a requirement for nonprofit corporations to state their “initial, planned, primary nonprofit activity” in their articles of incorporation.

## Exhibit D

### Nonprofit Corporation Laws Study Group Subgroup Reviewing Amendments to Nonprofit Corporation Act Report and Recommendation to the Full Study Group September 15, 2010

This subgroup has met and studied several potential amendments to the Nonprofit Corporation Act. The amendments currently under consideration are described below.

- 1. Amendments to incorporate Electronic Technology Concepts.** These concepts are incorporated into the 2008 Model Nonprofit Corporation Act. In addition, these concepts are currently under consideration for adoption into the Mississippi Business Corporation Act. The subgroup agrees the Nonprofit Corporation Act should be amended to incorporate these concepts. This will require amendments in several sections of the Act. A memo describing the amendments has been previously distributed to the full Study Group.
- 2. Increase Required Number of directors.** Increase the minimum number of required persons to serve on the board of directors from one person to three persons. According to research conducted by the Policy and Research Division, over 35 states require a nonprofit corporation to have at least 3 board members. The subgroup is considering this amendment for recommendation. This amendment will likely contain a grandfather provision for existing nonprofit corporations.

One suggestion was to make this a requirement only for charitable corporations or for charities that are registered with the Charities Division, but not for other types of nonprofit corporations. Another suggestion would be to require that a majority of the board members be independent from the nonprofit corporation. The group would need to determine what constitutes "independent" for purposes of this amendment, such as would volunteer officers or volunteer members be considered independent.

- 3. Liability Shield language.** Add an automatic liability shield for directors of charitable nonprofit corporations and an optional liability shield for directors of other types of nonprofit corporations. This amendment would incorporate the language currently in the Mississippi Business Corporation Act. If recommended the language would need to distinguish between the two different types of nonprofits in some manner. See attachment.



**Comparison of Director Liability Provisions**

MS Nonprofit Act	1987 Act	2008 Act	MS Business Corp Act
<p>§ 79-11-137. Articles of incorporation must set forth:</p> <p>(a) A corporate name for the corporation that satisfies the requirements of Section 79-11-157;</p>	<p>Section 2.02. Articles of Incorporation.</p> <p>(a) The articles of incorporation must set forth:</p> <p>(i) a corporate name for the corporation that satisfies the requirements of Section 4.01;</p> <p>(2) one of the following statements:</p> <p>(i) This corporation is a public benefit corporation.</p> <p>(ii) This corporation is a mutual benefit corporation.</p> <p>(iii) This corporation is a religious corporation.</p>	<p>§ 2.02. Articles of Incorporation</p> <p>(a) The articles of incorporation must set forth:</p> <p>(1) a name for the nonprofit corporation that satisfies the requirements of Section 4.01;</p>	<p>§ 79-4-2.02. Articles of incorporation, contents</p> <p>(a) The articles of incorporation must set forth:</p> <p>(1) A corporate name for the corporation that satisfies the requirements of Section 79-4-4.01;</p> <p>(2) The number of shares the corporation is authorized to issue and any information concerning the authorized shares as required by Section 79-4-6.01;</p>
<p>(b) The period of duration, which may be perpetual;</p> <p>(c) The street address of the corporation's initial registered office and the name of its initial registered agent at that office; and</p>	<p>(3) the street address of the corporation's initial registered office and the name of its initial registered agent at that office;</p>	<p>(2) the street address of the corporation's initial registered office and the name of its initial registered agent at that office;</p>	<p>(3) The street address of the corporation's initial registered office and the name of its initial registered agent at that office; and</p>
<p>(d) The name and address of each incorporator.</p>	<p>(4) the name and address of each incorporator;</p> <p>(5) whether or not the corporation will have members; and</p>	<p>(3) that the corporation is incorporated under this [act]; and</p> <p>(4) the name of each incorporator.</p>	<p>(4) The name and address of each incorporator.</p>

### Comparison of Director Liability Provisions

MS Nonprofit Act	1987 Act	2006 Act	MS Business Corp Act
(2) The articles of incorporation may set forth	(b) provisions not inconsistent with law regarding the distribution of assets on dissolution. (b) The articles of incorporation may set forth: (1) the purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity; (2) the names and addresses of the individuals who are to serve as the initial directors.	(a) The articles of incorporation may set forth: (1) the names of the individuals who are to serve as the initial directors; (2) provisions creating one or more designated bodies; (3) the names of the initial members of a designated body; (4) whether the corporation will have members; (5) the names of the initial members, if any;	(b) The articles of incorporation may set forth: (1) The names and addresses of the individuals who are to serve as the initial directors.
(b) Provisions not inconsistent with law regarding: (i) The purpose or purposes for which the corporation is organized; (ii) Managing the business and regulating the affairs of the corporation; (iii) Defining, limiting and regulating the powers of the corporation.	(3) provisions not inconsistent with law regarding: (i) managing and regulating the affairs of the corporation; (ii) defining, limiting, and regulating the powers of the corporation; board of	(6) provisions not inconsistent with law regarding: (i) the purpose or purposes for which the nonprofit corporation is organized; (ii) managing the business and regulating the affairs of the corporation; (iii) defining, limiting, and regulating the powers of the corporation.	(2) Provisions not inconsistent with law regarding: (i) The purpose or purposes for which the corporation is organized; (ii) Managing the business and regulating the affairs of the corporation; (iii) Defining, limiting and regulating the powers of the corporation.

### Comparison of Director Liability Provisions

MS Nonprofit Act	1987 Act	2008 Act	MS Business Corp Act
its board of directors and members; and	directors, and members (or any class of members); and	its board of directors, any designated body, and the members, if any;	its board of directors and shareholders;
(c) Any provision that under Sections 79-1-111 et seq. is required or permitted to be set forth in the bylaws.	(ii) the characteristics, qualifications, rights, limitations and obligations attaching to each or any class of members.	(iv) the characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members; or	(iv) A par value for authorized shares or classes of shares;
(c) Any provision that under Sections 79-1-111 et seq. is required or permitted to be set forth in the bylaws.	(4) any provision that under this Act is required or permitted to be set forth in the bylaws.	(v) the distribution of assets on dissolution;	(3) Any provision that under Section 79-4-101 et seq. is required or permitted to be set forth in the bylaws;
(c) Each incorporator and director named in the articles must sign the articles.	(8) a provision permitting or making obligatory indemnification of a director for liability (as defined in Section 8-50(5)) to any person for any action taken, or any failure to take any action, as a director, except liability for:	(7) any provision that this [act] requires or permits to be set forth in the articles or bylaws.	(4) A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for:
	(i) receipt of a financial benefit to which the director is not entitled;	(i) Each incorporator and director named in the articles must sign the articles.	(i) The amount of a financial benefit received by a director to which he is not entitled;
	(ii) an intentional infliction of harm;	(9) provisions required of the	(ii) An intentional infliction of harm on the corporation or the shareholders;
	(iii) a violation of Section 8-23; or	(iv) an intentional violation of criminal law; and	(ii) A violation of Section 79-4-3.23; or
	(iv) an intentional violation of criminal law; and		(iv) An intentional violation of criminal law; and
	(9) provisions required of the		

### Comparison of Director Liability Provisions

MS Nonprofit Act	1987 Act	2008 Act	MS Business Corp Act
	<p>corporation is to be exempt from taxation under federal, state, or local law.</p>	<p>corporation is to be exempt from taxation under federal, state, or local law.</p>	
		<p><i>This is the optional liability shield provision!</i></p>	<p>(5) A provision permitting or making obligatory indemnification of a director for liability as defined in Section 79-4-8.50(5) to any person for any action taken, or any failure to take any action, as a director, except liability for:</p>
<p>(c) The liability of a director of a nonprofit corporation that is not a charitable corporation may be eliminated or limited by a provision of the articles of incorporation that a director shall not be liable to the corporation or its members for money damages for any action taken, or any failure to take any action, as a director, except liability for:</p>	<p>(1) the amount of a financial benefit received by the director to which the director is not entitled;</p> <p>(2) an intentional infliction of harm;</p> <p>(3) a violation of Section 8.33; or</p> <p>(4) an intentional violation of criminal law.</p>	<p>(i) Receipt of a financial benefit to which he is not entitled;</p> <p>(ii) An intentional infliction of harm on the corporation or its shareholders;</p> <p>(iii) A violation of Sect or 79-4-8.33; or</p> <p>(iv) An intentional violation of criminal law.</p>	<p>(i) Receipt of a financial benefit to which he is not entitled;</p> <p>(ii) An intentional infliction of harm on the corporation or its shareholders;</p> <p>(iii) A violation of Sect or 79-4-8.33; or</p> <p>(iv) An intentional violation of criminal law.</p>
<p>(3) The articles of incorporation need not set forth any of the corporate powers enumerated in Sections 79-11-101 et seq.</p>	<p>(d) The articles of incorporation need not set forth any of the corporate powers enumerated in this Act.</p>	<p>(d) The articles of incorporation need not set forth any of the corporate powers enumerated in this [act].</p>	<p>(c) The articles of incorporation need not set forth any of the corporate powers enumerated in Section 79-4-101 et seq.</p> <p>(d) For the purposes of this section, a</p>

**Comparison of Director Liability Provisions**

MS Nonprofit Act	1987 Act	2008 Act	MS Business Corp Act
			"director" shall include any person vested with the discretion or powers of a director under Section 79-4-7.32.
		(e) Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with Section 1.20(c).	(e) Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with Section 79-4-1.20(k).
		(f) See Sections 3.01(a) (purposes), 8.31(d) (standards of liability for directors) and 8.58(c) (variation of indemnification). Source Note: Patterned after Model Business Corporation Act, 3d Ed. (2002), § 2.02. Derived from Revised Model Nonprofit Corporation Act (1987), § 2.02. Paragraphs (a)(3), (b)(2), (3), (5), (8)(v), (9), and (c)(5), and subsection (f) are new.	
		<b>§ 8.31 Standards of Liability for Directors</b> (a) A director is not liable to the nonprofit corporation or its members for any decision to take or not to take action, or any failure to take any action, as a director, unless the party asserting liability in a	<b>§ 79-4-8.31. Liability of director; burden of proof</b> (a) A director shall not be liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as a director, unless the party asserting liability in a

**Comparison of Director Liability Provisions**

MS Nonprofit Act	1987 Act	2008 Act	MS Business Corp Act
	proceeding establishes that:	proceeding establishes that:	proceeding establishes that:
	<p>(1) none of the following, if imposed as a bar to the proceeding by the director, precludes liability:</p> <ul style="list-style-type: none"> <li>(i) subsection (d) or a provision in the articles of incorporation authorized by Section 2.02(c);</li> <li>(ii) satisfaction of the requirements in Section 8.60 for validating a conflicting interest transaction; or</li> <li>(iii) satisfaction of the requirements in Section 8.70 for disclaiming a business opportunity; and</li> </ul> <p>(2) the challenged conduct consisted or was the result of:</p> <ul style="list-style-type: none"> <li>(i) action not in good faith; or</li> <li>(ii) a decision:                             <ul style="list-style-type: none"> <li>(A) which the director did not reasonably believe to be in the best interests of the corporation, or</li> <li>(B) as to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances; or</li> </ul> </li> <li>(iii) a lack of objectivity due to the director's familial, financial or business relationship with, or a lack of</li> </ul>	<p>(1) Any provision in the articles of incorporation authorized by Section 2.02(b)(4) or the protection afforded by Section 8.61 for action taken in compliance with Section 8.62 or 8.63, if imposed as a bar to the proceeding by the director, does not preclude liability; and</p> <p>(2) The challenged conduct consisted or was the result of:</p> <ul style="list-style-type: none"> <li>(i) Action not in good faith; or</li> <li>(ii) A decision                             <ul style="list-style-type: none"> <li>(A) Which the director did not reasonably believe to be in the best interests of the corporation, or</li> <li>(B) As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances; or</li> </ul> </li> <li>(iii) A lack of objectivity due to the director's familial, financial or business relationship with, or a lack of</li> </ul>	

### Comparison of Director Liability Provisions

MS Nonprofit Act	1987 Act	2008 Act	MS Business Corp Act
	independence due to the director's domination or control by another person having a material interest in the challenged conduct.	independence due to the director's domination or control by another person having a material interest in the challenged conduct.	independence due to the directors domination or control by another person having a material interest in the challenged conduct.
	(A) which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation, and (B) after a reasonable expectation to such effect has been established, the director has not established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation; or	(A) which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation, and (B) after a reasonable expectation to such effect has been established, the director has not established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation; or	(A) Which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation, and (B) After a reasonable expectation to such effect has been established, the director shall not have established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation; or
	(iv) a sustained failure of the director to devote attention to ongoing oversight of the activities and affairs of the corporation, or a failure to devote timely attention, by making (or causing to be made) appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need therefor; or	(iv) a sustained failure of the director to devote attention to ongoing oversight of the activities and affairs of the corporation, or a failure to devote timely attention, by making (or causing to be made) appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need therefor; or	(iv) A sustained failure of the director to be informed about the business and affairs of the corporation, or other material failure of the director to discharge the oversight function; or
	(v) receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its	(v) receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its	(v) Receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its

**Comparison of Director Liability Provisions**

MS Nonprofit Act	1987 Act	2008 Act	MS Business Corp Act
	<p>members that is actionable under applicable law.</p> <p>(b) The party seeking to hold the director liable:</p>	<p>(1) For money damages, also has the burden of establishing that:</p> <p>(i) Harm to the nonprofit corporation or its members has been suffered, and</p> <p>(ii) the harm suffered was proximately caused by the director's challenged conduct; or</p> <p>(2) for other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, also has whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or</p>	<p>shareholders that is actionable under applicable law.</p> <p>(b) The party seeking to hold the director liable:</p> <p>(1) For money damages, shall also have the burden of establishing that:</p> <p>(i) Harm to the corporation or its shareholders has been suffered, and</p> <p>(ii) The harm suffered was proximately caused by the director's challenged conduct; or</p> <p>(2) For other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, shall also have whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or</p> <p>(3) For other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, shall also have whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.</p>
		<p>(c) Nothing contained in this section:</p> <p>(1) in any instance where fairness is at issue, such as consideration of the fairness of a transaction to the nonprofit</p>	<p>(c) Nothing contained in this section shall</p> <p>(1) in any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under</p>



### Comparison of Director Liability Provisions

MS Nonprofit Act	1987 Act	2008 Act	MS Business Corp Act
	<p>corporation under Section 8.60(a)(3), alters the burden of proving the fact or lack of fairness otherwise applicable.</p> <p>(2) alters the fact or lack of liability of a director under another section of this [act], such as the provisions governing the consequences of an unlawful distribution under Section 8.33, a conflicting interest transaction under Section 8.60, or taking advantage of a business opportunity under Section 8.70; or</p> <p>(3) affects any rights to which the corporation or a director or member may be entitled under another statute of this state or the United States.</p>	<p>(3) affect any rights to which the corporation or a shareholder may be entitled under another statute of this state or the United States</p>	<p>Section 8.61(b)(3), alter the burden of proving the fact or lack of fairness otherwise applicable.</p> <p>(2) alter the fact or lack of liability of a director under another section of this act, such as the provisions governing the consequences of an unlawful distribution under Section 8.33 or a transactional interest under Section 8.61, or</p>
	<p>[This is the <i>automatic liability shield</i> provision]</p> <p>(d) Notwithstanding any other provision of this section, a director of a charitable corporation shall not be liable to the corporation or its members for money damages for any action taken, or any failure to take any action, as a director, except liability for:</p> <p>(1) the amount of a financial benefit received by the director to which the director is not entitled;</p> <p>(2) an intentional infliction of harm;</p> <p>(3) a violation of Section 8.33; or</p> <p>(4) an intentional violation of criminal law.</p>		

**Comparison of Director Liability Provisions**

MS Nonprofit Act	1987 Act	2008 Act	MS Business Corp Act
		<p>Source Note: Patterned after Model Business Corporation Act, 3d Ed. (2002) § 8.31, except that conforming changes have been made to subsections (a) and (c) with respect to §§ 8.60 and 8.70. Derived from Model Nonprofit Corporation Act (1987) § 8.30(d). Subsection (d) is new; cf. 42 U.S.C. § 14503 and 42 Pa.C.S. § 8532.1.</p>	