



DELBERT HOSEMANN  
*Secretary of State*

## **2015 Business Law Update Study Group Minutes**

**August 26, 2015**

The Business Law Update Study Group was called to order on Wednesday, August 26, 2015, at 11:00 a.m. at the Secretary of State's Office, 125 S. Congress Street, Jackson, Mississippi. A list of attendees is included as Exhibit A.

### **Welcome and Introduction**

Delbert Hosemann, Secretary of State, welcomed everyone to the meeting of the Business Law Update Study Group. Secretary Hosemann stated there were important issues to discuss and explained to those in attendance that the Office of the Secretary of State was interested in any input. Secretary Hosemann noted many past Business Law Study Group's ideas have been successfully implemented, evidenced by the fact that almost one thousand (1000) LLC's are filed every month in Mississippi. After his introduction, Secretary Hosemann introduced Preston Goff, Assistant Secretary of State, Policy and Research, and Tom Riley, Assistant Secretary of State, Business Services.

### **Proposed Changes**

Preston Goff again welcomed everyone. First, Goff brought up a discussion of Miss. Code Ann. Section 27-7-308. A proposed change would broaden the last line of subsection (1) including LCC's, partnerships, and other business entities in addition to corporations registered to do business in Mississippi. One member suggested there may already be regulations implementing this suggestion, but the study group member welcomed the change. Secretary Hosemann suggested that an appropriate change could include those business entities registered in the State of Mississippi *and filing tax returns* in Mississippi. The study group agreed with this proposed change.

Goff then discussed power of attorney with the group, specifically concerning the transfer of the homestead interest. Goff asked the group whether or not Section 89-1-29 should allow a spouse to be named on the power of attorney when dealing with the transfer of the homestead interest. One member of the study group suggested an appropriate idea would be to leave the

code the same and allow an attorney to try and draft around the statute on a case-by-case basis. No other members of the study group had any comments on the proposed change. Secretary Hosemann then voiced a plan to review Mississippi's probate laws, and this proposed change could be further reviewed at another time.

Tom Riley noted state law currently allows non-profits to convert to for-profit companies by simply filing a form. Riley did not think allowing such a conversion was the intent of the statute and suggested taking non-profits out of the section. One member proposed revising the statute to require a non-profit to be taxed on any assets it had if it converted or merged into a for-profit entity. However, another member suggested that keeping what was left over after the assets were taxed would be against public policy because the assets came from donations. Riley further noted this was a complex issue of which he would welcome other input on an appropriate resolution.

The next issue presented to the group involved alias names for foreign businesses attempting to register with the State when another business with that particular name already exists. Riley asked the group if the State should continue requiring foreign businesses to use an alias. One member noted that this issue arises in the parent-subsiary context when businesses want its companies to have the same name. Another member thought the statute requiring an alias name was currently state law for the purpose of protecting an already existing entity. Additionally, one member suggested there could be a litigation component at issue and requiring an alias could help distinguish which entity a person should sue.

Riley asked if the group thought a cooperative statute should be added to the Mississippi Code, but no study group members expressed interest in adding such a provision. Next, Riley asked the study group if they could identify any problems with increasing the penalty for filing false business documents. The study group had no issues increasing the fine for such action but Secretary Hosemann stated the penalty should not be a felony. The next topic involved a brief discussion on allowing virtual companies. Riley noted he would send the study group members a Bloomberg article on the subject.

Secretary Hosemann advised the group that the Secretary of State's Office was looking into making some changes regarding notaries. Secretary Hosemann noted he did not think virtual notaries should be implemented yet, but there are some basic credentialing provisions that could be updated and keeping online records should be explored.

## **Open Forum**

After a quick lunch break, the study group resumed and Secretary Hosemann asked group members if they had any issues they would like addressed. One suggestion was related to

agricultural loan transactions. The member noted Mississippi currently requires a tax applicable to loans secured by personal property. Additionally, she said there is an exception if a loan is secured by real estate. At times, attorneys run into problems when they have to explain the exception to counterparts in other states, specifically dealing with the uncertainty surrounding Department of Revenue enforcement. The member thought the intent of the statute applied the tax to small loan lenders. She suggested that a revision to this statute would provide an exemption for commercial loans but not consumer loans. The group established that the real concern may be bringing the issue to the Department of Revenue's attention.

One member noted he has been experiencing some difficulties with online forms on the Secretary of State's website. Moreover, another member has had problems seeing the entire form on the online filing system, and it is very difficult to get information from clients with line by line questions. It was also mentioned that there should not be a box for "issued shares" on the Articles of Incorporation form; rather, the only requirement should be for "authorized shares." Riley asked that any needed changes or problems be sent directly to him and the Secretary of State's Office could implement such changes. Lastly, a member of the study group suggested reviving the push for implementing the Uniform Power of Attorney Act.

## **Conclusion**

At the conclusion of the meeting, Secretary Hosemann thanked everyone for their attendance and participation.

With no further business, the meeting was adjourned at 1:30 p.m.

**Exhibit A**

**Minutes of the Business Law Update Study Group,**

**August 23, 2015**

Members in Attendance

1. Bob Box
2. Bill Brown
3. Josh Edwards
4. Joyce Hall
5. Gina Jacobs
6. Peder Johnson
7. Linda Keng
8. Larry Lefoldt
9. Wendy Mullins
10. Caryn Quilter
11. Ken Rector
12. Ben Roberson
13. Tommy Shepard
14. Billie Buck Staggers
15. Jody Varner
16. Cory Wilson

Secretary of State's Staff

1. Delbert Hosemann
2. Doug Davis
3. Nathan Upchurch
4. Tom Riley
5. Preston Goff
6. Leann Thompson
7. Curtis Anders
8. Matt Walton

Members in Attendance by Telephone

1. John Scott