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Joint Report of the Corporations Law Study Group And the Partnerships and LLCs Law Study Group to the Mississippi Secretary of State and the Mississippi State Legislature

December 1, 2008

To: The Honorable C. Delbert Hosemann, Jr., Secretary of State
Members of the Mississippi Senate
Members of the Mississippi House of Representatives

I. Introduction

The Corporations Law Study Group and the Partnerships and LLCs Law Study Group, two of six study groups assembled as part of Mississippi Secretary of State Delbert Hosemann's Business Reform Study Groups initiative, were formed in May 2008 to review Mississippi's business entity laws and recommend changes to make those laws more business-friendly and to bring them in line with the current model or uniform versions of these laws. Steve Hendrix, David Grishman and David Webb served as the Co-Chairmen of LLCs Group and Tommy Shepherd and Bill Mendenhall served as the Co-Chairs of the Corporations Group. The roster of members is listed at Exhibit A to this report.

The Groups met throughout the Summer and Fall of 2008. Several Sub-Groups were formed and met to discuss specific issues. Three Sub-Groups presented reports to a joint meeting of the two groups held on November 6, 2008. The members of the Groups approved these recommendations unanimously. These recommendations are set forth below.

II. Recommendations

A. **The Secretary of State should have the Authority to set fees for the Business Services filings of business entities by Rule.** The Groups believed that giving the Secretary the flexibility to set fees by rule will allow the Secretary to respond to changes and improvements in its filings systems more quickly. This will also allow the Secretary to establish fees that are uniform for all business entities. Because the business entity laws were adopted at different times and based on different uniform and model acts, there are various instances where the fees for the same filing are not uniform among business entities.

B. **The Secretary of State should adopt Rules to provide for discounted fees for services, as appropriate, such as discounted fees for online filings.** The Secretary is making many changes to its current filings systems which will make the processing of filings more efficient. The Groups recommend giving the Secretary the ability to pass these efficiencies on to the filing entity by charging discounted fees for certain services. This would also encourage entities to file reports online rather than by paper. The ability to charge a discounted fee for an online filing will provide entities with a financial incentive to file online.

C. **The Secretary of State should adopt Rules to provide for expedited filings services and should be permitted to charge an increased fee for such expedited filing services.** Many members of the Groups expressed a strong desire to be able to make filings on an expedited basis when an entity needs to make a filing to meet a deadline. These members believed that the Secretary should be able to charge and collect an additional, reasonable fee for expedited filings for those entities that need their documents filed more quickly and are willing to pay the additional fee.

D. **The Secretary of State shall be authorized to charge a $25 fee to accept service of process on defendant limited liability companies.** The corporation laws permit the Secretary to charge a $25 fee to accept service of process on corporations, but the LLC Act does not specifically grant this authority. This will allow the agency to recoup the costs it incurs in accepting service of process and sending notice to the LLC by registered mail and will bring LLCs into parity with corporations.

E. **Limited Liability Companies organized in Mississippi or registered to transact business in Mississippi should file annual reports and pay the same annual fee that corporations pay ($25).** The Groups acknowledged that because LLCs do not file periodic reports, many defunct LLCs are never formally dissolved. These LLCs remain on the list of registered LLCs, and their names are unavailable for use by other business entities. There are almost 80,000 registered LLCs (domestic and foreign) compared to 64,000 (domestic and foreign) registered corporations. Currently at least 39 states require limited liability companies to file annual reports. Periodic reports provide needed information for other businesses involved in commerce, including financial entities and businesses selling or purchasing property from an LLC. It also protects Mississippi citizens by keeping current information on all companies doing business in this state. The Group recommends that Mississippi join these 39 states and require domestic and foreign LLCs registered with the Mississippi Secretary of State to file annual reports. LLCs that fail to file annual reports will be administratively dissolved (or their certificate of authority will be revoked, as applicable) and their names will become available for use by other entities. The Group also acknowledges the potential revenue associated with these annual filings and supports the use of a portion of this potential revenue to fund a business court.

F. **Amend the LLC Act to provide for:**

Administrative dissolution of domestic LLC and administration revocation of a certificate of authority of a foreign LLC for failure to file their annual report. These provisions will be similar to the corporation law administrative dissolution and revocation provisions; and

Reinstatement of an LLC after administrative dissolution or revocation. These provisions will provide, among other things, that members of the reinstated LLC will be able to reinstate their limited liability at any time, which would be effective back to the date of the dissolution or revocation. The look-back" statutes will protect members from losing their limited liability in the event of an administrative dissolution or revocation.

G. **Revise Corporation Law (Sections 79-14-14.22 and 79-14-15.32) to eliminate the five-year limitation for corporation reinstatement following administrative dissolution or revocation.** Currently if a domestic corporation has been administratively dissolved for greater than five years or a foreign corporation's certificate of authority was administratively revoked over five years ago, the

Secretary by law must deny its request for reinstatement. The corporation then can appeal the denial to the Hinds County Chancery Court. In practice, the Court overrules the Secretary's denial and allows the corporation to proceed with reinstatement. This process is time-consuming and costly in the way of court costs and legal fees to the corporation. The Group recommends that the five-year limitation be removed from the statutes to allow corporations to reinstate at any time. This change is in line with the law in 23 other states.

H. **Adopt the Shareholder Awards and Options Amendment to the Model Business Corporation Act.** This Amendment to the Model Act was approved in 2008. If passed in Mississippi, it would allow the Board of Directors of a Mississippi corporation to authorize a corporate officer to designate the recipients of share options or other equity compensation awards. This officer will be prohibited from designating options or share awards to him or herself. The Groups agreed that this amendment is needed and should be adopted.

III. Conclusion

The Groups find that the recommendations listed above are favorable to Mississippi's business climate, while allowing the Agency to recoup costs associated with these changes. The Groups unanimously support the recommendations listed above. The Groups will continue to meet on related topics concerning Mississippi's business entities laws and will have further recommendations for the 2010 Legislative Session.

Respectfully Submitted:

Mr. David P. Webb, Co-Chair
Partnerships and LLCs Law Study Group

Mr. Bill Mendenhall, Co-Chair
Corporations Law Study Group

Mr. David B. Grishman, Co-Chair
Partnerships and LLCs Law Study Group

Mr. Tommy Shepherd, Co-Chair
Corporations Law Study Group

Mr. Steve M. Hendrix, Co-Chair
Partnerships and LLCs Law Study Group

Exhibit A – Rosters of members of the Corporations Law Study Group and the Partnerships and LLCs Law Study Group

Exhibit B – Conforming legislative amendments and proposed new statutes

Exhibit A
to the Joint Report of the Corporations Law and Partnerships and LLCs Law Study Group

PARTNERSHIPS AND LLCs LAW STUDY GROUP

	Prefix	First	Last	Hometown
1	Mr.	H.C.	Bailey	Ridgeland
2	Ms.	Rita	Bingham	Terry
3	Mr.	Paul	Breazeale	Jackson
4	Mr.	Stephen	Burrow	Pascagoula
5	Mr.	Mark	Buys	Vicksburg
6	Ms.	Marcie	Davant	Jackson
7	Mr.	Chad	Davidson	Jackson
8	Mr.	George	Fair	Jackson
9	Mr.	Robert	Gage	Port Gibson
10	Rep.	Andy	Gipson	Braxton
11	Mr.	David	Grishman	Jackson
12	Mr.	Steven	Hendrix	Jackson
13	Mr.	Gene	Henson	Germantown, TN
14	Mr.	Larry	Lefoldt	Jackson
15	Ms.	Lynette	Magee-Praytor	Brandon
16	Mr.	Alan	Matthews	Flowood
17	Mr.	Ronald	McMillan	Brandon
18	Mr.	Jim	Nippes	Jackson
19	Mr.	Hugh	Parker	Jackson
20	Mr.	Ken	Rector	Vicksburg
21	Mr.	Tom	Riley	Madison
22	Mr.	Ben	Roberson	Jackson
23	Mr.	Rusty	Russell	Jackson
24	Ms.	Pat	Solberg	Olive Branch
25	Mr.	Joseph	Stinson	Tylertown
26	Mr.	Stephen	Stubblefield	Jackson
27	Mr.	Jon	Turner	Jackson
28	Mr.	Jack	Turner	Olive Branch
29	Mr.	Jody	Varner	Jackson
30	Mr.	Paul	Varner	Jackson
31	Mr.	David	Webb	Jackson
32	Ms.	Ashley	Wicks	Jackson
33	Mr.	Bill	Williams	Gulfport
34	Ms.	Margaret	Williams	Jackson
35	Mr.	Martin	Willoughby	Madison
36	Mr.	Chris	Wilson	Laurel
37	Mr.	Eric	Wooten	Gulfport

CORPORATIONS LAW STUDY GROUP

	Prefix	First	Last	Hometown
1	Ms.	Jill	Beneke	Jackson
2	Mr.	William	Brown, Jr.	Ridgeland
3	Mr.	Mike	Bush	Tupelo
4	Ms.	Jack	Byrne, III	Natchez
5	Mr.	Jay	Carney	Columbia
6	Mr.	Mike	Cavanaugh	Biloxi
7	Mr.	Henry	Dick, III	Biloxi
8	Mr.	Henry	Chatham	Jackson
9	Mr.	Cecil	Harper	Madison via Vicksburg
10	Mr.	Russell	Hawkins, Sr.	Vicksburg
11	Mr.	Robert	Hutchinson	Jackson
12	Mr.	Sai	Ireland	Jackson
13	Mr.	Gina	Jacobs	Jackson
14	Mr.	Robert	Jones, III	Jackson
15	Mr.	James	McNamara, IV	Madison
16	Mr.	Bill	Mendenhall	Jackson
17	Mr.	William	Morehead	Cleveland
18	Mr.	Tom	Riley	Madison
19	Mr.	Ken	Rogers	Jackson
20	Mr.	Tommy	Shepherd	Jackson via Aberdeen
21	Mr.	James	Simpson, Jr.	Pass Christian
22	Mr.	Van	White	Jackson
23	Mr.	Stephen	Wilson	Brandon