



**DELBERT HOSEMANN**  
*Secretary of State*

**2009 Business Reform Study Groups**  
**Minutes of the Trade Name Laws Study Group, Meeting #3**  
**October 7, 2009**

The third meeting of the Trade Name Laws Study Group (the “Study Group”) was called to order on Wednesday, October 7, 2009 at 11:15 A.M. at the Office of the Secretary of State, 401 Mississippi Street, Jackson, Mississippi. A list of the persons in attendance is attached as Exhibit A.

**Approval of Minutes from the September 2, 2009 meeting**

The members unanimously approved the minutes of the September 2, 2009 meeting.

**Discussion re: proposed Business Name Registration Act**

Prior to the meeting, Doug Jennings, Senior Attorney, Division of Policy and Research (the “Division”), provided the Study Group members with a proposed draft of the trade name registration statute for their review. Study Group Co-chair Anne Turner prepared a revised version of the statute with her own recommendations, which the Group reviewed at the meeting. After reviewing both versions of the proposed statute, the members suggested a number of changes as outlined below.

The first change discussed was to the section concerning amendments to registration (proposed Section 25-93-11). The Study Group recommended revising this section to require a registrant to file an amendment of business name registration with the Secretary of State within thirty days of a material change of any information listed in the proposed Section 25-93-5. Next, the members recommended adding a section providing for penalties for fraudulent filings.

The Group also recommended changing the proposed statute’s short title from the “Business Name Registration Act” to the “Fictitious Business Name Registration Act” and to add a section to clarify the statute’s purpose. Lastly, the Group recommended adding language to the proposed Section 25-93-23 that would allow the Secretary of State to accept registration of a business name which contains a prohibited term if the term is not misleading. The members agreed to vote on the proposed statute by e-mail once the Division provided them with a revised draft incorporating the recommended changes.

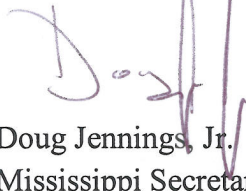
## **Adjournment**

Ms. Baker thanked the members for their work and contributions. She informed them that the process would soon begin to line up sponsors for the bill and she would provide the Study Group with status reports as the bill advanced through the Mississippi Legislature. With no further business to discuss the meeting was adjourned at 12:05 P.M.

## **Addendum**

The Study Group voted by e-mail to approve the final draft of the statute, which is attached as Exhibit B.

Respectfully Submitted,

A handwritten signature in purple ink, appearing to read "Doug Jennings, Jr.", is written over the typed name.

Doug Jennings, Jr.  
Mississippi Secretary of State  
Senior Attorney, Division of Policy and Research

**Exhibit A**

to the October 7, 2009 Minutes of Trade Name Laws Study Group, Meeting #3

Members in Attendance:

1. Whit Rayner, Co-Chair
2. Tom Riley, Assistant Secretary of State, Business Services Division
3. Anne Turner, Co-Chair

Members Attending by Telephone:

1. Thomas Alexander
2. Elisabeth Byrd
3. Stephen Carmody
4. Michael Goggans
5. Marc Porter

Secretary of State Personnel in Attendance:

1. Cheryn Baker, Assistant Secretary of State, Policy and Research Division
2. Doug Jennings, Senior Attorney, Policy and Research Division
3. Leann Hager, Legal Intern, Policy and Research Division

## **Exhibit B**

to the October 7, 2009 Minutes of Trade Name Laws Study Group, Meeting #3

### **§ 25-93-1. Short title.**

This chapter may be cited as the “Fictitious Business Name Registration Act.”

### **§ 25-93-3. Purpose.**

The purpose of this chapter is to establish a centralized, statewide system providing for the voluntary registration of fictitious business names being used in the state of Mississippi in order to provide the public with the legal names of persons or entities doing business under such fictitious names.

### **§ 25-93-5. Definitions.**

As used in this chapter:

- (a) “Business” means any commercial or professional activity.
- (b) “Fictitious business name” means any name under which an entity transacts business in this state, other than (a) the entity’s legal name or (b) a fictitious name adopted by a foreign entity under Title 79 because its legal name is unavailable.
- (c) ”Entity” means any corporation; limited liability company; partnership; limited partnership; limited liability partnership; sole proprietorship; firm; enterprise; franchise; association; organization; holding company; self-employed individual; joint-stock company; receivership; trust; other legal entity or undertaking organized for economic gain; nonprofit corporation; association or organization receiving public funds; or other such entity.

### **§ 25-93-7. Registration.**

- (a) An entity may apply to register a fictitious business name by filing with the Secretary of State the following information:
  - (1) The fictitious business name to be registered;
  - (2) The applicant’s legal name and mailing address;
  - (3) The street address(es) or physical location(s) where the entity uses or will be using the fictitious business name to transact business;
  - (4) If the applicant is a domestic corporation or limited liability company, its Mississippi business ID number;

(5) If the applicant is a foreign corporation or limited liability company, the state or nation of its organization and a copy of its certificate of authority to transact business in Mississippi;

(6) A statement that the applicant is familiar with the provisions of this chapter and understands that filing under this section does not create any exclusive rights in or to the fictitious business name; and

(7) Any other information the Secretary of State may reasonably require by rule, including, without limitation, the applicant's electronic mail address, the address of the entity's official website, if applicable, and the general nature of the business conducted by the applicant.

(b) The applicant shall sign and verify the application.

(c) Upon compliance by the applicant with the requirements of this section, the Secretary of State shall return to the applicant a stamped copy of the approved registration application.

(d) The Secretary of State shall not refuse registration of a fictitious business name on the ground that the name is indistinguishable from a previously registered fictitious business name, registered trademark, or legal name of an entity required by law to register with the Secretary of State.

(e) Only one fictitious business name may be registered per application submitted under the provisions of this section.

#### **§ 25-93-9. Amendments to registration.**

The registrant of a fictitious business name shall, within thirty (30) days of a material change in any of the information listed in § 25-93-5(a), file with the Secretary of State an amendment of fictitious business name registration. Such amendment shall set forth all information that would be required in an original application for registration of a fictitious business name, and the amendment shall be executed in the same manner as an original application.

#### **§ 25-93-11. Term and renewal.**

(a) The registration period for a fictitious business name registered under this chapter shall be five (5) years; registration shall expire on December 31 of the year in which the fifth anniversary of registration occurs.

(b) Renewal of fictitious business name registrations:

(1) Renewal of a fictitious business name registration may be made on or between January 1 and December 31 of the expiration year. Upon timely filing of a renewal statement, the effectiveness of the registration shall continue for five (5) years as provided in this section.

(2) If the registration is not timely renewed on or before December 31 of the year of expiration, the registration shall expire. The Secretary of State shall remove any expired or canceled registration from its records and may purge such registrations.

**§ 25-93-13. Effect of registration.**

Notwithstanding the provisions of any other law, registration of a fictitious business name under this chapter is for public notice only and gives rise to no presumption of the registrant's exclusive rights to own or use the fictitious business name registered, nor does it affect trademark, service mark, trade name, or other name rights previously acquired by others in the same or similar name. Registration under this chapter does not preserve a fictitious business name against future use or registration by others. The issuance of a registration under this chapter shall not constitute due organization or authority to transact business in this state.

**§ 25-93-15. Withdrawal of registration.**

The registrant of a fictitious business name may withdraw its registration by delivering to the Secretary of State a statement containing the following:

- (1) The legal name of the entity utilizing the fictitious business name;
- (2) The fictitious business name with respect to which the statement of withdrawal relates;
- (3) That the entity will no longer transact business in this state under the fictitious business name;
- (4) An acknowledgement that the applicant understands the fictitious business name registration will no longer be effective upon the filing of the statement of withdrawal; and
- (5) The signature of the withdrawing registrant.

**§ 25-93-17. Cancellation of registration.**

The Secretary of State shall cancel a fictitious business name registration if:

- (1) The Secretary of State receives a voluntary withdrawal of registration from the registrant or the assignee of record;
- (2) The registration is not renewed in accordance with this chapter;
- (3) A court of competent jurisdiction orders the cancellation on any grounds; or
- (4) The registration was obtained fraudulently by containing false or misleading information.

**§ 25-93-19. Change of ownership.**

Any fictitious business name registered under this chapter may be assigned by filing a duly executed written instrument with the Secretary of State.

**§ 25-93-21. Forms and fees.**

(a) All filings required under this chapter shall be made on forms prescribed by the Secretary of State.

(b) Subject to the provisions of subsection (c), the Secretary of State shall charge and collect nonrefundable processing fees as follows:

(1) For registration or renewal of a fictitious business name, \$5.

(2) For withdrawal, cancellation, amendment, or assignment of a fictitious business name, \$5.

(3) For furnishing a certified copy of a fictitious business name document, \$10.

(c) Entities required by law to file annual reports with the Secretary of State shall not be charged a separate fee for registration or renewal of a fictitious business name, provided that the application for registration or renewal is filed along with the entity's annual report.

(d) The Secretary of State shall prescribe by rule the means of electronic filing of documents required under this chapter.

**§ 25-93-23. Legal designation of entity.**

Notwithstanding any other provision of law to the contrary, a fictitious business name registered as provided in this chapter is not required to contain within that name a designation reflecting the applicant's type of legal entity, including the terms "corporation," "limited liability company," "limited liability partnership," "limited partnership," or any abbreviations or derivatives thereof.

**§ 25-93-25. Limitations on adoption of certain fictitious business names.**

The Secretary of State shall refuse registration of a fictitious business name, which, in the Secretary of State's sole discretion, is potentially misleading, or which includes any of the following terms:

(1) "Corporation," "Corp.," "Incorporated," or "Inc.," unless the applicant is a corporation organized or qualified to do business pursuant to the laws of this state;

(2) "Limited Liability Company," "Limited Company" or the abbreviation "L.L.C.," "L.C.," "LLC," or "LC," unless the applicant is a limited liability company organized or registered to do business pursuant to the laws of this state;

- (3) "Business Trust" or the abbreviation "B.T." or "BT," unless the applicant is a business trust organized or registered to do business pursuant to the laws of this state;
- (4) "Professional Corporation" or the abbreviation "Prof. Corp.," "P.C.," or "PC" or the word "Chartered" or the abbreviation "Chtd.," unless the applicant is a professional corporation organized to do business pursuant to the laws of this state;
- (5) "Professional Association," "Professional Organization," or the abbreviation "Prof. Ass'n" or "Prof. Org.," unless the applicant is a professional association organized to do business pursuant to the laws of this state;
- (6) "Limited" or the abbreviation "Ltd.," unless the applicant is a corporation, limited liability company, registered limited liability partnership, limited partnership, or professional corporation organized, qualified, or registered to do business pursuant to the laws of this state;
- (7) Words not permitted to be used in any business name without governmental consent, unless the applicant provides to the Secretary of State written evidence of such consent.

Notwithstanding the other provisions of this section, the Secretary of State may allow registration of a fictitious business name which contains a prohibited term if, in the Secretary of State's sole discretion, the term is not misleading.

**§ 25-93-27. Public examination of records.**

The Secretary of State shall keep for public examination a record of all fictitious business names registered or renewed under the provisions of this chapter.

**§ 25-93-29. Powers of Secretary of State.**

The Secretary of State is granted the power reasonably necessary to enable it to administer this chapter efficiently, to perform the duties herein imposed upon it, and to adopt reasonable rules necessary to carry out its duties and functions under this chapter.

**§ 25-93-31. Penalty for fraudulent filings.**

Any person who shall knowingly and willfully procure the registration of a fictitious business name or apply for registration of a fictitious business name under the provisions of this chapter by knowingly making any false or fraudulent representation or declaration, orally or in writing, or by any other fraudulent means, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00).