



D I S T R I C T O F C O L U M B I A B A R
Sections

PROPOSAL BY THE D.C. AFFAIRS SECTION OF THE D.C. BAR
ON REVISING THE BUSINESS ORGANIZATIONS CODE
OF THE DISTRICT OF COLUMBIA

SUMMARY

The Steering Committee of the D.C. Affairs Section voted on June 8, 2009¹ to endorse the proposed comprehensive revision of the District of Columbia's laws on business organizations drafted and approved by an ad hoc committee of D.C. attorneys.

The views expressed in this Summary represent only those of the D.C. Affairs Section and not those of the D.C. Bar or of its Board of Governors.

The District's current laws concerning business organizations, codified in Titles 29 and 33 of the D.C. Code, are full of anachronisms, gaps, outdated provisions and inconsistencies. As a result, few business enterprises are organized in the District of Columbia; both for-profit and not-for-profit entities generally prefer to be chartered in other jurisdictions with more modern laws.

Rather than trying to patch and fix the current antique structure of the District's business organizations statutes, the *ad hoc* group decided to draft an entirely new and comprehensive business organizations law. Under the proposal all current statutes dealing with business structures would be repealed and a new Title 29 would be enacted, which would contain 12 chapters, covering all form of business organization. The first chapter would consist of definitions and other general provisions that apply across the board to business organizations, a "hub" to which the other 11 chapters, each of them dealing with a particular kind of organization, would relate as "spokes."

The drafting group did not start from scratch. The "hub and spoke" structure itself is derived from the Uniform Commercial Code, which follows a similar format. Model comprehensive business codes developed by the Uniform Law Commission (ULC) and the American Bar Association (ABA) were used as starting points, with modifications made to suit the particular needs of the District of Columbia. Texas was the first state to adopt a uniform model business code, based on the ULC and ABA models, and Alabama has recently followed suit. Similar laws are under consideration in Pennsylvania, Utah and perhaps other states.

The Steering Committee of the D.C. Affairs Section recommends this draft to the D.C. Council and stands ready to work with the Council on the legislative review and enactment process.

¹ The members of the Steering Committee on the date of this vote are: Claudia McKoin, Esther Bushman, Lawrence Mirel, Nicholas Majett, Nicola Whitman, Walter Smith, Jon Bouker, Brian Flowers, and Tonya Sapp.



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PUBLIC STATEMENT OF THE D.C. AFFAIRS SECTION OF THE D.C. BAR
ON REVISING THE BUSINESS ORGANIZATIONS CODE OF
THE DISTRICT OF COLUMBIA

Adopted by the Steering Committee of the D.C. Affairs Section, June 8, 2009¹ at a duly noticed meeting at which a quorum was present.²

The District of Columbia Affairs Section of the D.C. Bar is made up of 371 attorneys who live, work, or have an interest in the District of Columbia, and/or who practice before or work with the District of Columbia Council, the Executive Branch and the Court system. Among its function is to review and provide expert assistance to the D.C. Government on legislative, judicial and related legal developments, to the end of improving the District's laws and administration of justice.

The views expressed in this Public Statement represent only those of the D.C. Affairs Section and not those of the D.C. Bar or of its Board of Governors.

In 2007 D.C. Councilmember Mary Cheh, then the Chair of the Committee on Public Services and Consumer Affairs, asked the D.C. Affairs Section for help in revising and modernizing the District's laws on business organizations. The Section agreed to take the request on as a project and invited volunteers versed in D.C. legislative processes and the substantive law of business organizations to form an *ad hoc* group of attorneys to begin a comprehensive review of all provisions of D.C. Code dealing with business organizations, including the corporation code, the non-profit corporation code, the professional corporation law, the partnership and limited partnership laws, the cooperative associations law, the law on statutory trusts, and others.

The *ad hoc* committee has drafted and voted on a "Business Organizations Code" that would completely revise and recodify the business organizations laws of the District of Columbia. The draft, which will be transmitted to the D.C. Council, is now being circulated for review and endorsement by the DC Affairs Section and others.

The work of the committee was coordinated by John Mitchell of the law firm of Williams Mullen, whose practice focuses on corporate and general business law. James McKay of the Office of the Attorney General of the District of Columbia, a Uniform Law Commissioner, provided crucial help in the form of model drafts and his wide knowledge of reform efforts

¹ The members of the Steering Committee on the date of this vote are: Claudia McKoin, Esther Bushman, Lawrence Mirel, Nicholas Majett, Nicola Whitman, Walter Smith, Brian Flowers, Jon Bouker, and Tonya Sapp.

² This public statement and its accompanying summary and other documents were approved at a duly noticed DC Affairs Section meeting held on June 8, 2009 at which a quorum was present. The vote on the motion to approve was 6:0:3 with 6 voting in favor, none in opposition, and 3 absent.

underway in other jurisdictions. Other members of the drafting group included: Nicholas Karambelas, a corporations lawyer with the D.C. firm of Sfikas & Karambelas, LLP, Lawrence H. Mirel of Wiley Rein LLP, Esther Bushman of the D.C. Office of Zoning, James M. Goldberg of Goldberg & Associates, PLLC, Heidi Schooner, Professor, Catholic University School of Law, and Phillip Kardis of K & L Gates LLP. Roy Kaufmann of Jackson & Campbell also contributed to the process.

The District's current laws concerning business organizations, codified in Titles 29 and 33 of the D.C. Code, were enacted by Congress between 1870 and 1954, before the District had its own legislature. Although the D.C. Council has made some modifications to the business organizations laws since it was created in 1974, there has been no comprehensive effort before now to modernize, harmonize and restructure the entire body of law governing the organization of business activities in the District of Columbia. The current laws are full of anachronisms, gaps, outdated provisions and inconsistencies. As a result, few business enterprises are organized in the District of Columbia; both for-profit and not-for-profit entities generally prefer to be chartered in other jurisdictions with more modern laws.

Rather than trying to patch and fix the current antique structure of the District's business organizations statutes, the *ad hoc* committee decided to draft an entirely new and comprehensive business organizations law. Under the proposal all current statutes dealing with business structures would be repealed and a new Title 29 would be enacted, consisting of 12 chapters, covering all form of business organization. The first chapter would consist of definitions and other general provisions that apply across the board to business organizations, a "hub" to which the other 11 chapters, each of them dealing with a particular kind of organization, would relate as "spokes."

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The *ad hoc* group went through a number of drafts, with changes based on comments received from interested attorneys and business law experts. The sixth draft, which runs to more than 400 pages in length, is the one approved, first by a majority of the *ad hoc* drafting committee, and now by the Section. It will undoubtedly be modified further as it progresses through the Council's legislative process. The Steering Committee of the D.C. Affairs Section recommends this draft to the D.C. Council and stands ready to work with the Council on the legislative review and enactment process.

Attached to this public statement is a summary of the proposed legislation. The full text can be viewed and downloaded from <http://www/http://www.williamsmullen.com/dcbusinesslaw/>.

This statement was prepared by Lawrence H. Mirel.