

INDIANA BUSINESS LAW SURVEY COMMISSION

Wednesday November 13th, 2024
In-Person Meeting

MINUTES DRAFT

Meeting was called to order by Chairman Becker at 1:35 pm EST.

Members in attendance in person: Alan Becker, Janet Monroe, Frank Sullivan, Dr. Matt Will, Josh Hollingsworth, virtual attendees were Keaton Miller, Stuart Gutwein

Absent Joe Montel & William Barrett

Others Present: Secretary Diego Morales, Jerry Bonnet, Scott Willis, Kegan Prentice, Beth Swindle, Sarah Lehman, Lindsey Eaton & Zach Grosser

Approval of Minutes:

- Minutes from September 30th, 2024, were approved.

Updates from the Secretary's office

Opening Comments- Secretary Morales

- Thanked the commission for their valued support and advice.
- Looking to promote greater connectivity to business and other agencies.
- Improve constituent services for business and all those that interact with the SOS.
- Focused on a better framework to help small businesses.
- Thanked the Business Services Division team for their effort and support of all constituents.

Legislation update- Kegan Prentice

- There is a desire for greater fraud protection. He feels that Business Services Division goals around a clearer definition of “principal office address” can be added to that.
- Pursuing a better understanding of the new administration’s legislative priorities.
- Will reach out to legislator on goal for modifying the 5-year reinstatement statute.

FinCEN and HEA 1623 update- Scott Willis

- 6.0 million BOI reports filed with FinCEN as of 10-31-24. Marketing efforts continue with email campaigns and other methods to get the word out to small business.
- HEA 1623 progressing – Mr. Willis will have discussions with Chairman Becker about where we stand specifically.

Old Business / Current Projects

- Discussing what process we want to take to select new members
 - Mr. Bonnet offered to help and said the office makes the recommendation to the new administration.
 - Commission taskforces could work directly with prospective members even if they are not officially members yet.
 - Commissioner Sullivan suggested a rank order of recommendations.

- d. Mr. Willis said when making selections we should keep each candidate's specialties in mind for where BLSC is lacking.
- e. Chairman Becker will tally recommendations on the list and a process will be carried out to reach out to validate interest by selected candidates.
- b. Commissioner Sullivan had no further update on the LLC comments and HUB & Meta updates. The task force will try to get the draft comments done by the end of the 1st quarter of 2025, and Commissioner Sullivan will try to put together a proposal for updates to HUB/META based on Uniform Commission changes by the March meeting.
- c. Commissioner Sullivan doesn't think there will be anything for LLC or HUB/META for the 2025 session.
- d. Commissioner Hollingsworth provided further information on the Indiana Code 6-8.1-10-9.5 Sales Tax Clearance process for M & A transactions. In practice the review to be completed within the 45-day limit is turned around in 3-4 days.

New Business

- a. **Model Business Corporation Act** -Chairman Becker requested taskforce volunteers. Commissioner Hollingsworth volunteered. If you wish to join the taskforce, please contact Commissioner Hollingsworth.
- b. **Comments to Updates on HUB META** -Commissioner Sullivan said the Commission made comments on this topic previously and this would only require updates. He feels it is a modest assignment. Contact Commissioner Sullivan to be involved in this taskforce.
- c. **Comments on rescinding the 5-year Reinstatement statute** -Kegan Prentice confirmed that the individual showing prior interest was retiring. Mr. Willis provided a list of what all states do for reinstatement. Chairman Becker commented that all the states around us do not have a limit. Mr. Willis suggested the use of Colorado's idea. If the 5-year rule is removed, he suggested that interested parties to reinstatement be required to show they were associated with the business to be reinstated.
 - i. Commissioner Sullivan wants a discussion about why not to remove the 5-year limit to reinstate, and he thinks Mr. Willis has a good argument on why not to.
 - ii. Commissioner Sullivan asked what the purpose of administrative dissolution is if an administratively dissolved entity can reinstate at any time.
 - iii. Commissioner Hollingsworth doesn't believe the Department of Revenue checks business status when processing tax info. Mr. Willis said the SOS is required to maintain old records. The Business Services Division is asking not to leave things open ended for anyone to reinstate. Anyone seeking to reinstate needs to prove their connection to the entity to be reinstated.
- d. **Revising the requirements around "Principal Office Address"** – The Business Services Division's overall goal is to promote connectivity between the business and the SOS. Many issues result from lack of connectivity. The Business Services Division wants to

help businesses understand the requirements and how to satisfy them. Mr. Willis provided the following information:

- i. Many diverse sources use Business Services Division records and depend on accuracy. The Department of Revenue uses INBiz records to gather data. Most financial institutions use the records as well, as do other SOS offices and the public.
- ii. New forms of business require new rules around types of Principal Office Address.
- iii. So far, we have been relying on service companies to maintain additional connections. Looking at current records, over 90,000 businesses don't have a business email in the INBiz records. About 135,000 are using the commercial resident agent's email as their business email. Service companies advertise free filing with just statutory fees as a marketing effort to gain customers. Then they ask for a fee to continue service. The adoption rate is not 100%, leaving a new business without any direct connection to the SOS and a lack of understanding of future requirements. Building trust with companies and ensuring accuracy of data is very important. Our goal should be to develop a strong ecosystem in Indiana.
- iv. Chairman Becker noted that we have witnessed the changes in communications with the SOS over time from filings made by fax, to email and moving toward text reminders. Communications need to evolve with the way small businesses want to communicate.
- v. Mr. Willis said research can be looped in with the Principal Office Address issue because it's all related to connectivity. Chairman Becker and Mr. Willis will have a conversation on how they want to tackle the research. The Business Services Division needs the Principal Office Address issue addressed in 2025 with fraud legislation. Other items can be pushed to 2026.
- vi. Mr. Prentice says that information is needed by mid-December to get it done in the 2025 legislative session.

Public Comment

Attorney introduced himself and his client NWRA (David)

1. David-NWRA provides services to thousands of businesses. Most are mom and pop, online businesses, holding companies, not brick and mortar businesses, and most use their home address for business purposes. NWRA offers a method to protect those that don't have office space from having to use their home address in the public record.
2. According to David, NWRA as a service company maintains that connectivity. NWRA does not file reinstatement requests for clients for businesses that have been administratively dissolved for more than 2 years due to the chance for fraudulent activity. NWRA currently provides data to SOS offices if requested. They are advocating for resident agents to maintain the records and not burden the SOS with that maintenance.
3. Mr. Willis asked whether NWRA would be opposed to providing contact information if that information was not part of the public records. David's response was that this

would not be an issue. Mr. Willis noted, however, not all resident agents can maintain that connectivity because they're so small.

4. NWRA asked if the verification of the customer is on them. Mr. Willis responded that it is.
5. The Business Services Division would like to add an audit process to commercial resident agents.
6. Commissioner Will sees this as privacy by default, and he interprets it as hiding a client. He asked what assurances NWRA could provide that NWRA would keep accurate records. –David said all clients are checked against terrorist lists. They don't want bad actors. They'd still maintain identifiable information. He said if fraud was identified they would resign as agent. Other states subject commercial resident agents to audit.
7. Commissioner Sullivan noted that NWRA competitors offer free filing with service fees and lose immediate connectivity. He asked what solution NWRA would have to this problem. David responded that he could only speak about his business. NWRA prides themselves on keeping their clients.
8. Commissioner Becker remembers there was pushback about providing email addresses for registered agents when the Indiana Supreme Court asked for this information to be collected to facilitate the eventual adoption of electronic service of process.
9. Mr. Willis is hoping better connectivity will help get things filed timely and deter fraud.

Next meeting

- Looking for a date in Jan. Possibly hosted by Commissioner Hollingsworth.

Adjournment

- Meeting was adjourned at 2:48pm