

By: Carlton

To: Judiciary

SENATE BILL NO. 2805
(As Passed the Senate)

1 AN ACT TO AMEND THE MISSISSIPPI BUSINESS CORPORATION ACT; TO
2 AMEND SECTION 79-4-1.40, MISSISSIPPI CODE OF 1972, TO REVISE
3 DEFINITIONS; TO AMEND SECTION 79-4-6.31, MISSISSIPPI CODE OF 1972,
4 TO REVISE THE ACQUISITION OF ITS OWN SHARES BY A CORPORATION; TO
5 AMEND SECTION 79-4-10.01, MISSISSIPPI CODE OF 1972, TO REVISE A
6 CORPORATION'S AUTHORITY TO AMEND ITS ARTICLES OF INCORPORATION; TO
7 AMEND SECTION 79-4-10.02, MISSISSIPPI CODE OF 1972, TO INCORPORATE
8 WITH REVISIONS THE PROVISIONS CONCERNING A CORPORATION'S AUTHORITY
9 TO AMEND ITS ARTICLES OF INCORPORATION BEFORE ISSUANCE OF SHARES,
10 CONTAINED IN SECTION 79-4-10.05, MISSISSIPPI CODE OF 1972; TO
11 AMEND SECTION 79-4-10.03, MISSISSIPPI CODE OF 1972, TO REVISE THE
12 AMENDMENT OF ARTICLES OF INCORPORATION BY BOARDS OF DIRECTORS AND
13 SHAREHOLDERS; TO AMEND SECTION 79-4-10.04, MISSISSIPPI CODE OF
14 1972, TO REVISE THE VOTING ON AMENDMENTS BY VOTING GROUPS; TO
15 AMEND SECTION 79-4-10.05, MISSISSIPPI CODE OF 1972, TO INCORPORATE
16 WITH REVISIONS THE PROVISIONS CONCERNING AMENDMENT OF THE ARTICLES
17 OF INCORPORATION BY THE BOARD OF DIRECTORS CONTAINED IN SECTION
18 79-4-10.02, MISSISSIPPI CODE OF 1972; TO AMEND SECTION 79-4-10.06,
19 MISSISSIPPI CODE OF 1972, TO REVISE THE PROVISIONS CONCERNING
20 ARTICLES OF AMENDMENT; TO AMEND SECTION 79-4-10.07, MISSISSIPPI
21 CODE OF 1972, TO REVISE THE PROVISIONS CONCERNING RESTATED
22 ARTICLES OF INCORPORATION; TO AMEND SECTION 79-4-10.08,
23 MISSISSIPPI CODE OF 1972, TO REVISE AMENDMENT OF ARTICLES OF
24 INCORPORATION PURSUANT TO REORGANIZATION; TO AMEND SECTION
25 79-4-10.09, MISSISSIPPI CODE OF 1972, TO CLARIFY THE EFFECT OF
26 AMENDMENT OF ARTICLES OF INCORPORATION; TO AMEND SECTION
27 79-4-10.20, MISSISSIPPI CODE OF 1972, TO REVISE AMENDMENT OF
28 BYLAWS BY A BOARD OF DIRECTORS OR SHAREHOLDERS; TO AMEND SECTION
29 79-4-10.21, MISSISSIPPI CODE OF 1972, TO REVISE THE PROVISIONS
30 CONCERNING A BYLAW INCREASING QUORUM OR VOTING REQUIREMENTS FOR
31 DIRECTORS; TO REPEAL SECTION 79-4-10.22, MISSISSIPPI CODE OF 1972,
32 WHICH PROVIDED FOR A BYLAW INCREASING THE QUORUM OR VOTING
33 REQUIREMENT FOR DIRECTORS; TO AMEND SECTION 79-4-11.01,
34 MISSISSIPPI CODE OF 1972, TO ENACT DEFINITIONS; TO AMEND SECTION
35 79-4-11.02, MISSISSIPPI CODE OF 1972, TO INCORPORATE WITH
36 REVISIONS THE PROVISIONS CONTAINED IN SECTION 79-4-11.01,
37 MISSISSIPPI CODE OF 1972, CONCERNING MERGER; TO AMEND SECTION
38 79-4-11.03, MISSISSIPPI CODE OF 1972, TO INCORPORATE WITH
39 REVISIONS THE PROVISIONS OF SECTION 79-4-11.02, MISSISSIPPI CODE
40 OF 1972, CONCERNING SHARE EXCHANGE; TO AMEND SECTION 79-4-11.04,
41 MISSISSIPPI CODE OF 1972, TO INCORPORATE WITH REVISIONS THE
42 PROVISIONS OF SECTION 79-4-11.03, MISSISSIPPI CODE OF 1972,
43 CONCERNING ACTION ON A PLAN OF MERGER OR SHARE EXCHANGE; TO AMEND
44 SECTION 79-4-11.05, MISSISSIPPI CODE OF 1972, TO INCORPORATE WITH
45 REVISIONS THE PROVISIONS OF SECTION 79-4-11.04, MISSISSIPPI CODE
46 OF 1972, CONCERNING MERGER BETWEEN PARENTS AND SUBSIDIARY OR
47 BETWEEN SUBSIDIARIES; TO AMEND SECTION 79-4-11.06, MISSISSIPPI
48 CODE OF 1972, TO INCORPORATE WITH REVISIONS THE PROVISIONS OF
49 SECTION 79-4-11.05, MISSISSIPPI CODE OF 1972, CONCERNING ARTICLES
50 OF MERGER OR SHARE EXCHANGE; TO AMEND SECTION 79-4-11.07,

51 MISSISSIPPI CODE OF 1972, TO INCORPORATE WITH REVISIONS THE
52 PROVISIONS OF SECTION 79-4-11.06 CONCERNING EFFECT OF MERGER OR
53 SHARE EXCHANGE; TO OMIT THE PROVISIONS OF SECTION 79-4-11.07,
54 MISSISSIPPI CODE OF 1972, CONCERNING MERGER OR SHARE EXCHANGE WITH
55 A FOREIGN CORPORATION; TO CODIFY SECTION 79-4-11.08, MISSISSIPPI
56 CODE OF 1972, CONCERNING ABANDONMENT OF A MERGER OR SHARE
57 EXCHANGE; TO AMEND SECTION 79-4-12.01, MISSISSIPPI CODE OF 1972,
58 TO REVISE PROVISIONS CONCERNING THE DISPOSITION OF ASSETS IN
59 REGULAR COURSE OF BUSINESS AND MORTGAGE OF ASSETS NOT REQUIRING
60 SHAREHOLDER APPROVAL; TO AMEND SECTION 79-4-12.02, MISSISSIPPI
61 CODE OF 1972, TO REVISE SHAREHOLDERS' APPROVAL OF CERTAIN
62 DISPOSITIONS; TO AMEND SECTION 79-4-14.02, MISSISSIPPI CODE OF
63 1972, TO REVISE PROVISIONS CONCERNING DISSOLUTION BY A BOARD OF
64 DIRECTORS AND SHAREHOLDERS; TO AMEND SECTION 79-4-14.03,
65 MISSISSIPPI CODE OF 1972, TO REVISE PROVISIONS CONCERNING ARTICLES
66 OF DISSOLUTION; TO AMEND SECTION 79-4-14.04, MISSISSIPPI CODE OF
67 1972, TO REVISE PROVISIONS CONCERNING REVOCATION OF DISSOLUTION;
68 TO AMEND SECTION 79-4-13.01, MISSISSIPPI CODE OF 1972, TO REVISE
69 DEFINITIONS; TO AMEND SECTION 79-4-13.02, MISSISSIPPI CODE OF
70 1972, TO REVISE THE RIGHT TO DISSENT TO APPLY TO THE RIGHT OF
71 APPRAISAL; TO AMEND SECTION 79-4-13.03, MISSISSIPPI CODE OF 1972,
72 TO REVISE THE ASSERTION OF RIGHTS BY NOMINEES AND BENEFICIAL
73 OWNERS; TO AMEND SECTION 79-4-13.20, MISSISSIPPI CODE OF 1972, TO
74 REVISE THE NOTICE OF APPRAISAL RIGHTS; TO AMEND SECTION
75 79-4-13.21, MISSISSIPPI CODE OF 1972, TO REVISE THE NOTICE OF
76 INTENT TO DEMAND PAYMENT; TO AMEND SECTION 79-4-13.22, MISSISSIPPI
77 CODE OF 1972, TO REVISE THE APPRAISAL NOTICE AND FORM; TO AMEND
78 SECTION 79-4-13.23, MISSISSIPPI CODE OF 1972, TO REVISE THE DUTY
79 TO DEMAND PAYMENT AND PERFECTION OF RIGHTS; TO AMEND SECTION
80 79-4-13.24, MISSISSIPPI CODE OF 1972, TO OMIT ALL THE LANGUAGE
81 CONCERNING SHARE RESTRICTIONS AND TO INCORPORATE WITH REVISIONS
82 THE PROVISIONS OF SECTION 79-4-13.25, MISSISSIPPI CODE OF 1972,
83 CONCERNING PAYMENT; TO AMEND SECTION 79-4-13.25, MISSISSIPPI CODE
84 OF 1972, TO INCORPORATE WITH REVISIONS THE PROVISIONS OF SECTION
85 79-4-13.27, MISSISSIPPI CODE OF 1972, CONCERNING AFTER-ACQUIRED
86 SHARES; TO AMEND SECTION 79-4-13.26, MISSISSIPPI CODE OF 1972, BY
87 OMITTING ITS CONTENT ENTIRELY AND TO INCORPORATE WITH REVISIONS
88 THE PROVISIONS OF SECTION 79-4-13.28, MISSISSIPPI CODE OF 1972,
89 CONCERNING PROCEDURE IF SHAREHOLDER IS DISSATISFIED WITH PAYMENT
90 OR OFFER; TO AMEND SECTION 79-4-13.30, MISSISSIPPI CODE OF 1972,
91 TO REVISE THE PROVISIONS CONCERNING COURT ACTION; TO AMEND SECTION
92 79-4-13.31, MISSISSIPPI CODE OF 1972, TO REVISE COURT COSTS AND
93 COUNSEL FEES; TO AMEND SECTION 79-14-101, MISSISSIPPI CODE OF
94 1972, TO REVISE DEFINITIONS IN THE MISSISSIPPI LIMITED PARTNERSHIP
95 ACT; TO AMEND SECTION 79-14-211, MISSISSIPPI CODE OF 1972, TO
96 REVISE PROVISIONS CONCERNING MERGERS INVOLVING LIMITED
97 PARTNERSHIPS; TO AMEND SECTION 79-29-103, MISSISSIPPI CODE OF
98 1972, TO REVISE DEFINITIONS IN THE MISSISSIPPI LIMITED LIABILITY
99 COMPANY ACT; TO AMEND SECTION 79-29-202, MISSISSIPPI CODE OF 1972,
100 TO REVISE REQUIREMENTS CONCERNING A CERTIFICATE OF FORMATION; TO
101 AMEND SECTION 79-29-209, MISSISSIPPI CODE OF 1972, TO REVISE
102 MERGER OF LIMITED LIABILITY COMPANIES; TO CREATE NEW SECTION
103 79-29-210, MISSISSIPPI CODE OF 1972, TO MAKE PROVISION FOR A
104 LIMITED LIABILITY COMPANY THAT IS A PARTY TO A MERGER; TO CREATE
105 NEW SECTION 79-29-211, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR A
106 CERTIFICATE OF MERGER; TO CREATE NEW SECTION 79-29-212,
107 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE EFFECT OF A MERGER;
108 TO CREATE NEW SECTION 79-29-213, MISSISSIPPI CODE OF 1972, TO
109 PROVIDE FOR THE EVENT OF ABANDONMENT OF A MERGER; TO CREATE NEW
110 SECTION 79-29-214, MISSISSIPPI CODE OF 1972, TO SPECIFY APPRAISAL
111 RIGHTS IN A LIMITED LIABILITY COMPANY MERGER; TO CREATE NEW
112 SECTION 79-10-4, MISSISSIPPI CODE OF 1972, TO CLARIFY THE
113 EFFECTIVENESS OF THE UNIFORM PARTNERSHIP ACT; TO AMEND SECTION
114 79-12-7, MISSISSIPPI CODE OF 1972, TO CLARIFY THE EFFECTIVENESS OF
115 THE UNIFORM PARTNERSHIP ACT; AND FOR RELATED PURPOSES.

116

117 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

118 SECTION 1. Section 79-4-1.40, Mississippi Code of 1972, is
119 amended as follows:[CSQ1]

120 79-4-1.40. In Section 79-4-1.01 et seq.:

121 (1) "Articles of incorporation" include amended and
122 restated articles of incorporation and articles of merger.

123 (2) "Authorized shares" means the shares of all classes
124 a domestic or foreign corporation is authorized to issue.

125 (3) "Conspicuous" means so written that a reasonable
126 person against whom the writing is to operate should have noticed
127 it. For example, printing in italics or boldface or contrasting
128 color, or typing in capitals or underlined, is conspicuous.

129 (4) "Corporation" or "domestic corporation" means a
130 corporation for profit, which is not a foreign corporation,
131 incorporated under or subject to the provisions of Section
132 79-4-1.01 et seq.

133 (5) "Deliver" or "delivery" means any method of
134 delivery used in conventional commercial practice, including
135 delivery by hand, mail, commercial delivery and electronic
136 transmission.

137 (6) "Distribution" means a direct or indirect transfer
138 of money or other property (except its own shares) or incurrence
139 of indebtedness by a corporation to or for the benefit of its
140 shareholders in respect of any of its shares. A distribution may
141 be in the form of a declaration or payment of a dividend; a
142 purchase, redemption or other acquisition of shares; a
143 distribution of indebtedness; or otherwise.

144 (7) "Effective date of notice" is defined in Section
145 79-4-1.41.

146 (8) "Electronic transmission" or "electronically
147 transmitted" means any process of communication not directly
148 involving the physical transfer of paper that is suitable for the
149 retention, retrieval and reproduction of information by the
150 recipient.

151 (9) "Employee" includes an officer but not a director.
152 A director may accept duties that make him also an employee.

153 (10) "Entity" includes corporation and foreign
154 corporation; not-for-profit corporation; profit and not-for-profit
155 unincorporated association; business trust, estate, partnership,
156 trust and two (2) or more persons having a joint or common
157 economic interest; and state, United States and foreign
158 government.

159 (11) "Foreign corporation" means a corporation for
160 profit incorporated under a law other than the law of this state.

161 (12) "Governmental subdivision" includes authority,
162 county, district and municipality.

163 (13) "Includes" denotes a partial definition.

164 (14) "Individual" includes the estate of an incompetent
165 or deceased individual.

166 (15) "Means" denotes an exhaustive definition.

167 (16) "Notice" is defined in Section 79-4-1.41.

168 (17) "Person" includes individual and entity.

169 (18) "Principal office" means the office (in or out of
170 this state) so designated in the annual report where the principal
171 executive offices of a domestic or foreign corporation are
172 located.

173 (19) "Proceeding" includes civil suit and criminal,
174 administrative and investigatory action.

175 (20) "Record date" means the date established under
176 Article 6 or 7 on which a corporation determines the identity of
177 its shareholders and their shareholdings for purposes of Section
178 79-4-1.01 et seq. The determinations shall be made as of the
179 close of business on the record date unless another time for doing

so is specified when the record date is fixed.

(21) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under Section 79-4-8.40(c) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(22) "Shares" mean the unit into which the proprietary interests in a corporation are divided.

(23) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(24) "Sign" or "signature" includes any manual, facsimile, conformed or electronic signature.

(25) "State," when referring to a part of the United States, includes a state and commonwealth (and their agencies and governmental subdivisions) and a territory, and insular possession (and their agencies and governmental subdivisions) of the United States.

(26) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(27) "United States" includes district, authority, bureau, commission, department and any other agency of the United States.

(28) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or Section 79-4-1.01 et seq. are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or Section 79-4-1.01 et seq. to vote generally on the matter are for that purpose a single voting group.

(29) "Voting power" means the current power to vote in the election of directors.

SECTION 2. Section 79-4-6.31, Mississippi Code of 1972, is amended as follows:[CSQ2]

79-4-6.31. (a) A corporation may acquire its own shares, and shares so acquired constitute authorized but unissued shares.

(b) If the articles of incorporation prohibit the reissue of the acquired shares, the number of authorized shares is reduced by the number of shares acquired * * *.

* * *

SECTION 3. Section 79-4-10.01, Mississippi Code of 1972, is amended as follows:[CSQ3]

79-4-10.01. (a) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation * * * as of the effective date of the amendment or to delete a provision that is not required to be contained in the articles of incorporation.

(b) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement or purpose or duration of the corporation.

SECTION 4. Section 79-4-10.02, Mississippi Code of 1972, is amended as follows:[CSQ4]

79-4-10.02. If a corporation has not yet issued shares, its board of directors, or its incorporators, if it has no board of directors, may adopt one or more amendments to the corporation's articles of incorporation.

SECTION 5. Section 79-4-10.03, Mississippi Code of 1972, is amended as follows:[CSQ5]

79-4-10.03. If a corporation has issued shares, an amendment to the articles of incorporation shall be adopted in the following manner:

(a) The proposed amendment must be adopted by the board

of directors * * *.

(b) Except as provided in Sections 79-4-10.05, 79-4-10.07, and 79-4-10.08, after adopting the proposed amendment the board of directors must submit the amendment to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the amendment, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the shareholders the basis for that determination.

* * *

(c) The board of directors may condition its submission of the * * * amendment to the shareholders on any basis.

(d) If the amendment is required to be approved by the shareholders and the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the * * * meeting of shareholders at which the amendment is to be submitted for approval. The notice * * * must * * * state that the purpose, or one of the purposes, of the meeting is to consider the * * * amendment and must contain or be accompanied by a copy * * * of the amendment.

(e) Unless * * * the articles of incorporation * * * or the board of directors acting pursuant to subsection (c), requires a greater vote or a * * * greater number of shares to be present, approval of the amendment requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the amendment exists, and, if any class or series of shares is entitled to vote as a separate group on the amendment, except as provided in Section 79-4-10.04(c), the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the amendment by that voting group * * * exists.

* * *

SECTION 6. Section 79-4-10.04, Mississippi Code of 1972, is amended as follows:[CSQ6]

79-4-10.04. (a) If a corporation has more than one (1) class of shares outstanding, the holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by the Mississippi Business Corporation Act, on a proposed amendment to the articles of incorporation if the amendment would:

(1) * * * Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(2) Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;

(3) Change the * * * rights, preferences or limitations of all or part of the shares of the class;

(4) Change the shares of all or part of the class into a different number of shares of the same class;

(5) Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior or superior * * * to the shares of the class;

(6) Increase the rights, preferences or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior or superior * * * to the shares of the class;

(7) Limit or deny an existing preemptive right of all or part of the shares of the class; or

(8) Cancel or otherwise affect rights to distributions * * * that have accumulated but not yet been authorized on all or part of the shares of the class.

(b) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (a), the holders of shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(c) If a proposed amendment that entitles the holders of two (2) or more classes or series of shares to vote as separate voting groups under this section would affect those two (2) or more classes or series in the same or a substantially similar way, the holders of shares of all the classes or series so affected must vote together as a single voting group on the proposed amendment, unless otherwise provided in the articles of incorporation or required by the board of directors.

(d) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

(e) The provisions of subsection (a)(6) * * * shall not apply to preferred stock issued by a public utility subject to the provisions of the Public Utility Holding Company Act, 15 United States Code, Section 79 et seq., where the issuance of its securities is regulated by an agency of the United States.

SECTION 7. Section 79-4-10.05, Mississippi Code of 1972, is amended as follows:[CSQ7]

79-4-10.05. Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of incorporation without shareholder approval:

(1) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) To delete the names and addresses of the initial directors;

(3) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Secretary of State;

(4) If the corporation has only one (1) class of shares outstanding:

(a) To change each issued and unissued authorized share of the class into a greater number of whole shares of that class; or

(b) To increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend;

(5) To change the corporate name by substituting the word "corporation," "incorporated," "company," "limited" or the abbreviation "corp.," "inc.," "co." or "ltd." for a similar word or abbreviation in the name, or by adding, deleting or changing a geographical attribution for the name;

(6) To reflect a reduction in authorized shares, as a result of the operation of Section 79-4-6.31(b), when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares;

(7) To delete a class of shares from the articles of incorporation, as a result of the operation of Section 79-4-6.31(b), when there are no remaining shares of the class because the corporation has acquired all shares of the class and the articles of incorporation prohibit the reissue of the acquired shares; or

(8) To make any change expressly permitted by Section 79-4-6.02(d) to be made without shareholder approval.

SECTION 8. Section 79-4-10.06, Mississippi Code of 1972, is amended as follows:[CSQ8]

79-4-10.06. After an amendment to the articles of incorporation has been adopted and approved in the manner required by the Mississippi Business Corporation Act and by the articles of incorporation, the corporation shall deliver to the Secretary of State, for filing, articles of amendment, which shall set forth:

375 (1) The name of the corporation;
 376 (2) The text of each amendment adopted;
 377 (3) If an amendment provides for an exchange,
 378 reclassification or cancellation of issued shares, provisions for
 379 implementing the amendment if not contained in the amendment
 380 itself;
 381 (4) The date of each amendment's adoption; and
 382 (5) If an amendment:
 383 (a) Was adopted by the incorporators or board of
 384 directors without shareholder approval, a statement that the
 385 amendment was duly approved by the incorporators or by the board
 386 of directors, as the case may be, and that shareholder approval
 387 was not required;
 388 (b) Required approval by the shareholders, a
 389 statement that the amendment was duly approved by the shareholders
 390 in the manner required by the Mississippi Business Corporation Act
 391 and by the articles of incorporation.
 392 * * *
 393 SECTION 9. Section 79-4-10.07, Mississippi Code of 1972, is
 394 amended as follows:[CSQ9]
 395 79-4-10.07. (a) A corporation's board of directors may
 396 restate its articles of incorporation at any time, with or without
 397 shareholder approval, to consolidate all amendments into a single
 398 document.
 399 (b) If the restated articles include one or more new
 400 amendments * * * that require shareholder approval, the amendments
 401 must be adopted and approved as provided in Section 79-4-10.03.
 402 * * *
 403 (c) A corporation that restates its articles of
 404 incorporation shall deliver to the Secretary of State for filing
 405 articles of restatement setting forth the name of the corporation
 406 and the text of the restated articles of incorporation, together
 407 with a certificate which states that the restated articles
 408 consolidate all amendments into a single document and, if a new
 409 amendment is included in the restated articles, which also
 410 includes the statements required under Section 79-4-10.06.
 411 * * *
 412 (d) Duly adopted restated articles of incorporation
 413 supersede the original articles of incorporation and all
 414 amendments thereto.
 415 (e) The Secretary of State may certify restated articles of
 416 incorporation * * * as the articles of incorporation currently in
 417 effect, without including the certificate information required by
 418 subsection (c).
 419 SECTION 10. Section 79-4-10.08, Mississippi Code of 1972, is
 420 amended as follows:[CSQ10]
 421 79-4-10.08. (a) A corporation's articles of incorporation
 422 may be amended without action by the board of directors or
 423 shareholders to carry out a plan of reorganization ordered or
 424 decreed by a court of competent jurisdiction under the authority
 425 of a law of the United States.
 426 (b) The individual or individuals designated by the court
 427 shall deliver to the Secretary of State for filing articles of
 428 amendment setting forth:
 429 (1) The name of the corporation;
 430 (2) The text of each amendment approved by the court;
 431 (3) The date of the court's order or decree approving
 432 the articles of amendment;
 433 (4) The title of the reorganization proceeding in which
 434 the order or decree was entered; and
 435 (5) A statement that the court had jurisdiction of the
 436 proceeding under federal statute.
 437 * * *
 438 (c) This section does not apply after entry of a final
 439 decree in the reorganization proceeding even though the court

440 retains jurisdiction of the proceeding for limited purposes
441 unrelated to consummation of the reorganization plan.
442 SECTION 11. Section 79-4-10.09, Mississippi Code of 1972, is
443 amended as follows:[CSQ11]
444 79-4-10.09. An amendment to the articles of incorporation
445 does not affect a cause of action existing against or in favor of
446 the corporation, a proceeding to which the corporation is a party,
447 or the existing rights of persons other than shareholders of the
448 corporation. An amendment changing a corporation's name does not
449 abate a proceeding brought by or against the corporation in its
450 former name.
451 SECTION 12. Section 79-4-10.20, Mississippi Code of 1972, is amended as
452 follows:[CSQ12]

453 79-4-10.20. (a) A corporation's shareholders may amend or repeal the

454 corporation's bylaws.

455 (b) A corporation's board of directors may amend or repeal the

456 corporation's bylaws unless:

457 (1) The articles of incorporation or Section 79-4-10.21 reserve

458 that power exclusively to the shareholders in whole or part; or

459 (2) The shareholders in amending, repealing, or adopting a

460 bylaw * * * expressly provide that the board of directors may not amend,

461 repeal, or reinstate that bylaw.

462 SECTION 13. Section 79-4-10.21, Mississippi Code of 1972, is amended as

463 follows:[CSQ13]

464 79-4-10.21. (a) * * * A bylaw that increases a quorum or voting

465 requirement for the board of directors may be amended or repealed:

466 (1) If adopted by the shareholders, only by the shareholders,
467 unless the bylaw otherwise provides;

468 (2) If adopted by the board of directors, either by the
469 shareholders or by the board of directors.

470 (b) * * * A bylaw adopted or amended by the shareholders that increases
471 a quorum or voting requirement for the board of directors may provide that it
472 can be amended or repealed only by a specified vote of either the shareholders
473 or the board of directors.

474 (c) Action by the board of directors under subsection (a) to amend or
475 repeal a bylaw that changes the quorum or voting requirement for the board of
476 directors must meet the same quorum requirement and be adopted by the same
477 vote * * * required to take action under the quorum and voting requirement then
478 in effect or proposed to be adopted, whichever is greater.

479 * * *

480 SECTION 14. Section 79-4-10.22, Mississippi Code of 1972, which provides
481 for bylaws increasing quorum or voting requirement for directors, is repealed.

482 SECTION 15. Section 79-4-11.01, Mississippi Code of 1972, is amended as
483 follows:

484 79-4-11.01. As used in this chapter:

485 (a) "Interests" means the proprietary interests in an other
486 entity.

487 (b) "Merger" means a business combination pursuant to Section
488 79-4-11.02

489 (c) "Organizational documents" means the basic document or
490 documents that create, or determine the internal governance of, an other
491 entity.

492 (d) "Other entity" means any association or legal entity, other
493 than a domestic or foreign corporation, organized to conduct business,
494 including, without limitation, limited partnerships, general partnerships,
495 limited liability partnerships, limited liability companies, joint ventures,
496 joint stock companies, and business trusts.

497 (e) "Party to a merger" or "party to a share exchange" means any

498 domestic or foreign corporation or other entity that will either:

499 (1) Merge under a plan of merger;

500 (2) Acquire shares or interests of another corporation or an

501 other entity in a share exchange; or

502 (3) Have all of its shares or interests or all of one or

503 more classes or series of its shares or interests acquired in a share exchange.

504 (f) "Share exchange" means a business combination pursuant to

505 Section 79-4-11.03.

506 (g) "Survivor" in a merger means the corporation or other entity

507 into which one or more other corporations or other entities are merged. A

508 survivor of a merger may preexist the merger or be created by the merger.

509 SECTION 16. Section 79-4-11.02, Mississippi Code of 1972, is amended as

510 follows:[CSQ14]

511 79-4-11.02. (a) One or more domestic corporations may merge with a

512 domestic or foreign corporation or other entity pursuant to a plan of merger.

513 (b) A foreign corporation, or a domestic or foreign other entity, may be

514 a party to the merger, or may be created by the terms of the plan of merger,

515 only if:

516 (1) The merger is permitted by the laws under which the

517 corporation or other entity is organized or by which it is governed; and

518 (2) In effecting the merger, the corporation or other entity

519 complies with such laws and with its articles of incorporation or

520 organizational documents.

521 (c) The plan of merger must include:

522 (1) The name of each corporation or other entity that will merge

523 and the name of the corporation or other entity that will be the survivor of

524 the merger;

525 (2) The terms and conditions of the merger;

526 (3) The manner and basis of converting the shares of each merging

527 corporation and interest of each merging other entity into shares or other

528 securities, interests, obligations, rights to acquire shares or other

529 securities, cash, other property, or any combination of the foregoing;

530 (4) The articles of incorporation of any corporation, or the
531 organizational documents of any other entity to be created by the merger, or if
532 a new corporation or other entity is not to be created by the merger, any
533 amendments to the survivor's articles of incorporation, or organizational
534 documents; and

535 (5) Any other provisions required by the laws under which any
536 party to the merger is organized or by which it is governed, or by the articles
537 of incorporation or organizational documents of any such party.

538 (d) The terms described in subsections (c)(2) and (c)(3) may be made
539 dependent on facts ascertainable outside of the plan of merger, provided that
540 those facts are objectively ascertainable. The term "facts" includes, but is
541 not limited to, the occurrence of any event, including a determination or
542 action by any person or body, including the corporation.

543 (e) The plan of merger may also include a provision that the plan may be
544 amended prior to filing the articles of merger with the Secretary of State,
545 provided that if the shareholders of a domestic corporation that is a party to

546 the merger are required or permitted to vote on the plan, the plan must provide
547 that subsequent to approval of the plan by such shareholders the plan may not
548 be amended to:

549 (1) Change the amount or kind of shares or other securities,
550 interests, obligations, rights to acquire shares or other securities, cash, or
551 other property to be received by the shareholders of or owners of interests in
552 any party to the merger upon conversion of their shares or interests under the
553 plan;

554 (2) Change the articles of incorporation of any corporation or the
555 organizational documents of any other entity, that will survive or be created
556 as a result of the merger, except for changes permitted by Section 79-4-10.05
557 or by comparable provisions of the laws under which the foreign corporation or
558 other entity is organized or governed; or

559 (3) Change any of the other terms or conditions of the plan if the
560 change would adversely affect such shareholders in any material respect.

561 SECTION 17. Section 79-4-11.03, Mississippi Code of 1972, is amended as

562 follows:[CSQ15]

563 79-4-11.03. (a) Through a share exchange:

564 (1) A domestic corporation may acquire all of the shares of one or
565 more classes or series of shares of another domestic or foreign corporation, or
566 all of the interests of one or more classes or series of interests of a
567 domestic or foreign other entity, in exchange for shares or other securities,
568 interests, obligations, rights to acquire shares or other securities, cash,
569 other property, or any combination of the foregoing, pursuant to a plan of
570 share exchange; or

571 (2) All of the shares of one or more classes or series of shares
572 of a domestic corporation may be acquired by another domestic or foreign
573 corporation or other entity, in exchange for shares or other securities,
574 interests, obligations, rights to acquire shares or other securities, cash,
575 other property, or any combination of the foregoing, pursuant to a plan of
576 share exchange.

577 (b) A foreign corporation, or a domestic or foreign other entity, may be

578 a party to the share exchange only if:

579 (1) The share exchange is permitted by the laws under which the

580 corporation or other entity is organized or by which it is governed; and

581 (2) In effecting the share exchange, the corporation or other

582 entity complies with such laws and with its articles of incorporation or

583 organizational documents.

584 (c) The plan of share exchange must include:

585 (1) The name of each corporation or other entity whose shares or

586 interests will be acquired and the name of the corporation or other entity that

587 will acquire those shares or interests;

588 (2) The terms and conditions of the share exchange;

589 (3) The manner and basis of exchanging shares of a corporation or

590 interests in an other entity whose shares or interests will be acquired under

591 the share exchange into shares or other securities, interests, obligations,

592 rights to acquire shares or other securities, cash, other property, or any

593 combination of the foregoing; and

594 (4) Any other provisions required by the laws under which any
595 party to the share exchange is organized or by the articles of incorporation or
596 organizational documents of any such party.

597 (d) The terms described in subsections (c)(2) and (c)(3) may be made
598 dependent on facts ascertainable outside the plan of share exchange, provided
599 that those facts are objectively ascertainable. The term "facts" includes, but
600 is not limited to, the occurrence of any event, including a determination or
601 action by any person or body, including the corporation.

602 (e) The plan of share exchange may also include a provision that the
603 plan may be amended prior to filing of the articles of share exchange with the
604 Secretary of State, provided that if the shareholders of a domestic corporation
605 that is a party to the share exchange are required or permitted to vote on the
606 plan, the plan must provide that subsequent to approval of the plan by such
607 shareholders the plan may not be amended to:

608 (1) Change the amount or kind of shares or other securities,
609 interests, obligations, rights to acquire shares or other securities, cash, or

610 other property to be issued by the corporation or to be received by the
611 shareholders of or owners of interests in any party to the share exchange in
612 exchange for their shares or interests under the plan; or

613 (2) Change any of the terms or conditions of the plan if the
614 change would adversely affect such shareholders in any material respect.

615 (f) Section 79-4-11.03 does not limit the power of a domestic
616 corporation to acquire shares of another corporation or interests in another
617 entity in a transaction other than a share exchange.

618 SECTION 18. Section 79-4-11.04, Mississippi Code of 1972, is amended as
619 follows:[CSQ16]

620 79-4-11.04. In the case of a domestic corporation that is a party to a
621 merger or share exchange:

622 (a) The plan of merger or share exchange, must be adopted by the
623 board of directors.

624 (b) Except as provided in subsection (g) and in Section
625 79-4-11.05, after adopting the plan of merger, the board of directors must

626 submit the plan to the shareholders for their approval. After adopting the
627 plan of share exchange, the board of directors of the corporation whose shares
628 will be acquired in the share exchange must submit the plan to the shareholders
629 for their approval. The board of directors must also transmit to the
630 shareholders a recommendation that the shareholders approve the plan of merger
631 or share exchange, unless the board of directors makes a determination that
632 because of conflicts of interest or other special circumstances it should not
633 make such a recommendation, in which case the board of directors must transmit
634 to the shareholders the basis for that determination.

635 (c) The board of directors may condition its submission of the
636 plan of merger or share exchange to the shareholders on any basis.

637 (d) If the plan of merger or share exchange is required to be
638 approved by the shareholders, and if the approval is to be given at a meeting,
639 the corporation must notify each shareholder, whether or not entitled to vote,
640 of the meeting of shareholders at which the plan is to be submitted for
641 approval. The notice must state that the purpose, or one (1) of the purposes,

642 of the meeting is to consider the plan and must contain or be accompanied by a
643 copy or summary of the plan. If the corporation is to be merged into an
644 existing corporation or other entity, the notice shall also include or be
645 accompanied by a copy or summary of the articles of incorporation or
646 organizational documents of that corporation or other entity. If the
647 corporation is to be merged into a corporation or other entity that is to be
648 created pursuant to the merger, the notice shall include or be accompanied by a
649 copy or a summary of the articles of incorporation or organizational documents
650 of the new corporation or other entity.

651 (e) Unless the articles of incorporation, or the board of
652 directors acting pursuant to subsection (c), requires a greater vote or a
653 greater number of votes to be present, the approval of the plan of merger or
654 share exchange shall require the approval of the shareholders at a meeting at
655 which a quorum consisting of at least a majority of the votes entitled to be
656 cast on the plan exists, and, if any class or series of shares is entitled to
657 vote as a separate group on the plan of merger or share exchange, the approval

658 of each such separate voting group at a meeting at which a quorum of the voting
659 group consisting of at least a majority of the votes entitled to be cast on the
660 merger or share exchange by that voting group is present.

661 (f) Separate voting by voting groups is required:

662 (1) On a plan of merger, by each class or series of shares
663 that (A) are to be converted, pursuant to the provisions of the plan of merger,
664 into shares or other securities, interests, obligations, rights to acquire
665 shares or other securities, cash, other property, or any combination of the
666 foregoing, or (B) would have a right to vote as a separate group on a provision
667 of the plan that, if contained in a proposed amendment to articles of
668 incorporation, would require action by separate voting groups under Section
669 79-4-10.04;

670 (2) On a plan of share exchange, by each class or series of
671 shares included in the exchange, with each class or series constituting a
672 separate voting group; and

673 (3) On a plan of merger or share exchange, if the voting

674 group is entitled under the articles of incorporation to vote as a voting group
675 to approve a plan of merger or share exchange.

676 (g) Unless the articles of incorporation otherwise provide,
677 approval by the corporation's shareholders of a plan of merger is not required
678 if:

679 (1) The corporation will survive the merger; and

680 (2) Except for amendments permitted by Section 79-4-10.05,
681 its articles of incorporation will not be changed; and

682 (3) Each shareholder of the corporation whose shares were
683 outstanding immediately before the effective date of the merger will hold the
684 same number of shares, with identical preferences, limitations, and relative
685 rights, immediately after the effective date of change; and

686 (4) The number of voting shares outstanding immediately
687 after the merger, plus the number of voting shares issuable as a result of the
688 merger (either by the conversion of securities issued pursuant to the merger or
689 the exercise of rights and warrants issued pursuant to the merger), will not

690 exceed by more than twenty percent (20%) the total number of voting shares of
691 the surviving corporation outstanding immediately before the merger; and

692 (5) The number of participating shares outstanding
693 immediately after the merger, plus the number of participating shares issuable
694 as a result of the merger (either by the conversion of securities issued
695 pursuant to the merger or the exercise of rights and warrants issued pursuant
696 to the merger), will not exceed by more than twenty percent (20%) the total
697 number of participating shares outstanding immediately before the merger.

698 (h) As used in subsection (g):

699 (1) "Participating shares" means shares that entitle their
700 holders to participate without limitation in distributions.

701 (2) "Voting shares" means shares that entitle their holders
702 to vote unconditionally in elections of directors.

703 (i) If as a result of a merger or share exchange one or more
704 shareholders of a domestic corporation would become subject to personal
705 liability for the obligations or liabilities of any other person or entity,

706 approval of the plan of merger shall require the execution, by each such
707 shareholder, of a separate written consent to become subject to such personal
708 liability.

709 SECTION 19. Section 79-4-11.05, Mississippi Code of 1972, is amended as
710 follows:[CSQ17]

711 79-4-11.05. (a) A domestic parent corporation that owns shares of a
712 domestic or foreign subsidiary corporation that carry at least ninety percent
713 (90%) of the voting power of each class and series of the outstanding shares of
714 the subsidiary that have voting power may merge the subsidiary into itself or
715 into another such subsidiary, or merge itself into the subsidiary, without the
716 approval of the board of directors or shareholders of the subsidiary unless the
717 articles of incorporation of any of the corporations otherwise provide, and
718 unless, in the case of a foreign subsidiary, approval by the subsidiary's board
719 of directors or shareholders is required by the laws under which the subsidiary
720 is organized.

721 (b) If under subsection (a) approval of a merger by the subsidiary's

722 shareholders is not required, the parent corporation shall, within ten (10)
723 days after the effective date of the merger, notify each of the subsidiary's
724 shareholders that the merger has become effective.

725 (c) Except as provided in subsections (a) and (b), a merger between a
726 parent and a subsidiary shall be governed by the provisions of Title 79,
727 Chapter 4, Article 11 applicable to mergers generally.

728 SECTION 20. Section 79-4-11.06, Mississippi Code of 1972, is amended as
729 follows:[CSQ18]

730 79-4-11.06. (a) After a plan of merger or share exchange has been
731 adopted and approved as required by the Mississippi Business Corporation Act,
732 articles of merger or share exchange shall be executed on behalf of each party
733 to the merger or share exchange by any officer or other duly authorized
734 representative. The articles shall set forth:

735 (1) The names of the parties to the merger or share exchange and
736 the date on which the merger or share exchange occurred or is to be effective;

737 (2) If the articles of incorporation of the survivor of a merger

738 are amended, or if a new corporation is created as a result of a merger, the
739 amendments to the survivor's articles of incorporation or the articles of
740 incorporation of the new corporation;

741 (3) If the plan of merger or share exchange required approval by
742 the shareholders of a domestic corporation that was a party to the merger or
743 share exchange, a statement that the plan was duly approved by the shareholders
744 and, if voting by any separate voting group was required, by each such separate
745 voting group, in the manner required by the Mississippi Business Corporation
746 Act and the articles of incorporation;

747 (4) If the plan of merger or share exchange did not require
748 approval by the shareholders of a domestic corporation that was a party to the
749 merger or share exchange, a statement to that effect; and

750 (5) As to each foreign corporation and each other entity that was
751 a party to the merger or share exchange, a statement that the plan and the
752 performance of its terms were duly authorized by all action required by the
753 laws under which the corporation or other entity is organized or by which it is

754 governed, and by its articles of incorporation or organizational documents.

755 (b) Articles of merger or share exchange shall be delivered to the

756 Secretary of State for filing by the survivor of the merger or the acquiring

757 corporation in a share exchange and shall take effect on the effective date.

758 SECTION 21. Section 79-4-11.07, Mississippi Code of 1972, is amended as

759 follows:[CSQ19]

760 79-4-11.07. (a) When a merger becomes effective:

761 (1) The corporation or other entity that is designated in the plan

762 of merger as the survivor continues or comes into existence, as the case may

763 be;

764 (2) The separate existence of every corporation or other entity

765 that is merged into the survivor ceases;

766 (3) All property owned by, and every contract right possessed by,

767 each corporation or other entity that merges into the survivor is vested in the

768 survivor without reversion or impairment;

769 (4) All liabilities of each corporation or other entity that is

770 merged into the survivor are vested in the survivor;

771 (5) The name of the survivor may, but need not be, substituted in

772 any pending proceeding for the name of any party to the merger whose separate

773 existence ceased in the merger;

774 (6) The articles of incorporation or organizational documents of

775 the survivor are amended to the extent provided in the plan of merger;

776 (7) The articles of incorporation or organizational documents of a

777 survivor that is created by the merger become effective; and

778 (8) The shares of each corporation that is a party to the merger,

779 and the interests in an other entity that is a party to a merger, that are to

780 be converted under the plan of merger into shares, interests, obligations,

781 rights to acquire securities, other securities, cash, other property, or any

782 combination of the foregoing, are converted and the former holders of such

783 shares or interests are entitled only to the rights provided to them in the

784 plan of merger or to any rights they may have under Title 79, Chapter 4,

785 Article 13.

786 (b) When a share exchange becomes effective, the shares of each domestic
787 corporation that are to be exchanged for shares or other securities, interests,
788 obligations, rights to acquire shares or securities, other securities, cash,
789 other property, or any combination of the foregoing, are entitled only to the
790 rights provided to them in the plan of share exchange or to any rights they may
791 have under Title 79, Chapter 4, Article 13.

792 (c) Any shareholder of a domestic corporation that is a party to a
793 merger or share exchange who, prior to the merger or share exchange, was liable
794 for the liabilities or obligations of such corporation, shall not be released
795 from such liabilities or obligations by reason of the merger or share exchange.

796 (d) Upon a merger becoming effective, a foreign corporation, or a
797 foreign other entity, that is the survivor of the merger is deemed to:

798 (1) Appoint the Secretary of State as its agent for service of
799 process in a proceeding to enforce the rights of shareholders of each domestic
800 corporation that is a party to the merger who exercise appraisal rights; and

801 (2) Agree that it will promptly pay the amount, if any, to which

802 such shareholders are entitled under Title 79, Chapter 4, Article 13.

803 SECTION 22. This section shall be codified as Section 79-4-11.08,

804 Mississippi Code of 1972:

805 79-4-11.08. (a) Unless otherwise provided in a plan of merger or share
806 exchange or in the laws under which a foreign corporation or a domestic or
807 foreign other entity that is a party to a merger or a share exchange is
808 organized or by which it is governed, after the plan has been adopted and
809 approved as required by this article, and at any time before the merger or
810 share exchange has become effective, it may be abandoned by any party thereto
811 without action by the party's shareholders or owners of interests, in
812 accordance with any procedures set forth in the plan of merger or share
813 exchange or, if no such procedures are set forth in the plan, in the manner
814 determined by the board of directors of a corporation, or the managers of an
815 other entity, subject to any contractual rights of other parties to the merger
816 or share exchange.

817 (b) If a merger or share exchange is abandoned under subsection (a)

818 after articles of merger or share exchange have been filed with the Secretary
819 of State but before the merger or share exchange has become effective, a
820 statement that the merger or share exchange has been abandoned in accordance
821 with this section, executed on behalf of a party to the merger or share
822 exchange by an officer or other duly authorized representative, shall be
823 delivered to the Secretary of State for filing prior to the effective date of
824 the merger or share exchange. Upon filing, the statement shall take effect and
825 the merger or share exchange shall be deemed abandoned and shall not become
826 effective.

827 SECTION 23. Section 79-4-12.01, Mississippi Code of 1972, is amended as
828 follows:[CSQ20]

829 79-4-12.01. * * * No approval of the shareholders of a corporation is
830 required, unless the articles of incorporation otherwise provide:

831 (1) To sell, lease, exchange, or otherwise dispose of any or * * *
832 all of the corporation's assets in the usual and regular course of business;

833 (2) To mortgage, pledge, dedicate to the repayment of indebtedness

834 (whether with or without recourse) or otherwise encumber any or all of the
835 corporation's assets, whether or not in the usual and regular course of
836 business; * * *

837 (3) To transfer any or all of the corporation's assets to one or
838 more corporations or other entities all of the shares or interests of which are
839 owned by the corporation; or

840 (4) To distribute assets pro rata to the holders of one or more
841 classes or series of the corporation's shares.

842 * * *

843 SECTION 24. Section 79-4-12.02, Mississippi Code of 1972, is amended as
844 follows:[CSQ21]

845 79-4-12.02. (a) A * * * sale, lease, exchange, or other disposition of
846 assets, other than a disposition described in Section 79-4-12.01, requires
847 approval of the corporation's shareholders if the disposition would leave the
848 corporation without a significant continuing business activity. If a
849 corporation retains a business activity that represented at least twenty-five

850 percent (25%) of total assets at the end of the most recently completed fiscal
851 year, and twenty-five (25%) of either income from continuing operations before
852 taxes or revenues from continuing operations for that fiscal year, in each case
853 of the corporation and its subsidiaries on a consolidated basis, the
854 corporation will conclusively be deemed to have retained a significant
855 continuing business activity.

856 (b) A disposition that requires approval of the shareholders under
857 subsection (a) shall be initiated by a resolution by the board of directors
858 authorizing the disposition. After adoption of such a resolution, the board of
859 directors shall submit the proposed disposition to the shareholders for their
860 approval. The board of directors shall also transmit to the shareholders a
861 recommendation that the shareholders approve the proposed disposition, unless
862 the board of directors makes a determination that because of conflicts of
863 interest or other special circumstances it should not make such a
864 recommendation, in which case the board of directors shall transmit to the
865 shareholders * * * the basis for that determination.

866 * * *

867 (c) The board of directors may condition its submission of a disposition
868 to the shareholders under subsection (b) on any basis.

869 (d) If a disposition is required to be approved by the shareholders
870 under subsection (a), and if the approval is to be given at a meeting, the
871 corporation shall notify each shareholder, whether or not entitled to vote, of
872 the * * * meeting of shareholders at which the disposition is to be submitted
873 for approval. The notice shall state that the purpose, or one of the purposes,
874 of the meeting is to consider the * * * disposition * * * and shall
875 contain * * * a description of the disposition, including the terms and
876 conditions thereof and the consideration to be received by the corporation.

877 (e) Unless the articles of incorporation or the board of directors
878 acting pursuant to subsection (c) require a greater vote, or a greater number
879 of votes to be present, the approval of a disposition by the shareholders shall
880 require the approval of the shareholders at a meeting at which a quorum
881 consisting of at least a majority of * * * the votes entitled to be cast on the

882 disposition exists.

883 (f) After a * * * disposition has been approved by the shareholders
884 under subsection (b), and at any time before the disposition has been
885 consummated, it may be abandoned by the corporation without action by the
886 shareholders, subject to any contractual rights of other parties to the
887 disposition.

888 (g) A disposition of assets in the course of dissolution under Title 79,
889 Chapter 4, Article 14 is not governed by this section.

890 (h) The assets of a direct or indirect consolidated subsidiary shall be
891 deemed the assets of the parent corporation for the purposes of this section.

892 SECTION 25. Section 79-4-14.02, Mississippi Code of 1972, is amended as
893 follows:[CSQ22]

894 79-4-14.02. (a) A corporation's board of directors may propose
895 dissolution for submission to the shareholders.

896 (b) For a proposal to dissolve to be adopted:

897 (1) The board of directors must recommend dissolution to the

898 shareholders unless the board of directors determines that because of conflict
899 of interest or other special circumstances it should make no recommendation and
900 communicates the basis for its determination to the shareholders; and

901 (2) The shareholders entitled to vote must approve the proposal to
902 dissolve as provided in subsection (e).

903 (c) The board of directors may condition its submission of the proposal
904 for dissolution on any basis.

905 (d) The corporation shall notify each shareholder, whether or not
906 entitled to vote, of the proposed shareholders' meeting * * *. The notice must
907 also state that the purpose, or one of the purposes, of the meeting is to
908 consider dissolving the corporation.

909 (e) Unless the articles of incorporation or the board of directors
910 acting pursuant to subsection (c) require a greater vote, a greater number of
911 shares to be present, or a vote by voting groups, adoption of the proposal to
912 dissolve shall require the approval of the shareholders at a meeting at which a
913 quorum consisting of at least a majority of * * * the votes entitled to be cast

914 exists.

915 SECTION 26. Section 79-4-14.03, Mississippi Code of 1972, is amended as

916 follows:[CSQ23]

917 79-4-14.03. (a) At any time after dissolution is authorized, the

918 corporation may dissolve by delivering to the Secretary of State for filing

919 articles of dissolution setting forth:

920 (1) The name of the corporation;

921 (2) The date dissolution was authorized; and

922 (3) If dissolution was approved by the shareholders, a statement

923 that the proposal to dissolve was duly approved by the shareholders in the

924 manner required by the Mississippi Business Corporation Act and by the articles

925 of incorporation.

926 * * *

927 (b) A corporation is dissolved upon the effective date of its articles

928 of dissolution.

929 SECTION 27. Section 79-4-14.04, Mississippi Code of 1972, is amended as

930 follows:[CSQ24]

931 79-4-14.04. (a) A corporation may revoke its dissolution within one
932 hundred twenty (120) days of its effective date.

933 (b) Revocation of dissolution must be authorized in the same manner as
934 the dissolution was authorized unless that authorization permitted revocation
935 by action of the board of directors alone, in which event the board of
936 directors may revoke the dissolution without shareholder action.

937 (c) After the revocation of dissolution is authorized, the corporation
938 may revoke the dissolution by delivering to the Secretary of State for filing
939 articles of revocation of dissolution, together with a copy of its articles of
940 dissolution, that set forth:

941 (1) The name of the corporation;

942 (2) The effective date of the dissolution that was revoked;

943 (3) The date that the revocation of dissolution was authorized;

944 (4) If the corporation's board of directors (or incorporators)

945 revoked the dissolution, a statement to that effect;

946 (5) If the corporation's board of directors revoked a dissolution
947 authorized by the shareholders, a statement that revocation was permitted by
948 action by the board of directors alone pursuant to that authorization; and

949 (6) If shareholder action was required to revoke the dissolution,
950 the information required by Section 79-4-14.03(a)(3) * * *.

951 (d) Unless a delayed effective date is specified, revocation of
952 dissolution is effective upon the effective date of the articles of revocation
953 of dissolution are filed.

954 (e) When the revocation of dissolution is effective, it relates back to
955 and takes effect as of the effective date of the dissolution and the
956 corporation resumes carrying on its business as if dissolution had never
957 occurred.

958 SECTION 28. Section 79-4-13.01, Mississippi Code of 1972, is amended as
959 follows:[CSQ25]

960 79-4-13.01. In this article:

961 (1) "Affiliate" means a person that directly or indirectly through

962 one or more intermediaries controls, is controlled by, or is under common
963 control with another person or is a senior executive thereof. For purposes of
964 Section 79-4-13.02(b)(4), a person is deemed to be an affiliate of its senior
965 executives.

966 (2) "Beneficial shareholder" means a person who is the beneficial
967 owner of shares held in a voting trust or by a nominee on the beneficial
968 owner's behalf.

969 (3) "Corporation" means the issuer of the shares held by a
970 shareholder demanding appraisal and, for matters covered in Sections 79-4-13.22
971 through 79-4-13.31, includes the surviving entity in a merger * * *.

972 * * *

973 (4) "Fair value" * * * means the value of the corporation's shares
974 determined:

975 (i) Immediately before the effectuation of the corporate
976 action to which the shareholder objects * * *;

977 (ii) Using customary and current valuation concepts and

978 techniques generally employed for similar businesses in the context of the
979 transaction requiring appraisal; and
980 (iii) Without discounting for lack of marketability or
981 minority status except, if appropriate, for amendments to the articles pursuant
982 to Section 79-4-13.02(a)(5).

983 (5) "Interest" means interest from the effective date of the
984 corporate action until the date of payment, at the * * * rate of interest on
985 judgements in this state on the effective date of the corporate action.

986 (6) "Preferred shares" means a class or series of shares whose
987 holders have preference over any other class or series with respect to
988 distributions.

989 (7) "Record shareholder" means the person in whose name shares are
990 registered in the records of the corporation or the beneficial owner of shares
991 to the extent of the rights granted by a nominee certificate on file with the
992 corporation.

993 (8) "Senior executive" means the chief executive officer, chief

994 operating officer, chief financial officer, and anyone in charge of a principal
995 business unit or function.

996 (9) "Shareholder" means both a record shareholder and a beneficial
997 shareholder.

998 SECTION 29. Section 79-4-13.02, Mississippi Code of 1972, is amended as
999 follows:[CSQ26]

1000 79-4-13.02. (a) A shareholder is entitled to appraisal rights, and to
1001 obtain payment of the fair value of that shareholder's shares, in the event
1002 of * * * any of the following corporate actions:

1003 (1) Consummation of a * * * merger to which the corporation is a
1004 party (i) if shareholder approval is required for the merger by Section
1005 79-4-11.04 * * * and the shareholder is entitled to vote on the merger, except
1006 that appraisal rights shall not be available to any shareholder of the
1007 corporation with respect to shares of any class or series that remain
1008 outstanding after consummation of the merger, or (ii) if the corporation is a
1009 subsidiary and the merger is governed by Section 79-4-11.05;

1010 (2) Consummation of a * * * share exchange to which the
1011 corporation is a party as the corporation whose shares will be acquired * * *
1012 if the shareholder is entitled to vote on the exchange, except that appraisal
1013 rights shall not be available to any shareholder of the corporation with
1014 respect to any class or series of shares of the corporation that is not
1015 exchanged;

1016 (3) Consummation of a disposition of assets pursuant to Section
1017 79-4-12.02 if the shareholder is entitled to vote on the disposition * * *;

1018 (4) An amendment of the articles of incorporation with respect to
1019 a class or series of shares that reduces the number of shares of a class or
1020 series owned by the shareholder to a fraction of a share if the corporation has
1021 the obligation or right to repurchase the fractional share so created; or

1022 * * *

1023 (5) Any other amendment to the articles of incorporation, merger,
1024 share exchange or disposition of assets to the extent provided by the articles
1025 of incorporation, bylaws or a resolution of the board of directors * * *.

1026 (b) Notwithstanding subsection (a), the availability of appraisal rights
1027 under subsections (a)(1), (2), (3) and (4) shall be limited in accordance with
1028 the following provisions:

1029 (1) Appraisal rights shall not be available for the holders of
1030 shares of any class or series of shares which is:

1031 (i) Listed on the New York Stock Exchange or the American
1032 Stock Exchange or designated as a national market system security on an
1033 interdealer quotation system by the National Association of Securities Dealers,
1034 Inc.; or

1035 (ii) Not so listed or designated, but has at least Two
1036 Thousand (2,000) shareholders and the outstanding shares of such class or
1037 series has a market value of at least Twenty Million Dollars (\$20,000,000.00)
1038 (exclusive of the value of such shares held by its subsidiaries, senior
1039 executives, directors and beneficial shareholders owning more than ten percent
1040 (10%) of such shares).

1041 (2) The applicability of subsection (b)(1) shall be determined as

1042 of:

1043 (i) The record date fixed to determine the shareholders

1044 entitled to receive notice of, and to vote at, the meeting of shareholders to

1045 act upon the corporate action requiring appraisal rights; or

1046 (ii) The day before the effective date of such corporate

1047 action if there is no meeting of shareholders.

1048 (3) Subsection (b)(1) shall not be applicable and appraisal rights

1049 shall be available pursuant to subsection (a) for the holders of any class or

1050 series of shares who are required by the terms of the corporate action

1051 requiring appraisal rights to accept for such shares anything other than cash

1052 or shares of any class or any series of shares of any corporation, or any other

1053 proprietary interest of any other entity, that satisfies the standards set

1054 forth in subsection (b)(1) at the time the corporate action becomes effective.

1055 (4) Subsection (b)(1) shall not be applicable and appraisal rights

1056 shall be available pursuant to subsection (a) for the holders of any class or

1057 series of shares where:

1058 (i) Any of the shares or assets of the corporation are being
1059 acquired or converted, whether by merger, share exchange or otherwise, pursuant
1060 to the corporate action by a person, or by an affiliate of a person, who:

1061 (A) Is, or at any time in the one-year period
1062 immediately preceding approval by the board of directors of the corporate
1063 action requiring appraisal rights was, the beneficial owner of twenty percent
1064 (20%) or more of the voting power of the corporation, excluding any shares
1065 acquired pursuant to an offer for all shares having voting power if such offer
1066 was made within one (1) year prior to the corporate action requiring appraisal
1067 rights for consideration of the same kind and of a value equal to or less than
1068 that paid in connection with the corporate action; or

1069 (B) Directly or indirectly has, or at any time in the
1070 one-year period immediately preceding approval by the board of directors of the
1071 corporation of the corporate action requiring appraisal rights had, the power,
1072 contractually or otherwise, to cause the appointment or election of twenty-five
1073 percent (25%) or more of the directors to the board of directors of the

1074 corporation; or

1075 (ii) Any of the shares or assets of the corporation are

1076 being acquired or converted, whether by merger, share exchange or otherwise,

1077 pursuant to such corporate action by a person, or by an affiliate of a person,

1078 who is, or at any time in the one-year period immediately preceding approval by

1079 the board of directors of the corporate action requiring appraisal rights was,

1080 a senior executive or director of the corporation or a senior executive of any

1081 affiliate thereof, and that senior executive or director will receive, as a

1082 result of the corporate action, a financial benefit not generally available to

1083 other shareholders as such, other than:

1084 (A) Employment, consulting, retirement or similar

1085 benefits established separately and not as part of or in contemplation of the

1086 corporate action; or

1087 (B) Employment, consulting, retirement or similar

1088 benefits established in contemplation of, or as part of, the corporate action

1089 that are not more favorable than those existing before the corporate action or,

1090 if more favorable, that have been approved on behalf of the corporation in the
1091 same manner as is provided in Section 79-4-8.62; or

1092 (C) In the case of a director of the corporation who
1093 will, in the corporate action, become a director of the acquiring entity in the
1094 corporate action or one (1) of its affiliates, rights and benefits as a
1095 director that are provided on the same basis as those afforded by the acquiring
1096 entity generally to other directors of such entity or such affiliate.

1097 (5) For the purposes of paragraph (4) only, the term "beneficial
1098 owner" means any person who, directly or indirectly, through any contract,
1099 arrangement, or understanding, other than a revocable proxy, has or shares the
1100 power to vote, or to direct the voting of, shares, provided that a member of a
1101 national securities exchange shall not be deemed to be a beneficial owner of
1102 securities held directly or indirectly by it on behalf of another person solely
1103 because such member is the record holder of such securities if the member is
1104 precluded by the rules of such exchange from voting without instruction on
1105 contested matters or matters that may affect substantially the rights or

1106 privileges of the holders of the securities to be voted. When two (2) or more
1107 persons agree to act together for the purpose of voting their shares of the
1108 corporation, each member of the group formed thereby shall be deemed to have
1109 acquired beneficial ownership, as of the date of such agreement, of all voting
1110 shares of the corporation beneficially owned by any member of the group.

1111 (c) Notwithstanding any other provision of Section 79-4-13.02, the
1112 articles of incorporation as originally filed or any amendment thereto may
1113 limit or eliminate appraisal rights for any class or series of preferred
1114 shares, but any such limitation or elimination contained in an amendment to the
1115 articles of incorporation that limits or eliminates appraisal rights for any of
1116 such shares that are outstanding immediately prior to the effective date of
1117 such amendment or that the corporation is or may be required to issue or sell
1118 thereafter pursuant to any conversion, exchange or to other right existing
1119 immediately before the effective date of such amendment shall not apply to any
1120 corporate action that becomes effective within one (1) year of that date if
1121 such action would otherwise afford appraisal rights.

1122 (d) A shareholder entitled to appraisal rights under this article may
1123 not challenge a completed corporate action for which appraisal rights are
1124 available unless such corporate action:

1125 (1) Was not effectuated in accordance with the applicable
1126 provisions of articles 10, 11 or 12 or the corporation's articles of
1127 incorporation, bylaws or board of directors' resolution authorizing the
1128 corporate action; or

1129 (2) Was procured as a result of fraud or material
1130 misrepresentation.

1131 SECTION 30. Section 79-4-13.03, Mississippi Code of 1972, is amended as
1132 follows:[CSQ27]

1133 79-4-13.03. (a) A record shareholder may assert appraisal rights as to
1134 fewer than all the shares registered in the record shareholder's name but owned
1135 by a beneficial shareholder only if the record shareholder objects with respect
1136 to all shares of the class or series owned by the beneficial shareholder and
1137 notifies the corporation in writing of the name and address of each beneficial

1138 shareholder on whose behalf appraisal rights are being asserted. The rights of
1139 a record shareholder who asserts appraisal rights for only part of the shares
1140 held of record in the record shareholder's name under this subsection shall be
1141 determined as if the shares as to which the record shareholder objects and the
1142 record shareholder's other shares were registered in the names of different
1143 record shareholders.

1144 (b) A beneficial shareholder may assert appraisal rights as to shares of
1145 any class or series held on * * * behalf of the shareholder only if such
1146 shareholder:

1147 (1) * * * Submits to the corporation the record shareholder's
1148 written consent to the assertion of such rights no later than the date referred
1149 to in Section 79-4-13.22(b)(2)(ii); and

1150 (2) * * * Does so with respect to all shares of the class or
1151 series that are beneficially owned by the beneficial shareholder * * *.

1152 SECTION 31. Section 79-4-13.20, Mississippi Code of 1972, is amended as
1153 follows:[CSQ28]

1154 79-4-13.20. (a) If proposed corporate action described in Section
1155 79-4-13.02(a) is to be submitted to a vote at a shareholders' meeting, the
1156 meeting notice must state that the corporation has concluded that shareholders
1157 are, are not or may be entitled to assert appraisal rights under this article.
1158 If the corporation concludes that appraisal rights are or may be available, a
1159 copy of this article must accompany the meeting notice sent to those record
1160 shareholders entitled to exercise appraisal rights.

1161 (b) In a merger pursuant to Section 79-4-11.05 * * *, the parent
1162 corporation must notify in writing all record shareholders of the subsidiary
1163 who are entitled to assert appraisal rights that the corporate action became
1164 effective. Such notice must be sent within ten (10) days after the corporate
1165 action became effective and include the materials described in Section
1166 79-4-13.22.

1167 SECTION 32. Section 79-4-13.21, Mississippi Code of 1972, is amended as
1168 follows:[CSQ29]

1169 79-4-13.21. (a) If proposed corporate action requiring appraisal rights

1170 under Section 79-4-13.02 is submitted to a vote at a shareholders' meeting, a
1171 shareholder who wishes to assert appraisal rights with respect to any class or
1172 series of shares:

1173 (1) Must deliver to the corporation before the vote is taken
1174 written notice of the shareholder's intent to demand payment * * * if the
1175 proposed action is effectuated; and

1176 (2) Must not vote, or cause or permit to be voted, any shares of
1177 such class or series in favor of the proposed action.

1178 (b) A shareholder who does not satisfy the requirement of subsection (a)
1179 is not entitled to payment * * * under this article.

1180 SECTION 33. Section 79-4-13.22, Mississippi Code of 1972, is amended as
1181 follows:[CSQ30]

1182 79-4-13.22. (a) If proposed corporate action requiring appraisal rights
1183 under Section 79-4-13.02(a) becomes effective, the corporation must deliver a
1184 written appraisal notice and form required by subsection (b)(1) to all
1185 shareholders who satisfied the requirements of Section 79-4-13.21. In the case

1186 of a merger under Section 79-4-11.05, the parent must deliver a written
1187 appraisal notice and form to all record shareholders who may be entitled to
1188 assert appraisal rights.

1189 (b) The appraisal notice must be sent no earlier than the date the
1190 corporate action became effective and no later than ten (10) days after such
1191 date and must:

1192 (1) Supply a form * * * that specifies the date of the first
1193 announcement to * * * shareholders of the principal terms of the proposed
1194 corporate action and requires * * * the shareholder asserting appraisal rights
1195 to certify (i) whether or not * * * beneficial ownership of those shares for
1196 which appraisal rights are asserted was acquired before that date, and (ii)
1197 that the shareholder did not vote for the transaction;

1198 (2) State:

1199 (i) Where the form must be sent and where * * * certificates
1200 for certificated shares must be deposited and the date by which those
1201 certificates must be deposited, which date may not be earlier than the date for

1202 receiving the required form under subsection (2)(ii);

1203 * * *

1204 (ii) * * * A date by which the corporation must receive the

1205 form, which date may not be fewer than forty (40) nor more than sixty (60) days

1206 after the date the subsection (a) appraisal notice and form are sent, and state

1207 that the shareholder shall have waived the right to demand appraisal with

1208 respect to the shares unless the form is received by the corporation by such

1209 specified date; * * *

1210 (iii) The corporation's estimate of the fair value of the

1211 shares;

1212 (iv) That, if requested in writing, the corporation will

1213 provide, to the shareholder so requesting, within ten (10) days after the date

1214 specified in subsection (2)(ii) the number of shareholders who return the forms

1215 by the specified date and the total number of shares owned by them; and

1216 (v) The date by which the notice to withdraw under Section

1217 79-4-13.23 must be received, which date must be within twenty (20) days after

1218 the date specified in subsection (2)(ii); and

1219 (3) Be accompanied by a copy of this article.

1220 SECTION 34. Section 79-4-13.23, Mississippi Code of 1972, is amended as

1221 follows:[CSQ31]

1222 79-4-13.23. (a) A shareholder who receives notice pursuant to Section

1223 79-4-13.22 and who wishes to exercise appraisal rights must * * * certify on

1224 the form sent by the corporation whether the beneficial owner of such shares

1225 acquired beneficial ownership of the shares before the date required to be set

1226 forth in the * * * notice pursuant to Section 79-4-13.22(b)(1). If a

1227 shareholder fails to make this certification, the corporation may elect to

1228 treat the shareholder's shares as after-acquired shares under Section

1229 79-4-13.25. In addition, a shareholder who wishes to exercise appraisal rights

1230 must execute and return the form and, in the case of certificated shares, * * *

1231 deposit the shareholder's certificates in accordance with the terms of the

1232 notice by the date referred to in the notice pursuant to Section

1233 79-4-13.22(b)(2)(ii). Once a shareholder deposits that shareholder's

1234 certificates or, in the case of uncertificated shares, returns the executed
1235 forms, that shareholder loses all rights as a shareholder, unless the
1236 shareholder withdraws pursuant to subsection (b).

1237 (b) A shareholder who has complied with subsection (a) may nevertheless
1238 decline to exercise appraisal rights and withdraw from the appraisal process by
1239 so notifying the corporation in writing by the date set forth in the appraisal
1240 notice pursuant to Section 79-4-13.22(b)(2)(v). A shareholder who fails to so
1241 withdraw from the appraisal process may not thereafter withdraw without the
1242 corporation's written consent.

1243 (c) A shareholder who does not execute and return the form and, in the
1244 case of certificated shares, deposit that shareholder's share certificates
1245 where required, each by the date set forth in the * * * notice described in
1246 Section 79-4-13.22(b), shall not be entitled to payment * * * under this
1247 article.

1248 SECTION 35. Section 79-4-13.24, Mississippi Code of 1972, is amended as
1249 follows:[CSQ32]

1250 79-4-13.24. (a) Except as provided in Section 79-4-13.25, within thirty
1251 (30) days after the form required by Section 79-4-13.22(b)(2)(ii) is due, the
1252 corporation shall pay in cash to those shareholders who complied with Section
1253 79-4-13.23(a) the amount the corporation estimates to be the fair value of
1254 their shares, plus interest.

1255 (b) The payment to each shareholder pursuant to subsection (a) must be
1256 accompanied by:

1257 (1) Financial statements of the corporation that issued the shares
1258 to be appraised, consisting of a balance sheet as of the end of a fiscal year
1259 ending not more than sixteen (16) months before the date of payment, an income
1260 statement for that year, a statement of changes in shareholders' equity for
1261 that year, and the latest available interim financial statements, if any;

1262 (2) A statement of the corporation's estimate of the fair value of
1263 the shares, which estimate must equal or exceed the corporation's estimate
1264 given pursuant to Section 79-4-13.22(b)(2)(iii); and

1265 (3) A statement that shareholders described in subsection (a) have

1266 the right to demand further payment under Section 79-4-13.26 and that if any
1267 such shareholder does not do so within the time period specified therein, such
1268 shareholder shall be deemed to have accepted such payment in full satisfaction
1269 of the corporation's obligations under this chapter.

1270 SECTION 36. Section 79-4-13.25, Mississippi Code of 1972, is amended as
1271 follows:[CSQ33]

1272 79-4-13.25. (a) A corporation may elect to withhold payment required by
1273 Section 79-4-13.24 from any shareholder who did not certify that beneficial
1274 ownership of all of the shareholder's shares for which appraisal rights are
1275 asserted was acquired before the date set forth in the appraisal notice sent
1276 pursuant to Section 79-4-13.22(b)(1).

1277 (b) If the corporation elected to withhold payment under subsection (a),
1278 it must, within thirty (30) days after the form required by Section
1279 79-4-13.22(b)(2)(ii) is due, notify all shareholders who are described in
1280 subsection (a):

1281 (1) Of the information required by Section 79-4-13.24(b)(1);

1282 (2) Of the corporation's estimate of fair value pursuant to
1283 Section 79-4-13.24(b)(2);

1284 (3) That they may accept the corporation's estimate of fair value,
1285 plus interest, in full satisfaction of their demands or demand appraisal under
1286 Section 79-4-13.26;

1287 (4) That those shareholders who wish to accept such offer must so
1288 notify the corporation of their acceptance of the corporation's offer within
1289 thirty (30) days after receiving the offer; and

1290 (5) That those shareholders who do not satisfy the requirements
1291 for demanding appraisal under Section 79-4-13.26 shall be deemed to have
1292 accepted the corporation's offer.

1293 (c) Within ten (10) days after receiving the shareholder's acceptance
1294 pursuant to subsection (b), the corporation must pay in cash the amount it
1295 offered under subsection (b)(2) to each shareholder who agreed to accept the
1296 corporation's offer in full satisfaction of the shareholder's demand.

1297 (d) Within forty (40) days after sending the notice described in

1298 subsection (b), the corporation must pay in cash the amount it offered to pay
1299 under subsection (b)(2) to each shareholder described in subsection (b)(5).

1300 SECTION 37. Section 79-4-13.26, Mississippi Code of 1972, is amended as
1301 follows:[CSQ34]

1302 79-4-13.26. (a) A shareholder paid pursuant to Section 79-4-13.24 who
1303 is dissatisfied with the amount of the payment must notify the corporation in
1304 writing of that shareholder's estimate of the fair value of the shares and
1305 demand payment of that estimate plus interest (less any payment under Section
1306 79-4-13.24). A shareholder offered payment under Section 79-4-13.25 who is
1307 dissatisfied with that offer must reject the offer and demand payment of the
1308 shareholder's stated estimate of the fair value of the shares plus interest.

1309 (b) A shareholder who fails to notify the corporation in writing of that
1310 shareholder's demand to be paid the shareholder's stated estimate of the fair
1311 value plus interest under subsection (a) within thirty (30) days after
1312 receiving the corporation's payment or offer of payment under Section
1313 79-4-13.24 or Section 79-4-13.25, respectively, waives the right to demand

1314 payment under this section and shall be entitled only to the payment made or
1315 offered pursuant to those respective sections.

1316 SECTION 38. Section 79-4-13.30, Mississippi Code of 1972, is amended as
1317 follows:[CSQ35]

1318 79-4-13.30. (a) If a shareholder makes demand for payment under Section
1319 79-4-13.26 which remains unsettled, the corporation shall commence a proceeding
1320 within sixty (60) days after receiving the payment demand and petition the
1321 court to determine the fair value of the shares and accrued interest. If the
1322 corporation does not commence the proceeding within the 60-day period, it shall
1323 pay in cash to each shareholder the amount the shareholder demanded pursuant to
1324 Section 79-4-13.26 plus interest.

1325 (b) The corporation shall commence the proceeding in the appropriate
1326 court of the county where the corporation's principal office (or, if
1327 none * * *, its registered office) in this state is located. If the
1328 corporation is a foreign corporation without a registered office in this state,
1329 it shall commence the proceeding in the county in this state where the

1330 principal office or registered office of the domestic corporation merged
1331 with * * * the foreign corporation was located at the time of the transaction.
1332 (c) The corporation shall make all shareholders (whether or not
1333 residents of this state) whose demands remain unsettled parties to the
1334 proceeding as in an action against their shares, and all parties must be served
1335 with a copy of the petition. Nonresidents may be served by registered or
1336 certified mail or by publication as provided by law.
1337 (d) The jurisdiction of the court in which the proceeding is commenced
1338 under subsection (b) is plenary and exclusive. The court may appoint one or
1339 more persons as appraisers to receive evidence and recommend a decision on the
1340 question of fair value. The appraisers shall have the powers described in the
1341 order appointing them, or in any amendment to it. The shareholders demanding
1342 appraisal rights are entitled to the same discovery rights as parties in other
1343 civil proceedings. There shall be no right to a jury trial.
1344 (e) Each shareholder made a party to the proceeding is entitled to
1345 judgment (i) for the amount, if any, by which the court finds the fair value of

1346 the shareholder's shares, plus interest, exceeds the amount paid by the
1347 corporation to the shareholder for such shares or (ii) for the fair value,
1348 plus * * * interest, of the shareholder's shares for which the corporation
1349 elected to withhold payment under Section 79-4-13.25.

1350 SECTION 39. Section 79-4-13.31, Mississippi Code of 1972, is amended as
1351 follows:[CSQ36]

1352 79-4-13.31. (a) The court in an appraisal proceeding commenced under
1353 Section 79-4-13.30 shall determine all costs of the proceeding, including the
1354 reasonable compensation and expenses of appraisers appointed by the court. The
1355 court shall assess the costs against the corporation, except that the court may
1356 assess costs against all or some of the shareholders demanding appraisal, in
1357 amounts the court finds equitable, to the extent the court finds such
1358 shareholders acted arbitrarily, vexatiously or not in good faith with respect
1359 to the rights provided by this article.

1360 (b) The court in an appraisal proceeding may also assess the fees and
1361 expenses of counsel and experts for the respective parties, in amounts the

1362 court finds equitable:

1363 (1) Against the corporation and in favor of any or all

1364 shareholders demanding appraisal if the court finds the corporation did not

1365 substantially comply with the requirements of Sections 79-4-13.20, 79-4-13.22,

1366 79-4-13.24 or 79-4-13.25; or

1367 (2) Against either the corporation or a shareholder demanding

1368 appraisal, in favor of any other party, if the court finds that the party

1369 against whom the fees and expenses are assessed acted arbitrarily, vexatiously

1370 or not in good faith with respect to the rights provided by this article.

1371 (c) If the court in an appraisal proceeding finds that the services of

1372 counsel for any shareholder were of substantial benefit to other shareholders

1373 similarly situated, and that the fees for those services should not be assessed

1374 against the corporation, the court may award to such counsel reasonable fees to

1375 be paid out of the amounts awarded the shareholders who were benefited.

1376 (d) To the extent the corporation fails to make a required payment

1377 pursuant to Section 79-4-13.24, 79-4-13.25 or 79-4-13.26, the shareholder may

1378 sue directly for the amount owed and, to the extent successful, shall be
1379 entitled to recover from the corporation all costs and expenses of the suit,
1380 including counsel fees.

1381 SECTION 40. Section 79-14-101, Mississippi Code of 1972, is amended as
1382 follows:[CSQ37]

1383 79-14-101. As used in this chapter, unless the context otherwise
1384 requires:

1385 (1) "Certificate of limited partnership" means the certificate
1386 referred to in Section 79-14-201, and the certificate as amended or restated.

1387 (2) "Contribution" means any cash, property, services rendered, or
1388 a promissory note or other obligation to contribute cash or property or to
1389 perform services, which a partner contributes to a limited partnership in his
1390 capacity as a partner.

1391 (3) "Deliver" or "delivery" means any method of delivery used in
1392 conventional commercial practice, including delivery by hand, mail, commercial
1393 delivery, and electronic transmission. If delivery is to the Secretary of

1394 State, delivery may be made by electronic transmission if, to the extent, and
1395 in the manner permitted by the Secretary of State.

1396 (4) "Electronic transmission" or "electronically transmitted"
1397 means any process of communication not directly involving the physical transfer
1398 of paper that is suitable for the retention, retrieval, and reproduction of
1399 information by the recipient.

1400 (5) "Entity" means any association or legal entity organized to
1401 conduct business, including, without limitation, limited partnerships, for
1402 profit and nonprofit corporations, general partnerships, limited liability
1403 partnerships, limited liability companies, joint ventures, joint stock
1404 companies and business trusts.

1405 (6) "Event of withdrawal of a general partner" means an event that
1406 causes a person to cease to be a general partner as provided in Section
1407 79-14-402.

1408 (7) "Foreign limited partnership" means a partnership formed under
1409 the laws of another state or under the laws of a foreign country or foreign

1410 jurisdiction and having as partners one or more general partners and one or
1411 more limited partners (or their equivalence under any name).

1412 (8) "General partner" means a person who has been admitted to a
1413 limited partnership as a general partner in accordance with the partnership
1414 agreement or the provisions of this chapter and named in the certificate of
1415 limited partnership as a general partner.

1416 (9) "Limited partner" means a person who has been admitted to a
1417 limited partnership as a limited partner in accordance with the partnership
1418 agreement.

1419 (10) "Limited partnership" and "domestic limited partnership" mean
1420 a partnership formed by two (2) or more persons under the laws of this state
1421 and having one or more general partners and one or more limited partners.

1422 (11) "Organizational documents" means the basic document or
1423 documents that create or determine the internal governance of an entity.

1424 (12) "Partner" means a limited or general partner.

1425 (13) "Partnership agreement" means any valid agreement, written or

1426 oral, of the partners as to the affairs of a limited partnership and the

1427 conduct of its business.

1428 (14) "Partnership interest" means a partner's share of the profits

1429 and losses of a limited partnership and the right to receive distributions of

1430 limited partnership assets.

1431 (15) "Person" means an individual, corporation, business trust,

1432 estate, trust, partnership, limited partnership, association, joint venture,

1433 government, governmental subdivision or agency, any other legal or commercial

1434 entity, nominee or any individual or entity in any representative capacity.

1435 (16) "Sign" or "signature" includes any manual, facsimile,

1436 conformed or electronic signature.

1437 (17) "State" means a state, territory, or possession of the United

1438 States, the District of Columbia, or the Commonwealth of Puerto Rico.

1439 SECTION 41. Section 79-14-211, Mississippi Code of 1972, is amended as

1440 follows:[CSQ38]

1441 79-14-211. (a) Unless otherwise provided in the certificate of limited

1442 partnership or partnership agreement, one or more domestic limited partnerships
1443 may merge or consolidate with a domestic or foreign entity pursuant to a plan
1444 of merger or consolidation.

1445 (b) A domestic or foreign entity may be a party to the merger or
1446 consolidation, or may be created by the terms of the plan of merger or
1447 consolidation, only if:

1448 (1) The merger or consolidation is permitted by the laws under
1449 which the entity is organized or by which it is governed; and

1450 (2) In effecting the merger or consolidation, the entity complies
1451 with such laws and with its organizational documents.

1452 (c) A domestic limited partnership that is not the surviving or
1453 resulting entity in the merger or consolidation shall file a certificate of
1454 cancellation, which shall have an effective date not later than the effective
1455 date of the merger or consolidation.

1456 (d) If following a merger or consolidation of one or more domestic
1457 limited partnerships and one or more foreign entities, the surviving or

1458 resulting entity is a foreign entity, there shall be attached to the
1459 certificate of cancellation filed pursuant to Section 79-14-203 for each such
1460 domestic limited partnership a certificate executed by the surviving or
1461 resulting foreign entity, stating that the surviving or resulting foreign
1462 entity agrees that it may be served with process in the State of Mississippi in
1463 any action, suit or proceeding for the enforcement of any obligation of such
1464 domestic limited partnership, irrevocably appointing the Secretary of State as
1465 its agent to accept service of process in any such action, suit or proceeding
1466 and specifying the address to which a copy of such process shall be mailed to
1467 it by the Secretary of State. In the event of service hereunder upon the
1468 Secretary of State, the plaintiff in any such action, suit or proceeding shall
1469 furnish the Secretary of State with the address specified in the certificate
1470 provided for in this section and any other address which the plaintiff may
1471 elect to furnish, and the Secretary of State shall notify the surviving or
1472 resulting foreign entity at all such addresses furnished by the plaintiff.
1473 (e) Upon the effective date of any merger or consolidation effected

1474 under this section, which said effective date shall not be earlier than when
1475 any certificate of cancellation required by subsection (b) of this section
1476 shall have become effective for all purposes of the laws of the State of
1477 Mississippi, all of the rights, privileges and powers of each of the foreign or
1478 domestic entities that have merged or consolidated, and all property, real,
1479 personal and mixed, and all debts due to any of said foreign or domestic
1480 entities, as well as all other things and causes of action belonging to each of
1481 such foreign or domestic entities shall be vested in the surviving or resulting
1482 foreign or domestic entity, and shall thereafter be the property of the
1483 surviving or resulting foreign or domestic entity as they were of each of the
1484 foreign or domestic entities that have merged or consolidated, and the title to
1485 any real property vested by deed or otherwise, under the laws of the State of
1486 Mississippi, in any of such foreign or domestic entities, shall not revert or
1487 be in any way impaired by reason of this chapter, but all rights of creditors
1488 and all liens upon any property of any of said foreign or domestic entities
1489 shall be preserved unimpaired, and all debts, liabilities and duties of each of

1490 the foreign or domestic entities that have merged or consolidated shall
1491 thenceforth attach to the surviving or resulting foreign or domestic entity,
1492 and may be enforced against it to the same extent as if said debts, liabilities
1493 and duties had been incurred or contracted by it.

1494 SECTION 42. Section 79-29-103, Mississippi Code of 1972, is amended as
1495 follows:[CSQ39]

1496 79-29-103. As used in this chapter, unless the context otherwise
1497 requires:

1498 (a) "Certificate of formation" means the certificate referred to
1499 in Section 79-29-201, and the certificate as amended or restated.

1500 (b) "Contribution" means any cash, property, services rendered, or
1501 a promissory note or other obligation to contribute cash or property or to
1502 perform services, which a person contributes to a limited liability company in
1503 his capacity as a member.

1504 (c) "Deliver" or "delivery" means any method of delivery used in
1505 conventional commercial practice, including delivery by hand, mail, commercial

1506 delivery and electronic transmission. If delivery is to the Secretary of
1507 State, delivery may be made by electronic transmission, if, to the extent, and
1508 in the manner permitted by the Secretary of State.

1509 (d) "Derivative proceeding" means a civil suit in the right of a
1510 limited liability company or, to the extent provided in Article 10 of this
1511 chapter, in the right of a foreign limited liability company.

1512 (e) "Electronic transmission" or "electronically transmitted"
1513 means any process of communication not directly involving the physical transfer
1514 of paper that is suitable for the retention, retrieval and reproduction of
1515 information by the recipient.

1516 (f) "Entity" means any association or legal entity organized to
1517 conduct business, including, without limitation, for profit and nonprofit
1518 corporations, limited partnerships, general partnerships, limited liability
1519 partnerships, limited liability companies, joint ventures, joint stock
1520 companies, and business trusts.

1521 (g) "Event of dissociation" means an event that causes a person to

1522 cease to be a member as provided in Section 79-29-307.

1523 (h) "Foreign limited liability company" means an entity that is an
1524 unincorporated association organized under laws other than the laws of this
1525 state that affords to each of its members, pursuant to the laws under which it
1526 is organized, limited liability with respect to liabilities of the entity.

1527 (i) "Interests" means the proprietary interests in an entity.

1528 (j) "Limited liability company" and "domestic limited liability
1529 company" mean an entity having one or more members that is an unincorporated
1530 association that is formed and existing under this chapter.

1531 (k) "Limited liability company agreement" means an agreement of
1532 the members as to the affairs of a limited liability company and the conduct of
1533 its business.

1534 (l) "Limited liability company interest" means a member's share of
1535 the profits and losses of a limited liability company and the right to receive
1536 distributions of limited liability company assets.

1537 (m) "Manager" or "managers" means a person or persons who are

1538 named in, or selected or designated pursuant to, the certificate of formation
1539 or limited liability company agreement to manage the limited liability company
1540 to the extent and as provided in the certificate of formation or limited
1541 liability company agreement.

1542 (n) "Member" means a person that has been admitted to a limited
1543 liability company as provided in Section 79-29-301 or, in the case of a foreign
1544 limited liability company, in accordance with the laws under which the foreign
1545 limited liability company is organized, and that has not dissociated from the
1546 limited liability company.

1547 (o) "Merger" means a business combination pursuant to Section
1548 79-29-209.

1549 (p) "Organizational documents" means the basic document or
1550 documents that create, or determine the internal governance of, an entity.

1551 (q) "Person" means an individual, corporation, nonprofit
1552 corporation, business trust, estate, trust, partnership, limited partnership,
1553 association, joint venture, limited liability company, government, governmental

1554 subdivision or agency, any other legal or commercial entity, nominee or any
1555 individual or entity in any representative capacity.

1556 (r) "Professional limited liability company" is a limited
1557 liability company formed and existing under Article 9 of this chapter.

1558 (s) "Sign" or "signature" includes any manual, facsimile,
1559 conformed or electronic signature.

1560 (t) "Survivor" in a merger means the entity into which one or more
1561 entities are merged. A survivor of a merger may preexist the merger or be
1562 created by the merger.

1563 SECTION 43. Section 79-29-202, Mississippi Code of 1972, is amended as
1564 follows:[CRG40]

1565 79-29-202. (1) A certificate of formation is amended by delivering a
1566 certificate of amendment thereto to the office of the Secretary of State for
1567 filing. The certificate shall set forth:

1568 (a) The name of the limited liability company;

1569 (b) The future effective date of the amendment, which must be a

1570 date certain not later than the ninetieth day after the date it is filed by the
1571 Secretary of State, unless it is effective upon the filing of the certificate
1572 of amendment; and

1573 (c) The amendment to the certificate.

1574 (2) A manager or, if there is no manager, any member who becomes aware
1575 that any statement in a certificate of formation was false when made or that
1576 any arrangements or other facts described have changed, making the certificate
1577 inaccurate in any respect, shall promptly amend the certificate.

1578 (3) A certificate of formation may be amended at any time for any other
1579 proper purpose.

1580 (4) Except for an amendment required by subsection (2) of this section,
1581 unless otherwise provided in the certificate of formation or limited liability
1582 company agreement, all members must agree to any amendment of the certificate
1583 of formation * * *.

1584 SECTION 44. Section 79-29-209, Mississippi Code of 1972, is amended as
1585 follows:[CSQ41]

1586 79-29-209. Merger of limited liability company.

1587 (1) Unless otherwise provided in the certificate of formation or limited
1588 liability company agreement * * *, one or more domestic limited liability
1589 companies may merge with a domestic or foreign entity pursuant to a plan of
1590 merger * * *.

1591 (2) A domestic or foreign entity may be a party to the merger, or may be
1592 created by the terms of the plan of merger, only if:

1593 (a) The merger is permitted by the laws under which the entity is
1594 organized or by which it is governed; and

1595 (b) In effecting the merger, the entity complies with such laws
1596 and with its organizational documents.

1597 * * *

1598 (3) The plan * * * of merger must include:

1599 (a) The name of each entity that will merge and the name of the
1600 entity that will be the survivor of the merger;

1601 (b) The terms and conditions of the * * * merger;

1602 (c) The manner and basis of converting the interests of each
1603 merging entity into shares or other securities, interests, obligations, rights
1604 to acquire shares or other securities, cash, other property, or any combination
1605 of the foregoing;

1606 (d) The organizational documents of any entity to be created by
1607 the merger, or if a new entity is not to be created by the merger, any
1608 amendments to the survivor's organizational documents; and

1609 (e) Any other provisions required by the laws under which any
1610 party to the merger is organized or by which it is governed, or by the
1611 organizational documents of any such party.

1612 (4) The terms described in subsections (3)(b) and (3)(c) of this section
1613 may be made dependent on facts ascertainable outside the plan of merger,
1614 provided that those facts are objectively ascertainable. The term "facts"
1615 includes, but is not limited to, the occurrence of any event, including a
1616 determination or action by any person or body, including the limited liability
1617 company.

1618 (5) The plan of merger may also include a provision that the plan may be
1619 amended prior to filing the certificate of merger with the Secretary of State,
1620 provided that if the members of a domestic limited liability company that is a
1621 party to the merger are required or permitted to vote on the plan, the plan
1622 must provide that subsequent to approval of the plan by such members the plan
1623 may not be amended to:

1624 (a) Change the amount or kind of shares or other securities,
1625 interests, obligations, rights to acquire shares or other securities, cash, or
1626 other property to be received by the owners of interests in any party to the
1627 merger upon conversion of their interests under the plan;

1628 (b) Change the organizational documents of any other entity that
1629 will survive or be created as a result of the merger; or

1630 (c) Change any of the other terms or conditions of the plan if the
1631 change would adversely affect such members in any material respect.

1632 SECTION 45. The following shall be codified as Section 79-29-210,
1633 Mississippi Code of 1972:

1634 79-29-210. **Action on a plan of merger.** In the case of a limited
1635 liability company that is a party to a merger:

1636 (a) Unless otherwise provided in the certificate of formation or
1637 limited liability company agreement, the plan of merger must be adopted by the
1638 members.

1639 (b) Unless the plan of merger is not required to be approved by
1640 the members, the limited liability company must notify each member and each
1641 owner of a limited liability company interest, whether or not entitled to vote,
1642 of the meeting of members at which the plan is to be submitted for approval.
1643 The notice must state that the purpose, or one of the purposes, of the meeting
1644 is to consider the plan and must contain or be accompanied by a copy or summary
1645 of the plan. If the limited liability company is to be merged into an existing
1646 entity, the notice shall also include or be accompanied by a copy or summary of
1647 the organizational documents of that entity. If the limited liability company
1648 is to be merged into an entity that is to be created pursuant to the merger,
1649 the notice shall include or be accompanied by a copy or a summary of the

1650 organizational documents of the new entity.

1651 (c) Unless otherwise provided in the certificate of formation or
1652 limited liability company agreement, approval of the plan of merger requires
1653 the approval of at least a majority of the votes entitled to be cast on the
1654 plan, and, if any class or series of interests is entitled to vote as a
1655 separate group on the plan of merger, the approval of at least a majority of
1656 the votes entitled to be cast on the merger by that voting group.

1657 (d) Unless otherwise provided in the certificate of formation or
1658 limited liability company agreement, separate voting by voting groups is
1659 required:

1660 (i) On a plan of merger, by each class or series of
1661 interests that (A) are to be converted, pursuant to the provisions of the plan
1662 of merger, into shares or other securities, interests, obligations, rights to
1663 acquire interests or other securities, cash, other property, or any combination
1664 of the foregoing, or (B) would have a right to vote as a separate group on a
1665 provision in the plan that, if contained in a proposed amendment to the

1666 certificate of formation or limited liability company agreement, would require
1667 action by separate voting groups under the certificate of formation or limited
1668 liability company agreement;

1669 (ii) On a plan of merger, if the voting group is entitled
1670 under the certificate of formation or limited liability company agreement, to
1671 vote as a voting group to approve a plan of merger.

1672 (e) If as a result of a merger one or more members or owners of a
1673 limited liability company interest of a domestic limited liability company
1674 would become subject to personal liability for the obligations or liabilities
1675 of any entity, approval of the plan of merger shall require the execution, by
1676 each such member and owner of a limited liability company interest, of a
1677 separate written consent to become subject to such personal liability.

1678 SECTION 46. The following shall be codified as Section 79-29-211,
1679 Mississippi Code of 1972:

1680 79-29-211. **Certificate of merger.** After a plan of merger has been
1681 adopted and approved as required by the Mississippi Limited Liability

1682 Corporation Act, a certificate of merger shall be executed on behalf of each
1683 party to the merger by any manager, if management of the limited liability
1684 company is vested in one or more managers, or by a member if management of the
1685 limited liability company is reserved to the members. The certificate shall
1686 set forth:

1687 (a) The names of the parties to the merger and the date on which
1688 the merger occurred or is to be effective;

1689 (b) If the organizational documents of the survivor of a merger
1690 are amended, or if a new entity is created as a result of a merger, the
1691 amendments to the organizational documents of the survivor or the
1692 organizational documents of the new entity;

1693 (c) A statement that the plan was duly approved by the members
1694 and, if voting by any separate voting group was required, by each such separate
1695 voting group, in the manner required by the Mississippi Limited Liability
1696 Corporation Act and the certificate of formation and limited liability company
1697 agreement;

1698 (d) As to each entity that was a party to the merger, a statement

1699 that the plan and the performance of its terms were duly authorized by all

1700 action required by the laws under which the entity is organized, or by which it

1701 is governed, and by its organizational documents;

1702 (e) The future effective date of the merger, which shall be a date

1703 or time certain not later than the ninetieth day after the date it is filed, if

1704 it is not to be effective upon the filing of the certificate of merger; and

1705 (f) The plan of merger.

1706 SECTION 47. The following shall be codified as Section 79-29-212,

1707 Mississippi Code of 1972:

1708 79-29-212. **Effect of merger.**

1709 (1) When a merger becomes effective:

1710 (a) The entity that is designated in the plan of merger as the

1711 survivor continues or comes into existence, as the case may be;

1712 (b) The separate existence of every entity that is merged into the

1713 survivor ceases;

1714 (c) All property owned by, and every contract right possessed by,
1715 each entity that merges into the survivor is vested in the survivor without
1716 reversion or impairment;

1717 (d) All liabilities of each entity that is merged into the
1718 survivor are vested in the survivor;

1719 (e) The name of the survivor may, but need not be, substituted in
1720 any pending proceeding for the name of any party to the merger whose separate
1721 existence ceased in the merger;

1722 (f) The organizational documents of the survivor are amended to
1723 the extent provided in the plan of merger;

1724 (g) The organizational documents of a survivor that is created by
1725 the merger become effective; and

1726 (h) The interests in an entity that is a party to a merger that
1727 are to be converted under the plan of merger into shares, interests,
1728 obligations, rights to acquire securities, other securities, cash, other
1729 property, or any combination of the foregoing, are converted, and the former

1730 holders of such interests are entitled only to the rights provided to them in
1731 the plan of merger or to any rights they may have under Section 79-29-214.

1732 (2) Any member or owner of a limited liability company interest of a
1733 domestic limited liability company that is a party to a merger who, prior to
1734 the merger, was liable for the liabilities or obligations of such limited
1735 liability company, shall not be released from such liabilities or obligations
1736 by reason of the merger.

1737 (3) Upon a merger becoming effective, a foreign entity that is the
1738 survivor of the merger is deemed to:

1739 (a) Appoint the Secretary of State as its agent for service of
1740 process in a proceeding to enforce the rights of the members and owners of a
1741 limited liability company interest of each domestic limited liability company
1742 that is a party to the merger who exercise appraisal rights; and

1743 (b) Agree that it will promptly pay the amount, if any, to which
1744 such members and owners of a limited liability company interest are entitled
1745 under Section 79-29-214, Mississippi Code of 1972.

1746 SECTION 48. The following shall be codified as Section 79-29-213,

1747 Mississippi Code of 1972:

1748 79-29-213. **Abandonment of a merger.**

1749 (1) Unless otherwise provided in a plan of merger or in the laws under

1750 which a domestic or foreign entity that is a party to a merger is organized or

1751 by which it is governed, after the plan has been adopted and approved as

1752 required by the Mississippi Limited Liability Corporation Act, and at any time

1753 before the merger has become effective, it may be abandoned by any party

1754 thereto without action by the party's owners of interests, in accordance with

1755 any procedures set forth in the plan of merger or, if no such procedures are

1756 set forth in the plan, in the manner determined by the entity, subject to any

1757 contractual rights of other parties to the merger.

1758 (2) If a merger is abandoned under subsection (1) after a certificate of

1759 merger has been filed with the Secretary of State but before the merger has

1760 become effective, a statement that the merger has been abandoned in accordance

1761 with this subsection, executed on behalf of a party to the merger by any

1762 manager, if management of the limited liability company is vested in one or
1763 more managers, or by a member if management of the limited liability company is
1764 reserved to the members, shall be delivered to the Secretary of State for
1765 filing prior to the effective date of the merger. Upon filing, the statement
1766 shall take effect and the merger shall be deemed abandoned and shall not become
1767 effective.

1768 SECTION 49. The following shall be codified as Section 79-29-214,
1769 Mississippi Code of 1972:

1770 79-29-214. **Appraisal rights.**

1771 (1) **Definitions.** In this section:

1772 (a) "Beneficial holder" means a person who is the beneficial owner
1773 of interests held in a voting trust or by a nominee on the beneficial owner's
1774 behalf.

1775 (b) "Fair value" means the value of the limited liability
1776 company=s interests determined:

1777 (i) Immediately before the effectuation of the action to

1778 which the member or owner of a limited liability company interest objects;

1779 (ii) Using customary and current valuation concepts and

1780 techniques generally employed for similar businesses in the context of the

1781 transaction requiring appraisal; and

1782 (iii) Without discounting for lack of marketability or

1783 minority status.

1784 (c) "Record holder" means the person in whose name interests are

1785 registered in the records of the entity or the beneficial owner of interests to

1786 the extent of the rights granted by a nominee certificate on file with the

1787 entity.

1788 (d) "Holder" means both a record holder and a beneficial holder.

1789 (2) **Right to appraisal.** (a) Unless otherwise provided in the

1790 certificate of formation or limited liability company agreement, each member

1791 and owner of a limited liability company interest is entitled to appraisal

1792 rights, and to obtain payment of the fair value of that member or owner of a

1793 limited liability company=s interest, in the event of any of the following

1794 actions:

1795 (i) Consummation of a merger to which the limited liability
1796 company is a party;

1797 (ii) Consummation of a sale, lease, exchange, or other
1798 disposition of assets if the disposition would leave the limited liability
1799 company without a significant continuing business activity. If a limited
1800 liability company retains a business activity that represented at least
1801 twenty-five percent (25%) of total assets at the end of the most recently
1802 completed fiscal year, and twenty-five percent (25%) of either income from
1803 continuing operations or revenues from continuing operations for that fiscal
1804 year, in each case of the limited liability company and its subsidiaries on a
1805 consolidated basis, the limited liability company will conclusively be deemed
1806 to have retained a significant continuing business activity;

1807 (iii) Any other action to the extent provided by the
1808 certificate of formation or limited liability company agreement.

1809 (b) A member or owner of a limited liability company interest

1810 entitled to appraisal rights under this section may not challenge a completed

1811 action for which appraisal rights are available unless such action:

1812 (i) Was not effectuated in accordance with the applicable

1813 provisions of the Mississippi Limited Liability Company Act or the limited

1814 liability company=s certificate of formation or limited liability company

1815 agreement; or

1816 (ii) Was procured as a result of fraud or material

1817 misrepresentation.

1818 (3) **Notice of appraisal rights.** If a proposed action described in

1819 subsection (2) of this section is to be submitted to a vote, the meeting notice

1820 must state that the limited liability company has concluded that members and

1821 owners of limited liability company interests are entitled to assert appraisal

1822 rights under this section and a copy of this section must accompany the meeting

1823 notice sent to the members and owners of limited liability company interests.

1824 (4) **Notice of intent to demand payment.** (a) If a proposed action

1825 requiring appraisal rights under subsection (2)(a) of this section is submitted

1826 to a vote, members and owners of limited liability company interests who wish

1827 to assert appraisal rights with respect to any class or series of interests:

1828 (i) Must deliver to the limited liability company before the

1829 vote is taken written notice of the person=s intent to demand payment if the

1830 proposed action is effectuated; and

1831 (ii) Must not vote, or cause or permit to be voted, any of

1832 the person=s interests in favor of the proposed action.

1833 (b) A member or owner of a limited liability company interest who

1834 does not satisfy the requirements of subsection (4)(a) of this section is not

1835 entitled to payment under this section.

1836 (5) **Appraisal notice and form.** (a) If a proposed action requiring

1837 appraisal rights under subsection (2) of this section becomes effective, the

1838 limited liability company must deliver a written appraisal notice and form

1839 required by this subsection (5) to all members and owners of limited liability

1840 company interests who satisfied the requirements of subsection (4) of this

1841 section.

1842 (b) The appraisal notice must be sent no earlier than the date the
1843 action became effective and no later than ten (10) days after such date and
1844 must:

1845 (i) Supply a form that specifies the date of the first
1846 announcement to members and owners of limited liability company interests of
1847 the principal terms of the proposed action and requires the person asserting
1848 appraisal rights to certify (A) whether beneficial ownership of those interests
1849 for which appraisal rights are asserted was acquired before that date, and (B)
1850 that the person did not vote for the transaction;

1851 (ii) State:

1852 (A) Where the form must be sent and where certificates
1853 for certificated interests must be deposited and the date by which those
1854 certificates must be deposited, which date may not be earlier than the date for
1855 receiving the required form under subsection (5)(b)(ii)(B) of this section;

1856 (B) A date by which the limited liability company must
1857 receive the form which date may not be fewer than forty (40) nor more than

1858 sixty (60) days after the date the subsection (5)(a) appraisal notice and form
1859 are sent, and state that the person shall have waived the right to demand
1860 appraisal with respect to the interests unless the form is received by the
1861 limited liability company by such specified date;

1862 (C) The limited liability company=s estimate of the
1863 fair value of the interests;

1864 (D) That, if requested in writing, the limited
1865 liability company will provide to the person so requesting, within ten (10)
1866 days after the date specified in subsection (5)(b)(ii)(B), the number of
1867 persons who return the forms by the specified date and the aggregate interests
1868 owned by them; and

1869 (E) The date by which the notice to withdraw under
1870 subsection (6) must be received, which date must be within twenty (20) days
1871 after the date specified in subsection (5)(b)(ii)(B) of this section; and

1872 (c) Be accompanied by a copy of this section.

1873 (6) **Perfection of rights; right to withdraw.** (a) A person who receives

1874 notice pursuant to subsection (5) and who wishes to exercise appraisal rights
1875 must certify on the form sent by the limited liability company whether the
1876 beneficial owner of such interests acquired beneficial ownership thereof before
1877 the date required to be set forth in the notice pursuant to subsection (5)(b)
1878 of this section. If a person fails to make this certification, the limited
1879 liability company may elect to treat the person=s interests as after-acquired
1880 interests under subsection (8). In addition, a person who wishes to exercise
1881 appraisal rights must execute and return the form and, in the case of
1882 certificated interests, deposit the person=s certificates in accordance with
1883 the terms of the notice by the date referred to in the notice pursuant to
1884 subsection (5)(b)(ii)(B) of this section. Once a person deposits that person=s
1885 certificates or, in the case of uncertificated interests, returns the executed
1886 forms, that member or owner of a limited liability company interest loses all
1887 rights as a member or owner of a limited liability company interest, unless the
1888 person withdraws pursuant to subsection (6)(b) of this section.

1889 (b) A person who has complied with subsection (6)(a) of this

1890 section may nevertheless decline to exercise appraisal rights and withdraw from
1891 the appraisal process by so notifying the limited liability company in writing
1892 by the date set forth in the appraisal notice pursuant to subsection
1893 (5)(b)(ii)(E) of this section. A person who fails to so withdraw from the
1894 appraisal process may not thereafter withdraw without the limited liability
1895 company=s written consent.

1896 (c) A person who does not execute and return the form and, in the
1897 case of certificated interests, deposit that person=s certificates where
1898 required, each by the date set forth in the notice described in subsection
1899 (5)(b)(ii)(B) of this section, shall not be entitled to payment under this
1900 subsection.

1901 (7) **Payment.** (a) Except as provided in subsection (6), within thirty
1902 (30) days after the form required by subsection (5)(b)(ii)(B) of this section
1903 is due, the limited liability company shall pay in cash to those persons who
1904 complied with subsection (6)(a) of this section the amount the limited
1905 liability company estimates to be the fair value of their interests, plus

1906 interest at the legal rate.

1907 (b) The payment to each person pursuant to subsection (7)(a) of
1908 this section must be accompanied by:

1909 (i) Financial statements of the limited liability company
1910 that issued the interests to be appraised, consisting of a balance sheet as of
1911 the end of a fiscal year ending not more than sixteen (16) months before the
1912 date of payment, an income statement for that year, a statement of changes in
1913 equity for that year, and the latest available interim financial statements, if
1914 any;

1915 (ii) A statement of the limited liability company=s estimate
1916 of the fair value of the interests, which estimate must equal or exceed the
1917 limited liability company=s estimate given pursuant to subsection (5)(b)(ii)(C)
1918 of this section;

1919 (iii) A statement that persons described in this subsection
1920 (7) have the right to demand further payment under subsection (9) and that if
1921 any such person does not do so within the time period specified therein, such

1922 person shall be deemed to have accepted such payment in full satisfaction of
1923 the limited liability company=s obligations under this section.

1924 (8) **After-acquired interests.** (a) A limited liability company may
1925 elect to withhold payment required by subsection (7) of this section from any
1926 person who did not certify that beneficial ownership of all of the person=s
1927 interests for which appraisal rights are asserted was acquired before the date
1928 set forth in the appraisal notice sent pursuant to subsection (5)(b)(i) of this
1929 section.

1930 (b) If the limited liability company elected to withhold payment
1931 under subsection (8)(a) of this section, it must, within thirty (30) days after
1932 the form required by subsection (5)(b)(ii)(B) of this section is due, notify
1933 all persons who are described in subsection (8)(a) of this section:

1934 (i) Of the information required by subsection (7)(b)(i) of
1935 this section;

1936 (ii) Of the limited liability company=s estimate of fair
1937 value pursuant to subsection (7)(b)(ii) of this section;

1938 (iii) That they may accept the limited liability company=s
1939 estimate of fair value, plus interest at the legal rate, in full satisfaction
1940 of their demands or demand appraisal under subsection (9) of this section;
1941 (iv) That those persons who wish to accept such offer must
1942 so notify the limited liability company of their acceptance of the limited
1943 liability company=s offer within thirty (30) days after receiving the offer;
1944 and
1945 (v) That those persons who do not satisfy the requirements
1946 for demanding appraisal under subsection (9) of this section shall be deemed to
1947 have accepted the limited liability company=s offer.
1948 (c) Within ten (10) days after receiving the person=s acceptance
1949 pursuant to subsection (8)(b) of this section, the limited liability company
1950 must pay in cash the amount it offered under subsection (8)(b)(ii) of this
1951 section to each person who agreed to accept the limited liability company=s
1952 offer in full satisfaction of the person=s demand.
1953 (d) Within forty (40) days after sending the notice described in

1954 subsection (8)(b) of this section, the limited liability company must pay in
1955 cash the amount it offered to pay under subsection (7)(b) of this section to
1956 each person described in subsection (8)(b)(ii) of this section.

1957 (9) **Procedure if person dissatisfied with payment or offer.** (a) A
1958 person paid pursuant to subsection (7) of this section who is dissatisfied with
1959 the amount of the payment must notify the limited liability company in writing
1960 of that person=s estimate of the fair value of the interests and demand payment
1961 of that estimate plus interest at the legal rate less any payment under
1962 subsection (7) of this section. A person offered payment under subsection (8)
1963 who is dissatisfied with that offer must reject the offer and demand payment of
1964 the person=s stated estimate of the fair value of the shares plus interest at
1965 the legal rate.

1966 (b) A person who fails to notify the limited liability company in
1967 writing of that person=s demand to be paid the person=s stated estimate of the
1968 fair value plus interest at the legal rate under subsection (9)(a) of this
1969 section within thirty (30) days after receiving the limited liability company=s

1970 payment or offer of payment under subsections (7) or (8) of this section,
1971 respectively, waives the right to demand payment under this subsection (9) and
1972 shall be entitled only to the payment made or offered pursuant to those
1973 respective subsections.

1974 (10) **Court action.** (a) If a person makes demand for payment under
1975 subsection (9) of this section which remains unsettled, the limited liability
1976 company shall commence a proceeding within sixty (60) days after receiving the
1977 payment demand and petition the court to determine the fair value of the
1978 interests and accrued interest at the legal rate. If the limited liability
1979 company does not commence the proceeding within the sixty (60) day period, it
1980 shall pay in cash to each such person the amount the person demanded pursuant
1981 to subsection (9)(a) of this section plus interest at the legal rate.

1982 (b) The limited liability company shall commence the proceeding in
1983 the chancery court of the county where the limited liability company=s
1984 registered office is located. If the limited liability company is a foreign
1985 limited liability company without a registered office in this state, it shall

1986 commence the proceeding in the county in this state where the registered office
1987 of the domestic limited liability company merged with the foreign limited
1988 liability company was located at the time of the transaction.

1989 (c) The limited liability company shall make all persons whose
1990 demands remain unsettled, whether or not residents of this state, parties to
1991 the proceeding as in an action against their interests, and all parties must be
1992 served with a copy of the complaint. Nonresidents may be served as otherwise
1993 provided by law.

1994 (d) The jurisdiction of the court in which the proceeding is
1995 commenced under subsection (10)(b) of this section is plenary and exclusive.
1996 The court may appoint one or more persons as appraisers to receive evidence and
1997 recommend a decision on the question of fair value. The appraisers shall have
1998 the powers described in the order appointing them, or in any amendment to it.
1999 The persons demanding appraisal rights are entitled to the same discovery
2000 rights as parties in other civil proceedings. There shall be no right to a
2001 jury trial.

2002 (e) Each person made a party to the proceeding is entitled to
2003 judgment: (i) for the amount, if any, by which the court finds the fair value
2004 of the person=s interests, plus interest at the legal rate, exceeds the amount
2005 paid by the limited liability company to the person for such interests, or (ii)
2006 for the fair value, plus interest at the legal rate, of the person=s interests
2007 for which the limited liability company elected to withhold payment under
2008 subsection (8) of this section.

2009 (11) **Court costs and counsel fees.** (a) The court in an appraisal
2010 proceeding commenced under subsection (10) of this section shall determine all
2011 costs of the proceeding, including the reasonable compensation and expenses of
2012 appraisers appointed by the court. The court shall assess the costs against
2013 the limited liability company, except that the court may assess costs against
2014 all or some of the persons demanding appraisal, in amounts the court finds
2015 equitable, to the extent the court finds such persons acted arbitrarily,
2016 vexatiously, or not in good faith with respect to the rights provided by this
2017 subsection.

2018 (b) The court in an appraisal proceeding may also assess the fees
2019 and expenses of counsel and experts for the respective parties, in amounts the
2020 court finds equitable:

2021 (i) Against the limited liability company and in favor of
2022 any or all persons demanding appraisal if the court finds the limited liability
2023 company did not substantially comply with the requirements of subsections (3),
2024 (5), (7) or (8) of this section; or

2025 (ii) Against either the limited liability company or a
2026 person demanding appraisal, in favor of any other party, if the court finds
2027 that the party against whom the fees and expenses are assessed acted
2028 arbitrarily, vexatiously, or not in good faith with respect to the rights
2029 provided by this subsection.

2030 (c) If the court in an appraisal proceeding finds that the
2031 services of counsel for any member or owner of a limited liability company
2032 interest were of substantial benefit to other persons similarly situated, and
2033 that the fees for those services should not be assessed against the limited

2034 liability company, the court may award to such counsel reasonable fees to be
2035 paid out of the amounts awarded the persons who were benefited.

2036 (d) To the extent the limited liability company fails to make a
2037 required payment pursuant to subsections (7), (8) or (9) of this section, the
2038 person may sue directly for the amount owed and, to the extent successful,
2039 shall be entitled to recover from the limited liability company all costs and
2040 expenses of the suit, including counsel fees.

2041 SECTION 50. The following shall be codified as Section 79-10-4,
2042 Mississippi Code of 1972:

2043 79-10-4. Professional corporations are not subject to the provisions of
2044 the Uniform Partnership Act.

2045 SECTION 51. Section 79-12-7, Mississippi Code of 1972, is amended as
2046 follows:[CSQ42]

2047 79-12-7. (1) The rule that statutes in derogation of the common law are
2048 to be strictly construed shall have no application to this chapter.

2049 (2) The law of estoppel shall apply under this chapter.

2050 (3) The law of agency shall apply under this chapter.

2051 (4) This chapter shall be so interpreted and construed as to effect its

2052 general purpose to make uniform the law of those states which enact it.

2053 (5) This chapter shall not be construed so as to impair the obligations

2054 of any contract existing when the chapter goes into effect, nor to affect any

2055 action or proceedings begun or right accrued before this chapter takes effect

2056 except as provided in Section 79-12-15(4).

2057 (6) This chapter shall not apply to business or professional

2058 corporations.

2059 SECTION 52. This act shall take effect and be in force from and after

2060 July 1, 2000.