HOUSE BILL NO. 1254

AN ACT TO REVISE THE MISSISSIPPI BUSINESS CORPORATION ACT; TO AMEND SECTION 79-4-6.01, MISSISSIPPI CODE OF 1972, TO REVISE THE DESIGNATION OF AUTHORIZED SHARES; TO AMEND SECTION 79-4-6.02, MISSISSIPPI CODE OF 1972, TO REVISE THE WAY IN WHICH TERMS OF A CLASS OR SERIES OF A CLASS OF SHARES IS DESIGNATED; TO AMEND SECTION 79-4-6.24, MISSISSIPPI CODE OF 1972, TO REVISE THE WAY IN WHICH SHARE OPTIONS ARE ISSUED; TO AMEND SECTION 79-4-6.40, MISSISSIPPI CODE OF 1972, TO REVISE THE DISTRIBUTION TO SHAREHOLDERS; TO AMEND SECTION 79-4-7.28, MISSISSIPPI CODE OF 1972, TO REQUIRE SPECIFIC AUTHORIZATION FOR CUMULATIVE VOTING FROM AND AFTER JULY 1, 2002; TO AMEND SECTION 79-4-8.01, MISSISSIPPI CODE OF 1972, TO REVISE THE EXERCISE OF CORPORATE POWERS; TO AMEND SECTION 79-4-8.03, MISSISSIPPI CODE OF 1972, TO REVISE THE NUMBER AND ELECTION OF DIRECTORS; TO AMEND SECTION 79-4-8.06, MISSISSIPPI CODE OF 1972, TO REVISE THE WAY IN WHICH THE TERMS OF DIRECTORS ARE STAGGERED; TO AMEND SECTION 79-4-8.21, MISSISSIPPI CODE OF 1972, TO REVISE THE WAY IN WHICH ACTION CAN BE TAKEN WITHOUT MEETING; TO AMEND SECTION 79-4-8.25, MISSISSIPPI CODE OF 1972, TO REVISE THE CREATION OF COMMITTEES OF THE BOARD OF DIRECTORS; TO AMEND SECTION 79-4-8.33, MISSISSIPPI CODE OF 1972, TO REVISE THE LIABILITY FOR UNLAWFUL DISTRIBUTIONS; TO AMEND SECTION 79-4-8.40, MISSISSIPPI CODE OF 1972, TO REVISE THE REQUIRED OFFICERS; TO AMEND SECTION 79-4-8.43, MISSISSIPPI CODE OF 1972, TO REVISE THE RESIGNATION AND REMOVAL OF OFFICERS; TO AMEND SECTION 79-4-8.44, MISSISSIPPI CODE OF 1972, TO REVISE REQUIREMENTS FOR THE ARTICLES OF DISSOLUTION; TO AMEND SECTION 79-4-14.06, MISSISSIPPI CODE OF 1972, TO REVISE NOTIFICATION TO KNOWN CLAIMANTS AGAINST A DISSOLVED CORPORATION; TO AMEND SECTION 79-4-14.07, MISSISSIPPI CODE OF 1972, TO REVISE NOTICE TO UNKNOWN CLAIMANTS AGAINST A DISSOLVED CORPORATION; TO CODIFY SECTIONS 79-4-14.08 AND 79-4-14.09, MISSISSIPPI CODE OF 1972, TO REVISE COURT PROCEEDINGS AND DIRECTOR DUTIES; TO AMEND SECTION 79-4-16.03, MISSISSIPPI CODE OF 1972, TO REVISE THE SCOPE OF THE INSPECTION RIGHT; TO CODIFY SECTIONS 79-4-16.05 AND 79-4-16.06, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE INSPECTION OF RECORDS BY DIRECTORS AND FOR EXCEPTION TO THE NOTICE REQUIREMENT; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 79-4-6.01, Mississippi Code of 1972, is amended as follows:

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79-4-6.01. (a) The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one (1) class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class, and prior to the issuance of shares of a class the terms, including the preferences, rights, and limitations ** of that class must be described in the articles of incorporation. All shares of a class must have terms, including preferences, rights and limitations ** identical with those of other shares of the same class except to the extent otherwise permitted by this section or Section 79-4-6.02.

(b) The articles of incorporation must authorize (1) one or more classes of shares that together have unlimited voting rights, and (2) one or more classes of shares (which may be the same class or classes as those with voting rights) that together are entitled to receive the net assets of the corporation upon dissolution.

(c) The articles of incorporation may authorize one or more classes of shares that:

1. Have special, conditional or limited voting rights, or no right to vote, except to the extent prohibited by Section 79-4-1.01 et seq.;

2. Are redeemable or convertible as specified in the articles of incorporation (i) at the option of the corporation, the shareholder or another person or upon the occurrence of a designated event; (ii) for cash, indebtedness, securities or other property; (iii) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

3. Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative or partially cumulative;
(4) Have preference over any other class of shares with respect to distributions, including dividends and distributions, upon the dissolution of the corporation.

(5) Have terms, including preferences, rights and limitations, that are made dependent upon facts ascertainable outside the articles and that may vary among holders of the same class so long as the manner in which such facts and variations shall operate on the preferences, rights and limitations of such class is clearly and expressly set forth in the articles. "Facts ascertainable outside the articles" include (i) an action or determination by any person, including the corporation, its board of directors, an officer or agent of the corporation, or any other person affiliated with the corporation; (ii) the contents of any agreement to which the corporation is a party or any other document; and (iii) any other event.

(d) The description of the designations, preferences, limitations and relative rights of share classes in subsection (c) is not exhaustive.

SECTION 2. Section 79-4-6.02, Mississippi Code of 1972, is amended as follows:

79-4-6.02. (a) If the articles of incorporation so provide, the board of directors may determine, in whole or in part, the terms, including the preferences, rights and limitations to the same extent as is permitted under Section 79-4-6.01 of (1) any class of shares before the issuance of any shares of that class, or (2) one or more series within a class before the issuance of any shares of that series.

(b) Each class and series of a class must be given a distinguishing designation.

(c) All shares of a class or series created under this section must have terms, including preferences, rights and limitations * * * identical * * * of those of other shares of the
same class or series, except to the extent permitted by this section and Section 79-4-6.01.

(d) Before issuing any shares of a class or series created under this section, the corporation must deliver to the Secretary of State for filing articles of amendment, which are effective without shareholder action, that set forth:

(1) The name of the corporation;

(2) The text of the amendment determining the terms of the class or series of shares; and

(3) A statement that the amendment was ** adopted by the board of directors, including the date of adoption.

SECTION 3. Section 79-4-6.24, Mississippi Code of 1972, is amended as follows:

79-4-6.24. (a) A corporation may issue rights, options or warrants for the purchase of shares or other securities of the corporation. The board of directors shall determine (i) the terms upon which the rights, options or warrants are issued, ** and (ii) the terms, including the consideration for which the shares or other securities are to be issued. The authorization by the board of directors to issue such rights, options, or warrants constitutes authorization of the issuance of the shares or other securities for which the rights, options or warrants are exercised.

(b) The terms and conditions of such rights, options or warrants, including those outstanding on the effective date of this section, may include, without limitation, restrictions or conditions that preclude or limit the exercise, transfer or receipt of such rights, options or warrants by any person or persons owning or offering to acquire a specified number or percentage of the outstanding shares or other securities of the corporation, or any transferee or transferees of any such person or persons, or that invalidate or void such rights, options or warrants.
warrants held by any such person or persons or any such transferee
or transferees.

SECTION 4. Section 79-4-6.40, Mississippi Code of 1972, is
amended as follows:

79-4-6.40. (a) A board of directors may authorize and the
corporation may make distributions to its shareholders subject to
restriction by the articles of incorporation and the limitation in
subsection (c).

(b) If the board of directors does not fix the record date
for determining shareholders entitled to a distribution (other
than one involving a purchase, redemption or other acquisition of
the corporation's shares), it is the date the board of directors
authorizes the distribution.

(c) No distribution may be made if, after giving it effect:

(1) The corporation would not be able to pay its debts
as they become due in the usual course of business; or

(2) The corporation's total assets would be less than
the sum of its total liabilities plus (unless the articles of
incorporation permit otherwise) the amount that would be needed,
if the corporation were to be dissolved at the time of the
distribution, to satisfy the preferential rights upon dissolution
of shareholders whose preferential rights are superior to those
receiving the distribution.

(d) The board of directors may base a determination that a
distribution is not prohibited under subsection (c) either on
financial statements prepared on the basis of accounting practices
and principles that are reasonable in the circumstances or on a
fair valuation or other method that is reasonable in the
circumstances.

(e) Except as otherwise provided in subsection (g), the
effect of a distribution under subsection (c) is measured;

(1) In the case of distribution by purchase, redemption
or other acquisition of the corporation's shares, as of the
earlier of (i) the date money or other property is transferred or debt incurred by the corporation, or (ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(2) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(3) In all other cases, as of (i) the date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization, or (ii) the date the payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

(f) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(g) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection (c) if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

(h) This section shall not apply to distributions in liquidation under this Subarticle A.

SECTION 5. Section 79-4-7.28, Mississippi Code of 1972, is amended as follows:

[Before July 1, 2002, this section shall read as follows:]

79-4-7.28. (a) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.
(b) Shareholders shall have a right to cumulate their votes for directors unless the articles of incorporation provide otherwise.

(c) A statement included in the articles of incorporation that "a designated voting group of shareholders is entitled to cumulate their votes for directors," or words of similar import, means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two (2) or more candidates.

[From and after July 1, 2002, this section shall read as follows:]

79-4-7.28. (a) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(b) Shareholders shall not have a right to cumulate their votes for directors unless the articles of incorporation provide otherwise.

(c) A statement included in the articles of incorporation that "a designated voting group of shareholders is entitled to cumulate their votes for directors," or words of similar import, means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two (2) or more candidates.

SECTION 6. Section 79-4-8.01, Mississippi Code of 1972, is amended as follows:

79-4-8.01. (a) Except as provided in Section 79-4-7.32, each corporation must have a board of directors.
(b) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed by or under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under Section 79-4-7.32.

SECTION 7. Section 79-4-8.03, Mississippi Code of 1972, is amended as follows:

79-4-8.03. (a) A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(b) The number of directors may be increased or decreased, from time to time, by amendment to, or in the manner provided in, the articles of incorporation or the bylaws.

* * *

(c) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under Section 79-4-8.06.

SECTION 8. Section 79-4-8.06, Mississippi Code of 1972, is amended as follows:

79-4-8.06. * * * The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two (2) or three (3) groups, with each group containing one-half (1/2) or one-third (1/3) of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two (2) years or three (3) years, as the case may be, to succeed those whose terms expire.
SECTION 9. Section 79-4-8.21, Mississippi Code of 1972, is amended as follows:

79-4-8.21. (a) * * * Action required or permitted by Section 79-4-1.01 et seq. to be taken by the board of directors * * * may be taken without a meeting if each director signs a consent describing the action taken and delivers it to the corporation.

(b) Action taken under this section is the act of the board of directors when one or more consents signed by all the directors are delivered to the corporation. The consent may specify the time at which the action taken thereunder is to be effective. A consent may be withdrawn by a revocation signed by the director and received by the corporation before receipt by the corporation of unrevoked written consents signed by all the directors.

(c) A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described as such in any document.

SECTION 10. Section 79-4-8.25, Mississippi Code of 1972, is amended as follows:

79-4-8.25. (a) Unless this chapter, the articles of incorporation or the bylaws provide otherwise, a board of directors may create one or more committees and appoint one or more members of the board of directors to serve on any such committee.

(b) Unless this chapter otherwise provides, the creation of a committee and appointment of members to it must be approved by the greater of (1) a majority of all the directors in office when the action is taken or (2) the number of directors required by the articles of incorporation or bylaws to take action under Section 79-4-8.24.

(c) Sections 79-4-8.20 through 79-4-8.24 * * * apply both to committees of the board and their members * * *. 
(d) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the powers of the board of directors under Section 79-4-8.01.

(e) A committee may not, however:

(1) Authorize or approve distributions, except according to a formula or method or within limits prescribed by the board of director;

(2) Approve or propose to shareholders action that Section 79-4-1.01 et seq. requires to be approved by shareholders;

(3) Fill vacancies on the board of directors or subject to subsection (g) on any of its committees; or

(4) Adopt, amend or repeal bylaws.

(f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in Section 79-4-8.30.

(g) The board of directors may appoint one or more directors as alternate members of any committee to replace any absent or disqualified member during the member's absence or disqualification. Unless the articles of incorporation or the bylaws or the resolution creating the committee provide otherwise, in the event of the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, unanimously, may appoint another director to act in place of the absent or disqualified member.

SECTION 11. Section 79-4-8.33, Mississippi Code of 1972, is amended as follows:

79-4-8.33. (a) A director who votes for or assents to a distribution in excess of what may be authorized and made pursuant to Section 79-4-6.40(a) or 79-4-14.09(a) is personally liable to the corporation for the amount of the distribution that exceeds
what could have been distributed without violating Section 79-4-6.40(a) or 79-4-14.09(a) if the party asserting liability establishes that when taking the action the director did not comply with Section 79-4-8.30.

(b) A director held liable under subsection (a) for an unlawful distribution is entitled to:

(1) Contribution from every other director who could be held liable under subsection (a) for the unlawful distribution; and

(2) Recoupment from each shareholder of the pro rata portion of the amount of the unlawful distribution the shareholder accepted, knowing the distribution was made in violation of Section 79-4-6.40(a) or 79-4-14.09(a).

(c) A proceeding to enforce:

(1) The liability of a director under subsection (a) is barred unless it is commenced within two (2) years after the date

(i) on which the effect of the distribution was measured under Section 79-4-6.40(e) or (g); (ii) as of which the violation of Section 79-4-6.40(a) occurred as the consequence of disregard of a restriction in the articles of incorporation; or (iii) on which the distribution of assets to shareholders under Section 79-4-14.09(a) was made; or

(2) Contribution or recoupment under subsection (b) is barred unless it is commenced within one (1) year after the liability of the claimant has been finally adjudicated under subsection (a).

SECTION 12. Section 79-4-8.40, Mississippi Code of 1972, is amended as follows:

79-4-8.40. (a) A corporation has the offices described in its bylaws or designated by the board of directors in accordance with the bylaws.

(b) The board of directors may elect individuals to fill one or more offices of the corporation. A duly authorized officer may...
appoint one or more officers ** if authorized by the bylaws or
the board of directors.

(c) The bylaws or the board of directors shall delegate to
one (1) of the officers responsibility for preparing minutes of
the directors' and shareholders' meetings and for maintaining and
authenticating records of the corporation.

(d) The same individual may simultaneously hold more than
one (1) office in a corporation.

SECTION 13. Section 79-4-8.43, Mississippi Code of 1972, is
amended as follows:

79-4-8.43. (a) An officer may resign at any time by
delivering notice to the corporation. A resignation is effective
when the notice is delivered unless the notice specifies a later
effective time. If a resignation is made effective at a later
time and the board or the appointing officer accepts the future
effective time, the board or the appointing officer may fill the
pending vacancy before the effective time if the board or the
appointing officer provides that the successor does not take
office until the effective time.

(b) An officer may be removed at any time with or without
cause by: (i) the board of directors; (ii) the officer who
appointed such officer, unless the bylaws or the board of
directors provide otherwise; or (iii) any other officer if
authorized by the bylaws or the board of directors.

(c) In this section, "appointing officer" means the officer
(including any successor to that officer) who appointed the
officer resigning or being removed.

SECTION 14. Section 79-4-13.02, Mississippi Code of 1972, is
amended as follows:

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

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

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

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

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

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

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

(1) Appraisal rights shall not be available to any shareholder of the constituent corporations in a corporate reorganization transaction otherwise covered by Section 79-4-13.02(a)(1) or (2) if: (i) the shareholders of an existing...
corporation exchange shares of such corporation for shares of a newly formed corporation and receive, after the reorganization, the same proportionate share interest in the new corporation and the rights and interests of the shareholders in the newly formed corporation are substantially the same as those in the existing corporation before the transaction; (ii) the newly formed corporation has no significant assets other than the shares of the existing corporation; (iii) after the reorganization the newly formed corporation and its subsidiaries have substantially the same assets and liabilities, on a consolidated basis, as those of the existing corporation prior to the transaction; (iv) fractional shares are neither created nor eliminated as a result of the transaction; (v) the existing corporation and the newly formed corporation are the only constituent corporations to such reorganization; (vi) the existing corporation and the newly formed corporation are corporations of this state; (vii) the directors of the existing corporation become the directors of the newly formed corporation upon the effective time of the corporate reorganization; (viii) the existing corporation becomes a direct wholly owned subsidiary of the newly formed corporation; and (ix) the shareholders of the existing corporation do not recognize gain or loss for United States federal income tax purposes as determined by the board of directors of the existing corporation.

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

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

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

(3) The applicability of subsection (b)(2) shall be
determined as of:

(i) The record date fixed to determine the
shareholders entitled to receive notice of, and to vote at, the
meeting of shareholders to act upon the corporate action requiring
appraisal rights; or

(ii) The day before the effective date of such
corporate action if there is no meeting of shareholders.

(4) Subsection (b)(2) shall not be applicable and
appraisal rights shall be available pursuant to subsection (a) for
the holders of any class or series of shares who are required by
the terms of the corporate action requiring appraisal rights to
accept for such shares anything other than cash or shares of any
class or any series of shares of any corporation, or any other
proprietary interest of any other entity, that satisfies the
standards set forth in subsection (b)(2) at the time the corporate
action becomes effective.

(5) Subsection (b)(2) shall not be applicable and
appraisal rights shall be available pursuant to subsection (a) for
the holders of any class or series of shares where:

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

(A) Is, or at any time in the one-year period
immediately preceding approval by the board of directors of the
corporate action requiring appraisal rights was, the beneficial
owner of twenty percent (20%) or more of the voting power of the
corporation, excluding any shares acquired pursuant to an offer
for all shares having voting power if such offer was made within
one (1) year prior to the corporate action requiring appraisal
rights for consideration of the same kind and of a value equal to
or less than that paid in connection with the corporate action; or
(B) Directly or indirectly has, or at any
time in the one-year period immediately preceding approval by the
board of directors of the corporation of the corporate action
requiring appraisal rights had, the power, contractually or
otherwise, to cause the appointment or election of twenty-five
percent (25%) or more of the directors to the board of directors
of the corporation; or
(ii) Any of the shares or assets of the
corporation are being acquired or converted, whether by merger,
share exchange or otherwise, pursuant to such corporate action by
a person, or by an affiliate of a person, who is, or at any time
in the one-year period immediately preceding approval by the board
of directors of the corporate action requiring appraisal rights
was, a senior executive or director of the corporation or a senior
executive of any affiliate thereof, and that senior executive or
director will receive, as a result of the corporate action, a
financial benefit not generally available to other shareholders as
such, other than:
(A) Employment, consulting, retirement or
similar benefits established separately and not as part of
contemplation of the corporate action; or
(B) Employment, consulting, retirement or
similar benefits established in contemplation of, or as part of,
the corporate action that are not more favorable than those
existing before the corporate action or, if more favorable, that
have been approved on behalf of the corporation in the same manner
as is provided in Section 79-4-8.62; or
(C) In the case of a director of the
corporation who will, in the corporate action, become a director
of the acquiring entity in the corporate action or one (1) of its
affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of such entity or such affiliate.

(6) For the purposes of paragraph (5) only, the term "beneficial owner" means any person who, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares, provided that a member of a national securities exchange shall not be deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because such member is the record holder of such securities if the member is precluded by the rules of such exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two (2) or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby shall be deemed to have acquired beneficial ownership, as of the date of such agreement, of all voting shares of the corporation beneficially owned by any member of the group.

(c) Notwithstanding any other provision of Section 79-4-13.02, the articles of incorporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, but any such limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective date of such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange or to other right existing immediately before the effective date of such amendment shall not apply to any corporate action that becomes effective within one (1) year of that date if such action would otherwise afford appraisal rights.
(d) A shareholder entitled to appraisal rights under this article may not challenge a completed corporate action for which appraisal rights are available unless such corporate action:

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

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

SECTION 15. Section 79-4-14.03, Mississippi Code of 1972, is amended as follows:

79-4-14.03. (a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Secretary of State for filing articles of dissolution setting forth:

(1) The name of the corporation;

(2) The date dissolution was authorized; and

(3) If dissolution was approved by the shareholders, a statement that the proposal to dissolve was duly approved by the shareholders in the manner required by the Mississippi Business Corporation Act and by the articles of incorporation.

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

(c) For purposes of this subarticle, "dissolved corporation" means a corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

SECTION 16. Section 79-4-14.06, Mississippi Code of 1972, is amended as follows:

79-4-14.06. (a) A dissolved corporation may dispose of the known claims against it by notifying its known claimants in writing of the dissolution at any time after its effective date.
(b) The written notice must:

1. Describe information that must be included in a claim;
2. Provide a mailing address where a claim may be sent;
3. State the deadline, which may not be fewer than one hundred twenty (120) days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and
4. State that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

1. If a claimant who was given written notice under subsection (b) does not deliver the claim to the dissolved corporation by the deadline; or
2. If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety (90) days from the effective date of the rejection notice.

(d) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

SECTION 17. Section 79-4-14.07, Mississippi Code of 1972, is amended as follows:

79-4-14.07. (a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.

(b) The notice must:

1. Be published one (1) time in a newspaper of general circulation in the county where the dissolved corporation's principal office (or, if none in this state, its registered office) is or was last located;
(2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) State that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within three (3) years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within the lesser of three (3) years after the publication date of the newspaper notice, or any other applicable limitations period established by applicable law:

(1) A claimant who was not given written notice under Section 79-4-14.06;

(2) A claimant whose claim was timely sent to the dissolved corporation but not acted on;

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim that is not barred under Section 79-4-14.06(b) or Section 79-4-14.07(d) may be enforced * * *:

(1) Against the dissolved corporation, to the extent of its undistributed assets; or

(2) Except as provided in Section 79-4-14.08(d), if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.
SECTION 18. The following provision shall be codified as Section 79-4-14.08, Mississippi Code of 1972:

79-4-14.08. (a) A dissolved corporation that has published a notice under Section 79-4-14.07 may file an application with the chancery court of the county where the dissolved corporation's principal office (or, if none in this state, its registered office) is located for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under Section 79-4-14.07(c).

(b) Within ten (10) days after the filing of the application, notice of the proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

(c) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.

(d) Provision by the dissolved corporation for security in the amount and the form ordered by the court under Section 79-4-14.08(a) shall satisfy the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a shareholder who received assets in liquidation.
SECTION 19. The following provision shall be codified as Section 79-4-14.09, Mississippi Code of 1972:

79-4-14.09. (a) Directors shall cause the dissolved corporation to discharge or make reasonable provision for the payment of claims and make distributions of assets to shareholders after payment or provision for claims.

(b) Directors of a dissolved corporation which has disposed of claims under Section 79-4-14.06, 79-4-14.07 or 79-4-14.08 shall not be liable for breach of Section 79-4-14.09(a) with respect to claims against the dissolved corporation that are barred or satisfied under Section 79-4-14.06, 79-4-14.07 or 79-4-14.08.

SECTION 20. Section 79-4-16.03, Mississippi Code of 1972, is amended as follows:

79-4-16.03. (a) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder represented.

(b) The right to copy records under Section 79-4-16.02 includes, if reasonable, the right to receive copies by xerographic or other means, including copies through an electronic transmission if available and so requested by the shareholder.

(c) The corporation may comply at its expense with a shareholder's demand to inspect the record of shareholders under Section 79-4-16.02(b)(3) by providing the shareholder with a list of shareholders that was compiled no earlier than the date of the shareholder's demand.

(d) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge may not exceed the estimated cost of production or transmission of the records.

SECTION 21. The following provision shall be codified as Section 79-4-16.05, Mississippi Code of 1972:
79-4-16.05. (a) A director of a corporation is entitled to inspect and copy the books, records and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(b) The chancery court of the county where the corporation's principal office (or if none in the state, its registered office) is located may order inspection and copying of the books, records and documents at the corporation's expense, upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

(c) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's costs (including reasonable counsel fees) incurred in connection with the application.

SECTION 22. The following provision shall be codified as Section 79-4-16.06, Mississippi Code of 1972:

79-4-16.06. (a) Whenever notice is required to be given under any provision of this act to any shareholder, such notice shall not be required to be given if:

(1) Notice of two (2) consecutive annual meetings, and all notices of meetings during the period between such two (2) consecutive annual meetings, have been sent to such shareholder at such shareholder's address as shown on the records of the corporation and have been returned undeliverable; or
(2) All, but not less than, two (2) payments or dividends on securities during a twelve-month period, or two (2) consecutive payments of dividends on securities during a period of more than twelve (12) months, have been sent to such shareholder at such shareholder's address as shown on the records of the corporation and have been returned undeliverable.

(b) If any such shareholder shall deliver to the corporation a written notice setting forth such shareholder's then current address, the requirement that notice be given to such shareholder shall be reinstated.

SECTION 23. This act shall take effect and be in force from and after July 1, 2001.