

By: Senator(s) Ross

To: Finance

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2452

1 AN ACT TO REVISE THE MISSISSIPPI BUSINESS CORPORATION ACT; TO
2 AMEND SECTION 79-4-6.01, MISSISSIPPI CODE OF 1972, TO REVISE THE
3 DESIGNATION OF AUTHORIZED SHARES; TO AMEND SECTION 79-4-6.02,
4 MISSISSIPPI CODE OF 1972, TO REVISE THE WAY IN WHICH TERMS OF A
5 CLASS OR SERIES OF A CLASS OF SHARES IS DESIGNATED; TO AMEND
6 SECTION 79-4-6.24, MISSISSIPPI CODE OF 1972, TO REVISE THE WAY IN
7 WHICH SHARE OPTIONS ARE ISSUED; TO AMEND SECTION 79-4-6.40,
8 MISSISSIPPI CODE OF 1972, TO REVISE THE DISTRIBUTION TO
9 SHAREHOLDERS; TO AMEND SECTION 79-4-7.28, MISSISSIPPI CODE OF
10 1972, TO REQUIRE SPECIFIC AUTHORIZATION FOR CUMULATIVE VOTING FROM
11 AND AFTER JULY 1, 2002; TO AMEND SECTION 79-4-8.01, MISSISSIPPI
12 CODE OF 1972, TO REVISE THE EXERCISE OF CORPORATE POWERS; TO AMEND
13 SECTION 79-4-8.03, MISSISSIPPI CODE OF 1972, TO REVISE THE NUMBER
14 AND ELECTION OF DIRECTORS; TO AMEND SECTION 79-4-8.06, MISSISSIPPI
15 CODE OF 1972, TO REVISE THE WAY IN WHICH THE TERMS OF DIRECTORS
16 ARE STAGGERED; TO AMEND SECTION 79-4-8.21, MISSISSIPPI CODE OF
17 1972, TO REVISE THE WAY IN WHICH ACTION CAN BE TAKEN WITHOUT
18 MEETING; TO AMEND SECTION 79-4-8.25, MISSISSIPPI CODE OF 1972, TO
19 REVISE THE CREATION OF COMMITTEES OF THE BOARD OF DIRECTORS; TO
20 AMEND SECTION 79-4-8.33, MISSISSIPPI CODE OF 1972, TO REVISE THE
21 LIABILITY FOR UNLAWFUL DISTRIBUTIONS; TO AMEND SECTION 79-4-8.40,
22 MISSISSIPPI CODE OF 1972, TO REVISE THE REQUIRED OFFICERS; TO
23 AMEND SECTION 79-4-8.43, MISSISSIPPI CODE OF 1972, TO REVISE THE
24 RESIGNATION AND REMOVAL OF OFFICERS; TO AMEND SECTION 79-4-13.02,
25 MISSISSIPPI CODE OF 1972, TO REVISE APPRAISAL RIGHTS; TO AMEND
26 SECTION 79-4-14.03, MISSISSIPPI CODE OF 1972, TO REVISE
27 REQUIREMENTS FOR THE ARTICLES OF DISSOLUTION; TO AMEND SECTION
28 79-4-14.06, MISSISSIPPI CODE OF 1972, TO REVISE NOTIFICATION TO
29 KNOWN CLAIMANTS AGAINST A DISSOLVED CORPORATION; TO AMEND SECTION
30 79-4-14.07, MISSISSIPPI CODE OF 1972, TO REVISE NOTICE TO UNKNOWN
31 CLAIMANTS AGAINST A DISSOLVED CORPORATION; TO CODIFY SECTIONS
32 79-4-14.08 AND 79-4-14.09, MISSISSIPPI CODE OF 1972, TO REVISE
33 COURT PROCEEDINGS AND DIRECTOR DUTIES; TO AMEND SECTION
34 79-4-16.03, MISSISSIPPI CODE OF 1972, TO REVISE THE SCOPE OF THE
35 INSPECTION RIGHT; TO CODIFY SECTIONS 79-4-16.05 AND 79-4-16.06,
36 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE INSPECTION OF RECORDS
37 BY DIRECTORS AND FOR EXCEPTION TO THE NOTICE REQUIREMENT; AND FOR
38 RELATED PURPOSES.

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

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

42 79-4-6.01. (a) The articles of incorporation must prescribe
43 the classes of shares and the number of shares of each class that
44 the corporation is authorized to issue. If more than one (1)
45 class of shares is authorized, the articles of incorporation must



46 prescribe a distinguishing designation for each class, and prior
47 to the issuance of shares of a class the terms, including the
48 preferences, rights, and limitations * * * of that class must be
49 described in the articles of incorporation. All shares of a class
50 must have terms, including preferences, rights and
51 limitations * * * identical with those of other shares of the same
52 class except to the extent otherwise permitted by this section or
53 Section 79-4-6.02.

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

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

61 (1) Have special, conditional or limited voting rights,
62 or no right to vote, except to the extent prohibited by Section
63 79-4-1.01 et seq.;

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

71 (3) Entitle the holders to distributions calculated in
72 any manner, including dividends that may be cumulative,
73 noncumulative or partially cumulative;

74 (4) Have preference over any other class of shares with
75 respect to distributions, including dividends and distributions,
76 upon the dissolution of the corporation.

77 (5) Have terms, including preferences, rights and
78 limitations, that are made dependent upon facts ascertainable



79 outside the articles and that may vary among holders of the same
80 class so long as the manner in which such facts and variations
81 shall operate on the preferences, rights and limitations of such
82 class is clearly and expressly set forth in the articles; "facts
83 ascertainable outside the articles": include (i) an action or
84 determination by any person, including the corporation, its board
85 of directors, an officer or agent of the corporation, or any other
86 person affiliated with the corporation; (ii) the contents of any
87 agreement to which the corporation is a party or any other
88 document; and (iii) any other event.

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

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

94 79-4-6.02. (a) If the articles of incorporation so provide,
95 the board of directors may determine, in whole or in part, the
96 terms, including the preferences, rights and limitations to the
97 same extent as is permitted under Section 79-4-6.01 of (1) any
98 class of shares before the issuance of any shares of that class,
99 or (2) one or more series within a class before the issuance of
100 any shares of that series.

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

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

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



112 (1) The name of the corporation;
113 (2) The text of the amendment determining the terms of
114 the class or series of shares; and

115 * * *

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

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

120 79-4-6.24. (a) A corporation may issue rights, options or
121 warrants for the purchase of shares or other securities of the
122 corporation. The board of directors shall determine (i) the terms
123 upon which the rights, options or warrants are issued, * * * and
124 (ii) the terms, including the consideration for which the shares
125 or other securities are to be issued. The authorization by the
126 board of directors to issue such rights, options, or warrants
127 constitutes authorization of the issuance of the shares or other
128 securities for which the rights, options or warrants are
129 exercisable.

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

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

143 79-4-6.40. (a) A board of directors may authorize and the
144 corporation may make distributions to its shareholders subject to



145 restriction by the articles of incorporation and the limitation in
146 subsection (c).

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

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

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

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

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

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

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

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



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

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

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

196 (h) This section shall not apply to distributions in
197 liquidation under Article 14 (Section 79-4-14.01 et seq.).

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

200 79-4-7.28. (a) Unless otherwise provided in the articles of
201 incorporation, directors are elected by a plurality of the votes
202 cast by the shares entitled to vote in the election at a meeting
203 at which a quorum is present.

204 (b) For corporations incorporated before July 1, 2002,
205 shareholders shall have a right to cumulate their votes for
206 directors unless the articles of incorporation provide otherwise.
207 For corporations incorporated on or after July 1, 2002,
208 shareholders do not have a right to cumulate their votes for
209 directors unless the articles of incorporation provide otherwise.



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

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

220 79-4-8.01. (a) Except as provided in Section 79-4-7.32,
221 each corporation must have a board of directors.

222 (b) All corporate powers shall be exercised by or under the
223 authority of, and the business and affairs of the corporation
224 managed by or under the direction of, its board of directors,
225 subject to any limitation set forth in the articles of
226 incorporation or in an agreement authorized under Section
227 79-4-7.32.

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

230 79-4-8.03. (a) A board of directors must consist of one or
231 more individuals, with the number specified in or fixed in
232 accordance with the articles of incorporation or bylaws.

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

236 * * *

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

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



242 79-4-8.06. * * * The articles of incorporation may provide
243 for staggering the terms of directors by dividing the total number
244 of directors into two (2) or three (3) groups, with each group
245 containing one-half (1/2) or one-third (1/3) of the total, as near
246 as may be. In that event, the terms of directors in the first
247 group expire at the first annual shareholders' meeting after their
248 election, the terms of the second group expire at the second
249 annual shareholders' meeting after their election, and the terms
250 of the third group, if any, expire at the third annual
251 shareholders' meeting after their election. At each annual
252 shareholders' meeting held thereafter, directors shall be chosen
253 for a term of two (2) years or three (3) years, as the case may
254 be, to succeed those whose terms expire.

255 SECTION 9. Section 79-4-8.21, Mississippi Code of 1972, is
256 amended as follows:

257 79-4-8.21. (a) * * * Action required or permitted by
258 Section 79-4-1.01 et seq. to be taken by the board of directors
259 may be taken without a meeting if * * * each director signs a
260 consent describing the action taken and delivers it to the
261 corporation.

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

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

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



275 79-4-8.25. (a) Unless this chapter, the articles of
276 incorporation or the bylaws provide otherwise, a board of
277 directors may create one or more committees and appoint one or
278 more members of the board of directors to serve on any such
279 committee. * * *

280 (b) Unless this chapter otherwise provides, the creation of
281 a committee and appointment of members to it must be approved by
282 the greater of (1) a majority of all the directors in office when
283 the action is taken or (2) the number of directors required by the
284 articles of incorporation or bylaws to take action under Section
285 79-4-8.24.

286 (c) Sections 79-4-8.20 through 79-4-8.24 * * * apply both to
287 committees of the board and their members * * *.

288 (d) To the extent specified by the board of directors or in
289 the articles of incorporation or bylaws, each committee may
290 exercise the powers of the board of directors under Section
291 79-4-8.01.

292 (e) A committee may not, however:

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

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

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

300 * * *

301 (4) Adopt, amend or repeal bylaws.

302 * * *

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

306 (g) The board of directors may appoint one or more directors
307 as alternate members of any committee to replace any absent or



308 disqualified member during the member's absence or
309 disqualification. Unless the articles of incorporation or the
310 bylaws or the resolution creating the committee provide otherwise,
311 in the event of the absence or disqualification of a member of a
312 committee, the member or members present at any meeting and not
313 disqualified from voting, unanimously, may appoint another
314 director to act in place of the absent or disqualified member.

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

317 79-4-8.33. (a) A director who votes for or assents to a
318 distribution in excess of what may be authorized and made pursuant
319 to Section 79-4-6.40(a) or 79-4-14.09(a) is personally liable to
320 the corporation for the amount of the distribution that exceeds
321 what could have been distributed without violating Section
322 79-4-6.40(a) or 79-4-14.09(a) if the party asserting liability
323 establishes that when taking the action the director did not
324 comply with Section 79-4-8.30.

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

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

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

334 (c) A proceeding to enforce:

335 (1) The liability of a director under subsection (a) is
336 barred unless it is commenced within two (2) years after the date
337 (i) on which the effect of the distribution was measured under
338 Section 79-4-6.40(e) or (g); (ii) as of which the violation of
339 Section 79-4-6.40(a) occurred as the consequence of disregard of a
340 restriction in the articles of incorporation; or (iii) on which



341 the distribution of assets to shareholders under Section
342 79-4-14.09(a) was made; or

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

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

349 79-4-8.40. (a) A corporation has the offices described in
350 its bylaws or designated by the board of directors in accordance
351 with the bylaws.

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

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

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

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

364 79-4-8.43. (a) An officer may resign at any time by
365 delivering notice to the corporation. A resignation is effective
366 when the notice is delivered unless the notice specifies a later
367 effective time. If a resignation is made effective at a later
368 time and the board or the appointing officer accepts the future
369 effective time, the board or the appointing officer may fill the
370 pending vacancy before the effective time if the board or the
371 appointing officer provides that the successor does not take
372 office until the effective time.



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

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

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

383 79-4-13.02. (a) A shareholder is entitled to appraisal
384 rights, and to obtain payment of the fair value of that
385 shareholder's shares, in the event of any of the following
386 corporate actions:

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

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

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

404 (4) An amendment of the articles of incorporation with
405 respect to a class or series of shares that reduces the number of



406 shares of a class or series owned by the shareholder to a fraction
407 of a share if the corporation has the obligation or right to
408 repurchase the fractional share so created; or

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

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

416 (1) Appraisal rights shall not be available to any
417 shareholder of the constituent corporations in a corporate
418 reorganization transaction otherwise covered by Section
419 79-4-13.02(a)(1) or (2) if: (i) the shareholders of an existing
420 corporation exchange shares of such corporation for shares of a
421 newly formed corporation and receive, after the reorganization,
422 the same proportionate share interest in the new corporation and
423 the rights and interests of the shareholders in the newly formed
424 corporation are substantially the same as those in the existing
425 corporation prior to the transaction; (ii) the newly formed
426 corporation has no significant assets other than the shares of the
427 existing corporation; (iii) after the reorganization the newly
428 formed corporation and its subsidiaries have substantially the
429 same assets and liabilities, on a consolidated basis, as those of
430 the existing corporation prior to the transaction; (iv) fractional
431 shares are neither created nor eliminated as a result of the
432 transaction; (v) the existing corporation and the newly formed
433 corporation are the only constituent corporations to such
434 reorganization; (vi) the existing corporation and the newly formed
435 corporation are corporations of this state; (vii) the directors of
436 the existing corporation become the directors of the newly formed
437 corporation upon the effective time of the corporate
438 reorganization; (viii) the existing corporation becomes a direct



439 wholly-owned subsidiary of the newly formed corporation; and (ix)
440 the shareholders of the existing corporation do not recognize gain
441 or loss for United States federal income tax purposes as
442 determined by the board of directors of the existing corporation.

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

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

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

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

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

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

464 (4) Subsection (b) (2) shall not be applicable and
465 appraisal rights shall be available pursuant to subsection (a) for
466 the holders of any class or series of shares who are required by
467 the terms of the corporate action requiring appraisal rights to
468 accept for such shares anything other than cash or shares of any
469 class or any series of shares of any corporation, or any other
470 proprietary interest of any other entity, that satisfies the



471 standards set forth in subsection (b) (2) at the time the corporate
472 action becomes effective.

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

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

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

489 (B) Directly or indirectly has, or at any
490 time in the one-year period immediately preceding approval by the
491 board of directors of the corporation of the corporate action
492 requiring appraisal rights had, the power, contractually or
493 otherwise, to cause the appointment or election of twenty-five
494 percent (25%) or more of the directors to the board of directors
495 of the corporation; or

496 (ii) Any of the shares or assets of the
497 corporation are being acquired or converted, whether by merger,
498 share exchange or otherwise, pursuant to such corporate action by
499 a person, or by an affiliate of a person, who is, or at any time
500 in the one-year period immediately preceding approval by the board
501 of directors of the corporate action requiring appraisal rights
502 was, a senior executive or director of the corporation or a senior
503 executive of any affiliate thereof, and that senior executive or



504 director will receive, as a result of the corporate action, a
505 financial benefit not generally available to other shareholders as
506 such, other than:

507 (A) Employment, consulting, retirement or
508 similar benefits established separately and not as part of, or in
509 contemplation of, the corporate action; or

510 (B) Employment, consulting, retirement or
511 similar benefits established in contemplation of, or as part of,
512 the corporate action that are not more favorable than those
513 existing before the corporate action or, if more favorable, that
514 have been approved on behalf of the corporation in the same manner
515 as is provided in Section 79-4-8.62; or

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

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



537 date of such agreement, of all voting shares of the corporation
538 beneficially owned by any member of the group.

539 (c) Notwithstanding any other provision of Section
540 79-4-13.02, the articles of incorporation as originally filed or
541 any amendment thereto may limit or eliminate appraisal rights for
542 any class or series of preferred shares, but any such limitation
543 or elimination contained in an amendment to the articles of
544 incorporation that limits or eliminates appraisal rights for any
545 of such shares that are outstanding immediately prior to the
546 effective date of such amendment or that the corporation is or may
547 be required to issue or sell thereafter pursuant to any
548 conversion, exchange or to other right existing immediately before
549 the effective date of such amendment shall not apply to any
550 corporate action that becomes effective within one (1) year of
551 that date if such action would otherwise afford appraisal rights.

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

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

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

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

563 79-4-14.03. (a) At any time after dissolution is
564 authorized, the corporation may dissolve by delivering to the
565 Secretary of State for filing articles of dissolution setting
566 forth:

567 (1) The name of the corporation;

568 (2) The date dissolution was authorized; and



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

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

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

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

582 79-4-14.06. (a) A dissolved corporation may dispose of the
583 known claims against it by notifying * * * its known claimants in
584 writing of the dissolution at any time after its effective date.

585 (b) The written notice must:

586 (1) Describe information that must be included in a
587 claim;

588 (2) Provide a mailing address where a claim may be
589 sent;

590 (3) State the deadline, which may not be fewer than one
591 hundred twenty (120) days from the effective date of the written
592 notice, by which the dissolved corporation must receive the claim;
593 and

594 (4) State that the claim will be barred if not received
595 by the deadline.

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

597 (1) If a claimant who was given written notice under
598 subsection (b) does not deliver the claim to the dissolved
599 corporation by the deadline; or

600 (2) If a claimant whose claim was rejected by the
601 dissolved corporation does not commence a proceeding to enforce



602 the claim within ninety (90) days from the effective date of the
603 rejection notice.

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

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

609 79-4-14.07. (a) A dissolved corporation may also publish
610 notice of its dissolution and request that persons with claims
611 against the dissolved corporation present them in accordance with
612 the notice.

613 (b) The notice must:

614 (1) Be published one (1) time in a newspaper of general
615 circulation in the county where the dissolved corporation's
616 principal office (or, if none in this state, its registered
617 office) is or was last located;

618 (2) Describe the information that must be included in a
619 claim and provide a mailing address where the claim may be sent;
620 and

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

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

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



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

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

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

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

642 (2) Except as provided in Section 79-4-14.08(d), if the
643 assets have been distributed in liquidation, against a shareholder
644 of the dissolved corporation to the extent of the shareholder's
645 pro rata share of the claim or the corporate assets distributed to
646 the shareholder in liquidation, whichever is less, but a
647 shareholder's total liability for all claims under this section
648 may not exceed the total amount of assets distributed to the
649 shareholder.

650 SECTION 18. The following provision shall be codified as
651 Section 79-4-14.08, Mississippi Code of 1972:

652 79-4-14.08. (a) A dissolved corporation that has published
653 a notice under Section 79-4-14.07 may file an application with the
654 chancery court of the county where the dissolved corporation's
655 principal office (or, if none in this state, its registered
656 office) is located for a determination of the amount and form of
657 security to be provided for payment of claims that are contingent
658 or have not been made known to the dissolved corporation or that
659 are based on an event occurring after the effective date of
660 dissolution but that, based on the facts known to the dissolved
661 corporation, are reasonably estimated to arise after the effective
662 date of dissolution. Provision need not be made for any claim
663 that is or is reasonably anticipated to be barred under Section
664 79-4-14.07(c).

665 (b) Within ten (10) days after the filing of the
666 application, notice of the proceeding shall be given by the



667 dissolved corporation to each claimant holding a contingent claim
668 whose contingent claim is shown on the records of the dissolved
669 corporation.

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

675 (d) Provision by the dissolved corporation for security in
676 the amount and the form ordered by the court under Section
677 79-4-14.08(a) shall satisfy the dissolved corporation's
678 obligations with respect to claims that are contingent, have not
679 been made known to the dissolved corporation or are based on an
680 event occurring after the effective date of dissolution, and such
681 claims may not be enforced against a shareholder who received
682 assets in liquidation.

683 SECTION 19. The following provision shall be codified as
684 Section 79-4-14.09, Mississippi Code of 1972:

685 79-4-14.09. (a) Directors shall cause the dissolved
686 corporation to discharge or make reasonable provision for the
687 payment of claims and make distributions of assets to shareholders
688 after payment or provision for claims.

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

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

696 79-4-16.03. (a) A shareholder's agent or attorney has the
697 same inspection and copying rights as the shareholder represented.

698 (b) The right to copy records under Section 79-4-16.02
699 includes, if reasonable, the right to receive copies * * *



700 by * * * xerographic or other means, including copies through an
701 electronic transmission if available and so requested by the
702 shareholder.

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

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

713 * * *

714 SECTION 21. The following provision shall be codified as
715 Section 79-4-16.05, Mississippi Code of 1972.

716 79-4-16.05. (a) A director of a corporation is entitled to
717 inspect and copy the books, records and documents of the
718 corporation at any reasonable time to the extent reasonably
719 related to the performance of the director's duties as a director,
720 including duties as a member of a committee, but not for any other
721 purpose or in any manner that would violate any duty to the
722 corporation.

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

731 (c) If an order is issued, the court may include provisions
732 protecting the corporation from undue burden or expense, and



733 prohibiting the director from using information obtained upon
734 exercise of the inspection rights in a manner that would violate a
735 duty to the corporation, and may also order the corporation to
736 reimburse the director for the director's costs (including
737 reasonable counsel fees) incurred in connection with the
738 application.

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

741 79-4-16.06. (a) Whenever notice is required to be given
742 under any provision of this act to any shareholder, such notice
743 shall not be required to be given if:

744 (1) Notice of two (2) consecutive annual meetings, and
745 all notices of meetings during the period between such two (2)
746 consecutive annual meetings, have been sent to such shareholder at
747 such shareholder's address as shown on the records of the
748 corporation and have been returned undeliverable; or

749 (2) All, but not less than two (2), payments or
750 dividends on securities during a twelve-month period, or two (2)
751 consecutive payments of dividends on securities during a period of
752 more than twelve (12) months, have been sent to such shareholder
753 at such shareholder's address as shown on the records of the
754 corporation and have been returned undeliverable.

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

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

