

By: Senator(s) Ross

To: Finance

## 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 exercised.

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

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

205 (b) Shareholders shall have a right to cumulate their votes  
206 for directors unless the articles of incorporation provide  
207 otherwise.

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

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

218 79-4-7.28. (a) Unless otherwise provided in the articles of  
219 incorporation, directors are elected by a plurality of the votes  
220 cast by the shares entitled to vote in the election at a meeting  
221 at which a quorum is present.

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

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

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

235 79-4-8.01. (a) Except as provided in Section 79-4-7.32,  
236 each corporation must have a board of directors.

237 (b) All corporate powers shall be exercised by or under the  
238 authority of, and the business and affairs of the corporation  
239 managed by or under the direction of, its board of directors,  
240 subject to any limitation set forth in the articles of  
241 incorporation or in an agreement authorized under Section  
242 79-4-7.32.

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

245 79-4-8.03. (a) A board of directors must consist of one or  
246 more individuals, with the number specified in or fixed in  
247 accordance with the articles of incorporation or bylaws.

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

251 \* \* \*

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

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

257 79-4-8.06. \* \* \* The articles of incorporation may provide  
258 for staggering the terms of directors by dividing the total number  
259 of directors into two (2) or three (3) groups, with each group  
260 containing one-half (1/2) or one-third (1/3) of the total, as near  
261 as may be. In that event, the terms of directors in the first  
262 group expire at the first annual shareholders' meeting after their  
263 election, the terms of the second group expire at the second  
264 annual shareholders' meeting after their election, and the terms  
265 of the third group, if any, expire at the third annual  
266 shareholders' meeting after their election. At each annual  
267 shareholders' meeting held thereafter, directors shall be chosen  
268 for a term of two (2) years or three (3) years, as the case may  
269 be, to succeed those whose terms expire.



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

272 79-4-8.21. (a) \* \* \* Action required or permitted by  
273 Section 79-4-1.01 et seq. to be taken by the board of directors  
274 may be taken without a meeting if \* \* \* each director signs a  
275 consent describing the action taken and delivers it to the  
276 corporation.

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

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

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

290 79-4-8.25. (a) Unless this chapter, the articles of  
291 incorporation or the bylaws provide otherwise, a board of  
292 directors may create one or more committees and appoint one or  
293 more members of the board of directors to serve on any such  
294 committee. \* \* \*

295 (b) Unless this chapter otherwise provides, the creation of  
296 a committee and appointment of members to it must be approved by  
297 the greater of (1) a majority of all the directors in office when  
298 the action is taken or (2) the number of directors required by the  
299 articles of incorporation or bylaws to take action under Section  
300 79-4-8.24.

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

303 (d) To the extent specified by the board of directors or in  
304 the articles of incorporation or bylaws, each committee may  
305 exercise the powers of the board of directors under Section  
306 79-4-8.01.

307 (e) A committee may not, however:

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

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

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

315 \* \* \*

316 (4) Adopt, amend or repeal bylaws.

317 \* \* \*

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

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

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

332 79-4-8.33. (a) A director who votes for or assents to a  
333 distribution in excess of what may be authorized and made pursuant  
334 to Section 79-4-6.40(a) or 79-4-14.09(a) is personally liable to  
335 the corporation for the amount of the distribution that exceeds

336 what could have been distributed without violating Section  
337 79-4-6.40(a) or 79-4-14.09(a) if the party asserting liability  
338 establishes that when taking the action the director did not  
339 comply with Section 79-4-8.30.

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

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

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

349 (c) A proceeding to enforce:

350 (1) The liability of a director under subsection (a) is  
351 barred unless it is commenced within two (2) years after the date  
352 (i) on which the effect of the distribution was measured under  
353 Section 79-4-6.40(e) or (g); (ii) as of which the violation of  
354 Section 79-4-6.40(a) occurred as the consequence of disregard of a  
355 restriction in the articles of incorporation; or (iii) on which  
356 the distribution of assets to shareholders under Section  
357 79-4-14.09(a) was made; or

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

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

364 79-4-8.40. (a) A corporation has the offices described in  
365 its bylaws or designated by the board of directors in accordance  
366 with the bylaws.

367 (b) The board of directors may elect individuals to fill one  
368 or more offices of the corporation. A duly authorized officer may

369 appoint one or more officers \* \* \* if authorized by the bylaws or  
370 the board of directors.

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

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

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

379 79-4-8.43. (a) An officer may resign at any time by  
380 delivering notice to the corporation. A resignation is effective  
381 when the notice is delivered unless the notice specifies a later  
382 effective time. If a resignation is made effective at a later  
383 time and the board or the appointing officer accepts the future  
384 effective time, the board or the appointing officer may fill the  
385 pending vacancy before the effective time if the board or the  
386 appointing officer provides that the successor does not take  
387 office until the effective time.

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

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

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

398 79-4-13.02. (a) A shareholder is entitled to appraisal  
399 rights, and to obtain payment of the fair value of that  
400 shareholder's shares, in the event of any of the following  
401 corporate actions:

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

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

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

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

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

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

431           (1) Appraisal rights shall not be available to any  
432 shareholder of the constituent corporations in a corporate  
433 reorganization transaction otherwise covered by Section  
434 79-4-13.02(a)(1) or (2) if: (i) the shareholders of an existing

435 corporation exchange shares of such corporation for shares of a  
436 newly formed corporation and receive, after the reorganization,  
437 the same proportionate share interest in the new corporation and  
438 the rights and interests of the shareholders in the newly formed  
439 corporation are substantially the same as those in the existing  
440 corporation prior to the transaction; (ii) the newly formed  
441 corporation has no significant assets other than the shares of the  
442 existing corporation; (iii) after the reorganization the newly  
443 formed corporation and its subsidiaries have substantially the  
444 same assets and liabilities, on a consolidated basis, as those of  
445 the existing corporation prior to the transaction; (iv) fractional  
446 shares are neither created nor eliminated as a result of the  
447 transaction; (v) the existing corporation and the newly formed  
448 corporation are the only constituent corporations to such  
449 reorganization; (vi) the existing corporation and the newly formed  
450 corporation are corporations of this state; (vii) the directors of  
451 the existing corporation become the directors of the newly formed  
452 corporation upon the effective time of the corporate  
453 reorganization; (viii) the existing corporation becomes a direct  
454 wholly-owned subsidiary of the newly formed corporation; and (ix)  
455 the shareholders of the existing corporation do not recognize gain  
456 or loss for United States federal income tax purposes as  
457 determined by the board of directors of the existing corporation.

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

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

464                   (ii) Not so listed or designated, but has at least  
465 two thousand (2,000) shareholders and the outstanding shares of  
466 such class or series has a market value of at least Twenty Million  
467 Dollars (\$20,000,000.00) (exclusive of the value of such shares

468 held by its subsidiaries, senior executives, directors and  
469 beneficial shareholders owning more than ten percent (10%) of such  
470 shares).

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

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

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

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

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

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

495 (A) Is, or at any time in the one-year period  
496 immediately preceding approval by the board of directors of the  
497 corporate action requiring appraisal rights was, the beneficial  
498 owner of twenty percent (20%) or more of the voting power of the  
499 corporation, excluding any shares acquired pursuant to an offer  
500 for all shares having voting power if such offer was made within

501 one (1) year prior to the corporate action requiring appraisal  
502 rights for consideration of the same kind and of a value equal to  
503 or less than that paid in connection with the corporate action; or

504 (B) Directly or indirectly has, or at any  
505 time in the one-year period immediately preceding approval by the  
506 board of directors of the corporation of the corporate action  
507 requiring appraisal rights had, the power, contractually or  
508 otherwise, to cause the appointment or election of twenty-five  
509 percent (25%) or more of the directors to the board of directors  
510 of the corporation; or

511 (ii) Any of the shares or assets of the  
512 corporation are being acquired or converted, whether by merger,  
513 share exchange or otherwise, pursuant to such corporate action by  
514 a person, or by an affiliate of a person, who is, or at any time  
515 in the one-year period immediately preceding approval by the board  
516 of directors of the corporate action requiring appraisal rights  
517 was, a senior executive or director of the corporation or a senior  
518 executive of any affiliate thereof, and that senior executive or  
519 director will receive, as a result of the corporate action, a  
520 financial benefit not generally available to other shareholders as  
521 such, other than:

522 (A) Employment, consulting, retirement or  
523 similar benefits established separately and not as part of, or in  
524 contemplation of, the corporate action; or

525 (B) Employment, consulting, retirement or  
526 similar benefits established in contemplation of, or as part of,  
527 the corporate action that are not more favorable than those  
528 existing before the corporate action or, if more favorable, that  
529 have been approved on behalf of the corporation in the same manner  
530 as is provided in Section 79-4-8.62; or

531 (C) In the case of a director of the  
532 corporation who will, in the corporate action, become a director  
533 of the acquiring entity in the corporate action or one (1) of its



534 affiliates, rights and benefits as a director that are provided on  
535 the same basis as those afforded by the acquiring entity generally  
536 to other directors of such entity or such affiliate.

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

554         (c) Notwithstanding any other provision of Section  
555 79-4-13.02, the articles of incorporation as originally filed or  
556 any amendment thereto may limit or eliminate appraisal rights for  
557 any class or series of preferred shares, but any such limitation  
558 or elimination contained in an amendment to the articles of  
559 incorporation that limits or eliminates appraisal rights for any  
560 of such shares that are outstanding immediately prior to the  
561 effective date of such amendment or that the corporation is or may  
562 be required to issue or sell thereafter pursuant to any  
563 conversion, exchange or to other right existing immediately before  
564 the effective date of such amendment shall not apply to any  
565 corporate action that becomes effective within one (1) year of  
566 that date if such action would otherwise afford appraisal rights.

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

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

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

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

578 79-4-14.03. (a) At any time after dissolution is  
579 authorized, the corporation may dissolve by delivering to the  
580 Secretary of State for filing articles of dissolution setting  
581 forth:

582 (1) The name of the corporation;

583 (2) The date dissolution was authorized; and

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

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

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

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

597 79-4-14.06. (a) A dissolved corporation may dispose of the  
598 known claims against it by notifying \* \* \* its known claimants in  
599 writing of the dissolution at any time after its effective date.

600           **(b)** The written notice must:

601                   (1) Describe information that must be included in a  
602 claim;

603                   (2) Provide a mailing address where a claim may be  
604 sent;

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

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

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

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

615                   (2) If a claimant whose claim was rejected by the  
616 dissolved corporation does not commence a proceeding to enforce  
617 the claim within ninety (90) days from the effective date of the  
618 rejection notice.

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

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

624           79-4-14.07. (a) A dissolved corporation may also publish  
625 notice of its dissolution and request that persons with claims  
626 against the dissolved corporation present them in accordance with  
627 the notice.

628           **(b)** The notice must:

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

633           (2) Describe the information that must be included in a  
634 claim and provide a mailing address where the claim may be sent;  
635 and

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

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

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

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

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

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

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

657           (2) Except as provided in Section 79-4-14.08(d), if the  
658 assets have been distributed in liquidation, against a shareholder  
659 of the dissolved corporation to the extent of the shareholder's  
660 pro rata share of the claim or the corporate assets distributed to  
661 the shareholder in liquidation, whichever is less, but a  
662 shareholder's total liability for all claims under this section  
663 may not exceed the total amount of assets distributed to the  
664 shareholder.

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

667 79-4-14.08. (a) A dissolved corporation that has published  
668 a notice under Section 79-4-14.07 may file an application with the  
669 chancery court of the county where the dissolved corporation's  
670 principal office (or, if none in this state, its registered  
671 office) is located for a determination of the amount and form of  
672 security to be provided for payment of claims that are contingent  
673 or have not been made known to the dissolved corporation or that  
674 are based on an event occurring after the effective date of  
675 dissolution but that, based on the facts known to the dissolved  
676 corporation, are reasonably estimated to arise after the effective  
677 date of dissolution. Provision need not be made for any claim  
678 that is or is reasonably anticipated to be barred under Section  
679 79-4-14.07(c).

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

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

690 (d) Provision by the dissolved corporation for security in  
691 the amount and the form ordered by the court under Section  
692 79-4-14.08(a) shall satisfy the dissolved corporation's  
693 obligations with respect to claims that are contingent, have not  
694 been made known to the dissolved corporation or are based on an  
695 event occurring after the effective date of dissolution, and such  
696 claims may not be enforced against a shareholder who received  
697 assets in liquidation.

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

700 79-4-14.09. (a) Directors shall cause the dissolved  
701 corporation to discharge or make reasonable provision for the  
702 payment of claims and make distributions of assets to shareholders  
703 after payment or provision for claims.

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

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

711 79-4-16.03. (a) A shareholder's agent or attorney has the  
712 same inspection and copying rights as the shareholder represented.

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

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

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

728 \* \* \*

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

731           79-4-16.05. (a) A director of a corporation is entitled to  
732 inspect and copy the books, records and documents of the  
733 corporation at any reasonable time to the extent reasonably  
734 related to the performance of the director's duties as a director,  
735 including duties as a member of a committee, but not for any other  
736 purpose or in any manner that would violate any duty to the  
737 corporation.

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

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

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

756           79-4-16.06. (a) Whenever notice is required to be given  
757 under any provision of this act to any shareholder, such notice  
758 shall not be required to be given if:

759           (1) Notice of two (2) consecutive annual meetings, and  
760 all notices of meetings during the period between such two (2)  
761 consecutive annual meetings, have been sent to such shareholder at  
762 such shareholder's address as shown on the records of the  
763 corporation and have been returned undeliverable; or

764           (2) All, but not less than two (2), payments or  
765 dividends on securities during a twelve-month period, or two (2)  
766 consecutive payments of dividends on securities during a period of  
767 more than twelve (12) months, have been sent to such shareholder  
768 at such shareholder's address as shown on the records of the  
769 corporation and have been returned undeliverable.

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

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