

By: Senator(s) Ross

To: Judiciary

SENATE BILL NO. 2470

1 AN ACT TO REVISE THE MISSISSIPPI BUSINESS CORPORATION ACT; TO
 2 AMEND SECTION 79-4-1.20, MISSISSIPPI CODE OF 1972, TO REVISE
 3 FILING REQUIREMENTS FOR DOCUMENTS; TO AMEND SECTION 79-4-1.40,
 4 MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS FOR THE ACT; TO
 5 AMEND SECTION 79-4-2.02, MISSISSIPPI CODE OF 1972, TO REVISE
 6 REQUIREMENTS FOR ARTICLES OF INCORPORATION; TO AMEND SECTIONS
 7 79-4-6.01 AND 79-4-6.02, MISSISSIPPI CODE OF 1972, TO REVISE
 8 AUTHORIZATION, CLASSES AND SERIES OF SHARES; TO REPEAL SECTION
 9 79-4-6.24, MISSISSIPPI CODE OF 1972, WHICH SETS FORTH PROVISIONS
 10 RELATING TO THE ISSUANCE OF RIGHTS, OPTIONS AND WARRANTS; TO AMEND
 11 SECTION 79-4-10.05, MISSISSIPPI CODE OF 1972, TO CORRECT INTERNAL
 12 REFERENCES FOR AMENDMENT OF THE ARTICLES OF INCORPORATION BY THE
 13 BOARD OF DIRECTORS; TO AMEND SECTION 79-4-10.06, MISSISSIPPI CODE
 14 OF 1972, TO REVISE PROVISIONS RELATING TO AMENDMENT OF THE
 15 ARTICLES OF INCORPORATION; TO AMEND SECTION 79-4-11.02,
 16 MISSISSIPPI CODE OF 1972, TO REVISE THE PROVISIONS CONCERNING
 17 DEPENDENT TERMS IN A PLAN OF MERGER; TO AMEND SECTION 79-4-11.03,
 18 MISSISSIPPI CODE OF 1972, TO REVISE THE PROVISIONS CONCERNING
 19 DEPENDENT TERMS IN A PLAN OF SHARE EXCHANGE; TO AMEND SECTION
 20 79-4-14.07, MISSISSIPPI CODE OF 1972, TO CORRECT INTERNAL
 21 REFERENCES; TO REPEAL SECTION 79-4-15.20 MISSISSIPPI CODE OF 1972,
 22 WHICH SETS FORTH PROVISIONS RELATING TO THE WITHDRAWAL OF FOREIGN
 23 CORPORATIONS; TO AMEND SECTION 79-4-16.01, MISSISSIPPI CODE OF
 24 1972, TO REVISE PROVISIONS REGARDING CORPORATE RECORDS; AND FOR
 25 RELATED PURPOSES.

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

27 **SECTION 1.** Section 79-4-1.20, Mississippi Code of 1972, is
 28 amended as follows:

29 79-4-1.20. (a) A document must satisfy the requirements of
 30 this section, and of any other section that adds to or varies
 31 these requirements, to be entitled to filing by the Secretary of
 32 State.

33 (b) Section 79-4-1.01 et seq. must require or permit filing
 34 the document in the office of the Secretary of State.

35 (c) The document must contain the information required by
 36 Section 79-4-1.01 et seq. It may contain other information as
 37 well.



38 (d) The document must be typewritten or printed, or, if
39 electronically transmitted, it must be in a format that can be
40 retrieved or reproduced by the Secretary of State in typewritten
41 or printed form.

42 (e) The document must be in the English language. A
43 corporate name need not be in English if written in English
44 letters or Arabic or Roman numerals, and the certificate of
45 existence required of foreign corporations need not be in English
46 if accompanied by a reasonably authenticated English translation.

47 (f) The document must be executed:

48 (1) By the chairman of the board of directors of a
49 domestic or foreign corporation, by its president, or by another
50 of its officers;

51 (2) If directors have not been selected or the
52 corporation has not been formed, by an incorporator; or

53 (3) If the corporation is in the hands of a receiver,
54 trustee or other court-appointed fiduciary, by that fiduciary.

55 (g) The person executing the document shall sign it and
56 state beneath or opposite his signature his name and the capacity
57 in which he signs. The document may but need not contain a
58 corporate seal, an attestation, acknowledgment or verification. A
59 document required or permitted to be filed under this chapter
60 which contains a copy of a signature, however made, is acceptable
61 for filing.

62 (h) If the Secretary of State has prescribed a mandatory
63 form for the document under Section 79-4-1.21, the document must
64 be in or on the prescribed form.

65 (i) The document must be delivered to the office of the
66 Secretary of State for filing. Delivery may be made by electronic
67 transmission if, to the extent and in the manner permitted by the
68 Secretary of State. If it is filed in typewritten or printed form
69 and not transmitted electronically, the Secretary of State may



70 require one exact or conformed copy to be delivered with the
71 document except as provided in Sections 79-4-5.03 and 79-4-15.09.

72 (j) When the document is delivered to the office of the
73 Secretary of State for filing, the correct filing fee, and any
74 franchise tax, license fee, or penalty required to be paid
75 therewith by this section or any other law must be paid or
76 provision for payment made in a manner permitted by the Secretary
77 of State.

78 (k) Whenever a provision of this chapter permits any of the
79 terms of a plan or a filed document to be dependent on facts
80 objectively ascertainable outside the plan or filed document, the
81 following provisions apply:

82 (1) The manner in which the facts will operate upon the
83 terms of the plan or filed document shall be set forth in the plan
84 or filed document.

85 (2) The facts may include, but are not limited to:

86 (i) Any of the following that is available in a
87 nationally recognized news or information medium either in print
88 or electronically: statistical or market indices, market prices
89 of any security or group of securities, interest rates, currency
90 exchange rates, or similar economic or financial data;

91 (ii) A determination or action by any person or
92 body, including the corporation or any other party to a plan or
93 filed document; or

94 (iii) The terms of, or actions taken under, an
95 agreement to which the corporation is a party, or any other
96 agreement or document.

97 (3) As used in this subsection:

98 (i) "Filed document" means a document filed with
99 the Secretary of State under any provision of this chapter except
100 Chapter 15 or Section 16.21; and

101 (ii) "Plan" means a plan of domestication,
102 nonprofit conversion, entity conversion, merger or share exchange.



103 (4) The following provisions of a plan or filed
104 document may not be made dependent on facts outside the plan or
105 filed document:

106 (i) The name and address of any person required in
107 a filed document.

108 (ii) The registered office of any entity required
109 in a filed document.

110 (iii) The registered agent of any entity required
111 in a filed document.

112 (iv) The number of authorized shares and
113 designation of each class or series of shares.

114 (v) The effective date of a filed document.

115 (vi) Any required statement in a filed document of
116 the date on which the underlying transaction was approved or the
117 manner in which that approval was given.

118 (5) If a provision of a filed document is made
119 dependent on a fact ascertainable outside of the filed document,
120 and that fact is not ascertainable by reference to a source
121 described in subsection (k) (2) (i) or a document that is a matter
122 of public record, or the affected shareholders have not received
123 notice of the fact from the corporation, then the corporation
124 shall file with the Secretary of State articles of amendment
125 setting forth the fact promptly after the time when the fact
126 referred to is first ascertainable or thereafter changes.
127 Articles of amendment under this subsection (k) (5) are deemed to
128 be authorized by the authorization of the original filed document
129 or plan to which they relate and may be filed by the corporation
130 without further action by the board of directors or the
131 shareholders.

132 **SECTION 2.** Section 79-4-1.40, Mississippi Code of 1972, is
133 amended as follows:

134 79-4-1.40. In Section 79-4-1.01 et seq.:



135 (1) "Articles of incorporation" include amended and
136 restated articles of incorporation and articles of merger.

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

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

143 (4) "Corporation" or "domestic corporation" means a
144 corporation for profit, which is not a foreign corporation,
145 incorporated under or subject to the provisions of Section
146 79-4-1.01 et seq.

147 (5) "Deliver" or "delivery" means any method of
148 delivery used in conventional commercial practice, including
149 delivery by hand, mail, commercial delivery and electronic
150 transmission.

151 (6) "Distribution" means a direct or indirect transfer
152 of money or other property (except its own shares) or incurrence
153 of indebtedness by a corporation to or for the benefit of its
154 shareholders in respect of any of its shares. A distribution may
155 be in the form of a declaration or payment of a dividend; a
156 purchase, redemption or other acquisition of shares; a
157 distribution of indebtedness; or otherwise.

158 (7) "Effective date of notice" is defined in Section
159 79-4-1.41.

160 (8) "Electronic transmission" or "electronically
161 transmitted" means any process of communication not directly
162 involving the physical transfer of paper that is suitable for the
163 retention, retrieval and reproduction of information by the
164 recipient.

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



167 (10) "Entity" includes corporation and foreign
168 corporation; not-for-profit corporation; profit and not-for-profit
169 unincorporated association; business trust, estate, partnership,
170 trust and two (2) or more persons having a joint or common
171 economic interest; and state, United States and foreign
172 government.

173 (11) "Facts objectively ascertainable" outside of a
174 filed document or plan is defined in Section 79-4-1.20(k).

175 (12) "Filing entity" means an other entity that is of a
176 type that is created by filing a public organic document.

177 (13) "Foreign corporation" means a corporation for
178 profit incorporated under a law other than the law of this state.

179 (14) "Governmental subdivision" includes authority,
180 county, district and municipality.

181 (15) "Includes" denotes a partial definition.

182 (16) "Individual" includes the estate of an incompetent
183 or deceased individual.

184 (17) "Means" denotes an exhaustive definition.

185 (18) "Notice" is defined in Section 79-4-1.41.

186 (19) "Person" includes individual and entity.

187 (20) "Principal office" means the office (in or out of
188 this state) so designated in the annual report where the principal
189 executive offices of a domestic or foreign corporation are
190 located.

191 (21) "Proceeding" includes civil suit and criminal,
192 administrative and investigatory action.

193 (22) "Record date" means the date established under
194 Article 6 or 7 on which a corporation determines the identity of
195 its shareholders and their shareholdings for purposes of Section
196 79-4-1.01 et seq. The determinations shall be made as of the
197 close of business on the record date unless another time for doing
198 so is specified when the record date is fixed.



199 (23) "Secretary" means the corporate officer to whom
200 the board of directors has delegated responsibility under Section
201 79-4-8.40(c) for custody of the minutes of the meetings of the
202 board of directors and of the shareholders and for authenticating
203 records of the corporation.

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

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

210 (26) "Sign" or "signature" includes any manual,
211 facsimile, conformed or electronic signature.

212 (27) "State," when referring to a part of the United
213 States, includes a state and commonwealth (and their agencies and
214 governmental subdivisions) and a territory, and insular possession
215 (and their agencies and governmental subdivisions) of the United
216 States.

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

219 (29) "United States" includes district, authority,
220 bureau, commission, department and any other agency of the United
221 States.

222 (30) "Voting group" means all shares of one or more
223 classes or series that under the articles of incorporation or
224 Section 79-4-1.01 et seq. are entitled to vote and be counted
225 together collectively on a matter at a meeting of shareholders.
226 All shares entitled by the articles of incorporation or Section
227 79-4-1.01 et seq. to vote generally on the matter are for that
228 purpose a single voting group.

229 (31) "Voting power" means the current power to vote in
230 the election of directors.



231 **SECTION 3.** Section 79-4-2.02, Mississippi Code of 1972, is
232 amended as follows:

233 79-4-2.02. (a) The articles of incorporation must set
234 forth:

235 (1) A corporate name for the corporation that satisfies
236 the requirements of Section 79-4-4.01;

237 (2) The number of shares the corporation is authorized
238 to issue and any information concerning the authorized shares as
239 required by Section 79-4-6.01;

240 (3) The street address of the corporation's initial
241 registered office and the name of its initial registered agent at
242 that office; and

243 (4) The name and address of each incorporator.

244 (b) The articles of incorporation may set forth:

245 (1) The names and addresses of the individuals who are
246 to serve as the initial directors;

247 (2) Provisions not inconsistent with law regarding:

248 (i) The purpose or purposes for which the
249 corporation is organized;

250 (ii) Managing the business and regulating the
251 affairs of the corporation;

252 (iii) Defining, limiting and regulating the powers
253 of the corporation, its board of directors and shareholders; and

254 (iv) A par value for authorized shares or classes
255 of shares;

256 (3) Any provision that under Section 79-4-1.01 et seq.
257 is required or permitted to be set forth in the bylaws;

258 (4) A provision eliminating or limiting the liability
259 of a director to the corporation or its shareholders for money
260 damages for any action taken, or any failure to take any action,
261 as a director, except liability for:

262 (i) The amount of a financial benefit received by
263 a director to which he is not entitled;



264 (ii) An intentional infliction of harm on the
265 corporation or the shareholders;
266 (iii) A violation of Section 79-4-8.33; or
267 (iv) An intentional violation of criminal law; and
268 (5) A provision permitting or making obligatory
269 indemnification of a director for liability as defined in Section
270 79-4-8.50(5) to any person for any action taken, or any failure to
271 take any action, as a director, except liability for:

272 (i) Receipt of a financial benefit to which he is
273 not entitled;

274 (ii) An intentional infliction of harm on the
275 corporation or its shareholders;

276 (iii) A violation of Section 79-4-8.33; or

277 (iv) An intentional violation of criminal law.

278 (c) The articles of incorporation need not set forth any of
279 the corporate powers enumerated in Section 79-4-1.01 et seq.

280 (d) For the purposes of this section, a "director" shall
281 include any person vested with the discretion or powers of a
282 director under Section 79-4-7.32.

283 (e) Provisions of the articles of incorporation may be made
284 dependent upon facts objectively ascertainable outside the
285 articles of incorporation in accordance with Section 79-4-1.20(k).

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

288 79-4-6.01. (a) The articles of incorporation must set forth
289 any classes of shares and series of shares within a class, and the
290 number of shares of each class and series, that the corporation is
291 authorized to issue. If more than one (1) class or series of
292 shares is authorized, the articles of incorporation must prescribe
293 a distinguishing designation for each class or series and must
294 describe, prior to the issuance of shares of a class or series,
295 the terms, including the preferences, rights, and limitations of
296 that class or series. Except to the extent varied as permitted by



297 this section, all shares of a class or series must have terms,
298 including preferences, rights and limitations that are identical
299 with those of other shares of the same class or series.

300 (b) The articles of incorporation must authorize:

301 (1) One or more classes or series of shares that
302 together have unlimited voting rights, and

303 (2) One or more classes or series of shares (which may
304 be the same class or classes as those with voting rights) that
305 together are entitled to receive the net assets of the corporation
306 upon dissolution.

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

309 (1) Have special, conditional or limited voting rights,
310 or no right to vote, except to the extent otherwise provided by
311 Section 79-4-1.01 et seq.;

312 (2) Are redeemable or convertible as specified in the
313 articles of incorporation (i) at the option of the corporation,
314 the shareholder or another person or upon the occurrence of a
315 specified event; (ii) for cash, indebtedness, securities or other
316 property; and (iii) at prices and in amounts specified or
317 determined in accordance with a * * * formula * * *;

318 (3) Entitle the holders to distributions calculated in
319 any manner, including dividends that may be cumulative,
320 noncumulative or partially cumulative; or

321 (4) Have preference over any other class or series of
322 shares with respect to distributions, including * * *
323 distributions upon the dissolution of the corporation.

324 (d) * * * Terms of shares may be made dependent upon facts
325 objectively ascertainable outside the articles of incorporation in
326 accordance with Section 79-4-1.20(k).

327 (e) Any of the terms of shares or series so long as such
328 variations are expressly set forth in the articles of
329 incorporation.



330 (f) The description of the preferences, rights and
331 limitations of classes or series of shares * * * in subsection (c)
332 is not exhaustive.

333 **SECTION 5.** Section 79-4-6.02, Mississippi Code of 1972, is
334 amended as follows:

335 79-4-6.02. (a) If the articles of incorporation so provide,
336 the board of directors is authorized without shareholder approval,
337 to:

338 (1) Classify any unissued shares into one or more
339 classes or into one or more series within a class;

340 (2) Reclassify any unissued shares of any class into
341 one or more classes or into one or more series within one or more
342 classes; or

343 (3) Reclassify any unissued shares of any series of any
344 class into one or more classes or into one or more series within a
345 class.

346 (b) If the board of directors acts pursuant to subsection
347 (a), it must determine the terms, including the preferences,
348 rights and limitations, to the same extent * * * permitted under
349 Section 79-4-6.01 of:

350 (1) Any class of shares before the issuance of any
351 shares of that class, or

352 (2) Any series within a class before the issuance of
353 any shares of that series.

354 * * *

355 (c) Before issuing any shares of a class or series created
356 under this section, the corporation must deliver to the Secretary
357 of State for filing articles of amendment setting forth the terms
358 determined under subsection (a) * * *.

359 * * *

360 **SECTION 6.** Section 79-4-6.24, Mississippi Code of 1972,
361 which sets forth provisions relating to the issuance of rights,
362 options and warrants, is repealed.



363 **SECTION 7.** Section 79-4-10.05, Mississippi Code of 1972, is
364 amended as follows:

365 79-4-10.05. Unless the articles of incorporation provide
366 otherwise, a corporation's board of directors may adopt amendments
367 to the corporation's articles of incorporation without shareholder
368 approval:

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

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

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

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

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

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

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

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

393 (7) To delete a class of shares from the articles of
394 incorporation, as a result of the operation of Section
395 79-4-6.31(b), when there are no remaining shares of the class



396 because the corporation has acquired all shares of the class and
397 the articles of incorporation prohibit the reissue of the acquired
398 shares; or

399 (8) To make any change expressly permitted by Section
400 79-4-6.02(a) or (b) to be made without shareholder approval.

401 **SECTION 8.** Section 79-4-10.06, Mississippi Code of 1972, is
402 amended as follows:

403 79-4-10.06. After an amendment to the articles of
404 incorporation has been adopted and approved in the manner required
405 by the Mississippi Business Corporation Act and by the articles of
406 incorporation, the corporation shall deliver to the Secretary of
407 State, for filing, articles of amendment, which shall set forth:

408 (1) The name of the corporation;

409 (2) The text of each amendment adopted, or the
410 information required by Section 79-4-1.20(k)(5);

411 (3) If an amendment provides for an exchange,
412 reclassification or cancellation of issued shares, provisions for
413 implementing the amendment (if not contained in the amendment
414 itself), which may be made dependent upon facts objectively
415 ascertainable outside the articles of amendment in accordance with
416 Section 79-4-1.20(k);

417 (4) The date of each amendment's adoption; and

418 (5) If an amendment:

419 (a) Was adopted by the incorporators or board of
420 directors without shareholder approval, a statement that the
421 amendment was duly approved by the incorporators or by the board
422 of directors, as the case may be, and that shareholder approval
423 was not required;

424 (b) Required approval by the shareholders, a
425 statement that the amendment was duly approved by the shareholders
426 in the manner required by the Mississippi Business Corporation Act
427 and by the articles of incorporation; or



428 (c) Is being filed pursuant to Section
429 79-4-1.20(k)(5), a statement to that effect.

430 **SECTION 9.** Section 79-4-11.02, Mississippi Code of 1972, is
431 amended as follows:

432 79-4-11.02. (a) One or more domestic corporations may merge
433 with a domestic or foreign corporation or other entity pursuant to
434 a plan of merger.

435 (b) A foreign corporation, or a domestic or foreign other
436 entity, may be a party to the merger, or may be created by the
437 terms of the plan of merger, only if:

438 (1) The merger is permitted by the laws under which the
439 corporation or other entity is organized or by which it is
440 governed; and

441 (2) In effecting the merger, the corporation or other
442 entity complies with such laws and with its articles of
443 incorporation or organizational documents.

444 (c) The plan of merger must include:

445 (1) The name of each corporation or other entity that
446 will merge and the name of the corporation or other entity that
447 will be the survivor of the merger;

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

449 (3) The manner and basis of converting the shares of
450 each merging corporation and interest of each merging other entity
451 into shares or other securities, interests, obligations, rights to
452 acquire shares or other securities, cash, other property, or any
453 combination of the foregoing;

454 (4) The articles of incorporation of any corporation,
455 or the organizational documents of any other entity to be created
456 by the merger, or if a new corporation or other entity is not to
457 be created by the merger, any amendments to the survivor's
458 articles of incorporation, or organizational documents; and

459 (5) Any other provisions required by the laws under
460 which any party to the merger is organized or by which it is



461 governed, or by the articles of incorporation or organizational
462 documents of any such party.

463 (d) * * * Terms of a plan of merger may be made dependent on
464 facts objectively ascertainable outside the plan in accordance
465 with Section 79-4-1.20(k). * * *

466 (e) The plan of merger may also include a provision that the
467 plan may be amended prior to filing the articles of merger with
468 the Secretary of State, provided that if the shareholders of a
469 domestic corporation that is a party to the merger are required or
470 permitted to vote on the plan, the plan must provide that
471 subsequent to approval of the plan by such shareholders the plan
472 may not be amended to:

473 (1) Change the amount or kind of shares or other
474 securities, interests, obligations, rights to acquire shares or
475 other securities, cash, or other property to be received by the
476 shareholders of or owners of interests in any party to the merger
477 upon conversion of their shares or interests under the plan;

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

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

487 **SECTION 10.** Section 79-4-11.03, Mississippi Code of 1972, is
488 amended as follows:

489 79-4-11.03. (a) Through a share exchange:

490 (1) A domestic corporation may acquire all of the
491 shares of one or more classes or series of shares of another
492 domestic or foreign corporation, or all of the interests of one or
493 more classes or series of interests of a domestic or foreign other



494 entity, in exchange for shares or other securities, interests,
495 obligations, rights to acquire shares or other securities, cash,
496 other property, or any combination of the foregoing, pursuant to a
497 plan of share exchange; or

498 (2) All of the shares of one or more classes or series
499 of shares of a domestic corporation may be acquired by another
500 domestic or foreign corporation or other entity, in exchange for
501 shares or other securities, interests, obligations, rights to
502 acquire shares or other securities, cash, other property, or any
503 combination of the foregoing, pursuant to a plan of share
504 exchange.

505 (b) A foreign corporation, or a domestic or foreign other
506 entity, may be a party to the share exchange only if:

507 (1) The share exchange is permitted by the laws under
508 which the corporation or other entity is organized or by which it
509 is governed; and

510 (2) In effecting the share exchange, the corporation or
511 other entity complies with such laws and with its articles of
512 incorporation or organizational documents.

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

514 (1) The name of each corporation or other entity whose
515 shares or interests will be acquired and the name of the
516 corporation or other entity that will acquire those shares or
517 interests;

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

519 (3) The manner and basis of exchanging shares of a
520 corporation or interests in an other entity whose shares or
521 interests will be acquired under the share exchange into shares or
522 other securities, interests, obligations, rights to acquire shares
523 or other securities, cash, other property, or any combination of
524 the foregoing; and

525 (4) Any other provisions required by the laws under
526 which any party to the share exchange is organized or by the



527 articles of incorporation or organizational documents of any such
528 party.

529 (d) * * * Terms of a plan of share exchange may be made
530 dependent on facts objectively ascertainable outside the plan in
531 accordance with Section 79-4-1.20(k). * * *

532 (e) The plan of share exchange may also include a provision
533 that the plan may be amended prior to filing of the articles of
534 share exchange with the Secretary of State, provided that if the
535 shareholders of a domestic corporation that is a party to the
536 share exchange are required or permitted to vote on the plan, the
537 plan must provide that subsequent to approval of the plan by such
538 shareholders the plan may not be amended to:

539 (1) Change the amount or kind of shares or other
540 securities, interests, obligations, rights to acquire shares or
541 other securities, cash, or other property to be issued by the
542 corporation or to be received by the shareholders of or owners of
543 interests in any party to the share exchange in exchange for their
544 shares or interests under the plan; or

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

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

552 **SECTION 11.** Section 79-4-14.07, Mississippi Code of 1972, is
553 amended as follows:

554 79-4-14.07. (a) A dissolved corporation may also publish
555 notice of its dissolution and request that persons with claims
556 against the dissolved corporation present them in accordance with
557 the notice.

558 (b) The notice must:



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

563 (2) Describe the information that must be included in a
564 claim and provide a mailing address where the claim may be sent;
565 and

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

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

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

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

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

583 (d) A claim that is not barred by Section 79-4-14.06(c) or
584 Section 79-4-14.07(c) may be enforced:

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

587 (2) Except as provided in Section 79-4-14.08(d), if the
588 assets have been distributed in liquidation, against a shareholder
589 of the dissolved corporation to the extent of the shareholder's
590 pro rata share of the claim or the corporate assets distributed to
591 the shareholder in liquidation, whichever is less, but a



592 shareholder's total liability for all claims under this section
593 may not exceed the total amount of assets distributed to the
594 shareholder.

595 **SECTION 12.** Section 79-4-15.20, Mississippi Code of 1972,
596 which sets forth provisions relating to the withdrawal of foreign
597 corporations, is repealed.

598 **SECTION 13.** Section 79-4-16.01, Mississippi Code of 1972, is
599 amended as follows:

600 79-4-16.01. (a) A corporation shall keep as permanent
601 records minutes of all meetings of its shareholders and board of
602 directors, a record of all actions taken by the shareholders or
603 board of directors without a meeting, and a record of all actions
604 taken by a committee of the board of directors in place of the
605 board of directors on behalf of the corporation.

606 (b) A corporation shall maintain appropriate accounting
607 records.

608 (c) A corporation or its agent shall maintain a record of
609 its shareholders, in a form that permits preparation of a list of
610 the names and addresses of all shareholders, in alphabetical order
611 by class of shares showing the number and class of shares held by
612 each.

613 (d) A corporation shall maintain its records in written form
614 or in another form capable of conversion into written form within
615 a reasonable time.

616 (e) A corporation shall keep a copy of the following records
617 at its principal office:

618 (1) Its articles or restated articles of incorporation,
619 all amendments to them currently in effect and any notices to
620 shareholders referred to in Section 79-4-1.20(k)(5) regarding
621 facts on which a filed document is dependent;

622 (2) Its bylaws or restated bylaws and all amendments to
623 them currently in effect;



624 (3) Resolutions adopted by its board of directors
625 creating one or more classes or series of shares, and fixing their
626 relative rights, preferences and limitations, if shares issued
627 pursuant to those resolutions are outstanding;

628 (4) The minutes of all shareholders' meetings, and
629 records of all action taken by shareholders without a meeting, for
630 the past three (3) years;

631 (5) All written communications to shareholders
632 generally within the past three (3) years, including the financial
633 statements furnished for the past three (3) years under Section
634 79-4-16.20;

635 (6) A list of the names and business addresses of its
636 current directors and officers; and

637 (7) Its most recent annual report delivered to the
638 Secretary of State under Section 79-4-16.22.

639 **SECTION 14.** This act shall take effect and be in force from
640 and after July 1, 2003.

