

By: Representative Pierce

To: Judiciary A

HOUSE BILL NO. 972  
(As Passed the House)

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  
22 1972, WHICH SETS FORTH PROVISIONS RELATING TO THE WITHDRAWAL OF  
23 FOREIGN CORPORATIONS; TO AMEND SECTION 79-4-16.01, MISSISSIPPI  
24 CODE OF 1972, TO REVISE PROVISIONS REGARDING CORPORATE RECORDS;  
25 AND FOR 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 may vary among holders of the  
328 same class or series so long as such variations are expressly set  
329 forth in the articles of incorporation.

330       (f) The description of the \* \* \* preferences, rights and  
331 limitations \* \* \* of \* \* \* classes or series of shares in  
332 subsection (c) 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  
465 accordance 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, 2004.