

By: Representative Pierce

To: Judiciary A

HOUSE BILL NO. 972
(As Sent to Governor)

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, AS AMENDED BY HOUSE BILL NO. 1517, 2004
17 REGULAR SESSION, TO REVISE THE PROVISIONS CONCERNING DEPENDENT
18 TERMS IN A PLAN OF MERGER; TO AMEND SECTION 79-4-11.03,
19 MISSISSIPPI CODE OF 1972, TO REVISE THE PROVISIONS CONCERNING
20 DEPENDENT TERMS IN A PLAN OF SHARE EXCHANGE; TO AMEND SECTION
21 79-4-14.07, MISSISSIPPI CODE OF 1972, TO CORRECT INTERNAL
22 REFERENCES; TO REPEAL SECTION 79-4-15.20, MISSISSIPPI CODE OF
23 1972, WHICH SETS FORTH PROVISIONS RELATING TO THE WITHDRAWAL OF
24 FOREIGN CORPORATIONS; TO AMEND SECTION 79-4-16.01, MISSISSIPPI
25 CODE OF 1972, TO REVISE PROVISIONS REGARDING CORPORATE RECORDS; TO
26 AMEND SECTION 79-4-16.20, MISSISSIPPI CODE OF 1972, TO CLARIFY
27 THAT ANNUAL FINANCIAL STATEMENTS MAY BE DELIVERED BY METHODS OTHER
28 THAN MAIL; AND FOR RELATED PURPOSES.

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

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

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

36 (b) Section 79-4-1.01 et seq. must require or permit filing
37 the document in the Office of the Secretary of State.

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

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

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

50 (f) The document must be executed:

51 (1) By the chairman of the board of directors of a
52 domestic or foreign corporation, by its president, or by another
53 of its officers;

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

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

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

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

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

73 require one (1) exact or conformed copy to be delivered with the
74 document except as provided in Sections 79-4-5.03 and 79-4-15.09.

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

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

85 (1) The manner in which the facts will operate upon the
86 terms of the plan or filed document shall be set forth in the plan
87 or filed document.

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

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

94 (ii) A determination or action by any person or
95 body, including the corporation or any other party to a plan or
96 filed document; or

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

100 (3) As used in this subsection:

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

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

106 (4) The following provisions of a plan or filed
107 document may not be made dependent on facts outside the plan or
108 filed document:

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

111 (ii) The registered office of any entity required
112 in a filed document.

113 (iii) The registered agent of any entity required
114 in a filed document.

115 (iv) The number of authorized shares and
116 designation of each class or series of shares.

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

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

121 (5) If a provision of a filed document is made
122 dependent on a fact ascertainable outside of the filed document,
123 and that fact is not ascertainable by reference to a source
124 described in subsection (k)(2)(i) or a document that is a matter
125 of public record, or the affected shareholders have not received
126 notice of the fact from the corporation, then the corporation
127 shall file with the Secretary of State articles of amendment
128 setting forth the fact promptly after the time when the fact
129 referred to is first ascertainable or thereafter changes.

130 Articles of amendment under this subsection (k)(5) are deemed to
131 be authorized by the authorization of the original filed document
132 or plan to which they relate and may be filed by the corporation
133 without further action by the board of directors or the
134 shareholders.

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

137 79-4-1.40. In Section 79-4-1.01 et seq.:

138 (1) "Articles of incorporation" include amended and
139 restated articles of incorporation and articles of merger.

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

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

146 (4) "Corporation" or "domestic corporation" means a
147 corporation for profit, which is not a foreign corporation,
148 incorporated under or subject to the provisions of Section
149 79-4-1.01 et seq.

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

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

161 (7) "Effective date of notice" is defined in Section
162 79-4-1.41.

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

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

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

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

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

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

182 (14) "Governmental subdivision" includes authority,
183 county, district and municipality.

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

185 (16) "Individual" includes the estate of an incompetent
186 or deceased individual.

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

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

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

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

194 (21) "Proceeding" includes civil suit and criminal,
195 administrative and investigatory action.

196 (22) "Record date" means the date established under
197 Article 6 or 7 on which a corporation determines the identity of
198 its shareholders and their shareholdings for purposes of Section
199 79-4-1.01 et seq. The determinations shall be made as of the
200 close of business on the record date unless another time for doing
201 so is specified when the record date is fixed.

202 (23) "Secretary" means the corporate officer to whom
203 the board of directors has delegated responsibility under Section
204 79-4-8.40(c) for custody of the minutes of the meetings of the
205 board of directors and of the shareholders and for authenticating
206 records of the corporation.

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

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

213 (26) "Sign" or "signature" includes any manual,
214 facsimile, conformed or electronic signature.

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

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

222 (29) "United States" includes district, authority,
223 bureau, commission, department and any other agency of the United
224 States.

225 (30) "Voting group" means all shares of one or more
226 classes or series that under the articles of incorporation or
227 Section 79-4-1.01 et seq. are entitled to vote and be counted
228 together collectively on a matter at a meeting of shareholders.
229 All shares entitled by the articles of incorporation or Section
230 79-4-1.01 et seq. to vote generally on the matter are for that
231 purpose a single voting group.

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

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

236 79-4-2.02. (a) The articles of incorporation must set
237 forth:

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

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

243 (3) The street address of the corporation's initial
244 registered office and the name of its initial registered agent at
245 that office; and

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

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

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

250 (2) Provisions not inconsistent with law regarding:

251 (i) The purpose or purposes for which the
252 corporation is organized;

253 (ii) Managing the business and regulating the
254 affairs of the corporation;

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

257 (iv) A par value for authorized shares or classes
258 of shares;

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

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

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

267 (ii) An intentional infliction of harm on the
268 corporation or the shareholders;
269 (iii) A violation of Section 79-4-8.33; or
270 (iv) An intentional violation of criminal law; and
271 (5) A provision permitting or making obligatory
272 indemnification of a director for liability as defined in Section
273 79-4-8.50(5) to any person for any action taken, or any failure to
274 take any action, as a director, except liability for:

275 (i) Receipt of a financial benefit to which he is
276 not entitled;

277 (ii) An intentional infliction of harm on the
278 corporation or its shareholders;

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

280 (iv) An intentional violation of criminal law.

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

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

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

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

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

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

303 (b) The articles of incorporation must authorize:

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

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

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

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

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

321 (3) Entitle the holders to distributions calculated in
322 any manner, including dividends that may be cumulative,
323 noncumulative or partially cumulative; or

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

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

330 (e) Any of the terms of shares may vary among holders of the
331 same class or series so long as such variations are expressly set
332 forth in the articles of incorporation.

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

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

338 79-4-6.02. (a) If the articles of incorporation so provide,
339 the board of directors is authorized without shareholder approval,
340 to:

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

343 (2) Reclassify any unissued shares of any class into
344 one or more classes or into one or more series within one or more
345 classes; or

346 (3) Reclassify any unissued shares of any series of any
347 class into one or more classes or into one or more series within a
348 class.

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

353 (1) Any class of shares before the issuance of any
354 shares of that class, or

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

357 * * *

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

362 * * *

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

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

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

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

374 (2) To delete the names and addresses of the initial
375 directors;

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

379 (4) If the corporation has only one (1) class of shares
380 outstanding:

381 (a) To change each issued and unissued authorized
382 share of the class into a greater number of whole shares of that
383 class; or

384 (b) To increase the number of authorized shares of
385 the class to the extent necessary to permit the issuance of shares
386 as a share dividend;

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

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

396 (7) To delete a class of shares from the articles of
397 incorporation, as a result of the operation of Section
398 79-4-6.31(b), when there are no remaining shares of the class

399 because the corporation has acquired all shares of the class and
400 the articles of incorporation prohibit the reissue of the acquired
401 shares; or

402 (8) To make any change expressly permitted by Section
403 79-4-6.02(a) or (b) to be made without shareholder approval.

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

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

411 (1) The name of the corporation;

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

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

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

421 (5) If an amendment:

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

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

431 (c) Is being filed pursuant to Section
432 79-4-1.20(k)(5), a statement to that effect.

433 **SECTION 9.** Section 79-4-11.02, Mississippi Code of 1972, as
434 amended by House Bill No. 1517, 2004 Regular Session, is amended
435 as follows:

436 79-4-11.02. (a) One or more domestic corporations may merge
437 with a domestic or foreign corporation or other entity pursuant to
438 a plan of merger.

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

442 (1) The merger is permitted by the laws under which the
443 corporation or other entity is organized or by which it is
444 governed; and

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

448 (c) The plan of merger must include:

449 (1) The name of each corporation or other entity that
450 will merge and the name of the corporation or other entity that
451 will be the survivor of the merger;

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

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

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

463 (5) Any other provisions required by the laws under
464 which any party to the merger is organized or by which it is
465 governed, or by the articles of incorporation or organizational
466 documents of any such party.

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

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

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

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

488 (3) Change any of the other terms or conditions of the
489 plan if the change would adversely affect such shareholders in any
490 material respect.

491 (f) Liability from a merger shall be limited as provided in
492 Sections 1 through 5 of House Bill No. 1517, 2004 Regular Session.

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

495 79-4-11.03. (a) Through a share exchange:

496 (1) A domestic corporation may acquire all of the
497 shares of one or more classes or series of shares of another
498 domestic or foreign corporation, or all of the interests of one or
499 more classes or series of interests of a domestic or foreign other
500 entity, in exchange for shares or other securities, interests,
501 obligations, rights to acquire shares or other securities, cash,
502 other property, or any combination of the foregoing, pursuant to a
503 plan of share exchange; or

504 (2) All of the shares of one or more classes or series
505 of shares of a domestic corporation may be acquired by another
506 domestic or foreign corporation or other entity, in exchange for
507 shares or other securities, interests, obligations, rights to
508 acquire shares or other securities, cash, other property, or any
509 combination of the foregoing, pursuant to a plan of share
510 exchange.

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

513 (1) The share exchange is permitted by the laws under
514 which the corporation or other entity is organized or by which it
515 is governed; and

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

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

520 (1) The name of each corporation or other entity whose
521 shares or interests will be acquired and the name of the
522 corporation or other entity that will acquire those shares or
523 interests;

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

525 (3) The manner and basis of exchanging shares of a
526 corporation or interests in an other entity whose shares or
527 interests will be acquired under the share exchange into shares or
528 other securities, interests, obligations, rights to acquire shares

529 or other securities, cash, other property, or any combination of
530 the foregoing; and

531 (4) Any other provisions required by the laws under
532 which any party to the share exchange is organized or by the
533 articles of incorporation or organizational documents of any such
534 party.

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

538 (e) The plan of share exchange may also include a provision
539 that the plan may be amended prior to filing of the articles of
540 share exchange with the Secretary of State, provided that if the
541 shareholders of a domestic corporation that is a party to the
542 share exchange are required or permitted to vote on the plan, the
543 plan must provide that subsequent to approval of the plan by such
544 shareholders the plan may not be amended to:

545 (1) Change the amount or kind of shares or other
546 securities, interests, obligations, rights to acquire shares or
547 other securities, cash, or other property to be issued by the
548 corporation or to be received by the shareholders of or owners of
549 interests in any party to the share exchange in exchange for their
550 shares or interests under the plan; or

551 (2) Change any of the terms or conditions of the plan
552 if the change would adversely affect such shareholders in any
553 material respect.

554 (f) Section 79-4-11.03 does not limit the power of a
555 domestic corporation to acquire shares of another corporation or
556 interests in another entity in a transaction other than a share
557 exchange.

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

560 79-4-14.07. (a) A dissolved corporation may also publish
561 notice of its dissolution and request that persons with claims

562 against the dissolved corporation present them in accordance with
563 the notice.

564 (b) The notice must:

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

569 (2) Describe the information that must be included in a
570 claim and provide a mailing address where the claim may be sent;
571 and

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

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

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

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

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

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

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

593 (2) Except as provided in Section 79-4-14.08(d), if the
594 assets have been distributed in liquidation, against a shareholder

595 of the dissolved corporation to the extent of the shareholder's
596 pro rata share of the claim or the corporate assets distributed to
597 the shareholder in liquidation, whichever is less, but a
598 shareholder's total liability for all claims under this section
599 may not exceed the total amount of assets distributed to the
600 shareholder.

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

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

606 79-4-16.01. (a) A corporation shall keep as permanent
607 records minutes of all meetings of its shareholders and board of
608 directors, a record of all actions taken by the shareholders or
609 board of directors without a meeting, and a record of all actions
610 taken by a committee of the board of directors in place of the
611 board of directors on behalf of the corporation.

612 (b) A corporation shall maintain appropriate accounting
613 records.

614 (c) A corporation or its agent shall maintain a record of
615 its shareholders, in a form that permits preparation of a list of
616 the names and addresses of all shareholders, in alphabetical order
617 by class of shares showing the number and class of shares held by
618 each.

619 (d) A corporation shall maintain its records in written form
620 or in another form capable of conversion into written form within
621 a reasonable time.

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

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

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

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

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

637 (5) All written communications to shareholders
638 generally within the past three (3) years, including the financial
639 statements furnished for the past three (3) years under Section
640 79-4-16.20;

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

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

645 **SECTION 14.** Section 79-4-16.20, Mississippi Code of 1972, is
646 amended as follows:

647 79-4-16.20. (a) A corporation shall furnish its
648 shareholders annual financial statements, which may be
649 consolidated or combined statements of the corporation and one or
650 more of its subsidiaries, as appropriate, that include a balance
651 sheet as of the end of the fiscal year, an income statement for
652 that year, and a statement of changes in shareholders' equity for
653 the year unless that information appears elsewhere in the
654 financial statements. If financial statements are prepared for
655 the corporation on the basis of generally accepted accounting
656 principles, the annual financial statements must also be prepared
657 on that basis.

658 (b) If the annual financial statements are reported upon by
659 a public accountant, his report must accompany them. If not, the

660 statements must be accompanied by a statement of the president or
661 the person responsible for the corporation's accounting records:

662 (1) Stating his reasonable belief whether the
663 statements were prepared on the basis of generally accepted
664 accounting principles and, if not, describing the basis of
665 preparation; and

666 (2) Describing any respects in which the statements
667 were not prepared on a basis of accounting consistent with the
668 statements prepared for the preceding year.

669 (c) A corporation shall deliver the annual financial
670 statements to each shareholder within one hundred twenty (120)
671 days after the close of each fiscal year. Thereafter, on written
672 request from a shareholder to whom the statements were not
673 delivered, the corporation shall mail him the latest financial
674 statements.

675 **SECTION 15.** This act shall take effect and be in force from
676 and after July 1, 2004.