

By: Senator(s) Ross

To: Judiciary, Division A

SENATE BILL NO. 2553  
(As Passed the Senate)

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; TO AMEND  
 25 SECTION 79-4-16.20, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT  
 26 ANNUAL FINANCIAL STATEMENTS MAY BE DELIVERED BY METHODS OTHER THAN  
 27 MAIL; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

49 (f) The document must be executed:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

99 (3) As used in this subsection:

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

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

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

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

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

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

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

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

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

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

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

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

136           79-4-1.40. In Section 79-4-1.01 et seq.:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

235           79-4-2.02. (a) The articles of incorporation must set  
236 forth:

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

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

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

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

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

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

249                   (2) Provisions not inconsistent with law regarding:

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

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

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

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

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

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

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



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

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

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

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

279 (iv) An intentional violation of criminal law.

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

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

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

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

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

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

302 (b) The articles of incorporation must authorize:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

356       \* \* \*

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

361       \* \* \*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

410 (1) The name of the corporation;

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

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

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

420 (5) If an amendment:

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

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

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

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

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

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

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

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

446           (c) The plan of merger must include:

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

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

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

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

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

463 governed, or by the articles of incorporation or organizational  
464 documents of any such party.

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

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

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

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

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

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

491 79-4-11.03. (a) Through a share exchange:

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

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

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

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

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

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

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

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

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

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

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



529 articles of incorporation or organizational documents of any such  
530 party.

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

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

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

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

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

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

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

560 (b) The notice must:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

608       (b) A corporation shall maintain appropriate accounting  
609 records.

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

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

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

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

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

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

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

633           (5) All written communications to shareholders  
634 generally within the past three (3) years, including the financial  
635 statements furnished for the past three (3) years under Section  
636 79-4-16.20;

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

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

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

643           79-4-16.20. (a) A corporation shall furnish its  
644 shareholders annual financial statements, which may be  
645 consolidated or combined statements of the corporation and one or  
646 more of its subsidiaries, as appropriate, that include a balance  
647 sheet as of the end of the fiscal year, an income statement for  
648 that year, and a statement of changes in shareholders' equity for  
649 the year unless that information appears elsewhere in the  
650 financial statements. If financial statements are prepared for  
651 the corporation on the basis of generally accepted accounting  
652 principles, the annual financial statements must also be prepared  
653 on that basis.

654           (b) If the annual financial statements are reported upon by  
655 a public accountant, his report must accompany them. If not, the  
656 statements must be accompanied by a statement of the president or  
657 the person responsible for the corporation's accounting records:

658           (1) Stating his reasonable belief whether the  
659 statements were prepared on the basis of generally accepted  
660 accounting principles and, if not, describing the basis of  
661 preparation; and

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

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

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