

By: Senator(s) Ross

To: Judiciary, Division A

## SENATE BILL NO. 2684

1 AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE MODEL BUSINESS  
 2 CORPORATION ACT; TO AMEND SECTION 79-4-1.40, MISSISSIPPI CODE OF  
 3 1972, TO REVISE DEFINITIONS UNDER THE ACT; TO AMEND SECTION  
 4 79-4-1.41, MISSISSIPPI CODE OF 1972, TO CLARIFY NOTICE; TO CREATE  
 5 SECTION 79-4-1.44, MISSISSIPPI CODE OF 1972, TO AUTHORIZE  
 6 HOUSEHOLDING AS IT RELATES TO PROVIDING INDIVIDUAL NOTICES; TO  
 7 AMEND SECTION 79-4-7.01, MISSISSIPPI CODE OF 1972, TO REVISE  
 8 ELECTION OF DIRECTORS AT THE ANNUAL MEETING; TO AMEND SECTION  
 9 79-4-7.03, MISSISSIPPI CODE OF 1972, TO CLARIFY COURT-ORDERED  
 10 MEETINGS; TO AMEND SECTION 79-4-7.04, MISSISSIPPI CODE OF 1972, TO  
 11 REVISE ACTION BY WRITTEN CONSENT IN LIEU OF MEETING; TO CREATE  
 12 SECTION 79-4-7.48, MISSISSIPPI CODE OF 1972, TO SPECIFY A  
 13 SHAREHOLDER ACTION TO APPOINT A CUSTODIAN OR RECEIVER; TO AMEND  
 14 SECTION 79-4-13.01, MISSISSIPPI CODE OF 1972, TO REVISE  
 15 DEFINITIONS; TO AMEND SECTION 79-4-13.02, MISSISSIPPI CODE OF  
 16 1972, TO REVISE THE RIGHT TO APPRAISAL; TO AMEND SECTION  
 17 79-4-13.20, MISSISSIPPI CODE OF 1972, TO REVISE THE NOTICE OF THE  
 18 RIGHT TO APPRAISAL; TO AMEND SECTION 79-4-13.21, MISSISSIPPI CODE  
 19 OF 1972, TO REVISE THE NOTICE OF INTENT TO DEMAND PAYMENT AND THE  
 20 CONSEQUENCES OF VOTING OR CONSENTING; TO AMEND SECTION 79-4-13.22,  
 21 MISSISSIPPI CODE OF 1972, TO REVISE REQUIREMENTS PERTAINING TO THE  
 22 APPRAISAL NOTICE AND FORM; TO AMEND SECTION 79-4-13.23,  
 23 MISSISSIPPI CODE OF 1972, TO REVISE THE PERFECTION AND RIGHTS AND  
 24 THE RIGHT TO WITHDRAW; TO AMEND SECTION 79-4-13.25, MISSISSIPPI  
 25 CODE OF 1972, TO CLARIFY AFTER-ACQUIRED SHARES' OBLIGATIONS; TO  
 26 AMEND SECTION 79-4-13.31, MISSISSIPPI CODE OF 1972, TO REVISE  
 27 COURT COSTS AND EXPENSES; TO CREATE SECTION 79-4-13.40,  
 28 MISSISSIPPI CODE OF 1972, TO LIMIT OTHER REMEDIES; TO AMEND  
 29 SECTION 79-4-14.30, MISSISSIPPI CODE OF 1972, TO REVISE THE  
 30 GROUNDS FOR JUDICIAL DISSOLUTION; TO AMEND SECTION 79-4-14.32,  
 31 MISSISSIPPI CODE OF 1972, TO REVISE RECEIVERSHIP AND  
 32 CUSTODIANSHIP; TO AMEND SECTION 79-4-14.34, MISSISSIPPI CODE OF  
 33 1972, TO CLARIFY THE ELECTION TO PURCHASE IN LIEU OF DISSOLUTION  
 34 OF A CORPORATION; AND FOR RELATED PURPOSES.

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

36 **SECTION 1.** Section 79-4-1.40, Mississippi Code of 1972, is  
 37 amended as follows:

38 79-4-1.40. In Section 79-4-1.01 et seq.:

39 (1) "Articles of incorporation" include amended and  
 40 restated articles of incorporation and articles of merger.

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

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

47           (4) "Corporation" or "domestic corporation" means a  
48 corporation for profit, which is not a foreign corporation,  
49 incorporated under or subject to the provisions of Section  
50 79-4-1.01 et seq.

51           (5) "Deliver" or "delivery" means any method of  
52 delivery used in conventional commercial practice, including  
53 delivery by hand, mail, commercial delivery and electronic  
54 transmission.

55           (6) "Distribution" means a direct or indirect transfer  
56 of money or other property (except its own shares) or incurrence  
57 of indebtedness by a corporation to or for the benefit of its  
58 shareholders in respect of any of its shares. A distribution may  
59 be in the form of a declaration or payment of a dividend; a  
60 purchase, redemption or other acquisition of shares; a  
61 distribution of indebtedness; or otherwise.

62           (7) "Effective date of notice" is defined in Section  
63 79-4-1.41.

64           (8) "Electronic transmission" or "electronically  
65 transmitted" means any process of communication not directly  
66 involving the physical transfer of paper that is suitable for the  
67 retention, retrieval and reproduction of information by the  
68 recipient.

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

71           (9AA) "Expenses" means reasonable expenses of any kind  
72 that are incurred in connection with a matter.

73           (10) "Entity" includes corporation and foreign  
74 corporation; not-for-profit corporation; profit and not-for-profit  
75 unincorporated association; business trust, estate, partnership,

76 trust and two (2) or more persons having a joint or common  
77 economic interest; and state, United States and foreign  
78 government.

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

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

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

85 (14) "Governmental subdivision" includes authority,  
86 county, district and municipality.

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

88 (16) "Individual" includes the estate of an incompetent  
89 or deceased individual.

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

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

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

93 (20) "Principal office" means the office (in or out of  
94 this state) so designated in the annual report where the principal  
95 executive offices of a domestic or foreign corporation are  
96 located.

97 (21) "Proceeding" includes civil suit and criminal,  
98 administrative and investigatory action.

99 (22) "Public corporation" means a corporation that has  
100 shares listed on a national securities exchange or regularly  
101 traded in a market maintained by one or more members of a national  
102 or affiliated securities association.

103 (23) "Record date" means the date established under  
104 Article 6 or 7 on which a corporation determines the identity of  
105 its shareholders and their shareholdings for purposes of Section  
106 79-4-1.01 et seq. The determinations shall be made as of the  
107 close of business on the record date unless another time for doing  
108 so is specified when the record date is fixed.

109           (24) "Secretary" means the corporate officer to whom  
110 the board of directors has delegated responsibility under Section  
111 79-4-8.40(c) for custody of the minutes of the meetings of the  
112 board of directors and of the shareholders and for authenticating  
113 records of the corporation.

114           (25) "Shares" means the unit into which the proprietary  
115 interests in a corporation are divided.

116           (26) "Shareholder" means the person in whose name  
117 shares are registered in the records of a corporation or the  
118 beneficial owner of shares to the extent of the rights granted by  
119 a nominee certificate on file with a corporation.

120           (27) "Sign" or "signature" includes any manual,  
121 facsimile, conformed or electronic signature.

122           (28) "State," when referring to a part of the United  
123 States, includes a state and commonwealth (and their agencies and  
124 governmental subdivisions) and a territory, and insular possession  
125 (and their agencies and governmental subdivisions) of the United  
126 States.

127           (29) "Subscriber" means a person who subscribes for  
128 shares in a corporation, whether before or after incorporation.

129           (30) "United States" includes district, authority,  
130 bureau, commission, department and any other agency of the United  
131 States.

132           (31) "Voting group" means all shares of one or more  
133 classes or series that under the articles of incorporation or  
134 Section 79-4-1.01 et seq. are entitled to vote and be counted  
135 together collectively on a matter at a meeting of shareholders.  
136 All shares entitled by the articles of incorporation or Section  
137 79-4-1.01 et seq. to vote generally on the matter are for that  
138 purpose a single voting group.

139           (32) "Voting power" means the current power to vote in  
140 the election of directors.

141           **SECTION 2.** Section 79-4-1.41, Mississippi Code of 1972, is  
142 amended as follows:

143           79-4-1.41. (a) Notice under Section 79-4-1.01 et seq. shall  
144 be in writing unless oral notice is reasonable under the  
145 circumstances. Notice by electronic transmission is written  
146 notice.

147           (b) Notice may be communicated in person; by mail or other  
148 method of delivery; or by telephone, voice mail or other  
149 electronic means. If these forms of personal notice are  
150 impracticable, notice may be communicated by a newspaper of  
151 general circulation in the area where published, or by radio,  
152 television or other form of public broadcast communication.

153           (c) Written notice by a domestic or foreign corporation to  
154 its shareholder, if in a comprehensible form, is effective (i)  
155 upon deposit in the United States mail, if mailed postpaid and  
156 correctly addressed to the shareholder's address shown in the  
157 corporation's current record of shareholders, or (ii) when  
158 electronically transmitted to the shareholder in a manner  
159 authorized by the shareholder.

160           (d) Written notice to a domestic or foreign corporation  
161 (authorized to transact business in this state) may be addressed  
162 to its registered agent at its registered office or to the  
163 secretary of the corporation \* \* \* at its principal office shown  
164 in its most recent annual report or, in the case of a foreign  
165 corporation that has not yet delivered an annual report, in its  
166 application for a certificate of authority.

167           (e) Except as provided in subsection (c), written notice, if  
168 in a comprehensible form, is effective at the earliest of the  
169 following:

170                   (1) When received;

171                   (2) Five (5) days after its deposit in the United  
172 States mail, if mailed postpaid and correctly addressed;

173           (3) On the date shown on the return receipt, if sent by  
174 registered or certified mail, return receipt requested, and the  
175 receipt is signed by or on behalf of the addressee.

176           (f) Oral notice is effective when communicated if  
177 communicated in a comprehensible manner.

178           (g) If Section 79-4-1.01 et seq. prescribes notice  
179 requirements for particular circumstances, those requirements  
180 govern. If articles of incorporation, or bylaws prescribe notice  
181 requirements, not inconsistent with this section or other  
182 provisions of Section 79-4-1.01 et seq., those requirements  
183 govern.

184           **SECTION 3.** The following shall be codified as Section  
185 79-4-1.44, Mississippi Code of 1972:

186           79-4-1.44. **Householding.** (a) A corporation has delivered  
187 written notice or any other report or statement under this act,  
188 the articles of incorporation or the bylaws to any shareholders  
189 who share a common address if:

190           (1) The corporation delivers one (1) copy of the  
191 notice, report or statement to the common address;

192           (2) The corporation addresses the notice, report or  
193 statement to those shareholders either as a group or to each of  
194 those shareholders individually or to the shareholders in a form  
195 to which each of those shareholders has consented; and

196           (3) Each of those shareholders consents to delivery of  
197 a single copy of such notice, report or statement to the  
198 shareholders' common address.

199           Any such consent shall be revocable by any of such  
200 shareholders who deliver written notice of revocation to the  
201 corporation. If such written notice of revocation is delivered,  
202 the corporation shall begin providing individual notices, reports  
203 or other statements to the revoking shareholder no later than  
204 thirty (30) days after delivery of the written notice of  
205 revocation.

206 (b) Any shareholder who fails to object by written notice to  
207 the corporation, within sixty (60) days of written notice by the  
208 corporation of its intention to send single copies of notices,  
209 reports or statements to shareholders who share a common address  
210 as permitted by subsection (a), shall be deemed to have consented  
211 to receiving such single copy at the common address.

212 **SECTION 4.** Section 79-4-7.01, Mississippi Code of 1972, is  
213 amended as follows:

214 79-4-7.01. (a) Unless directors are elected by written  
215 consent in lieu of an annual meeting as permitted by Section  
216 79-4-7.04, a corporation shall hold a meeting of shareholders  
217 annually at a time stated in or fixed in accordance with the  
218 bylaws; provided, however, that if a corporation's articles of  
219 incorporation authorize shareholders to cumulate their votes when  
220 electing directors pursuant to Section 79-4-7.28, directors may  
221 not be elected by less than unanimous written consent.

222 (b) Annual shareholders' meetings may be held in or out of  
223 this state at the place stated in or fixed in accordance with the  
224 bylaws. If no place is stated in or fixed in accordance with the  
225 bylaws, annual meetings shall be held at the corporation's  
226 principal office.

227 (c) The failure to hold an annual meeting at the time stated  
228 in or fixed in accordance with a corporation's bylaws does not  
229 affect the validity of any corporate action.

230 **SECTION 5.** Section 79-4-7.03, Mississippi Code of 1972, is  
231 amended as follows:

232 79-4-7.03. (a) The chancery court of the county where a  
233 corporation's principal office (or, if none in this state, its  
234 registered office) is located may summarily order a meeting to be  
235 held:

236 (1) On application of any shareholder of the  
237 corporation entitled to participate in an annual meeting if an  
238 annual meeting was not held or action by written consent in lieu

239 thereof did not become effective within the earlier of six (6)  
240 months after the end of the corporation's fiscal year or fifteen  
241 (15) months after its last annual meeting or written consent in  
242 lieu thereof; or

243 (2) On application of a shareholder who signed a demand  
244 for a special meeting valid under Section 79-4-7.02 if:

245 (i) Notice of the special meeting was not given  
246 within thirty (30) days after the date the demand was delivered to  
247 the corporation's secretary; or

248 (ii) The special meeting was not held in  
249 accordance with the notice.

250 (b) The court may fix the time and place of the meeting,  
251 determine the shares entitled to participate in the meeting,  
252 specify a record date for determining shareholders entitled to  
253 notice of and to vote at the meeting, prescribe the form and  
254 content of the meeting notice, fix the quorum required for  
255 specific matters to be considered at the meeting (or direct that  
256 the votes represented at the meeting constitute a quorum for  
257 action on those matters), and enter other orders necessary to  
258 accomplish the purpose or purposes of the meeting.

259 **SECTION 6.** Section 79-4-7.04, Mississippi Code of 1972, is  
260 amended as follows:

261 79-4-7.04. (a) Action required or permitted by Section  
262 79-4-1.01 et seq. to be taken at a shareholders' meeting may be  
263 taken without a meeting if the action is taken by all the  
264 shareholders entitled to vote on the action. The action must be  
265 evidenced by one or more written consents describing the action  
266 taken, signed by all the shareholders entitled to vote on the  
267 action and delivered to the corporation for inclusion in the  
268 minutes or filing with the corporate records. A unanimous consent  
269 signed under this subsection is the act of the shareholders when  
270 consents signed by all shareholders have been delivered to the  
271 corporation.



272           (b) The articles of incorporation may provide that any  
273 action required or permitted by Section 79-4-1.01 et seq. to be  
274 taken at a shareholder's meeting may be taken without a meeting  
275 and without prior notice, if consents in writing setting forth the  
276 action so taken are signed by the holders of outstanding shares  
277 having not less than the minimum number of votes that would be  
278 required to authorize or take the action at a meeting at which all  
279 shares entitled to vote on the action were present and voted. The  
280 written consent shall bear the date of signature of the  
281 shareholder who signs the consent and be delivered to the  
282 corporation for inclusion in the minutes or filing with the  
283 corporate records.

284           (c) If not otherwise fixed under Section 79-4-7.03 or  
285 79-4-7.07, and if prior board action is not required respecting  
286 the action to be taken without a meeting, the record date for  
287 determining the shareholders entitled to take action without a  
288 meeting shall be the first date on which a signed written consent  
289 is delivered to the corporation. If not otherwise fixed under  
290 Section 79-4-7.03 or 79-4-7.07, and if prior board action is  
291 required respecting the action to be taken without a meeting, the  
292 record date shall be the close of business on the day the  
293 resolution of the board taking such prior action is adopted. No  
294 written consent shall be effective to take the corporate action  
295 referred to therein unless, within sixty (60) days of the earliest  
296 date on which a consent delivered to the corporation as required  
297 by this section was signed, written consents signed by the holders  
298 of shares having sufficient votes to take the action have been  
299 delivered to the corporation. A written consent may be revoked by  
300 a writing to that effect delivered to the corporation before  
301 unrevoked written consents sufficient in number to take the  
302 corporation action are delivered to the corporation.

303           (d) A consent signed pursuant to the provisions of this  
304 section has the effect of a vote taken at a meeting \* \* \* and may

305 be described as such in any document. Unless the articles of  
306 incorporation, bylaws, or a resolution of the board of directors  
307 provides for a reasonable delay to permit tabulation of written  
308 consents, the action taken by less than unanimous written consent  
309 shall be effective when written consents signed by the holders of  
310 shares having sufficient votes to take the action are delivered to  
311 the corporation.

312 (e) If Section 79-4-1.01 et seq. requires that notice of a  
313 proposed action be given to nonvoting shareholders and the action  
314 is to be taken by written consent of the voting shareholders, the  
315 corporation must give its nonvoting shareholders written notice of  
316 the action not more than ten (10) days after (i) written consents  
317 sufficient to take the action have been delivered to the  
318 corporation, or (ii) such later date that tabulation of consents  
319 is completed pursuant to an authorization under subsection (d).  
320 The notice must reasonably describe the action taken and contain  
321 or be accompanied by the same material that, under Section  
322 79-4-1.01 et seq., would have been required to be sent to  
323 nonvoting shareholders in a notice of a meeting at which the  
324 proposed action would have been submitted to the shareholders for  
325 action.

326 (f) If \* \* \* action is \* \* \* taken by less than unanimous  
327 written consent of the voting shareholders, the corporation must  
328 give its nonconsenting voting shareholders written notice of  
329 the \* \* \* action not more than ten (10) days after (i) written  
330 consents sufficient to take the action have been delivered to the  
331 corporation, or (ii) such later date that tabulation of consents  
332 is completed pursuant to an authorization under subsection (d).  
333 The notice must reasonably describe the action taken and contain  
334 or be accompanied by the same material that, under Section  
335 79-4-1.01 et seq., would have been required to be sent to voting  
336 shareholders in a notice of a meeting at which the \* \* \* action  
337 would have been submitted to the shareholders for action.

338       (g) The notice requirements in subsections (e) and (f) shall  
339 not delay the effectiveness of actions taken by written consent,  
340 and a failure to comply with such notice requirements shall not  
341 invalidate actions taken by written consent, provided that this  
342 subsection shall not be deemed to limit judicial power to fashion  
343 any appropriate remedy in favor of a shareholder adversely  
344 affected by a failure to give such notice within the required time  
345 period.

346       (h) An electronic transmission may be used to consent to an  
347 action, if the electronic transmission contains or is accompanied  
348 by information from which the corporation can determine the date  
349 on which the electronic transmission was signed and that the  
350 electronic transmission was authorized by the shareholder, the  
351 shareholder's agent, or the shareholder's attorney-in-fact.

352       (i) Delivery of a written consent to the corporation under  
353 this section is delivery to the corporation's registered agent at  
354 its registered office or to the secretary of the corporation at  
355 its principal office.

356       **SECTION 7.** The following shall be codified as Section  
357 79-4-7.48, Mississippi Code of 1972:

358       79-4-7.48. Shareholder action to appoint custodian or  
359 **receiver.** (a) The chancery court of the county where a  
360 corporation's principal office (or, if none in this state, its  
361 registered office) is located may appoint one or more persons to  
362 be custodians, or, if the corporation is insolvent, to be  
363 receivers, of and for a corporation in a proceeding by a  
364 shareholder where it is established that:

365               (1) The directors are deadlocked in the management of  
366 the corporate affairs, the shareholders are unable to break the  
367 deadlock, and irreparable injury to the corporation is threatened  
368 or being suffered; or

369           (2) The directors or those in control of the  
370 corporation are acting fraudulently and irreparable injury to the  
371 corporation is threatened or being suffered.

372           (b) The court:

373                 (1) May issue injunctions, appoint a temporary  
374 custodian or temporary receiver with all the powers and duties the  
375 court directs, take other action to preserve the corporate assets  
376 wherever located, and carry on the business of the corporation  
377 until a full hearing is held;

378                 (2) Shall hold a full hearing, after notifying all  
379 parties to the proceeding and any interested persons designated by  
380 the court, before appointing a custodian or receiver; and

381                 (3) Has jurisdiction over the corporation and all of  
382 its property, wherever located.

383           (c) The court may appoint an individual or domestic or  
384 foreign corporation (authorized to transact business in this  
385 state) as a custodian or receiver and may require the custodian or  
386 receiver to post bond, with or without sureties, in an amount the  
387 court directs.

388           (d) The court shall describe the powers and duties of the  
389 custodian or receiver in its appointing order, which may be  
390 amended from time to time. Among other powers,

391                 (1) A custodian may exercise all of the powers of the  
392 corporation, through or in place of its board of directors, to the  
393 extent necessary to manage the business and affairs of the  
394 corporation; and

395                 (2) A receiver (i) may dispose of all or any part of  
396 the assets of the corporation wherever located, at a public or  
397 private sale, if authorized by the court; and (ii) may sue and  
398 defend in the receiver's own name as receiver in all courts of  
399 this state.

400           (e) The court during a custodianship may redesignate the  
401 custodian a receiver, and during a receivership may redesignate

402 the receiver a custodian, if doing so is in the best interests of  
403 the corporation.

404 (f) The court from time to time during the custodianship or  
405 receivership may order compensation paid and expense disbursements  
406 or reimbursements made to the custodian or receiver from the  
407 assets of the corporation or proceeds from the sale of its assets.

408 **SECTION 8.** Section 79-4-13.01, Mississippi Code of 1972, is  
409 amended as follows:

410 79-4-13.01. In this article:

411 (1) "Affiliate" means a person that directly or  
412 indirectly through one or more intermediaries controls, is  
413 controlled by, or is under common control with another person or  
414 is a senior executive thereof. For purposes of Section  
415 79-4-13.02(b)(5), a person is deemed to be an affiliate of its  
416 senior executives.

417 (2) "Beneficial shareholder" means a person who is the  
418 beneficial owner of shares held in a voting trust or by a nominee  
419 on the beneficial owner's behalf.

420 (3) "Corporation" means the issuer of the shares held  
421 by a shareholder demanding appraisal and, for matters covered in  
422 Sections 79-4-13.22 through 79-4-13.31, includes the surviving  
423 entity in a merger.

424 (4) "Fair value" means the value of the corporation's  
425 shares determined:

426 (i) Immediately before the effectuation of the  
427 corporate action to which the shareholder objects;

428 (ii) Using customary and current valuation  
429 concepts and techniques generally employed for similar businesses  
430 in the context of the transaction requiring appraisal; and

431 (iii) Without discounting for lack of  
432 marketability or minority status except, if appropriate, for  
433 amendments to the articles pursuant to Section 79-4-13.02(a)(5).

434 (5) "Interest" means interest from the effective date  
435 of the corporate action until the date of payment, at the rate of  
436 interest on judgments in this state on the effective date of the  
437 corporate action.

438 (5.1) "Interested transaction" means a corporate action  
439 described in Section 79-4-13.02(a), other than a merger pursuant  
440 to Section 79-4-11.05, involving an interested person in which any  
441 of the shares or assets of the corporation are being acquired or  
442 converted. As used in this definition:

443 (i) "Interested person" means a person, or an  
444 affiliate of a person, who at any time during the one-year period  
445 immediately preceding approval by the board of directors of the  
446 corporate action: (A) was the beneficial owner of twenty percent  
447 (20%) or more of the voting power of the corporation, excluding  
448 any shares acquired pursuant to an offer for all shares having  
449 voting power if the offer was made within one (1) year prior to  
450 the corporate action for consideration of the same kind and of a  
451 value equal to or less than that paid in connection with the  
452 corporate action; (B) had the power, contractually or otherwise to  
453 cause the appointment or election of twenty-five percent (25%) or  
454 more of the directors to the board of directors of the  
455 corporation; or (C) was a senior executive or director of the  
456 corporation or a senior executive of any affiliate thereof, and  
457 that senior executive or director will receive, as a result of the  
458 corporate action, a financial benefit not generally available to  
459 other shareholders as such, other than: (1) employment,  
460 consulting, retirement, or similar benefits established  
461 separately and not as part of, or in contemplation of, the  
462 corporate action; or (2) employment, consulting, retirement, or  
463 similar benefits established in contemplation of or as part of the  
464 corporate action that are not more favorable than those existing  
465 before the corporate action or, if more favorable, that have been  
466 approved on behalf of the corporation in the same manner as is

467 provided in Section 79-4-8.62; or (3) in the case of a director of  
468 the corporation who will, in the corporate action become a  
469 director of the acquiring entity in the corporate action, or one  
470 of its affiliates, rights and benefits as a director that are  
471 provided on the same basis as those afforded by the acquiring  
472 entity generally to other directors of such entity or such  
473 affiliate.

474 (ii) "Beneficial owner" means any person who,  
475 directly or indirectly, through any contract, arrangement, or  
476 understanding, other than a revocable proxy, has or shares the  
477 power to vote, or to direct the voting of, shares; except that a  
478 member of a national securities exchange is not deemed to be a  
479 beneficial owner of securities held directly or indirectly by it  
480 on behalf of another person solely because the member is the  
481 record holder of the securities if the member is precluded by the  
482 rules of the exchange from voting without instruction on contested  
483 matters or matters that may affect substantially the rights or  
484 privileges of the holders of the securities to be voted. When two  
485 (2) or more persons agree to act together for the purpose of  
486 voting their shares of the corporation, each member of the group  
487 formed thereby is deemed to have acquired beneficial ownership, as  
488 of the date of the agreement, of all voting shares of the  
489 corporation beneficially owned by any member of the group.

490 (6) "Preferred shares" means a class or series of  
491 shares whose holders have preference over any other class or  
492 series with respect to distributions.

493 (7) "Record shareholder" means the person in whose name  
494 shares are registered in the records of the corporation or the  
495 beneficial owner of shares to the extent of the rights granted by  
496 a nominee certificate on file with the corporation.

497 (8) "Senior executive" means the chief executive  
498 officer, chief operating officer, chief financial officer, and  
499 anyone in charge of a principal business unit or function.

500           (9) "Shareholder" means both a record shareholder and a  
501 beneficial shareholder.

502           **SECTION 9.** Section 79-4-13.02, Mississippi Code of 1972, is  
503 amended as follows:

504           79-4-13.02. (a) A shareholder is entitled to appraisal  
505 rights, and to obtain payment of the fair value of that  
506 shareholder's shares, in the event of any of the following  
507 corporate actions:

508           (1) Consummation of a merger to which the corporation  
509 is a party (i) if shareholder approval is required for the merger  
510 by Section 79-4-11.04 and the shareholder is entitled to vote on  
511 the merger, except that appraisal rights shall not be available to  
512 any shareholder of the corporation with respect to shares of any  
513 class or series that remain outstanding after consummation of the  
514 merger, or (ii) if the corporation is a subsidiary and the merger  
515 is governed by Section 79-4-11.05;

516           (2) Consummation of a share exchange to which the  
517 corporation is a party as the corporation whose shares will be  
518 acquired if the shareholder is entitled to vote on the exchange,  
519 except that appraisal rights shall not be available to any  
520 shareholder of the corporation with respect to any class or series  
521 of shares of the corporation that is not exchanged;

522           (3) Consummation of a disposition of assets pursuant to  
523 Section 79-4-12.02 if the shareholder is entitled to vote on the  
524 disposition;

525           (4) An amendment of the articles of incorporation with  
526 respect to a class or series of shares that reduces the number of  
527 shares of a class or series owned by the shareholder to a fraction  
528 of a share if the corporation has the obligation or right to  
529 repurchase the fractional share so created; or

530           (5) Any other amendment to the articles of  
531 incorporation, merger, share exchange or disposition of assets to



532 the extent provided by the articles of incorporation, bylaws or a  
533 resolution of the board of directors.

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

537 (1) Appraisal rights shall not be available to any  
538 shareholder of the constituent corporations in a corporate  
539 reorganization transaction otherwise covered by Section  
540 79-4-13.02(a)(1) or (2) if: (i) the shareholders of an existing  
541 corporation exchange shares of such corporation for shares of a  
542 newly formed corporation and receive, after the reorganization,  
543 the same proportionate share interest in the new corporation and  
544 the rights and interests of the shareholders in the newly formed  
545 corporation are substantially the same as those in the existing  
546 corporation prior to the transaction; (ii) the newly formed  
547 corporation has no significant assets other than the shares of the  
548 existing corporation; (iii) after the reorganization the newly  
549 formed corporation and its subsidiaries have substantially the  
550 same assets and liabilities, on a consolidated basis, as those of  
551 the existing corporation prior to the transaction; (iv) fractional  
552 shares are neither created nor eliminated as a result of the  
553 transaction; (v) the existing corporation and the newly formed  
554 corporation are the only constituent corporations to such  
555 reorganization; (vi) the existing corporation and the newly formed  
556 corporation are corporations of this state; (vii) the directors of  
557 the existing corporation become the directors of the newly formed  
558 corporation upon the effective time of the corporate  
559 reorganization; (viii) the existing corporation becomes a direct  
560 wholly owned subsidiary of the newly formed corporation; and (ix)  
561 the shareholders of the existing corporation do not recognize gain  
562 or loss for United States federal income tax purposes as  
563 determined by the board of directors of the existing corporation.

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

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

570 (ii) Not so listed or designated, but has at least  
571 two thousand (2,000) shareholders and the outstanding shares of  
572 such class or series has a market value of at least Twenty Million  
573 Dollars (\$20,000,000.00) (exclusive of the value of such shares  
574 held by its subsidiaries, senior executives, directors and  
575 beneficial shareholders owning more than ten percent (10%) of such  
576 shares).

577 (3) The applicability of subsection (b)(2) shall be  
578 determined as of:

579 (i) The record date fixed to determine the  
580 shareholders entitled to receive notice of, and to vote at, the  
581 meeting of shareholders to act upon the corporate action requiring  
582 appraisal rights; or

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

585 (4) Subsection (b)(2) shall not be applicable and  
586 appraisal rights shall be available pursuant to subsection (a) for  
587 the holders of any class or series of shares who are required by  
588 the terms of the corporate action requiring appraisal rights to  
589 accept for such shares anything other than cash or shares of any  
590 class or any series of shares of any corporation, or any other  
591 proprietary interest of any other entity, that satisfies the  
592 standards set forth in subsection (b)(2) at the time the corporate  
593 action becomes effective.

594 (5) Subsection (b)(2) shall not be applicable and  
595 appraisal rights shall be available pursuant to subsection (a) for

596 the holders of any class or series of shares where the corporate  
597 action is an interested transaction.

598 \* \* \*

599 (c) Notwithstanding any other provision of Section  
600 79-4-13.02, the articles of incorporation as originally filed or  
601 any amendment thereto may limit or eliminate appraisal rights for  
602 any class or series of preferred shares, but any such limitation  
603 or elimination contained in an amendment to the articles of  
604 incorporation that limits or eliminates appraisal rights for any  
605 of such shares that are outstanding immediately prior to the  
606 effective date of such amendment or that the corporation is or may  
607 be required to issue or sell thereafter pursuant to any  
608 conversion, exchange or to other right existing immediately before  
609 the effective date of such amendment shall not apply to any  
610 corporate action that becomes effective within one (1) year of  
611 that date if such action would otherwise afford appraisal rights.

612 \* \* \*

613 **SECTION 10.** Section 79-4-13.20, Mississippi Code of 1972, is  
614 amended as follows:

615 79-4-13.20. (a) Where any corporate action specified in  
616 Section 79-4-13.02(a) is to be submitted to a vote at a  
617 shareholders' meeting, the meeting notice must state that the  
618 corporation has concluded that the shareholders are, are not or  
619 may be entitled to assert appraisal rights under this article. If  
620 the corporation concludes that appraisal rights are or may be  
621 available, a copy of this article must accompany the meeting  
622 notice sent to those record shareholders entitled to exercise  
623 appraisal rights.

624 (b) In a merger pursuant to Section 79-4-11.05, the parent  
625 corporation must notify in writing all record shareholders of the  
626 subsidiary who are entitled to assert appraisal rights that the  
627 corporate action became effective. Such notice must be sent

628 within ten (10) days after the corporate action became effective  
629 and include the materials described in Section 79-4-13.22.

630 (c) Where any corporate action specified in Section  
631 79-4-13.02(a) is to be approved by written consent of the  
632 shareholders pursuant to Section 79-4-7.04:

633 (1) Written notice that appraisal rights are, are not  
634 or may be available must be given to each record shareholder from  
635 whom a consent is solicited at the time consent of such  
636 shareholder is first solicited and, if the corporation has  
637 concluded that appraisal rights are or may be available, must be  
638 accompanied by a copy of this article; and

639 (2) Written notice that appraisal rights are, are not  
640 or may be available must be delivered together with the notice to  
641 nonconsenting and nonvoting shareholders required by Section  
642 79-4-7.04(e) and (f), may include the materials described in  
643 Section 79-4-13.22 and, if the corporation has concluded that  
644 appraisal rights are or may be available, must be accompanied by a  
645 copy of this article.

646 **SECTION 11.** Section 79-4-13.21, Mississippi Code of 1972, is  
647 amended as follows:

648 79-4-13.21. (a) If a corporate action specified in Section  
649 79-4-13.02(a) is submitted to a vote at a shareholders' meeting, a  
650 shareholder who wishes to assert appraisal rights with respect to  
651 any class or series of shares:

652 (1) Must deliver to the corporation, before the vote is  
653 taken, written notice of the shareholder's intent to demand  
654 payment if the proposed action is effectuated; and

655 (2) Must not vote, or cause or permit to be voted, any  
656 shares of such class or series in favor of the proposed action.

657 (b) If a corporate action specified in Section 79-4-13.02(a)  
658 is to be approved by less than unanimous written consent, a  
659 shareholder who wishes to assert appraisal rights with respect to  
660 any class or series of shares must not execute a consent in favor

661 of the proposed action with respect to that class or series of  
662 shares.

663 (c) A shareholder who fails to satisfy the requirements of  
664 subsection (a) or (b) is not entitled to payment under this  
665 article.

666 **SECTION 12.** Section 79-4-13.22, Mississippi Code of 1972, is  
667 amended as follows:

668 79-4-13.22. (a) If proposed corporate action requiring  
669 appraisal rights under Section 79-4-13.02(a) becomes effective,  
670 the corporation must deliver a written appraisal notice and form  
671 required by subsection (b)(1) to all shareholders who satisfied  
672 the requirements of Section 79-4-13.21(a) or Section  
673 79-4-13.21(b). In the case of a merger under Section 79-4-11.05,  
674 the parent must deliver a written appraisal notice and form to all  
675 record shareholders who may be entitled to assert appraisal  
676 rights.

677 (b) The appraisal notice must be sent no earlier than the  
678 date the corporate action specified in Section 79-4-13.02(a)  
679 became effective and no later than ten (10) days after such date,  
680 and must:

681 (1) Supply a form that (i) specifies the date of the  
682 first announcement to shareholders of the principal terms of the  
683 proposed corporate action, if any, and (ii) if such announcement  
684 was made, requires the shareholder asserting appraisal rights to  
685 certify \* \* \* whether \* \* \* beneficial ownership of those shares  
686 for which appraisal rights are asserted was acquired before that  
687 date and \* \* \* that, as to those shares, the shareholder did not  
688 vote for or consent to the transaction;

689 (2) State:

690 (i) Where the form must be sent and where  
691 certificates for certificated shares must be deposited and the  
692 date by which those certificates must be deposited, which date may

693 not be earlier than the date for receiving the required form under  
694 subsection (2)(ii);

695 (ii) A date by which the corporation must receive  
696 the form, which date may not be fewer than forty (40) nor more  
697 that sixty (60) days after the date the subsection (a) appraisal  
698 notice and form are sent, and state that the shareholder shall  
699 have waived the right to demand appraisal with respect to the  
700 shares unless the form is received by the corporation by such  
701 specified date;

702 (iii) The corporation's estimate of the fair value  
703 of the shares;

704 (iv) That, if requested in writing, the  
705 corporation will provide, to the shareholder so requesting, within  
706 ten (10) days after the date specified in subsection (2)(ii) the  
707 number of shareholders who return the forms by the specified date  
708 and the total number of shares owned by them; and

709 (v) The date by which the notice to withdraw under  
710 Section 79-4-13.23 must be received, which date must be within  
711 twenty (20) days after the date specified in subsection (2)(ii);  
712 and

713 (3) Be accompanied by a copy of this article.

714 **SECTION 13.** Section 79-4-13.23, Mississippi Code of 1972, is  
715 amended as follows:

716 79-4-13.23. (a) A shareholder who receives notice pursuant  
717 to Section 79-4-13.22 and who wishes to exercise appraisal rights  
718 must sign and return on the form sent by the corporation and, in  
719 the case of certificated shares, deposit the shareholder's  
720 certificates in accordance with the terms of the notice by the  
721 date referred to in the notice pursuant to Section  
722 79-4-13.22(b)(2)(ii). In addition, if applicable, the shareholder  
723 must certify on the form whether the beneficial owner of such  
724 shares acquired beneficial ownership of the shares before the date  
725 required to be set forth in the notice pursuant to Section

726 79-4-13.22(b)(1). If a shareholder fails to make this  
727 certification, the corporation may elect to treat the  
728 shareholder's shares as after-acquired shares under Section  
729 79-4-13.25. \* \* \* Once a shareholder deposits that shareholder's  
730 certificates or, in the case of uncertificated shares, returns the  
731 signed forms, that shareholder loses all rights as a shareholder,  
732 unless the shareholder withdraws pursuant to subsection (b).

733 (b) A shareholder who has complied with subsection (a) may  
734 nevertheless decline to exercise appraisal rights and withdraw  
735 from the appraisal process by so notifying the corporation in  
736 writing by the date set forth in the appraisal notice pursuant to  
737 Section 79-4-13.22(b)(2)(v). A shareholder who fails to so  
738 withdraw from the appraisal process may not thereafter withdraw  
739 without the corporation's written consent.

740 (c) A shareholder who does not sign and return the form and,  
741 in the case of certificated shares, deposit that shareholder's  
742 share certificates where required, each by the date set forth in  
743 the notice described in Section 79-4-13.22(b), shall not be  
744 entitled to payment under this article.

745 **SECTION 14.** Section 79-4-13.25, Mississippi Code of 1972, is  
746 amended as follows:

747 79-4-13.25. (a) A corporation may elect to withhold payment  
748 required by Section 79-4-13.24 from any shareholder who was  
749 required to, but did not certify that beneficial ownership of all  
750 of the shareholder's shares for which appraisal rights are  
751 asserted was acquired before the date set forth in the appraisal  
752 notice sent pursuant to Section 79-4-13.22(b)(1).

753 (b) If the corporation elected to withhold payment under  
754 subsection (a), it must, within thirty (30) days after the form  
755 required by Section 79-4-13.22(b)(2)(ii) is due, notify all  
756 shareholders who are described in subsection (a):

757 (1) Of the information required by Section  
758 79-4-13.24(b)(1);

759 (2) Of the corporation's estimate of fair value  
760 pursuant to Section 79-4-13.24(b)(2);

761 (3) That they may accept the corporation's estimate of  
762 fair value, plus interest, in full satisfaction of their demands  
763 or demand appraisal under Section 79-4-13.26;

764 (4) That those shareholders who wish to accept such  
765 offer must so notify the corporation of their acceptance of the  
766 corporation's offer within thirty (30) days after receiving the  
767 offer; and

768 (5) That those shareholders who do not satisfy the  
769 requirements for demanding appraisal under Section 79-4-13.26  
770 shall be deemed to have accepted the corporation's offer.

771 (c) Within ten (10) days after receiving the shareholder's  
772 acceptance pursuant to subsection (b), the corporation must pay in  
773 cash the amount it offered under subsection (b)(2) to each  
774 shareholder who agreed to accept the corporation's offer in full  
775 satisfaction of the shareholder's demand.

776 (d) Within forty (40) days after sending the notice  
777 described in subsection (b), the corporation must pay in cash the  
778 amount it offered to pay under subsection (b)(2) to each  
779 shareholder described in subsection (b)(5).

780 **SECTION 15.** Section 79-4-13.31, Mississippi Code of 1972, is  
781 amended as follows:

782 79-4-13.31. (a) The court in an appraisal proceeding  
783 commenced under Section 79-4-13.30 shall determine all court costs  
784 of the proceeding, including the reasonable compensation and  
785 expenses of appraisers appointed by the court. The court shall  
786 assess the court costs against the corporation, except that the  
787 court may assess court costs against all or some of the  
788 shareholders demanding appraisal, in amounts which the court finds  
789 equitable, to the extent the court finds such shareholders acted  
790 arbitrarily, vexatiously or not in good faith with respect to the  
791 rights provided by this article.



792 (b) The court in an appraisal proceeding may also assess  
793 the \* \* \* expenses of \* \* \* the respective parties in amounts the  
794 court finds equitable:

795 (1) Against the corporation and in favor of any or all  
796 shareholders demanding appraisal if the court finds the  
797 corporation did not substantially comply with the requirements of  
798 Section 79-4-13.20, 79-4-13.22, 79-4-13.24 or 79-4-13.25; or

799 (2) Against either the corporation or a shareholder  
800 demanding appraisal, in favor of any other party, if the court  
801 finds that the party against whom the \* \* \* expenses are assessed  
802 acted arbitrarily, vexatiously or not in good faith with respect  
803 to the rights provided by this article.

804 (c) If the court in an appraisal proceeding finds that the  
805 expenses incurred by any shareholder were of substantial benefit  
806 to other shareholders similarly situated, and that such expenses  
807 should not be assessed against the corporation, the court may  
808 direct that such expenses be paid out of the amounts awarded the  
809 shareholders who were benefited.

810 (d) To the extent the corporation fails to make a required  
811 payment pursuant to Section 79-4-13.24, 79-4-13.25 or 79-4-13.26,  
812 the shareholder may sue directly for the amount owed and, to the  
813 extent successful, shall be entitled to recover from the  
814 corporation all \* \* \* expenses of the suit \* \* \*.

815 **SECTION 16.** The following shall be codified as Section  
816 79-4-13.40, Mississippi Code of 1972:

817 79-4-13.40. Other remedies limited. (a) The legality of a  
818 proposed or completed corporate action described in Section  
819 79-4-13.02(a) may not be contested, nor may the corporate action  
820 be enjoined, set aside or rescinded, in a legal or equitable  
821 proceeding by a shareholder after the shareholders have approved  
822 the corporate action.

823 (b) Subsection (a) does not apply to a corporate action  
824 that:

825 (1) Was not authorized and approved in accordance with  
826 the applicable provisions of:

827 (i) Article 9, 10, 11 or 12,

828 (ii) The articles of incorporation or bylaws, or

829 (iii) The resolution of the board of directors  
830 authorizing the corporate action;

831 (2) Was procured as a result of fraud, a material  
832 misrepresentation, or an omission of a material fact necessary to  
833 make statements made, in light of the circumstances in which they  
834 were made, not misleading;

835 (3) Is an interested transaction, unless it has been  
836 recommended by the board of directors in the same manner as is  
837 provided in Section 79-4-8.62 and has been approved by the  
838 shareholders in the same manner as is provided in Section  
839 79-4-8.63 as if the interested transaction were a director's  
840 conflicting interest transaction; or

841 (4) Is approved by less than unanimous consent of the  
842 voting shareholders pursuant to Section 79-4-7.04 if:

843 (i) The challenge to the corporate action is  
844 brought by a shareholder who did not consent and as to whom notice  
845 of the approval of the corporate action was not effective at least  
846 ten (10) days before the corporate action was effected; and

847 (ii) The proceeding challenging the corporate  
848 action is commenced within ten (10) days after notice of the  
849 approval of the corporation action is effective as to the  
850 shareholder bringing the proceeding.

851 **SECTION 17.** Section 79-4-14.30, Mississippi Code of 1972, is  
852 amended as follows:

853 79-4-14.30. (a) The chancery court may dissolve a  
854 corporation:

855 (1) In a proceeding by the Attorney General if it is  
856 established that:

857                   (i) The corporation obtained its articles of  
858 incorporation through fraud; or

859                   (ii) The corporation has continued to exceed or  
860 abuse the authority conferred upon it by law;

861                   (2) In a proceeding by a shareholder if it is  
862 established that:

863                   (i) The directors are deadlocked in the management  
864 of the corporate affairs, the shareholders are unable to break the  
865 deadlock, and irreparable injury to the corporation is threatened  
866 or being suffered, or the business and affairs of the corporation  
867 can no longer be conducted to the advantage of the shareholders  
868 generally, because of the deadlock;

869                   (ii) The directors or those in control of the  
870 corporation have acted, are acting, or will act in a manner that  
871 is illegal, oppressive or fraudulent;

872                   (iii) The shareholders are deadlocked in voting  
873 power and have failed, for a period that includes at least two (2)  
874 consecutive annual meeting dates, to elect successors to directors  
875 whose terms have expired; or

876                   (iv) The corporate assets are being misapplied or  
877 wasted;

878                   (3) In a proceeding by a creditor if it is established  
879 that:

880                   (i) The creditor's claim has been reduced to  
881 judgment, the execution on the judgment return unsatisfied, and  
882 the corporation is insolvent; or

883                   (ii) The corporation has admitted in writing that  
884 the creditor's claim is due and owing and the corporation is  
885 insolvent; or

886                   (4) In a proceeding by the corporation to have its  
887 voluntary dissolution continued under court supervision; or

888           (5) In a proceeding by a shareholder if the corporation  
889 has abandoned its business and has failed within a reasonable time  
890 to liquidate and distribute its assets and dissolve.

891           (b) Section 79-4-14.30(a)(2) shall not apply in the case of  
892 a corporation that, on the date of the filing of the proceeding,  
893 has shares that are: (i) listed on the New York Stock Exchange,  
894 the American Stock Exchange, or any exchange owned or operated by  
895 the NASDAQ Stock Market, LLC, or listed or quoted on a system  
896 owned or operated by the National Association of Securities  
897 Dealers, Inc.; or (ii) not so listed or quoted, but are held by at  
898 least three hundred (300) shareholders and the shares outstanding  
899 have a market value of at least Twenty Million Dollars  
900 (\$20,000,000.00) (exclusive of the value of such shares held by  
901 the corporation's subsidiaries, senior executives, directors and  
902 beneficial shareholders owning more than ten percent (10%) of such  
903 shares).

904           (c) In this section "beneficial shareholder" has the meaning  
905 specified in Section 79-4-13.01(2).

906           **SECTION 18.** Section 79-4-14.32, Mississippi Code of 1972, is  
907 amended as follows:

908           79-4-14.32. (a) Unless an election to purchase has been  
909 filed under Section 79-4-14.34, a court in a judicial proceeding  
910 brought to dissolve a corporation may appoint one or more  
911 receivers to wind up and liquidate, or one or more custodians to  
912 manage, the business and affairs of the corporation. The court  
913 shall hold a hearing, after notifying all parties to the  
914 proceeding and any interested persons designated by the court,  
915 before appointing a receiver or custodian. The court appointing a  
916 receiver or custodian has \* \* \* jurisdiction over the corporation  
917 and all its property wherever located.

918           (b) The court may appoint an individual or a domestic or  
919 foreign corporation (authorized to transact business in this  
920 state) as a receiver or custodian. The court may require the

921 receiver or custodian to post bond, with or without sureties, in  
922 an amount the court directs.

923 (c) The court shall describe the powers and duties of the  
924 receiver or custodian in its appointing order, which may be  
925 amended from time to time. Among other powers:

926 (1) The receiver (i) may dispose of all or any part of  
927 the assets of the corporation wherever located, at a public or  
928 private sale, if authorized by the court; and (ii) may sue and  
929 defend in his own name as receiver of the corporation in all  
930 courts of this state;

931 (2) The custodian may exercise all the powers of the  
932 corporation, through or in place of its board of directors or  
933 officers, to the extent necessary to manage the affairs of the  
934 corporation in the best interests of its shareholders and  
935 creditors.

936 (d) The court during a receivership may redesignate the  
937 receiver a custodian, and during a custodianship may redesignate  
938 the custodian a receiver, if doing so is in the best interests of  
939 the corporation, its shareholders and creditors.

940 (e) The court from time to time during the receivership or  
941 custodianship may order compensation paid and expenses paid or  
942 reimbursed to the receiver or custodian \* \* \* from the assets of  
943 the corporation or proceeds from the sale of the assets.

944 **SECTION 19.** Section 79-4-14.34, Mississippi Code of 1972, is  
945 amended as follows:

946 79-4-14.34. (a) In a proceeding under Section 79-4-14.30(2)  
947 to dissolve a corporation \* \* \*, the corporation may elect or, if  
948 it fails to elect, one or more shareholders may elect to purchase  
949 all shares owned by the petitioning shareholder at the fair value  
950 of the shares. An election pursuant to this section shall be  
951 irrevocable unless the court determines that it is equitable to  
952 set aside or modify the election.

953           (b) An election to purchase pursuant to this section may be  
954 filed with the court at any time within ninety (90) days after the  
955 filing of the petition under Section 79-4-14.30(2) or at such  
956 later time as the court in its discretion may allow. If the  
957 election to purchase is filed by one or more shareholders, the  
958 corporation shall, within ten (10) days thereafter, give written  
959 notice to all shareholders, other than the petitioner. The notice  
960 must state the name and number of shares owned by the petitioner  
961 and the name and number of shares owned by each electing  
962 shareholder and must advise the recipients of their right to join  
963 in the election to purchase shares in accordance with this  
964 section. Shareholders who wish to participate must file notice of  
965 their intention to join in the purchase no later than thirty (30)  
966 days after the effective date of the notice to them. All  
967 shareholders who have filed an election or notice of their  
968 intention to participate in the election to purchase thereby  
969 become parties to the proceeding and shall participate in the  
970 purchase in proportion to their ownership of shares as of the date  
971 the first election was filed, unless they otherwise agree or the  
972 court otherwise directs. After an election has been filed by the  
973 corporation or one or more shareholders, the proceeding under  
974 Section 79-4-14.30(2) may not be discontinued or settled, nor may  
975 the petitioning shareholder sell or otherwise dispose of his  
976 shares, unless the court determines that it would be equitable to  
977 the corporation and the shareholders, other than the petitioner,  
978 to permit such discontinuance, settlement, sale or other  
979 disposition.

980           (c) If, within sixty (60) days of the filing of the first  
981 election, the parties reach agreement as to the fair value and  
982 terms of purchase of the petitioner's shares, the court shall  
983 enter an order directing the purchase of petitioner's shares upon  
984 the terms and conditions agreed to by the parties.

985 (d) If the parties are unable to reach an agreement as  
986 provided for in subsection (c), the court, upon application of any  
987 party, shall stay the Section 79-4-14.30(2) proceedings and  
988 determine the fair value of the petitioner's shares as of the day  
989 before the date on which the petition under Section 79-4-14.30(2)  
990 was filed or as of such other date as the court deems appropriate  
991 under the circumstances.

992 (e) Upon determining the fair value of the shares, the court  
993 shall enter an order directing the purchase upon such terms and  
994 conditions as the court deems appropriate, which may include  
995 payment of the purchase price in installments, where necessary in  
996 the interests of equity, provision for security to assure payment  
997 of the purchase price and any additional costs, fees and expenses  
998 as may have been awarded, and, if the shares are to be purchased  
999 by shareholders, the allocation of shares among them. In  
1000 allocating petitioner's shares among holders of different classes  
1001 of shares, the court should attempt to preserve the existing  
1002 distribution of voting rights among holders of different classes  
1003 insofar as practicable and may direct that holders of a specific  
1004 class or classes shall not participate in the purchase. Interest  
1005 may be allowed at the rate and from the date determined by the  
1006 court to be equitable, but if the court finds that the refusal of  
1007 the petitioning shareholder to accept an offer of payment was  
1008 arbitrary or otherwise not in good faith, no interest shall be  
1009 allowed. If the court finds that the petitioning shareholder had  
1010 probable grounds for relief under Section 79-4-14.30(2)(ii) or  
1011 (iv), it may award to the petitioning shareholder reasonable fees  
1012 and expenses of counsel and of any experts employed by him.

1013 (f) Upon entry of an order under subsection (c) or (e), the  
1014 court shall dismiss the petition to dissolve the corporation under  
1015 Section 79-4-14.30, and the petitioning shareholder shall no  
1016 longer have any rights or status as a shareholder of the  
1017 corporation, except the right to receive the amounts awarded to

1018 him by the order of the court which shall be enforceable in the  
1019 same manner as any other judgment.

1020 (g) The purchase ordered pursuant to subsection (e) shall be  
1021 made within ten (10) days after the date the order becomes final  
1022 unless before that time the corporation files with the court a  
1023 notice of its intention to adopt articles of dissolution pursuant  
1024 to Sections 79-4-14.02 and 79-4-14.03, which articles must then be  
1025 adopted and filed within fifty (50) days thereafter. Upon filing  
1026 of such articles of dissolution, the corporation shall be  
1027 dissolved in accordance with the provisions of Sections 79-4-14.05  
1028 through 79-4-14.07 and the order entered pursuant to subsection  
1029 (e) shall no longer be of any force or effect, except that the  
1030 court may award the petitioning shareholder reasonable fees and  
1031 expenses in accordance with the provisions of the last sentence of  
1032 subsection (e) and the petitioner may continue to pursue any  
1033 claims previously asserted on behalf of the corporation.

1034 (h) Any payment by the corporation pursuant to an order  
1035 under subsection (c) or (e), other than an award of fees and  
1036 expenses pursuant to subsection (e), is subject to the provisions  
1037 of Section 79-4-6.40.

1038 (i) Nothing contained in this section shall diminish the  
1039 inherent equity powers of the court to fashion alternative  
1040 remedies to judicial dissolution.

1041 **SECTION 20.** This act shall take effect and be in force from  
1042 and after July 1, 2007.