

By: Senator(s) Fillingane

To: Judiciary, Division A

SENATE BILL NO. 2444

1 AN ACT TO AMEND SECTION 79-11-121, MISSISSIPPI CODE OF 1972,
2 TO REVISE PROVISIONS DEALING WITH THE ISSUANCE OF CERTIFICATES OF
3 EXISTENCE TO CONFORM TO THE MODEL NONPROFIT CORPORATION ACT; TO
4 AMEND SECTION 79-11-127, MISSISSIPPI CODE OF 1972, TO REVISE
5 DEFINITIONS; TO AMEND SECTION 79-11-129, MISSISSIPPI CODE OF 1972,
6 TO CLARIFY FORM AND DELIVERY OF NOTICE UNDER THE ACT; TO AMEND
7 SECTION 79-11-137, MISSISSIPPI CODE OF 1972, TO REQUIRE NONPROFITS
8 FORMED AFTER THE EFFECTIVE DATE TO STATE A PRINCIPAL PURPOSE IN
9 THEIR ARTICLES OF INCORPORATION AND TO REVISE DIRECTOR LIABILITY;
10 TO AMEND SECTION 79-11-165, MISSISSIPPI CODE OF 1972, TO PROVIDE
11 FOR CHANGE OF A REGISTERED AGENT FOR SERVICE; TO AMEND SECTION
12 79-11-197, MISSISSIPPI CODE OF 1972, TO ALLOW ELECTRONIC MEETINGS
13 OF MEMBERS; TO AMEND SECTION 79-11-199, MISSISSIPPI CODE OF 1972,
14 TO ALLOW ELECTRONIC SPECIAL MEETINGS; TO AMEND SECTION 79-11-203,
15 MISSISSIPPI CODE OF 1972, TO REVISE THE APPROVAL OF ACTIONS
16 WITHOUT MEETING; TO AMEND SECTION 79-11-211, MISSISSIPPI CODE OF
17 1972, TO REVISE WRITTEN BALLOT REQUIREMENTS; TO AMEND SECTION
18 79-11-221, MISSISSIPPI CODE OF 1972, TO CLARIFY PROXY
19 AUTHORIZATION; TO AMEND SECTION 79-11-235, MISSISSIPPI CODE OF
20 1972, TO REQUIRE A MINIMUM NUMBER OF DIRECTORS FOR NONPROFITS THAT
21 SOLICIT IN THE STATE; TO AMEND SECTION 79-11-267, MISSISSIPPI CODE
22 OF 1972, TO CLARIFY A DIRECTOR'S LIABILITY TO THE NONPROFIT; TO
23 AMEND SECTION 79-11-283, MISSISSIPPI CODE OF 1972, TO CLARIFY
24 ELECTRONIC RECORD KEEPING; TO AMEND SECTION 79-11-287, MISSISSIPPI
25 CODE OF 1972, TO ALLOW ELECTRONIC COPIES; TO AMEND SECTION
26 79-11-347, MISSISSIPPI CODE OF 1972, TO REVISE THE GROUNDS FOR
27 ADMINISTRATIVE DISSOLUTION; TO AMEND SECTION 79-11-349,
28 MISSISSIPPI CODE OF 1972, TO REVISE THE PROCEDURE FOR
29 ADMINISTRATIVE DISSOLUTION; TO AMEND SECTION 79-11-377,
30 MISSISSIPPI CODE OF 1972, TO REVISE THE PROCEDURE FOR THE CHANGE
31 OF A REGISTERED AGENT FOR SERVICE; TO AMEND SECTION 79-11-399,
32 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE RELATIONSHIP OF THE
33 ACT TO THE FEDERAL ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL
34 COMMERCE ACT; TO CREATE NEW CODE SECTION 79-11-405, MISSISSIPPI
35 CODE OF 1972, TO MAKE CERTAIN PROVISIONS REGARDING A NONPROFIT'S
36 EXEMPTION FROM TAX; AND FOR RELATED PURPOSES.

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

38 **SECTION 1.** Section 79-11-121, Mississippi Code of 1972, is
39 amended as follows:



40 79-11-121. (1) Any person may apply to the Secretary of
41 State to furnish a certificate of existence for a domestic or
42 foreign corporation.

43 (2) The certificate of existence sets forth:

44 (a) The domestic corporation's corporate name or the
45 foreign corporation's corporate name used in this state;

46 (b) That (i) the domestic corporation is duly
47 incorporated under the law of this state, the date of its
48 incorporation and the period of its duration if less than
49 perpetual; or (ii) that the foreign corporation is authorized to
50 transact business in this state;

51 (c) That all fees, taxes, and penalties owed to this
52 state have been paid, if (i) payment is reflected in the records
53 of the Secretary of State and (ii) nonpayment affects the good
54 standing of the domestic or foreign corporation;

55 (d) That its most recent status report required by
56 Section 79-11-391 has been delivered to the Secretary of State;

57 (e) That articles of dissolution have not been filed;
58 and

59 (f) Other facts of record in the Office of the
60 Secretary of State that may be requested by the application.

61 (3) Subject to any qualification stated in the certificate,
62 a certificate of existence issued by the Secretary of State may be
63 relied upon as conclusive evidence that the domestic or foreign
64 corporation is in existence or is authorized to conduct activities
65 in this state.

66 **SECTION 2.** Section 79-11-127, Mississippi Code of 1972, is
67 amended as follows:

68 79-11-127. Unless the context otherwise requires in Section
69 79-11-101 et seq., the following terms shall have the meaning
70 ascribed herein:

71 (a) "Approved by (or approval by) the members" means
72 approved or ratified by the affirmative vote of a majority of the



73 votes represented and voting at a duly held meeting at which a
74 quorum is present (which affirmative votes also constitute a
75 majority of the required quorum) or by a written ballot or written
76 consent in conformity with Section 79-11-101 et seq. or by the
77 affirmative vote, written ballot or written consent of such
78 greater proportion, including the votes of all the members of any
79 class, unit or grouping as may be provided in the articles, bylaws
80 or Section 79-11-101 et seq. for any specified member action.

81 (b) "Articles of incorporation" or "articles" include
82 amended and restated articles of incorporation and articles of
83 merger.

84 (c) "Board" or "board of directors" means the board of
85 directors except that no person or group of persons are the board
86 of directors because of powers delegated to that person or group
87 pursuant to Section 79-11-231.

88 (d) "Bylaws" means the code or codes of rules (other
89 than the articles) adopted pursuant to Section 79-11-101 et seq.
90 for the regulation or management of the affairs of the corporation
91 irrespective of the name or names by which such rules are
92 designated.

93 (e) "Class" means a group of memberships which have the
94 same rights with respect to voting, dissolution, redemption and
95 transfer. For the purposes of this section, rights shall be
96 considered the same if they are determined by a formula applied
97 uniformly.

98 (f) "Conspicuous" means so written, displayed, or
99 presented that a reasonable person against whom the record is to
100 operate should have noticed it. For example, text in italics,
101 boldface, contrasting color or capitals, or that is underlined, is
102 conspicuous.

103 (g) "Corporation" means a nonprofit corporation subject
104 to the provisions of Section 79-11-101 et seq., except a foreign
105 corporation.



106 (h) "Delegates" means those persons elected or
107 appointed to vote in a representative assembly for the election of
108 a director or directors or on other matters.

109 (i) "Deliver" or "delivery" means any method of
110 delivery used in conventional commercial practice, including
111 delivery by hand, mail, commercial delivery and electronic
112 transmission, except that delivery to the Secretary of State means
113 actual receipt by the Secretary of State.

114 (j) "Directors" means individuals, designated in the
115 articles or bylaws or elected by the incorporators, and their
116 successors and individuals elected or appointed by any other name
117 or title to act as members of the board.

118 (k) "Distribution" means the payment of a dividend or
119 any part of the income or profit of a corporation to its members,
120 directors or officers. Payment of reasonable compensation, fees,
121 or expenses incurred in the performance of duties on behalf of the
122 corporation is not a distribution.

123 (l) "Domestic corporation" means a corporation.

124 (m) "Effective date of notice" is defined in Section
125 79-11-129.

126 (n) "Electronic" means relating to technology having
127 electrical, digital, magnetic, wireless, optical, electromagnetic,
128 or similar capabilities.

129 (o) "Electronic transmission" or "electronically
130 transmitted" means any process of communication not directly
131 involving the physical transfer of paper that is suitable for the
132 retention, retrieval and reproduction of information by the
133 recipient.

134 (p) "Employee" includes an officer but not a director.
135 A director may accept duties that make the director an employee.

136 (q) "Entity" includes corporation and foreign
137 corporation; business corporation and foreign business
138 corporation; profit and nonprofit unincorporated association;



139 corporation sole; business trust, estate, partnership, trust and
140 two (2) or more persons having a joint or common economic
141 interest; and state, United States and foreign government.

142 (r) "File," "filed" or "filing" means filed in the
143 Office of the Secretary of State.

144 (s) "Foreign corporation" means a corporation organized
145 under a law other than the law of this state which would be a
146 nonprofit corporation if formed under the laws of this state.

147 (t) "Governmental subdivision" includes authority,
148 county, district and municipality.

149 (u) "Includes" denotes a partial definition.

150 (v) "Individual" includes the estate of an incompetent
151 individual.

152 (w) "Means" denotes a complete definition.

153 (x) "Member" means (without regard to what a person is
154 called in the articles or bylaws) any person or persons who on
155 more than one (1) occasion, pursuant to a provision of a
156 corporation's articles or bylaws, have the right to vote for the
157 election of a director or directors.

158 A person is not a member by virtue of any of the
159 following:

160 (i) Any rights such person has as a delegate;

161 (ii) Any rights such person has to designate a
162 director or directors; or

163 (iii) Any rights such person has as a director.

164 (y) "Membership" refers to the rights and obligations a
165 member or members have pursuant to a corporation's articles,
166 bylaws and Section 79-11-101 et seq.

167 (z) "Nonprofit corporation" means a corporation, no
168 part of the assets, income or profit of which is distributed to or
169 enures to the benefit of its members, directors or officers,
170 except as otherwise provided under this chapter. In a corporation
171 all of whose members are nonprofit corporations, distribution to



172 members does not deprive it of the status of a nonprofit
173 corporation.

174 (aa) "Notice" is defined in Section 79-11-129.

175 (bb) "Person" includes any individual or entity.

176 (cc) "Principal office" means the office (in or out of
177 this state) where the principal executive offices of a domestic or
178 foreign corporation are located.

179 (dd) "Proceeding" includes civil suit and criminal,
180 administrative and investigatory action.

181 (ee) "Record" means information that is inscribed on a
182 tangible medium or that is stored in an electronic or other medium
183 and is retrievable in perceivable form.

184 (ff) "Record date" means the date established under
185 Section 79-11-209 on which a corporation determines the identity
186 of its members for the purposes of Section 79-11-101 et seq.

187 (gg) "Religious corporation" means a corporation
188 organized and operating primarily or exclusively for religious
189 purposes.

190 (hh) "Secretary" means the corporate officer to whom
191 the board of directors has delegated responsibility under Section
192 79-11-273 for custody of the minutes of the directors' and
193 members' meetings and for authenticating the records of the
194 corporation.

195 (ii) "Sign" means with present intent to authenticate
196 or adopt a record:

197 (i) To execute or adopt a tangible symbol; or

198 (ii) To attach to or logically associate with the
199 record an electronic sound, symbol, or process as defined under
200 Mississippi law.

201 (jj) "State," when referring to a part of the United
202 States, includes a state and commonwealth (and their agencies and
203 governmental subdivisions) and a territory, and insular possession



204 (and their agencies and governmental subdivisions) of the United
205 States.

206 (kk) "United States" includes any district, authority,
207 bureau, commission, department and any other agency of the United
208 States.

209 (ll) "Vote" includes authorization by written ballot
210 and written consent.

211 (mm) "Voting power" means the total number of votes
212 entitled to be cast for the election of directors at the time the
213 determination of voting power is made, excluding a vote which is
214 contingent upon the happening of a condition or event that has not
215 occurred at the time. Where a class is entitled to vote as a
216 class for directors, the determination of voting power of the
217 class shall be based on the percentage of the number of directors
218 the class is entitled to elect out of the total number of
219 authorized directors.

220 **SECTION 3.** Section 79-11-129, Mississippi Code of 1972, is
221 amended as follows:

222 79-11-129. (1) Notice under this chapter must be in the
223 form of a record unless oral notice is authorized by this chapter
224 or is reasonable under the circumstances.

225 (2) Notice may be communicated in person * * * or by
226 delivery * * *. If these forms of communication are
227 impracticable, notice may be communicated by a newspaper of
228 general circulation in the area where published; or by radio,
229 television or other form of public broadcast communication.

230 (3) Oral notice is effective when communicated if
231 communicated in a comprehensible manner.

232 (4) Written notice by a domestic or foreign corporation to a
233 member, if in a comprehensible form, is effective:

234 (a) Upon deposit in the United States mail, if the
235 postage or delivery charge is paid and the notice is correctly



236 addressed to the member's address shown in the corporation's
237 current record of members, or

238 (b) When given if the notice is delivered in any other
239 manner that the member has authorized.

240 (5) Except as provided in subsection (4) of this section,
241 written notice, if in a comprehensible form, is effective at the
242 earliest of the following:

243 (a) When received;

244 (b) Five (5) days after its deposit in the United
245 States mail, if mailed postpaid and correctly addressed;

246 (c) On the date shown on the return receipt, if sent by
247 registered or certified mail, return receipt requested, and the
248 receipt is signed by or on behalf of the addressee.

249 (6) Written notice is correctly addressed to a member of a
250 domestic or foreign corporation if addressed to the member's
251 address shown in the corporation's current list of members.

252 (7) A written notice or report delivered as part of a
253 newsletter, magazine or other publication regularly sent to
254 members shall constitute a written notice or report if addressed
255 or delivered to the member's address shown in the corporation's
256 current list of members, or in the case of members who are
257 residents of the same household and who have the same address in
258 the corporation's current list of members, if addressed or
259 delivered to one of such members, at the address appearing on the
260 current list of members.

261 (8) Written notice is correctly addressed to a domestic or
262 foreign corporation (authorized to transact business in this
263 state), other than in its capacity as a member, if addressed to
264 its registered agent or to its secretary at its principal office
265 shown in its most recent status report or, in the case of a
266 foreign corporation that has not yet delivered a status report, in
267 its application for a certificate of authority.



268 (9) If Section 79-11-205 or any other provision of Section
269 79-11-101 et seq. prescribes notice requirements for particular
270 circumstances, those requirements govern. If articles or bylaws
271 prescribe notice requirements, not inconsistent with this section
272 or other provisions of Section 79-11-101 et seq., those
273 requirements govern.

274 (10) With respect to electronic communications:

275 (a) Unless otherwise provided in the articles of
276 incorporation or bylaws, or otherwise agreed between the sender
277 and the recipient, an electronic communication is received when:

278 (i) It enters an information processing system
279 that the recipient has designated or uses for the purpose of
280 receiving electronic records or information of the type sent and
281 from which the recipient is able to retrieve the electronic
282 record; and

283 (ii) It is in a form capable of being processed by
284 that system.

285 (b) An electronic communication is received under
286 paragraph (10) (a) even if no individual is aware of its receipt.

287 (c) Receipt of an electronic acknowledgement from an
288 information processing system described in subsection (10) (a)
289 establishes that a record was received but, by itself, does not
290 establish that the content sent corresponds to the content
291 received.

292 (11) An authorization by a member of delivery of notices or
293 communications by e-mail or similar electronic means may be
294 revoked by the member by notice to the nonprofit corporation in
295 the form of a record. Such an authorization is deemed revoked if
296 (a) the corporation is unable to deliver two (2) consecutive
297 notices or other communications to the member in the manner
298 authorized; and (b) the inability becomes known to the secretary
299 or other person responsible for giving the notice or other



300 communication; but the failure to treat the inability as a
301 revocation does not invalidate any meeting or other action.

302 **SECTION 4.** Section 79-11-137, Mississippi Code of 1972, is
303 amended as follows:

304 79-11-137. (1) The articles of incorporation must set
305 forth:

306 (a) A corporate name for the corporation that satisfies
307 the requirements of Section 79-11-157;

308 (b) The period of duration, which may be perpetual;

309 (c) The street address of the corporation's initial
310 registered office and the name of its initial registered agent at
311 that office;

312 (d) The name and address of each incorporator;

313 (e) If the corporation is incorporated on or after
314 January 1, 2012, the corporation's initial planned, primary
315 nonprofit activity; and

316 (f) Any other information the Secretary of State may
317 reasonably require by rule, including, without limitation, the
318 contact name, electronic mail address, telephone number or
319 business or mailing address of the corporation or that can be used
320 to contact the corporation.

321 (2) The articles of incorporation may set forth:

322 (a) The names and addresses of the individuals who are
323 to serve as the initial directors;

324 (b) Provisions not inconsistent with law regarding:

325 (i) The purpose or purposes for which the
326 corporation is organized;

327 (ii) Managing the business and regulating the
328 affairs of the corporation;

329 (iii) Defining, limiting and regulating the powers
330 of the corporation, its board of directors and members; * * *

331 (c) Any provision that under Section 79-11-101 et seq.
332 is required or permitted to be set forth in the bylaws; and



333 (d) A provision permitting or making obligatory
334 indemnification of a director for liability (as defined in Section
335 79-11-281(1)(c)) to any person for any action taken, or any
336 failure to take any action as a director, except liability for:

337 (i) Receipt of a financial benefit to which the
338 director is not entitled;

339 (ii) An intentional infliction of harm;

340 (iii) A violation of Section 79-11-270; or

341 (iv) An intentional violation of criminal law.

342 (3) The articles of incorporation need not set forth any of
343 the corporate powers enumerated in Section 79-11-101 et seq.

344 (4) The liability of a director of a corporation that is not
345 a charitable organization as defined in Section 79-11-501 may be
346 eliminated or limited by a provision of the articles of
347 incorporation that a director shall not be liable to the
348 corporation or its members for money damages for any action taken
349 or any failure to take any action as a director, except liability
350 for:

351 (a) The amount of a financial benefit received by the
352 director to which the director is not entitled;

353 (b) An intentional infliction of harm;

354 (c) A violation of Section 79-11-270; or

355 (d) An intentional violation of criminal law.

356 **SECTION 5.** Section 79-11-165, Mississippi Code of 1972, is
357 amended as follows:

358 79-11-165. (1) A corporation may change its registered
359 office or registered agent by delivering to the Secretary of State
360 for filing a statement of change on a form prescribed by the
361 Secretary of State and in a method prescribed by the Secretary of
362 State that sets forth:

363 (a) The name of the corporation;

364 (b) The street address of its current registered
365 office;



366 (c) If the current registered office is to be changed,
367 the street address of the new registered office;

368 (d) The name of its current registered agent;

369 (e) If the current registered agent is to be changed,
370 the name of the new registered agent and the new agent's written
371 consent (either on the statement or attached to it) to the
372 appointment; and

373 (f) A representation that after the change or changes
374 are made, the street addresses of its registered office and the
375 principal office of its registered agent will be identical.

376 (2) If * * * the street address of a registered agent's
377 business office is changed, the registered agent may change the
378 street address of the registered office of any corporation for
379 which he is the registered agent by notifying the corporation in
380 the form of a record of the change and signing * * * and
381 delivering to the Secretary of State for filing a statement that
382 complies with the requirements of subsection (1) of this section
383 and recites that the corporation has been notified of the change.

384 **SECTION 6.** Section 79-11-197, Mississippi Code of 1972, is
385 amended as follows:

386 79-11-197. (1) A corporation with members shall hold a
387 membership meeting annually at a time stated in or fixed in
388 accordance with the bylaws.

389 (2) Annual membership meetings may be held in or out of this
390 state at the place stated in or fixed in accordance with the
391 bylaws. If no place is stated in or fixed in accordance with the
392 bylaws, annual meetings shall be held at the corporation's
393 principal office.

394 (3) At the annual meeting:

395 (a) The president and chief financial officer shall
396 report on the activities and financial condition of the
397 corporation; and



398 (b) The members shall consider and act upon such other
399 matters as may be raised consistent with the requirements of
400 Sections 79-11-205 and 79-11-219.

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

404 (5) The articles of incorporation or bylaws may provide that
405 an annual or regular meeting of members does not need to be held
406 at a geographic location if the meeting is held by means of the
407 Internet or other electronic communications technology in a
408 fashion pursuant to which the members have the opportunity to read
409 or hear the proceedings substantially concurrently with their
410 occurrence, vote on matters submitted to the members, pose
411 questions, and make comments.

412 **SECTION 7.** Section 79-11-199, Mississippi Code of 1972, is
413 amended as follows:

414 79-11-199. (1) A corporation with members shall hold a
415 special meeting of members:

416 (a) On call of its board or the person or persons
417 authorized to do so by the articles or bylaws; or

418 (b) If the holders of at least five percent (5%) of the
419 voting power sign, date and deliver to any corporate officer one
420 or more written demands for the meeting describing the purpose or
421 purposes for which it is to be held.

422 (2) The close of business on the thirtieth day before
423 delivery of the demand for a special meeting to any corporate
424 officer is the record date for the purpose of determining whether
425 the five percent (5%) requirement of subsection (1) of this
426 section has been met.

427 (3) If a notice for a special meeting demanded under
428 subsection (1)(b) of this section is not given pursuant to Section
429 79-11-205 within thirty (30) days after the date the written
430 demand or demands are delivered to a corporate officer, regardless



431 of the requirements of subsection (4) of this section, a person
432 signing the demand or demands may set the time and place of the
433 meeting and give notice pursuant to Section 79-11-205.

434 (4) Special meetings of members may be held in or out of
435 this state at the place stated in or fixed in accordance with the
436 bylaws. If no place is stated or fixed in accordance with the
437 bylaws, special meetings shall be held at the corporation's
438 principal office.

439 (5) Only those matters that are within the purpose or
440 purposes described in the meeting notice required by Section
441 79-11-205 may be conducted at a special meeting of members.

442 (6) The articles of incorporation or bylaws may provide that
443 a special meeting of members does not need to be held at a
444 geographic location if the meeting is held by means of the
445 Internet or other electronic communications technology in a
446 fashion pursuant to which the members have the opportunity to read
447 or hear the proceedings substantially concurrently with their
448 occurrence, vote on matters submitted to the members, pose
449 questions, and make comments.

450 **SECTION 8.** Section 79-11-203, Mississippi Code of 1972, is
451 amended as follows:

452 79-11-203. (1) Unless limited or prohibited by the articles
453 or bylaws, action required or permitted by Section 79-11-101 et
454 seq. to be approved by the members may be approved without a
455 meeting of members if the action is approved by members holding at
456 least eighty percent (80%) of the voting power. The action must
457 be evidenced by one or more consents in the form of a record
458 bearing the date of signature and describing the action taken,
459 signed by those members representing at least eighty percent (80%)
460 of the voting power, and delivered to the corporation for
461 inclusion in the minutes or filing with the corporate records.

462 (2) If not otherwise determined under Section 79-11-201 or
463 79-11-209, the record date for determining members entitled to



464 take action without a meeting is the date the first member signed
465 the consent under subsection (1) of this section.

466 (3) A consent signed under this section has the effect of a
467 meeting vote and may be described as such in any document filed
468 with the Secretary of State.

469 (4) Written notice of member approval pursuant to this
470 section shall be given to all members who have not signed the
471 written consent. If written notice is required, member approval
472 pursuant to this section shall be effective ten (10) days after
473 such written notice is given.

474 **SECTION 9.** Section 79-11-211, Mississippi Code of 1972, is
475 amended as follows:

476 79-11-211. (1) Except as provided in subsection (5) of this
477 section and unless prohibited or limited by the articles or
478 bylaws, any action which may be taken at any annual or special
479 meeting of members may be taken without a meeting if the
480 corporation delivers a written ballot to every member entitled to
481 vote on the matter.

482 (2) A * * * ballot shall:

483 (a) Be in the form of a record;

484 (b) Set forth each proposed action; and

485 (c) Provide an opportunity to vote for or against each
486 proposed action.

487 (3) Approval by written ballot pursuant to this section
488 shall be valid only when the number of votes cast by ballot equals
489 or exceeds the quorum required to be present at a meeting
490 authorizing the action, and the number of approvals equals or
491 exceeds the number of votes that would be required to approve the
492 matter at a meeting at which the total number of votes cast was
493 the same as the number of votes cast by ballot.

494 (4) All solicitations for votes by written ballot shall:

495 (a) Indicate the number of responses needed to meet the
496 quorum requirements;



497 (b) State the percentage of approvals necessary to
498 approve each matter other than election of directors; and

499 (c) Specify the time by which a ballot must be received
500 by the corporation in order to be counted.

501 (5) Except as otherwise provided in the articles or bylaws,
502 a written ballot may not be revoked.

503 **SECTION 10.** Section 79-11-221, Mississippi Code of 1972, is
504 amended as follows:

505 79-11-221. (1) Unless the articles or bylaws prohibit or
506 limit proxy voting, a member may appoint a proxy to vote or
507 otherwise act for the member by signing an appointment form either
508 personally or by an attorney-in-fact in the form of a record.

509 (2) An appointment of a proxy is effective when received by
510 the secretary or other officer or agent authorized to tabulate
511 votes. An appointment is valid for eleven (11) months unless a
512 different period is expressly provided in the appointment form;
513 provided, however, that no proxy shall be valid for more than
514 three (3) years from its date of execution.

515 (3) An appointment of a proxy is revocable by the member.

516 (4) The death or incapacity of the member appointing a proxy
517 does not affect the right of the corporation to accept the proxy's
518 authority unless notice of the death or incapacity is received by
519 the secretary or other officer or agent authorized to tabulate
520 votes before the proxy exercises authority under the appointment.

521 (5) Appointment of a proxy is revoked by the person
522 appointing the proxy:

523 (a) Attending any meeting and voting in person; or

524 (b) Signing and delivering to the secretary or other
525 officer or agent authorized to tabulate proxy votes either a
526 writing in the form of a record stating that the appointment of
527 the proxy is revoked or a subsequent appointment form.

528 (6) Subject to Section 79-11-227 and any express limitation
529 on the proxy's authority appearing on the face of the appointment



530 form, a corporation is entitled to accept the proxy's vote or
531 other action as that of the member making the appointment.

532 **SECTION 11.** Section 79-11-235, Mississippi Code of 1972, is
533 amended as follows:

534 79-11-235. (1) (a) Except as provided in paragraph (b) of
535 this subsection, the number of directors shall be specified in or
536 fixed in accordance with the articles or bylaws.

537 (b) If the corporation: (i) is a charitable
538 organization as defined in Section 79-11-501; (ii) which solicits
539 contributions or intends to solicit contributions in the state by
540 any means whatsoever; and (iii) is incorporated on or after
541 January 1, 2012, the board must consist of not less than three (3)
542 directors, with the number of directors specified in or fixed in
543 accordance with the articles or bylaws.

544 (2) The number of directors may be increased or decreased in
545 conformance with law from time to time by amendment to or in the
546 manner prescribed in the articles or bylaws.

547 **SECTION 12.** Section 79-11-267, Mississippi Code of 1972, is
548 amended as follows:

549 79-11-267. (1) A director shall discharge his duties as a
550 director, including his duties as a member of a committee, in
551 accordance with his good faith belief that he is acting in the
552 best interests of the corporation.

553 (2) Unless he has knowledge or information concerning the
554 matter in question that makes reliance unwarranted, a director is
555 entitled to rely on information, opinions, reports or statements,
556 including financial statements and other financial data, if
557 prepared or presented by:

558 (a) One or more officers or employees of the
559 corporation whom the director believes, in good faith, to be
560 reliable and competent in the matters presented;



561 (b) Legal counsel, public accountants or other persons
562 as to matters the director believes, in good faith, are within the
563 person's professional or expert competence; or

564 (c) A committee of the board of directors of which he
565 is not a member if the director believes, in good faith, that the
566 committee merits confidence.

567 (3) A director is not liable for any action taken as a
568 director, or any failure to take any action, if he performed the
569 duties of his office in compliance with this section.

570 (4) A person alleging a violation of this section has the
571 burden of proving the violation.

572 (5) Notwithstanding any other provision of this section, a
573 director of a corporation that is a charitable organization as
574 defined in Section 79-11-501 shall not be liable to the
575 corporation or its members for money damages for any action taken,
576 or any failure to take any action, as a director, except liability
577 for:

578 (a) The amount of a financial benefit received by the
579 director to which the director is not entitled;

580 (b) An intentional infliction of harm;

581 (c) A violation of Section 79-11-270; or

582 (d) An intentional violation of criminal law.

583 **SECTION 13.** Section 79-11-283, Mississippi Code of 1972, is
584 amended as follows:

585 79-11-283. (1) A corporation shall keep as permanent
586 records minutes of all meetings of its members and board of
587 directors, a record of all actions taken by the members or
588 directors without a meeting, and a record of all actions taken by
589 committees of the board of directors as authorized by Section
590 79-11-265.

591 (2) A corporation shall maintain appropriate accounting
592 records.



593 (3) A corporation or its agent shall maintain a record of
594 its members in a form that permits preparation of a list of the
595 names and addresses of all members, in alphabetical order by class
596 showing the number of votes each member is entitled to vote.

597 (4) A corporation shall maintain its records in written form
598 or in any other form of a record * * *.

599 (5) A corporation shall keep a copy of the following records
600 at its principal office:

601 (a) Its articles or restated articles of incorporation
602 and all amendments to them currently in effect;

603 (b) Its bylaws or restated bylaws and all amendments to
604 them currently in effect;

605 (c) Resolutions adopted by its board of directors
606 relating to the characteristics, qualifications, rights,
607 limitations and obligations of members or any class or category of
608 members;

609 (d) The minutes of all meetings of members and records
610 of all actions approved by the members for the past three (3)
611 years;

612 (e) All written communications to members generally
613 within the past three (3) years;

614 (f) A list of the names and business or home addresses
615 of its current directors and officers; and

616 (g) Its most recent status report delivered to the
617 Secretary of State under Section 79-11-391.

618 **SECTION 14.** Section 79-11-287, Mississippi Code of 1972, is
619 amended as follows:

620 79-11-287. (1) A member's agent or attorney has the same
621 inspection and copying rights as the member the agent or attorney
622 represents.

623 (2) The right to copy records under Section 79-11-285
624 includes, if reasonable, the right to receive copies * * *.



625 Copies may be provided through an electronic transmission if
626 available and so requested by the member.

627 (3) The corporation may impose a reasonable charge, covering
628 the costs of labor and material, for copies of any documents
629 provided to the member. The charge may not exceed the estimated
630 cost of production or reproduction of the records.

631 (4) The corporation may comply with a member's demand to
632 inspect the record of members under Section 79-11-285(2)(c) by
633 providing the member with a list of its members that was compiled
634 no earlier than the date of the member's demand.

635 **SECTION 15.** Section 79-11-347, Mississippi Code of 1972, is
636 amended as follows:

637 79-11-347. The Secretary of State may commence a proceeding
638 under Section 79-11-349 to administratively dissolve a corporation
639 if:

640 (a) The corporation does not pay within sixty (60) days
641 after they are due any taxes or penalties imposed by Section
642 79-11-101 et seq. or other law;

643 (b) The corporation does not deliver a requested status
644 report to the Secretary of State within sixty (60) days after it
645 is due;

646 (c) The corporation is without a registered agent or
647 registered office in this state for sixty (60) days or more;

648 (d) The corporation does not notify the Secretary of
649 State within one hundred twenty (120) days that its registered
650 agent or registered office has been changed, that its registered
651 agent has resigned or that its registered office has been
652 discontinued; * * *

653 (e) The corporation's period of duration, if any,
654 stated in its articles of incorporation expires; or

655 (f) The corporation fails to report within the time
656 period specified in Section 79-11-405 the suspension or revocation



657 of its tax-exempt status under Section 501(c)(3) of the Internal
658 Revenue Code.

659 **SECTION 16.** Section 79-11-349, Mississippi Code of 1972, is
660 amended as follows:

661 79-11-349. (1) Upon determining that one or more grounds
662 exist under Section 79-11-347 for dissolving a corporation, the
663 Secretary of State shall notify the corporation in form of a
664 record of that determination * * *. For purpose of this section,
665 notice may be made by publication by newspaper of general
666 circulation in the area of the corporation's last-known location.

667 (2) If the corporation does not correct each ground for
668 dissolution or demonstrate to the reasonable satisfaction of the
669 Secretary of State that each ground determined by the Secretary of
670 State does not exist within at least sixty (60) days after service
671 of the notice is perfected, * * * the Secretary of State may
672 administratively dissolve the corporation by signing a certificate
673 of dissolution that recites the ground or grounds for dissolution
674 and its effective date. The Secretary of State shall file the
675 original of the certificate and serve a copy on the
676 corporation * * * if the corporation has filed a valid address or
677 registered agent with the Secretary of State within the previous
678 calendar year.

679 (3) A corporation administratively dissolved continues its
680 corporate existence but may not carry on any activities except
681 those necessary to wind up and liquidate its affairs under Section
682 79-11-341 and notify its claimants under Sections 79-11-343 and
683 79-11-345.

684 (4) The administrative dissolution of a corporation does not
685 terminate the authority of its registered agent.

686 **SECTION 17.** Section 79-11-377, Mississippi Code of 1972, is
687 amended as follows:

688 79-11-377. (1) A foreign corporation authorized to transact
689 business in this state may change its registered office or



690 registered agent by delivering to the Secretary of State for
691 filing a statement of change on a form prescribed by the Secretary
692 of State and in a method prescribed by the Secretary of State that
693 sets forth:

694 (a) Its name;

695 (b) The street address of its current registered
696 office;

697 (c) If the current registered office is to be changed,
698 the street address of its new registered office;

699 (d) The name of its current registered agent;

700 (e) If the current registered agent is to be changed,
701 the name of its new registered agent and the new agent's written
702 consent (either on the statement or attached to it) to the
703 appointment; and

704 (f) A representation that after the change or changes
705 are made, the street address of its registered office and the
706 office of its registered agent will be identical.

707 (2) If a registered agent changes the street address of its
708 business office, the agent may change the address of the
709 registered office of any foreign corporation for which the agent
710 is the registered agent by delivering notice to the corporation in
711 the form of a record of the change and signing * * * and
712 delivering to the Secretary of State for filing a statement of
713 change that complies with the requirements of subsection (1) of
714 this section and recites that the corporation has been notified of
715 the change.

716 **SECTION 18.** Section 79-11-399, Mississippi Code of 1972, is
717 amended as follows:

718 79-11-399. (1) Except as provided in subsection (2) of this
719 section, the repeal of a statute by Section 79-11-101 et seq. does
720 not affect:

721 (a) The operation of the statute or any action taken
722 under it before its repeal;



723 (b) Any ratification, right, remedy, privilege,
724 obligation or liability acquired, accrued or incurred under the
725 statute before its repeal;

726 (c) Any violation of the statute or any penalty,
727 forfeiture or punishment incurred because of the violation before
728 its repeal;

729 (d) Any proceeding, reorganization or dissolution
730 commenced under the statute before its repeal, and the proceeding,
731 reorganization or dissolution may be completed in accordance with
732 the statute as if it had not been repealed; or

733 (e) Any meeting of members or directors or action by
734 written consent noticed or any action taken before its repeal as a
735 result of a meeting of members or directors or action by written
736 consent.

737 (2) If a penalty or punishment imposed for violation of a
738 statute repealed by Section 79-11-101 et seq. is reduced by
739 Section 79-11-101 et seq., the penalty or punishment, if not
740 already imposed, shall be imposed in accordance with Section
741 79-11-101 et seq.

742 (3) This chapter modifies, limits, or supersedes the federal
743 Electronic Signatures in Global and National Commerce Act, 15 USC
744 Section 7001 et seq., but this chapter does not modify, limit, or
745 supersede Section 101(c) of that act or authorize electronic
746 delivery of any of the notices described in Section 103(b) of that
747 act.

748 **SECTION 19.** The following shall be codified as Section
749 79-11-405, Mississippi Code of 1972:

750 79-11-405. (1) A nonprofit corporation granted a
751 determination of exemption from tax as an organization described
752 in Section 501(c)(3) of the Internal Revenue Code shall notify the
753 Secretary of State, in the form and manner prescribed by the
754 Secretary of State, within thirty (30) calendar days of the
755 determination of exemption.



756 (2) If a nonprofit corporation's exemption from tax as an
757 organization described in Section 501(c)(3) of the Internal
758 Revenue Code is suspended or revoked, the nonprofit corporation
759 shall notify the Secretary of State of the suspension or
760 revocation, in the form and manner prescribed by the Secretary of
761 State, within thirty (30) calendar days of the suspension or
762 revocation.

763 * * *

764 **SECTION 20.** This act shall take effect and be in force from
765 and after January 1, 2012.

