

By: Representative Cockerham

To: Judiciary A

HOUSE BILL NO. 789
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 79-4-1.22, MISSISSIPPI CODE OF 1972,
2 AS AMENDED BY HOUSE BILL NO. 1162, 2012 REGULAR SESSION, TO
3 CLARIFY FEES CHARGED AND COLLECTED BY THE SECRETARY OF STATE UNDER
4 THE BUSINESS CORPORATION ACT; TO AMEND SECTION 79-4-1.25,
5 MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO. 1162, 2012
6 REGULAR SESSION, TO REVISE THE TIME IN WHICH THE SECRETARY OF
7 STATE MUST DELIVER NOTICE OF A REFUSAL TO FILE A DOCUMENT; TO
8 AMEND SECTION 79-4-1.29, MISSISSIPPI CODE OF 1972, TO REVISE THE
9 FINE FOR KNOWINGLY SIGNING A FALSE DOCUMENT; TO AMEND SECTION
10 79-4-1.40, MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS; TO
11 AMEND SECTION 79-4-1.41, MISSISSIPPI CODE OF 1972, AS AMENDED BY
12 HOUSE BILL NO. 1162, 2012 REGULAR SESSION, TO REVISE FORMS OF
13 NOTICE CONSIDERED SUFFICIENT UNDER THE ACT; TO AMEND SECTION
14 79-4-4.01, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO.
15 1162, 2012 REGULAR SESSION, TO REVISE REQUIREMENTS PERTAINING TO
16 CORPORATION NAMES; TO AMEND SECTION 79-4-4.02, MISSISSIPPI CODE OF
17 1972, TO REVISE RESERVATION OF A CORPORATE NAME; TO AMEND SECTION
18 79-4-6.20, MISSISSIPPI CODE OF 1972, TO MAKE A TECHNICAL REVISION
19 TO THE PROVISION DEALING WITH SUBSCRIPTION OF SHARES; TO AMEND
20 SECTION 79-4-7.04, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE
21 BILL NO. 1162, 2012 REGULAR SESSION, TO REVISE THE ELECTRONIC
22 TRANSMISSION OF CONSENT TO AN ACTION; TO AMEND SECTION 79-4-7.05,
23 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR REMOTE PARTICIPATION; TO
24 CREATE SECTION 79-4-7.09, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
25 ELECTRONIC SHAREHOLDER MEETINGS; TO AMEND SECTION 79-4-7.22,
26 MISSISSIPPI CODE OF 1972, TO ALLOW ELECTRONIC APPOINTMENT OF A
27 PROXY; TO AMEND SECTION 79-4-7.42, MISSISSIPPI CODE OF 1972, TO
28 CLARIFY THE DATE OF DELIVERY OF A WRITTEN DEMAND; TO AMEND SECTION
29 79-4-8.01, MISSISSIPPI CODE OF 1972, TO CLARIFY THE EXERCISE OF
30 POWER BY THE BOARD OF DIRECTORS; TO AMEND SECTION 79-4-8.05,
31 MISSISSIPPI CODE OF 1972, TO CLARIFY THE EXPIRATION OF TERMS OF
32 THE BOARD OF DIRECTORS; TO AMEND SECTION 79-4-8.06, MISSISSIPPI
33 CODE OF 1972, TO CLARIFY THE STAGGERING OF TERMS OF THE BOARD OF
34 DIRECTORS; TO AMEND SECTION 79-4-8.07, MISSISSIPPI CODE OF 1972,
35 TO CLARIFY THE RESIGNATION OF DIRECTORS; TO AMEND SECTION
36 79-4-8.10, MISSISSIPPI CODE OF 1972, TO CLARIFY THE FILLING OF
37 VACANCIES ON THE BOARD OF DIRECTORS; TO AMEND SECTION 79-4-8.24,
38 MISSISSIPPI CODE OF 1972, TO CLARIFY THE PRESUMPTION OF ASSENT TO
39 CORPORATE ACTIONS; TO CREATE SECTION 79-4-8.26, MISSISSIPPI CODE
40 OF 1972, TO CLARIFY THE SUBMISSION OF A MATTER TO THE SHAREHOLDERS
41 FOR A VOTE WHEN THE ACTION IS NOT RECOMMENDED BY THE BOARD; TO
42 AMEND SECTION 79-4-8.31, MISSISSIPPI CODE OF 1972, TO REVISE THE
43 POTENTIAL LIABILITY OF A DIRECTOR; TO AMEND SECTION 79-4-8.50,
44 MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS; TO AMEND SECTION
45 79-4-8.53, MISSISSIPPI CODE OF 1972, TO CLARIFY PAYMENT OF
46 EXPENSES OF LITIGATION; TO AMEND SECTION 79-4-8.58, MISSISSIPPI



47 CODE OF 1972, TO RESTRICT IMPAIRMENT OF ANY EXISTING RIGHT OF
48 INDEMNIFICATION OR RIGHT TO ADVANCES FOR EXPENSES BY THE
49 SUBSEQUENT AMENDMENT OF CORPORATE ARTICLES OR BYLAWS; TO AMEND
50 SECTION 79-4-8.60, MISSISSIPPI CODE OF 1972, TO REVISE
51 DEFINITIONS; TO AMEND SECTION 79-4-11.01, MISSISSIPPI CODE OF
52 1972, TO REVISE DEFINITIONS; TO AMEND SECTIONS 79-4-11.02,
53 79-4-11.03 AND 79-4-11.04, MISSISSIPPI CODE OF 1972, TO CONFORM TO
54 THE NEW DEFINITIONS OF "INTERESTS," "ELIGIBLE INTERESTS" AND
55 "MEMBERSHIP"; TO AMEND SECTION 79-4-11.06, MISSISSIPPI CODE OF
56 1972, TO CLARIFY FILING OF ARTICLES OF INCORPORATION; TO AMEND
57 SECTION 79-4-11.07, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE
58 BILL NO. 1162, 2012 REGULAR SESSION, TO CONFORM TO THE NEW
59 DEFINITIONS OF "INTERESTS," "ELIGIBLE INTERESTS" AND "MEMBERSHIP";
60 TO AMEND SECTION 79-4-11.08, MISSISSIPPI CODE OF 1972, TO CLARIFY
61 ABANDONMENT OF A PLAN OF MERGER OR SHARE EXCHANGE; TO AMEND
62 SECTION 79-4-13.20, MISSISSIPPI CODE OF 1972, TO CLARIFY CERTAIN
63 NOTICES TO SHAREHOLDERS; TO AMEND SECTION 79-4-13.21, MISSISSIPPI
64 CODE OF 1972, TO CLARIFY ASSENT TO AN ACTION TO ASSERT APPRAISAL
65 RIGHTS; TO AMEND SECTION 79-4-13.22, MISSISSIPPI CODE OF 1972, TO
66 REVISE THE FORM OF NOTICE OF AN ACTION REQUIRING APPRAISAL RIGHTS;
67 TO AMEND SECTION 79-4-14.21, MISSISSIPPI CODE OF 1972, AS AMENDED
68 BY HOUSE BILL NO. 1162, 2012 REGULAR SESSION, TO REVISE NOTICE OF
69 DISSOLUTION; TO AMEND SECTION 79-4-14.22, MISSISSIPPI CODE OF
70 1972, AS AMENDED BY HOUSE BILL NO. 1162, 2012 REGULAR SESSION, TO
71 REVISE REINSTATEMENT; TO AMEND SECTION 79-4-15.01, MISSISSIPPI
72 CODE OF 1972, TO REVISE THE ACTIVITIES REQUIRING CERTIFICATE; TO
73 AMEND SECTION 79-4-15.02, MISSISSIPPI CODE OF 1972, TO CLARIFY THE
74 TRANSACTION OF BUSINESS WITHOUT AUTHORITY; TO AMEND SECTION
75 79-4-15.06, MISSISSIPPI CODE OF 1972, TO REVISE THE REQUIREMENTS
76 THAT APPLY TO A CORPORATE NAME; TO AMEND SECTION 79-4-15.31,
77 MISSISSIPPI CODE OF 1972, TO REVISE REVOCATION OF A FOREIGN
78 CORPORATION'S CERTIFICATE OF AUTHORITY; TO AMEND SECTION
79 79-4-15.32, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO.
80 1162, 2012 REGULAR SESSION, TO CLARIFY THE CONTINUATION IN
81 BUSINESS OF A FOREIGN CORPORATION THAT IS REINSTATED AFTER
82 ADMINISTRATIVE DISSOLUTION; TO AMEND SECTION 79-4-16.01,
83 MISSISSIPPI CODE OF 1972, TO CLARIFY REQUIRED RECORD KEEPING; TO
84 AMEND SECTION 79-4-16.02, MISSISSIPPI CODE OF 1972, TO CLARIFY A
85 SHAREHOLDER'S RIGHT OF INSPECTION; TO AMEND SECTION 79-4-16.06,
86 MISSISSIPPI CODE OF 1972, TO CLARIFY NOTICE TO SHAREHOLDERS; TO
87 AMEND SECTION 79-4-16.20, MISSISSIPPI CODE OF 1972, TO CLARIFY THE
88 ANNUAL FINANCIAL STATEMENT REQUIREMENT; TO CREATE SECTION
89 79-4-17.05, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE RELATION
90 OF THE ACT TO THE FEDERAL ELECTRONIC SIGNATURES ACT; TO REPEAL
91 SECTION 79-4-16.21, MISSISSIPPI CODE OF 1972, DEALING WITH THE
92 REPORTING OF THE INDEMNIFICATION OF OR EXPENSE ADVANCES TO A
93 DIRECTOR AND CERTAIN SHARE ISSUES BY THE CORPORATION; AND FOR
94 RELATED PURPOSES.

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

96 **SECTION 1.** Section 79-4-1.22, Mississippi Code of 1972, as
97 amended by House Bill No. 1162, 2012 Regular Session, is amended
98 as follows:



99 79-4-1.22. (a) The Secretary of State shall collect the
 100 following fees when the documents described in this subsection are
 101 delivered to him for filing:

Document	Fee
(1) Articles of incorporation.....\$	50.00
(2) Application for use of indistinguishable name.....	25.00
(3) Application for reserved name.....	25.00
(4) Notice of transfer <u>or cancellation</u> of reserved name.....	25.00
(5) Application for registered name.....	50.00
(6) Application for renewal of registered name.....	50.00
(7) <u>[Reserved]</u>	
(8) <u>[Reserved]</u>	
(9) <u>[Reserved]</u>	
(10) Amendment of articles of incorporation...	50.00
(11) Restatement of articles of incorporation.....	50.00
with amendment of articles.....	50.00
(12) Articles of merger or share exchange.....	50.00
(13) Articles of dissolution.....	25.00
(14) Articles of revocation of dissolution....	25.00
(15) Certificate of administrative dissolution.....	No fee
(16) Application for reinstatement following administrative dissolution.....	50.00
(17) Certificate of reinstatement.....	No fee
(18) Certificate of judicial dissolution.....	No fee
(19) Application for certificate of authority.....	500.00
(20) Application for amended certificate of authority.....	50.00



132	(21) Application for certificate of	
133	withdrawal.....	25.00
134	(22) Certificate of revocation of authority to	
135	transact business.....	No fee
136	(23) Application for reinstatement following	
137	administrative revocation.....	100.00
138	(24) Certificate of reinstatement.....	No fee
139	(25) Annual report.....	25.00
140	(26) Articles of correction.....	50.00
141	(27) Application for certificate of existence	
142	or authorization.....	25.00
143	(28) Any other document required or permitted	
144	to be filed by Section 79-4-1.01 et seq.....	25.00

145 (b) The Secretary of State shall collect a fee of
146 Twenty-five Dollars (\$25.00) each time process is served on him
147 under Section 79-4-1.01 et seq. The party to a proceeding causing
148 service of process is entitled to recover this fee as costs if he
149 prevails in the proceeding.

150 (c) The Secretary of State shall collect the following fees
151 for copying and certifying the copy of any filed document relating
152 to a domestic or foreign corporation:

- 153 (1) One Dollar (\$1.00) a page for copying; and
- 154 (2) Ten Dollars (\$10.00) for the certificate.

155 (d) The Secretary of State may collect a filing fee greater
156 than the fee set out herein, not to exceed the actual costs of
157 processing the filing, if the form for filing as prescribed by the
158 Secretary of State has not been used.

159 (e) The Secretary of State may promulgate rules to:

- 160 (1) Reduce the filing fees prescribed in this section
- 161 or provide for discounts of fees to encourage online filing of
- 162 documents or for other reasons as determined by the Secretary of
- 163 State; and



164 (2) Provide for documents to be filed and accepted on
165 an expedited basis upon the request of the applicant. The
166 Secretary of State may promulgate rules to provide for an
167 additional reasonable filing fee not to exceed Twenty-five Dollars
168 (\$25.00) to be paid by the applicant and collected by the
169 Secretary of State for the expedited filing services.

170 **SECTION 2.** Section 79-4-1.25, Mississippi Code of 1972, as
171 amended by House Bill No. 1162, 2012 Regular Session, is amended
172 as follows:

173 79-4-1.25. (a) If a document delivered to the Office of the
174 Secretary of State for filing satisfies the requirements of
175 Section 79-4-1.20, the Secretary of State shall file it.

176 (b) The Secretary of State files a document by recording it
177 as filed on the date and time of receipt. After filing a
178 document, * * * the Secretary of State shall deliver to the
179 domestic or foreign corporation or its representative a copy of
180 the document with an acknowledgment of the date and time of
181 filing.

182 (c) If the Secretary of State refuses to file a document, he
183 shall return it to the domestic or foreign corporation or its
184 representative within ten (10) days after the document was
185 delivered, together with a brief, written explanation of the
186 reason for his refusal.

187 (d) The Secretary of State's duty to file documents under
188 this section is ministerial. His filing or refusing to file a
189 document does not:

190 (1) Affect the validity or invalidity of the document,
191 in whole or in part;

192 (2) Relate to the correctness or incorrectness of
193 information contained in the document;

194 (3) Create a presumption that the document is valid or
195 invalid or that information contained in the document is correct
196 or incorrect.



197 **SECTION 3.** Section 79-4-1.29, Mississippi Code of 1972, is
198 amended as follows:

199 79-4-1.29. (a) A person commits an offense if he signs a
200 document he knows is false in any material respect with intent
201 that the document be delivered to the Secretary of State for
202 filing.

203 (b) An offense under this section is a misdemeanor
204 punishable by a fine of not to exceed One Thousand Dollars
205 (\$1,000.00).

206 **SECTION 4.** Section 79-4-1.40, Mississippi Code of 1972, is
207 amended as follows:

208 79-4-1.40. In Section 79-4-1.01 et seq.:

209 (1) "Articles of incorporation" means the original
210 articles of incorporation, all amendments thereof, and any other
211 documents permitted or required to be filed by a domestic business
212 corporation with the Secretary of State under any provision of
213 this chapter except Section 79-4-16.22. If an amendment of the
214 articles or any other document filed under this chapter restates
215 the articles in their entirety, thenceforth the "articles" shall
216 not include any prior documents.

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

219 (3) "Conspicuous" means so written, displayed, or
220 presented that a reasonable person against whom the writing is to
221 operate should have noticed it. For example, text in italics,
222 boldface, contrasting color, * * * capitals or underlined, is
223 conspicuous.

224 (4) "Corporation" or "domestic corporation" means a
225 corporation for profit, which is not a foreign corporation,
226 incorporated under or subject to the provisions of Section
227 79-4-1.01 et seq.

228 (5) "Deliver" or "delivery" means any method of
229 delivery used in conventional commercial practice, including



230 delivery by hand, mail, commercial delivery and, if authorized in
231 accordance with Section 79-7-1.41, by electronic transmission.

232 (6) "Distribution" means a direct or indirect transfer
233 of money or other property (except its own shares) or incurrence
234 of indebtedness by a corporation to or for the benefit of its
235 shareholders in respect of any of its shares. A distribution may
236 be in the form of a declaration or payment of a dividend; a
237 purchase, redemption or other acquisition of shares; a
238 distribution of indebtedness; or otherwise.

239 (7) "Documents" means (i) any tangible medium on which
240 information is inscribed, and includes any writing or written
241 instruments, or (ii) an electronic record.

242 (8) "Domestic unincorporated entity" means an
243 unincorporated entity whose internal affairs are governed by the
244 laws of this state.

245 (9) "Effective date of notice" is defined in Section
246 79-4-1.41.

247 * * *

248 (10) "Electronic" means relating to technology having
249 electrical, digital, magnetic, wireless, optical, electromagnetic,
250 or similar capabilities.

251 (11) "Electronic record" means information that is
252 stored in an electronic or other medium and is retrievable in
253 paper form through an automated process used in conventional
254 commercial practice, unless otherwise authorized in accordance
255 with Section 79-4-1.41(j).

256 (12) "Electronic transmission" or "electronically
257 transmitted" means any form or process of communication, not
258 directly involving the physical transfer of paper or another
259 tangible medium, which (i) is suitable for the retention,
260 retrieval and reproduction of information by the recipient, and
261 (ii) is retrievable in paper form by the recipient through an



262 automated process used in conventional commercial practice, unless
263 otherwise authorized in accordance with Section 79-4-1.41(j).

264 (13) "Eligible entity" means a domestic or foreign
265 unincorporated entity or a domestic or foreign nonprofit
266 corporation.

267 (14) "Eligible interest" means interests or membership.

268 (15) "Employee" includes an officer but not a director.
269 A director may accept duties that make him also an employee.

270 (16) "Expenses" means reasonable expenses of any kind
271 that are incurred in connection with a matter.

272 (17) "Entity" includes domestic and foreign business
273 corporation; domestic and foreign nonprofit corporation; estate;
274 trust; business trust; domestic and foreign unincorporated entity;
275 two (2) or more persons having a joint or common economic
276 interest, and state, United States, and foreign government.

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

279 (19) "Filing entity" means another entity that is of a
280 type that is created by filing a public organic document.

281 (20) "Foreign corporation" means a corporation * * *
282 incorporated under a law other than the law of this state, which
283 would be a business corporation if incorporated under the laws of
284 this state.

285 (21) "Foreign nonprofit corporation" means a
286 corporation incorporated under a law other than the law of this
287 state, which would be a nonprofit corporation if incorporated
288 under the laws of this state.

289 (22) "Foreign unincorporated entity" means an
290 unincorporated entity whose internal affairs are governed by an
291 organic law of a jurisdiction other than this state.

292 (23) "Governmental subdivision" includes authority,
293 county, district and municipality.

294 (24) "Includes" denotes a partial definition.



295 (25) "Individual" means a natural person, and includes
296 the estate of an incompetent or deceased natural person.

297 (26) "Interest" means either or both of the following
298 rights under the organic law of an unincorporated entity:

299 (i) The right to receive distributions from the
300 entity either in the ordinary course or upon liquidation; or

301 (ii) The right to receive notice or vote on issues
302 involving its internal affairs, other than as an agent, assignee,
303 proxy, or person responsible for managing its business and
304 affairs.

305 (27) "Means" denotes an exhaustive definition.

306 (28) "Membership" means the rights of a member in a
307 domestic or foreign nonprofit corporation.

308 (29) "Nonprofit corporation" or "domestic nonprofit
309 corporation" means a corporation incorporated under the laws of
310 this state and subject to the provisions of Section 79-11-101 et
311 seq.

312 (30) "Notice" is defined in Section 79-4-1.41.

313 (31) "Organic law" means the statute governing the
314 internal affairs of a domestic or foreign business or nonprofit
315 corporation or unincorporated entity.

316 (32) "Person" includes an individual and an entity.

317 (33) "Principal office" means the office (in or out of
318 this state) so designated in the annual report where the principal
319 executive offices of a domestic or foreign corporation are
320 located.

321 (34) "Proceeding" includes civil suit and criminal,
322 administrative and investigatory action.

323 (35) "Public corporation" means a corporation that has
324 shares listed on a national securities exchange or regularly
325 traded in a market maintained by one or more members of a
326 national * * * securities association.



327 (36) "Qualified director" is defined in Section
328 79-4-1.43.

329 (37) "Record date" means the date established under
330 Article 6 or 7 on which a corporation determines the identity of
331 its shareholders and their shareholdings for purposes of Section
332 79-4-1.01 et seq. The determinations shall be made as of the
333 close of business on the record date unless another time for doing
334 so is specified when the record date is fixed.

335 (38) "Secretary" means the corporate officer to whom
336 the board of directors has delegated responsibility under Section
337 79-4-8.40(c) for custody of the minutes of the meetings of the
338 board of directors and of the shareholders and for authenticating
339 records of the corporation.

340 (39) "Shares" means the unit into which the proprietary
341 interests in a corporation are divided.

342 (40) "Shareholder" means the person in whose name
343 shares are registered in the records of a corporation or the
344 beneficial owner of shares to the extent of the rights granted by
345 a nominee certificate on file with a corporation.

346 (41) "Sign" or "signature" means, with present intent
347 to authenticate or adopt a document:

348 (i) To execute or adopt a tangible symbol to a
349 document, and includes any manual, facsimile, or conformed
350 signature; or

351 (ii) To attach to or logically associate with an
352 electronic transmission an electronic sound, symbol, or process,
353 and includes an electronic signature in an electronic
354 transmission.

355 (42) "State," when referring to a part of the United
356 States, includes a state and commonwealth (and their agencies and
357 governmental subdivisions) and a territory, and insular possession
358 (and their agencies and governmental subdivisions) of the United
359 States.



360 (43) "Subscriber" means a person who subscribes for
361 shares in a corporation, whether before or after incorporation.

362 (44) "Unincorporated entity" means an organization or
363 artificial legal person that either has a separate legal existence
364 or has the power to acquire an estate in real property in its own
365 name and that is not any of the following: a domestic or foreign
366 business or nonprofit corporation, an estate, a trust, a state,
367 the United States, or a foreign government. The term includes a
368 general partnership, limited liability company, limited
369 partnership, business trust, joint-stock association and
370 unincorporated nonprofit association.

371 (45) "United States" includes district, authority,
372 bureau, commission, department and any other agency of the United
373 States.

374 (46) "Voting group" means all shares of one or more
375 classes or series that under the articles of incorporation or
376 Section 79-4-1.01 et seq. are entitled to vote and be counted
377 together collectively on a matter at a meeting of shareholders.
378 All shares entitled by the articles of incorporation or Section
379 79-4-1.01 et seq. to vote generally on the matter are for that
380 purpose a single voting group.

381 (47) "Voting power" means the current power to vote in
382 the election of directors.

383 (48) "Writing" or "written" means any information in
384 the form of a document.

385 **SECTION 5.** Section 79-4-1.41, Mississippi Code of 1972, as
386 amended by House Bill No. 1162, 2012 Regular Session, is amended
387 as follows:

388 79-4-1.41. (a) Notice under Section 79-4-1.01 et seq. must
389 be in writing unless oral notice is reasonable in the
390 circumstances. Unless otherwise agreed between the sender and the
391 recipient, words in a notice or other communication under this
392 chapter must be in English.



393 (b) A notice or other communication may be given or sent by
394 any method of delivery, except that electronic transmissions must
395 be in accordance with this section. If these methods of delivery
396 are impracticable, a notice or other communication may be
397 communicated by a newspaper of general circulation in the area
398 where published, or by radio, television or other form of public
399 broadcast communication.

400 * * *

401 (c) Notice or other communication to a domestic or foreign
402 corporation authorized to transact business in this state may be
403 delivered to its registered agent * * * or to the secretary of the
404 corporation at its principal office shown in its most recent
405 annual report or, in the case of a foreign corporation that has
406 not yet delivered an annual report, in its application for a
407 certificate of authority.

408 (d) Notice or other communication may be delivered by
409 electronic transmission if consented to by the recipient or if
410 authorized by subsection (j) of this section.

411 (e) Any consent under subsection (d) of this section may be
412 revoked by the person who consented by written or electronic
413 notice to the person to whom the consent was delivered. Any such
414 consent is deemed revoked if (1) the corporation is unable to
415 deliver two (2) consecutive electronic transmissions given by the
416 corporation in accordance with such consent, and (2) such
417 inability becomes known to the secretary or an assistant secretary
418 of the corporation or to the transfer agent, or other person
419 responsible for the giving of notice or other communications; the
420 inadvertent failure to treat such inability as a revocation shall
421 not invalidate any meeting or other action.

422 (f) Unless otherwise agreed between the sender and the
423 recipient, an electronic transmission is received when:

424 (1) It enters an information-processing system that the
425 recipient has designated or uses for the purpose of receiving



426 electronic transmissions or information of the type sent, and from
427 which the recipient is able to retrieve the electronic
428 transmission; and

429 (2) It is in a form capable of being processed by that
430 system.

431 (g) Receipt of an electronic acknowledgement from an
432 information-processing system described in subsection (f)(1) of
433 this section establishes that an electronic transmission was
434 received but, by itself, does not establish that the content sent
435 corresponds to the content received.

436 (h) An electronic transmission is received under this
437 section even if no individual is aware of its receipt.

438 (i) * * * Notice or other communication, if in a
439 comprehensible form or manner, is effective at the earliest of the
440 following:

441 * * *

442 (1) If in physical form, the earliest of when it is
443 actually received, or when it is left at:

444 (i) A shareholder's address shown on the
445 corporation's record of shareholders maintained by the corporation
446 under Section 79-4-16.01(c);

447 (ii) A director's residence or usual place of
448 business; or

449 (iii) The corporation's principal place of
450 business;

451 (2) * * * If mailed postage prepaid and correctly
452 addressed to a shareholder, upon deposit in the United States
453 mail;

454 (3) If mailed by United States mail postage prepaid and
455 correctly addressed to a recipient other than a shareholder, the
456 earliest when it is actually received or:



457 (i) * * * If sent by registered or certified mail,
458 return receipt requested, the date shown on the return
459 receipt * * * signed by or on behalf of the addressee; or

460 (ii) Five (5) days after it is deposited in the
461 United States mail;

462 (4) If an electronic transmission, when it is received
463 as provided in subsection (f) of this section; and

464 (5) If oral, when communicated.

465 * * *

466 (j) A notice or other communication may be in the form of an
467 electronic transmission that cannot be directly reproduced in
468 paper form by the recipient through an automated process used in
469 conventional commercial practice only if (1) the electronic
470 transmission is otherwise retrievable in perceivable form, and (2)
471 the sender and the recipient have consented in writing to the use
472 of such form of electronic transmission.

473 (k) If Section 79-4-1.01 et seq. prescribes * * *
474 requirements for notices or other communications in particular
475 circumstances, those requirements govern. If articles of
476 incorporation or bylaws prescribe * * * requirements for notices
477 or other communications, not inconsistent with this section or
478 other provisions of Section 79-4-1.01 et seq., those requirements
479 govern. The articles of incorporation or bylaws may authorize or
480 require delivery of notices of meetings of directors by electronic
481 transmission.

482 **SECTION 6.** Section 79-4-4.01, Mississippi Code of 1972, is
483 amended as follows:

484 79-4-4.01. (a) A corporate name:

485 (1) Must contain the word "corporation,"
486 "incorporated," "company" or "limited," or the abbreviation
487 "corp.," "inc.," "co." or "ltd." or words or abbreviations of like
488 import in another language; and



489 (2) May not contain language stating or implying that
490 the corporation is organized for a purpose other than that
491 permitted by Section 79-4-3.01 and its articles of incorporation.

492 (b) Except as authorized by subsections (c) and (d), a
493 corporate name must be distinguishable upon the records of the
494 Secretary of State from:

495 (1) The corporate name of a corporation incorporated or
496 authorized to transact business in this state;

497 * * *

498 (2) The fictitious name adopted by a foreign
499 corporation or foreign limited liability company authorized to
500 transact business in this state because its real name is
501 unavailable; * * *

502 (3) The corporate name of a nonprofit corporation
503 incorporated or authorized to transact business in this state;

504 (4) The name of a limited partnership, limited
505 liability partnership or limited liability company that is
506 organized or registered under the laws of this state and which has
507 not been dissolved; and

508 (5) A name that is reserved or registered in the Office
509 of the Secretary of State for any of the entities named in
510 subsection (b) of this section which reservation or registration
511 has not expired.

512 (c) A corporation may apply to the Secretary of State for
513 authorization to use a name that is not distinguishable upon his
514 records from one or more of the names described in subsection (b).
515 The Secretary of State shall authorize use of the name applied for
516 if:

517 (1) The other corporation consents to the use in
518 writing and submits an undertaking in form satisfactory to the
519 Secretary of State to change its name to a name that is
520 distinguishable upon the records of the Secretary of State from
521 the name of the applying corporation; or



522 (2) The applicant delivers to the Secretary of State a
523 certified copy of the final judgment of a court of competent
524 jurisdiction establishing the applicant's right to use the name
525 applied for in this state.

526 (d) A corporation may use the name (including the fictitious
527 name) of another domestic or foreign corporation that is used in
528 this state if the other corporation is incorporated or authorized
529 to transact business in this state and the proposed user
530 corporation:

531 (1) Has merged with the other corporation;

532 (2) Has been formed by reorganization of the other
533 corporation; or

534 (3) Has acquired all or substantially all of the
535 assets, including the corporate name, of the other corporation.

536 (e) Section 79-4-1.01 et seq. does not control the use of
537 fictitious names.

538 **SECTION 7.** Section 79-4-4.02, Mississippi Code of 1972, is
539 amended as follows:

540 79-4-4.02. (a) A person may reserve the exclusive use of a
541 corporate name, including a fictitious name for a foreign
542 corporation whose corporate name is not available, by delivering
543 an application to the Secretary of State for filing. The
544 application must set forth the name and address of the applicant
545 and the name proposed to be reserved. If the Secretary of State
546 finds that the corporate name applied for is available, he shall
547 reserve the name for the applicant's exclusive use for a
548 nonrenewable one-hundred-eighty-day period.

549 (b) The owner of a reserved corporate name may transfer the
550 reservation to another person by delivering to the Secretary of
551 State a signed notice of the transfer that states the name and
552 address of the transferee.

553 (c) The reservation of a specified name may be cancelled by
554 delivering to the Office of the Secretary of State a notice of



555 cancellation, specifying the name of the reservation to be
556 cancelled and the name and address of the owner or transferee.

557 (d) Unless the Secretary of State finds that any
558 application, notice of transfer, or notice of cancellation filed
559 with the Secretary of State as required by this section does not
560 conform to law, upon receipt of all filing fees required by law
561 the Secretary of State shall prepare and return to the person who
562 filed the instrument a copy of the filed instrument with a
563 notation thereon of the action taken by the Secretary of State.

564 (e) A fee as set forth in Section 79-4-1.22(4) of this
565 chapter shall be paid at the time of the reservation of any name
566 and at the time of the filing of a notice of the transfer or
567 cancellation of any such reservation.

568 **SECTION 8.** Section 79-4-6.20, Mississippi Code of 1972, is
569 amended as follows:

570 79-4-6.20. (a) A subscription for shares entered into
571 before incorporation is irrevocable for six (6) months unless the
572 subscription agreement provides a longer or shorter period or all
573 the subscribers agree to revocation.

574 (b) The board of directors may determine the payment terms
575 of subscriptions for shares that were entered into before
576 incorporation, unless the subscription agreement specifies them.
577 A call for payment by the board of directors must be uniform so
578 far as practicable as to all shares of the same class or series,
579 unless the subscription agreement specifies otherwise.

580 (c) Shares issued pursuant to subscriptions entered into
581 before incorporation are fully paid and nonassessable when the
582 corporation receives the consideration specified in the
583 subscription agreement.

584 (d) If a subscriber defaults in payment of money or property
585 under a subscription agreement entered into before incorporation,
586 the corporation may collect the amount owed as any other debt.
587 Alternatively, unless the subscription agreement provides



588 otherwise, the corporation may rescind the agreement and may sell
589 the shares if the debt remains unpaid more than twenty (20) days
590 after the corporation sends a written demand for payment to the
591 subscriber.

592 (e) A subscription agreement entered into after
593 incorporation is a contract between the subscriber and the
594 corporation subject to Section 79-4-6.21.

595 **SECTION 9.** Section 79-4-7.04, Mississippi Code of 1972, as
596 amended by House Bill No. 1162, 2012 Regular Session, is amended
597 as follows:

598 79-4-7.04. (a) Action required or permitted by Section
599 79-4-1.01 et seq. to be taken at a shareholders' meeting may be
600 taken without a meeting if the action is taken by all the
601 shareholders entitled to vote on the action. The action must be
602 evidenced by one or more written consents describing the action
603 taken, signed by all the shareholders entitled to vote on the
604 action and delivered to the corporation for inclusion in the
605 minutes or filing with the corporate records. A unanimous consent
606 signed under this subsection is the act of the shareholders when
607 consents signed by all shareholders have been delivered to the
608 corporation.

609 (b) The articles of incorporation may provide that any
610 action required or permitted by Section 79-4-1.01 et seq. to be
611 taken at a shareholder's meeting may be taken without a meeting
612 and without prior notice, if consents in writing setting forth the
613 action so taken are signed by the holders of outstanding shares
614 having not less than the minimum number of votes that would be
615 required to authorize or take the action at a meeting at which all
616 shares entitled to vote on the action were present and voted. The
617 written consent shall bear the date of signature of the
618 shareholder who signs the consent and be delivered to the
619 corporation for inclusion in the minutes or filing with the
620 corporate records.



621 (c) If not otherwise fixed under Section 79-4-7.03 or
622 79-4-7.07, and if prior board action is not required respecting
623 the action to be taken without a meeting, the record date for
624 determining the shareholders entitled to take action without a
625 meeting shall be the first date on which a signed written consent
626 is delivered to the corporation. If not otherwise fixed under
627 Section 79-4-7.03 or 79-4-7.07, and if prior board action is
628 required respecting the action to be taken without a meeting, the
629 record date shall be the close of business on the day the
630 resolution of the board taking such prior action is adopted. No
631 written consent shall be effective to take the corporate action
632 referred to therein unless, within sixty (60) days of the earliest
633 date on which a consent delivered to the corporation as required
634 by this section was signed, written consents signed by the holders
635 of shares having sufficient votes to take the action have been
636 delivered to the corporation. A written consent may be revoked by
637 a writing to that effect delivered to the corporation before
638 unrevoked written consents sufficient in number to take the
639 corporation action are delivered to the corporation.

640 (d) A consent signed pursuant to the provisions of this
641 section has the effect of a vote taken at a meeting and may be
642 described as such in any document. Unless the articles of
643 incorporation, bylaws, or a resolution of the board of directors
644 provides for a reasonable delay to permit tabulation of written
645 consents, the action taken by less than unanimous written consent
646 shall be effective when written consents signed by the holders of
647 shares having sufficient votes to take the action are delivered to
648 the corporation.

649 (e) If Section 79-4-1.01 et seq. requires that notice of a
650 proposed action be given to nonvoting shareholders and the action
651 is to be taken by written consent of the voting shareholders, the
652 corporation must give its nonvoting shareholders written notice of
653 the action not more than ten (10) days after (i) written consents



654 sufficient to take the action have been delivered to the
655 corporation, or (ii) such later date that tabulation of consents
656 is completed pursuant to an authorization under subsection (d).
657 The notice must reasonably describe the action taken and contain
658 or be accompanied by the same material that, under Section
659 79-4-1.01 et seq., would have been required to be sent to
660 nonvoting shareholders in a notice of a meeting at which the
661 proposed action would have been submitted to the shareholders for
662 action.

663 (f) If action is taken by less than unanimous written
664 consent of the voting shareholders, the corporation must give its
665 nonconsenting voting shareholders written notice of the action not
666 more than ten (10) days after (i) written consents sufficient to
667 take the action have been delivered to the corporation, or (ii)
668 such later date that tabulation of consents is completed pursuant
669 to an authorization under subsection (d). The notice must
670 reasonably describe the action taken and contain or be accompanied
671 by the same material that, under Section 79-4-1.01 et seq., would
672 have been required to be sent to voting shareholders in a notice
673 of a meeting at which the action would have been submitted to the
674 shareholders for action.

675 (g) The notice requirements in subsections (e) and (f) shall
676 not delay the effectiveness of actions taken by written consent,
677 and a failure to comply with such notice requirements shall not
678 invalidate actions taken by written consent, provided that this
679 subsection shall not be deemed to limit judicial power to fashion
680 any appropriate remedy in favor of a shareholder adversely
681 affected by a failure to give such notice within the required time
682 period.

683 * * *

684 **SECTION 10.** Section 79-4-7.05, Mississippi Code of 1972, is
685 amended as follows:



686 79-4-7.05. (a) A corporation shall notify shareholders of
687 the date, time and place of each annual and special shareholders'
688 meeting no fewer than ten (10) nor more than sixty (60) days
689 before the meeting date. If the board of directors has authorized
690 participation by means of remote communication pursuant to Section
691 79-4-7.09 for any class or series of shareholders, the notice of
692 such class or series of shareholders shall describe the means of
693 remote communication to be used. Unless Section 79-4-1.01 et seq.
694 or the articles of incorporation require otherwise, the
695 corporation is required to give notice only to shareholders
696 entitled to vote at the meeting.

697 (b) Unless Section 79-4-1.01 et seq. or the articles of
698 incorporation require otherwise, notice of an annual meeting need
699 not include a description of the purpose or purposes for which the
700 meeting is called.

701 (c) Notice of a special meeting must include a description
702 of the purpose or purposes for which the meeting is called.

703 (d) If not otherwise fixed under Section 79-4-7.03 or
704 79-4-7.07, the record date for determining shareholders entitled
705 to notice of and to vote at an annual or special shareholders'
706 meeting is the day before the first notice is delivered to
707 shareholders.

708 (e) Unless the bylaws require otherwise, if an annual or
709 special shareholders' meeting is adjourned to a different date,
710 time or place, notice need not be given of the new date, time or
711 place if the new date, time or place is announced at the meeting
712 before adjournment. If a new record date for the adjourned
713 meeting is or must be fixed under Section 79-4-7.07, however,
714 notice of the adjourned meeting must be given under this section
715 to persons who are shareholders as of the new record date.

716 **SECTION 11.** The following shall be codified as Section
717 79-4-7.09, Mississippi Code of 1972:



718 79-4-7.09. **Remote participation in annual and special**
719 **meetings.** (a) Shareholders of any class or series may
720 participate in any meeting of shareholders by means of remote
721 communication to the extent the board of directors authorizes such
722 participation for such class or series. Participation by means of
723 remote communication shall be subject to such guidelines and
724 procedures as the board of directors adopts, and shall be in
725 conformity with subsection (b) of this section.

726 (b) Shareholders participating in a shareholders' meeting by
727 means of remote communication shall be deemed present and may vote
728 at such a meeting if the corporation has implemented reasonable
729 measures:

730 (1) To verify that each person participating remotely
731 is a shareholder; and

732 (2) To provide such shareholders a reasonable
733 opportunity to participate in the meeting and to vote on matters
734 submitted to the shareholders, including an opportunity to
735 communicate, and to read or hear the proceedings of the meeting,
736 substantially concurrently with such proceeding.

737 **SECTION 12.** Section 79-4-7.22, Mississippi Code of 1972, is
738 amended as follows:

739 79-4-7.22. (a) A shareholder may vote his shares in person
740 or by proxy.

741 (b) A shareholder or his agent or attorney-in-fact may
742 appoint a proxy to vote or otherwise act for the shareholder by
743 signing an appointment form or by electronic transmission. An
744 electronic transmission must contain or be accompanied by
745 information from which the recipient can determine the date of the
746 transmission, and that the transmission was authorized by the
747 sender or the sender's agent or attorney-in-fact.

748 (c) An appointment of a proxy is effective when a signed
749 appointment form or an electronic transmission of the appointment
750 is received by the inspector of election or the officer or agent



751 of the corporation authorized to tabulate votes. An appointment
752 is valid for eleven (11) months unless a longer period is
753 expressly provided in the appointment.

754 (d) An appointment of a proxy is revocable unless the
755 appointment form or electronic transmission states that it is
756 irrevocable and the appointment is coupled with an interest.
757 Appointments coupled with an interest include the appointment of:

758 (1) A pledgee;

759 (2) A person who purchased or agreed to purchase the
760 shares;

761 (3) A creditor of the corporation who extended it
762 credit under terms requiring the appointment;

763 (4) An employee of the corporation whose employment
764 contract requires the appointment; or

765 (5) A party to a voting agreement created under Section
766 79-4-7.31.

767 (e) The death or incapacity of the shareholder appointing a
768 proxy does not affect the right of the corporation to accept the
769 proxy's authority unless notice of the death or incapacity is
770 received by the secretary or other officer or agent authorized to
771 tabulate votes before the proxy exercises his authority under the
772 appointment.

773 (f) An appointment made irrevocable under subsection (d) is
774 revoked when the interest with which it is coupled is
775 extinguished.

776 (g) A transferee for value of shares subject to an
777 irrevocable appointment may revoke the appointment if he did not
778 know of its existence when he acquired the shares and the
779 existence of the irrevocable appointment was not noted
780 conspicuously on the certificate representing the shares or on the
781 information statement for shares without certificates.

782 (h) Subject to Section 79-4-7.24 and to any express
783 limitation on the proxy's authority stated in the appointment form



784 or electronic transmission, a corporation is entitled to accept
785 the proxy's vote or other action as that of the shareholder making
786 the appointment.

787 **SECTION 13.** Section 79-4-7.42, Mississippi Code of 1972, is
788 amended as follows:

789 79-4-7.42. No shareholder may commence a derivative
790 proceeding until:

791 (1) A written demand has been made upon the corporation
792 to take suitable action; and

793 (2) Ninety (90) days have expired from the date
794 delivery of the demand was made unless the shareholder has earlier
795 been notified that the demand has been rejected by the corporation
796 or unless irreparable injury to the corporation would result by
797 waiting for the expiration of the ninety-day period.

798 **SECTION 14.** Section 79-4-8.01, Mississippi Code of 1972, is
799 amended as follows:

800 79-4-8.01. (a) Except as provided in Section 79-4-7.32,
801 each corporation must have a board of directors.

802 (b) All corporate powers shall be exercised by or under the
803 authority of the board of directors of the corporation, and the
804 business and affairs of the corporation shall be managed by or
805 under the direction, and subject to the oversight, of its board of
806 directors, subject to any limitation set forth in the articles of
807 incorporation or in an agreement authorized under Section
808 79-4-7.32.

809 **SECTION 15.** Section 79-4-8.05, Mississippi Code of 1972, is
810 amended as follows:

811 79-4-8.05. (a) The terms of the initial directors of a
812 corporation expire at the first shareholders' meeting at which
813 directors are elected.

814 (b) The terms of all other directors expire at the next, or
815 if their terms are staggered in accordance with Section 79-4-8.06,



816 at the applicable second or third, annual shareholders' meeting
817 following their election * * *.

818 (c) A decrease in the number of directors does not shorten
819 an incumbent director's term.

820 (d) The term of a director elected to fill a vacancy expires
821 at the next shareholders' meeting at which directors are elected.

822 (e) Despite the expiration of a director's term, he
823 continues to serve until his successor is elected and qualifies or
824 until there is a decrease in the number of directors.

825 **SECTION 16.** Section 79-4-8.06, Mississippi Code of 1972, is
826 amended as follows:

827 79-4-8.06. The articles of incorporation may provide for
828 staggering the terms of directors by dividing the total number of
829 directors into two (2) or three (3) groups, with each group
830 containing one-half (1/2) or one-third (1/3) of the total, as near
831 as may be practicable. In that event, the terms of directors in
832 the first group expire at the first annual shareholders' meeting
833 after their election, the terms of the second group expire at the
834 second annual shareholders' meeting after their election, and the
835 terms of the third group, if any, expire at the third annual
836 shareholders' meeting after their election. At each annual
837 shareholders' meeting held thereafter, directors shall be chosen
838 for a term of two (2) years or three (3) years, as the case may
839 be, to succeed those whose terms expire.

840 **SECTION 17.** Section 79-4-8.07, Mississippi Code of 1972, is
841 amended as follows:

842 79-4-8.07. (a) A director may resign at any time by
843 delivering written notice to the board of directors, or its chair
844 or to the secretary of the corporation.

845 (b) A resignation is effective when the notice is delivered
846 unless the notice specifies a later effective date.

847 **SECTION 18.** Section 79-4-8.10, Mississippi Code of 1972, is
848 amended as follows:



849 79-4-8.10. (a) Unless the articles of incorporation provide
850 otherwise, if a vacancy occurs on a board of directors, including
851 a vacancy resulting from an increase in the number of directors:

852 (1) The shareholders may fill the vacancy;

853 (2) The board of directors may fill the vacancy; or

854 (3) If the directors remaining in office constitute
855 fewer than a quorum of the board, they may fill the vacancy by the
856 affirmative vote of a majority of all the directors remaining in
857 office.

858 (b) If the vacant office was held by a director elected by a
859 voting group of shareholders, only the holders of shares of that
860 voting group are entitled to fill the vacancy if it is filled by
861 the shareholders and only the directors elected by that voting
862 group are entitled to fill the vacancy if it is filled by the
863 director.

864 (c) A vacancy that will occur at a specific later date (by
865 reason of a resignation effective at a later date under Section
866 79-4-8.07(b) or otherwise) may be filled before the vacancy occurs
867 but the new director may not take office until the vacancy occurs.

868 **SECTION 19.** Section 79-4-8.24, Mississippi Code of 1972, is
869 amended as follows:

870 79-4-8.24. (a) Unless the articles of incorporation or
871 bylaws require a greater number or unless otherwise specifically
872 provided in this chapter, a quorum of a board of directors
873 consists of:

874 (1) A majority of the fixed number of directors if the
875 corporation has a fixed board size; or

876 (2) A majority of the number of directors prescribed,
877 or if no number is prescribed, the number in office immediately
878 before the meeting begins, if the corporation has a variable-range
879 size board.

880 (b) The articles of incorporation or bylaws may authorize a
881 quorum of a board of directors to consist of no fewer than



882 one-third (1/3) of the fixed or prescribed number of directors
883 determined under subsection (a).

884 (c) If a quorum is present when a vote is taken, the
885 affirmative vote of a majority of directors present is the act of
886 the board of directors unless the articles of incorporation or
887 bylaws require the vote of a greater number of directors.

888 (d) A director who is present at a meeting of the board of
889 directors or a committee of the board of directors when corporate
890 action is taken is deemed to have assented to the action taken
891 unless: (1) the director objects at the beginning of the meeting
892 (or promptly upon his arrival) to holding it or transacting
893 business at the meeting; (2) the dissent or abstention from the
894 action taken is entered in the minutes of the meeting; or (3) the
895 director delivers written notice of the director's dissent or
896 abstention to the presiding officer of the meeting before its
897 adjournment or to the corporation immediately after adjournment of
898 the meeting. The right of dissent or abstention is not available
899 to a director who votes in favor of the action taken.

900 **SECTION 20.** The following shall be codified as Section
901 79-4-8.26, Mississippi Code of 1972:

902 79-4-8.26. A corporation may agree to submit a matter to a
903 vote of its shareholders even if, after approving the matter, the
904 board of directors determines it no longer recommends the matter.

905 **SECTION 21.** Section 79-4-8.31, Mississippi Code of 1972, is
906 amended as follows:

907 79-4-8.31. (a) A director shall not be liable to the
908 corporation or its shareholders for any decision to take or not to
909 take action, or any failure to take any action, as a director,
910 unless the party asserting liability in a proceeding establishes
911 that:

912 (1) No defense by the director based on (i) any
913 provision in the articles of incorporation authorized by Section
914 79-4-2.02(b)(4) or the protection afforded by Section 79-4-8.61



915 for action taken in compliance with Section 79-4-8.62 or
916 79-4-8.63, or (ii) the protection afforded by Section 79-4-8.70,
917 precludes liability; and

918 (2) The challenged conduct consisted or was the result
919 of:

920 (i) Action not in good faith; or

921 (ii) A decision:

922 (A) Which the director did not reasonably
923 believe to be in the best interests of the corporation; or

924 (B) As to which the director was not informed
925 to an extent the director reasonably believed appropriate in the
926 circumstances; or

927 (iii) A lack of objectivity due to the director's
928 familial, financial or business relationship with, or a lack of
929 independence due to the director's domination or control by,
930 another person having a material interest in the challenged
931 conduct:

932 (A) Which relationship or which domination or
933 control could reasonably be expected to have affected the
934 director's judgment respecting the challenged conduct in a manner
935 adverse to the corporation; and

936 (B) After a reasonable expectation to such
937 effect has been established, the director shall not have
938 established that the challenged conduct was reasonably believed by
939 the director to be in the best interests of the corporation; or

940 (iv) A sustained failure of the director to devote
941 attention to ongoing oversight of the business and affairs of the
942 corporation, or a failure to devote timely attention, by making
943 (or causing to be made) appropriate inquiry, when particular facts
944 and circumstances of significant concern materialize that would
945 alert a reasonably attentive director to the need therefor; or

946 (v) Receipt of a financial benefit to which the
947 director was not entitled or any other breach of the director's



948 duties to deal fairly with the corporation and its shareholders
949 that is actionable under applicable law.

950 (b) The party seeking to hold the director liable:

951 (1) For money damages, shall also have the burden of
952 establishing that:

953 (i) Harm to the corporation or its shareholders
954 has been suffered; and

955 (ii) The harm suffered was proximately caused by
956 the director's challenged conduct; or

957 (2) For other money payment under a legal remedy, such
958 as compensation for the unauthorized use of corporate assets,
959 shall also have whatever persuasion burden may be called for to
960 establish that the payment sought is appropriate in the
961 circumstances; or

962 (3) For other money payment under an equitable remedy,
963 such as profit recovery by or disgorgement to the corporation,
964 shall also have whatever persuasion burden may be called for to
965 establish that the equitable remedy sought is appropriate in the
966 circumstances.

967 (c) Nothing contained in this section shall (1) in any
968 instance where fairness is at issue, such as consideration of the
969 fairness of a transaction to the corporation under Section
970 79-4-8.61(b) (3), alter the burden of proving the fact or lack of
971 fairness otherwise applicable, (2) alter the fact or lack of
972 liability of a director under another section of this act, such as
973 the provisions governing the consequences of an unlawful
974 distribution under Section 79-4-8.33 or a transactional interest
975 under Section 79-4-8.61, or (3) affect any rights to which the
976 corporation or a shareholder may be entitled under another statute
977 of this state or the United States.

978 **SECTION 22.** Section 79-4-8.50, Mississippi Code of 1972, is
979 amended as follows:

980 79-4-8.50. In this subarticle:



981 (1) "Corporation" includes any domestic or foreign
982 predecessor entity of a corporation in a merger.

983 (2) "Director" or "officer" means an individual who is
984 or was a director or officer, respectively, of a corporation or
985 who, while a director or officer of the corporation, is or was
986 serving at the corporation's request as a director, officer,
987 manager, partner, trustee, employee or agent of another entity or
988 employee benefit plan * * *. A director or officer is considered
989 to be serving an employee benefit plan at the corporation's
990 request if the individual's duties to the corporation also impose
991 duties on, or otherwise involve services by, the individual to the
992 plan or to participants in or beneficiaries of the plan.

993 "Director" or "officer" includes, unless the context requires
994 otherwise, the estate or personal representative of a director or
995 officer.

996 (3) "Expenses" means reasonable expenses of any kind
997 that are incurred in connection with a matter.

998 (4) "Liability" means the obligation to pay a judgment,
999 settlement, penalty, fine (including an excise tax assessed with
1000 respect to an employee benefit plan), or reasonable expenses
1001 incurred with respect to a proceeding.

1002 (5) "Official capacity" means: (i) when used with
1003 respect to a director, the office of director in a corporation;
1004 and (ii) when used with respect to an officer, as contemplated in
1005 Section 79-4-8.56, the office in a corporation held by the
1006 officer. "Official capacity" does not include service for any
1007 other domestic or foreign corporation or any partnership, joint
1008 venture, trust, employee benefit plan or other entity.

1009 (6) "Party" means an individual who was, is, or is
1010 threatened to be made a defendant or respondent in a proceeding.

1011 (7) "Proceeding" means any threatened, pending, or
1012 completed action, suit or proceeding, whether civil, criminal,



1013 administrative, arbitratative or investigative and whether formal or
1014 informal.

1015 **SECTION 23.** Section 79-4-8.53, Mississippi Code of 1972, is
1016 amended as follows:

1017 79-4-8.53. (a) A corporation may, before final disposition
1018 of a proceeding, advance funds to pay for or reimburse the
1019 reasonable expenses incurred in connection with the proceeding by
1020 an individual who is a party to the proceeding because that
1021 individual is a member of the board of directors if the director
1022 delivers to the corporation:

1023 (1) A signed written affirmation of the director's good
1024 faith belief that the relevant standard of conduct described in
1025 Section 79-4-8.51 has been met by the director or that the
1026 proceeding involves conduct for which liability has been
1027 eliminated under a provision of the articles of incorporation as
1028 authorized by Section 79-4-2.02(b)(4); and

1029 (2) A signed written undertaking of the director to
1030 repay any funds advanced if the director is not entitled to
1031 mandatory indemnification under Section 79-4-8.52 and it is
1032 ultimately determined under Section 79-4-8.54 or Section 79-4-8.55
1033 that the director has not met the relevant standard of conduct
1034 described in Section 79-4-8.51.

1035 (b) The undertaking required by subsection (a)(2) must be an
1036 unlimited general obligation of the director but need not be
1037 secured and may be accepted without reference to the financial
1038 ability of the director to make repayment.

1039 (c) Authorizations under this section shall be made:

1040 (1) By the board of directors:

1041 (i) If there are two (2) or more qualified
1042 directors, by a majority vote of all the qualified directors (a
1043 majority of whom shall for such purpose constitute a quorum) or by
1044 a majority of the members of a committee of two (2) or more
1045 qualified directors appointed by such a vote; or



1046 (ii) If there are fewer than two (2) qualified
1047 directors, by the vote necessary for action by the board in
1048 accordance with Section 79-4-8.24(c), in which authorization
1049 directors who are not qualified directors may participate; or

1050 (2) By the shareholders, but shares owned by or voted
1051 under the control of a director who at the time is not a qualified
1052 director may not be voted on the authorization.

1053 **SECTION 24.** Section 79-4-8.58, Mississippi Code of 1972, is
1054 amended as follows:

1055 79-4-8.58. (a) A corporation may, by a provision in its
1056 articles of incorporation or bylaws or in a resolution adopted or
1057 a contract approved by its board of directors or shareholders,
1058 obligate itself in advance of the act or omission giving rise to a
1059 proceeding to provide indemnification in accordance with Section
1060 79-4-8.51 or advance funds to pay for or reimburse expenses in
1061 accordance with Section 79-4-8.53. Any such provision that
1062 obligates the corporation to provide indemnification to the
1063 fullest extent permitted by law shall be deemed to obligate the
1064 corporation to advance funds to pay for or reimburse expenses in
1065 accordance with Section 79-4-8.53 to the fullest extent permitted
1066 by law, unless the provision specifically provides otherwise.

1067 (b) A right of indemnification or to advances for expenses
1068 created by this subarticle or under subsection (a) that is in
1069 effect at the time of an act or omission shall not be eliminated
1070 or impaired with respect to the act or omission by an amendment of
1071 the articles of incorporation or bylaws or a resolution of the
1072 directors or shareholders adopted after the occurrence of the act
1073 or omission, unless, in the case of a right created under
1074 subsection (a), the provision creating the right that is in effect
1075 at the time of the act or omission explicitly authorizes
1076 elimination or impairment after the act or omission has occurred.

1077 (c) Any provision pursuant to subsection (a) shall not
1078 obligate the corporation to indemnify or advance expenses to a



1079 director of a predecessor of the corporation, pertaining to
1080 conduct with respect to the predecessor, unless otherwise
1081 specifically provided. Any provision for indemnification or
1082 advance for expenses in the articles of incorporation, bylaws, or
1083 a resolution of the board of directors or shareholders of a
1084 predecessor of the corporation in a merger or in a contract to
1085 which the predecessor is a party, existing at the time the merger
1086 takes effect, shall be governed by Section 79-4-11.06(a) (3).

1087 (d) Subject to subsection (b), a corporation may, by a
1088 provision in its articles of incorporation, limit any of the
1089 rights to indemnification or advance for expenses created by or
1090 pursuant to this subarticle.

1091 (e) This subarticle does not limit a corporation's power to
1092 pay or reimburse expenses incurred by a director or an officer in
1093 connection with his appearance as a witness in a proceeding at a
1094 time when he is not a party.

1095 (f) This subarticle does not limit a corporation's power to
1096 indemnify, advance expenses to or provide or maintain insurance on
1097 behalf of an employee or agent.

1098 **SECTION 25.** Section 79-4-8.60, Mississippi Code of 1972, is
1099 amended as follows:

1100 79-4-8.60. In Sections 79-4-8.60 through 79-4-8.63 and
1101 Section 79-4-8.70:

1102 (1) "Director's conflicting interest transaction" means
1103 a transaction effected or proposed to be effected by the
1104 corporation (or by an entity controlled by the corporation):

1105 (i) To which, at the relevant time, the director
1106 is a party; or

1107 (ii) Respecting which, at the relevant time, the
1108 director had knowledge and a material financial interest known to
1109 the director; or



1110 (iii) Respecting which, at the relevant time, the
1111 director knew that a related person was a party or had a material
1112 financial interest.

1113 (2) "Control" (including the term "controlled by")
1114 means (i) having the power, directly or indirectly, to elect or
1115 remove a majority of the members of the board of directors or
1116 other governing body of an entity, whether through the ownership
1117 of voting shares or interests, by contract, or otherwise, or (ii)
1118 being subject to a majority of the risk of loss from the entity's
1119 activities or entitled to receive a majority of the entity's
1120 residual returns.

1121 (3) "Relevant time" means (i) the time at which
1122 directors' actions respecting the transaction are taken in
1123 compliance with Section 79-4-8.62, or (ii) if the transaction is
1124 not brought before the board of directors of the corporation (or
1125 its committee) for action under Section 79-4-8.62, at the time the
1126 corporation (or an entity controlled by the corporation) becomes
1127 legally obligated to consummate the transaction.

1128 (4) "Material financial interest" means a financial
1129 interest in a transaction that would reasonably be expected to
1130 impair the objectivity of the director's judgment when
1131 participating in action on the authorization of the transaction.

1132 (5) "Related person" means:

1133 (i) The director's spouse;

1134 (ii) A child, stepchild, grandchild, parent,
1135 stepparent, grandparent, sibling, stepsiblings, half-siblings,
1136 aunt, uncle, niece or nephew (or spouse of any thereof) of the
1137 director or of the director's spouse;

1138 (iii) An individual living in the same home as the
1139 director;

1140 (iv) An entity (other than the corporation or an
1141 entity controlled by the corporation) controlled by the director
1142 or any person specified in this paragraph (5);



1143 (v) A domestic or foreign (A) business or
1144 nonprofit corporation (other than the corporation or an entity
1145 controlled by the corporation) of which the director is a
1146 director, (B) unincorporated entity of which the director is a
1147 general partner or a member of the governing body, or (C)
1148 individual, trust or estate for whom or of which the director is a
1149 trustee, guardian, personal representative or like fiduciary; or
1150 (vi) A person that is, or an entity that is
1151 controlled by, an employer of the director.

1152 (6) "Fair to the corporation" means, for purposes of
1153 Section 79-4-8.61(b)(3), that the transaction as a whole was
1154 beneficial to the corporation, taking into appropriate account
1155 whether it was (i) fair in terms of the director's dealings with
1156 the corporation, and (ii) comparable to what might have been
1157 obtainable in an arms' length transaction, given the consideration
1158 paid or received by the corporation.

1159 (7) "Required disclosure" means disclosure of (i) the
1160 existence and nature of the director's conflicting interest, and
1161 (ii) all facts known to the director respecting the subject matter
1162 of the transaction that a director free of such conflicting
1163 interest would reasonably believe to be material in deciding
1164 whether to proceed with the transaction.

1165 **SECTION 26.** Section 79-4-11.01, Mississippi Code of 1972, is
1166 amended as follows:

1167 79-4-11.01. As used in this chapter:

1168 * * *

1169 (a) "Merger" means a business combination pursuant to
1170 Section 79-4-11.02.

1171 (b) "Organizational documents" means the basic document
1172 or documents that create, or determine the internal governance of,
1173 an eligible entity.

1174 * * *



1175 (c) "Party to a merger" or "party to a share exchange"
1176 means any domestic or foreign corporation or eligible entity that
1177 will * * *:

1178 (1) Merge under a plan of merger;

1179 (2) Acquire shares or eligible interests of
1180 another corporation or eligible entity in a share exchange; or

1181 (3) Have all of its shares or eligible interests
1182 or all of one or more classes or series of its shares or eligible
1183 interests acquired in a share exchange.

1184 (d) "Share exchange" means a business combination
1185 pursuant to Section 79-4-11.03.

1186 (e) "Survivor" in a merger means the corporation or
1187 eligible entity into which one or more other corporations or
1188 eligible entities are merged. A survivor of a merger may preexist
1189 the merger or be created by the merger.

1190 **SECTION 27.** Section 79-4-11.02, Mississippi Code of 1972, is
1191 amended as follows:

1192 79-4-11.02. (a) One or more domestic corporations may merge
1193 with a domestic or foreign corporation or eligible entity pursuant
1194 to a plan of merger.

1195 (b) A foreign corporation, or a domestic or foreign eligible
1196 entity, may be a party to the merger, or may be created by the
1197 terms of the plan of merger, only if:

1198 (1) The merger is permitted by the laws under which the
1199 corporation or eligible entity is organized or by which it is
1200 governed; and

1201 (2) In effecting the merger, the corporation or
1202 eligible entity complies with such laws and with its articles of
1203 incorporation or organizational documents.

1204 (c) The plan of merger must include:

1205 (1) The name of each corporation or eligible entity
1206 that will merge and the name of the corporation or eligible entity
1207 that will be the survivor of the merger;



1208 (2) The terms and conditions of the merger;

1209 (3) The manner and basis of converting the shares of
1210 each merging corporation and eligible interest of each merging
1211 eligible entity into shares or other securities, eligible
1212 interests, obligations, rights to acquire shares or other
1213 securities, cash, other property, or any combination of the
1214 foregoing;

1215 (4) The articles of incorporation of any corporation,
1216 or the organizational documents of any eligible entity to be
1217 created by the merger, or if a new corporation or eligible entity
1218 is not to be created by the merger, any amendments to the
1219 survivor's articles of incorporation, or organizational documents;
1220 and

1221 (5) Any other provisions required by the laws under
1222 which any party to the merger is organized or by which it is
1223 governed, or by the articles of incorporation or organizational
1224 documents of any such party.

1225 (d) Terms of a plan of merger may be made dependent on facts
1226 objectively ascertainable outside the plan in accordance with
1227 Section 79-4-1.20(k).

1228 (e) The plan of merger may also include a provision that the
1229 plan may be amended prior to filing the articles of merger with
1230 the Secretary of State, provided that if the shareholders of a
1231 domestic corporation that is a party to the merger are required or
1232 permitted to vote on the plan, the plan must provide that
1233 subsequent to approval of the plan by such shareholders the plan
1234 may not be amended to:

1235 (1) Change the amount or kind of shares or other
1236 securities, eligible interests, obligations, rights to acquire
1237 shares or other securities, cash, or other property to be received
1238 by the shareholders of or owners of interests in any party to the
1239 merger upon conversion of their shares or interests under the
1240 plan;



1241 (2) Change the articles of incorporation of any
1242 corporation or the organizational documents of any eligible
1243 entity, that will survive or be created as a result of the merger,
1244 except for changes permitted by Section 79-4-10.05 or by
1245 comparable provisions of the laws under which the foreign
1246 corporation or eligible entity is organized or governed; or

1247 (3) Change any of the other terms or conditions of the
1248 plan if the change would adversely affect such shareholders in any
1249 material respect.

1250 (f) Liability from a merger shall be limited as provided in
1251 Sections 79-33-1 through 79-33-9.

1252 **SECTION 28.** Section 79-4-11.03, Mississippi Code of 1972, is
1253 amended as follows:

1254 79-4-11.03. (a) Through a share exchange:

1255 (1) A domestic corporation may acquire all of the
1256 shares of one or more classes or series of shares of another
1257 domestic or foreign corporation, or all of the interests of one or
1258 more classes or series of interests of a domestic or foreign
1259 eligible entity, in exchange for shares or other securities,
1260 interests, obligations, rights to acquire shares or other
1261 securities, cash, other property, or any combination of the
1262 foregoing, pursuant to a plan of share exchange; or

1263 (2) All of the shares of one or more classes or series
1264 of shares of a domestic corporation may be acquired by another
1265 domestic or foreign corporation or eligible entity, in exchange
1266 for shares or other securities, interests, obligations, rights to
1267 acquire shares or other securities, cash, other property, or any
1268 combination of the foregoing, pursuant to a plan of share
1269 exchange.

1270 (b) A foreign corporation, or a domestic or foreign eligible
1271 entity, may be a party to the share exchange only if:



1272 (1) The share exchange is permitted by the laws under
1273 which the corporation or eligible entity is organized or by which
1274 it is governed; and

1275 (2) In effecting the share exchange, the corporation or
1276 eligible entity complies with such laws and with its articles of
1277 incorporation or organizational documents.

1278 (c) The plan of share exchange must include:

1279 (1) The name of each corporation or eligible entity
1280 whose shares or interests will be acquired and the name of the
1281 corporation or eligible entity that will acquire those shares or
1282 interests;

1283 (2) The terms and conditions of the share exchange;

1284 (3) The manner and basis of exchanging shares of a
1285 corporation or interests in an eligible entity whose shares or
1286 interests will be acquired under the share exchange into shares or
1287 other securities, interests, obligations, rights to acquire shares
1288 or other securities, cash, other property, or any combination of
1289 the foregoing; and

1290 (4) Any other provisions required by the laws under
1291 which any party to the share exchange is organized or by the
1292 articles of incorporation or organizational documents of any such
1293 party.

1294 (d) Terms of a plan of share exchange may be made dependent
1295 on facts objectively ascertainable outside the plan in accordance
1296 with Section 79-4-1.20(k).

1297 (e) The plan of share exchange may also include a provision
1298 that the plan may be amended prior to filing of the articles of
1299 share exchange with the Secretary of State, provided that if the
1300 shareholders of a domestic corporation that is a party to the
1301 share exchange are required or permitted to vote on the plan, the
1302 plan must provide that subsequent to approval of the plan by such
1303 shareholders the plan may not be amended to:



1304 (1) Change the amount or kind of shares or other
1305 securities, interests, obligations, rights to acquire shares or
1306 other securities, cash, or other property to be issued by the
1307 corporation or to be received by the shareholders of or owners of
1308 interests in any party to the share exchange in exchange for their
1309 shares or interests under the plan; or

1310 (2) Change any of the terms or conditions of the plan
1311 if the change would adversely affect such shareholders in any
1312 material respect.

1313 (f) Section 79-4-11.03 does not limit the power of a
1314 domestic corporation to acquire shares of another corporation or
1315 interests in another entity in a transaction other than a share
1316 exchange.

1317 **SECTION 29.** Section 79-4-11.04, Mississippi Code of 1972, is
1318 amended as follows:

1319 79-4-11.04. In the case of a domestic corporation that is a
1320 party to a merger or share exchange:

1321 (a) The plan of merger or share exchange must be
1322 adopted by the board of directors.

1323 (b) Except as provided in subsection (g) and in Section
1324 79-4-11.05, after adopting the plan of merger, the board of
1325 directors must submit the plan to the shareholders for their
1326 approval. After adopting the plan of share exchange, the board of
1327 directors of the corporation whose shares will be acquired in the
1328 share exchange must submit the plan to the shareholders for their
1329 approval. The board of directors must also transmit to the
1330 shareholders a recommendation that the shareholders approve the
1331 plan of merger or share exchange, unless the board of directors
1332 makes a determination that because of conflicts of interest or
1333 other special circumstances it should not make such a
1334 recommendation, in which case the board of directors must transmit
1335 to the shareholders the basis for that determination.



1336 (c) The board of directors may condition its submission
1337 of the plan of merger or share exchange to the shareholders on any
1338 basis.

1339 (d) If the plan of merger or share exchange is required
1340 to be approved by the shareholders, and if the approval is to be
1341 given at a meeting, the corporation must notify each shareholder,
1342 whether or not entitled to vote, of the meeting of shareholders at
1343 which the plan is to be submitted for approval. The notice must
1344 state that the purpose, or one (1) of the purposes, of the meeting
1345 is to consider the plan and must contain or be accompanied by a
1346 copy or summary of the plan. If the corporation is to be merged
1347 into an existing corporation or eligible entity, the notice shall
1348 also include or be accompanied by a copy or summary of the
1349 articles of incorporation or organizational documents of that
1350 corporation or eligible entity. If the corporation is to be
1351 merged into a corporation or eligible entity that is to be created
1352 pursuant to the merger, the notice shall include or be accompanied
1353 by a copy or a summary of the articles of incorporation or
1354 organizational documents of the new corporation or eligible
1355 entity.

1356 (e) Unless the articles of incorporation, or the board
1357 of directors acting pursuant to subsection (c), requires a greater
1358 vote or a greater number of votes to be present, the approval of
1359 the plan of merger or share exchange shall require the approval of
1360 the shareholders at a meeting at which a quorum consisting of at
1361 least a majority of the votes entitled to be cast on the plan
1362 exists, and, if any class or series of shares is entitled to vote
1363 as a separate group on the plan of merger or share exchange, the
1364 approval of each such separate voting group at a meeting at which
1365 a quorum of the voting group consisting of at least a majority of
1366 the votes entitled to be cast on the merger or share exchange by
1367 that voting group is present.

1368 (f) Separate voting by voting groups is required:



1369 (1) On a plan of merger, by each class or series
1370 of shares that (A) are to be converted, pursuant to the provisions
1371 of the plan of merger, into shares or other securities, interests,
1372 obligations, rights to acquire shares or other securities, cash,
1373 other property, or any combination of the foregoing, or (B) would
1374 have a right to vote as a separate group on a provision of the
1375 plan that, if contained in a proposed amendment to articles of
1376 incorporation, would require action by separate voting groups
1377 under Section 79-4-10.04;

1378 (2) On a plan of share exchange, by each class or
1379 series of shares included in the exchange, with each class or
1380 series constituting a separate voting group; and

1381 (3) On a plan of merger or share exchange, if the
1382 voting group is entitled under the articles of incorporation to
1383 vote as a voting group to approve a plan of merger or share
1384 exchange.

1385 (g) Unless the articles of incorporation otherwise
1386 provide, approval by the corporation's shareholders of a plan of
1387 merger is not required if:

1388 (1) The corporation will survive the merger; and

1389 (2) Except for amendments permitted by Section
1390 79-4-10.05, its articles of incorporation will not be changed; and

1391 (3) Each shareholder of the corporation whose
1392 shares were outstanding immediately before the effective date of
1393 the merger will hold the same number of shares, with identical
1394 preferences, limitations, and relative rights, immediately after
1395 the effective date of change; and

1396 (4) The number of voting shares outstanding
1397 immediately after the merger, plus the number of voting shares
1398 issuable as a result of the merger (either by the conversion of
1399 securities issued pursuant to the merger or the exercise of rights
1400 and warrants issued pursuant to the merger), will not exceed by
1401 more than twenty percent (20%) the total number of voting shares



1402 of the surviving corporation outstanding immediately before the
1403 merger; and

1404 (5) The number of participating shares outstanding
1405 immediately after the merger, plus the number of participating
1406 shares issuable as a result of the merger (either by the
1407 conversion of securities issued pursuant to the merger or the
1408 exercise of rights and warrants issued pursuant to the merger),
1409 will not exceed by more than twenty percent (20%) the total number
1410 of participating shares outstanding immediately before the merger.

1411 (h) As used in subsection (g):

1412 (1) "Participating shares" means shares that
1413 entitle their holders to participate without limitation in
1414 distributions.

1415 (2) "Voting shares" means shares that entitle
1416 their holders to vote unconditionally in elections of directors.

1417 (i) If as a result of a merger or share exchange one or
1418 more shareholders of a domestic corporation would become subject
1419 to personal liability for the obligations or liabilities of any
1420 other person or entity, approval of the plan of merger shall
1421 require the execution, by each such shareholder, of a separate
1422 written consent to become subject to such personal liability.

1423 **SECTION 30.** Section 79-4-11.06, Mississippi Code of 1972, is
1424 amended as follows:

1425 79-4-11.06. (a) After a plan of merger or share exchange
1426 has been adopted and approved as required by the Mississippi
1427 Business Corporation Act, articles of merger or share exchange
1428 shall be signed on behalf of each party to the merger or share
1429 exchange by any officer or other duly authorized representative.
1430 The articles shall set forth:

1431 (1) The names of the parties to the merger or share
1432 exchange and the date on which the merger or share exchange
1433 occurred or is to be effective;



1434 (2) If the articles of incorporation of the survivor of
1435 a merger are amended, or if a new corporation is created as a
1436 result of a merger, the amendments to the survivor's articles of
1437 incorporation or the articles of incorporation of the new
1438 corporation;

1439 (3) If the plan of merger or share exchange required
1440 approval by the shareholders of a domestic corporation that was a
1441 party to the merger or share exchange, a statement that the plan
1442 was duly approved by the shareholders and, if voting by any
1443 separate voting group was required, by each such separate voting
1444 group, in the manner required by the Mississippi Business
1445 Corporation Act and the articles of incorporation;

1446 (4) If the plan of merger or share exchange did not
1447 require approval by the shareholders of a domestic corporation
1448 that was a party to the merger or share exchange, a statement to
1449 that effect; and

1450 (5) As to each foreign corporation and each eligible
1451 entity that was a party to the merger or share exchange, a
1452 statement that the plan and the performance of its terms were duly
1453 authorized by all action required by the laws under which the
1454 corporation or eligible entity is organized or by which it is
1455 governed, and by its articles of incorporation or organizational
1456 documents.

1457 (b) Articles of merger or share exchange shall be delivered
1458 to the Secretary of State for filing by the survivor of the merger
1459 or the acquiring corporation in a share exchange and shall take
1460 effect on the effective date.

1461 **SECTION 31.** Section 79-4-11.07, Mississippi Code of 1972, as
1462 amended by House Bill No. 1162, 2012 Regular Session, is amended
1463 as follows:

1464 79-4-11.07. (a) When a merger becomes effective:



1465 (1) The corporation or eligible entity that is
1466 designated in the plan of merger as the survivor continues or
1467 comes into existence, as the case may be;

1468 (2) The separate existence of every corporation or
1469 eligible entity that is merged into the survivor ceases;

1470 (3) All property owned by, and every contract right
1471 possessed by, each corporation or eligible entity that merges into
1472 the survivor is vested in the survivor without reversion or
1473 impairment;

1474 (4) All liabilities of each corporation or eligible
1475 entity that is merged into the survivor are vested in the survivor
1476 subject to the limitations as provided in Sections 79-33-1 through
1477 79-33-9;

1478 (5) The name of the survivor may, but need not be,
1479 substituted in any pending proceeding for the name of any party to
1480 the merger whose separate existence ceased in the merger;

1481 (6) The articles of incorporation or organizational
1482 documents of the survivor are amended to the extent provided in
1483 the plan of merger;

1484 (7) The articles of incorporation or organizational
1485 documents of a survivor that is created by the merger become
1486 effective; and

1487 (8) The shares of each corporation that is a party to
1488 the merger, and the interests in an eligible entity that is a
1489 party to a merger, that are to be converted under the plan of
1490 merger into shares, interests, obligations, rights to acquire
1491 securities, other securities, cash, other property, or any
1492 combination of the foregoing, are converted and the former holders
1493 of such shares or interests are entitled only to the rights
1494 provided to them in the plan of merger or to any rights they may
1495 have under Title 79, Chapter 4, Article 13.

1496 (b) When a share exchange becomes effective, the shares of
1497 each domestic corporation that are to be exchanged for shares or



1498 other securities, interests, obligations, rights to acquire shares
1499 or securities, other securities, cash, other property, or any
1500 combination of the foregoing, are entitled only to the rights
1501 provided to them in the plan of share exchange or to any rights
1502 they may have under Title 79, Chapter 4, Article 13.

1503 (c) Any shareholder of a domestic corporation that is a
1504 party to a merger or share exchange who, prior to the merger or
1505 share exchange, was liable for the liabilities or obligations of
1506 such corporation, shall not be released from such liabilities or
1507 obligations by reason of the merger or share exchange.

1508 (d) Upon a merger becoming effective, a foreign corporation,
1509 or a foreign eligible entity, that is the survivor of the merger
1510 is deemed to:

1511 (1) Agree that service of process in a proceeding to
1512 enforce the rights of shareholders of each domestic corporation
1513 that is a party to the merger who exercise appraisal rights, may
1514 be made in the manner provided in Section 79-35-13; and

1515 (2) Agree that it will promptly pay the amount, if any,
1516 to which such shareholders are entitled under Title 79, Chapter 4,
1517 Article 13.

1518 **SECTION 32.** Section 79-4-11.08, Mississippi Code of 1972, is
1519 amended as follows:

1520 79-4-11.08. (a) Unless otherwise provided in a plan of
1521 merger or share exchange or in the laws under which a foreign
1522 corporation or a domestic or foreign eligible entity that is a
1523 party to a merger or a share exchange is organized or by which it
1524 is governed, after the plan has been adopted and approved as
1525 required by this article, and at any time before the merger or
1526 share exchange has become effective, it may be abandoned by any
1527 party thereto without action by the party's shareholders or owners
1528 of interests, in accordance with any procedures set forth in the
1529 plan of merger or share exchange or, if no such procedures are set
1530 forth in the plan, in the manner determined by the board of



1531 directors, * * * subject to any contractual rights of other
1532 parties to the merger or share exchange.

1533 (b) If a merger or share exchange is abandoned under
1534 subsection (a) after articles of merger or share exchange have
1535 been filed with the Secretary of State but before the merger or
1536 share exchange has become effective, a statement that the merger
1537 or share exchange has been abandoned in accordance with this
1538 section, signed on behalf of a party to the merger or share
1539 exchange by an officer or other duly authorized representative,
1540 shall be delivered to the Secretary of State for filing prior to
1541 the effective date of the merger or share exchange. Upon filing,
1542 the statement shall take effect and the merger or share exchange
1543 shall be deemed abandoned and shall not become effective.

1544 **SECTION 33.** Section 79-4-13.20, Mississippi Code of 1972, is
1545 amended as follows:

1546 79-4-13.20. (a) Where any corporate action specified in
1547 Section 79-4-13.02(a) is to be submitted to a vote at a
1548 shareholders' meeting, the meeting notice must state that the
1549 corporation has concluded that the shareholders are, are not or
1550 may be entitled to assert appraisal rights under this article. If
1551 the corporation concludes that appraisal rights are or may be
1552 available, a copy of this article must accompany the meeting
1553 notice sent to those record shareholders entitled to exercise
1554 appraisal rights.

1555 (b) In a merger pursuant to Section 79-4-11.05, the parent
1556 corporation must notify in writing all record shareholders of the
1557 subsidiary who are entitled to assert appraisal rights that the
1558 corporate action became effective. Such notice must be sent
1559 within ten (10) days after the corporate action became effective
1560 and include the materials described in Section 79-4-13.22.

1561 (c) Where any corporate action specified in Section
1562 79-4-13.02(a) is to be approved by written consent of the
1563 shareholders pursuant to Section 79-4-7.04:



1564 (1) Written notice that appraisal rights are, are not
1565 or may be available must be sent to each record shareholder from
1566 whom a consent is solicited at the time consent of such
1567 shareholder is first solicited and, if the corporation has
1568 concluded that appraisal rights are or may be available, must be
1569 accompanied by a copy of this article; and

1570 (2) Written notice that appraisal rights are, are not
1571 or may be available must be delivered together with the notice to
1572 nonconsenting and nonvoting shareholders required by Section
1573 79-4-7.04(e) and (f), may include the materials described in
1574 Section 79-4-13.22 and, if the corporation has concluded that
1575 appraisal rights are or may be available, must be accompanied by a
1576 copy of this article.

1577 **SECTION 34.** Section 79-4-13.21, Mississippi Code of 1972, is
1578 amended as follows:

1579 79-4-13.21. (a) If a corporate action specified in Section
1580 79-4-13.02(a) is submitted to a vote at a shareholders' meeting, a
1581 shareholder who wishes to assert appraisal rights with respect to
1582 any class or series of shares:

1583 (1) Must deliver to the corporation, before the vote is
1584 taken, written notice of the shareholder's intent to demand
1585 payment if the proposed action is effectuated; and

1586 (2) Must not vote, or cause or permit to be voted, any
1587 shares of such class or series in favor of the proposed action.

1588 (b) If a corporate action specified in Section 79-4-13.02(a)
1589 is to be approved by less than unanimous written consent, a
1590 shareholder who wishes to assert appraisal rights with respect to
1591 any class or series of shares must not sign a consent in favor of
1592 the proposed action with respect to that class or series of
1593 shares.

1594 (c) A shareholder who fails to satisfy the requirements of
1595 subsection (a) or (b) is not entitled to payment under this
1596 article.



1597 **SECTION 35.** Section 79-4-13.22, Mississippi Code of 1972, is
1598 amended as follows:

1599 79-4-13.22. (a) If proposed corporate action requiring
1600 appraisal rights under Section 79-4-13.02(a) becomes effective,
1601 the corporation must send a written appraisal notice and the form
1602 required by subsection (b) (1) to all shareholders who satisfied
1603 the requirements of Section 79-4-13.21(a) or Section
1604 79-4-13.21(b). In the case of a merger under Section 79-4-11.05,
1605 the parent must deliver an appraisal notice and form to all record
1606 shareholders who may be entitled to assert appraisal rights.

1607 (b) The appraisal notice must be delivered no earlier than
1608 the date the corporate action specified in Section 79-4-13.02(a)
1609 became effective and no later than ten (10) days after such date,
1610 and must:

1611 (1) Supply a form that (i) specifies the date of the
1612 first announcement to shareholders of the principal terms of the
1613 proposed corporate action, if any, and (ii) if such announcement
1614 was made, requires the shareholder asserting appraisal rights to
1615 certify whether beneficial ownership of those shares for which
1616 appraisal rights are asserted was acquired before that date and
1617 that, as to those shares, the shareholder did not vote for or
1618 consent to the transaction;

1619 (2) State:

1620 (i) Where the form must be sent and where
1621 certificates for certificated shares must be deposited and the
1622 date by which those certificates must be deposited, which date may
1623 not be earlier than the date for receiving the required form under
1624 subsection (2) (ii);

1625 (ii) A date by which the corporation must receive
1626 the form, which date may not be fewer than forty (40) nor more
1627 than sixty (60) days after the date the subsection (a) appraisal
1628 notice is sent, and state that the shareholder shall have waived



1629 the right to demand appraisal with respect to the shares unless
1630 the form is received by the corporation by such specified date;

1631 (iii) The corporation's estimate of the fair value
1632 of the shares;

1633 (iv) That, if requested in writing, the
1634 corporation will provide, to the shareholder so requesting, within
1635 ten (10) days after the date specified in subsection (2)(ii) the
1636 number of shareholders who return the forms by the specified date
1637 and the total number of shares owned by them; and

1638 (v) The date by which the notice to withdraw under
1639 Section 79-4-13.23 must be received, which date must be within
1640 twenty (20) days after the date specified in subsection (2)(ii);
1641 and

1642 (3) Be accompanied by a copy of this article.

1643 **SECTION 36.** Section 79-4-14.21, Mississippi Code of 1972, as
1644 amended by House Bill No. 1162, 2012 Regular Session, is amended
1645 as follows:

1646 79-4-14.21. (a) If the Secretary of State determines that
1647 one or more grounds exist under Section 79-4-14.20 for dissolving
1648 a corporation, he shall serve the corporation with written notice
1649 of his determination * * *, except that such determination may be
1650 served by first-class mail.

1651 (b) If the corporation does not correct each ground for
1652 dissolution or demonstrate to the reasonable satisfaction of the
1653 Secretary of State that each ground determined by the Secretary of
1654 State does not exist within sixty (60) days after service of the
1655 notice is perfected * * *, the Secretary of State shall
1656 administratively dissolve the corporation by signing a certificate
1657 of dissolution that recites the ground or grounds for dissolution
1658 and its effective date. The Secretary of State shall file the
1659 original of the certificate and serve a copy on the
1660 corporation * * *, except that such certificate may be served by
1661 first-class mail.



1662 (c) [Reserved]

1663 (d) The administrative dissolution of a corporation does not
1664 terminate the authority of its registered agent.

1665 (e) The administrative dissolution of a corporation shall
1666 not impair the validity of any contract, deed, mortgage, security
1667 interest, lien, or act of the corporation or prevent the
1668 corporation from defending any action, suit or proceeding in any
1669 court of this state.

1670 (f) A corporation that has been administratively dissolved
1671 may not maintain any action, suit or proceeding in any court of
1672 this state until the corporation is reinstated.

1673 **SECTION 37.** Section 79-4-14.22, Mississippi Code of 1972, as
1674 amended by House Bill No. 1162, 2012 Regular Session, is amended
1675 as follows:

1676 79-4-14.22. (a) A corporation administratively dissolved
1677 under Section 79-4-14.21 may apply to the Secretary of State for
1678 reinstatement at any time after the effective date of dissolution.
1679 The applicant must:

1680 (1) Recite the name of the corporation and the
1681 effective date of its administrative dissolution;

1682 (2) State that the ground or grounds for dissolution
1683 either did not exist or have been eliminated;

1684 (3) State that the corporation's name satisfies the
1685 requirements of Section 79-4-4.01; and

1686 (4) Contain a certificate from the Mississippi
1687 Department of Revenue reciting that all taxes owed by the
1688 corporation have been paid * * *.

1689 (b) If the Secretary of State determines that the
1690 application contains the information required by subsection (a)
1691 and that the information is correct, he shall cancel the
1692 certificate of dissolution and prepare a certificate of
1693 reinstatement that recites his determination and the effective



1694 date of reinstatement, file the original of the certificate and
1695 serve a copy on the corporation * * *.

1696 (c) When the reinstatement is effective:

1697 (1) The reinstatement relates back to and takes effect
1698 as of the effective date of the administrative dissolution;

1699 (2) Any liability incurred by the corporation,
1700 director, officer or a shareholder after the administrative
1701 dissolution and before the reinstatement shall be determined as if
1702 the administrative dissolution had never occurred; and

1703 (3) The corporation may resume carrying on its business
1704 as if the administrative dissolution had never occurred.

1705 **SECTION 38.** Section 79-4-15.01, Mississippi Code of 1972, is
1706 amended as follows:

1707 79-4-15.01. (a) A foreign corporation may not transact
1708 business in this state until it obtains a certificate of authority
1709 from the Secretary of State.

1710 (b) The following activities, among others, do not
1711 constitute transacting business within the meaning of subsection
1712 (a):

1713 (1) Maintaining, defending or settling any proceeding;

1714 (2) Holding meetings of the board of directors or
1715 shareholders or carrying on other activities concerning internal
1716 corporate affairs;

1717 (3) Maintaining bank accounts;

1718 (4) Maintaining offices or agencies for the transfer,
1719 exchange and registration of the corporation's own securities or
1720 maintaining trustees or depositories with respect to those
1721 securities;

1722 (5) Selling through independent contractors;

1723 (6) Soliciting or obtaining orders, whether by mail or
1724 through employees or agents or otherwise, if the orders require
1725 acceptance outside this state before they become contracts;



1726 (7) Creating or acquiring indebtedness, mortgages and
1727 security interests in real or personal property;

1728 (8) Securing or collecting debts or enforcing mortgages
1729 and security interests in property securing the debts;

1730 (9) Owning, without more, real or personal property;

1731 (10) Conducting an isolated transaction that is
1732 completed within thirty (30) days and that is not one in the
1733 course of repeated transactions of a like nature;

1734 (11) Transacting business in interstate commerce;

1735 (12) Being a shareholder in a corporation or a foreign
1736 corporation that transacts business in this state;

1737 (13) Being a limited partner of a limited partnership
1738 or foreign limited partnership that is transacting business in
1739 this state;

1740 (14) Being a member or manager of a limited liability
1741 company or foreign limited liability company that is transacting
1742 business in this state.

1743 (c) The list of activities in subsection (b) is not
1744 exhaustive.

1745 (d) A foreign corporation which is * * * general partner of
1746 any general or limited partnership * * *, which partnership is
1747 transacting business in this state, is hereby declared to be
1748 transacting business in this state.

1749 **SECTION 39.** Section 79-4-15.02, Mississippi Code of 1972, is
1750 amended as follows:

1751 79-4-15.02. (a) A foreign corporation transacting business
1752 in this state without a certificate of authority may not maintain
1753 a proceeding in any court in this state until it obtains a
1754 certificate of authority.

1755 (b) The successor to a foreign corporation that transacted
1756 business in this state without a certificate of authority and the
1757 assignee of a cause of action arising out of that business may not
1758 maintain a proceeding based on that cause of action in any court



1759 in this state until the foreign corporation or its successor
1760 obtains a certificate of authority.

1761 (c) A court may stay a proceeding commenced by a foreign
1762 corporation, its successor or assignee until it determines whether
1763 the foreign corporation or its successor requires a certificate of
1764 authority. If it so determines, the court may further stay the
1765 proceeding until the foreign corporation or its successor obtains
1766 the certificate.

1767 (d) A foreign corporation is liable for a civil penalty of
1768 Ten Dollars (\$10.00) for each day, but not to exceed a total of
1769 One Thousand Dollars (\$1,000.00) for each year, it transacts
1770 business in this state without a certificate of authority. The
1771 Attorney General may collect all penalties due under this
1772 subsection.

1773 (e) Notwithstanding subsections (a) and (b), the failure of
1774 a foreign corporation to obtain a certificate of authority shall
1775 not impair the validity of any contract, deed, mortgage, security
1776 interest, lien or act of such foreign corporation or prevent the
1777 foreign corporation from defending any action, suit or proceeding
1778 in any court of this state.

1779 **SECTION 40.** Section 79-4-15.06, Mississippi Code of 1972, is
1780 amended as follows:

1781 79-4-15.06. (a) If the corporate name of a foreign
1782 corporation does not satisfy the requirements of Section
1783 79-4-4.01, the foreign corporation to obtain or maintain a
1784 certificate of authority to transact business in this state:

1785 (1) May add the word "corporation," "incorporated,"
1786 "company" or "limited," or the abbreviation "corp.," "inc.," "co."
1787 or "ltd.," to its corporate name for use in this state; or

1788 (2) May use a fictitious name to transact business in
1789 this state if its real name is unavailable and it delivers to the
1790 Secretary of State for filing a copy of the resolution of its



1791 board of directors, certified by its secretary, adopting the
1792 fictitious name.

1793 (b) Except as authorized by subsections (c) and (d), the
1794 corporate name (including a fictitious name) of a foreign
1795 corporation must be distinguishable upon the records of the
1796 Secretary of State from:

1797 (1) The corporate name of a corporation incorporated or
1798 authorized to transact business in this state;

1799 * * *

1800 (2) The fictitious name of another foreign corporation
1801 or foreign limited liability company authorized to transact
1802 business in this state; * * *

1803 (3) The corporate name of a nonprofit corporation
1804 incorporated or authorized to transact business in this state;

1805 (4) The name of a limited partnership, limited
1806 liability partnership or limited liability company that is
1807 organized or registered under the laws of this state and which has
1808 not been dissolved; and

1809 (5) A name that is reserved or registered in the Office
1810 of the Secretary of State for any of the entities named in
1811 subsection (b) which reservation or registration has not expired.

1812 (c) A foreign corporation may apply to the Secretary of
1813 State for authorization to use in this state the name of another
1814 corporation (incorporated or authorized to transact business in
1815 this state) that is not distinguishable upon his records from the
1816 name applied for. The Secretary of State shall authorize use of
1817 the name applied for if:

1818 (1) The other corporation consents to the use in
1819 writing and submits an undertaking in form satisfactory to the
1820 Secretary of State to change its name to a name that is
1821 distinguishable upon the records of the Secretary of State from
1822 the name of the applying corporation; or



1823 (2) The applicant delivers to the Secretary of State a
1824 certified copy of a final judgment of a court of competent
1825 jurisdiction establishing the applicant's right to use the name
1826 applied for in this state.

1827 (d) A foreign corporation may use in this state the name
1828 (including the fictitious name) of another domestic or foreign
1829 corporation that is used in this state if the other corporation is
1830 incorporated or authorized to transact business in this state and
1831 the foreign corporation:

1832 (1) Has merged with the other corporation;

1833 (2) Has been formed by reorganization of the other
1834 corporation; or

1835 (3) Has acquired all or substantially all of the
1836 assets, including the corporate name, of the other corporation.

1837 (e) If a foreign corporation authorized to transact business
1838 in this state changes its corporate name to one that does not
1839 satisfy the requirements of Section 79-4-4.01, it may not transact
1840 business in this state under the changed name until it adopts a
1841 name satisfying the requirements of Section 79-4-4.01 and obtains
1842 an amended certificate of authority under Section 79-4-15.04.

1843 **SECTION 41.** Section 79-4-15.31, Mississippi Code of 1972, as
1844 amended by House Bill No. 1162, 2012 Regular Session, is amended
1845 as follows:

1846 79-4-15.31. (a) If the Secretary of State determines that
1847 one or more grounds exist under Section 79-4-15.30 for revocation
1848 of a certificate of authority, he shall serve the foreign
1849 corporation with written notice of his determination under Section
1850 79-4-15.10, except that such determination may be served by
1851 first-class mail.

1852 (b) If the foreign corporation does not correct each ground
1853 for revocation or demonstrate to the reasonable satisfaction of
1854 the Secretary of State that each ground determined by the
1855 Secretary of State does not exist within sixty (60) days after



1856 service of the notice is perfected under Section 79-4-15.10, the
1857 Secretary of State may revoke the foreign corporation's
1858 certificate of authority by signing a certificate of revocation
1859 that recites the ground or grounds for revocation and its
1860 effective date. The Secretary of State shall file the original of
1861 the certificate and serve a copy on the foreign corporation under
1862 Section 79-4-15.10, except that such certificate may be served by
1863 first-class mail.

1864 (c) The authority of a foreign corporation to transact
1865 business in this state ceases on the date shown on the certificate
1866 revoking its certificate of authority.

1867 (d) The Secretary of State's revocation of a foreign
1868 corporation's certificate of authority appoints the Secretary of
1869 State the foreign corporation's agent for service of process in
1870 any proceeding based on a cause of action which arose during the
1871 time the foreign corporation was authorized to transact business
1872 in this state. Service of process on the Secretary of State under
1873 the Mississippi Rules of Civil Procedure is service on the foreign
1874 corporation. Upon receipt of process, the Secretary of State
1875 shall mail a copy of the process to the secretary of the foreign
1876 corporation at its principal office shown in its most recent
1877 annual report or in any subsequent communication received from the
1878 corporation stating the current mailing address of its principal
1879 office, or, if none are on file, in its application for a
1880 certificate of authority.

1881 (e) Revocation of a foreign corporation's certificate of
1882 authority does not terminate the authority of the registered agent
1883 of the corporation.

1884 (f) The administrative revocation of a foreign corporation's
1885 certificate of authority shall not impair the validity of any
1886 contract, deed, mortgage, security interest, lien or act of such
1887 foreign corporation or prevent the foreign corporation from



1888 defending any action, suit or proceeding with any court of this
1889 state.

1890 (g) A foreign corporation whose registration has been
1891 administratively revoked may not maintain any action, suit or
1892 proceeding in any court of this state until such foreign
1893 corporation's certificate of authority has been reinstated.

1894 **SECTION 42.** Section 79-4-15.32, Mississippi Code of 1972, as
1895 amended by House Bill No. 1162, 2012 Regular Session, is amended
1896 as follows:

1897 79-4-15.32. (a) A foreign corporation whose certificate of
1898 authority is administratively revoked under Section 79-4-15.31 may
1899 apply to the Secretary of State for reinstatement at any time
1900 after the effective date of such revocation. The application
1901 must:

1902 (1) Recite the name of the corporation and the
1903 effective date of the administrative revocation;

1904 (2) State that the ground or grounds for revocation
1905 either did not exist or have been eliminated;

1906 (3) State that the corporation's name satisfies the
1907 requirements of Section 79-4-4.01; and

1908 (4) Contain a certificate from the Mississippi
1909 Department of Revenue reciting that the corporation has properly
1910 filed all reports and paid all taxes and penalties required by
1911 revenue laws of this state.

1912 (b) If the Secretary of State determines that the
1913 application contains the information required by subsection (a)
1914 and that the information is correct, he shall reinstate the
1915 certificate of authority, prepare a certificate that recites his
1916 determination and the effective date of reinstatement, file the
1917 original of the certificate, and serve a copy on the corporation
1918 under Section 79-35-13.

1919 (c) When the reinstatement is effective, it relates back to
1920 and takes effect as of the effective date of the administrative



1921 revocation. Any liability incurred by the foreign corporation or
1922 a director, officer or shareholder after the administrative
1923 revocation and before the reinstatement shall be determined as if
1924 the administrative revocation had never occurred, and the
1925 corporation resumes carrying on its business as if the
1926 administrative revocation had never occurred.

1927 **SECTION 43.** Section 79-4-16.01, Mississippi Code of 1972, is
1928 amended as follows:

1929 79-4-16.01. (a) A corporation shall keep as permanent
1930 records minutes of all meetings of its shareholders and board of
1931 directors, a record of all actions taken by the shareholders or
1932 board of directors without a meeting, and a record of all actions
1933 taken by a committee of the board of directors in place of the
1934 board of directors on behalf of the corporation.

1935 (b) A corporation shall maintain appropriate accounting
1936 records.

1937 (c) A corporation or its agent shall maintain a record of
1938 its shareholders, in a form that permits preparation of a list of
1939 the names and addresses of all shareholders, in alphabetical order
1940 by class of shares showing the number and class of shares held by
1941 each.

1942 (d) A corporation shall maintain its records in the form of
1943 a document, including an electronic record, or in another form
1944 capable of conversion into paper form within a reasonable time.

1945 (e) A corporation shall keep a copy of the following records
1946 at its principal office:

1947 (1) Its articles or restated articles of incorporation,
1948 all amendments to them currently in effect and any notices to
1949 shareholders referred to in Section 79-4-1.20(k)(5) regarding
1950 facts on which a filed document is dependent;

1951 (2) Its bylaws or restated bylaws and all amendments to
1952 them currently in effect;



1953 (3) Resolutions adopted by its board of directors
1954 creating one or more classes or series of shares, and fixing their
1955 relative rights, preferences and limitations, if shares issued
1956 pursuant to those resolutions are outstanding;

1957 (4) The minutes of all shareholders' meetings, and
1958 records of all action taken by shareholders without a meeting, for
1959 the past three (3) years;

1960 (5) All written communications to shareholders
1961 generally within the past three (3) years, including the financial
1962 statements furnished for the past three (3) years under Section
1963 79-4-16.20;

1964 (6) A list of the names and business addresses of its
1965 current directors and officers; and

1966 (7) Its most recent annual report delivered to the
1967 Secretary of State under Section 79-4-16.22.

1968 **SECTION 44.** Section 79-4-16.02, Mississippi Code of 1972, is
1969 amended as follows:

1970 79-4-16.02. (a) Subject to Section 79-4-16.03(c), a
1971 shareholder of a corporation is entitled to inspect and copy,
1972 during regular business hours at the corporation's principal
1973 office, any of the records of the corporation described in Section
1974 79-4-16.01(e) if he gives the corporation a signed written notice
1975 of his demand at least five (5) business days before the date on
1976 which he wishes to inspect and copy.

1977 (b) A shareholder of a corporation is entitled to inspect
1978 and copy, during regular business hours at a reasonable location
1979 specified by the corporation, any of the following records of the
1980 corporation if the shareholder meets the requirements of
1981 subsection (c) and gives the corporation a signed written notice
1982 of his demand at least five (5) business days before the date on
1983 which he wishes to inspect and copy:

1984 (1) Excerpts from minutes of any meeting of the board
1985 of directors, records of any action of a committee of the board of



1986 directors while acting in place of the board of directors on
1987 behalf of the corporation, minutes of any meeting of the
1988 shareholders, and records of action taken by the shareholders or
1989 board of directors without a meeting, to the extent not subject to
1990 inspection under subsection (a) of this section;

1991 (2) Accounting records of the corporation; and

1992 (3) The record of shareholders.

1993 (c) A shareholder may inspect and copy the records
1994 identified in subsection (b) only if:

1995 (1) His demand is made in good faith and for a proper
1996 purpose;

1997 (2) He describes with reasonable particularity his
1998 purpose and the records he desires to inspect; and

1999 (3) The records are directly connected with his
2000 purpose.

2001 (d) The right of inspection granted by this section may not
2002 be abolished or limited by a corporation's articles of
2003 incorporation or bylaws.

2004 (e) This section does not affect:

2005 (1) The right of a shareholder to inspect records under
2006 Section 79-4-7.20 or, if the shareholder is in litigation with the
2007 corporation, to the same extent as any other litigant;

2008 (2) The power of a court, independently of Section
2009 79-4-1.01 et seq., to compel the production of corporate records
2010 for examination.

2011 (f) For purposes of this section, "shareholder" includes a
2012 beneficial owner whose shares are held in a voting trust or by a
2013 nominee on his behalf.

2014 **SECTION 45.** Section 79-4-16.06, Mississippi Code of 1972, is
2015 amended as follows:

2016 79-4-16.06. (a) Whenever notice would otherwise be required
2017 to be given under any provision of this act to a shareholder, such
2018 notice need not be given if:



2019 (1) Notices to the shareholders of two (2) consecutive
2020 annual meetings, and all notices of meetings during the period
2021 between such two (2) consecutive annual meetings, have been sent
2022 to such shareholder at such shareholder's address as shown on the
2023 records of the corporation and have been returned undeliverable or
2024 could not be delivered; or

2025 (2) All, but not less than two (2), payments or
2026 dividends on securities during a twelve-month period, or two (2)
2027 consecutive payments of dividends on securities during a period of
2028 more than twelve (12) months, have been sent to such shareholder
2029 at such shareholder's address as shown on the records of the
2030 corporation and have been returned undeliverable or could not be
2031 delivered.

2032 (b) If any such shareholder shall deliver to the corporation
2033 a written notice setting forth such shareholder's then current
2034 address, the requirement that notice be given to such shareholder
2035 shall be reinstated.

2036 **SECTION 46.** Section 79-4-16.20, Mississippi Code of 1972, is
2037 amended as follows:

2038 79-4-16.20. (a) A corporation shall furnish its
2039 shareholders annual financial statements, which may be
2040 consolidated or combined statements of the corporation and one or
2041 more of its subsidiaries, as appropriate, that include a balance
2042 sheet as of the end of the fiscal year, an income statement for
2043 that year, and a statement of changes in shareholders' equity for
2044 the year unless that information appears elsewhere in the
2045 financial statements. If financial statements are prepared for
2046 the corporation on the basis of generally accepted accounting
2047 principles, the annual financial statements must also be prepared
2048 on that basis.

2049 (b) If the annual financial statements are reported upon by
2050 a public accountant, his report must accompany them. If not, the



2051 statements must be accompanied by a statement of the president or
2052 the person responsible for the corporation's accounting records:

2053 (1) Stating his reasonable belief whether the
2054 statements were prepared on the basis of generally accepted
2055 accounting principles and, if not, describing the basis of
2056 preparation; and

2057 (2) Describing any respects in which the statements
2058 were not prepared on a basis of accounting consistent with the
2059 statements prepared for the preceding year.

2060 (c) A corporation shall deliver the annual financial
2061 statements to each shareholder within one hundred twenty (120)
2062 days after the close of each fiscal year. Thereafter, on written
2063 request from a shareholder to whom the statements were not
2064 delivered, the corporation shall send the shareholder the latest
2065 financial statements. A public corporation may fulfill its
2066 responsibilities under this section by delivering the specified
2067 financial statements, or otherwise making them available, in any
2068 manner permitted by the applicable rules and regulations of the
2069 United States Securities and Exchange Commission.

2070 **SECTION 47.** The following shall be codified as Section
2071 79-4-17.05, Mississippi Code of 1972:

2072 79-4-17.05. In the event that any provisions of this chapter
2073 are deemed to modify, limit or supersede the Federal Electronic
2074 Signatures in Global and National Commerce Act, 15 USCS Section
2075 7001 et seq., the provisions of this chapter shall control to the
2076 maximum extent permitted by Section 102(a)(2) of that federal act.

2077 **SECTION 48.** Section 79-4-16.21, Mississippi Code of 1972,
2078 dealing with the reporting of the indemnification of or expense
2079 advances to a director in connection with a proceeding as well as
2080 certain issues of shares by the corporation, is repealed.

2081 **SECTION 49.** This act shall take effect and be in force from
2082 and after January 1, 2013.

