

By: Senator(s) Tindell

To: Judiciary, Division A

SENATE BILL NO. 2327

1 AN ACT TO AMEND SECTION 79-37-111, MISSISSIPPI CODE OF 1972,
 2 TO REVISE THE REQUIREMENTS FOR FILING OF DOCUMENTS; TO AMEND
 3 SECTION 79-37-114, MISSISSIPPI CODE OF 1972, TO REVISE THE TIME
 4 WITHIN WHICH A FILED DOCUMENT MAY BE CORRECTED; TO AMEND SECTION
 5 79-37-116, MISSISSIPPI CODE OF 1972, TO REVISE THE FORUM FOR
 6 APPEAL FROM THE SECRETARY'S REFUSAL TO FILE A DOCUMENT; TO AMEND
 7 SECTION 79-37-401, MISSISSIPPI CODE OF 1972, TO CLARIFY WHEN AN
 8 ENTITY IS ENTITLED TO CONVERSION OR DOMESTICATION AND TO EXCLUDE
 9 CHARITABLE ORGANIZATIONS; TO AMEND SECTION 79-37-405, MISSISSIPPI
 10 CODE OF 1972, TO REVISE CONVERSION OF A DOMESTIC ENTITY; TO AMEND
 11 SECTION 79-37-406, MISSISSIPPI CODE OF 1972, TO REVISE HOW THE
 12 REGISTRATION TO DO BUSINESS OF A CONVERTING ENTITY THAT IS A
 13 FOREIGN ENTITY IS AMENDED; TO AMEND SECTION 79-37-505, MISSISSIPPI
 14 CODE OF 1972, TO CLARIFY THE REQUIREMENTS FOR A STATEMENT OF
 15 DOMESTICATION TO BE ACCEPTED FOR FILING; AND FOR RELATED PURPOSES.

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

17 **SECTION 1.** Section 79-37-111, Mississippi Code of 1972, is
 18 amended as follows:

19 79-37-111. (a) To be entitled to filing by the Secretary of
 20 State, a document must satisfy the following requirements and the
 21 requirements of any other provision of this chapter that adds to
 22 or varies these requirements:

23 (1) This chapter requires or permits filing the
 24 document in the Office of the Secretary of State.



25 (2) The document contains the information required by
26 this chapter and may contain other information.

27 (3) The document is in a record.

28 (4) The document is in the English language, but the
29 name of an entity need not be in English if written in English
30 letters or Arabic or Roman numerals.

31 (5) The document is signed:

32 (A) By an officer or director of a domestic or
33 foreign corporation;

34 (B) By a person authorized by a domestic or
35 foreign entity that is not a corporation; or

36 (C) If the entity is in the hands of a receiver,
37 trustee, or other court-appointed fiduciary, by that fiduciary.

38 (6) The document must state the name and capacity of
39 the person that signed it.

40 (7) The document must be delivered to the Office of the
41 Secretary of State for filing in the format and in the manner
42 required by the Secretary of State.

43 (b) When a document is delivered to the Office of the
44 Secretary of State for filing, the correct filing fee must be paid
45 or provision for payment made in a manner permitted by the
46 Secretary of State.

47 **SECTION 2.** Section 79-37-114, Mississippi Code of 1972, is
48 amended as follows:



49 79-37-114. (a) A domestic or foreign entity may correct a
50 document filed by the Secretary of State within * * * one hundred
51 twenty (120) days of the filing if:

- 52 (1) The document contains an inaccuracy;
53 (2) The document was defectively signed; or
54 (3) The electronic transmission of the document to the
55 Secretary of State was defective.

56 (b) A document is corrected by filing with the Secretary of
57 State a statement of correction that:

- 58 (1) Describes the document to be corrected and states
59 its filing date or has attached a copy of the document;
60 (2) Specifies the inaccuracy or defect to be corrected;
61 and
62 (3) Corrects the inaccuracy or defect.

63 (c) A statement of correction is effective on the effective
64 date of the document it corrects except as to persons relying on
65 the uncorrected document and adversely affected by the correction.
66 As to those persons, a statement of correction is effective when
67 filed.

68 **SECTION 3.** Section 79-37-116, Mississippi Code of 1972, is
69 amended as follows:

70 79-37-116. (a) If the Secretary of State refuses to file a
71 document delivered for filing, the domestic or foreign entity that
72 submitted the document for filing may appeal the refusal within
73 thirty (30) days after the return of the document to * * * the



74 Chancery Court of the First Judicial District of Hinds County,
75 Mississippi * * *. The appeal is commenced by petitioning the
76 court to compel filing the document and by attaching to the
77 petition the document and the explanation of the Secretary of
78 State for the refusal to file.

79 (b) The court may summarily order the Secretary of State to
80 file the document or take other action the court considers
81 appropriate.

82 (c) The court's final decision may be appealed as in other
83 civil proceedings.

84 **SECTION 4.** Section 79-37-401, Mississippi Code of 1972, is
85 amended as follows:

86 79-37-401. (a) A charitable organization as defined in
87 Section 79-11-501 may not convert under this Article 4.

88 (b) By complying with this article, a domestic entity may
89 become:

90 (1) A domestic entity that is a different type of
91 entity; or

92 (2) A foreign entity that is a different type of
93 entity, if the conversion is authorized by the law of the foreign
94 entity's jurisdiction of formation and the domestic entity has
95 complied with Article 5 of this Chapter.

96 (* * *c) By complying with the provisions of this article
97 applicable to foreign entities, a foreign entity may become a
98 domestic entity that is a different type of entity if the



99 conversion is authorized by the law of the foreign entity's
100 jurisdiction of formation and the foreign entity has first
101 domesticated to this state under Article 5 of this Chapter.

102 (* * *d) If a protected agreement contains a provision that
103 applies to a merger of a domestic entity but does not refer to a
104 conversion, the provision applies to a conversion of the entity as
105 if the conversion were a merger until the provision is amended
106 after January 1, 2015.

107 **SECTION 5.** Section 79-37-405, Mississippi Code of 1972, is
108 amended as follows:

109 79-37-405. (a) A statement of conversion must be signed on
110 behalf of the converting entity and delivered to the Secretary of
111 State for filing.

112 (b) A statement of conversion must contain:

113 (1) The name, jurisdiction of formation, and type of
114 entity of the converting entity;

115 (2) The name, jurisdiction of formation, and type of
116 entity of the converted entity;

117 (3) If the statement of conversion is not to be
118 effective upon filing, the later date and time on which it will
119 become effective, which may not be more than ninety (90) days
120 after the date of filing;

121 (4) If the converting entity is a domestic entity, a
122 statement that the plan of conversion was approved in accordance
123 with this article or, if the converting entity is a foreign



124 entity, a statement that the conversion was approved by the
125 foreign entity in accordance with the law of its jurisdiction of
126 formation; copies of the conversion documents from its
127 jurisdiction of formation must be filed;

128 (5) If the converted entity is a domestic filing
129 entity, its public organic record, as an attachment;

130 (6) If the converted entity is a domestic limited
131 liability partnership, its statement of qualification, as an
132 attachment; and

133 (7) If the converted entity is a foreign entity, a
134 mailing address to which the Secretary of State may send any
135 process served on the Secretary of State pursuant to Section
136 79-37-406(e).

137 (c) In addition to the requirements of subsection (b), a
138 statement of conversion may contain any other provision not
139 prohibited by law.

140 (d) If the converted entity is a domestic entity, its public
141 organic record, if any, must satisfy the requirements of the law
142 of this state, except that the public organic record does not need
143 to be signed and may omit any provision that is not required to be
144 included in a restatement of the public organic record.

145 * * *

146 (* * *e) A statement of conversion is effective on the date
147 and time of filing or the later date and time specified in the
148 statement of conversion.



149 (* * *f) If the converted entity is a domestic entity, the
150 conversion is effective when the statement of conversion is
151 effective. If the converted entity is a foreign entity, the
152 conversion is effective on the later of:

153 (1) The date and time provided by the organic law of
154 the converted entity; or

155 (2) When the statement is effective.

156 **SECTION 6.** Section 79-37-406, Mississippi Code of 1972, is
157 amended as follows:

158 79-37-406. (a) When a conversion becomes effective:

159 (1) The converted entity is:

160 (A) Organized under and subject to the organic law
161 of the converted entity; and

162 (B) The same entity without interruption as the
163 converting entity;

164 (2) All property of the converting entity continues to
165 be vested in the converted entity without transfer, reversion, or
166 impairment;

167 (3) All debts, obligations, and other liabilities of
168 the converting entity continue as debts, obligations, and other
169 liabilities of the converted entity;

170 (4) Except as otherwise provided by law or the plan of
171 conversion, all the rights, privileges, immunities, powers, and
172 purposes of the converting entity remain in the converted entity;



173 (5) The name of the converted entity may be substituted
174 for the name of the converting entity in any pending action or
175 proceeding;

176 (6) If a converted entity is a filing entity, its
177 public organic record is effective;

178 (7) If the converted entity is a limited liability
179 partnership, its statement of qualification is effective;

180 (8) The private organic rules of the converted entity
181 which are to be in a record, if any, approved as part of the plan
182 of conversion are effective; and

183 (9) The interests in the converting entity are
184 converted, and the interest holders of the converting entity are
185 entitled only to the rights provided to them under the plan of
186 conversion and to any appraisal rights they have under Section
187 79-37-109 and the converting entity's organic law.

188 (b) Except as otherwise provided in the organic law or
189 organic rules of the converting entity, the conversion does not
190 give rise to any rights that an interest holder, governor, or
191 third party would have upon a dissolution, liquidation, or winding
192 up of the converting entity.

193 (c) When a conversion becomes effective, a person that did
194 not have interest holder liability with respect to the converting
195 entity and becomes subject to interest holder liability with
196 respect to a domestic entity as a result of a conversion has
197 interest holder liability only to the extent provided by the



198 organic law of the entity and only for those debts, obligations,
199 and other liabilities that arise after the conversion becomes
200 effective.

201 (d) When a conversion becomes effective, the interest holder
202 liability of a person that ceases to hold an interest in a
203 domestic converting entity with respect to which the person had
204 interest holder liability is subject to the following rules:

205 (1) The conversion does not discharge any interest
206 holder liability under the organic law of a domestic converting
207 entity to the extent the interest holder liability arose before
208 the conversion became effective.

209 (2) The person does not have interest holder liability
210 under the organic law of the domestic converting entity for any
211 debt, obligation, or other liability that arises after the
212 conversion becomes effective.

213 (3) The organic law of the domestic converting entity
214 continues to apply to the release, collection, or discharge of any
215 interest holder liability preserved under paragraph (1) as if the
216 conversion had not occurred.

217 (4) The person has whatever rights of contribution from
218 any other person as are provided by other law or the organic rules
219 of the domestic converting entity with respect to any interest
220 holder liability preserved under paragraph (1) as if the
221 conversion had not occurred.



222 (e) When a conversion becomes effective, a foreign entity
223 that is the converted entity may be served with process in this
224 state for the collection and enforcement of any of its debts,
225 obligations, and other liabilities in accordance with applicable
226 law.

227 (f) If the converting entity is a registered foreign entity,
228 its registration to do business in this state is * * * amended to
229 reflect its new status when the conversion becomes effective.

230 (g) A conversion does not require the entity to wind up its
231 affairs and does not constitute or cause the dissolution of the
232 entity.

233 **SECTION 7.** Section 79-37-505, Mississippi Code of 1972, is
234 amended as follows:

235 79-37-505. (a) A statement of domestication must be signed
236 by the domesticating entity and delivered to the Secretary of
237 State for filing.

238 (b) A statement of domestication must contain:

239 (1) The name, jurisdiction of formation, and type of
240 entity of the domesticating entity;

241 (2) The name and jurisdiction of formation of the
242 domesticated entity;

243 (3) If the statement of domestication is not to be
244 effective upon filing, the later date and time on which it will
245 become effective, which may not be more than ninety (90) days
246 after the date of filing;



247 (4) If the domesticating entity is a domestic entity, a
248 statement that the plan of domestication was approved in
249 accordance with this article or, if the domesticating entity is a
250 foreign entity, a statement that the domestication was approved in
251 accordance with the law of its jurisdiction of formation;

252 (5) If the domesticated entity is a domestic filing
253 entity, its public organic record, as an attachment;

254 (6) If the domesticated entity is a domestic limited
255 liability partnership, its statement of qualification, as an
256 attachment; * * *

257 (7) If the domesticated entity is a foreign entity that
258 is not a registered foreign entity, a mailing address to which the
259 Secretary of State may send any process served on the Secretary of
260 State pursuant to Section 79-37-506(e) * * *;

261 (8) If the domesticated entity is a foreign entity, a
262 copy of the filed domestication documents from the new
263 jurisdiction as an attachment; and

264 (9) If the domesticated entity is a domestic entity, a
265 certificate of good standing or certificate of existence from its
266 jurisdiction of formation that is issued less than one hundred
267 eighty (180) days before filing under this section.

268 (c) In addition to the requirements of subsection (b), a
269 statement of domestication may contain any other provision not
270 prohibited by law.



271 (d) If the domesticated entity is a domestic entity, its
272 public organic record, if any, must satisfy the requirements of
273 the law of this state, but the public organic record does not need
274 to be signed and may omit any provision that is not required to be
275 included in a restatement of the public organic record.

276 (e) A plan of domestication that is signed by a
277 domesticating domestic entity and meets all of the requirements of
278 subsection (b) may be delivered to the Secretary of State for
279 filing instead of a statement of domestication and on filing has
280 the same effect. If a plan of domestication is filed as provided
281 in this subsection, references in this chapter to a statement of
282 domestication refer to the plan of domestication filed under this
283 subsection.

284 (f) A statement of domestication is effective on the date
285 and time of filing or the later date and time specified in the
286 statement of domestication.

287 (g) A domestication in which the domesticated entity is a
288 domestic entity is effective when the statement of domestication
289 is effective. A domestication in which the domesticated entity is
290 a foreign entity is effective on the later of:

291 (1) The date and time provided by the organic law of
292 the domesticated entity; or

293 (2) When the statement is effective.

294 **SECTION 8.** This act shall take effect and be in force from
295 and after July 1, 2017.

