

By: Representative Paden

To: Judiciary A

HOUSE BILL NO. 544

1 AN ACT TO CREATE THE "MISSISSIPPI BENEFIT CORPORATION ACT";
2 TO PROVIDE THAT A CORPORATION SUBJECT TO THE MISSISSIPPI BENEFIT
3 CORPORATION ACT MAY BE SIMULTANEOUSLY SUBJECT TO THE MISSISSIPPI
4 BUSINESS CORPORATION ACT AND THE MISSISSIPPI PROFESSIONAL
5 CORPORATION ACT; TO PROVIDE CERTAIN DEFINITIONS; TO REQUIRE A
6 BENEFIT CORPORATION TO BE INCORPORATED IN ACCORDANCE WITH THE
7 MISSISSIPPI BUSINESS CORPORATION ACT; TO PROVIDE THAT A BUSINESS
8 CORPORATION MAY ELECT TO BECOME A BENEFIT CORPORATION; TO PROVIDE
9 THAT A BENEFIT CORPORATION MAY TERMINATE ITS BENEFIT CORPORATION
10 STATUS; TO REQUIRE A BENEFIT CORPORATION TO HAVE A PURPOSE OF
11 CREATING GENERAL PUBLIC BENEFIT; TO SPECIFY THE STANDARD OF
12 CONDUCT FOR BENEFIT CORPORATION DIRECTORS; TO AUTHORIZE THE BOARD
13 OF DIRECTORS OF A BENEFIT CORPORATION TO DESIGNATE A BENEFIT
14 DIRECTOR; TO SPECIFY THE STANDARD OF CONDUCT FOR OFFICERS; TO
15 AUTHORIZE A BENEFIT CORPORATION TO DESIGNATE A BENEFIT OFFICER; TO
16 LIMIT THE LIABILITY OF BENEFIT CORPORATIONS FOR CERTAIN ACTIONS
17 REGARDING ITS FAILURE TO PURSUE GENERAL PUBLIC BENEFIT; TO REQUIRE
18 A BENEFIT CORPORATION TO PREPARE AN ANNUAL BENEFIT REPORT; TO
19 REQUIRE A BENEFIT CORPORATION TO SEND ITS BENEFIT REPORT TO
20 SHAREHOLDERS AND MAKE IT AVAILABLE ON ITS WEBSITE OR PROVIDE
21 COPIES UPON REQUEST; TO BRING FORWARD SECTIONS 79-4-2.01,
22 79-4-2.02, 79-4-2.03, 79-4-2.04, 79-4-2.05, 79-4-2.06, 79-4-2.07,
23 79-4-3.01, 79-4-7.40, 79-4-7.48, 79-4-8.08, 79-4-8.09, 79-4-8.30,
24 79-4-8.41, 79-4-8.42 AND 79-10-19, MISSISSIPPI CODE OF 1972, FOR
25 PURPOSES OF POSSIBLE AMENDMENT; TO AMEND SECTION 79-4-11.04,
26 MISSISSIPPI CODE OF 1972, TO MAKE CERTAIN TECHNICAL AMENDMENTS;
27 AND FOR RELATED PURPOSES.

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

29 **SECTION 1.** Sections 1 through 14 of this act are known and
30 may be cited as the "Mississippi Benefit Corporation Act."



31 **SECTION 2.** (1) This chapter is applicable to all benefit
32 corporations.

33 (2) The existence of a provision of this chapter does not of
34 itself create an implication that a contrary or different rule of
35 law is applicable to a business corporation that is not a benefit
36 corporation. This chapter does not affect a statute or rule of
37 law that is applicable to a business corporation that is not a
38 benefit corporation.

39 (3) Except as otherwise provided in this chapter, the
40 Mississippi Business Corporation Act (Chapter 4, Title 79,
41 Mississippi Code of 1972) generally is applicable to all benefit
42 corporations. A benefit corporation may be subject simultaneously
43 to this chapter and the Mississippi Professional Corporation Act
44 (Chapter 10, Title 79, Mississippi Code of 1972). The provisions
45 of this chapter control over the provisions of the Mississippi
46 Business Corporation Act and the Mississippi Professional
47 Corporation Act.

48 (4) A provision of the articles of incorporation or bylaws
49 of a benefit corporation may not limit, be inconsistent with or
50 supersede a provision of this chapter.

51 **SECTION 3.** The following words and phrases have the meanings
52 ascribed to them in this section unless the context clearly
53 indicates otherwise:

54 (a) "Benefit corporation" means a business corporation:



55 (i) That has elected to become subject to this
56 chapter; and

57 (ii) The status of which as a benefit corporation
58 has not been terminated.

59 (b) "Benefit director" means the director, if any,
60 designated as the benefit director of a benefit corporation under
61 Section 9 of this act.

62 (c) "Benefit enforcement proceeding" means any claim or
63 action or proceeding for:

64 (i) Failure of a benefit corporation to pursue or
65 create general public benefit or a specific public benefit purpose
66 set forth in its articles; or

67 (ii) Violation of any obligation, duty or standard
68 of conduct under this chapter.

69 (d) "Benefit officer" means the individual, if any,
70 designated as the benefit officer of a benefit corporation under
71 Section 11 of this act.

72 (e) "General public benefit" means a material positive
73 impact on society and the environment, taken as a whole, assessed
74 against a third-party standard, from the business and operations
75 of a benefit corporation.

76 (f) "Independent" means having no material relationship
77 with a benefit corporation or a subsidiary of the benefit
78 corporation. Serving as a benefit director or benefit officer
79 does not make an individual not independent. A material



80 relationship between an individual and a benefit corporation or
81 any of its subsidiaries conclusively is presumed to exist if any
82 of the following apply:

83 (i) The individual is, or has been within the last
84 three (3) years, an employee other than a benefit officer of the
85 benefit corporation or a subsidiary.

86 (ii) An immediate family member of the individual
87 is, or has been within the last three (3) years, an executive
88 officer other than a benefit officer of the benefit corporation or
89 a subsidiary.

90 (iii) There is a beneficial or record ownership of
91 five percent (5%) or more of the outstanding equity interests,
92 calculated as if all outstanding rights to acquire equity
93 interests in the entity had been exercised.

94 (g) "Minimum status vote" means:

95 (i) In the case of a business corporation, in
96 addition to any other required approval or vote, the satisfaction
97 of the following conditions:

98 1. The shareholders of every class or series
99 are entitled to vote as a separate voting group on the corporate
100 action regardless of a limitation stated in the articles of
101 incorporation or bylaws on the voting rights of any class or
102 series.



103 2. The corporate action must be approved by
104 the affirmative vote of the shareholders of each class or series
105 entitled to cast at least two-thirds (2/3) of the votes that all
106 shareholders of the class or series are entitled to cast on the
107 action.

108 (ii) In the case of a domestic entity other than a
109 business corporation, in addition to any other required approval,
110 vote or consent, the satisfaction of the following conditions:

111 1. The holders of every class or series of
112 equity interest in the entity that are entitled to receive a
113 distribution of any kind from the entity are entitled to vote on
114 or consent to the action regardless of any otherwise applicable
115 limitation on the voting or consent rights of any class or series.

116 2. The action must be approved by the
117 affirmative vote or consent of the holders described in
118 subparagraph (i) of this paragraph (g) entitled to cast at least
119 two-thirds (2/3) of the votes or consents that all of those
120 holders are entitled to cast on the action.

121 (h) "Specific public benefit" means:

122 (i) Providing low-income or underserved
123 individuals or communities with beneficial products or services;

124 (ii) Promoting economic opportunity for
125 individuals or communities beyond the creation of jobs in the
126 normal course of business;

127 (iii) Protecting or restoring the environment;



128 (iv) Improving human health;
129 (v) Promoting the arts, sciences or advancement of
130 knowledge;

131 (vi) Increasing the flow of capital to entities
132 with a purpose to benefit society or the environment; or

133 (vii) Conferring any other particular benefit on
134 society or the environment.

135 (i) "Subsidiary" means, in relation to a person, an
136 entity in which the person owns beneficially or of record fifty
137 percent (50%) or more of the outstanding equity interests,
138 calculated as if all outstanding rights to acquire equity
139 interests in the entity had been exercised.

140 (j) "Third-party standard" means a recognized standard
141 for defining, reporting and assessing corporate social and
142 environmental performance that is:

143 (i) Comprehensive because it assesses the effects
144 of the business and its operations upon the interests listed in
145 Section 8(1)(a)(ii) through (v) of this act.

146 (ii) Developed by an entity that is not controlled
147 by the benefit corporation.

148 (iii) Credible because it is developed by an
149 entity that both:

150 1. Has access to necessary expertise to
151 assess overall corporate social and environmental performance; and



152 2. Uses a balanced multi-stakeholder approach
153 to develop the standard, including a reasonable public comment
154 period.

155 (iv) Transparent because the following information
156 is publicly available:

157 1. About the standard:

158 a. The criteria considered when
159 measuring the overall social and environmental performance of a
160 business.

161 b. The relative weightings, if any, of
162 those criteria.

163 2. About the development and revision of the
164 standard:

165 a. The identity of the directors,
166 officers, material owners and the governing body of the entity
167 that developed and controls revisions to the standard.

168 b. The process by which revisions to the
169 standard and changes to the membership of the governing body are
170 made.

171 c. An accounting of the revenue and
172 sources of financial support for the entity, with sufficient
173 detail to disclose any relationships that could reasonably be
174 considered to present a potential conflict of interest.

175 **SECTION 4.** A benefit corporation must be incorporated in
176 accordance with Article 2 of the Mississippi Business Corporation



177 Act, but its articles of incorporation also must state that it is
178 a benefit corporation.

179 **SECTION 5.** (1) An existing business corporation may become
180 a benefit corporation under this chapter by amending its articles
181 of incorporation so that they contain, in addition to the
182 requirements of Section 79-4-2.02, a statement that the
183 corporation is a benefit corporation. In order to be effective,
184 the amendment must be adopted by at least the minimum status vote.

185 (2) (a) Except as provided in paragraph (b) of this
186 subsection (2), if a domestic entity that is not a benefit
187 corporation is a party to a merger, consolidation, conversion or
188 share exchange and the surviving, new or resulting entity in the
189 merger, consolidation, conversion or share exchange is to be a
190 benefit corporation, the plan of merger, consolidation, conversion
191 or share exchange must be adopted by the domestic entity by at
192 least the minimum status vote.

193 (b) Paragraph (a) of this subsection (2) does not apply
194 in the case of a corporation that is a party to a merger if the
195 shareholders of the corporation are not required to vote on the
196 merger pursuant to Sections 79-4-11.04(g) and 79-4-11.05.

197 **SECTION 6.** (1) A benefit corporation may terminate its
198 status as such and cease to be subject to this chapter by amending
199 its articles of incorporation to delete the provision required by
200 Sections 4 and 5 of this act to be stated in the articles of a



201 benefit corporation. In order to be effective, the amendment must
202 be adopted by at least the minimum status vote.

203 (2) Except as provided in subsection (3) of this section, if
204 a plan of merger, consolidation, conversion or share exchange
205 would have the effect of terminating the status of a business
206 corporation as a benefit corporation, the plan or transaction must
207 be adopted by at least the minimum status vote in order to be
208 effective.

209 (3) Subsection (2) of this section does not apply in the
210 case of a corporation that is a party to a merger if the
211 shareholders of the corporation are not entitled to vote on the
212 merger pursuant to Sections 79-4-11.04(g) and 79-4-11.05.

213 (4) Any sale, lease, exchange or other disposition of all or
214 substantially all of the assets of a benefit corporation, unless
215 the transaction is in the usual and regular course of business, is
216 not effective unless the transaction is approved by at least the
217 minimum status vote.

218 **SECTION 7.** (1) A benefit corporation must have a purpose
219 of creating general public benefit. This purpose is in addition
220 to its purpose under Section 79-4-3.01.

221 (2) The articles of incorporation of a benefit corporation
222 may identify one or more specific public benefits that it is the
223 purpose of the benefit corporation to create in addition to its
224 purposes under Section 79-4-3.01 and subsection (1) of this
225 section. The identification of a specific public benefit under



226 this subsection does not limit the purpose of a benefit
227 corporation to create general public benefit under subsection (1)
228 of this section.

229 (3) The creation of general public benefit and specific
230 public benefit under subsections (1) and (2) of this section is in
231 the best interests of the benefit corporation.

232 (4) A benefit corporation may amend its articles of
233 incorporation to add, amend or delete the identification of a
234 specific public benefit that it is the purpose of the benefit
235 corporation to create. In order to be effective, the amendment
236 must be adopted by at least the minimum status vote.

237 (5) A professional corporation that is a benefit corporation
238 does not violate Section 79-10-19 by having the purpose to create
239 general public benefit or a specific public benefit.

240 **SECTION 8.** (1) In discharging the duties of their
241 respective positions and in considering the best interests of the
242 benefit corporation, the board of directors, committees of the
243 board and individual directors of a benefit corporation:

244 (a) Must consider the effects of any action or inaction
245 upon:

246 (i) The shareholders of the benefit corporation;

247 (ii) The employees and work force of the benefit
248 corporation, its subsidiaries and its suppliers;



249 (iii) The interests of customers as beneficiaries
250 of the general public benefit or a specific public benefit purpose
251 of the benefit corporation;

252 (iv) Community and societal factors, including
253 those of each community in which offices or facilities of the
254 benefit corporation, its subsidiaries or its suppliers are
255 located;

256 (v) The local and global environment;

257 (vi) The short-term and long-term interests of the
258 benefit corporation, including benefits that may accrue to the
259 benefit corporation from its long-term plans and the possibility
260 that these interests may be served best by the continued
261 independence of the benefit corporation; and

262 (vii) The ability of the benefit corporation to
263 accomplish its general public benefit purpose and any specific
264 public benefit purpose; and

265 (b) May consider:

266 (i) The interests referred to in Section
267 79-4-8.30(f); and

268 (ii) Other pertinent factors or the interests of
269 any other group that they deem appropriate; but

270 (c) Need not give priority to a particular interest or
271 factor referred to in paragraphs (a) and (b) of this subsection
272 (1) over any other interest or factor unless the benefit
273 corporation has stated in its articles of incorporation its



274 intention to give priority to certain interests or factors related
275 to the accomplishment of its general public benefit purpose or of
276 a specific public benefit purpose identified in its articles of
277 incorporation.

278 (2) The consideration of interests and factors in the manner
279 provided by subsection (1) of this section:

280 (a) Does not constitute a violation of Section
281 79-4-8.30; and

282 (b) Is in addition to the ability of directors to
283 consider interests and factors as provided in Section
284 79-4-8.30(f).

285 (3) Except as provided in the articles of incorporation or
286 bylaws, a director is not liable personally for monetary damages
287 for:

288 (a) Any action or inaction in the course of performing
289 the duties of a director under subsection (1) of this section if
290 the director was not interested with respect to the action or
291 inaction; or

292 (b) Failure of the benefit corporation to pursue or
293 create general public benefit or specific public benefit.

294 (4) A director does not have a duty to a person who is a
295 beneficiary of the general public benefit purpose or a specific
296 public benefit purpose of a benefit corporation arising from the
297 status of the person as a beneficiary.

298 (5) A director who makes a business judgment in good



299 faith fulfills the duty under this section if the director:

300 (a) Is not interested in the subject of the business
301 judgment;

302 (b) Is informed with respect to the subject of the
303 business judgment to the extent the director reasonably believes
304 to be appropriate under the circumstances; and

305 (c) Rationally believes that the business judgment is
306 in the best interests of the benefit corporation.

307 **SECTION 9.** (1) The board of directors of a benefit
308 corporation may include a director who:

309 (a) Is designated the benefit director; and

310 (b) Has, in addition to the powers, duties, rights and
311 immunities of the other directors of the benefit corporation, the
312 powers, duties, rights and immunities provided in this chapter.

313 (2) A benefit director must be elected, and may be removed,
314 in the manner provided by Sections 79-4-8.08 and 79-4-8.09.

315 Except as provided in subsection (6) of this section, a benefit
316 director must be an individual who is independent. A benefit
317 director may serve as the benefit officer at the same time as
318 serving as the benefit director. The articles of incorporation or
319 bylaws of a benefit corporation may prescribe additional
320 qualifications of a benefit director not inconsistent with this
321 subsection (2).

322 (3) The benefit director must prepare, and the benefit
323 corporation must include in the annual benefit report to



324 shareholders required by Section 13 of this act, a report from the
325 benefit director on all of the following:

326 (a) Whether the benefit corporation acted in accordance
327 with its general public benefit purpose and any specific public
328 benefit purpose in all material respects during the period covered
329 by the report.

330 (b) Whether the directors and officers complied with
331 Sections 8(1) and 10(1), respectively.

332 (c) If the benefit director believes that the benefit
333 corporation or its directors or officers failed to act or comply
334 in the manner described in paragraphs (a) and (b) of this
335 subsection (3), a description of the ways in which the benefit
336 corporation or its directors or officers failed to act or comply.

337 (4) The act or inaction of an individual in the capacity of
338 a benefit director constitutes, for all purposes, an act or
339 inaction of that individual in the capacity of a director of the
340 benefit corporation.

341 (5) Regardless of whether the articles of incorporation or
342 bylaws of a benefit corporation include a provision eliminating or
343 limiting the personal liability of directors authorized by Section
344 79-4-8.58, a benefit director is not liable personally for an act
345 or omission in the capacity of a benefit director unless the act
346 or omission constitutes self-dealing, willful misconduct or a
347 knowing violation of law.

348 (6) The benefit director of a professional corporation



349 does not need to be independent.

350 **SECTION 10.** (1) Each officer of a benefit corporation must
351 consider the interests and factors described in Section 8(1)(a) of
352 this act in the manner provided in Section 8(1)(c) of this act if:

353 (a) The officer has discretion to act with respect to a
354 matter; and

355 (b) It reasonably appears to the officer that the
356 matter may have a material effect on the creation by the benefit
357 corporation of general public benefit or a specific public benefit
358 identified in the articles of incorporation of the benefit
359 corporation.

360 (2) The consideration of interests and factors in the manner
361 provided in subsection (1) of this section does not constitute a
362 violation of Sections 79-4-8.41 and 79-4-8.42.

363 (3) Except as provided in the articles of incorporation or
364 bylaws, an officer is not liable personally for monetary damages
365 for:

366 (a) An action or inaction as an officer in the course
367 of performing the duties of an officer under subsection (1) of
368 this section if the officer was not interested with respect to the
369 action or inaction; or

370 (b) Failure of the benefit corporation to pursue or
371 create general public benefit or specific public benefit.

372 (4) An officer does not have a duty to a person who is a



373 beneficiary of the general public benefit purpose or a specific
374 public benefit purpose of a benefit corporation arising from the
375 status of the person as a beneficiary.

376 (5) An officer who makes a business judgment in good
377 faith fulfills the duty under this section if the officer:

378 (a) Is not interested in the subject of the business
379 judgment;

380 (b) Is informed with respect to the subject of the
381 business judgment to the extent the officer reasonably believes to
382 be appropriate under the circumstances; and

383 (c) Rationally believes that the business judgment is
384 in the best interests of the benefit corporation.

385 **SECTION 11.** (1) A benefit corporation may have an officer
386 designated the benefit officer.

387 (2) A benefit officer has:

388 (a) The powers and duties relating to the purpose of
389 the corporation to create general public benefit or specific
390 public benefit provided:

391 (i) By the bylaws; or

392 (ii) By resolution or order of the board of
393 directors, absent controlling provisions in the bylaws.

394 (b) The duty to prepare the benefit report required by
395 Section 13 of this act.



396 **SECTION 12.** (1) Except in a benefit enforcement proceeding,
397 a person may not bring an action or assert a claim against a
398 benefit corporation or its directors or officers with respect to:

399 (a) Failure to pursue or create general public benefit
400 or a specific public benefit set forth in its articles of
401 incorporation; or

402 (b) Violation of an obligation, duty or standard of
403 conduct under this chapter.

404 (2) A benefit corporation is not liable for monetary damages
405 under this chapter for any failure of the benefit corporation to
406 pursue or create general public benefit or a specific public
407 benefit.

408 (3) A benefit enforcement proceeding may be commenced or
409 maintained only:

410 (a) Directly by the benefit corporation; or

411 (b) Derivatively in accordance with Sections 79-4-7.40
412 through 79-4-7.48 by:

413 (i) A person or group of persons who owned
414 beneficially or of record at least two percent (2%) of the total
415 number of shares of a class or series outstanding at the time of
416 the act or omission complained of;

417 (ii) A director;

418 (iii) A person or group of persons who owned
419 beneficially or of record five percent (5%) or more of the
420 outstanding equity interests in an entity of which the benefit



421 corporation is a subsidiary at the time of the act or omission
422 complained of; or

423 (iv) Other persons as specified in the articles of
424 incorporation or bylaws of the benefit corporation.

425 (4) For purposes of this section, a person is the beneficial
426 owner of shares or equity interests if the shares or equity
427 interests are held in a voting trust or by a nominee on behalf of
428 the beneficial owner.

429 **SECTION 13.** (1) A benefit corporation must prepare an
430 annual benefit report including all of the following:

431 (a) A narrative description of:

432 (i) The ways in which the benefit corporation
433 pursued general public benefit during the year and the extent to
434 which general public benefit was created.

435 (ii) Both:

436 1. The ways in which the benefit corporation
437 pursued a specific public benefit that the articles of
438 incorporation state it is the purpose of the benefit corporation
439 to create; and

440 2. The extent to which that specific public
441 benefit was created.

442 (iii) Any circumstances that have hindered the
443 creation by the benefit corporation of general public benefit or
444 specific public benefit.



445 (iv) The process and rationale for selecting or
446 changing the third-party standard used to prepare the benefit
447 report.

448 (b) An assessment of the overall social and
449 environmental performance of the benefit corporation against a
450 third-party standard:

451 (i) Applied consistently with any application of
452 that standard in prior benefit reports; or

453 (ii) Accompanied by an explanation of the reasons
454 for:

455 1. Any inconsistent application; or
456 2. The change to that standard from the one
457 used in the immediately prior report.

458 (c) The name of the benefit director and the benefit
459 officer, if any, and the address to which correspondence to each
460 of them may be directed.

461 (d) The compensation paid by the benefit corporation
462 during the year to each director in the capacity of a director.

463 (e) The statement of the benefit director described in
464 Section 9(3) of this act.

465 (f) A statement of any connection between the
466 organization that established the third-party standard, or its
467 directors, officers or any holder of five percent (5%) or more of
468 the governance interests in the organization, and the benefit
469 corporation or its directors, officers or any holder of five



470 percent (5%) or more of the outstanding shares of the benefit
471 corporation, including any financial or governance relationship
472 that might materially affect the credibility of the use of the
473 third-party standard.

474 (2) If, during the year covered by a benefit report, a
475 benefit director resigned from or refused to stand for reelection
476 to the position of benefit director, or was removed from the
477 position of benefit director, and the benefit director furnished
478 the benefit corporation with any written correspondence concerning
479 the circumstances surrounding the resignation, refusal or removal,
480 the benefit report must include that correspondence as an exhibit.

481 (3) Neither the benefit report nor the assessment of the
482 performance of the benefit corporation in the benefit report
483 required by subsection (1)(b) of this section needs to be audited
484 or certified by a third party.

485 **SECTION 14.** (1) A benefit corporation must send its annual
486 benefit report to each shareholder on the earlier of:

487 (a) One hundred twenty (120) days following the end of
488 the fiscal year of the benefit corporation; or

489 (b) The same time that the benefit corporation delivers
490 any other annual report to its shareholders.

491 (2) A benefit corporation must post all of its benefit
492 reports on the public portion of its Internet website, if any; but
493 the compensation paid to directors and financial or proprietary



494 information included in the benefit reports may be omitted from
495 the benefit reports as posted.

496 (3) If a benefit corporation does not have an Internet
497 website, the benefit corporation must provide a copy of its most
498 recent benefit report, without charge, to any person that requests
499 a copy, but the compensation paid to directors and financial or
500 proprietary information included in the benefit report may be
501 omitted from the copy of the benefit report provided.

502 (4) Concurrently with the delivery of the benefit report to
503 shareholders under subsection (1) of this section, the benefit
504 corporation must deliver a copy of the benefit report to the
505 Secretary of State for filing, but the compensation paid to
506 directors and financial or proprietary information included in the
507 benefit report may be omitted from the benefit report as delivered
508 to the Secretary of State. The Secretary of State shall charge a
509 fee of Twenty-five Dollars (\$25.00) for filing a benefit report.

510 **SECTION 15.** Section 79-4-2.01, Mississippi Code of 1972, is
511 brought forward as follows:

512 79-4-2.01. One or more persons may act as the incorporator
513 or incorporators of a corporation by delivering articles of
514 incorporation to the Secretary of State for filing.

515 **SECTION 16.** Section 79-4-2.02, Mississippi Code of 1972, is
516 brought forward as follows:

517 79-4-2.02. (a) The articles of incorporation must set
518 forth:



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

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

524 (3) The street address of the corporation's initial
525 registered office and the name of its initial registered agent at
526 that office; and

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

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

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

531 (2) Provisions not inconsistent with law regarding:

532 (i) The purpose or purposes for which the
533 corporation is organized;

534 (ii) Managing the business and regulating the
535 affairs of the corporation;

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

538 (iv) A par value for authorized shares or classes
539 of shares;

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

542 (4) A provision eliminating or limiting the liability
543 of a director to the corporation or its shareholders for money



544 damages for any action taken, or any failure to take any action,
545 as a director, except liability for:

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

548 (ii) An intentional infliction of harm on the
549 corporation or the shareholders;

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

551 (iv) An intentional violation of criminal law; and

552 (5) A provision permitting or making obligatory
553 indemnification of a director for liability as defined in Section
554 79-4-8.50(5) to any person for any action taken, or any failure to
555 take any action, as a director, except liability for:

556 (i) Receipt of a financial benefit to which he is
557 not entitled;

558 (ii) An intentional infliction of harm on the
559 corporation or its shareholders;

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

561 (iv) An intentional violation of criminal law.

562 (6) A provision or reference to a provision in the
563 corporation's bylaws that requires derivative proceedings under
564 Section 79-4-7.41(1) or any other internal corporate claim that is
565 based upon a current or former director's or officer's violation
566 of a duty to be brought in the appropriate court of the county
567 where the corporation's principal office is located, consistent
568 with applicable law and jurisdictional requirements.



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

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

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

577 **SECTION 17.** Section 79-4-2.03, Mississippi Code of 1972, is
578 brought forward as follows:

579 79-4-2.03. (a) Unless a delayed effective date is
580 specified, the corporate existence begins when the articles of
581 incorporation are filed.

582 (b) The Secretary of State's filing of the articles of
583 incorporation is conclusive proof that the incorporators satisfied
584 all conditions precedent to incorporation except in a proceeding
585 by the state to cancel or revoke the incorporation or
586 involuntarily dissolve the corporation.

587 **SECTION 18.** Section 79-4-2.04, Mississippi Code of 1972, is
588 brought forward as follows:

589 79-4-2.04. All persons purporting to act as or on behalf of
590 a corporation, knowing there was no incorporation under Sections
591 79-4-1.01 et seq., are jointly and severally liable for all
592 liabilities created while so acting.



593 **SECTION 19.** Section 79-4-2.05, Mississippi Code of 1972, is
594 brought forward as follows:

595 79-4-2.05. (a) After incorporation:

596 (1) If initial directors are named in the articles of
597 incorporation, the initial directors shall hold an organizational
598 meeting, at the call of a majority of the directors, to complete
599 the organization of the corporation by appointing officers,
600 adopting bylaws and carrying on any other business brought before
601 the meeting.

602 (2) If initial directors are not named in the articles,
603 the incorporator or incorporators shall hold an organizational
604 meeting at the call of a majority of the incorporators:

605 (i) To elect directors and complete the
606 organization of the corporation; or

607 (ii) To elect a board of directors who shall
608 complete the organization of the corporation.

609 (b) Action required or permitted by Sections 79-4-1.01 et
610 seq. to be taken by incorporators at an organizational meeting may
611 be taken without a meeting if the action taken is evidenced by one
612 or more written consents describing the action taken and signed by
613 each incorporator.

614 (c) An organizational meeting may be held in or out of this
615 state.

616 **SECTION 20.** Section 79-4-2.06, Mississippi Code of 1972, is
617 brought forward as follows:



618 79-4-2.06. (a) The incorporators or board of directors of a
619 corporation shall adopt initial bylaws for the corporation.

620 (b) The bylaws of a corporation may contain any provision
621 for managing the business and regulating the affairs of the
622 corporation that is not inconsistent with law or the articles of
623 incorporation.

624 **SECTION 21.** Section 79-4-2.07, Mississippi Code of 1972, is
625 brought forward as follows:

626 79-4-2.07. (a) Unless the articles of incorporation provide
627 otherwise, the board of directors of a corporation may adopt
628 bylaws to be effective only in an emergency defined in subsection
629 (d). The emergency bylaws, which are subject to amendment or
630 repeal by the shareholders, may make all provisions necessary for
631 managing the corporation during the emergency, including:

632 (1) Procedures for calling a meeting of the board of
633 directors;

634 (2) Quorum requirements for the meeting; and

635 (3) Designation of additional or substitute directors.

636 (b) All provisions of the regular bylaws consistent with the
637 emergency bylaws remain effective during the emergency. The
638 emergency bylaws are not effective after the emergency ends.

639 (c) Corporate action taken in good faith in accordance with
640 the emergency bylaws:

641 (1) Binds the corporation; and



642 (2) May not be used to impose liability on a corporate
643 director, officer, employee or agent.

644 (d) An emergency exists for purposes of this section if a
645 quorum of the corporation's directors cannot readily be assembled
646 because of some catastrophic event.

647 **SECTION 22.** Section 79-4-3.01, Mississippi Code of 1972, is
648 brought forward as follows:

649 79-4-3.01. (a) Every corporation incorporated under
650 Sections 79-4-1.01 et seq. has the purpose of engaging in any
651 lawful business unless a more limited purpose is set forth in the
652 articles of incorporation.

653 (b) A corporation engaging in a business that is subject to
654 regulation under another statute of this state may incorporate
655 under Sections 79-4-1.01 et seq. only if permitted by, and subject
656 to all limitations of the other statute.

657 **SECTION 23.** Section 79-4-7.40, Mississippi Code of 1972, is
658 brought forward as follows:

659 79-4-7.40. In Sections 79-4-7.41 through 79-4-7.47:

660 (1) "Derivative proceeding" means a civil suit in the
661 right of a domestic corporation or, to the extent provided in
662 Section 79-4-7.47, in the right of a foreign corporation.

663 (2) "Shareholder" includes a beneficial owner whose
664 shares are held in a voting trust or held by a nominee on the
665 beneficial owner's behalf.



666 **SECTION 24.** Section 79-4-7.48, Mississippi Code of 1972, is
667 brought forward as follows:

668 79-4-7.48. (a) The chancery court of the county where a
669 corporation's principal office (or, if none in this state, its
670 registered office) is located may appoint one or more persons to
671 be custodians, or, if the corporation is insolvent, to be
672 receivers, of and for a corporation in a proceeding by a
673 shareholder where it is established that:

674 (1) The directors are deadlocked in the management of
675 the corporate affairs, the shareholders are unable to break the
676 deadlock, and irreparable injury to the corporation is threatened
677 or being suffered; or

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

681 (b) The court:

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

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



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

692 (c) The court may appoint an individual or domestic or
693 foreign corporation (authorized to transact business in this
694 state) as a custodian or receiver and may require the custodian or
695 receiver to post bond, with or without sureties, in an amount the
696 court directs.

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

700 (1) A custodian may exercise all of the powers of the
701 corporation, through or in place of its board of directors, to the
702 extent necessary to manage the business and affairs of the
703 corporation; and

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

709 (e) The court during a custodianship may redesignate the
710 custodian a receiver, and during a receivership may redesignate
711 the receiver a custodian, if doing so is in the best interests of
712 the corporation.

713 (f) The court from time to time during the custodianship or
714 receivership may order compensation paid and expense disbursements



715 or reimbursements made to the custodian or receiver from the
716 assets of the corporation or proceeds from the sale of its assets.

717 **SECTION 25.** Section 79-4-8.08, Mississippi Code of 1972, is
718 brought forward as follows:

719 79-4-8.08. (a) The shareholders may remove one or more
720 directors with or without cause unless the articles of
721 incorporation provide that directors may be removed only for
722 cause.

723 (b) If a director is elected by a voting group of
724 shareholders, only the shareholders of that voting group may
725 participate in the vote to remove him.

726 (c) If cumulative voting is authorized, a director may not
727 be removed if the number of votes sufficient to elect him under
728 cumulative voting is voted against his removal. If cumulative
729 voting is not authorized, a director may be removed only if the
730 number of votes cast to remove him exceeds the number of votes
731 cast not to remove him.

732 (d) A director may be removed by the shareholders only at a
733 meeting called for the purpose of removing him and the meeting
734 notice must state that the purpose, or one (1) of the purposes, of
735 the meeting is removal of the director.

736 **SECTION 26.** Section 79-4-8.09, Mississippi Code of 1972, is
737 brought forward as follows:

738 79-4-8.09. (a) The chancery court of the county where a
739 corporation's principal office is located, or the Chancery Court



740 of the First Judicial District of Hinds County, Mississippi, if
741 the corporation does not have a principal office in this state,
742 may remove a director of the corporation from office in a
743 proceeding commenced either by the corporation or by its
744 shareholders holding at least ten percent (10%) of the outstanding
745 shares of any class if the court finds that (1) the director
746 engaged in fraudulent or dishonest conduct, or gross abuse of
747 authority or discretion, with respect to the corporation, and (2)
748 removal is in the best interest of the corporation.

749 (b) The court that removes a director may bar the director
750 from reelection for a period prescribed by the court.

751 (c) If shareholders commence a proceeding under subsection
752 (a), they shall make the corporation a party defendant.

753 **SECTION 27.** Section 79-4-8.30, Mississippi Code of 1972, is
754 brought forward as follows:

755 79-4-8.30. (a) Each member of the board of directors, when
756 discharging the duties of a director, shall act:

757 (1) In good faith, and

758 (2) In a manner the director reasonably believes to be
759 in the best interests of the corporation.

760 (b) The members of the board of directors or a committee of
761 the board, when becoming informed in connection with their
762 decision-making function or devoting attention to their oversight
763 function, shall discharge their duties with the care that a person



764 in a like position would reasonably believe appropriate under
765 similar circumstances.

766 (c) In discharging board or committee duties a director, who
767 does not have knowledge that makes reliance unwarranted, is
768 entitled to rely on the performance by any of the persons
769 specified in subsection (e) (1) or subsection (e) (3) to whom the
770 board may have delegated, formally or informally by course of
771 conduct, the authority or duty to perform one or more of the
772 board's functions that are delegable under applicable law.

773 (d) In discharging board or committee duties a director, who
774 does not have knowledge that makes reliance unwarranted, is
775 entitled to rely on information, opinions, reports or statements,
776 including financial statements and other financial data, prepared
777 or presented by any of the persons specified in subsection (e).

778 (e) A director is entitled to rely, in accordance with
779 subsection (c) or (d), on:

780 (1) One or more officers or employees of the
781 corporation whom the director reasonably believes to be reliable
782 and competent in the functions performed or the information,
783 opinions, reports or statements provided;

784 (2) Legal counsel, public accountants, or other persons
785 retained by the corporation as to matters involving skills or
786 expertise the director reasonably believes are matters (i) within
787 the particular person's professional or expert competence or (ii)
788 as to which the particular person merits confidence; or



789 (3) A committee of the board of directors of which the
790 director is not a member if the director reasonably believes the
791 committee merits confidence.

792 (f) For purposes of this section, a director, in determining
793 what he reasonably believes to be in the best interests of the
794 corporation, shall consider the interests of the corporation's
795 shareholders and, in his discretion, may consider any of the
796 following:

797 (1) The interests of the corporation's employees,
798 suppliers, creditors and customers;

799 (2) The economy of the state and nation;

800 (3) Community and societal considerations;

801 (4) The long-term as well as short-term interests of
802 the corporation and its shareholders, including the possibility
803 that these interests may be best served by the continued
804 independence of the corporation.

805 **SECTION 28.** Section 79-4-8.41, Mississippi Code of 1972, is
806 brought forward as follows:

807 79-4-8.41. Each officer has the authority and shall perform
808 the duties set forth in the bylaws or, to the extent consistent
809 with the bylaws, the duties prescribed by the board of directors
810 or by direction of an officer authorized by the board of directors
811 to prescribe the duties of other officers.

812 **SECTION 29.** Section 79-4-8.42, Mississippi Code of 1972, is
813 brought forward as follows:



814 79-4-8.42. (a) An officer, when performing in such
815 capacity, shall act:
816 (1) In good faith;
817 (2) With the care that a person in a like position
818 would reasonably exercise under similar circumstances; and
819 (3) In a manner the officer reasonably believes to be
820 in the best interests of the corporation.

821 (b) In discharging those duties an officer, who does not
822 have knowledge that makes reliance unwarranted, is entitled to
823 rely on:

824 (1) The performance of properly delegated
825 responsibilities by one or more employees of the corporation whom
826 the officer reasonably believes to be reliable and competent in
827 performing the responsibilities delegated; or

828 (2) Information, opinions, reports or statements,
829 including financial statements and other financial data, prepared
830 or presented by one or more employees of the corporation whom the
831 officer reasonably believes to be reliable and competent in the
832 matters presented or by legal counsel, public accountants, or
833 other persons retained by the corporation as to matters involving
834 skills or expertise the officer reasonably believes are matters
835 (i) within the particular person's professional or expert
836 competence or (ii) as to which the particular person merits
837 confidence.



838 (c) An officer shall not be liable to the corporation or its
839 shareholders for any decision to take or not to take action, or
840 any failure to take any action, as an officer, if the duties of
841 the office are performed in compliance with this section. Whether
842 an officer who does not comply with this section shall have
843 liability will depend in such instance on applicable law,
844 including those principles of Section 79-4-8.31 that have
845 relevance.

846 **SECTION 30.** Section 79-10-19, Mississippi Code of 1972, is
847 brought forward as follows:

848 79-10-19. (1) A professional corporation may not render any
849 professional service other than the professional service
850 authorized by its articles of incorporation.

851 (2) Subsection (1) does not prohibit a professional
852 corporation from investing its funds in real estate, mortgages,
853 securities, or any other type of investment or from owning real or
854 personal property appropriate for carrying on its business.

855 **SECTION 31.** Section 79-4-11.04, Mississippi Code of 1972, is
856 amended as follows:

857 79-4-11.04. In the case of a domestic corporation that is a
858 party to a merger or share exchange:

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

861 (b) Except as provided in subsection (g) and in Section
862 79-4-11.05, after adopting the plan of merger, the board of



863 directors must submit the plan to the shareholders for their
864 approval. After adopting the plan of share exchange, the board of
865 directors of the corporation whose shares will be acquired in the
866 share exchange must submit the plan to the shareholders for their
867 approval. The board of directors must also transmit to the
868 shareholders a recommendation that the shareholders approve the
869 plan of merger or share exchange, unless the board of directors
870 makes a determination that because of conflicts of interest or
871 other special circumstances it should not make such a
872 recommendation, in which case the board of directors must transmit
873 to the shareholders the basis for that determination.

874 (c) The board of directors may condition its submission
875 of the plan of merger or share exchange to the shareholders on any
876 basis.

877 (d) If the plan of merger or share exchange is required
878 to be approved by the shareholders, and if the approval is to be
879 given at a meeting, the corporation must notify each shareholder,
880 whether or not entitled to vote, of the meeting of shareholders at
881 which the plan is to be submitted for approval. The notice must
882 state that the purpose, or one (1) of the purposes, of the meeting
883 is to consider the plan and must contain or be accompanied by a
884 copy or summary of the plan. If the corporation is to be merged
885 into an existing corporation or eligible entity, the notice shall
886 also include or be accompanied by a copy or summary of the
887 articles of incorporation or organizational documents of that



888 corporation or eligible entity. If the corporation is to be
889 merged into a corporation or eligible entity that is to be created
890 pursuant to the merger, the notice shall include or be accompanied
891 by a copy or a summary of the articles of incorporation or
892 organizational documents of the new corporation or eligible
893 entity.

894 (e) Unless the articles of incorporation, or the board
895 of directors acting pursuant to subsection (c), requires a greater
896 vote or a greater number of votes to be present, the approval of
897 the plan of merger or share exchange shall require the approval of
898 the shareholders at a meeting at which a quorum consisting of at
899 least a majority of the votes entitled to be cast on the plan
900 exists, and, if any class or series of shares is entitled to vote
901 as a separate group on the plan of merger or share exchange, the
902 approval of each such separate voting group at a meeting at which
903 a quorum of the voting group consisting of at least a majority of
904 the votes entitled to be cast on the merger or share exchange by
905 that voting group is present.

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

907 (1) On a plan of merger, by each class or series
908 of shares that (A) are to be converted, pursuant to the provisions
909 of the plan of merger, into shares or other securities, interests,
910 obligations, rights to acquire shares or other securities, cash,
911 other property, or any combination of the foregoing, or (B) would
912 have a right to vote as a separate group on a provision of the



913 plan that, if contained in a proposed amendment to the articles of
914 incorporation, would require action by separate voting groups
915 under Section 79-4-10.04;

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

919 (3) On a plan of merger or share exchange, if the
920 voting group is entitled under the articles of incorporation to
921 vote as a voting group to approve a plan of merger or share
922 exchange.

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

926 (1) The corporation will survive the merger; * * *

927 (2) Except for amendments permitted by Section
928 79-4-10.05, its articles of incorporation will not be
929 changed; * * *

930 (3) Each shareholder of the corporation whose
931 shares were outstanding immediately before the effective date of
932 the merger will hold the same number of shares, with identical
933 preferences, limitations, and relative rights, immediately after
934 the effective date of change; * * *

935 (4) The number of voting shares outstanding
936 immediately after the merger, plus the number of voting shares
937 issuable as a result of the merger (either by the conversion of



938 securities issued pursuant to the merger or the exercise of rights
939 and warrants issued pursuant to the merger), will not exceed by
940 more than twenty percent (20%) the total number of voting shares
941 of the surviving corporation outstanding immediately before the
942 merger; and

943 (5) The number of participating shares outstanding
944 immediately after the merger, plus the number of participating
945 shares issuable as a result of the merger (either by the
946 conversion of securities issued pursuant to the merger or the
947 exercise of rights and warrants issued pursuant to the merger),
948 will not exceed by more than twenty percent (20%) the total number
949 of participating shares outstanding immediately before the merger.

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

951 (1) "Participating shares" means shares that
952 entitle their holders to participate without limitation in
953 distributions.

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

956 (i) If as a result of a merger or share exchange one or
957 more shareholders of a domestic corporation would become subject
958 to personal liability for the obligations or liabilities of any
959 other person or entity, approval of the plan of merger shall
960 require the execution, by each such shareholder, of a separate
961 written consent to become subject to such personal liability.



962 **SECTION 32.** Sections 1 through 14 of this act shall be
963 codified as a new chapter in Title 79, Mississippi Code of 1972.

964 **SECTION 33.** This act shall take effect and be in force from
965 and after July 1, 2018.

