MISSISSIPPI LEGISLATURE

REGULAR SESSION 2018

By: Representative Paden

To: Judiciary A

HOUSE BILL NO. 544

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

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

SECTION 1. Sections 1 through 14 of this act are known and
may be cited as the "Mississippi Benefit Corporation Act."
SECTION 2.  (1) This chapter is applicable to all benefit corporations.

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

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

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

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

(a) "Benefit corporation" means a business corporation:
(i) That has elected to become subject to this chapter; and
(ii) The status of which as a benefit corporation has not been terminated.

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

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

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

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

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

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

(f) "Independent" means having no material relationship with a benefit corporation or a subsidiary of the benefit corporation. Serving as a benefit director or benefit officer does not make an individual not independent. A material
relationship between an individual and a benefit corporation or any of its subsidiaries conclusively is presumed to exist if any of the following apply:

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

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

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

(g) "Minimum status vote" means:

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

1. The shareholders of every class or series are entitled to vote as a separate voting group on the corporate action regardless of a limitation stated in the articles of incorporation or bylaws on the voting rights of any class or series.
2. The corporate action must be approved by the affirmative vote of the shareholders of each class or series entitled to cast at least two-thirds (2/3) of the votes that all shareholders of the class or series are entitled to cast on the action.

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

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

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

(h) "Specific public benefit" means:

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

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

(iii) Protecting or restoring the environment;
(iv) Improving human health;
(v) Promoting the arts, sciences or advancement of knowledge;
(vi) Increasing the flow of capital to entities with a purpose to benefit society or the environment; or
(vii) Conferring any other particular benefit on society or the environment.

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

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

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

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

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

1. Has access to necessary expertise to assess overall corporate social and environmental performance; and
2. Uses a balanced multi-stakeholder approach to develop the standard, including a reasonable public comment period.

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

   1. About the standard:
      a. The criteria considered when measuring the overall social and environmental performance of a business.
      b. The relative weightings, if any, of those criteria.

   2. About the development and revision of the standard:
      a. The identity of the directors, officers, material owners and the governing body of the entity that developed and controls revisions to the standard.
      b. The process by which revisions to the standard and changes to the membership of the governing body are made.
      c. An accounting of the revenue and sources of financial support for the entity, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

SECTION 4. A benefit corporation must be incorporated in accordance with Article 2 of the Mississippi Business Corporation Act.
Act, but its articles of incorporation also must state that it is a benefit corporation.

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

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

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

**SECTION 6.** (1) A benefit corporation may terminate its status as such and cease to be subject to this chapter by amending its articles of incorporation to delete the provision required by Sections 4 and 5 of this act to be stated in the articles of a
benefit corporation. In order to be effective, the amendment must be adopted by at least the minimum status vote.

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

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

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

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

(2) The articles of incorporation of a benefit corporation may identify one or more specific public benefits that it is the purpose of the benefit corporation to create in addition to its purposes under Section 79-4-3.01 and subsection (1) of this section. The identification of a specific public benefit under
this subsection does not limit the purpose of a benefit corporation to create general public benefit under subsection (1) of this section.

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

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

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

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

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

(i) The shareholders of the benefit corporation;

(ii) The employees and work force of the benefit corporation, its subsidiaries and its suppliers;
(iii) The interests of customers as beneficiaries
of the general public benefit or a specific public benefit purpose
of the benefit corporation;

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

(v) The local and global environment;

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

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

(b) May consider:

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

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

(c) Need not give priority to a particular interest or
factor referred to in paragraphs (a) and (b) of this subsection
(1) over any other interest or factor unless the benefit
corporation has stated in its articles of incorporation its
intention to give priority to certain interests or factors related
to the accomplishment of its general public benefit purpose or of
a specific public benefit purpose identified in its articles of
incorporation.

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

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

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

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

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

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

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

(5) A director who makes a business judgment in good
faith fulfills the duty under this section if the director:

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

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

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

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

(a) Is designated the benefit director; and

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

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

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

(3) The benefit director must prepare, and the benefit corporation must include in the annual benefit report to
shareholders required by Section 13 of this act, a report from the
benefit director on all of the following:

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

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

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

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

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

(6) The benefit director of a professional corporation
does not need to be independent.

SECTION 10. (1) Each officer of a benefit corporation must consider the interests and factors described in Section 8(1)(a) of this act in the manner provided in Section 8(1)(c) of this act if:
(a) The officer has discretion to act with respect to a matter; and
(b) It reasonably appears to the officer that the matter may have a material effect on the creation by the benefit corporation of general public benefit or a specific public benefit identified in the articles of incorporation of the benefit corporation.

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

(3) Except as provided in the articles of incorporation or bylaws, an officer is not liable personally for monetary damages for:
(a) An action or inaction as an officer in the course of performing the duties of an officer under subsection (1) of this section if the officer was not interested with respect to the action or inaction; or
(b) Failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

(4) An officer does not have a duty to a person who is a
beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

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

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

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

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

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

(2) A benefit officer has:

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

(i) By the bylaws; or

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

(b) The duty to prepare the benefit report required by Section 13 of this act.
SECTION 12. (1) Except in a benefit enforcement proceeding, a person may not bring an action or assert a claim against a benefit corporation or its directors or officers with respect to:

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

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

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

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

(a) Directly by the benefit corporation; or

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

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

(ii) A director;

(iii) A person or group of persons who owned beneficially or of record five percent (5%) or more of the outstanding equity interests in an entity of which the benefit
 corporation is a subsidiary at the time of the act or omission complained of; or

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

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

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

(a) A narrative description of:

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

(ii) Both:

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

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

(iii) Any circumstances that have hindered the creation by the benefit corporation of general public benefit or specific public benefit.
(iv) The process and rationale for selecting or changing the third-party standard used to prepare the benefit report.

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

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

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

       1. Any inconsistent application; or

       2. The change to that standard from the one used in the immediately prior report.

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

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

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

(f) A statement of any connection between the organization that established the third-party standard, or its directors, officers or any holder of five percent (5%) or more of the governance interests in the organization, and the benefit corporation or its directors, officers or any holder of five
percent (5%) or more of the outstanding shares of the benefit
corporation, including any financial or governance relationship
that might materially affect the credibility of the use of the
third-party standard.

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

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

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

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

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

(2) A benefit corporation must post all of its benefit
reports on the public portion of its Internet website, if any; but
the compensation paid to directors and financial or proprietary
information included in the benefit reports may be omitted from the benefit reports as posted.

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

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

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

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

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

79-4-2.02. (a) The articles of incorporation must set forth:
(1) A corporate name for the corporation that satisfies the requirements of Section 79-4-4.01;

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

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

(4) The name and address of each incorporator.

(b) The articles of incorporation may set forth:

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

(2) Provisions not inconsistent with law regarding:

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

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

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

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

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

(4) A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money
damages for any action taken, or any failure to take any action, as a director, except liability for:

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

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

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

(iv) An intentional violation of criminal law; and

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

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

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

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

(iv) An intentional violation of criminal law.

(6) A provision or reference to a provision in the corporation's bylaws that requires derivative proceedings under Section 79-4-7.41(1) or any other internal corporate claim that is based upon a current or former director's or officer's violation of a duty to be brought in the appropriate court of the county where the corporation's principal office is located, consistent with applicable law and jurisdictional requirements.
(c) The articles of incorporation need not set forth any of the corporate powers enumerated in Section 79-4-1.01 et seq.

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

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

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

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

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

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

79-4-2.04. All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under Sections 79-4-1.01 et seq., are jointly and severally liable for all liabilities created while so acting.
SECTION 19. Section 79-4-2.05, Mississippi Code of 1972, is brought forward as follows:

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

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

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

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

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

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

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

SECTION 20. Section 79-4-2.06, Mississippi Code of 1972, is brought forward as follows:
79-4-2.06. (a) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation. (b) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

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

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

(1) Procedures for calling a meeting of the board of directors;
(2) Quorum requirements for the meeting; and
(3) Designation of additional or substitute directors.

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

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

(1) Binds the corporation; and
(2) May not be used to impose liability on a corporate
director, officer, employee or agent.

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

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

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

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

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

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

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

(2) "Shareholder" includes a beneficial owner whose
shares are held in a voting trust or held by a nominee on the
beneficial owner's behalf.
SECTION 24. Section 79-4-7.48, Mississippi Code of 1972, is brought forward as follows:

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

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

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

(b) The court:

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

(2) Shall hold a full hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a custodian or receiver; and
(3) Has jurisdiction over the corporation and all of its property, wherever located.

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

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

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

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

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

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

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

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

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

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

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

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

79-4-8.09. (a) The chancery court of the county where a corporation's principal office is located, or the Chancery Court
of the First Judicial District of Hinds County, Mississippi, if the corporation does not have a principal office in this state, may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders holding at least ten percent (10%) of the outstanding shares of any class if the court finds that (1) the director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation, and (2) removal is in the best interest of the corporation.

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

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

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

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

(1) In good faith, and

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

(b) The members of the board of directors or a committee of the board, when becoming informed in connection with their decision-making function or devoting attention to their oversight function, shall discharge their duties with the care that a person
in a like position would reasonably believe appropriate under
similar circumstances.

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

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

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

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

(2) Legal counsel, public accountants, or other persons
retained by the corporation as to matters involving skills or
expertise the director reasonably believes are matters (i) within
the particular person's professional or expert competence or (ii)
as to which the particular person merits confidence; or
(3) A committee of the board of directors of which the
director is not a member if the director reasonably believes the
committee merits confidence.

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

(1) The interests of the corporation's employees,
suppliers, creditors and customers;
(2) The economy of the state and nation;
(3) Community and societal considerations;
(4) The long-term as well as short-term interests of
the corporation and its shareholders, including the possibility
that these interests may be best served by the continued
independence of the corporation.

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

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

SECTION 29. Section 79-4-8.42, Mississippi Code of 1972, is
brought forward as follows:
79-4-8.42. (a) An officer, when performing in such
capacity, shall act:

   (1) In good faith;
   (2) With the care that a person in a like position
would reasonably exercise under similar circumstances; and
   (3) In a manner the officer reasonably believes to be
in the best interests of the corporation.

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

   (1) The performance of properly delegated
responsibilities by one or more employees of the corporation whom
the officer reasonably believes to be reliable and competent in
performing the responsibilities delegated; or
   (2) Information, opinions, reports or statements,
including financial statements and other financial data, prepared
or presented by one or more employees of the corporation whom the
officer reasonably believes to be reliable and competent in the
matters presented or by legal counsel, public accountants, or
other persons retained by the corporation as to matters involving
skills or expertise the officer reasonably believes are matters
(i) within the particular person's professional or expert
competence or (ii) as to which the particular person merits
confidence.
An officer shall not be liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as an officer, if the duties of the office are performed in compliance with this section. Whether an officer who does not comply with this section shall have liability will depend in such instance on applicable law, including those principles of Section 79-4-8.31 that have relevance.

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

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

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

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

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

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

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

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

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

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

(f) Separate voting by voting groups is required:

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

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

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

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

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

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

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

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

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

(h) As used in subsection (g):

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

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

(i) If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to personal liability for the obligations or liabilities of any other person or entity, approval of the plan of merger shall require the execution, by each such shareholder, of a separate written consent to become subject to such personal liability.
SECTION 32. Sections 1 through 14 of this act shall be codified as a new chapter in Title 79, Mississippi Code of 1972.

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