

By: Representative Paden

To: Judiciary A

HOUSE BILL NO. 8

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). If there is a
45 conflict between any provision of this chapter and any provision
46 of the Mississippi Business Corporation Act or the Mississippi
47 Professional Corporation Act, the provision of this chapter shall
48 control.

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

52 **SECTION 3.** The following words and phrases have the meanings
53 as defined in this section unless the context clearly indicates
54 otherwise:

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



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

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

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

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

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

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

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

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

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



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

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

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

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

95 (g) "Minimum status vote" means:

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

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



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

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

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

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

122 (h) "Specific public benefit" means:

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

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

128 (iii) Protecting or restoring the environment;



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

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

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

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

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

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

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

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

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



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

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

158 1. About the standard:

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

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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

247 (i) The shareholders of the benefit corporation;

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



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

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

257 (v) The local and global environment;

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

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

266 (b) May consider:

267 (i) The interests referred to in Section
268 79-4-8.30(f); and

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

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



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

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

281 (a) Does not constitute a violation of Section
282 79-4-8.30; and

283 (b) Is in addition to the ability of directors to
284 consider interests and factors as provided in Section
285 79-4-8.30(f).

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

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

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

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

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



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

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

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

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

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

310 (a) Is designated the benefit director; and

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

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

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

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



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

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

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

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

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

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

349 (6) The benefit director of a professional corporation



350 does not need to be independent.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

388 (2) A benefit officer has:

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

392 (i) By the bylaws; or

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

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



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

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

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

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

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

411 (a) Directly by the benefit corporation; or

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

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

418 (ii) A director;

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



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

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

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

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

432 (a) A narrative description of:

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

436 (ii) Both:

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

532 (2) Provisions not inconsistent with law regarding:

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

562 (iv) An intentional violation of criminal law.

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



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

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

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

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

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

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

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

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



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

596 79-4-2.05. (a) After incorporation:

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

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

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

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

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

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

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



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

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

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

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

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

635 (2) Quorum requirements for the meeting; and

636 (3) Designation of additional or substitute directors.

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

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

642 (1) Binds the corporation; and



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

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

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

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

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

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

660 79-4-7.40. In Sections 79-4-7.41 through 79-4-7.47:

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

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



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

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

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

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

682 (b) The court:

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

758 (1) In good faith, and

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

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



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

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

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

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

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

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



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

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

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

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

801 (3) Community and societal considerations;

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

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

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

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



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

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

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

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



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

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

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

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

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

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

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

862 (b) Except as provided in subsection (g) and in Section
863 79-4-11.05, after adopting the plan of merger, the board of



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

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

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



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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

965 **SECTION 33.** This act shall take effect and be in force from
966 and after July 1, 2019.

