

By: Representative Paden

To: Judiciary A;
Appropriations

HOUSE BILL NO. 207

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 shall be known

30 and 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; or

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; and



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 and

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

123 (h) "Specific public benefit" means:

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

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



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

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

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

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

148 (ii) Developed by an entity that is not controlled
149 by the benefit corporation; and

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

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



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

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

159 1. About the standard:

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

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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

246 (a) Shall consider the effects of any action or
247 inaction upon:

248 (i) The shareholders of the benefit corporation;

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



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

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

258 (v) The local and global environment;

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

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

267 (b) May consider:

268 (i) The interests referred to in Section
269 79-4-8.30(f); and

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

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



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

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

282 (a) Does not constitute a violation of Section
283 79-4-8.30; and

284 (b) Is in addition to the ability of directors to
285 consider interests and factors as provided in Section
286 79-4-8.30(f).

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

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

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

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

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



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

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

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

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

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

311 (a) Is designated the benefit director; and

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

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

317 Except as provided in subsection (6) of this section, a benefit
318 director shall be an individual who is independent. A benefit
319 director may serve as the benefit officer at the same time as
320 serving as the benefit director. The articles of incorporation or
321 bylaws of a benefit corporation may prescribe additional
322 qualifications of a benefit director that are consistent with this
323 subsection (2).

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



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

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

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

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

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

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

350 (6) The benefit director of a professional corporation



351 does not need to be independent.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

389 (2) A benefit officer has:

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

393 (i) By the bylaws; or

394 (ii) By resolution or order of the board of
395 directors, absent controlling provisions in the bylaws; and

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



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

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

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

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

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

412 (a) Directly by the benefit corporation; or

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

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

419 (ii) A director;

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



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

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

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

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

433 (a) A narrative description of:

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

437 (ii) Both:

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

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

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



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

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

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

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

457 1. Any inconsistent application; or

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

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

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

465 (e) The statement of the benefit director described in
466 Section 9(3) of this act; and

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



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

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

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

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

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

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

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



497 information included in the benefit reports may be omitted from
498 the benefit reports as posted.

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

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

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

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

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

520 79-4-2.02. (a) The articles of incorporation must set
521 forth:



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

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

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

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

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

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

534 (2) Provisions not inconsistent with law regarding:

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

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

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

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

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

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



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

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

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

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

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

555 (5) A provision permitting or making obligatory
556 indemnification of a director for liability as defined in Section
557 79-4-8.50(5) to any person for any action taken, or any failure to
558 take any action, as a director, except liability for:

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

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

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

564 (iv) An intentional violation of criminal law.

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



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

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

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

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

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

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

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

592 79-4-2.04. All persons purporting to act as or on behalf of
593 a corporation, knowing there was no incorporation under Sections
594 79-4-1.01 et seq., are jointly and severally liable for all
595 liabilities created while so acting.



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

598 79-4-2.05. (a) After incorporation:

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

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

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

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

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

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

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



621 79-4-2.06. (a) The incorporators or board of directors of a
622 corporation shall adopt initial bylaws for the corporation.

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

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

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

635 (1) Procedures for calling a meeting of the board of
636 directors;

637 (2) Quorum requirements for the meeting; and

638 (3) Designation of additional or substitute directors.

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

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

644 (1) Binds the corporation; and



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

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

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

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

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

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

662 79-4-7.40. In Sections 79-4-7.41 through 79-4-7.47:

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

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



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

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

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

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

684 (b) The court:

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

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



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

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

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

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

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

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

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



718 or reimbursements made to the custodian or receiver from the
719 assets of the corporation or proceeds from the sale of its assets.

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

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

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

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

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

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

741 79-4-8.09. (a) The chancery court of the county where a
742 corporation's principal office is located, or the Chancery Court



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

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

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

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

758 79-4-8.30. (a) Each member of the board of directors, when
759 discharging the duties of a director, shall act:

760 (1) In good faith, and

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

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



767 in a like position would reasonably believe appropriate under
768 similar circumstances.

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

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

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

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

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



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

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

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

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

803 (3) Community and societal considerations;

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

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

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

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



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

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

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

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



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

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

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

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

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

860 79-4-11.04. In the case of a domestic corporation that is a
861 party to a merger or share exchange:

862 (a) The plan of merger or share exchange * * * shall be
863 adopted by the board of directors * * *;

864 (b) Except as provided in subsection (g) and in Section
865 79-4-11.05, after adopting the plan of merger, the board of



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

878 (c) The board of directors may condition its submission
879 of the plan of merger or share exchange to the shareholders on any
880 basis * * *;

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



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

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

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

911 (1) On a plan of merger, by each class or series
912 of shares that (A) are to be converted, pursuant to the provisions
913 of the plan of merger, into shares or other securities, interests,
914 obligations, rights to acquire shares or other securities, cash,
915 other property, or any combination of the foregoing, or (B) would



916 have a right to vote as a separate group on a provision of the
917 plan that, if contained in a proposed amendment to the articles of
918 incorporation, would require action by separate voting groups
919 under Section 79-4-10.04;

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

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

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

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

931 (2) Except for amendments permitted by Section
932 79-4-10.05, its articles of incorporation will not be
933 changed; * * *

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

939 (4) The number of voting shares outstanding
940 immediately after the merger, plus the number of voting shares



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

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

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

955 (1) "Participating shares" means shares that
956 entitle their holders to participate without limitation in
957 distributions * * *; and

958 (2) "Voting shares" means shares that entitle
959 their holders to vote unconditionally in elections of
960 directors * * *; and

961 (i) If as a result of a merger or share exchange one or
962 more shareholders of a domestic corporation would become subject
963 to personal liability for the obligations or liabilities of any
964 other person or entity, approval of the plan of merger shall



965 require the execution, by each such shareholder, of a separate
966 written consent to become subject to such personal liability.

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

969 **SECTION 33.** This act shall take effect and be in force from
970 and after July 1, 2023.

