

By: Senator(s) McCaughn

To: Judiciary, Division A

SENATE BILL NO. 2536

1 AN ACT TO REQUIRE NONPROFIT CORPORATIONS TO FILE AN ANNUAL  
 2 REPORT WITH THE SECRETARY OF STATE BY A CERTAIN DATE; TO REQUIRE  
 3 THE REPORT TO CONTAIN CERTAIN INFORMATION; TO PROVIDE THAT  
 4 INFORMATION IN THE ANNUAL REPORT MUST BE CURRENT AS OF THE DATE  
 5 THE ANNUAL REPORT IS EXECUTED ON BEHALF OF THE NONPROFIT  
 6 CORPORATION; TO REQUIRE THE SECRETARY OF STATE TO NOTICE A  
 7 NONPROFIT CORPORATION OF ANY DEFICIENCIES IN AN ANNUAL REPORT; TO  
 8 PROVIDE THAT FAILURE TO FILE AN ANNUAL REPORT MAY SUBJECT THE  
 9 NONPROFIT CORPORATION TO DISSOLUTION OR REVOCATION; TO AMEND  
 10 SECTION 79-11-127, MISSISSIPPI CODE OF 1972, TO DEFINE THE TERM  
 11 "PUBLIC FUNDS" WITHIN THE PROVISIONS OF THE MISSISSIPPI NONPROFIT  
 12 CORPORATION ACT; TO AMEND SECTIONS 79-11-107, 79-11-347 AND  
 13 79-11-385, MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED  
 14 PURPOSES.

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

16 **SECTION 1.** (1) All nonprofit corporations shall file an  
 17 annual report with the Secretary of State by April 15 of each  
 18 year.

19 (2) All nonprofit corporations shall set forth in its annual  
 20 report the following information:

21 (a) The name of the nonprofit corporation and the state  
 22 or country or other foreign jurisdiction under whose law it is  
 23 organized;



24           (b) The name, email address, and street or physical  
25 address of its registered agent in this state;

26           (c) The address of its principal office;

27           (d) The name, titles and business address of its  
28 principal officer;

29           (e) A brief description of the nature of its business;  
30 and

31           (f) A statement as to whether it has received public  
32 funds, including a description of the type and amount of any  
33 public funds and a listing of any governmental entity that  
34 distributed the public funds.

35           (2) Information in the annual report must be current as of  
36 the date the annual report is executed on behalf of the nonprofit  
37 corporation.

38           (3) If an annual report does not contain the information  
39 required by this section, the Secretary of State shall promptly  
40 return the report to the nonprofit corporation with a written  
41 notification of the deficiency for correction. If the report is  
42 corrected to contain the information required by this section and  
43 delivered to the Secretary of State within thirty (30) days after  
44 the effective date of the written notice sent under this  
45 subsection or before the date the report is otherwise due, the  
46 annual report shall be deemed timely filed.

47           (4) A nonprofit corporation may be subject to administrative  
48 dissolution or revocation for failure to file its annual report.



49           **SECTION 2.** Section 79-11-127, Mississippi Code of 1972, is  
50 amended as follows:

51           79-11-127. Unless the context otherwise requires in Section  
52 79-11-101 et seq., the following terms shall have the meaning  
53 ascribed herein:

54           (a) "Approved by (or approval by) the members" means  
55 approved or ratified by the affirmative vote of a majority of the  
56 votes represented and voting at a duly held meeting at which a  
57 quorum is present (which affirmative votes also constitute a  
58 majority of the required quorum) or by a written ballot or written  
59 consent in conformity with Section 79-11-101 et seq. or by the  
60 affirmative vote, written ballot or written consent of such  
61 greater proportion, including the votes of all the members of any  
62 class, unit or grouping as may be provided in the articles, bylaws  
63 or Section 79-11-101 et seq. for any specified member action.

64           (b) "Articles of incorporation" or "articles" include  
65 amended and restated articles of incorporation and articles of  
66 merger.

67           (c) "Board" or "board of directors" means the board of  
68 directors except that no person or group of persons are the board  
69 of directors because of powers delegated to that person or group  
70 pursuant to Section 79-11-231.

71           (d) "Bylaws" means the code or codes of rules (other  
72 than the articles) adopted pursuant to Section 79-11-101 et seq.  
73 for the regulation or management of the affairs of the corporation



74 irrespective of the name or names by which such rules are  
75 designated.

76 (e) "Class" means a group of memberships which have the  
77 same rights with respect to voting, dissolution, redemption and  
78 transfer. For the purposes of this section, rights shall be  
79 considered the same if they are determined by a formula applied  
80 uniformly.

81 (f) "Conspicuous" means so written, displayed, or  
82 presented that a reasonable person against whom the record is to  
83 operate should have noticed it. For example, text in italics,  
84 boldface, contrasting color or capitals, or that is underlined, is  
85 conspicuous.

86 (g) "Corporation" means a nonprofit corporation subject  
87 to the provisions of Section 79-11-101 et seq., except a foreign  
88 corporation.

89 (h) "Delegates" means those persons elected or  
90 appointed to vote in a representative assembly for the election of  
91 a director or directors or on other matters.

92 (i) "Deliver" or "delivery" means any method of  
93 delivery used in conventional commercial practice, including  
94 delivery by hand, mail, commercial delivery and electronic  
95 transmission, except that delivery to the Secretary of State means  
96 actual receipt by the Secretary of State.

97 (j) "Directors" means individuals, designated in the  
98 articles or bylaws or elected by the incorporators, and their



99 successors and individuals elected or appointed by any other name  
100 or title to act as members of the board.

101 (k) "Distribution" means the payment of a dividend or  
102 any part of the income or profit of a corporation to its members,  
103 directors or officers. Payment of reasonable compensation, fees,  
104 or expenses incurred in the performance of duties on behalf of the  
105 corporation is not a distribution.

106 (l) "Domestic corporation" means a corporation.

107 (m) "Effective date of notice" is defined in Section  
108 79-11-129.

109 (n) "Electronic" means relating to technology having  
110 electrical, digital, magnetic, wireless, optical, electromagnetic,  
111 or similar capabilities.

112 (o) "Electronic transmission" or "electronically  
113 transmitted" means any process of communication not directly  
114 involving the physical transfer of paper that is suitable for the  
115 retention, retrieval and reproduction of information by the  
116 recipient.

117 (p) "Employee" includes an officer but not a director.  
118 A director may accept duties that make the director an employee.

119 (q) "Entity" includes corporation and foreign  
120 corporation; business corporation and foreign business  
121 corporation; profit and nonprofit unincorporated association;  
122 corporation sole; business trust, estate, partnership, trust and



123 two (2) or more persons having a joint or common economic  
124 interest; and state, United States and foreign government.

125 (r) "File," "filed" or "filing" means filed in the  
126 Office of the Secretary of State.

127 (s) "Foreign corporation" means a corporation organized  
128 under a law other than the law of this state which would be a  
129 nonprofit corporation if formed under the laws of this state.

130 (t) "Governmental subdivision" includes authority,  
131 county, district and municipality.

132 (u) "Includes" denotes a partial definition.

133 (v) "Individual" includes the estate of an incompetent  
134 individual.

135 (w) "Means" denotes a complete definition.

136 (x) "Member" means (without regard to what a person is  
137 called in the articles or bylaws) any person or persons who on  
138 more than one (1) occasion, pursuant to a provision of a  
139 corporation's articles or bylaws, have the right to vote for the  
140 election of a director or directors.

141 A person is not a member by virtue of any of the  
142 following:

143 (i) Any rights such person has as a delegate;

144 (ii) Any rights such person has to designate a  
145 director or directors; or

146 (iii) Any rights such person has as a director.



147 (y) "Membership" refers to the rights and obligations a  
148 member or members have pursuant to a corporation's articles,  
149 bylaws and Section 79-11-101 et seq.

150 (z) "Nonprofit corporation" means a corporation, no  
151 part of the assets, income or profit of which is distributed to or  
152 enures to the benefit of its members, directors or officers,  
153 except as otherwise provided under this chapter. In a corporation  
154 all of whose members are nonprofit corporations, distribution to  
155 members does not deprive it of the status of a nonprofit  
156 corporation.

157 (aa) "Notice" is defined in Section 79-11-129.

158 ( \* \* \*ab) "Person" includes any individual or entity.

159 ( \* \* \*ac) "Principal office" means the office (in or  
160 out of this state) where the principal executive offices of a  
161 domestic or foreign corporation are located.

162 ( \* \* \*ad) "Proceeding" includes civil suit and  
163 criminal, administrative and investigatory action.

164 (ae) "Public funds" means monies received by a  
165 nonprofit corporation during its most recently completed fiscal  
166 year that were received from the State of Mississippi or its  
167 political subdivisions, including any local governmental authority  
168 within the State of Mississippi.

169 ( \* \* \*af) "Record" means information that is inscribed  
170 on a tangible medium or that is stored in an electronic or other  
171 medium and is retrievable in perceivable form.



172 ( \* \* \*ag) "Record date" means the date established  
173 under Section 79-11-209 on which a corporation determines the  
174 identity of its members for the purposes of Section 79-11-101 et  
175 seq.

176 ( \* \* \*ah) "Religious corporation" means a corporation  
177 organized and operating primarily or exclusively for religious  
178 purposes.

179 ( \* \* \*ai) "Secretary" means the corporate officer to  
180 whom the board of directors has delegated responsibility under  
181 Section 79-11-273 for custody of the minutes of the directors' and  
182 members' meetings and for authenticating the records of the  
183 corporation.

184 ( \* \* \*aj) "Sign" means with present intent to  
185 authenticate or adopt a record:

186 (i) To execute or adopt a tangible symbol; or  
187 (ii) To attach to or logically associate with the  
188 record an electronic sound, symbol, or process as defined under  
189 Mississippi law.

190 ( \* \* \*ak) "State," when referring to a part of the  
191 United States, includes a state and commonwealth (and their  
192 agencies and governmental subdivisions) and a territory, and  
193 insular possession (and their agencies and governmental  
194 subdivisions) of the United States.





195 ( \* \* \* al) "United States" includes any district,  
196 authority, bureau, commission, department and any other agency of  
197 the United States.

198 ( \* \* \* am) "Vote" includes authorization by written  
199 ballot and written consent.

200 ( \* \* \* an) "Voting power" means the total number of  
201 votes entitled to be cast for the election of directors at the  
202 time the determination of voting power is made, excluding a vote  
203 which is contingent upon the happening of a condition or event  
204 that has not occurred at the time. Where a class is entitled to  
205 vote as a class for directors, the determination of voting power  
206 of the class shall be based on the percentage of the number of  
207 directors the class is entitled to elect out of the total number  
208 of authorized directors.

209 **SECTION 3.** Section 79-11-107, Mississippi Code of 1972, is  
210 amended as follows:

211 79-11-107. (1) The Secretary of State may prescribe and  
212 furnish, on request, forms for: (a) an application for a  
213 certificate of existence; (b) a foreign corporation's application  
214 for a certificate of authority to transact business in this state;  
215 (c) a foreign corporation's application for a certificate of  
216 withdrawal; \* \* \* (d) the status report; and (e) the annual  
217 report. If the Secretary of State so requires, use of these forms  
218 is mandatory.



219 (2) The Secretary of State may prescribe and furnish on  
220 request forms for other documents required or permitted to be  
221 filed by Section 79-11-101 et seq., but their use is not  
222 mandatory.

223 **SECTION 4.** Section 79-11-347, Mississippi Code of 1972, is  
224 amended as follows:

225 79-11-347. The Secretary of State may commence a proceeding  
226 under Section 79-11-349 to administratively dissolve a corporation  
227 if:

228 (a) The corporation does not pay within sixty (60) days  
229 after they are due any taxes or penalties imposed by Section  
230 79-11-101 et seq. or other law;

231 (b) The corporation does not deliver a requested status  
232 report to the Secretary of State within sixty (60) days after it  
233 is due;

234 (c) The corporation does not deliver an annual report  
235 to the Secretary or State within sixty (60) days after it is due;

236 ( \* \* \*d) The corporation is without a registered agent  
237 in this state for sixty (60) days or more;

238 ( \* \* \*e) The corporation does not notify the Secretary  
239 of State within one hundred twenty (120) days that its registered  
240 agent has been changed or that its registered agent has resigned;

241 ( \* \* \*f) The corporation's period of duration, if any,  
242 stated in its articles of incorporation expires;



243 ( \* \* \*g) The corporation fails to report within the  
244 time period specified in Section 79-11-405 the suspension or  
245 revocation of its tax-exempt status under Section 501(c)(3) of the  
246 Internal Revenue Code; or

247 ( \* \* \*h) An incorporator, director, officer or agent  
248 of the corporation signed a document he knew was false in any  
249 material respect with intent that the document be delivered to the  
250 Secretary of State for filing.

251 **SECTION 5.** Section 79-11-385, Mississippi Code of 1972, is  
252 amended as follows:

253 79-11-385. (1) The Secretary of State may commence a  
254 proceeding under Section 79-11-387 to revoke the certificate of  
255 authority of a foreign corporation authorized to transact business  
256 in this state if:

257 (a) The foreign corporation does not deliver the status  
258 report to the Secretary of State within sixty (60) days after it  
259 is due;

260 (b) The foreign corporation does not deliver an annual  
261 report to the Secretary or State within sixty (60) days after it  
262 is due;

263 ( \* \* \*c) The foreign corporation does not pay within  
264 sixty (60) days after they are due any franchise taxes or  
265 penalties imposed by Section 79-11-101 et seq. or other law;

266 ( \* \* \*d) The foreign corporation is without a  
267 registered agent in this state for sixty (60) days or more;



268 ( \* \* \*e) The foreign corporation does not inform the  
269 Secretary of State by an appropriate filing that its registered  
270 agent has changed or that its registered agent has resigned within  
271 ninety (90) days of the change or resignation;

272 ( \* \* \*f) An incorporator, director, officer or agent  
273 of the foreign corporation signed a document such person knew was  
274 false in any material respect with intent that the document be  
275 delivered to the Secretary of State for filing; or

276 ( \* \* \*g) The Secretary of State receives a duly  
277 authenticated certificate from the Secretary of State or other  
278 official having custody of corporate records in the state or  
279 country under whose law the foreign corporation is incorporated  
280 stating that it has been dissolved or has disappeared as the  
281 result of a merger.

282 (2) The Attorney General may commence a proceeding under  
283 Section 79-11-387 to revoke the certificate of authority of a  
284 foreign corporation authorized to transact business in this state  
285 if the foreign corporation has continued to exceed or abuse the  
286 authority conferred upon it by law.

287 **SECTION 6.** Section 1 of this act shall be codified in Title  
288 79, Chapter 11, Mississippi Code of 1972, within the provisions of  
289 the Mississippi Nonprofit Corporation Act.

290 **SECTION 7.** This act shall take effect and be in force from  
291 and after July 1, 2024.

