

By: Senator(s) Ross

To: Finance

SENATE BILL NO. 2452  
(As Passed the Senate)

1 AN ACT TO REVISE THE MISSISSIPPI BUSINESS CORPORATION ACT; TO  
2 AMEND SECTION 79-4-6.01, MISSISSIPPI CODE OF 1972, TO REVISE THE  
3 DESIGNATION OF AUTHORIZED SHARES; TO AMEND SECTION 79-4-6.02,  
4 MISSISSIPPI CODE OF 1972, TO REVISE THE WAY IN WHICH TERMS OF A  
5 CLASS OR SERIES OF A CLASS OF SHARES IS DESIGNATED; TO AMEND  
6 SECTION 79-4-6.24, MISSISSIPPI CODE OF 1972, TO REVISE THE WAY IN  
7 WHICH SHARE OPTIONS ARE ISSUED; TO AMEND SECTION 79-4-6.40,  
8 MISSISSIPPI CODE OF 1972, TO REVISE THE DISTRIBUTION TO  
9 SHAREHOLDERS; TO AMEND SECTION 79-4-7.28, MISSISSIPPI CODE OF  
10 1972, TO REQUIRE SPECIFIC AUTHORIZATION FOR CUMULATIVE VOTING FROM  
11 AND AFTER JULY 1, 2002; TO AMEND SECTION 79-4-8.01, MISSISSIPPI  
12 CODE OF 1972, TO REVISE THE EXERCISE OF CORPORATE POWERS; TO AMEND  
13 SECTION 79-4-8.03, MISSISSIPPI CODE OF 1972, TO REVISE THE NUMBER  
14 AND ELECTION OF DIRECTORS; TO AMEND SECTION 79-4-8.06, MISSISSIPPI  
15 CODE OF 1972, TO REVISE THE WAY IN WHICH THE TERMS OF DIRECTORS  
16 ARE STAGGERED; TO AMEND SECTION 79-4-8.21, MISSISSIPPI CODE OF  
17 1972, TO REVISE THE WAY IN WHICH ACTION CAN BE TAKEN WITHOUT  
18 MEETING; TO AMEND SECTION 79-4-8.25, MISSISSIPPI CODE OF 1972, TO  
19 REVISE THE CREATION OF COMMITTEES OF THE BOARD OF DIRECTORS; TO  
20 AMEND SECTION 79-4-8.33, MISSISSIPPI CODE OF 1972, TO REVISE THE  
21 LIABILITY FOR UNLAWFUL DISTRIBUTIONS; TO AMEND SECTION 79-4-8.40,  
22 MISSISSIPPI CODE OF 1972, TO REVISE THE REQUIRED OFFICERS; TO  
23 AMEND SECTION 79-4-8.43, MISSISSIPPI CODE OF 1972, TO REVISE THE  
24 RESIGNATION AND REMOVAL OF OFFICERS; TO AMEND SECTION 79-4-13.02,  
25 MISSISSIPPI CODE OF 1972, TO REVISE APPRAISAL RIGHTS; TO AMEND  
26 SECTION 79-4-14.03, MISSISSIPPI CODE OF 1972, TO REVISE  
27 REQUIREMENTS FOR THE ARTICLES OF DISSOLUTION; TO AMEND SECTION  
28 79-4-14.06, MISSISSIPPI CODE OF 1972, TO REVISE NOTIFICATION TO  
29 KNOWN CLAIMANTS AGAINST A DISSOLVED CORPORATION; TO AMEND SECTION  
30 79-4-14.07, MISSISSIPPI CODE OF 1972, TO REVISE NOTICE TO UNKNOWN  
31 CLAIMANTS AGAINST A DISSOLVED CORPORATION; TO CODIFY SECTIONS  
32 79-4-14.08 AND 79-4-14.09, MISSISSIPPI CODE OF 1972, TO REVISE  
33 COURT PROCEEDINGS AND DIRECTOR DUTIES; TO AMEND SECTION  
34 79-4-16.03, MISSISSIPPI CODE OF 1972, TO REVISE THE SCOPE OF THE  
35 INSPECTION RIGHT; TO CODIFY SECTIONS 79-4-16.05 AND 79-4-16.06,  
36 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE INSPECTION OF RECORDS  
37 BY DIRECTORS AND FOR EXCEPTION TO THE NOTICE REQUIREMENT; AND FOR  
38 RELATED PURPOSES.

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

40 SECTION 1. Section 79-4-6.01, Mississippi Code of 1972, is  
41 amended as follows:

42           79-4-6.01. (a) The articles of incorporation must prescribe  
43 the classes of shares and the number of shares of each class that  
44 the corporation is authorized to issue. If more than one (1)  
45 class of shares is authorized, the articles of incorporation must  
46 prescribe a distinguishing designation for each class, and prior  
47 to the issuance of shares of a class the terms, including the  
48 preferences, rights, and limitations \* \* \* of that class must be  
49 described in the articles of incorporation. All shares of a class  
50 must have terms, including preferences, rights and  
51 limitations \* \* \* identical with those of other shares of the same  
52 class except to the extent otherwise permitted by this section or  
53 Section 79-4-6.02.

54           (b) The articles of incorporation must authorize (1) one or  
55 more classes of shares that together have unlimited voting rights,  
56 and (2) one or more classes of shares (which may be the same class  
57 or classes as those with voting rights) that together are entitled  
58 to receive the net assets of the corporation upon dissolution.

59           (c) The articles of incorporation may authorize one or more  
60 classes of shares that:

61                 (1) Have special, conditional or limited voting rights,  
62 or no right to vote, except to the extent prohibited by Section  
63 79-4-1.01 et seq.;

64                 (2) Are redeemable or convertible as specified in the  
65 articles of incorporation (i) at the option of the corporation,  
66 the shareholder or another person or upon the occurrence of a  
67 designated event; (ii) for cash, indebtedness, securities or other  
68 property; (iii) in a designated amount or in an amount determined  
69 in accordance with a designated formula or by reference to  
70 extrinsic data or events;

71                 (3) Entitle the holders to distributions calculated in  
72 any manner, including dividends that may be cumulative,  
73 noncumulative or partially cumulative;

74 (4) Have preference over any other class of shares with  
75 respect to distributions, including dividends and distributions,  
76 upon the dissolution of the corporation.

77 (5) Have terms, including preferences, rights and  
78 limitations, that are made dependent upon facts ascertainable  
79 outside the articles and that may vary among holders of the same  
80 class so long as the manner in which such facts and variations  
81 shall operate on the preferences, rights and limitations of such  
82 class is clearly and expressly set forth in the articles; "facts  
83 ascertainable outside the articles": include (i) an action or  
84 determination by any person, including the corporation, its board  
85 of directors, an officer or agent of the corporation, or any other  
86 person affiliated with the corporation; (ii) the contents of any  
87 agreement to which the corporation is a party or any other  
88 document; and (iii) any other event.

89 (d) The description of the designations, preferences,  
90 limitations and relative rights of share classes in subsection (c)  
91 is not exhaustive.

92 SECTION 2. Section 79-4-6.02, Mississippi Code of 1972, is  
93 amended as follows:

94 79-4-6.02. (a) If the articles of incorporation so provide,  
95 the board of directors may determine, in whole or in part, the  
96 terms, including the preferences, rights and limitations to the  
97 same extent as is permitted under Section 79-4-6.01 of (1) any  
98 class of shares before the issuance of any shares of that class,  
99 or (2) one or more series within a class before the issuance of  
100 any shares of that series.

101 (b) Each class and series of a class must be given a  
102 distinguishing designation.

103 (c) All shares of a class or series created under this  
104 section must have terms, including preferences, rights and  
105 limitations \* \* \* identical \* \* \* of those of other shares of the

106 same class or series, except to the extent permitted by this  
107 section and Section 79-4-6.01.

108 (d) Before issuing any shares of a class or series created  
109 under this section, the corporation must deliver to the Secretary  
110 of State for filing articles of amendment, which are effective  
111 without shareholder action, that set forth:

112 (1) The name of the corporation;

113 (2) The text of the amendment determining the terms of  
114 the class or series of shares; and

115 \* \* \*

116 (3) A statement that the amendment was \* \* \* adopted by  
117 the board of directors, including the date of adoption.

118 SECTION 3. Section 79-4-6.24, Mississippi Code of 1972, is  
119 amended as follows:

120 79-4-6.24. (a) A corporation may issue rights, options or  
121 warrants for the purchase of shares or other securities of the  
122 corporation. The board of directors shall determine (i) the terms  
123 upon which the rights, options or warrants are issued, \* \* \* and  
124 (ii) the terms, including the consideration for which the shares  
125 or other securities are to be issued. The authorization by the  
126 board of directors to issue such rights, options, or warrants  
127 constitutes authorization of the issuance of the shares or other  
128 securities for which the rights, options or warrants are  
129 exercisable.

130 (b) The terms and conditions of such rights, options or  
131 warrants, including those outstanding on the effective date of  
132 this section, may include, without limitation, restrictions or  
133 conditions that preclude or limit the exercise, transfer or  
134 receipt of such rights, options or warrants by any person or  
135 persons owning or offering to acquire a specified number or  
136 percentage of the outstanding shares or other securities of the  
137 corporation, or any transferee or transferees of any such person  
138 or persons, or that invalidate or void such rights, options or

139 warrants held by any such person or persons or any such transferee  
140 or transferees.

141 SECTION 4. Section 79-4-6.40, Mississippi Code of 1972, is  
142 amended as follows:

143 79-4-6.40. (a) A board of directors may authorize and the  
144 corporation may make distributions to its shareholders subject to  
145 restriction by the articles of incorporation and the limitation in  
146 subsection (c).

147 (b) If the board of directors does not fix the record date  
148 for determining shareholders entitled to a distribution (other  
149 than one involving a purchase, redemption or other acquisition of  
150 the corporation's shares), it is the date the board of directors  
151 authorizes the distribution.

152 (c) No distribution may be made if, after giving it effect:

153 (1) The corporation would not be able to pay its debts  
154 as they become due in the usual course of business; or

155 (2) The corporation's total assets would be less than  
156 the sum of its total liabilities plus (unless the articles of  
157 incorporation permit otherwise) the amount that would be needed,  
158 if the corporation were to be dissolved at the time of the  
159 distribution, to satisfy the preferential rights upon dissolution  
160 of shareholders whose preferential rights are superior to those  
161 receiving the distribution.

162 (d) The board of directors may base a determination that a  
163 distribution is not prohibited under subsection (c) either on  
164 financial statements prepared on the basis of accounting practices  
165 and principles that are reasonable in the circumstances or on a  
166 fair valuation or other method that is reasonable in the  
167 circumstances.

168 (e) Except as otherwise provided in subsection (g), the  
169 effect of a distribution under subsection (c) is measured;

170 (1) In the case of distribution by purchase, redemption  
171 or other acquisition of the corporation's shares, as of the

172 earlier of (i) the date money or other property is transferred or  
173 debt incurred by the corporation, or (ii) the date the shareholder  
174 ceases to be a shareholder with respect to the acquired shares;

175 (2) In the case of any other distribution of  
176 indebtedness, as of the date the indebtedness is distributed; and

177 (3) In all other cases, as of (i) the date the  
178 distribution is authorized if the payment occurs within one  
179 hundred twenty (120) days after the date of authorization, or (ii)  
180 the date the payment is made if it occurs more than one hundred  
181 twenty (120) days after the date of authorization.

182 (f) A corporation's indebtedness to a shareholder incurred  
183 by reason of a distribution made in accordance with this section  
184 is at parity with the corporation's indebtedness to its general,  
185 unsecured creditors except to the extent subordinated by  
186 agreement.

187 (g) Indebtedness of a corporation, including indebtedness  
188 issued as a distribution, is not considered a liability for  
189 purposes of determinations under subsection (c) if its terms  
190 provide that payment of principal and interest are made only if  
191 and to the extent that payment of a distribution to shareholders  
192 could then be made under this section. If the indebtedness is  
193 issued as a distribution, each payment of principal or interest is  
194 treated as a distribution, the effect of which is measured on the  
195 date the payment is actually made.

196 (h) This section shall not apply to distributions in  
197 liquidation under Article 14 (Section 79-4-14.01 et seq.).

198 SECTION 5. Section 79-4-7.28, Mississippi Code of 1972, is  
199 amended as follows:

200 79-4-7.28. (a) Unless otherwise provided in the articles of  
201 incorporation, directors are elected by a plurality of the votes  
202 cast by the shares entitled to vote in the election at a meeting  
203 at which a quorum is present.

204           (b) For corporations incorporated before July 1, 2002,  
205 shareholders shall have a right to cumulate their votes for  
206 directors unless the articles of incorporation provide otherwise.  
207 For corporations incorporated on or after July 1, 2002,  
208 shareholders do not have a right to cumulate their votes for  
209 directors unless the articles of incorporation provide otherwise.

210           (c) A statement included in the articles of incorporation  
211 that "a designated voting group of shareholders is entitled to  
212 cumulate their votes for directors," or words of similar import,  
213 means that the shareholders designated are entitled to multiply  
214 the number of votes they are entitled to cast by the number of  
215 directors for whom they are entitled to vote and cast the product  
216 for a single candidate or distribute the product among two (2) or  
217 more candidates.

218           SECTION 6. Section 79-4-8.01, Mississippi Code of 1972, is  
219 amended as follows:

220           79-4-8.01. (a) Except as provided in Section 79-4-7.32,  
221 each corporation must have a board of directors.

222           (b) All corporate powers shall be exercised by or under the  
223 authority of, and the business and affairs of the corporation  
224 managed by or under the direction of, its board of directors,  
225 subject to any limitation set forth in the articles of  
226 incorporation or in an agreement authorized under Section  
227 79-4-7.32.

228           SECTION 7. Section 79-4-8.03, Mississippi Code of 1972, is  
229 amended as follows:

230           79-4-8.03. (a) A board of directors must consist of one or  
231 more individuals, with the number specified in or fixed in  
232 accordance with the articles of incorporation or bylaws.

233           (b) The number of directors may be increased or decreased,  
234 from time to time, by amendment to, or in the manner provided in,  
235 the articles of incorporation or the bylaws.

236           \* \* \*

237        (c) Directors are elected at the first annual shareholders'  
238 meeting and at each annual meeting thereafter unless their terms  
239 are staggered under Section 79-4-8.06.

240        SECTION 8. Section 79-4-8.06, Mississippi Code of 1972, is  
241 amended as follows:

242        79-4-8.06. \* \* \* The articles of incorporation may provide  
243 for staggering the terms of directors by dividing the total number  
244 of directors into two (2) or three (3) groups, with each group  
245 containing one-half (1/2) or one-third (1/3) of the total, as near  
246 as may be. In that event, the terms of directors in the first  
247 group expire at the first annual shareholders' meeting after their  
248 election, the terms of the second group expire at the second  
249 annual shareholders' meeting after their election, and the terms  
250 of the third group, if any, expire at the third annual  
251 shareholders' meeting after their election. At each annual  
252 shareholders' meeting held thereafter, directors shall be chosen  
253 for a term of two (2) years or three (3) years, as the case may  
254 be, to succeed those whose terms expire.

255        SECTION 9. Section 79-4-8.21, Mississippi Code of 1972, is  
256 amended as follows:

257        79-4-8.21. (a) \* \* \* Action required or permitted by  
258 Section 79-4-1.01 et seq. to be taken by the board of directors  
259 may be taken without a meeting if \* \* \* each director signs a  
260 consent describing the action taken and delivers it to the  
261 corporation.

262        (b) Action taken under this section is the act of the board  
263 of directors when one or more consents signed by all the directors  
264 are delivered to the corporation. The consent may specify the  
265 time at which the action taken thereunder is to be effective. A  
266 consent may be withdrawn by a revocation signed by the director  
267 and received by the corporation prior to receipt by the  
268 corporation of unrevoked written consents signed by all the  
269 directors.



270 (c) A consent signed under this section has the effect of  
271 action taken at a meeting of the board of directors and may be  
272 described as such in any document.

273 SECTION 10. Section 79-4-8.25, Mississippi Code of 1972, is  
274 amended as follows:

275 79-4-8.25. (a) Unless this chapter, the articles of  
276 incorporation or the bylaws provide otherwise, a board of  
277 directors may create one or more committees and appoint one or  
278 more members of the board of directors to serve on any such  
279 committee. \* \* \*

280 (b) Unless this chapter otherwise provides, the creation of  
281 a committee and appointment of members to it must be approved by  
282 the greater of (1) a majority of all the directors in office when  
283 the action is taken or (2) the number of directors required by the  
284 articles of incorporation or bylaws to take action under Section  
285 79-4-8.24.

286 (c) Sections 79-4-8.20 through 79-4-8.24 \* \* \* apply both to  
287 committees of the board and their members \* \* \*.

288 (d) To the extent specified by the board of directors or in  
289 the articles of incorporation or bylaws, each committee may  
290 exercise the powers of the board of directors under Section  
291 79-4-8.01.

292 (e) A committee may not, however:

293 (1) Authorize or approve distributions, except  
294 according to a formula or method or within limits prescribed by  
295 the board of directors;

296 (2) Approve or propose to shareholders action that  
297 Section 79-4-1.01 et seq. requires to be approved by shareholders;

298 (3) Fill vacancies on the board of directors, or  
299 subject to subsection (g), on any of its committees; or

300 \* \* \*

301 (4) Adopt, amend or repeal bylaws.

302 \* \* \*

303 (f) The creation of, delegation of authority to, or action  
304 by a committee does not alone constitute compliance by a director  
305 with the standards of conduct described in Section 79-4-8.30.

306 (g) The board of directors may appoint one or more directors  
307 as alternate members of any committee to replace any absent or  
308 disqualified member during the member's absence or  
309 disqualification. Unless the articles of incorporation or the  
310 bylaws or the resolution creating the committee provide otherwise,  
311 in the event of the absence or disqualification of a member of a  
312 committee, the member or members present at any meeting and not  
313 disqualified from voting, unanimously, may appoint another  
314 director to act in place of the absent or disqualified member.

315 SECTION 11. Section 79-4-8.33, Mississippi Code of 1972, is  
316 amended as follows:

317 79-4-8.33. (a) A director who votes for or assents to a  
318 distribution in excess of what may be authorized and made pursuant  
319 to Section 79-4-6.40(a) or 79-4-14.09(a) is personally liable to  
320 the corporation for the amount of the distribution that exceeds  
321 what could have been distributed without violating Section  
322 79-4-6.40(a) or 79-4-14.09(a) if the party asserting liability  
323 establishes that when taking the action the director did not  
324 comply with Section 79-4-8.30.

325 (b) A director held liable under subsection (a) for an  
326 unlawful distribution is entitled to:

327 (1) Contribution from every other director who could be  
328 held liable under subsection (a) for the unlawful distribution;  
329 and

330 (2) Recoupment from each shareholder of the pro rata  
331 portion of the amount of the unlawful distribution the shareholder  
332 accepted, knowing the distribution was made in violation of  
333 Section 79-4-6.40(a) or 79-4-14.09(a).

334 (c) A proceeding to enforce:

335           (1) The liability of a director under subsection (a) is  
336 barred unless it is commenced within two (2) years after the date  
337 (i) on which the effect of the distribution was measured under  
338 Section 79-4-6.40(e) or (g); (ii) as of which the violation of  
339 Section 79-4-6.40(a) occurred as the consequence of disregard of a  
340 restriction in the articles of incorporation; or (iii) on which  
341 the distribution of assets to shareholders under Section  
342 79-4-14.09(a) was made; or

343           (2) Contribution or recoupment under subsection (b) is  
344 barred unless it is commenced within one (1) year after the  
345 liability of the claimant has been finally adjudicated under  
346 subsection (a).

347           SECTION 12. Section 79-4-8.40, Mississippi Code of 1972, is  
348 amended as follows:

349           79-4-8.40. (a) A corporation has the offices described in  
350 its bylaws or designated by the board of directors in accordance  
351 with the bylaws.

352           (b) The board of directors may elect individuals to fill one  
353 or more offices of the corporation. A duly authorized officer may  
354 appoint one or more officers \* \* \* if authorized by the bylaws or  
355 the board of directors.

356           (c) The bylaws or the board of directors shall delegate to  
357 one (1) of the officers responsibility for preparing minutes of  
358 the directors' and shareholders' meetings and for maintaining and  
359 authenticating records of the corporation.

360           (d) The same individual may simultaneously hold more than  
361 one (1) office in a corporation.

362           SECTION 13. Section 79-4-8.43, Mississippi Code of 1972, is  
363 amended as follows:

364           79-4-8.43. (a) An officer may resign at any time by  
365 delivering notice to the corporation. A resignation is effective  
366 when the notice is delivered unless the notice specifies a later  
367 effective time. If a resignation is made effective at a later

368 time and the board or the appointing officer accepts the future  
369 effective time, the board or the appointing officer may fill the  
370 pending vacancy before the effective time if the board or the  
371 appointing officer provides that the successor does not take  
372 office until the effective time.

373 (b) \* \* \* An officer may be removed at any time with or  
374 without cause by: (i) the board of directors; (ii) the officer  
375 who appointed such officer, unless the bylaws or the board of  
376 directors provide otherwise; or (iii) any other officer if  
377 authorized by the bylaws or the board of directors.

378 (c) In this section, "appointing officer" means the officer  
379 (including any successor to that officer) who appointed the  
380 officer resigning or being removed.

381 SECTION 14. Section 79-4-13.02, Mississippi Code of 1972, is  
382 amended as follows:

383 79-4-13.02. (a) A shareholder is entitled to appraisal  
384 rights, and to obtain payment of the fair value of that  
385 shareholder's shares, in the event of any of the following  
386 corporate actions:

387 (1) Consummation of a merger to which the corporation  
388 is a party (i) if shareholder approval is required for the merger  
389 by Section 79-4-11.04 and the shareholder is entitled to vote on  
390 the merger, except that appraisal rights shall not be available to  
391 any shareholder of the corporation with respect to shares of any  
392 class or series that remain outstanding after consummation of the  
393 merger, or (ii) if the corporation is a subsidiary and the merger  
394 is governed by Section 79-4-11.05;

395 (2) Consummation of a share exchange to which the  
396 corporation is a party as the corporation whose shares will be  
397 acquired if the shareholder is entitled to vote on the exchange,  
398 except that appraisal rights shall not be available to any  
399 shareholder of the corporation with respect to any class or series  
400 of shares of the corporation that is not exchanged;

401           (3) Consummation of a disposition of assets pursuant to  
402 Section 79-4-12.02 if the shareholder is entitled to vote on the  
403 disposition;

404           (4) An amendment of the articles of incorporation with  
405 respect to a class or series of shares that reduces the number of  
406 shares of a class or series owned by the shareholder to a fraction  
407 of a share if the corporation has the obligation or right to  
408 repurchase the fractional share so created; or

409           (5) Any other amendment to the articles of  
410 incorporation, merger, share exchange or disposition of assets to  
411 the extent provided by the articles of incorporation, bylaws or a  
412 resolution of the board of directors.

413           (b) Notwithstanding subsection (a), the availability of  
414 appraisal rights under subsection (a)(1), (2), (3) and (4) shall  
415 be limited in accordance with the following provisions:

416           (1) Appraisal rights shall not be available to any  
417 shareholder of the constituent corporations in a corporate  
418 reorganization transaction otherwise covered by Section  
419 79-4-13.02(a)(1) or (2) if: (i) the shareholders of an existing  
420 corporation exchange shares of such corporation for shares of a  
421 newly formed corporation and receive, after the reorganization,  
422 the same proportionate share interest in the new corporation and  
423 the rights and interests of the shareholders in the newly formed  
424 corporation are substantially the same as those in the existing  
425 corporation prior to the transaction; (ii) the newly formed  
426 corporation has no significant assets other than the shares of the  
427 existing corporation; (iii) after the reorganization the newly  
428 formed corporation and its subsidiaries have substantially the  
429 same assets and liabilities, on a consolidated basis, as those of  
430 the existing corporation prior to the transaction; (iv) fractional  
431 shares are neither created nor eliminated as a result of the  
432 transaction; (v) the existing corporation and the newly formed  
433 corporation are the only constituent corporations to such

434 reorganization; (vi) the existing corporation and the newly formed  
435 corporation are corporations of this state; (vii) the directors of  
436 the existing corporation become the directors of the newly formed  
437 corporation upon the effective time of the corporate  
438 reorganization; (viii) the existing corporation becomes a direct  
439 wholly-owned subsidiary of the newly formed corporation; and (ix)  
440 the shareholders of the existing corporation do not recognize gain  
441 or loss for United States federal income tax purposes as  
442 determined by the board of directors of the existing corporation.

443         (2) Appraisal rights shall not be available for the  
444 holders of shares of any class or series of shares which is:

445                 (i) Listed on the New York Stock Exchange or the  
446 American Stock Exchange or designated as a national market system  
447 security on an interdealer quotation system by the National  
448 Association of Securities Dealers, Inc.; or

449                 (ii) Not so listed or designated, but has at least  
450 two thousand (2,000) shareholders and the outstanding shares of  
451 such class or series has a market value of at least Twenty Million  
452 Dollars (\$20,000,000.00) (exclusive of the value of such shares  
453 held by its subsidiaries, senior executives, directors and  
454 beneficial shareholders owning more than ten percent (10%) of such  
455 shares).

456         (3) The applicability of subsection (b)(2) shall be  
457 determined as of:

458                 (i) The record date fixed to determine the  
459 shareholders entitled to receive notice of, and to vote at, the  
460 meeting of shareholders to act upon the corporate action requiring  
461 appraisal rights; or

462                 (ii) The day before the effective date of such  
463 corporate action if there is no meeting of shareholders.

464         (4) Subsection (b)(2) shall not be applicable and  
465 appraisal rights shall be available pursuant to subsection (a) for  
466 the holders of any class or series of shares who are required by

467 the terms of the corporate action requiring appraisal rights to  
468 accept for such shares anything other than cash or shares of any  
469 class or any series of shares of any corporation, or any other  
470 proprietary interest of any other entity, that satisfies the  
471 standards set forth in subsection (b)(2) at the time the corporate  
472 action becomes effective.

473 (5) Subsection (b)(2) shall not be applicable and  
474 appraisal rights shall be available pursuant to subsection (a) for  
475 the holders of any class or series of shares where:

476 (i) Any of the shares or assets of the corporation  
477 are being acquired or converted, whether by merger, share exchange  
478 or otherwise, pursuant to the corporate action by a person, or by  
479 an affiliate of a person, who:

480 (A) Is, or at any time in the one-year period  
481 immediately preceding approval by the board of directors of the  
482 corporate action requiring appraisal rights was, the beneficial  
483 owner of twenty percent (20%) or more of the voting power of the  
484 corporation, excluding any shares acquired pursuant to an offer  
485 for all shares having voting power if such offer was made within  
486 one (1) year prior to the corporate action requiring appraisal  
487 rights for consideration of the same kind and of a value equal to  
488 or less than that paid in connection with the corporate action; or

489 (B) Directly or indirectly has, or at any  
490 time in the one-year period immediately preceding approval by the  
491 board of directors of the corporation of the corporate action  
492 requiring appraisal rights had, the power, contractually or  
493 otherwise, to cause the appointment or election of twenty-five  
494 percent (25%) or more of the directors to the board of directors  
495 of the corporation; or

496 (ii) Any of the shares or assets of the  
497 corporation are being acquired or converted, whether by merger,  
498 share exchange or otherwise, pursuant to such corporate action by  
499 a person, or by an affiliate of a person, who is, or at any time

500 in the one-year period immediately preceding approval by the board  
501 of directors of the corporate action requiring appraisal rights  
502 was, a senior executive or director of the corporation or a senior  
503 executive of any affiliate thereof, and that senior executive or  
504 director will receive, as a result of the corporate action, a  
505 financial benefit not generally available to other shareholders as  
506 such, other than:

507 (A) Employment, consulting, retirement or  
508 similar benefits established separately and not as part of, or in  
509 contemplation of, the corporate action; or

510 (B) Employment, consulting, retirement or  
511 similar benefits established in contemplation of, or as part of,  
512 the corporate action that are not more favorable than those  
513 existing before the corporate action or, if more favorable, that  
514 have been approved on behalf of the corporation in the same manner  
515 as is provided in Section 79-4-8.62; or

516 (C) In the case of a director of the  
517 corporation who will, in the corporate action, become a director  
518 of the acquiring entity in the corporate action or one (1) of its  
519 affiliates, rights and benefits as a director that are provided on  
520 the same basis as those afforded by the acquiring entity generally  
521 to other directors of such entity or such affiliate.

522 (6) For the purposes of paragraph (5) only, the term  
523 "beneficial owner" means any person who, directly or indirectly,  
524 through any contract, arrangement, or understanding, other than a  
525 revocable proxy, has or shares the power to vote, or to direct the  
526 voting of, shares, provided that a member of a national securities  
527 exchange shall not be deemed to be a beneficial owner of  
528 securities held directly or indirectly by it on behalf of another  
529 person solely because such member is the record holder of such  
530 securities if the member is precluded by the rules of such  
531 exchange from voting without instruction on contested matters or  
532 matters that may affect substantially the rights or privileges of



533 the holders of the securities to be voted. When two (2) or more  
534 persons agree to act together for the purpose of voting their  
535 shares of the corporation, each member of the group formed thereby  
536 shall be deemed to have acquired beneficial ownership, as of the  
537 date of such agreement, of all voting shares of the corporation  
538 beneficially owned by any member of the group.

539 (c) Notwithstanding any other provision of Section  
540 79-4-13.02, the articles of incorporation as originally filed or  
541 any amendment thereto may limit or eliminate appraisal rights for  
542 any class or series of preferred shares, but any such limitation  
543 or elimination contained in an amendment to the articles of  
544 incorporation that limits or eliminates appraisal rights for any  
545 of such shares that are outstanding immediately prior to the  
546 effective date of such amendment or that the corporation is or may  
547 be required to issue or sell thereafter pursuant to any  
548 conversion, exchange or to other right existing immediately before  
549 the effective date of such amendment shall not apply to any  
550 corporate action that becomes effective within one (1) year of  
551 that date if such action would otherwise afford appraisal rights.

552 (d) A shareholder entitled to appraisal rights under this  
553 article may not challenge a completed corporate action for which  
554 appraisal rights are available unless such corporate action:

555 (1) Was not effectuated in accordance with the  
556 applicable provisions of Article 10, 11 or 12 or the corporation's  
557 articles of incorporation, bylaws or board of directors'  
558 resolution authorizing the corporate action; or

559 (2) Was procured as a result of fraud or material  
560 misrepresentation.

561 SECTION 15. Section 79-4-14.03, Mississippi Code of 1972, is  
562 amended as follows:

563 79-4-14.03. (a) At any time after dissolution is  
564 authorized, the corporation may dissolve by delivering to the

565 Secretary of State for filing articles of dissolution setting  
566 forth:

- 567 (1) The name of the corporation;  
568 (2) The date dissolution was authorized; and  
569 (3) If dissolution was approved by the shareholders, a  
570 statement that the proposal to dissolve was duly approved by the  
571 shareholders in the manner required by the Mississippi Business  
572 Corporation Act and by the articles of incorporation.

573 (b) A corporation is dissolved upon the effective date of  
574 its articles of dissolution.

575 (c) For purposes of this subarticle, "dissolved corporation"  
576 means a corporation whose articles of dissolution have become  
577 effective and includes a successor entity to which the remaining  
578 assets of the corporation are transferred subject to its  
579 liabilities for purposes of liquidation.

580 SECTION 16. Section 79-4-14.06, Mississippi Code of 1972, is  
581 amended as follows:

582 79-4-14.06. (a) A dissolved corporation may dispose of the  
583 known claims against it by notifying \* \* \* its known claimants in  
584 writing of the dissolution at any time after its effective date.

585 (b) The written notice must:

586 (1) Describe information that must be included in a  
587 claim;

588 (2) Provide a mailing address where a claim may be  
589 sent;

590 (3) State the deadline, which may not be fewer than one  
591 hundred twenty (120) days from the effective date of the written  
592 notice, by which the dissolved corporation must receive the claim;  
593 and

594 (4) State that the claim will be barred if not received  
595 by the deadline.

596 (c) A claim against the dissolved corporation is barred:

597 (1) If a claimant who was given written notice under  
598 subsection (b) does not deliver the claim to the dissolved  
599 corporation by the deadline; or

600 (2) If a claimant whose claim was rejected by the  
601 dissolved corporation does not commence a proceeding to enforce  
602 the claim within ninety (90) days from the effective date of the  
603 rejection notice.

604 (d) For purposes of this section, "claim" does not include a  
605 contingent liability or a claim based on an event occurring after  
606 the effective date of dissolution.

607 SECTION 17. Section 79-4-14.07, Mississippi Code of 1972, is  
608 amended as follows:

609 79-4-14.07. (a) A dissolved corporation may also publish  
610 notice of its dissolution and request that persons with claims  
611 against the dissolved corporation present them in accordance with  
612 the notice.

613 (b) The notice must:

614 (1) Be published one (1) time in a newspaper of general  
615 circulation in the county where the dissolved corporation's  
616 principal office (or, if none in this state, its registered  
617 office) is or was last located;

618 (2) Describe the information that must be included in a  
619 claim and provide a mailing address where the claim may be sent;  
620 and

621 (3) State that a claim against the dissolved  
622 corporation will be barred unless a proceeding to enforce the  
623 claim is commenced within three (3) years after the publication of  
624 the notice.

625 (c) If the dissolved corporation publishes a newspaper  
626 notice in accordance with subsection (b), the claim of each of the  
627 following claimants is barred unless the claimant commences a  
628 proceeding to enforce the claim against the dissolved corporation  
629 within the lesser of three (3) years after the publication date of

630 the newspaper notice, or any other applicable limitations period  
631 established by applicable law:

632 (1) A claimant who was not given written notice under  
633 Section 79-4-14.06;

634 (2) A claimant whose claim was timely sent to the  
635 dissolved corporation but not acted on;

636 (3) A claimant whose claim is contingent or based on an  
637 event occurring after the effective date of dissolution.

638 (d) A claim that is not barred under Section 79-4-14.06(b)  
639 or Section 79-4-14.07(d) may be enforced \* \* \*:

640 (1) Against the dissolved corporation, to the extent of  
641 its undistributed assets; or

642 (2) Except as provided in Section 79-4-14.08(d), if the  
643 assets have been distributed in liquidation, against a shareholder  
644 of the dissolved corporation to the extent of the shareholder's  
645 pro rata share of the claim or the corporate assets distributed to  
646 the shareholder in liquidation, whichever is less, but a  
647 shareholder's total liability for all claims under this section  
648 may not exceed the total amount of assets distributed to the  
649 shareholder.

650 SECTION 18. The following provision shall be codified as  
651 Section 79-4-14.08, Mississippi Code of 1972:

652 79-4-14.08. (a) A dissolved corporation that has published  
653 a notice under Section 79-4-14.07 may file an application with the  
654 chancery court of the county where the dissolved corporation's  
655 principal office (or, if none in this state, its registered  
656 office) is located for a determination of the amount and form of  
657 security to be provided for payment of claims that are contingent  
658 or have not been made known to the dissolved corporation or that  
659 are based on an event occurring after the effective date of  
660 dissolution but that, based on the facts known to the dissolved  
661 corporation, are reasonably estimated to arise after the effective  
662 date of dissolution. Provision need not be made for any claim

663 that is or is reasonably anticipated to be barred under Section  
664 79-4-14.07(c).

665 (b) Within ten (10) days after the filing of the  
666 application, notice of the proceeding shall be given by the  
667 dissolved corporation to each claimant holding a contingent claim  
668 whose contingent claim is shown on the records of the dissolved  
669 corporation.

670 (c) The court may appoint a guardian ad litem to represent  
671 all claimants whose identities are unknown in any proceeding  
672 brought under this section. The reasonable fees and expenses of  
673 such guardian, including all reasonable expert witness fees, shall  
674 be paid by the dissolved corporation.

675 (d) Provision by the dissolved corporation for security in  
676 the amount and the form ordered by the court under Section  
677 79-4-14.08(a) shall satisfy the dissolved corporation's  
678 obligations with respect to claims that are contingent, have not  
679 been made known to the dissolved corporation or are based on an  
680 event occurring after the effective date of dissolution, and such  
681 claims may not be enforced against a shareholder who received  
682 assets in liquidation.

683 SECTION 19. The following provision shall be codified as  
684 Section 79-4-14.09, Mississippi Code of 1972:

685 79-4-14.09. (a) Directors shall cause the dissolved  
686 corporation to discharge or make reasonable provision for the  
687 payment of claims and make distributions of assets to shareholders  
688 after payment or provision for claims.

689 (b) Directors of a dissolved corporation which has disposed  
690 of claims under Section 79-4-14.06, 79-4-14.07 or 79-4-14.08 shall  
691 not be liable for breach of Section 79-4-14.09(a) with respect to  
692 claims against the dissolved corporation that are barred or  
693 satisfied under Section 79-4-14.06, 79-4-14.07 or 79-4-14.08.

694 SECTION 20. Section 79-4-16.03, Mississippi Code of 1972, is  
695 amended as follows:

696 79-4-16.03. (a) A shareholder's agent or attorney has the  
697 same inspection and copying rights as the shareholder represented.

698 (b) The right to copy records under Section 79-4-16.02  
699 includes, if reasonable, the right to receive copies \* \* \*  
700 by \* \* \* xerographic or other means, including copies through an  
701 electronic transmission if available and so requested by the  
702 shareholder.

703 (c) The corporation may comply at its expense with a  
704 shareholder's demand to inspect the record of shareholders under  
705 Section 79-4-16.02(b)(3) by providing the shareholder with a list  
706 of shareholders that was compiled no earlier than the date of the  
707 shareholder's demand.

708 (d) The corporation may impose a reasonable charge, covering  
709 the costs of labor and material, for copies of any documents  
710 provided to the shareholder. The charge may not exceed the  
711 estimated cost of production, reproduction or transmission of the  
712 records.

713 \* \* \*

714 SECTION 21. The following provision shall be codified as  
715 Section 79-4-16.05, Mississippi Code of 1972.

716 79-4-16.05. (a) A director of a corporation is entitled to  
717 inspect and copy the books, records and documents of the  
718 corporation at any reasonable time to the extent reasonably  
719 related to the performance of the director's duties as a director,  
720 including duties as a member of a committee, but not for any other  
721 purpose or in any manner that would violate any duty to the  
722 corporation.

723 (b) The chancery court of the county where the corporation's  
724 principal office (or if none in the state, its registered office)  
725 is located may order inspection and copying of the books, records  
726 and documents at the corporation's expense, upon application of a  
727 director who has been refused such inspection rights, unless the  
728 corporation establishes that the director is not entitled to such

729 inspection rights. The court shall dispose of an application  
730 under this subsection on an expedited basis.

731 (c) If an order is issued, the court may include provisions  
732 protecting the corporation from undue burden or expense, and  
733 prohibiting the director from using information obtained upon  
734 exercise of the inspection rights in a manner that would violate a  
735 duty to the corporation, and may also order the corporation to  
736 reimburse the director for the director's costs (including  
737 reasonable counsel fees) incurred in connection with the  
738 application.

739 SECTION 22. The following provision shall be codified as  
740 Section 79-4-16.06, Mississippi Code of 1972:

741 79-4-16.06. (a) Whenever notice is required to be given  
742 under any provision of this act to any shareholder, such notice  
743 shall not be required to be given if:

744 (1) Notice of two (2) consecutive annual meetings, and  
745 all notices of meetings during the period between such two (2)  
746 consecutive annual meetings, have been sent to such shareholder at  
747 such shareholder's address as shown on the records of the  
748 corporation and have been returned undeliverable; or

749 (2) All, but not less than two (2), payments or  
750 dividends on securities during a twelve-month period, or two (2)  
751 consecutive payments of dividends on securities during a period of  
752 more than twelve (12) months, have been sent to such shareholder  
753 at such shareholder's address as shown on the records of the  
754 corporation and have been returned undeliverable.

755 (b) If any such shareholder shall deliver to the corporation  
756 a written notice setting forth such shareholder's then current  
757 address, the requirement that notice be given to such shareholder  
758 shall be reinstated.

759 SECTION 23. This act shall take effect and be in force from  
760 and after July 1, 2001.