

By: Senator(s) Ross

To: Judiciary, Division A

SENATE BILL NO. 2684

1 AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE MODEL BUSINESS
 2 CORPORATION ACT; TO AMEND SECTION 79-4-1.40, MISSISSIPPI CODE OF
 3 1972, TO REVISE DEFINITIONS UNDER THE ACT; TO AMEND SECTION
 4 79-4-1.41, MISSISSIPPI CODE OF 1972, TO CLARIFY NOTICE; TO CREATE
 5 SECTION 79-4-1.44, MISSISSIPPI CODE OF 1972, TO AUTHORIZE
 6 HOUSEHOLDING AS IT RELATES TO PROVIDING INDIVIDUAL NOTICES; TO
 7 AMEND SECTION 79-4-7.01, MISSISSIPPI CODE OF 1972, TO REVISE
 8 ELECTION OF DIRECTORS AT THE ANNUAL MEETING; TO AMEND SECTION
 9 79-4-7.03, MISSISSIPPI CODE OF 1972, TO CLARIFY COURT-ORDERED
 10 MEETINGS; TO AMEND SECTION 79-4-7.04, MISSISSIPPI CODE OF 1972, TO
 11 REVISE ACTION BY WRITTEN CONSENT IN LIEU OF MEETING; TO CREATE
 12 SECTION 79-4-7.48, MISSISSIPPI CODE OF 1972, TO SPECIFY A
 13 SHAREHOLDER ACTION TO APPOINT A CUSTODIAN OR RECEIVER; TO AMEND
 14 SECTION 79-4-13.01, MISSISSIPPI CODE OF 1972, TO REVISE
 15 DEFINITIONS; TO AMEND SECTION 79-4-13.02, MISSISSIPPI CODE OF
 16 1972, TO REVISE THE RIGHT TO APPRAISAL; TO AMEND SECTION
 17 79-4-13.20, MISSISSIPPI CODE OF 1972, TO REVISE THE NOTICE OF THE
 18 RIGHT TO APPRAISAL; TO AMEND SECTION 79-4-13.21, MISSISSIPPI CODE
 19 OF 1972, TO REVISE THE NOTICE OF INTENT TO DEMAND PAYMENT AND THE
 20 CONSEQUENCES OF VOTING OR CONSENTING; TO AMEND SECTION 79-4-13.22,
 21 MISSISSIPPI CODE OF 1972, TO REVISE REQUIREMENTS PERTAINING TO THE
 22 APPRAISAL NOTICE AND FORM; TO AMEND SECTION 79-4-13.23,
 23 MISSISSIPPI CODE OF 1972, TO REVISE THE PERFECTION AND RIGHTS AND
 24 THE RIGHT TO WITHDRAW; TO AMEND SECTION 79-4-13.25, MISSISSIPPI
 25 CODE OF 1972, TO CLARIFY AFTER-ACQUIRED SHARES' OBLIGATIONS; TO
 26 AMEND SECTION 79-4-13.31, MISSISSIPPI CODE OF 1972, TO REVISE
 27 COURT COSTS AND EXPENSES; TO CREATE SECTION 79-4-13.40,
 28 MISSISSIPPI CODE OF 1972, TO LIMIT OTHER REMEDIES; TO AMEND
 29 SECTION 79-4-14.30, MISSISSIPPI CODE OF 1972, TO REVISE THE
 30 GROUNDS FOR JUDICIAL DISSOLUTION; TO AMEND SECTION 79-4-14.32,
 31 MISSISSIPPI CODE OF 1972, TO REVISE RECEIVERSHIP AND
 32 CUSTODIANSHIP; TO AMEND SECTION 79-4-14.34, MISSISSIPPI CODE OF
 33 1972, TO CLARIFY THE ELECTION TO PURCHASE IN LIEU OF DISSOLUTION
 34 OF A CORPORATION; AND FOR RELATED PURPOSES.

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

36 **SECTION 1.** Section 79-4-1.40, Mississippi Code of 1972, is
 37 amended as follows:

38 79-4-1.40. In Section 79-4-1.01 et seq.:

39 (1) "Articles of incorporation" include amended and
 40 restated articles of incorporation and articles of merger.

41 (2) "Authorized shares" means the shares of all classes
 42 a domestic or foreign corporation is authorized to issue.

43 (3) "Conspicuous" means so written that a reasonable
44 person against whom the writing is to operate should have noticed
45 it. For example, printing in italics or boldface or contrasting
46 color, or typing in capitals or underlined, is conspicuous.

47 (4) "Corporation" or "domestic corporation" means a
48 corporation for profit, which is not a foreign corporation,
49 incorporated under or subject to the provisions of Section
50 79-4-1.01 et seq.

51 (5) "Deliver" or "delivery" means any method of
52 delivery used in conventional commercial practice, including
53 delivery by hand, mail, commercial delivery and electronic
54 transmission.

55 (6) "Distribution" means a direct or indirect transfer
56 of money or other property (except its own shares) or incurrence
57 of indebtedness by a corporation to or for the benefit of its
58 shareholders in respect of any of its shares. A distribution may
59 be in the form of a declaration or payment of a dividend; a
60 purchase, redemption or other acquisition of shares; a
61 distribution of indebtedness; or otherwise.

62 (7) "Effective date of notice" is defined in Section
63 79-4-1.41.

64 (8) "Electronic transmission" or "electronically
65 transmitted" means any process of communication not directly
66 involving the physical transfer of paper that is suitable for the
67 retention, retrieval and reproduction of information by the
68 recipient.

69 (9) "Employee" includes an officer but not a director.
70 A director may accept duties that make him also an employee.

71 (9AA) "Expenses" means reasonable expenses of any kind
72 that are incurred in connection with a matter.

73 (10) "Entity" includes corporation and foreign
74 corporation; not-for-profit corporation; profit and not-for-profit
75 unincorporated association; business trust, estate, partnership,

76 trust and two (2) or more persons having a joint or common
77 economic interest; and state, United States and foreign
78 government.

79 (11) "Facts objectively ascertainable" outside of a
80 filed document or plan is defined in Section 79-4-1.20(k).

81 (12) "Filing entity" means an other entity that is of a
82 type that is created by filing a public organic document.

83 (13) "Foreign corporation" means a corporation for
84 profit incorporated under a law other than the law of this state.

85 (14) "Governmental subdivision" includes authority,
86 county, district and municipality.

87 (15) "Includes" denotes a partial definition.

88 (16) "Individual" includes the estate of an incompetent
89 or deceased individual.

90 (17) "Means" denotes an exhaustive definition.

91 (18) "Notice" is defined in Section 79-4-1.41.

92 (19) "Person" includes individual and entity.

93 (20) "Principal office" means the office (in or out of
94 this state) so designated in the annual report where the principal
95 executive offices of a domestic or foreign corporation are
96 located.

97 (21) "Proceeding" includes civil suit and criminal,
98 administrative and investigatory action.

99 (22) "Public corporation" means a corporation that has
100 shares listed on a national securities exchange or regularly
101 traded in a market maintained by one or more members of a national
102 or affiliated securities association.

103 (23) "Record date" means the date established under
104 Article 6 or 7 on which a corporation determines the identity of
105 its shareholders and their shareholdings for purposes of Section
106 79-4-1.01 et seq. The determinations shall be made as of the
107 close of business on the record date unless another time for doing
108 so is specified when the record date is fixed.

109 (24) "Secretary" means the corporate officer to whom
110 the board of directors has delegated responsibility under Section
111 79-4-8.40(c) for custody of the minutes of the meetings of the
112 board of directors and of the shareholders and for authenticating
113 records of the corporation.

114 (25) "Shares" means the unit into which the proprietary
115 interests in a corporation are divided.

116 (26) "Shareholder" means the person in whose name
117 shares are registered in the records of a corporation or the
118 beneficial owner of shares to the extent of the rights granted by
119 a nominee certificate on file with a corporation.

120 (27) "Sign" or "signature" includes any manual,
121 facsimile, conformed or electronic signature.

122 (28) "State," when referring to a part of the United
123 States, includes a state and commonwealth (and their agencies and
124 governmental subdivisions) and a territory, and insular possession
125 (and their agencies and governmental subdivisions) of the United
126 States.

127 (29) "Subscriber" means a person who subscribes for
128 shares in a corporation, whether before or after incorporation.

129 (30) "United States" includes district, authority,
130 bureau, commission, department and any other agency of the United
131 States.

132 (31) "Voting group" means all shares of one or more
133 classes or series that under the articles of incorporation or
134 Section 79-4-1.01 et seq. are entitled to vote and be counted
135 together collectively on a matter at a meeting of shareholders.
136 All shares entitled by the articles of incorporation or Section
137 79-4-1.01 et seq. to vote generally on the matter are for that
138 purpose a single voting group.

139 (32) "Voting power" means the current power to vote in
140 the election of directors.

141 **SECTION 2.** Section 79-4-1.41, Mississippi Code of 1972, is
142 amended as follows:

143 79-4-1.41. (a) Notice under Section 79-4-1.01 et seq. shall
144 be in writing unless oral notice is reasonable under the
145 circumstances. Notice by electronic transmission is written
146 notice.

147 (b) Notice may be communicated in person; by mail or other
148 method of delivery; or by telephone, voice mail or other
149 electronic means. If these forms of personal notice are
150 impracticable, notice may be communicated by a newspaper of
151 general circulation in the area where published, or by radio,
152 television or other form of public broadcast communication.

153 (c) Written notice by a domestic or foreign corporation to
154 its shareholder, if in a comprehensible form, is effective (i)
155 upon deposit in the United States mail, if mailed postpaid and
156 correctly addressed to the shareholder's address shown in the
157 corporation's current record of shareholders, or (ii) when
158 electronically transmitted to the shareholder in a manner
159 authorized by the shareholder.

160 (d) Written notice to a domestic or foreign corporation
161 (authorized to transact business in this state) may be addressed
162 to its registered agent at its registered office or to the
163 secretary of the corporation * * * at its principal office shown
164 in its most recent annual report or, in the case of a foreign
165 corporation that has not yet delivered an annual report, in its
166 application for a certificate of authority.

167 (e) Except as provided in subsection (c), written notice, if
168 in a comprehensible form, is effective at the earliest of the
169 following:

170 (1) When received;

171 (2) Five (5) days after its deposit in the United
172 States mail, if mailed postpaid and correctly addressed;

173 (3) On the date shown on the return receipt, if sent by
174 registered or certified mail, return receipt requested, and the
175 receipt is signed by or on behalf of the addressee.

176 (f) Oral notice is effective when communicated if
177 communicated in a comprehensible manner.

178 (g) If Section 79-4-1.01 et seq. prescribes notice
179 requirements for particular circumstances, those requirements
180 govern. If articles of incorporation, or bylaws prescribe notice
181 requirements, not inconsistent with this section or other
182 provisions of Section 79-4-1.01 et seq., those requirements
183 govern.

184 **SECTION 3.** The following shall be codified as Section
185 79-4-1.44, Mississippi Code of 1972:

186 79-4-1.44. **Householding.** (a) A corporation has delivered
187 written notice or any other report or statement under this act,
188 the articles of incorporation or the bylaws to any shareholders
189 who share a common address if:

190 (1) The corporation delivers one (1) copy of the
191 notice, report or statement to the common address;

192 (2) The corporation addresses the notice, report or
193 statement to those shareholders either as a group or to each of
194 those shareholders individually or to the shareholders in a form
195 to which each of those shareholders has consented; and

196 (3) Each of those shareholders consents to delivery of
197 a single copy of such notice, report or statement to the
198 shareholders' common address.

199 Any such consent shall be revocable by any of such
200 shareholders who deliver written notice of revocation to the
201 corporation. If such written notice of revocation is delivered,
202 the corporation shall begin providing individual notices, reports
203 or other statements to the revoking shareholder no later than
204 thirty (30) days after delivery of the written notice of
205 revocation.

206 (b) Any shareholder who fails to object by written notice to
207 the corporation, within sixty (60) days of written notice by the
208 corporation of its intention to send single copies of notices,
209 reports or statements to shareholders who share a common address
210 as permitted by subsection (a), shall be deemed to have consented
211 to receiving such single copy at the common address.

212 **SECTION 4.** Section 79-4-7.01, Mississippi Code of 1972, is
213 amended as follows:

214 79-4-7.01. (a) Unless directors are elected by written
215 consent in lieu of an annual meeting as permitted by Section
216 79-4-7.04, a corporation shall hold a meeting of shareholders
217 annually at a time stated in or fixed in accordance with the
218 bylaws; provided, however, that if a corporation's articles of
219 incorporation authorize shareholders to cumulate their votes when
220 electing directors pursuant to Section 79-4-7.28, directors may
221 not be elected by less than unanimous written consent.

222 (b) Annual shareholders' meetings may be held in or out of
223 this state at the place stated in or fixed in accordance with the
224 bylaws. If no place is stated in or fixed in accordance with the
225 bylaws, annual meetings shall be held at the corporation's
226 principal office.

227 (c) The failure to hold an annual meeting at the time stated
228 in or fixed in accordance with a corporation's bylaws does not
229 affect the validity of any corporate action.

230 **SECTION 5.** Section 79-4-7.03, Mississippi Code of 1972, is
231 amended as follows:

232 79-4-7.03. (a) The chancery court of the county where a
233 corporation's principal office (or, if none in this state, its
234 registered office) is located may summarily order a meeting to be
235 held:

236 (1) On application of any shareholder of the
237 corporation entitled to participate in an annual meeting if an
238 annual meeting was not held or action by written consent in lieu

239 thereof did not become effective within the earlier of six (6)
240 months after the end of the corporation's fiscal year or fifteen
241 (15) months after its last annual meeting or written consent in
242 lieu thereof; or

243 (2) On application of a shareholder who signed a demand
244 for a special meeting valid under Section 79-4-7.02 if:

245 (i) Notice of the special meeting was not given
246 within thirty (30) days after the date the demand was delivered to
247 the corporation's secretary; or

248 (ii) The special meeting was not held in
249 accordance with the notice.

250 (b) The court may fix the time and place of the meeting,
251 determine the shares entitled to participate in the meeting,
252 specify a record date for determining shareholders entitled to
253 notice of and to vote at the meeting, prescribe the form and
254 content of the meeting notice, fix the quorum required for
255 specific matters to be considered at the meeting (or direct that
256 the votes represented at the meeting constitute a quorum for
257 action on those matters), and enter other orders necessary to
258 accomplish the purpose or purposes of the meeting.

259 **SECTION 6.** Section 79-4-7.04, Mississippi Code of 1972, is
260 amended as follows:

261 79-4-7.04. (a) Action required or permitted by Section
262 79-4-1.01 et seq. to be taken at a shareholders' meeting may be
263 taken without a meeting if the action is taken by all the
264 shareholders entitled to vote on the action. The action must be
265 evidenced by one or more written consents describing the action
266 taken, signed by all the shareholders entitled to vote on the
267 action and delivered to the corporation for inclusion in the
268 minutes or filing with the corporate records. A unanimous consent
269 signed under this subsection is the act of the shareholders when
270 consents signed by all shareholders have been delivered to the
271 corporation.

272 (b) The articles of incorporation may provide that any
273 action required or permitted by Section 79-4-1.01 et seq. to be
274 taken at a shareholder's meeting may be taken without a meeting
275 and without prior notice, if consents in writing setting forth the
276 action so taken are signed by the holders of outstanding shares
277 having not less than the minimum number of votes that would be
278 required to authorize or take the action at a meeting at which all
279 shares entitled to vote on the action were present and voted. The
280 written consent shall bear the date of signature of the
281 shareholder who signs the consent and be delivered to the
282 corporation for inclusion in the minutes or filing with the
283 corporate records.

284 (c) If not otherwise fixed under Section 79-4-7.03 or
285 79-4-7.07, and if prior board action is not required respecting
286 the action to be taken without a meeting, the record date for
287 determining the shareholders entitled to take action without a
288 meeting shall be the first date on which a signed written consent
289 is delivered to the corporation. If not otherwise fixed under
290 Section 79-4-7.03 or 79-4-7.07, and if prior board action is
291 required respecting the action to be taken without a meeting, the
292 record date shall be the close of business on the day the
293 resolution of the board taking such prior action is adopted. No
294 written consent shall be effective to take the corporate action
295 referred to therein unless, within sixty (60) days of the earliest
296 date on which a consent delivered to the corporation as required
297 by this section was signed, written consents signed by the holders
298 of shares having sufficient votes to take the action have been
299 delivered to the corporation. A written consent may be revoked by
300 a writing to that effect delivered to the corporation before
301 unrevoked written consents sufficient in number to take the
302 corporation action are delivered to the corporation.

303 (d) A consent signed pursuant to the provisions of this
304 section has the effect of a vote taken at a meeting * * * and may

305 be described as such in any document. Unless the articles of
306 incorporation, bylaws, or a resolution of the board of directors
307 provides for a reasonable delay to permit tabulation of written
308 consents, the action taken by less than unanimous written consent
309 shall be effective when written consents signed by the holders of
310 shares having sufficient votes to take the action are delivered to
311 the corporation.

312 (e) If Section 79-4-1.01 et seq. requires that notice of a
313 proposed action be given to nonvoting shareholders and the action
314 is to be taken by written consent of the voting shareholders, the
315 corporation must give its nonvoting shareholders written notice of
316 the action not more than ten (10) days after (i) written consents
317 sufficient to take the action have been delivered to the
318 corporation, or (ii) such later date that tabulation of consents
319 is completed pursuant to an authorization under subsection (d).
320 The notice must reasonably describe the action taken and contain
321 or be accompanied by the same material that, under Section
322 79-4-1.01 et seq., would have been required to be sent to
323 nonvoting shareholders in a notice of a meeting at which the
324 proposed action would have been submitted to the shareholders for
325 action.

326 (f) If * * * action is * * * taken by less than unanimous
327 written consent of the voting shareholders, the corporation must
328 give its nonconsenting voting shareholders written notice of
329 the * * * action not more than ten (10) days after (i) written
330 consents sufficient to take the action have been delivered to the
331 corporation, or (ii) such later date that tabulation of consents
332 is completed pursuant to an authorization under subsection (d).
333 The notice must reasonably describe the action taken and contain
334 or be accompanied by the same material that, under Section
335 79-4-1.01 et seq., would have been required to be sent to voting
336 shareholders in a notice of a meeting at which the * * * action
337 would have been submitted to the shareholders for action.

338 (g) The notice requirements in subsections (e) and (f) shall
339 not delay the effectiveness of actions taken by written consent,
340 and a failure to comply with such notice requirements shall not
341 invalidate actions taken by written consent, provided that this
342 subsection shall not be deemed to limit judicial power to fashion
343 any appropriate remedy in favor of a shareholder adversely
344 affected by a failure to give such notice within the required time
345 period.

346 (h) An electronic transmission may be used to consent to an
347 action, if the electronic transmission contains or is accompanied
348 by information from which the corporation can determine the date
349 on which the electronic transmission was signed and that the
350 electronic transmission was authorized by the shareholder, the
351 shareholder's agent, or the shareholder's attorney-in-fact.

352 (i) Delivery of a written consent to the corporation under
353 this section is delivery to the corporation's registered agent at
354 its registered office or to the secretary of the corporation at
355 its principal office.

356 **SECTION 7.** The following shall be codified as Section
357 79-4-7.48, Mississippi Code of 1972:

358 79-4-7.48. Shareholder action to appoint custodian or
359 **receiver.** (a) The chancery court of the county where a
360 corporation's principal office (or, if none in this state, its
361 registered office) is located may appoint one or more persons to
362 be custodians, or, if the corporation is insolvent, to be
363 receivers, of and for a corporation in a proceeding by a
364 shareholder where it is established that:

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

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

372 (b) The court:

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

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

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

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

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

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

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

400 (e) The court during a custodianship may redesignate the
401 custodian a receiver, and during a receivership may redesignate

402 the receiver a custodian, if doing so is in the best interests of
403 the corporation.

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

408 **SECTION 8.** Section 79-4-13.01, Mississippi Code of 1972, is
409 amended as follows:

410 79-4-13.01. In this article:

411 (1) "Affiliate" means a person that directly or
412 indirectly through one or more intermediaries controls, is
413 controlled by, or is under common control with another person or
414 is a senior executive thereof. For purposes of Section
415 79-4-13.02(b)(5), a person is deemed to be an affiliate of its
416 senior executives.

417 (2) "Beneficial shareholder" means a person who is the
418 beneficial owner of shares held in a voting trust or by a nominee
419 on the beneficial owner's behalf.

420 (3) "Corporation" means the issuer of the shares held
421 by a shareholder demanding appraisal and, for matters covered in
422 Sections 79-4-13.22 through 79-4-13.31, includes the surviving
423 entity in a merger.

424 (4) "Fair value" means the value of the corporation's
425 shares determined:

426 (i) Immediately before the effectuation of the
427 corporate action to which the shareholder objects;

428 (ii) Using customary and current valuation
429 concepts and techniques generally employed for similar businesses
430 in the context of the transaction requiring appraisal; and

431 (iii) Without discounting for lack of
432 marketability or minority status except, if appropriate, for
433 amendments to the articles pursuant to Section 79-4-13.02(a)(5).

434 (5) "Interest" means interest from the effective date
435 of the corporate action until the date of payment, at the rate of
436 interest on judgments in this state on the effective date of the
437 corporate action.

438 (5.1) "Interested transaction" means a corporate action
439 described in Section 79-4-13.02(a), other than a merger pursuant
440 to Section 79-4-11.05, involving an interested person in which any
441 of the shares or assets of the corporation are being acquired or
442 converted. As used in this definition:

443 (i) "Interested person" means a person, or an
444 affiliate of a person, who at any time during the one-year period
445 immediately preceding approval by the board of directors of the
446 corporate action: (A) was the beneficial owner of twenty percent
447 (20%) or more of the voting power of the corporation, excluding
448 any shares acquired pursuant to an offer for all shares having
449 voting power if the offer was made within one (1) year prior to
450 the corporate action for consideration of the same kind and of a
451 value equal to or less than that paid in connection with the
452 corporate action; (B) had the power, contractually or otherwise to
453 cause the appointment or election of twenty-five percent (25%) or
454 more of the directors to the board of directors of the
455 corporation; or (C) was a senior executive or director of the
456 corporation or a senior executive of any affiliate thereof, and
457 that senior executive or director will receive, as a result of the
458 corporate action, a financial benefit not generally available to
459 other shareholders as such, other than: (1) employment,
460 consulting, retirement, or similar benefits established
461 separately and not as part of, or in contemplation of, the
462 corporate action; or (2) employment, consulting, retirement, or
463 similar benefits established in contemplation of or as part of the
464 corporate action that are not more favorable than those existing
465 before the corporate action or, if more favorable, that have been
466 approved on behalf of the corporation in the same manner as is

467 provided in Section 79-4-8.62; or (3) in the case of a director of
468 the corporation who will, in the corporate action become a
469 director of the acquiring entity in the corporate action, or one
470 of its affiliates, rights and benefits as a director that are
471 provided on the same basis as those afforded by the acquiring
472 entity generally to other directors of such entity or such
473 affiliate.

474 (ii) "Beneficial owner" means any person who,
475 directly or indirectly, through any contract, arrangement, or
476 understanding, other than a revocable proxy, has or shares the
477 power to vote, or to direct the voting of, shares; except that a
478 member of a national securities exchange is not deemed to be a
479 beneficial owner of securities held directly or indirectly by it
480 on behalf of another person solely because the member is the
481 record holder of the securities if the member is precluded by the
482 rules of the exchange from voting without instruction on contested
483 matters or matters that may affect substantially the rights or
484 privileges of the holders of the securities to be voted. When two
485 (2) or more persons agree to act together for the purpose of
486 voting their shares of the corporation, each member of the group
487 formed thereby is deemed to have acquired beneficial ownership, as
488 of the date of the agreement, of all voting shares of the
489 corporation beneficially owned by any member of the group.

490 (6) "Preferred shares" means a class or series of
491 shares whose holders have preference over any other class or
492 series with respect to distributions.

493 (7) "Record shareholder" means the person in whose name
494 shares are registered in the records of the corporation or the
495 beneficial owner of shares to the extent of the rights granted by
496 a nominee certificate on file with the corporation.

497 (8) "Senior executive" means the chief executive
498 officer, chief operating officer, chief financial officer, and
499 anyone in charge of a principal business unit or function.

500 (9) "Shareholder" means both a record shareholder and a
501 beneficial shareholder.

502 **SECTION 9.** Section 79-4-13.02, Mississippi Code of 1972, is
503 amended as follows:

504 79-4-13.02. (a) A shareholder is entitled to appraisal
505 rights, and to obtain payment of the fair value of that
506 shareholder's shares, in the event of any of the following
507 corporate actions:

508 (1) Consummation of a merger to which the corporation
509 is a party (i) if shareholder approval is required for the merger
510 by Section 79-4-11.04 and the shareholder is entitled to vote on
511 the merger, except that appraisal rights shall not be available to
512 any shareholder of the corporation with respect to shares of any
513 class or series that remain outstanding after consummation of the
514 merger, or (ii) if the corporation is a subsidiary and the merger
515 is governed by Section 79-4-11.05;

516 (2) Consummation of a share exchange to which the
517 corporation is a party as the corporation whose shares will be
518 acquired if the shareholder is entitled to vote on the exchange,
519 except that appraisal rights shall not be available to any
520 shareholder of the corporation with respect to any class or series
521 of shares of the corporation that is not exchanged;

522 (3) Consummation of a disposition of assets pursuant to
523 Section 79-4-12.02 if the shareholder is entitled to vote on the
524 disposition;

525 (4) An amendment of the articles of incorporation with
526 respect to a class or series of shares that reduces the number of
527 shares of a class or series owned by the shareholder to a fraction
528 of a share if the corporation has the obligation or right to
529 repurchase the fractional share so created; or

530 (5) Any other amendment to the articles of
531 incorporation, merger, share exchange or disposition of assets to

532 the extent provided by the articles of incorporation, bylaws or a
533 resolution of the board of directors.

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

537 (1) Appraisal rights shall not be available to any
538 shareholder of the constituent corporations in a corporate
539 reorganization transaction otherwise covered by Section
540 79-4-13.02(a)(1) or (2) if: (i) the shareholders of an existing
541 corporation exchange shares of such corporation for shares of a
542 newly formed corporation and receive, after the reorganization,
543 the same proportionate share interest in the new corporation and
544 the rights and interests of the shareholders in the newly formed
545 corporation are substantially the same as those in the existing
546 corporation prior to the transaction; (ii) the newly formed
547 corporation has no significant assets other than the shares of the
548 existing corporation; (iii) after the reorganization the newly
549 formed corporation and its subsidiaries have substantially the
550 same assets and liabilities, on a consolidated basis, as those of
551 the existing corporation prior to the transaction; (iv) fractional
552 shares are neither created nor eliminated as a result of the
553 transaction; (v) the existing corporation and the newly formed
554 corporation are the only constituent corporations to such
555 reorganization; (vi) the existing corporation and the newly formed
556 corporation are corporations of this state; (vii) the directors of
557 the existing corporation become the directors of the newly formed
558 corporation upon the effective time of the corporate
559 reorganization; (viii) the existing corporation becomes a direct
560 wholly owned subsidiary of the newly formed corporation; and (ix)
561 the shareholders of the existing corporation do not recognize gain
562 or loss for United States federal income tax purposes as
563 determined by the board of directors of the existing corporation.

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

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

570 (ii) Not so listed or designated, but has at least
571 two thousand (2,000) shareholders and the outstanding shares of
572 such class or series has a market value of at least Twenty Million
573 Dollars (\$20,000,000.00) (exclusive of the value of such shares
574 held by its subsidiaries, senior executives, directors and
575 beneficial shareholders owning more than ten percent (10%) of such
576 shares).

577 (3) The applicability of subsection (b)(2) shall be
578 determined as of:

579 (i) The record date fixed to determine the
580 shareholders entitled to receive notice of, and to vote at, the
581 meeting of shareholders to act upon the corporate action requiring
582 appraisal rights; or

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

585 (4) Subsection (b)(2) shall not be applicable and
586 appraisal rights shall be available pursuant to subsection (a) for
587 the holders of any class or series of shares who are required by
588 the terms of the corporate action requiring appraisal rights to
589 accept for such shares anything other than cash or shares of any
590 class or any series of shares of any corporation, or any other
591 proprietary interest of any other entity, that satisfies the
592 standards set forth in subsection (b)(2) at the time the corporate
593 action becomes effective.

594 (5) Subsection (b)(2) shall not be applicable and
595 appraisal rights shall be available pursuant to subsection (a) for

596 the holders of any class or series of shares where the corporate
597 action is an interested transaction.

598 * * *

599 (c) Notwithstanding any other provision of Section
600 79-4-13.02, the articles of incorporation as originally filed or
601 any amendment thereto may limit or eliminate appraisal rights for
602 any class or series of preferred shares, but any such limitation
603 or elimination contained in an amendment to the articles of
604 incorporation that limits or eliminates appraisal rights for any
605 of such shares that are outstanding immediately prior to the
606 effective date of such amendment or that the corporation is or may
607 be required to issue or sell thereafter pursuant to any
608 conversion, exchange or to other right existing immediately before
609 the effective date of such amendment shall not apply to any
610 corporate action that becomes effective within one (1) year of
611 that date if such action would otherwise afford appraisal rights.

612 * * *

613 **SECTION 10.** Section 79-4-13.20, Mississippi Code of 1972, is
614 amended as follows:

615 79-4-13.20. (a) Where any corporate action specified in
616 Section 79-4-13.02(a) is to be submitted to a vote at a
617 shareholders' meeting, the meeting notice must state that the
618 corporation has concluded that the shareholders are, are not or
619 may be entitled to assert appraisal rights under this article. If
620 the corporation concludes that appraisal rights are or may be
621 available, a copy of this article must accompany the meeting
622 notice sent to those record shareholders entitled to exercise
623 appraisal rights.

624 (b) In a merger pursuant to Section 79-4-11.05, the parent
625 corporation must notify in writing all record shareholders of the
626 subsidiary who are entitled to assert appraisal rights that the
627 corporate action became effective. Such notice must be sent

628 within ten (10) days after the corporate action became effective
629 and include the materials described in Section 79-4-13.22.

630 (c) Where any corporate action specified in Section
631 79-4-13.02(a) is to be approved by written consent of the
632 shareholders pursuant to Section 79-4-7.04:

633 (1) Written notice that appraisal rights are, are not
634 or may be available must be given to each record shareholder from
635 whom a consent is solicited at the time consent of such
636 shareholder is first solicited and, if the corporation has
637 concluded that appraisal rights are or may be available, must be
638 accompanied by a copy of this article; and

639 (2) Written notice that appraisal rights are, are not
640 or may be available must be delivered together with the notice to
641 nonconsenting and nonvoting shareholders required by Section
642 79-4-7.04(e) and (f), may include the materials described in
643 Section 79-4-13.22 and, if the corporation has concluded that
644 appraisal rights are or may be available, must be accompanied by a
645 copy of this article.

646 **SECTION 11.** Section 79-4-13.21, Mississippi Code of 1972, is
647 amended as follows:

648 79-4-13.21. (a) If a corporate action specified in Section
649 79-4-13.02(a) is submitted to a vote at a shareholders' meeting, a
650 shareholder who wishes to assert appraisal rights with respect to
651 any class or series of shares:

652 (1) Must deliver to the corporation, before the vote is
653 taken, written notice of the shareholder's intent to demand
654 payment if the proposed action is effectuated; and

655 (2) Must not vote, or cause or permit to be voted, any
656 shares of such class or series in favor of the proposed action.

657 (b) If a corporate action specified in Section 79-4-13.02(a)
658 is to be approved by less than unanimous written consent, a
659 shareholder who wishes to assert appraisal rights with respect to
660 any class or series of shares must not execute a consent in favor

661 of the proposed action with respect to that class or series of
662 shares.

663 (c) A shareholder who fails to satisfy the requirements of
664 subsection (a) or (b) is not entitled to payment under this
665 article.

666 **SECTION 12.** Section 79-4-13.22, Mississippi Code of 1972, is
667 amended as follows:

668 79-4-13.22. (a) If proposed corporate action requiring
669 appraisal rights under Section 79-4-13.02(a) becomes effective,
670 the corporation must deliver a written appraisal notice and form
671 required by subsection (b)(1) to all shareholders who satisfied
672 the requirements of Section 79-4-13.21(a) or Section
673 79-4-13.21(b). In the case of a merger under Section 79-4-11.05,
674 the parent must deliver a written appraisal notice and form to all
675 record shareholders who may be entitled to assert appraisal
676 rights.

677 (b) The appraisal notice must be sent no earlier than the
678 date the corporate action specified in Section 79-4-13.02(a)
679 became effective and no later than ten (10) days after such date,
680 and must:

681 (1) Supply a form that (i) specifies the date of the
682 first announcement to shareholders of the principal terms of the
683 proposed corporate action, if any, and (ii) if such announcement
684 was made, requires the shareholder asserting appraisal rights to
685 certify * * * whether * * * beneficial ownership of those shares
686 for which appraisal rights are asserted was acquired before that
687 date and * * * that, as to those shares, the shareholder did not
688 vote for or consent to the transaction;

689 (2) State:

690 (i) Where the form must be sent and where
691 certificates for certificated shares must be deposited and the
692 date by which those certificates must be deposited, which date may

693 not be earlier than the date for receiving the required form under
694 subsection (2)(ii);

695 (ii) A date by which the corporation must receive
696 the form, which date may not be fewer than forty (40) nor more
697 that sixty (60) days after the date the subsection (a) appraisal
698 notice and form are sent, and state that the shareholder shall
699 have waived the right to demand appraisal with respect to the
700 shares unless the form is received by the corporation by such
701 specified date;

702 (iii) The corporation's estimate of the fair value
703 of the shares;

704 (iv) That, if requested in writing, the
705 corporation will provide, to the shareholder so requesting, within
706 ten (10) days after the date specified in subsection (2)(ii) the
707 number of shareholders who return the forms by the specified date
708 and the total number of shares owned by them; and

709 (v) The date by which the notice to withdraw under
710 Section 79-4-13.23 must be received, which date must be within
711 twenty (20) days after the date specified in subsection (2)(ii);
712 and

713 (3) Be accompanied by a copy of this article.

714 **SECTION 13.** Section 79-4-13.23, Mississippi Code of 1972, is
715 amended as follows:

716 79-4-13.23. (a) A shareholder who receives notice pursuant
717 to Section 79-4-13.22 and who wishes to exercise appraisal rights
718 must sign and return on the form sent by the corporation and, in
719 the case of certificated shares, deposit the shareholder's
720 certificates in accordance with the terms of the notice by the
721 date referred to in the notice pursuant to Section
722 79-4-13.22(b)(2)(ii). In addition, if applicable, the shareholder
723 must certify on the form whether the beneficial owner of such
724 shares acquired beneficial ownership of the shares before the date
725 required to be set forth in the notice pursuant to Section

726 79-4-13.22(b)(1). If a shareholder fails to make this
727 certification, the corporation may elect to treat the
728 shareholder's shares as after-acquired shares under Section
729 79-4-13.25. * * * Once a shareholder deposits that shareholder's
730 certificates or, in the case of uncertificated shares, returns the
731 signed forms, that shareholder loses all rights as a shareholder,
732 unless the shareholder withdraws pursuant to subsection (b).

733 (b) A shareholder who has complied with subsection (a) may
734 nevertheless decline to exercise appraisal rights and withdraw
735 from the appraisal process by so notifying the corporation in
736 writing by the date set forth in the appraisal notice pursuant to
737 Section 79-4-13.22(b)(2)(v). A shareholder who fails to so
738 withdraw from the appraisal process may not thereafter withdraw
739 without the corporation's written consent.

740 (c) A shareholder who does not sign and return the form and,
741 in the case of certificated shares, deposit that shareholder's
742 share certificates where required, each by the date set forth in
743 the notice described in Section 79-4-13.22(b), shall not be
744 entitled to payment under this article.

745 **SECTION 14.** Section 79-4-13.25, Mississippi Code of 1972, is
746 amended as follows:

747 79-4-13.25. (a) A corporation may elect to withhold payment
748 required by Section 79-4-13.24 from any shareholder who was
749 required to, but did not certify that beneficial ownership of all
750 of the shareholder's shares for which appraisal rights are
751 asserted was acquired before the date set forth in the appraisal
752 notice sent pursuant to Section 79-4-13.22(b)(1).

753 (b) If the corporation elected to withhold payment under
754 subsection (a), it must, within thirty (30) days after the form
755 required by Section 79-4-13.22(b)(2)(ii) is due, notify all
756 shareholders who are described in subsection (a):

757 (1) Of the information required by Section
758 79-4-13.24(b)(1);

759 (2) Of the corporation's estimate of fair value
760 pursuant to Section 79-4-13.24(b)(2);

761 (3) That they may accept the corporation's estimate of
762 fair value, plus interest, in full satisfaction of their demands
763 or demand appraisal under Section 79-4-13.26;

764 (4) That those shareholders who wish to accept such
765 offer must so notify the corporation of their acceptance of the
766 corporation's offer within thirty (30) days after receiving the
767 offer; and

768 (5) That those shareholders who do not satisfy the
769 requirements for demanding appraisal under Section 79-4-13.26
770 shall be deemed to have accepted the corporation's offer.

771 (c) Within ten (10) days after receiving the shareholder's
772 acceptance pursuant to subsection (b), the corporation must pay in
773 cash the amount it offered under subsection (b)(2) to each
774 shareholder who agreed to accept the corporation's offer in full
775 satisfaction of the shareholder's demand.

776 (d) Within forty (40) days after sending the notice
777 described in subsection (b), the corporation must pay in cash the
778 amount it offered to pay under subsection (b)(2) to each
779 shareholder described in subsection (b)(5).

780 **SECTION 15.** Section 79-4-13.31, Mississippi Code of 1972, is
781 amended as follows:

782 79-4-13.31. (a) The court in an appraisal proceeding
783 commenced under Section 79-4-13.30 shall determine all court costs
784 of the proceeding, including the reasonable compensation and
785 expenses of appraisers appointed by the court. The court shall
786 assess the court costs against the corporation, except that the
787 court may assess court costs against all or some of the
788 shareholders demanding appraisal, in amounts which the court finds
789 equitable, to the extent the court finds such shareholders acted
790 arbitrarily, vexatiously or not in good faith with respect to the
791 rights provided by this article.

792 (b) The court in an appraisal proceeding may also assess
793 the * * * expenses of * * * the respective parties in amounts the
794 court finds equitable:

795 (1) Against the corporation and in favor of any or all
796 shareholders demanding appraisal if the court finds the
797 corporation did not substantially comply with the requirements of
798 Section 79-4-13.20, 79-4-13.22, 79-4-13.24 or 79-4-13.25; or

799 (2) Against either the corporation or a shareholder
800 demanding appraisal, in favor of any other party, if the court
801 finds that the party against whom the * * * expenses are assessed
802 acted arbitrarily, vexatiously or not in good faith with respect
803 to the rights provided by this article.

804 (c) If the court in an appraisal proceeding finds that the
805 expenses incurred by any shareholder were of substantial benefit
806 to other shareholders similarly situated, and that such expenses
807 should not be assessed against the corporation, the court may
808 direct that such expenses be paid out of the amounts awarded the
809 shareholders who were benefited.

810 (d) To the extent the corporation fails to make a required
811 payment pursuant to Section 79-4-13.24, 79-4-13.25 or 79-4-13.26,
812 the shareholder may sue directly for the amount owed and, to the
813 extent successful, shall be entitled to recover from the
814 corporation all * * * expenses of the suit * * *.

815 **SECTION 16.** The following shall be codified as Section
816 79-4-13.40, Mississippi Code of 1972:

817 79-4-13.40. Other remedies limited. (a) The legality of a
818 proposed or completed corporate action described in Section
819 79-4-13.02(a) may not be contested, nor may the corporate action
820 be enjoined, set aside or rescinded, in a legal or equitable
821 proceeding by a shareholder after the shareholders have approved
822 the corporate action.

823 (b) Subsection (a) does not apply to a corporate action
824 that:

825 (1) Was not authorized and approved in accordance with
826 the applicable provisions of:

827 (i) Article 9, 10, 11 or 12,

828 (ii) The articles of incorporation or bylaws, or

829 (iii) The resolution of the board of directors
830 authorizing the corporate action;

831 (2) Was procured as a result of fraud, a material
832 misrepresentation, or an omission of a material fact necessary to
833 make statements made, in light of the circumstances in which they
834 were made, not misleading;

835 (3) Is an interested transaction, unless it has been
836 recommended by the board of directors in the same manner as is
837 provided in Section 79-4-8.62 and has been approved by the
838 shareholders in the same manner as is provided in Section
839 79-4-8.63 as if the interested transaction were a director's
840 conflicting interest transaction; or

841 (4) Is approved by less than unanimous consent of the
842 voting shareholders pursuant to Section 79-4-7.04 if:

843 (i) The challenge to the corporate action is
844 brought by a shareholder who did not consent and as to whom notice
845 of the approval of the corporate action was not effective at least
846 ten (10) days before the corporate action was effected; and

847 (ii) The proceeding challenging the corporate
848 action is commenced within ten (10) days after notice of the
849 approval of the corporation action is effective as to the
850 shareholder bringing the proceeding.

851 **SECTION 17.** Section 79-4-14.30, Mississippi Code of 1972, is
852 amended as follows:

853 79-4-14.30. (a) The chancery court may dissolve a
854 corporation:

855 (1) In a proceeding by the Attorney General if it is
856 established that:

857 (i) The corporation obtained its articles of
858 incorporation through fraud; or

859 (ii) The corporation has continued to exceed or
860 abuse the authority conferred upon it by law;

861 (2) In a proceeding by a shareholder if it is
862 established that:

863 (i) The directors are deadlocked in the management
864 of the corporate affairs, the shareholders are unable to break the
865 deadlock, and irreparable injury to the corporation is threatened
866 or being suffered, or the business and affairs of the corporation
867 can no longer be conducted to the advantage of the shareholders
868 generally, because of the deadlock;

869 (ii) The directors or those in control of the
870 corporation have acted, are acting, or will act in a manner that
871 is illegal, oppressive or fraudulent;

872 (iii) The shareholders are deadlocked in voting
873 power and have failed, for a period that includes at least two (2)
874 consecutive annual meeting dates, to elect successors to directors
875 whose terms have expired; or

876 (iv) The corporate assets are being misapplied or
877 wasted;

878 (3) In a proceeding by a creditor if it is established
879 that:

880 (i) The creditor's claim has been reduced to
881 judgment, the execution on the judgment return unsatisfied, and
882 the corporation is insolvent; or

883 (ii) The corporation has admitted in writing that
884 the creditor's claim is due and owing and the corporation is
885 insolvent; or

886 (4) In a proceeding by the corporation to have its
887 voluntary dissolution continued under court supervision; or

888 (5) In a proceeding by a shareholder if the corporation
889 has abandoned its business and has failed within a reasonable time
890 to liquidate and distribute its assets and dissolve.

891 (b) Section 79-4-14.30(a)(2) shall not apply in the case of
892 a corporation that, on the date of the filing of the proceeding,
893 has shares that are: (i) listed on the New York Stock Exchange,
894 the American Stock Exchange, or any exchange owned or operated by
895 the NASDAQ Stock Market, LLC, or listed or quoted on a system
896 owned or operated by the National Association of Securities
897 Dealers, Inc.; or (ii) not so listed or quoted, but are held by at
898 least three hundred (300) shareholders and the shares outstanding
899 have a market value of at least Twenty Million Dollars
900 (\$20,000,000.00) (exclusive of the value of such shares held by
901 the corporation's subsidiaries, senior executives, directors and
902 beneficial shareholders owning more than ten percent (10%) of such
903 shares).

904 (c) In this section "beneficial shareholder" has the meaning
905 specified in Section 79-4-13.01(2).

906 **SECTION 18.** Section 79-4-14.32, Mississippi Code of 1972, is
907 amended as follows:

908 79-4-14.32. (a) Unless an election to purchase has been
909 filed under Section 79-4-14.34, a court in a judicial proceeding
910 brought to dissolve a corporation may appoint one or more
911 receivers to wind up and liquidate, or one or more custodians to
912 manage, the business and affairs of the corporation. The court
913 shall hold a hearing, after notifying all parties to the
914 proceeding and any interested persons designated by the court,
915 before appointing a receiver or custodian. The court appointing a
916 receiver or custodian has * * * jurisdiction over the corporation
917 and all its property wherever located.

918 (b) The court may appoint an individual or a domestic or
919 foreign corporation (authorized to transact business in this
920 state) as a receiver or custodian. The court may require the

921 receiver or custodian to post bond, with or without sureties, in
922 an amount the court directs.

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

926 (1) The receiver (i) may dispose of all or any part of
927 the assets of the corporation wherever located, at a public or
928 private sale, if authorized by the court; and (ii) may sue and
929 defend in his own name as receiver of the corporation in all
930 courts of this state;

931 (2) The custodian may exercise all the powers of the
932 corporation, through or in place of its board of directors or
933 officers, to the extent necessary to manage the affairs of the
934 corporation in the best interests of its shareholders and
935 creditors.

936 (d) The court during a receivership may redesignate the
937 receiver a custodian, and during a custodianship may redesignate
938 the custodian a receiver, if doing so is in the best interests of
939 the corporation, its shareholders and creditors.

940 (e) The court from time to time during the receivership or
941 custodianship may order compensation paid and expenses paid or
942 reimbursed to the receiver or custodian * * * from the assets of
943 the corporation or proceeds from the sale of the assets.

944 **SECTION 19.** Section 79-4-14.34, Mississippi Code of 1972, is
945 amended as follows:

946 79-4-14.34. (a) In a proceeding under Section 79-4-14.30(2)
947 to dissolve a corporation * * *, the corporation may elect or, if
948 it fails to elect, one or more shareholders may elect to purchase
949 all shares owned by the petitioning shareholder at the fair value
950 of the shares. An election pursuant to this section shall be
951 irrevocable unless the court determines that it is equitable to
952 set aside or modify the election.

953 (b) An election to purchase pursuant to this section may be
954 filed with the court at any time within ninety (90) days after the
955 filing of the petition under Section 79-4-14.30(2) or at such
956 later time as the court in its discretion may allow. If the
957 election to purchase is filed by one or more shareholders, the
958 corporation shall, within ten (10) days thereafter, give written
959 notice to all shareholders, other than the petitioner. The notice
960 must state the name and number of shares owned by the petitioner
961 and the name and number of shares owned by each electing
962 shareholder and must advise the recipients of their right to join
963 in the election to purchase shares in accordance with this
964 section. Shareholders who wish to participate must file notice of
965 their intention to join in the purchase no later than thirty (30)
966 days after the effective date of the notice to them. All
967 shareholders who have filed an election or notice of their
968 intention to participate in the election to purchase thereby
969 become parties to the proceeding and shall participate in the
970 purchase in proportion to their ownership of shares as of the date
971 the first election was filed, unless they otherwise agree or the
972 court otherwise directs. After an election has been filed by the
973 corporation or one or more shareholders, the proceeding under
974 Section 79-4-14.30(2) may not be discontinued or settled, nor may
975 the petitioning shareholder sell or otherwise dispose of his
976 shares, unless the court determines that it would be equitable to
977 the corporation and the shareholders, other than the petitioner,
978 to permit such discontinuance, settlement, sale or other
979 disposition.

980 (c) If, within sixty (60) days of the filing of the first
981 election, the parties reach agreement as to the fair value and
982 terms of purchase of the petitioner's shares, the court shall
983 enter an order directing the purchase of petitioner's shares upon
984 the terms and conditions agreed to by the parties.

985 (d) If the parties are unable to reach an agreement as
986 provided for in subsection (c), the court, upon application of any
987 party, shall stay the Section 79-4-14.30(2) proceedings and
988 determine the fair value of the petitioner's shares as of the day
989 before the date on which the petition under Section 79-4-14.30(2)
990 was filed or as of such other date as the court deems appropriate
991 under the circumstances.

992 (e) Upon determining the fair value of the shares, the court
993 shall enter an order directing the purchase upon such terms and
994 conditions as the court deems appropriate, which may include
995 payment of the purchase price in installments, where necessary in
996 the interests of equity, provision for security to assure payment
997 of the purchase price and any additional costs, fees and expenses
998 as may have been awarded, and, if the shares are to be purchased
999 by shareholders, the allocation of shares among them. In
1000 allocating petitioner's shares among holders of different classes
1001 of shares, the court should attempt to preserve the existing
1002 distribution of voting rights among holders of different classes
1003 insofar as practicable and may direct that holders of a specific
1004 class or classes shall not participate in the purchase. Interest
1005 may be allowed at the rate and from the date determined by the
1006 court to be equitable, but if the court finds that the refusal of
1007 the petitioning shareholder to accept an offer of payment was
1008 arbitrary or otherwise not in good faith, no interest shall be
1009 allowed. If the court finds that the petitioning shareholder had
1010 probable grounds for relief under Section 79-4-14.30(2)(ii) or
1011 (iv), it may award to the petitioning shareholder reasonable fees
1012 and expenses of counsel and of any experts employed by him.

1013 (f) Upon entry of an order under subsection (c) or (e), the
1014 court shall dismiss the petition to dissolve the corporation under
1015 Section 79-4-14.30, and the petitioning shareholder shall no
1016 longer have any rights or status as a shareholder of the
1017 corporation, except the right to receive the amounts awarded to

1018 him by the order of the court which shall be enforceable in the
1019 same manner as any other judgment.

1020 (g) The purchase ordered pursuant to subsection (e) shall be
1021 made within ten (10) days after the date the order becomes final
1022 unless before that time the corporation files with the court a
1023 notice of its intention to adopt articles of dissolution pursuant
1024 to Sections 79-4-14.02 and 79-4-14.03, which articles must then be
1025 adopted and filed within fifty (50) days thereafter. Upon filing
1026 of such articles of dissolution, the corporation shall be
1027 dissolved in accordance with the provisions of Sections 79-4-14.05
1028 through 79-4-14.07 and the order entered pursuant to subsection
1029 (e) shall no longer be of any force or effect, except that the
1030 court may award the petitioning shareholder reasonable fees and
1031 expenses in accordance with the provisions of the last sentence of
1032 subsection (e) and the petitioner may continue to pursue any
1033 claims previously asserted on behalf of the corporation.

1034 (h) Any payment by the corporation pursuant to an order
1035 under subsection (c) or (e), other than an award of fees and
1036 expenses pursuant to subsection (e), is subject to the provisions
1037 of Section 79-4-6.40.

1038 (i) Nothing contained in this section shall diminish the
1039 inherent equity powers of the court to fashion alternative
1040 remedies to judicial dissolution.

1041 **SECTION 20.** This act shall take effect and be in force from
1042 and after July 1, 2007.