MISSISSIPPI LEGISLATURE

By: Representative Yancey

REGULAR SESSION 2024

To: Business and Commerce

HOUSE BILL NO. 1344
(As Sent to Governor)

1 AN ACT TO REQUIRE DOMESTIC AND FOREIGN NONPROFIT CORPORATIONS
2 TO FILE AN ANNUAL REPORT WITH THE SECRETARY OF STATE PROVIDING
3 CERTAIN SPECIFIED INFORMATION, INCLUDING WHETHER THE CORPORATION
4 HAS RECEIVED PUBLIC FUNDS FROM A GOVERNMENTAL ENTITY; TO AMEND
5 SECTIONS 79-11-107 THROUGH 79-11-387, MISSISSIPPI CODE OF 1972, IN
6 CONFORMITY TO THE PROVISIONS OF THIS ACT; TO BRING FORWARD SECTION
7 79-11-391, WHICH REQUIRES NONPROFIT CORPORATIONS TO FILE A STATUS
8 REPORT UPON REQUEST OF THE SECRETARY OF STATE, FOR PURPOSES OF
9 POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

11 SECTION 1. (1) Each nonprofit corporation, as defined in
12 Section 79-11-127(z), shall file an annual report with the
13 Secretary of State Business Services Division before May 15 of
14 each year on a form prescribed by the Secretary of State.
15
16 (2) Each domestic nonprofit corporation and each foreign
17 nonprofit corporation authorized to transact business in this
18 state shall deliver an annual report to the Secretary of State for
19 filing, on such date as may be established by the Secretary of
20 State, which provides the following information:
(a) The name of the nonprofit corporation and the state or country or other foreign jurisdiction under whose law it is organized;

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

(c) The address of its principal office;

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

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

(f) Whether it has received public funds and a listing of any governmental entity that distributed the public funds. The term "public funds" means funds received by the organization during its most recently completed fiscal year which were received from the State of Mississippi or any local governmental authority located within the State of Mississippi.

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

(3) If an annual report does not contain the information required by this section, the Secretary of State shall provide written notice promptly to the reporting nonprofit corporation and return the report for correction. If the report is corrected to contain the information required by this section and delivered to
the Secretary of State within thirty (30) days after the effective
date of notice, the report is deemed to be timely filed.

(4) If the nonprofit corporation fails to file timely or
fails to disclose the information required under this section,
the corporation may be subject to the penalties of dissolution or
disallowance of nonprofit status, or both.

(5) The requirements of this section shall not apply to
water associations as defined in Section 79-11-394.

SECTION 2. Section 79-11-107, Mississippi Code of 1972, is
amended as follows:

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

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

SECTION 3. Section 79-11-109, Mississippi Code of 1972, is
amended as follows:

79-11-109. (1) Except as otherwise provided in subsection
(4) of this section, the Secretary of State shall collect the
following fees when the documents described in this subsection are
delivered for filing:

<table>
<thead>
<tr>
<th>Document</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Articles of incorporation</td>
<td>$50.00</td>
</tr>
<tr>
<td>(b) [Reserved]</td>
<td></td>
</tr>
<tr>
<td>(c) Application for reserved name</td>
<td>25.00</td>
</tr>
<tr>
<td>(d) Notice of transfer or cancellation of reserved name</td>
<td>25.00</td>
</tr>
<tr>
<td>(e) [Reserved]</td>
<td></td>
</tr>
<tr>
<td>(f) [Reserved]</td>
<td></td>
</tr>
<tr>
<td>(g) [Reserved]</td>
<td></td>
</tr>
<tr>
<td>(h) [Reserved]</td>
<td></td>
</tr>
<tr>
<td>(i) [Reserved]</td>
<td></td>
</tr>
<tr>
<td>(j) Amendment of articles of incorporation</td>
<td>50.00</td>
</tr>
<tr>
<td>(k) Restatement of articles of incorporation with amendments</td>
<td>50.00</td>
</tr>
<tr>
<td>(l) Articles of merger</td>
<td>50.00</td>
</tr>
<tr>
<td>(m) Articles of dissolution</td>
<td>25.00</td>
</tr>
<tr>
<td>(n) Articles of revocation of dissolution</td>
<td>25.00</td>
</tr>
<tr>
<td>(o) Certificate of administrative dissolution</td>
<td>No Fee</td>
</tr>
<tr>
<td>(p) Application for reinstatement following</td>
<td></td>
</tr>
<tr>
<td>administrative dissolution</td>
<td>50.00</td>
</tr>
<tr>
<td>(q) Certificate of reinstatement</td>
<td>No Fee</td>
</tr>
<tr>
<td>(r) Certificate of judicial dissolution</td>
<td>No Fee</td>
</tr>
</tbody>
</table>
(s) Application for certificate of authority 100.00
(t) Application for amended certificate of authority 50.00
(u) Application for certificate of withdrawal 25.00
(v) Certificate of revocation of authority to transact business No Fee
(w)  * * * Annual report  * * * No Fee
(x) Articles of correction 50.00
(y) Application for certificate of existence or authorization 25.00
(z) Any other document required or permitted to be filed by Section 79-11-101 et seq. 25.00

(2) Except as otherwise provided in subsection (4) of this section, the Secretary of State shall collect a fee of Twenty-five Dollars ($25.00) upon being served with process under Section 79-11-101 et seq. The party to a proceeding causing service of process is entitled to recover the fee paid the Secretary of State as costs if the party prevails in the proceeding.

(3) Except as otherwise provided in subsection (4) of this section, the Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:
(a) One Dollar ($1.00) a page for copying; and
(b) Ten Dollars ($10.00) for the certificate.
(4) The Secretary of State may collect a filing fee greater than the fee set forth in subsections (1), (2) and (3) in an amount not to exceed twice the fee set forth in subsections (1), (2) and (3) of processing the filing, if the form prescribed by the Secretary of State for such filing has not been used.

SECTION 4. Section 79-11-121, Mississippi Code of 1972, is amended as follows:

79-11-121. (1) Any person may apply to the Secretary of State to furnish a certificate of existence for a domestic or foreign corporation.

(2) The certificate of existence sets forth:

(a) The domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(b) That (i) the domestic corporation is duly incorporated under the law of this state, the date of its incorporation and the period of its duration if less than perpetual; or (ii) that the foreign corporation is authorized to transact business in this state;

(c) That all fees, taxes, and penalties owed to this state have been paid, if (i) payment is reflected in the records of the Secretary of State and (ii) nonpayment affects the good standing of the domestic or foreign corporation;

(d) That its most recent *** annual report *** has been delivered to the Secretary of State;
(e) That articles of dissolution have not been filed; and

(f) Other facts of record in the Office of the Secretary of State that may be requested by the application.

(3) Subject to any qualification stated in the certificate, a certificate of existence issued by the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to conduct activities in this state.

SECTION 5. Section 79-11-129, Mississippi Code of 1972, is amended as follows:

79-11-129. (1) Notice under this chapter must be in the form of a record unless oral notice is authorized by this chapter or is reasonable under the circumstances.

(2) Notice may be communicated in person or by delivery. If these forms of communication are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio, television or other form of public broadcast communication.

(3) Oral notice is effective when communicated if communicated in a comprehensible manner.

(4) Written notice by a domestic or foreign corporation to a member, if in a comprehensible form, is effective:

(a) Upon deposit in the United States mail, if the postage or delivery charge is paid and the notice is correctly
addressed to the member's address shown in the corporation's current record of members, or

(b) When given if the notice is delivered in any other manner that the member has authorized.

(5) Except as provided in subsection (4) of this section, written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) When received;
(b) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed;
(c) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Written notice is correctly addressed to a member of a domestic or foreign corporation if addressed to the member's address shown in the corporation's current list of members.

(7) A written notice or report delivered as part of a newsletter, magazine or other publication regularly sent to members shall constitute a written notice or report if addressed or delivered to the member's address shown in the corporation's current list of members, or in the case of members who are residents of the same household and who have the same address in the corporation's current list of members, if addressed or delivered to one (1) of such members, at the address appearing on the current list of members.
(8) Written notice is correctly addressed to a domestic or foreign corporation (authorized to transact business in this state), other than in its capacity as a member, if addressed to its registered agent or to its secretary at its principal office shown in its most recent *annual* report or, in the case of a foreign corporation that has not yet delivered *annual* report, in its application for a certificate of authority.

(9) If Section 79-11-205 or any other provision of Section 79-11-101 et seq. prescribes notice requirements for particular circumstances, those requirements govern. If articles or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of Section 79-11-101 et seq., those requirements govern.

(10) With respect to electronic communications:

(a) Unless otherwise provided in the articles of incorporation or bylaws, or otherwise agreed between the sender and the recipient, an electronic communication is received when:

(i) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(ii) It is in a form capable of being processed by that system.
(b) An electronic communication is received under subsection (10)(a) even if no individual is aware of its receipt.

(c) Receipt of an electronic acknowledgement from an information processing system described in subsection (10)(a) establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(11) An authorization by a member of delivery of notices or communications by e-mail or similar electronic means may be revoked by the member by notice to the nonprofit corporation in the form of a record. Such an authorization is deemed revoked if (a) the corporation is unable to deliver two (2) consecutive notices or other communications to the member in the manner authorized; and (b) the inability becomes known to the secretary or other person responsible for giving the notice or other communication; but the failure to treat the inability as a revocation does not invalidate any meeting or other action.

SECTION 6. Section 79-11-283, Mississippi Code of 1972, is amended as follows:

79-11-283. (1) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized by Section 79-11-265.
241 (2) A corporation shall maintain appropriate accounting
242 records.
243 (3) A corporation or its agent shall maintain a record of
244 its members in a form that permits preparation of a list of the
245 names and addresses of all members, in alphabetical order by class
246 showing the number of votes each member is entitled to vote.
247 (4) A corporation shall maintain its records in written form
248 or in any other form of a record.
249 (5) A corporation shall keep a copy of the following records
250 at its principal office:
251 (a) Its articles or restated articles of incorporation
252 and all amendments to them currently in effect;
253 (b) Its bylaws or restated bylaws and all amendments to
254 them currently in effect;
255 (c) Resolutions adopted by its board of directors
256 relating to the characteristics, qualifications, rights,
257 limitations and obligations of members or any class or category of
258 members;
259 (d) The minutes of all meetings of members and records
260 of all actions approved by the members for the past three (3)
261 years;
262 (e) All written communications to members generally
263 within the past three (3) years;
264 (f) A list of the names and business or home addresses
265 of its current directors and officers; and
(g) Its most recent **annual** report delivered to the Secretary of State.

**SECTION 7.** Section 79-11-347, Mississippi Code of 1972, is amended as follows:

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

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

(b) The corporation does not deliver **the required annual** report to the Secretary of State within sixty (60) days after it is due;

(c) The corporation is without a registered agent in this state for sixty (60) days or more;

(d) The corporation does not notify the Secretary of State within one hundred twenty (120) days that its registered agent has been changed or that its registered agent has resigned;

(e) The corporation's period of duration, if any, stated in its articles of incorporation expires;

(f) The corporation fails to report within the time period specified in Section 79-11-405 the suspension or revocation of its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code; or
(g) An incorporator, director, officer or agent of the corporation signed a document he knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing.

SECTION 8. Section 79-11-385, Mississippi Code of 1972, is amended as follows:

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

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

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

(c) The foreign corporation is without a registered agent in this state for sixty (60) days or more;

(d) The foreign corporation does not inform the Secretary of State by an appropriate filing that its registered agent has changed or that its registered agent has resigned within ninety (90) days of the change or resignation;

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

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

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

SECTION 9. Section 79-11-387, Mississippi Code of 1972, is
amended as follows:

79-11-387. (1) The Secretary of State upon determining that
one or more grounds exist under Section 79-11-385 for revocation
of a certificate of authority shall serve the foreign corporation
with written notice of that determination under Section 79-11-381.

(2) The Attorney General upon determining that grounds exist
under Section 79-11-385(2) for revocation of a certificate of
authority shall request the Secretary of State to serve, and the
Secretary of State shall serve the foreign corporation with
written notice of that determination under Section 79-11-381.
(3) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State or Attorney General that each ground for revocation determined by the Secretary of State or Attorney General does not exist within sixty (60) days after service of the notice is perfected under Section 79-11-381, the Secretary of State may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation under Section 79-11-381.

(4) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(5) The Secretary of State's revocation of a foreign corporation's certificate of authority appoints the Secretary of State, the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the Secretary of State under this subsection is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communications received from the corporation.
stating the current mailing address of its principal office, or, if none is on file, in its application for a certificate of authority.

(6) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

SECTION 10. Section 79-11-391, Mississippi Code of 1972, is brought forward as follows:

79-11-391. (1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall upon request deliver to the Secretary of State a status report on a form prescribed and furnished by the Secretary of State that sets forth:

(a) The name of the corporation and the jurisdiction under whose law it is incorporated;

(b) The information required by Section 79-35-5(a);

(c) The address of its principal office;

(d) The names and business or residence addresses of its directors and principal officers;

(e) A brief description of the nature of its activities; and

(f) Whether or not it has members.

(2) Upon receiving the request for a status report, a domestic or foreign corporation shall have ninety (90) days to deliver the report to the Secretary of State.
(3) The information in the status report must be current on the date the status report is executed on behalf of the corporation.

(4) The Secretary of State may request a status report from time to time, but not more frequently than once every five (5) years, beginning five (5) years from the date upon which a domestic corporation was incorporated or a foreign corporation was authorized to transact business.

(5) If a status report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within thirty (30) days after the effective date of notice, it is deemed to be timely filed.

SECTION 11. Section 1 of this act shall be codified as a new section in Title 79, Chapter 11, Mississippi Code of 1972.

SECTION 12. This act shall take effect and be in force from and after July 1, 2024.