

By: Senator(s) McCaughn

To: Judiciary, Division A

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2536

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

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

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

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

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



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

26 (c) The address of its principal office;

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

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

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

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

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

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



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

50           79-11-127. Unless the context otherwise requires in Section  
51 79-11-101 et seq., the following terms shall have the meaning  
52 ascribed herein:

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

(u) "Includes" denotes a partial definition.

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

(w) "Means" denotes a complete definition.

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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





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

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

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

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

210 79-11-107. (1) The Secretary of State may prescribe and  
211 furnish, on request, forms for: (a) an application for a  
212 certificate of existence; (b) a foreign corporation's application  
213 for a certificate of authority to transact business in this state;  
214 (c) a foreign corporation's application for a certificate of  
215 withdrawal; \* \* \* (d) the status report; and (e) the annual  
216 report. If the Secretary of State so requires, use of these forms  
217 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 4.** 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 a requested status report to the Secretary of State within sixty (60) days after it is due;

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

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

( \* \* \* e ) 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;

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



( \* \* \*g) 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

( \* \* \*h) 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 5.** 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 status report to the Secretary of State within sixty (60) days after it is due;

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

( \* \* \*c) 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;

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



( \* \* \*e) 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;

( \* \* \*f) 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

( \* \* \*g) 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 6.** Section 1 of this act shall be codified in Title 79, Chapter 11, Mississippi Code of 1972, within the provisions of the Mississippi Nonprofit Corporation Act.

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

