

Corporation Laws 2011 Study Group Roster

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Proposed Amendments to Mississippi Business Corporation Act

[Senate Bill 2699](#): 2011 Regular Session

CURRENT LAW

PROPOSED AMENDMENTS

<p>Does not expressly allow remote participation in annual and special meetings.</p>	<p>Authorizes shareholders to participate in any shareholders' meeting by means of remote participation in accordance with guidelines adopted by the board of directors. <u>Line 735</u></p> <ul style="list-style-type: none"> • Corporation must have implemented reasonable measures to verify that each person is a shareholder. <u>Lines 747</u> • Must provide reasonable opportunity for shareholders to participate, communicate, read and hear proceedings of the meeting. <u>Line 749</u>
<p>Board of directors required to approve certain matters before recommending shareholders vote to approve it. (e.g., mergers – Section 79-4-11.04).</p>	<p>Board of directors can agree to submit a matter to the shareholders for approval, even if the board later determines it does not recommend the shareholders approve the action. This is known as “force the vote” because it allows shareholders to force the board of directors to submit the vote to the shareholders. <u>Lines 921-924</u></p>
<p>Oversight is not a specified director duty.</p> <p>Appropriate inquiry into the circumstances is not a specified director duty.</p>	<p>Requires that all corporate powers be exercised by or under the authority of the board of directors, managed by or under the direction of, and subject to the oversight of, its board of directors. <u>Line 820</u></p> <p>Directors are liable for sustained failure to devote attention to oversight, devote timely attention to, and making appropriate inquiry under the circumstances. Directors are held to a reasonably attentive director standard. <u>Line 960</u></p>
<p>Lacks electronic technology concepts. Absent or insufficient definitions of “documents,” “electronic,” “electronic record,” “sign,” “signature,” “writing,” and “written.”</p>	<p>These terms are amended or added to incorporate the Uniform Electronic Transmissions Act and the Electronic Signatures in Global and National Commerce Act.</p> <p>Authorizes electronic filing with the Secretary of State's Office.</p> <p>Authorizes electronic delivery of notices and other communications. <u>Line 360 and throughout</u></p>
<p>Does not address the impact of administrative dissolution on defending court actions or liability of officers and directors.</p>	<p>Adds administrative dissolution does not impair the validity of contracts or prevent defense of actions in court. <u>Line 1353</u></p> <p>When a corporation is reinstated, liability incurred during the dissolved period will be treated as if the corporation never dissolved. <u>Line 1383</u></p>

Corporate Headquarter Tax Incentives Programs of Surrounding States: Qualifications

	Arkansas	Georgia	Tennessee	Mississippi
Minimum number of jobs the Headquarter is required to create	50	The number is determined by comparing the monthly average of full time jobs subject to GA income tax with the corresponding average for the prior taxable year.	No minimum number required if the Corporation is investing over 50 million dollars in new buildings or renovations. A company may still be eligible with only a 10 million dollar investment if they create 100 new jobs.	35
Percentage the newly created jobs must be paid over the State's annual salary average.	No requirement	<p>Must pay at or above 110% of the average wage of the county in which it is located.</p> <p>If the corporation is not claiming eligible credits in other provisions of the GA code, then they may receive the following if they create at least 50 new jobs;</p> <p>→\$2,500 per every job that pays 110%-120% of the county average.</p> <p>→\$3,000 per every job that pays 120%-150% of the county average.</p> <p>→\$4,000 per every job that pays 150%-175% of the county average.</p> <p>→\$4,500 per every job that pays 175%-200% of the county average.</p> <p>→\$5,000 per every job that</p>	If the corporation is eligible for the credit through the option of only investing 10 million dollars but by creating 100 new jobs, those 100 jobs must pay at least 150% of the state's average wage.	A credit of \$500 is allowed for each newly created full-time position regardless of the salary, or a credit of \$1,000 for each position if the salary is 125% of the state average, or a credit of \$2,000 if the salary is 200% of the state average.

	Arkansas	Georgia	Tennessee	Mississippi
		pays 200% or more of the county average.		
Time to complete the required qualifications	Must hire the required number of jobs within 24 months of applying for the credit.	Must meet the required number of jobs within one year of applying for the credit.	Required number of jobs Must be met within one year of applying for the credit. The minimum investments (dollar amounts) required above must be met within 6 years.	The number of jobs required must be created within one year.
Length of time for which the credit can be claimed	No time limit, but the Commissioner has limited discretion to establish a time frame in the final compliance agreement.	Any credit claimed under this section but not used in a taxable year may be carried forward for 10 years from the close of the year in which the new jobs were created.	No maximum time limit, but the Commissioner has the sole discretion to establish a time frame in the final compliance agreement.	5 year maximum.
Definition of Headquarters	Corporate or regional headquarters means the home or center of operations, including research and development, of a national or multinational corporation with no retail sales to the public.	“the principle central administrative office of such business”	A facility in TN that houses an international, national, or regional office where executive employees are located and where primary functions are preformed. The facility must be used for at least 10 years beginning from the date of substantial completion.	A headquarter is not defined by statute, but rather that power is left to the Mississippi State Tax Commission. They have defined such as, “an office or location of a multi-state business where managerial, professional, technical, and administrative personnel are domiciled and employed.”
Domicile Requirements	Not required	Not required	Not required	Required

	Arkansas	Georgia	Tennessee	Mississippi
Incentives	The Commissioner has the discretion to negotiate a credit of up to 3.9% of the businesses' annual payroll for the new full time jobs created. OR up to 5% if located in an area of high unemployment.	The amount of credit is dependent upon the salary amount. However, a tax credit shall not exceed 25 million dollars.	A credit for ALL state sales or use tax, except tax at the rate of .5% on the sales or use of qualified tangible property.	Like Georgia, the amount of credit is dependent upon the salary amount. Unlike other states, Mississippi prohibits corporations in the business of hazardous waste from claiming the tax credit. The classification of personnel as headquarters employees is dependent upon duties in direct relationship to the functions of the entity, and not solely on the physical presence at the location, such as salesmen, truck drivers, janitors, etc.



DELBERT HOSEMANN
Secretary of State

Enacted Legislation from Corporation Laws Study Group

2011

Amendments to Nonprofit Corporation Act – Senate Bill 2444 (effective January 1, 2012). The amendments add a definition of a “nonprofit corporation” consistent with common law and with definitions of nonprofit corporations in other states. Consequently, the definition of “distribution” clarifies payments to officers, directors and members for reasonable compensation for services provided are permitted. The amendments permit an automatic liability shield from personal liability (with exceptions for criminal law violations, receipt of un-entitled financial benefit, etc.) for directors of charitable nonprofit corporations (referred to below as “charitable nonprofits”). Likewise, an optional liability shield for nonprofit corporations which are not charitable nonprofits can be included in their articles of incorporation. Last, the amendments implement electronic technology concepts in communications among nonprofit corporations, their members and in membership meetings.

Extension of Expiration of Corporate Charters – Senate Bill 2408 (effective July 1, 2011). Before the Model Business Corporation Act and Model Nonprofit Corporation Act were adopted in Mississippi in 1988, state law in effect from 1892 to 1911 limited the duration of corporations formed in Mississippi to fifty (50) years. In 1950, the charter extension statute extended the duration of corporations formed under prior law from fifty (50) years to ninety-nine (99) years. The Secretary of State’s Office took no action to dissolve the extended charter corporations which still appear in the Agency’s database as active corporations. The amendment automatically changed the duration of the extended charter corporations to perpetual, with no filing required, so long as they continue to stay in business for thirty (30) days after July 1, 2011, the date the amendment took effect.

2010

Limited Liability Companies – House Bill 683 (effective January 1, 2011). The Limited Liability Companies Study Group recommended the adoption of a comprehensive revised act, based in part on Delaware’s LLC Act. This act requires LLCs to file annual reports and pay an annual fee, similar to the reports and fees corporations pay. The only difference from the bill

recommended by the study group was the amount of annual report fees to be paid by LLCs (which will be no fee for domestic LLCs and \$250 for foreign LLCs).

Trade Names – Senate Bill 2003 (effective July 1, 2010) creates a system for the registration of trade names (also called fictitious names, assumed names, or DBAs). A trade name is a fictitious or assumed name other than an individual's or business entity's legal name that one business uses to distinguish itself from another. Most states have adopted laws governing the registration and use of trade names, as these laws generally impose little burden on businesses while protecting the public from unscrupulous parties. The Act, as adopted, was identical to the version recommended by the Secretary of State's Trade Names Study Group.

2009

Corporations – Senate Bill 3060 and House Bill 1515 (effective July 1, 2009) amends the business corporation and nonprofit corporation laws. The corporate reinstatement laws have been revised to make it much easier and quicker for administratively dissolved corporations to become reinstated. Senate Bill 3060 also gives our office the authority to adopt rules to reduce the cost of online corporate filings and to provide for expedited filing services for corporations. Currently the only filing accepted online is the corporate annual reports; however, we expect to be adding other filings that can be made online.

Securities – House Bill 781 (effective January 1, 2010) enacts the Uniform Securities Act of 2002 in Mississippi to replace our existing, outdated securities act and will bring Mississippi into uniformity with federal law and the most current securities laws in other states. Like the changes to the charities laws, this act will enhance the enforcement powers for our office to investigate and enforce the law against dishonest companies and salespeople. It will also ease regulatory burdens on multi-state companies that sell securities in Mississippi.

Charities and Nonprofits – House Bill 680 (effective July 1, 2009) makes several significant changes to Mississippi's charitable solicitation laws. The new provisions ease regulatory burdens on charities but also strengthen our ability to enforce the law against dishonest charities. These changes include increasing the annual revenue threshold for charity registration with our office from \$4,000 a year to \$25,000 a year. This law also expands our office's enforcement authority by allowing us to subpoena witnesses and documents during investigations and to bring actions in Chancery Court to stop illegal activities, collect fines, and remove charitable corporate status.

Trademarks – Senate Bill 2641 (effective July 1, 2009) makes changes to Mississippi's trademark laws to include the most current protections under federal law and make it easier for businesses that have Mississippi registered trademarks to prove claims of trademark dilution. The amendments allow businesses that have famous trademarks to enforce their trademark rights against those businesses that would damage the mark's reputation. In addition, the changes to the trademark law provide greater protections both to businesses that use competitors' trademarks in comparative advertising and to media outlets that use trademarks in news reporting.