

1 AN ACT TO AMEND SECTION 79-4-1.22, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY FEES CHARGED AND COLLECTED BY THE SECRETARY OF STATE
3 UNDER THE BUSINESS CORPORATION ACT; TO AMEND SECTION 79-4-1.25,
4 MISSISSIPPI CODE OF 1972, TO REVISE THE TIME IN WHICH THE
5 SECRETARY OF STATE MUST DELIVER NOTICE OF A REFUSAL TO FILE A
6 DOCUMENT; TO AMEND SECTION 79-4-1.29, MISSISSIPPI CODE OF 1972, TO
7 REVISE THE FINE FOR KNOWINGLY SIGNING A FALSE DOCUMENT; TO AMEND
8 SECTION 79-4-1.40, MISSISSIPPI CODE OF 1972, TO REVISE
9 DEFINITIONS; TO AMEND SECTION 79-4-1.41, MISSISSIPPI CODE OF 1972,
10 TO REVISE FORMS OF NOTICE CONSIDERED SUFFICIENT UNDER THE ACT; TO
11 AMEND SECTION 79-4-4.01, MISSISSIPPI CODE OF 1972, TO REVISE
12 REQUIREMENTS PERTAINING TO CORPORATION NAMES; TO AMEND SECTION
13 79-4-4.02, MISSISSIPPI CODE OF 1972, TO REVISE RESERVATION OF A
14 CORPORATE NAME; TO AMEND SECTION 79-4-5.01, MISSISSIPPI CODE OF
15 1972, TO CLARIFY THE REQUIREMENT OF A REGISTERED AGENT FOR SERVICE
16 OF PROCESS; TO AMEND SECTION 79-4-5.02, MISSISSIPPI CODE OF 1972,
17 TO CLARIFY THE CHANGING OF A REGISTERED AGENT; TO AMEND SECTION
18 79-4-6.20, MISSISSIPPI CODE OF 1972, TO MAKE A TECHNICAL REVISION
19 TO THE PROVISION DEALING WITH SUBSCRIPTION OF SHARES; TO AMEND
20 SECTION 79-4-7.04, MISSISSIPPI CODE OF 1972, TO REVISE THE
21 ELECTRONIC TRANSMISSION OF CONSENT TO AN ACTION; TO AMEND SECTION
22 79-4-7.05, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR REMOTE
23 PARTICIPATION; TO CREATE SECTION 79-4-7.09, MISSISSIPPI CODE OF
24 1972, TO PROVIDE FOR ELECTRONIC SHAREHOLDER MEETINGS; TO AMEND
25 SECTION 79-4-7.22, MISSISSIPPI CODE OF 1972, TO ALLOW ELECTRONIC
26 APPOINTMENT OF A PROXY; TO AMEND SECTION 79-4-7.42, MISSISSIPPI
27 CODE OF 1972, TO CLARIFY THE DATE OF DELIVERY OF A WRITTEN DEMAND;
28 TO AMEND SECTION 79-4-8.01, MISSISSIPPI CODE OF 1972, TO CLARIFY
29 THE EXERCISE OF POWER BY THE BOARD OF DIRECTORS; TO AMEND SECTION
30 79-4-8.05, MISSISSIPPI CODE OF 1972, TO CLARIFY THE EXPIRATION OF
31 TERMS OF THE BOARD OF DIRECTORS; TO AMEND SECTION 79-4-8.06,
32 MISSISSIPPI CODE OF 1972, TO CLARIFY THE STAGGERING OF TERMS OF
33 THE BOARD OF DIRECTORS; TO AMEND SECTION 79-4-8.07, MISSISSIPPI
34 CODE OF 1972, TO CLARIFY THE RESIGNATION OF DIRECTORS; TO AMEND
35 SECTION 79-4-8.10, MISSISSIPPI CODE OF 1972, TO CLARIFY THE
36 FILLING OF VACANCIES ON THE BOARD OF DIRECTORS; TO AMEND SECTION
37 79-4-8.24, MISSISSIPPI CODE OF 1972, TO CLARIFY THE PRESUMPTION OF
38 ASSENT TO CORPORATE ACTIONS; TO AMEND SECTION 79-4-8.26,
39 MISSISSIPPI CODE OF 1972, TO CLARIFY THE SUBMISSION OF A MATTER TO
40 THE SHAREHOLDERS FOR A VOTE WHEN THE ACTION IS NOT RECOMMENDED BY
41 THE BOARD; TO AMEND SECTION 79-4-8.31, MISSISSIPPI CODE OF 1972,
42 TO REVISE THE POTENTIAL LIABILITY OF A DIRECTOR; TO AMEND SECTION
43 79-4-8.50, MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS; TO
44 AMEND SECTION 79-4-8.53, MISSISSIPPI CODE OF 1972, TO CLARIFY
45 PAYMENT OF EXPENSES OF LITIGATION; TO AMEND SECTION 79-4-8.60,
46 MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS; TO AMEND SECTION
47 79-4-11.01, MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS; TO

48 AMEND SECTION 79-4-11.06, MISSISSIPPI CODE OF 1972, TO CLARIFY
49 FILING OF ARTICLES OF INCORPORATION; TO AMEND SECTION 79-4-11.08,
50 MISSISSIPPI CODE OF 1972, TO CLARIFY ABANDONMENT OF A PLAN OF
51 MERGER OR SHARE EXCHANGE; TO AMEND SECTION 79-4-13.20, MISSISSIPPI
52 CODE OF 1972, TO CLARIFY CERTAIN NOTICES TO SHAREHOLDERS; TO AMEND
53 SECTION 79-4-13.21, MISSISSIPPI CODE OF 1972, TO CLARIFY ASSENT TO
54 AN ACTION TO ASSERT APPRAISAL RIGHTS; TO AMEND SECTION 79-4-13.22,
55 MISSISSIPPI CODE OF 1972, TO REVISE THE FORM OF NOTICE OF AN
56 ACTION REQUIRING APPRAISAL RIGHTS; TO AMEND SECTION 79-4-14.21,
57 MISSISSIPPI CODE OF 1972, TO REVISE NOTICE OF DISSOLUTION; TO
58 AMEND SECTION 79-4-14.22, MISSISSIPPI CODE OF 1972, TO REVISE
59 REINSTATEMENT; TO AMEND SECTION 79-4-15.01, MISSISSIPPI CODE OF
60 1972, TO REVISE THE ACTIVITIES REQUIRING CERTIFICATE; TO AMEND
61 SECTION 79-4-15.02, MISSISSIPPI CODE OF 1972, TO CLARIFY THE
62 TRANSACTION OF BUSINESS WITHOUT AUTHORITY; TO AMEND SECTION
63 79-4-15.06, MISSISSIPPI CODE OF 1972, TO REVISE THE REQUIREMENTS
64 THAT APPLY TO A CORPORATE NAME; TO AMEND SECTION 79-4-15.07,
65 MISSISSIPPI CODE OF 1972, TO REVISE THE REQUIREMENT OF A
66 REGISTERED AGENT FOR SERVICE; TO AMEND SECTION 79-4-15.08,
67 MISSISSIPPI CODE OF 1972, TO CLARIFY THE CHANGE OF A REGISTERED
68 AGENT; TO AMEND SECTION 79-4-15.31, MISSISSIPPI CODE OF 1972, TO
69 REVISE REVOCATION OF A FOREIGN CORPORATION'S CERTIFICATE OF
70 AUTHORITY; TO AMEND SECTION 79-4-16.01, MISSISSIPPI CODE OF 1972,
71 TO CLARIFY REQUIRED RECORD KEEPING; TO AMEND SECTION 79-4-16.02,
72 MISSISSIPPI CODE OF 1972, TO CLARIFY A SHAREHOLDER'S RIGHT OF
73 INSPECTION; TO AMEND SECTION 79-4-16.06, MISSISSIPPI CODE OF 1972,
74 TO CLARIFY NOTICE TO SHAREHOLDERS; TO AMEND SECTION 79-4-16.20,
75 MISSISSIPPI CODE OF 1972, TO CLARIFY THE ANNUAL FINANCIAL
76 STATEMENT REQUIREMENT; TO REPEAL SECTION 79-4-16.21, MISSISSIPPI
77 CODE OF 1972, DEALING WITH THE REPORTING OF THE INDEMNIFICATION OF
78 OR EXPENSE ADVANCES TO A DIRECTOR AND CERTAIN SHARE ISSUES BY THE
79 CORPORATION; TO CREATE SECTION 79-4-17.05, MISSISSIPPI CODE OF
80 1972, TO PROVIDE FOR THE RELATION OF THE ACT TO THE FEDERAL
81 ELECTRONIC SIGNATURES ACT; AND FOR RELATED PURPOSES.

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

83 **SECTION 1.** Section 79-4-1.22, Mississippi Code of 1972, is
84 amended as follows: [ss011]

85 79-4-1.22. **Fees.** (a) The Secretary of State shall collect
86 the following fees when the documents described in this subsection
87 are delivered to him for filing:

88	Document	Fee
89	(1) Articles of incorporation.....	\$ 50.00
90	(2) Application for use of indistinguishable	
91	name.....	25.00
92	(3) Application for reserved name.....	25.00
93	(4) Notice of transfer <u>or cancellation</u> of reserved	
94	name.....	25.00
95	(5) Application for registered name.....	50.00

96	(6) Application for renewal of registered	
97	name.....	50.00
98	(7) Corporation's statement of change of	
99	registered agent or registered office or both.....	10.00
100	(8) Agent's statement of change of registered	
101	office for each affected corporation.....	10.00
102	not to exceed a total of.....	1,000.00
103	(9) Agent's statement of resignation.....	No fee
104	(10) Amendment of articles of Incorporation...	50.00
105	(11) Restatement of articles of	
106	incorporation.....	50.00
107	with amendment of articles.....	50.00
108	(12) Articles of merger or share exchange.....	50.00
109	(13) Articles of dissolution.....	25.00
110	(14) Articles of revocation of dissolution....	25.00
111	(15) Certificate of administrative	
112	dissolution.....	No fee
113	(16) Application for reinstatement following	
114	administrative dissolution.....	50.00
115	(17) Certificate of reinstatement.....	No fee
116	(18) Certificate of judicial dissolution.....	No fee
117	(19) Application for certificate of	
118	authority.....	500.00
119	(20) Application for amended certificate of	
120	authority.....	50.00
121	(21) Application for certificate of	
122	withdrawal.....	25.00
123	(22) Certificate of revocation of authority to	
124	transact business.....	No fee
125	(23) Application for reinstatement following	
126	administrative revocation.....	100.00

127	(24) Certificate of reinstatement.....	No fee
128	(25) Annual report.....	25.00
129	(26) Articles of correction.....	50.00
130	(27) Application for certificate of existence	
131	or authorization.....	25.00
132	(28) Any other document required or permitted	
133	to be filed by Section 79-4-1.01 et seq.....	25.00

134 (b) The Secretary of State shall collect a fee of
135 Twenty-five Dollars (\$25.00) each time process is served on him
136 under Section 79-4-1.01 et seq. The party to a proceeding causing
137 service of process is entitled to recover this fee as costs if he
138 prevails in the proceeding.

139 (c) The Secretary of State shall collect the following fees
140 for copying and certifying the copy of any filed document relating
141 to a domestic or foreign corporation:

- 142 (1) One Dollar (\$1.00) a page for copying; and
- 143 (2) Ten Dollars (\$10.00) for the certificate.

144 (d) The Secretary of State may collect a filing fee greater
145 than the fee set out herein, not to exceed the actual costs of
146 processing the filing, if the form for filing as prescribed by the
147 Secretary of State has not been used.

148 (e) The Secretary of State may promulgate rules to:

- 149 (1) Reduce the filing fees prescribed in this section
150 or provide for discounts of fees to encourage online filing of
151 documents or for other reasons as determined by the Secretary of
152 State; and

- 153 (2) Provide for documents to be filed and accepted on
154 an expedited basis upon the request of the applicant. The
155 Secretary of State may promulgate rules to provide for an
156 additional reasonable filing fee * * * to be paid by the applicant

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157 and collected by the Secretary of State for the expedited filing
158 services.

159 **SECTION 2.** Section 79-4-1.25, Mississippi Code of 1972, is
160 amended as follows: [SS012]

161 79-4-1.25. **Role of Secretary of State.** (a) If a document
162 delivered to the Office of the Secretary of State for filing
163 satisfies the requirements of Section 79-4-1.20, the Secretary of
164 State shall file it.

165 (b) The Secretary of State files a document by recording it
166 as filed on the date and time of receipt. After filing a
167 document, except as provided in Sections 79-4-5.03 and 79-4-15.09,
168 the Secretary of State shall deliver to the domestic or foreign
169 corporation or its representative a copy of the document with an
170 acknowledgment of the date and time of filing.

171 (c) If the Secretary of State refuses to file a document, he
172 shall return it to the domestic or foreign corporation or its
173 representative within ten (10) days after the document was
174 delivered, together with a brief, written explanation of the
175 reason for his refusal.

176 (d) The Secretary of State's duty to file documents under
177 this section is ministerial. His filing or refusing to file a
178 document does not:

179 (1) Affect the validity or invalidity of the document
180 in whole or part;

181 (2) Relate to the correctness or incorrectness of
182 information contained in the document;

183 (3) Create a presumption that the document is valid or
184 invalid or that information contained in the document is correct
185 or incorrect.

186 **SECTION 3.** Section 79-4-1.29, Mississippi Code of 1972, is
187 amended as follows: [SS013]

188 79-4-1.29. **Knowingly signing false document.** (a) A person
189 commits an offense if he signs a document he knows is false in any
190 material respect with intent that the document be delivered to the
191 Secretary of State for filing.

192 (b) An offense under this section is a misdemeanor
193 punishable by a fine of not to exceed One Thousand Dollars
194 (\$1,000.00).

195 **SECTION 4.** Section 79-4-1.40, Mississippi Code of 1972, is
196 amended as follows: [SS014]

197 79-4-1.40. **Definitions in general.** In Section 79-4-1.01 et
198 seq.:

199 (1) "Articles of incorporation" * * * means the
200 original articles of incorporation, all amendments thereof, and
201 any other documents permitted or required to be filed by a
202 domestic business corporation with the Secretary of State under
203 any provision of this chapter except Section 79-4-16.22. If an
204 amendment of the articles or any other document filed under this
205 chapter restates the articles in their entirety, thenceforth the
206 "articles" shall not include any prior documents.

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

209 (3) "Conspicuous" means so written, displayed, or
210 presented that a reasonable person against whom the writing is to
211 operate should have noticed it. For example, text in italics,
212 boldface, contrasting color, * * * capitals or underlined, is
213 conspicuous.

214 (4) "Corporation" or "domestic corporation" means a
215 corporation for profit, which is not a foreign corporation,
216 incorporated under or subject to the provisions of Section
217 79-4-1.01 et seq.

218 (5) "Deliver" or "delivery" means any method of
219 delivery used in conventional commercial practice, including
220 delivery by hand, mail, commercial delivery and, if authorized in
221 accordance with Section 79-7-1.41, by electronic transmission.

222 (6) "Distribution" means a direct or indirect transfer
223 of money or other property (except its own shares) or incurrence
224 of indebtedness by a corporation to or for the benefit of its
225 shareholders in respect of any of its shares. A distribution may
226 be in the form of a declaration or payment of a dividend; a
227 purchase, redemption or other acquisition of shares; a
228 distribution of indebtedness; or otherwise.

229 (7) "Documents" means (i) any tangible medium on which
230 information is inscribed, and includes any writing or written
231 instruments, or (ii) an electronic record.

232 (8) "Domestic unincorporated entity" means an
233 unincorporated entity whose internal affairs are governed by the
234 laws of this state.

235 (9) "Effective date of notice" is defined in Section
236 79-4-1.41.

237 (10) "Electronic" means relating to technology having
238 electrical, digital, magnetic, wireless, optical, electromagnetic,
239 or similar capabilities.

240 (11) "Electronic record" means information that is
241 stored in an electronic or other medium and is retrievable in
242 paper form through an automated process used in conventional
243 commercial practice, unless otherwise authorized in accordance
244 with Section 79-4-1.41(j).

245 (12) "Electronic transmission" or "electronically
246 transmitted" means any form or process of communication, not
247 directly involving the physical transfer of paper or another
248 tangible medium, which (i) is suitable for the retention,

249 retrieval and reproduction of information by the recipient, and
250 (ii) is retrievable in paper form by the recipient through an
251 automated process used in conventional commercial practice, unless
252 otherwise authorized in accordance with Section 79-4-1.41(j).

253 (13) "Eligible entity" means a domestic or foreign
254 unincorporated entity or a domestic or foreign nonprofit
255 corporation.

256 (14) "Employee" includes an office but not a director.
257 A director may accept duties that make him also an employee.

258 (15) "Expenses" means reasonable expenses of any kind
259 that are incurred in connection with a matter.

260 (16) "Entity" includes domestic and foreign business
261 corporation; domestic and foreign nonprofit corporation; estate;
262 trust; business trust; domestic and foreign unincorporated entity;
263 two (2) or more persons having a joint or common economic
264 interest, and state, United States, and foreign government.

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

267 (18) "Filing entity" means another entity that is of a
268 type that is created by filing a public organic document.

269 (19) "Foreign corporation" means a corporation * * *
270 incorporated under a law other than the law of this state, which
271 would be a business corporation if incorporated under the laws of
272 this state.

273 (20) "Foreign nonprofit corporation" means a
274 corporation incorporated under a law other than the law of this
275 state, which would be a nonprofit corporation if incorporated
276 under that laws of this state.

277 (21) "Foreign unincorporated entity" means an
278 unincorporated entity whose internal affairs are governed by an
279 organic law of a jurisdiction other than this state.

280 (22) "Governmental subdivision" includes authority,
281 county, district and municipality.

282 (23) "Includes" denotes a partial definition.

283 (24) "Individual" means a natural person, and includes
284 the estate of an incompetent or deceased natural person.

285 (25) "Means" denotes an exhaustive definition.

286 (26) "Nonprofit corporation" or "domestic nonprofit
287 corporation" means a corporation incorporated under the laws of
288 this state and subject to the provisions of Section 79-11-101 et
289 seq.

290 (27) "Notice" is defined in Section 79-4-1.41.

291 (28) "Person" includes an individual and an entity.

292 (29) "Principal office" means the office (in or out of
293 this state) so designated in the annual report where the principal
294 executive offices of a domestic or foreign corporation are
295 located.

296 (30) "Proceeding" includes civil suit and criminal,
297 administrative and investigatory action.

298 (31) "Public corporation" means a corporation that has
299 shares listed on a national securities exchange or regularly
300 traded in a market maintained by one or more members of a
301 national * * * securities association.

302 (32) "Qualified director" is defined in Section
303 79-4-1.43.

304 (33) "Record date" means the date established under
305 Article 6 or 7 on which a corporation determines the identity of
306 its shareholders and their shareholdings for purposes of Section
307 79-4-1.01 et seq. The determinations shall be made as of the
308 close of business on the record date unless another time for doing
309 so is specified when the record date is fixed.

310 (34) "Secretary" means the corporate officer to whom
311 the board of directors has delegated responsibility under Section
312 79-4-8.40(c) for custody of the minutes of the meetings of the
313 board of directors and of the shareholders and for authenticating
314 records of the corporation.

315 (35) "Shares" means the unit into which the proprietary
316 interests in a corporation are divided.

317 (36) "Shareholder" means the person in whose name
318 shares are registered in the records of a corporation or the
319 beneficial owner of shares to the extent of the rights granted by
320 a nominee certificate on file with a corporation.

321 (37) "Sign" or "signature" * * * means, with present
322 intent to authenticate or adopt a document:

323 (i) to execute or adopt a tangible symbol to a
324 document, and includes any manual, facsimile, or conformed
325 signature; or

326 (ii) to attach to or logically associate with an
327 electronic transmission, an electronic sound, symbol, or process,
328 and includes an electronic signature in an electronic
329 transmission.

330 (38) "State," when referring to a part of the United
331 States, includes a state and commonwealth (and their agencies and
332 governmental subdivisions) and a territory, and insular possession
333 (and their agencies and governmental subdivisions) of the United
334 States.

335 (39) "Subscriber" means a person who subscribes for
336 shares in a corporation, whether before or after incorporation.

337 (40) "Unincorporated entity" means an organization or
338 artificial legal person that either has a separate legal existence
339 or has the power to acquire an estate in real property in its own
340 name and that is not any of the following: a domestic or foreign

341 business or nonprofit corporation, an estate, a trust, a state,
342 the United States, or a foreign government. The term includes a
343 general partnership, limited liability company, limited
344 partnership, business trust, joint-stock association and
345 unincorporated nonprofit association.

346 (41) "United States" includes district, authority,
347 bureau, commission, department and any other agency of the United
348 States.

349 (42) "Voting group" means all shares of one or more
350 classes or series that under the articles of incorporation or
351 Section 79-4-1.01 et seq. are entitled to vote and be counted
352 together collectively on a matter at a meeting of shareholders.
353 All shares entitled by the articles of incorporation or Section
354 79-4-1.01 et seq. to vote generally on the matter are for that
355 purpose a single voting group.

356 (43) "Voting power" means the current power to vote in
357 the election of directors.

358 (44) "Writing" or "written" means any information in
359 the form of a document.

360 **SECTION 5.** Section 79-4-1.41, Mississippi Code of 1972, is
361 amended as follows: [ss015]

362 79-4-1.41. **Form of notice.** (a) Notice under Section
363 79-4-1.01 et seq., must be in writing unless oral notice is
364 reasonable * * * in the circumstances. Unless otherwise agreed
365 between the sender and the recipient, words in a notice or other
366 communication under this chapter must be in English.

367 (b) A notice or other communication may be given or sent by
368 any method of delivery, * * * except that electronic * * *
369 transmissions must be in accordance with this section. If these
370 methods of delivery are impracticable, a notice or other
371 communications may be communicated by a newspaper of general

372 circulation in the area where published, or by radio, television
373 or other form of public broadcast communication.

374 * * *

375 (c) Notice or other communication to a domestic or foreign
376 corporation authorized to transact business in this state may be
377 delivered to its registered agent at its registered office or to
378 the secretary of the corporation at its principal office shown in
379 its most recent annual report or, in the case of a foreign
380 corporation that has not yet delivered an annual report, in its
381 application for a certificate of authority.

382 (d) Notice or other communication may be delivered by
383 electronic transmission if consented to by the recipient or if
384 authorized by subsection (j) of this section.

385 (e) Any consent under subsection (d) of this section may be
386 revoked by the person who consented by written or electronic
387 notice to the person to whom the consent was delivered. Any such
388 consent is deemed revoked if (1) the corporation is unable to
389 deliver two (2) consecutive electronic transmissions given by the
390 corporation in accordance with such consent, and (2) such inability
391 becomes known to the secretary or an assistant secretary of the
392 corporation or to the transfer agent, or other person responsible
393 for the giving of notice or other communications; provided,
394 however, the inadvertent failure to treat such inability as a
395 revocation shall not invalidate any meeting or other action.

396 (f) Unless otherwise agreed between the sender and the
397 recipient, an electric transmission is received when:

398 (1) It enters an information processing system that the
399 recipient has designated or uses for the purpose of receiving
400 electronic transmissions or information of the type sent, and from
401 which the recipient is able to retrieve the electronic
402 transmission; and

403 (2) It is in a form capable of being processed by that
404 system.

405 (g) Receipt of an electronic acknowledgement from an
406 information processing system described in subsection (f)(1) of
407 this section establishes that an electronic transmission was
408 received but, by itself, does not establish that the content sent
409 corresponds to the content received.

410 (h) An electronic transmission is received under this
411 section even if no individual is aware of its receipt.

412 (i) * * * Notice or other communication, if in a
413 comprehensible form or manner, is effective at the earliest of the
414 following:

415 * * *

416 (1) If in physical form, the earliest of when it
417 is actually received, or when it is left at:

418 (A) A shareholder's address shown on the
419 corporation's record of shareholders maintained by the corporation
420 under Section 79-4-16.01(c);

421 (B) A director's residence or usual place of
422 business; or

423 (C) The corporation's principal place of
424 business;

425 (2) * * * If mailed postage prepaid and correctly
426 addressed to a shareholder, upon deposit in the United States
427 mail;

428 (3) If mailed by United States mail postage prepaid and
429 correctly addressed to a recipient other than a shareholder, the
430 earliest when it is actually received or:

431 (A) * * * If sent by registered or certified mail,
432 return receipt requested, the date shown on the return
433 receipt * * * signed by or on behalf of the addressee; or

434 (B) Five (5) days after it is deposited in the
435 United States mail;

436 (4) If an electronic transmission, when it is received
437 as provided in subsection (f) of this section; and

438 (5) If oral, when communicated.

439 * * *

440 (j) A notice or other communication may be in the form of an
441 electronic transmission that cannot be directly reproduced in
442 paper form by the recipient through an automated process used in
443 conventional commercial practice only if (i) the electronic
444 transmission is otherwise retrievable in perceivable form, and
445 (ii) the sender and the recipient have consented in writing to the
446 use of such form of electronic transmission.

447 (k) If Section 79-4-1.01 et seq. prescribes * * *
448 requirements for notices or other communications in particular
449 circumstances, those requirements govern. If articles of
450 incorporation or bylaws prescribe * * * requirements for notices
451 or other communications, not inconsistent with this section or
452 other provisions of Section 79-4-1.01 et seq., those requirements
453 govern. The articles of incorporation or bylaws may authorize or
454 require delivery of notices of meetings of directors by electronic
455 transmission.

456 **SECTION 6.** Section 79-4-4.01, Mississippi Code of 1972, is
457 amended as follows: [SS016]

458 79-4-4.01. **Requirements.** (a) A corporate name:

459 (1) Must contain the word "corporation,"
460 "incorporated," "company" or "limited," or the abbreviation
461 "corp.," "inc.," "co." or "ltd." or words or abbreviations of like
462 import in another language; and

463 * * *

464 (2) May not contain language stating or implying that
465 the corporation is organized for a purpose other than that
466 permitted by Section 79-4-3.01 and its articles of incorporation.

467 (b) Except as authorized by subsections (c) and (d), a
468 corporate name must be distinguishable upon the records of the
469 Secretary of State from:

470 (1) The corporate name of a corporation incorporated or
471 authorized to transact business in this state;

472 (2) The fictitious name adopted by a foreign
473 corporation or foreign limited liability company authorized to
474 transact business in this state because its real name is
475 unavailable; * * *

476 (3) The corporate name of a nonprofit corporation
477 incorporated or authorized to transact business in this state;

478 (4) The name of a limited partnership, limited
479 liability partnership or limited liability company that is
480 organized or registered under the laws of this state and which has
481 not been dissolved; and

482 (5) A name that is reserved or registered in the Office
483 of the Secretary of State for any of the entities named in
484 subsection (b) of this section which reservation or registration
485 has not expired.

486 (c) A corporation may apply to the Secretary of State for
487 authorization to use a name that is not distinguishable upon his
488 records from one or more of the names described in subsection (b).
489 The Secretary of State shall authorize use of the name applied for
490 if:

491 (1) The other corporation consents to the use in
492 writing and submits an undertaking in form satisfactory to the
493 Secretary of State to change its name to a name that is

494 distinguishable upon the records of the Secretary of State from
495 the name of the applying corporation; or

496 (2) The applicant delivers to the Secretary of State a
497 certified copy of the final judgment of a court of competent
498 jurisdiction establishing the applicant's right to use the name
499 applied for in this state.

500 (d) A corporation may use the name (including the fictitious
501 name) of another domestic or foreign corporation that is used in
502 this state if the other corporation is incorporated or authorized
503 to transact business in this state and the proposed user
504 corporation;

505 (1) Has merged with the other corporation;

506 (2) Has been formed by reorganization of the other
507 corporation; or

508 (3) Has acquired all or substantially all of the
509 assets, including the corporate name, of the other corporation.

510 (e) Section 79-4-1.01 et seq. do not control the use of
511 fictitious names.

512 **SECTION 7.** Section 79-4-4.02, Mississippi Code of 1972, is
513 amended as follows: [SS017]

514 79-4-4.02. **Reservation.** (a) A person may reserve the
515 exclusive use of a corporate name, including a fictitious name for
516 a foreign corporation whose corporate name is not available, by
517 delivering an application to the Secretary of State for filing.
518 The application must set forth the name and address of the
519 applicant and the name proposed to be reserved. If the Secretary
520 of State finds that the corporate name applied for is available,
521 he shall reserve the name for the applicant's exclusive use for a
522 nonrenewable one-hundred-eighty-day period.

523 (b) The owner of a reserved corporate name may transfer the
524 reservation to another person by delivering to the Secretary of

525 State a signed notice of the transfer that states the name and
526 address of the transferee.

527 (c) The reservation of a specified name may be cancelled by
528 delivering to the Office of the Secretary of State a notice of
529 cancellation, specifying the name of the reservation to be
530 cancelled and the name and address of the owner or transferee.

531 (d) Unless the Secretary of State finds that any
532 application, notice of transfer, or notice of cancellation filed
533 with the Secretary of State as required by this section does not
534 conform to law, upon receipt of all filing fees required by law
535 the Secretary of State shall prepare and return to the person who
536 filed the instrument a copy of the filed instrument with a
537 notation thereon of the action taken by the Secretary of State.

538 (e) A fee as set forth in Section 79-4-1.22(4) of this
539 chapter shall be paid at the time of the reservation of any name
540 and at the time of the filing of a notice of the transfer or
541 cancellation of any such reservation.

542 **SECTION 8.** Section 79-4-5.01, Mississippi Code of 1972, is
543 amended as follows: [SS018]

544 79-4-5.01. **Registered office and agent required.** Each
545 corporation must continuously maintain in this state:

546 (1) A registered office that may be the same as any of
547 its places of business; and

548 (2) A registered agent, who may be:

549 (i) An individual who resides in this state and
550 whose business office is identical with the registered office;

551 (ii) A domestic corporation, a domestic limited
552 liability company or * * * domestic nonprofit corporation whose
553 business office is identical with the registered office; or

554 (iii) A foreign corporation, foreign limited
555 liability company or * * * foreign nonprofit corporation

556 authorized to transact business in this state whose business
557 office is identical with the registered office.

558 **SECTION 9.** Section 79-4-5.02, Mississippi Code of 1972, is
559 amended as follows: [ss019]

560 79-4-5.02. **Changing registered office or agent.** (a) A
561 corporation may change its registered office or registered agent
562 by delivering to the Secretary of State for filing a statement of
563 change that sets forth:

564 (1) The name of the corporation;

565 (2) The street address of its current registered
566 office;

567 (3) If the current registered office is to be changed,
568 the street address of the new registered office;

569 (4) The name of its current registered agent;

570 (5) If the current registered agent is to be changed,
571 the name of the new registered agent and the new agent's written
572 consent (either on the statement or attached to it) to the
573 appointment; and

574 (6) That after the change or changes are made, the
575 street addresses of its registered office and the business office
576 of its registered agent will be identical.

577 (b) If * * * the street address of a registered agent's
578 business office changes, the registered agent may change the
579 street address of the registered office of any corporation for
580 which he is the registered agent by delivering a signed written
581 notice of the change to the corporation * * * and delivering to
582 the Secretary of State for filing a signed statement that complies
583 with the requirements of subsection (a) and recites that the
584 corporation has been notified of the change.

585 **SECTION 10.** Section 79-4-6.20, Mississippi Code of 1972, is
586 amended as follows: [ss0110]

587 79-4-6.20. **Subscriptions.** (a) A subscription for shares
588 entered into before incorporation is irrevocable for six (6)
589 months unless the subscription agreement provides a longer or
590 shorter period or all the subscribers agree to revocation.

591 (b) The board of directors may determine the payment terms
592 of subscriptions for shares that were entered into before
593 incorporation, unless the subscription agreement specifies them.
594 A call for payment by the board of directors must be uniform so
595 far as practicable as to all shares of the same class or series,
596 unless the subscription agreement specifies otherwise.

597 (c) Shares issued pursuant to subscriptions entered into
598 before incorporation are fully paid and nonassessable when the
599 corporation receives the consideration specified in the
600 subscription agreement.

601 (d) If a subscriber defaults in payment of money or property
602 under a subscription agreement entered into before incorporation,
603 the corporation may collect the amount owed as any other debt.
604 Alternatively, unless the subscription agreement provides
605 otherwise, the corporation may rescind the agreement and may sell
606 the shares if the debt remains unpaid more than twenty (20) days
607 after the corporation sends a written demand for payment to the
608 subscriber.

609 (e) A subscription agreement entered into after
610 incorporation is a contract between the subscriber and the
611 corporation subject to Section 79-4-6.21.

612 **SECTION 11.** Section 79-4-7.04, Mississippi Code of 1972, is
613 amended as follows: [SS0111]

614 79-4-7.04. **Actions taken without meetings; written notice;**
615 **written consent.** (a) Action required or permitted by Section
616 79-4-1.01 et seq. to be taken at a shareholders' meeting may be
617 taken without a meeting if the action is taken by all the

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618 shareholders entitled to vote on the action. The action must be
619 evidenced by one or more written consents describing the action
620 taken, signed by all the shareholders entitled to vote on the
621 action and delivered to the corporation for inclusion in the
622 minutes or filing with the corporate records. A unanimous consent
623 signed under this subsection is the act of the shareholders when
624 consents signed by all shareholders have been delivered to the
625 corporation.

626 (b) The articles of incorporation may provide that any
627 action required or permitted by Section 79-4-1.01 et seq. to be
628 taken at a shareholder's meeting may be taken without a meeting
629 and without prior notice, if consents in writing setting forth the
630 action so taken are signed by the holders of outstanding shares
631 having not less than the minimum number of votes that would be
632 required to authorize or take the action at a meeting at which all
633 shares entitled to vote on the action were present and voted. The
634 written consent shall bear the date of signature of the
635 shareholder who signs the consent and be delivered to the
636 corporation for inclusion in the minutes or filing with the
637 corporate records.

638 (c) If not otherwise fixed under Section 79-4-7.03 or
639 79-4-7.07, and if prior board action is not required respecting
640 the action to be taken without a meeting, the record date for
641 determining the shareholders entitled to take action without a
642 meeting shall be the first date on which a signed written consent
643 is delivered to the corporation. If not otherwise fixed under
644 Section 79-4-7.03 or 79-4-7.07, and if prior board action is
645 required respecting the action to be taken without a meeting, the
646 record date shall be the close of business on the day the
647 resolution of the board taking such prior action is adopted. No
648 written consent shall be effective to take the corporate action

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649 referred to therein unless, within sixty (60) days of the earliest
650 date on which a consent delivered to the corporation as required
651 by this section was signed, written consents signed by the holders
652 of shares having sufficient votes to take the action have been
653 delivered to the corporation. A written consent may be revoked by
654 a writing to that effect delivered to the corporation before
655 unrevoked written consents sufficient in number to take the
656 corporation action are delivered to the corporation.

657 (d) A consent signed pursuant to the provisions of this
658 section has the effect of a vote taken at a meeting and may be
659 described as such in any document. Unless the articles of
660 incorporation, bylaws, or a resolution of the board of directors
661 provides for a reasonable delay to permit tabulation of written
662 consents, the action taken by less than unanimous written consent
663 shall be effective when written consents signed by the holders of
664 shares having sufficient votes to take the action are delivered to
665 the corporation.

666 (e) If Section 79-4-1.01 et seq. requires that notice of a
667 proposed action be given to nonvoting shareholders and the action
668 is to be taken by written consent of the voting shareholders, the
669 corporation must give its nonvoting shareholders written notice of
670 the action not more than ten (10) days after (i) written consents
671 sufficient to take the action have been delivered to the
672 corporation, or (ii) such later date that tabulation of consents
673 is completed pursuant to an authorization under subsection (d).
674 The notice must reasonably describe the action taken and contain
675 or be accompanied by the same material that, under Section
676 79-4-1.01 et seq., would have been required to be sent to
677 nonvoting shareholders in a notice of a meeting at which the
678 proposed action would have been submitted to the shareholders for
679 action.

680 (f) If action is taken by less than unanimous written
681 consent of the voting shareholders, the corporation must give its
682 nonconsenting voting shareholders written notice of the action not
683 more than ten (10) days after (i) written consents sufficient to
684 take the action have been delivered to the corporation, or (ii)
685 such later date that tabulation of consents is completed pursuant
686 to an authorization under subsection (d). The notice must
687 reasonably describe the action taken and contain or be accompanied
688 by the same material that, under Section 79-4-1.01 et seq., would
689 have been required to be sent to voting shareholders in a notice
690 of a meeting at which the action would have been submitted to the
691 shareholders for action.

692 (g) The notice requirements in subsections (e) and (f) shall
693 not delay the effectiveness of actions taken by written consent,
694 and a failure to comply with such notice requirements shall not
695 invalidate actions taken by written consent, provided that this
696 subsection shall not be deemed to limit judicial power to fashion
697 any appropriate remedy in favor of a shareholder adversely
698 affected by a failure to give such notice within the required time
699 period.

700 * * *

701 **SECTION 12.** Section 79-4-7.05, Mississippi Code of 1972, is
702 amended as follows: [SS0112]

703 79-4-7.05. **Notice to shareholders.** (a) A corporation shall
704 notify shareholders of the date, time and place of each annual and
705 special shareholders' meeting no fewer than ten (10) nor more than
706 sixty (60) days before the meeting date. If the board of
707 directors has authorized participation by means of remote
708 communication pursuant to Section 79-4-7.09 for any class or
709 series of shareholders, the notice of such class or series of
710 shareholders shall describe the means of remote communication to

711 be used. Unless Section 79-4-1.01 et seq. or the articles of
712 incorporation require otherwise, the corporation is required to
713 give notice only to shareholders entitled to vote at the meeting.

714 (b) Unless Section 79-4-1.01 et seq. or the articles of
715 incorporation require otherwise, notice of an annual meeting need
716 not include a description of the purpose or purposes for which the
717 meeting is called.

718 (c) Notice of a special meeting must include a description
719 of the purpose or purposes for which the meeting is called.

720 (d) If not otherwise fixed under Section 79-4-7.03 or
721 79-4-7.07, the record date for determining shareholders entitled
722 to notice of and to vote at an annual or special shareholders'
723 meeting is the day before the first notice is delivered to
724 shareholders.

725 (e) Unless the bylaws require otherwise, if an annual or
726 special shareholders' meeting is adjourned to a different date,
727 time or place, notice need not be given of the new date, time or
728 place if the new date, time or place is announced at the meeting
729 before adjournment. If a new record date for the adjourned
730 meeting is or must be fixed under Section 79-4-7.07, however,
731 notice of the adjourned meeting must be given under this section
732 to persons who are shareholders as of the new record date.

733 **SECTION 13.** The following shall be codified as Section
734 79-4-7.09, Mississippi Code of 1972:

735 79-4-7.09. **Remote participation in annual and special**
736 **meetings.** (a) Shareholders of any class or series may
737 participate in any meeting of shareholders by means of remote
738 communication to the extent the board of directors authorizes such
739 participation for such class or series. Participation by means of
740 remote communication shall be subject to such guidelines and

741 procedures as the board of directors adopts, and shall be in
742 conformity with subsection (b) of this section.

743 (b) Shareholders participating in a shareholders' meeting by
744 means of remote communication shall be deemed present and may vote
745 at such a meeting if the corporation has implemented reasonable
746 measures:

747 (1) To verify that each person participating remotely
748 is a shareholder; and

749 (2) To provide such shareholders a reasonable
750 opportunity to participate in the meeting and to vote on matters
751 submitted to the shareholders, including an opportunity to
752 communicate, and to read or hear the proceedings of the meeting,
753 substantially concurrently with such proceeding.

754 **SECTION 14.** Section 79-4-7.22, Mississippi Code of 1972, is
755 amended as follows: [SS0113]

756 79-4-7.22. **Appointment of proxy.** (a) A shareholder may
757 vote his shares in person or by proxy.

758 (b) A shareholder or his agent or attorney-in-fact may
759 appoint a proxy to vote or otherwise act for the shareholder by
760 signing an appointment form or by electronic transmission. An
761 electronic transmission must contain or be accompanied by
762 information from which the recipient can determine the date of the
763 transmission, and that the transmission was authorized by the
764 sender or the sender's agent or attorney-in-fact.

765 (c) An appointment of a proxy is effective when a signed
766 appointment form or an electronic transmission of the appointment
767 is received by the inspector of election or the officer or agent
768 of the corporation authorized to tabulate votes. An appointment
769 is valid for eleven (11) months unless a longer period is
770 expressly provided in the appointment.

771 (d) An appointment of a proxy is revocable unless the
772 appointment form or electronic transmission states that it is
773 irrevocable and the appointment is coupled with an interest.
774 Appointments coupled with an interest include the appointment of:

775 (1) A pledgee;

776 (2) A person who purchased or agreed to purchase the
777 shares;

778 (3) A creditor of the corporation who extended it
779 credit under terms requiring the appointment;

780 (4) An employee of the corporation whose employment
781 contract requires the appointment; or

782 (5) A party to a voting agreement created under Section
783 79-4-7.31.

784 (e) The death or incapacity of the shareholder appointing a
785 proxy does not affect the right of the corporation to accept the
786 proxy's authority unless notice of the death or incapacity is
787 received by the secretary or other officer or agent authorized to
788 tabulate votes before the proxy exercises his authority under the
789 appointment.

790 (f) An appointment made irrevocable under subsection (d) is
791 revoked when the interest with which it is coupled is
792 extinguished.

793 (g) A transferee for value of shares subject to an
794 irrevocable appointment may revoke the appointment if he did not
795 know of its existence when he acquired the shares and the
796 existence of the irrevocable appointment was not noted
797 conspicuously on the certificate representing the shares or on the
798 information statement for shares without certificates.

799 (h) Subject to Section 79-4-7.24 and to any express
800 limitation on the proxy's authority stated in the appointment form
801 or electronic transmission, a corporation is entitled to accept

802 the proxy's vote or other action as that of the shareholder making
803 the appointment.

804 **SECTION 15.** Section 79-4-7.42, Mississippi Code of 1972, is
805 amended as follows: [SS0114]

806 79-4-7.42. **Written demand.** No shareholder may commence a
807 derivative proceeding until:

808 (1) A written demand has been made upon the corporation
809 to take suitable action; and

810 (2) Ninety (90) days have expired from the date
811 delivery of the demand was made unless the shareholder has earlier
812 been notified that the demand has been rejected by the corporation
813 or unless irreparable injury to the corporation would result by
814 waiting for the expiration of the ninety-day period.

815 **SECTION 16.** Section 79-4-8.01, Mississippi Code of 1972, is
816 amended as follows: [SS0115]

817 79-4-8.01. **Board required; role.** (a) Except as provided in
818 Section 79-4-7.32, each corporation must have a board of
819 directors.

820 (b) All corporate powers shall be exercised by or under the
821 authority of the board of directors of the corporation, and the
822 business and affairs of the corporation shall be managed by or
823 under the direction, and subject to the oversight, of its board of
824 directors, subject to any limitation set forth in the articles of
825 incorporation or in an agreement authorized under Section
826 79-4-7.32.

827 **SECTION 17.** Section 79-4-8.05, Mississippi Code of 1972, is
828 amended as follows: [SS0116]

829 79-4-8.05. **Terms.** (a) The terms of the initial directors
830 of a corporation expire at the first shareholders' meeting at
831 which directors are elected.

832 (b) The terms of all other directors expire at the next, or
833 if their terms are staggered in accordance with Section 79-4-8.06,
834 at the applicable second or third, annual shareholders' meeting
835 following their election * * *.

836 (c) A decrease in the number of directors does not shorten
837 an incumbent director's term.

838 (d) The term of a director elected to fill a vacancy expires
839 at the next shareholders' meeting at which directors are elected.

840 (e) Despite the expiration of a director's term, he
841 continues to serve until his successor is elected and qualifies or
842 until there is a decrease in the number of directors.

843 **SECTION 18.** Section 79-4-8.06, Mississippi Code of 1972, is
844 amended as follows: [SS0117]

845 79-4-8.06. **Staggered terms.** The articles of incorporation
846 may provide for staggering the terms of directors by dividing the
847 total number of directors into two (2) or three (3) groups, with
848 each group containing one-half (1/2) or one-third (1/3) of the
849 total, as near as may be practicable. In that event, the terms of
850 directors in the first group expire at the first annual
851 shareholders' meeting after their election, the terms of the
852 second group expire at the second annual shareholders' meeting
853 after their election, and the terms of the third group, if any,
854 expire at the third annual shareholders' meeting after their
855 election. At each annual shareholders' meeting held thereafter,
856 directors shall be chosen for a term of two (2) years or three (3)
857 years, as the case may be, to succeed those whose terms expire.

858 **SECTION 19.** Section 79-4-8.07, Mississippi Code of 1972, is
859 amended as follows: [SS0118]

860 79-4-8.07. **Resignation.** (a) A director may resign at any
861 time by delivering written notice to the board of directors, or
862 its chair or to the secretary of the corporation.

863 (b) A resignation is effective when the notice is delivered
864 unless the notice specifies a later effective date.

865 **SECTION 20.** Section 79-4-8.10, Mississippi Code of 1972, is
866 amended as follows: [SS0119]

867 79-4-8.10. **Vacancies.** (a) Unless the articles of
868 incorporation provide otherwise, if a vacancy occurs on a board of
869 directors, including a vacancy resulting from an increase in the
870 number of directors:

871 (1) The shareholders may fill the vacancy;

872 (2) The board of directors may fill the vacancy; or

873 (3) If the directors remaining in office constitute
874 fewer than a quorum of the board, they may fill the vacancy by the
875 affirmative vote of a majority of all the directors remaining in
876 office.

877 (b) If the vacant office was held by a director elected by a
878 voting group of shareholders, only the holders of shares of that
879 voting group are entitled to fill the vacancy if it is filled by
880 the shareholders and only the directors elected by that voting
881 group are entitled to fill the vacancy if it is filled by the
882 director.

883 (c) A vacancy that will occur at a specific later date (by
884 reason of a resignation effective at a later date under Section
885 79-4-8.07(b) or otherwise) may be filled before the vacancy occurs
886 but the new director may not take office until the vacancy occurs.

887 **SECTION 21.** Section 79-4-8.24, Mississippi Code of 1972, is
888 amended as follows: [SS0120]

889 79-4-8.24. **Quorum; assent to action presumed.** (a) Unless
890 the articles of incorporation or bylaws require a greater number
891 or unless otherwise specifically provided in this chapter, a
892 quorum of a board of directors consists of:

893 (1) A majority of the fixed number of directors if the
894 corporation has a fixed board size; or

895 (2) A majority of the number of directors prescribed,
896 or if no number is prescribed, the number in office immediately
897 before the meeting begins, if the corporation has a variable-range
898 size board.

899 (b) The articles of incorporation or bylaws may authorize a
900 quorum of a board of directors to consist of no fewer than
901 one-third (1/3) of the fixed or prescribed number of directors
902 determined under subsection (a).

903 (c) If a quorum is present when a vote is taken, the
904 affirmative vote of a majority of directors present is the act of
905 the board of directors unless the articles of incorporation or
906 bylaws require the vote of a greater number of directors.

907 (d) A director who is present at a meeting of the board of
908 directors or a committee of the board of directors when corporate
909 action is taken is deemed to have assented to the action taken
910 unless: (1) the director objects at the beginning of the meeting
911 (or promptly upon his arrival) to holding it or transacting
912 business at the meeting; (2) the dissent or abstention from the
913 action taken is entered in the minutes of the meeting; or (3) the
914 director delivers written notice of the director's dissent or
915 abstention to the presiding officer of the meeting before its
916 adjournment or to the corporation immediately after adjournment of
917 the meeting. The right of dissent or abstention is not available
918 to a director who votes in favor of the action taken.

919 **SECTION 22.** The following shall be codified as Section
920 79-4-8.26, Mississippi Code of 1972:

921 79-4-8.26. **Submission of matters for shareholder vote.** A
922 corporation may agree to submit a matter to a vote of its

923 shareholders even if, after approving the matter, the board of
924 directors determines it no longer recommends the matter.

925 **SECTION 23.** Section 79-4-8.31, Mississippi Code of 1972, is
926 amended as follows: [SS0121]

927 79-4-8.31. **Liability of director; burden of proof.** (a) A
928 director shall not be liable to the corporation or its
929 shareholders for any decision to take or not to take action, or
930 any failure to take any action, as a director, unless the party
931 asserting liability in a proceeding establishes that:

932 (1) No defense by the director based on (i) any
933 provision in the articles of incorporation authorized by Section
934 79-4-2.02(b) (4) or the protection afforded by Section 79-4-8.61
935 for action taken in compliance with Section 79-4-8.62 or
936 79-4-8.63, * * * or (ii) the protection afforded by Section
937 79-4-8.70, precludes liability; and

938 (2) The challenged conduct consisted or was the result
939 of:

940 (i) Action not in good faith; or

941 (ii) A decision:

942 (A) Which the director did not reasonably
943 believe to be in the best interests of the corporation; or

944 (B) As to which the director was not informed
945 to an extent the director reasonably believed appropriate in the
946 circumstances; or

947 (iii) A lack of objectivity due to the director's
948 familial, financial or business relationship with, or a lack of
949 independence due to the director's domination or control by,
950 another person having a material interest in the challenged
951 conduct:

952 (A) Which relationship or which domination or
953 control could reasonably be expected to have affected the

954 director's judgment respecting the challenged conduct in a manner
955 adverse to the corporation; and

956 (B) After a reasonable expectation to such
957 effect has been established, the director shall not have
958 established that the challenged conduct was reasonably believed by
959 the director to be in the best interests of the corporation; or

960 (iv) A sustained failure of the director to devote
961 attention to ongoing oversight of the business and affairs of the
962 corporation, or a failure to devote timely attention, by making
963 (or causing to be made) appropriate inquiry, when particular facts
964 and circumstances of significant concern materialize that would
965 alert a reasonably attentive director to the need therefore; or

966 (v) Receipt of a financial benefit to which the
967 director was not entitled or any other breach of the director's
968 duties to deal fairly with the corporation and its shareholders
969 that is actionable under applicable law.

970 (b) The party seeking to hold the director liable:

971 (1) For money damages, shall also have the burden of
972 establishing that:

973 (i) Harm to the corporation or its shareholders
974 has been suffered; and

975 (ii) The harm suffered was proximately caused by
976 the director's challenged conduct; or

977 (2) For other money payment under a legal remedy, such
978 as compensation for the unauthorized use of corporate assets,
979 shall also have whatever persuasion burden may be called for to
980 establish that the payment sought is appropriate in the
981 circumstances; or

982 (3) For other money payment under an equitable remedy,
983 such as profit recovery by or disgorgement to the corporation,
984 shall also have whatever persuasion burden may be called for to

985 establish that the equitable remedy sought is appropriate in the
986 circumstances.

987 (c) Nothing contained in this section shall (1) in any
988 instance where fairness is at issue, such as consideration of the
989 fairness of a transaction to the corporation under Section
990 79-4-8.61(b) (3), alter the burden of proving the fact or lack of
991 fairness otherwise applicable, (2) alter the fact or lack of
992 liability of a director under another section of this act, such as
993 the provisions governing the consequences of an unlawful
994 distribution under Section 79-4-8.33 or a transactional interest
995 under Section 79-4-8.61, or (3) affect any rights to which the
996 corporation or a shareholder may be entitled under another statute
997 of this state or the United States.

998 **SECTION 24.** Section 79-4-8.50, Mississippi Code of 1972, is
999 amended as follows: [ss0122]

1000 79-4-8.50. **Definitions.** In this subchapter:

1001 (1) "Corporation" includes any domestic or foreign
1002 predecessor entity of a corporation in a merger.

1003 (2) "Director" or "officer" means an individual who is
1004 or was a director or officer, respectively, of a corporation or
1005 who, while a director or officer of the corporation, is or was
1006 serving at the corporation's request as a director, officer,
1007 manager, partner, trustee, employee or agent of another entity or
1008 employee benefit plan * * *. A director or officer is considered
1009 to be serving an employee benefit plan at the corporation's
1010 request if the individual's duties to the corporation also impose
1011 duties on, or otherwise involve services by, the individual to the
1012 plan or to participants in or beneficiaries of the plan.

1013 "Director" or "officer" includes, unless the context requires
1014 otherwise, the estate or personal representative of a director or
1015 officer.

1016 (3) "Expenses" means reasonable expenses of any kind
1017 that are incurred in connection with a matter.

1018 (4) "Liability" means the obligation to pay a judgment,
1019 settlement, penalty, fine (including an excise tax assessed with
1020 respect to an employee benefit plan), or reasonable expenses
1021 incurred with respect to a proceeding.

1022 (5) "Official capacity" means: (i) when used with
1023 respect to a director, the office of director in a corporation;
1024 and (ii) when used with respect to an officer, as contemplated in
1025 Section 79-4-8.56, the office in a corporation held by the
1026 officer. "Official capacity" does not include service for any
1027 other domestic or foreign corporation or any partnership, joint
1028 venture, trust, employee benefit plan or other entity.

1029 (6) "Party" means an individual who was, is, or is
1030 threatened to be made a defendant or respondent in a proceeding.

1031 (7) "Proceeding" means any threatened, pending, or
1032 completed action, suit or proceeding, whether civil, criminal,
1033 administrative, arbitratve or investigative and whether formal or
1034 informal.

1035 **SECTION 25.** Section 79-4-8.53, Mississippi Code of 1972, is
1036 amended as follows: [SS0123]

1037 79-4-8.53. **Litigation expenses.** (a) A corporation may,
1038 before final disposition of a proceeding, advance funds to pay for
1039 or reimburse the reasonable expenses incurred in connection with
1040 the proceeding by an individual who is a party to the proceeding
1041 because that individual is a member of the board of directors if
1042 the director delivers to the corporation:

1043 (1) A signed written affirmation of the director's good
1044 faith belief that the relevant standard of conduct described in
1045 Section 79-4-8.51 has been met by the director or that the
1046 proceeding involves conduct for which liability has been

1047 eliminated under a provision of the articles of incorporation as
1048 authorized by Section 79-4-2.02(b)(4); and

1049 (2) A signed written undertaking of the director to
1050 repay any funds advanced if the director is not entitled to
1051 mandatory indemnification under Section 79-4-8.52 and it is
1052 ultimately determined under Section 79-4-8.54 or Section 79-4-8.55
1053 that the director has not met the relevant standard of conduct
1054 described in Section 79-4-8.51.

1055 (b) The undertaking required by subsection (a)(2) must be an
1056 unlimited general obligation of the director but need not be
1057 secured and may be accepted without reference to the financial
1058 ability of the director to make repayment.

1059 (c) Authorizations under this section shall be made:

1060 (1) By the board of directors:

1061 (i) If there are two (2) or more qualified
1062 directors, by a majority vote of all the qualified directors (a
1063 majority of whom shall for such purpose constitute a quorum) or by
1064 a majority of the members of a committee of two (2) or more
1065 qualified directors appointed by such a vote; or

1066 (ii) If there are fewer than two (2) qualified
1067 directors, by the vote necessary for action by the board in
1068 accordance with Section 79-4-8.24(c), in which authorization
1069 directors who are not qualified directors may participate; or

1070 (2) By the shareholders, but shares owned by or voted
1071 under the control of a director who at the time is not a qualified
1072 director may not be voted on the authorization.

1073 **SECTION 26.** Section 79-4-8.60, Mississippi Code of 1972, is
1074 amended as follows: [SS0124]

1075 79-4-8.60. **Definitions.** In Sections 79-4-8.60 through
1076 79-4-8.63 and Section 79-4-8.70:

1077 (1) "Director's conflicting interest transaction" means
1078 a transaction effected or proposed to be effected by the
1079 corporation (or by an entity controlled by the corporation):

1080 (i) To which, at the relevant time, the director
1081 is a party; or

1082 (ii) Respecting which, at the relevant time, the
1083 director had knowledge and a material financial interest known to
1084 the director; or

1085 (iii) Respecting which, at the relevant time, the
1086 director knew that a related person was a party or had a material
1087 financial interest.

1088 (2) "Control" (including the term "controlled by")
1089 means (i) having the power, directly or indirectly, to elect or
1090 remove a majority of the members of the board of directors or
1091 other governing body of an entity, whether through the ownership
1092 of voting shares or interests, by contract, or otherwise, or (ii)
1093 being subject to a majority of the risk of loss from the entity's
1094 activities or entitled to receive a majority of the entity's
1095 residual returns.

1096 (3) "Relevant time" means (i) the time at which
1097 directors' actions respecting the transaction are taken in
1098 compliance with Section 79-4-8.62, or (ii) if the transaction is
1099 not brought before the board of directors of the corporation (or
1100 its committee) for action under Section 79-4-8.62, at the time the
1101 corporation (or an entity controlled by the corporation) becomes
1102 legally obligated to consummate the transaction.

1103 (4) "Material financial interest" means a financial
1104 interest in a transaction that would reasonably be expected to
1105 impair the objectivity of the director's judgment when
1106 participating in action on the authorization of the transaction.

1107 (5) "Related person" means:

|

1108 (i) The director's spouse;

1109 (ii) A child, stepchild, grandchild, parent,
1110 stepparent, grandparent, sibling, stepsiblings, half siblings,
1111 aunt, uncle, niece or nephew (or spouse of any thereof) of the
1112 director or of the director's spouse;

1113 (iii) An individual living in the same home as the
1114 director;

1115 (iv) An entity (other than the corporation or an
1116 entity controlled by the corporation) controlled by the director
1117 or any person specified in this paragraph (5);

1118 (v) A domestic or foreign (A) business or
1119 nonprofit corporation (other than the corporation or an entity
1120 controlled by the corporation) of which the director is a
1121 director, (B) unincorporated entity of which the director is a
1122 general partner or a member of the governing body, or (C)
1123 individual, trust or estate for whom or of which the director is a
1124 trustee, guardian, personal representative or like fiduciary; or

1125 (vi) A person that is, or an entity that is
1126 controlled by, an employer of the director.

1127 (6) "Fair to the corporation" means, for purposes of
1128 Section 79-4-8.61(b)(3), that the transaction as a whole was
1129 beneficial to the corporation, taking into appropriate account
1130 whether it was (i) fair in terms of the director's dealings with
1131 the corporation, and (ii) comparable to what might have been
1132 obtainable in an arms' length transaction, given the consideration
1133 paid or received by the corporation.

1134 (7) "Required disclosure" means disclosure of (i) the
1135 existence and nature of the director's conflicting interest, and
1136 (ii) all facts known to the director respecting the subject matter
1137 of the transaction that a director free of such conflicting

1138 interest would reasonably believe to be material in deciding
1139 whether to proceed with the transaction.

1140 **SECTION 27.** Section 79-4-11.01, Mississippi Code of 1972, is
1141 amended as follows: [SS0125]

1142 79-4-11.01. **Definitions.** As used in this chapter:

1143 (a) "Interests" means the proprietary interests in an
1144 other entity.

1145 (b) "Merger" means a business combination pursuant to
1146 Section 79-4-11.02.

1147 (c) "Organizational documents" means the basic document
1148 or documents that create, or determine the internal governance of,
1149 an other entity.

1150 (d) [Reserved]

1151 (e) "Party to a merger" or "party to a share exchange"
1152 means any domestic or foreign corporation or eligible entity that
1153 will * * *:

1154 (1) Merge under a plan of merger;

1155 (2) Acquire shares or interests of another
1156 corporation or eligible entity in a share exchange; or

1157 (3) Have all of its shares or interests or all of
1158 one or more classes or series of its shares or interests acquired
1159 in a share exchange.

1160 (f) "Share exchange" means a business combination
1161 pursuant to Section 79-4-11.03.

1162 (g) "Survivor" in a merger means the corporation or
1163 eligible entity into which one or more other corporations or other
1164 entities are merged. A survivor of a merger may preexist the
1165 merger or be created by the merger.

1166 **SECTION 28.** Section 79-4-11.06, Mississippi Code of 1972, is
1167 amended as follows: [SS0126]

1168 79-4-11.06. **Filing articles; contents; effectiveness.** (a)

1169 After a plan of merger or share exchange has been adopted and
1170 approved as required by the Mississippi Business Corporation Act,
1171 articles of merger or share exchange shall be signed on behalf of
1172 each party to the merger or share exchange by any officer or other
1173 duly authorized representative. The articles shall set forth:

1174 (1) The names of the parties to the merger or share
1175 exchange and the date on which the merger or share exchange
1176 occurred or is to be effective;

1177 (2) If the articles of incorporation of the survivor of
1178 a merger are amended, or if a new corporation is created as a
1179 result of a merger, the amendments to the survivor's articles of
1180 incorporation or the articles of incorporation of the new
1181 corporation;

1182 (3) If the plan of merger or share exchange required
1183 approval by the shareholders of a domestic corporation that was a
1184 party to the merger or share exchange, a statement that the plan
1185 was duly approved by the shareholders and, if voting by any
1186 separate voting group was required, by each such separate voting
1187 group, in the manner required by the Mississippi Business
1188 Corporation Act and the articles of incorporation;

1189 (4) If the plan of merger or share exchange did not
1190 require approval by the shareholders of a domestic corporation
1191 that was a party to the merger or share exchange, a statement to
1192 that effect; and

1193 (5) As to each foreign corporation and each other
1194 entity that was a party to the merger or share exchange, a
1195 statement that the plan and the performance of its terms were duly
1196 authorized by all action required by the laws under which the
1197 corporation or other entity is organized or by which it is

1198 governed, and by its articles of incorporation or organizational
1199 documents.

1200 (b) Articles of merger or share exchange shall be delivered
1201 to the Secretary of State for filing by the survivor of the merger
1202 or the acquiring corporation in a share exchange and shall take
1203 effect on the effective date.

1204 **SECTION 29.** Section 79-4-11.08, Mississippi Code of 1972, is
1205 amended as follows: [SS0127]

1206 79-4-11.08. **Abandonment.** (a) Unless otherwise provided in
1207 a plan of merger or share exchange or in the laws under which a
1208 foreign corporation or a domestic or foreign other entity that is
1209 a party to a merger or a share exchange is organized or by which
1210 it is governed, after the plan has been adopted and approved as
1211 required by this article, and at any time before the merger or
1212 share exchange has become effective, it may be abandoned by any
1213 party thereto without action by the party's shareholders or owners
1214 of interests, in accordance with any procedures set forth in the
1215 plan of merger or share exchange or, if no such procedures are set
1216 forth in the plan, in the manner determined by the board of
1217 directors of a corporation, or the managers of an other entity,
1218 subject to any contractual rights of other parties to the merger
1219 or share exchange.

1220 (b) If a merger or share exchange is abandoned under
1221 subsection (a) after articles of merger or share exchange have
1222 been filed with the Secretary of State but before the merger or
1223 share exchange has become effective, a statement that the merger
1224 or share exchange has been abandoned in accordance with this
1225 section, signed on behalf of a party to the merger or share
1226 exchange by an officer or other duly authorized representative,
1227 shall be delivered to the Secretary of State for filing prior to
1228 the effective date of the merger or share exchange. Upon filing,

1229 the statement shall take effect and the merger or share exchange
1230 shall be deemed abandoned and shall not become effective.

1231 **SECTION 30.** Section 79-4-13.20, Mississippi Code of 1972, is
1232 amended as follows: [SS0128]

1233 79-4-13.20. **Notice to shareholders of rights.** (a) Where
1234 any corporate action specified in Section 79-4-13.02(a) is to be
1235 submitted to a vote at a shareholders' meeting, the meeting notice
1236 must state that the corporation has concluded that the
1237 shareholders are, are not or may be entitled to assert appraisal
1238 rights under this article. If the corporation concludes that
1239 appraisal rights are or may be available, a copy of this article
1240 must accompany the meeting notice sent to those record
1241 shareholders entitled to exercise appraisal rights.

1242 (b) In a merger pursuant to Section 79-4-11.05, the parent
1243 corporation must notify in writing all record shareholders of the
1244 subsidiary who are entitled to assert appraisal rights that the
1245 corporate action became effective. Such notice must be sent
1246 within ten (10) days after the corporate action became effective
1247 and include the materials described in Section 79-4-13.22.

1248 (c) Where any corporate action specified in Section
1249 79-4-13.02(a) is to be approved by written consent of the
1250 shareholders pursuant to Section 79-4-7.04:

1251 (1) Written notice that appraisal rights are, are not
1252 or may be available must be sent to each record shareholder from
1253 whom a consent is solicited at the time consent of such
1254 shareholder is first solicited and, if the corporation has
1255 concluded that appraisal rights are or may be available, must be
1256 accompanied by a copy of this article; and

1257 (2) Written notice that appraisal rights are, are not
1258 or may be available must be delivered together with the notice to
1259 nonconsenting and nonvoting shareholders required by Section

1260 79-4-7.04(e) and (f), may include the materials described in
1261 Section 79-4-13.22 and, if the corporation has concluded that
1262 appraisal rights are or may be available, must be accompanied by a
1263 copy of this article.

1264 **SECTION 31.** Section 79-4-13.21, Mississippi Code of 1972, is
1265 amended as follows: [SS0129]

1266 79-4-13.21. **Eligibility for payment.** (a) If a corporate
1267 action specified in Section 79-4-13.02(a) is submitted to a vote
1268 at a shareholders' meeting, a shareholder who wishes to assert
1269 appraisal rights with respect to any class or series of shares:

1270 (1) Must deliver to the corporation, before the vote is
1271 taken, written notice of the shareholder's intent to demand
1272 payment if the proposed action is effectuated; and

1273 (2) Must not vote, or cause or permit to be voted, any
1274 shares of such class or series in favor of the proposed action.

1275 (b) If a corporate action specified in Section 79-4-13.02(a)
1276 is to be approved by less than unanimous written consent, a
1277 shareholder who wishes to assert appraisal rights with respect to
1278 any class or series of shares must not sign a consent in favor of
1279 the proposed action with respect to that class or series of
1280 shares.

1281 (c) A shareholder who fails to satisfy the requirements of
1282 subsection (a) or (b) is not entitled to payment under this
1283 article.

1284 **SECTION 32.** Section 79-4-13.22, Mississippi Code of 1972, is
1285 amended as follows: [SS0130]

1286 79-4-13.22. **Appraisal notice and form.** (a) If proposed
1287 corporate action requiring appraisal rights under Section
1288 79-4-13.02(a) becomes effective, the corporation must send a
1289 written appraisal notice and the form required by subsection
1290 (b)(1) to all shareholders who satisfied the requirements of

1291 Section 79-4-13.21(a) or Section 79-4-13.21(b). In the case of a
1292 merger under Section 79-4-11.05, the parent must deliver an * * *
1293 appraisal notice and form to all record shareholders who may be
1294 entitled to assert appraisal rights.

1295 (b) The appraisal notice must be delivered no earlier than
1296 the date the corporate action specified in Section 79-4-13.02(a)
1297 became effective and no later than ten (10) days after such date,
1298 and must:

1299 (1) Supply a form that (i) specifies the date of the
1300 first announcement to shareholders of the principal terms of the
1301 proposed corporate action, if any, and (ii) if such announcement
1302 was made, requires the shareholder asserting appraisal rights to
1303 certify whether beneficial ownership of those shares for which
1304 appraisal rights are asserted was acquired before that date and
1305 that, as to those shares, the shareholder did not vote for or
1306 consent to the transaction;

1307 (2) State:

1308 (i) Where the form must be sent and where
1309 certificates for certificated shares must be deposited and the
1310 date by which those certificates must be deposited, which date may
1311 not be earlier than the date for receiving the required form under
1312 subsection (2)(ii);

1313 (ii) A date by which the corporation must receive
1314 the form, which date may not be fewer than forty (40) nor more
1315 than sixty (60) days after the date the subsection (a) appraisal
1316 notice is sent, and state that the shareholder shall have waived
1317 the right to demand appraisal with respect to the shares unless
1318 the form is received by the corporation by such specified date;

1319 (iii) The corporation's estimate of the fair value
1320 of the shares;

1321 (iv) That, if requested in writing, the
1322 corporation will provide, to the shareholder so requesting, within
1323 ten (10) days after the date specified in subsection (2)(ii) the
1324 number of shareholders who return the forms by the specified date
1325 and the total number of shares owned by them; and

1326 (v) The date by which the notice to withdraw under
1327 Section 79-4-13.23 must be received, which date must be within
1328 twenty (20) days after the date specified in subsection (2)(ii);
1329 and

1330 (3) Be accompanied by a copy of this article.

1331 **SECTION 33.** Section 79-4-14.21, Mississippi Code of 1972, is
1332 amended as follows: [SS0131]

1333 79-4-14.21. **Notice and certificate; effects.** (a) If the
1334 Secretary of State determines that one or more grounds exist under
1335 Section 79-4-14.20 for dissolving a corporation, he shall serve
1336 the corporation with written notice of his determination under
1337 Section 79-4-5.04, except that such determination may be served by
1338 first-class mail.

1339 (b) If the corporation does not correct each ground for
1340 dissolution or demonstrate to the reasonable satisfaction of the
1341 Secretary of State that each ground determined by the Secretary of
1342 State does not exist within sixty (60) days after service of the
1343 notice is perfected under Section 79-4-5.04, the Secretary of
1344 State shall administratively dissolve the corporation by signing a
1345 certificate of dissolution that recites the ground or grounds for
1346 dissolution and its effective date. The Secretary of State shall
1347 file the original of the certificate and serve a copy on the
1348 corporation under Section 79-4-5.04, except that such certificate
1349 may be served by first-class mail.

1350 (c) [Reserved]

1351 (d) The administrative dissolution of a corporation does not
1352 terminate the authority of its registered agent.

1353 (e) The administrative dissolution of a corporation shall
1354 not impair the validity of any contract, deed, mortgage, security
1355 interest, lien or act of such corporation or prevent such
1356 corporation from defending any action, suit or proceeding in any
1357 court of this state.

1358 (f) A corporation that has been administratively dissolved
1359 may not maintain any action, suit or proceeding in any court of
1360 this state until such corporation is reinstated.

1361 **SECTION 34.** Section 79-4-14.22, Mississippi Code of 1972, is
1362 amended as follows: [SS0132]

1363 79-4-14.22. **Reinstatement.** (a) A corporation
1364 administratively dissolved under Section 79-4-14.21 may apply to
1365 the Secretary of State for reinstatement at any time after the
1366 effective date of dissolution. The applicant must:

1367 (1) Recite the name of the corporation and the
1368 effective date of its administrative dissolution;

1369 (2) State that the ground or grounds for dissolution
1370 either did not exist or have been eliminated;

1371 (3) State that the corporation's name satisfies the
1372 requirements of Section 79-4-4.01; and

1373 (4) Contain a certificate from the Mississippi
1374 Department of Revenue reciting that all taxes owed by the
1375 corporation have been paid.

1376 (b) If the Secretary of State determines that the
1377 application contains the information required by subsection (a)
1378 and that the information is correct, he shall cancel the
1379 certificate of dissolution and prepare a certificate of
1380 reinstatement that recites his determination and the effective

1381 date of reinstatement, file the original of the certificate and
1382 serve a copy on the corporation under Section 79-4-5.04.

1383 (c) When the reinstatement is effective:

1384 (1) The reinstatement relates back to and takes effect
1385 as of the effective date of the administrative dissolution;

1386 (2) Any liability incurred by the corporation,
1387 director, officer or a shareholder after the administrative
1388 dissolution and before the reinstatement shall be determined as if
1389 the administrative dissolution had never occurred; and

1390 (3) The corporation may resume carrying on its business
1391 as if the administrative dissolution had never occurred.

1392 * * *

1393 **SECTION 35.** Section 79-4-15.01, Mississippi Code of 1972, is
1394 amended as follows: [SS0133]

1395 79-4-15.01. **Activities requiring certificate; exempt**

1396 **activities.** (a) A foreign corporation may not transact business
1397 in this state until it obtains a certificate of authority from the
1398 Secretary of State.

1399 (b) The following activities, among others, do not
1400 constitute transacting business within the meaning of subsection
1401 (a):

1402 (1) Maintaining, defending or settling any proceeding;

1403 (2) Holding meetings of the board of directors or
1404 shareholders or carrying on other activities concerning internal
1405 corporate affairs;

1406 (3) Maintaining bank accounts;

1407 (4) Maintaining offices or agencies for the transfer,
1408 exchange and registration of the corporation's own securities or
1409 maintaining trustees or depositories with respect to those
1410 securities;

1411 (5) Selling through independent contractors;

1412 (6) Soliciting or obtaining orders, whether by mail or
1413 through employees or agents or otherwise, if the orders require
1414 acceptance outside this state before they become contracts;

1415 (7) Creating or acquiring indebtedness, mortgages and
1416 security interests in real or personal property;

1417 (8) Securing or collecting debts or enforcing mortgages
1418 and security interests in property securing the debts;

1419 (9) Owning, without more, real or personal property;

1420 (10) Conducting an isolated transaction that is
1421 completed within thirty (30) days and that is not one in the
1422 course of repeated transactions of a like nature;

1423 (11) Transacting business in interstate commerce;

1424 (12) Being a shareholder in a corporation or a foreign
1425 corporation that transacts business in this state;

1426 (13) Being a limited partner of a limited partnership
1427 or foreign limited liability company that is transacting business
1428 in this state.

1429 (14) Being a member or manager of a limited liability
1430 company or foreign limited company that is transacting business in
1431 this state.

1432 (c) The list of activities in subsection (b) is not
1433 exhaustive.

1434 (d) A foreign corporation which is * * * general partner of
1435 any general or limited partnership * * *, which partnership is
1436 transacting business in this state, is hereby declared to be
1437 transacting business in this state.

1438 **SECTION 36.** Section 79-4-15.02, Mississippi Code of 1972, is
1439 amended as follows: [SS0134]

1440 79-4-15.02. **Transacting business without authority, effects.**

1441 (a) A foreign corporation transacting business in this state
1442 without a certificate of authority may not maintain a proceeding

1443 in any court in this state until it obtains a certificate of
1444 authority.

1445 (b) The successor to a foreign corporation that transacted
1446 business in this state without a certificate of authority and the
1447 assignee of a cause of action arising out of that business may not
1448 maintain a proceeding based on that cause of action in any court
1449 in this state until the foreign corporation or its successor
1450 obtains a certificate of authority.

1451 (c) A court may stay a proceeding commenced by a foreign
1452 corporation, its successor or assignee until it determines whether
1453 the foreign corporation or its successor requires a certificate of
1454 authority. If it so determines, the court may further stay the
1455 proceeding until the foreign corporation or its successor obtains
1456 the certificate.

1457 (d) A foreign corporation is liable for a civil penalty of
1458 Ten Dollars (\$10.00) for each day, but not to exceed a total of
1459 One Thousand Dollars (\$1,000.00) for each year, it transacts
1460 business in this state without a certificate of authority. The
1461 Attorney General may collect all penalties due under this
1462 subsection.

1463 (e) Notwithstanding subsections (a) and (b), the failure of
1464 a foreign corporation to obtain a certificate of authority shall
1465 not impair the validity of any contract, deed, mortgage, security
1466 interest, lien or act of such foreign corporation or prevent the
1467 foreign corporation from defending any action, suit or proceeding
1468 in any court of this state.

1469 **SECTION 37.** Section 79-4-15.06, Mississippi Code of 1972, is
1470 amended as follows: [SS0135]

1471 79-4-15.06. **Corporate name.** (a) If the corporate name of a
1472 foreign corporation does not satisfy the requirements of Section

1473 79-4-4.01, the foreign corporation to obtain or maintain a
1474 certificate of authority to transact business in this state:

1475 (1) May add the word "corporation," "incorporated,"
1476 "company" or "limited," or the abbreviation "corp.," "inc.," "co."
1477 or "ltd.," to its corporate name for use in this state; or

1478 (2) May use a fictitious name to transact business in
1479 this state if its real name is unavailable and it delivers to the
1480 Secretary of State for filing a copy of the resolution of its
1481 board of directors, certified by its secretary, adopting the
1482 fictitious name.

1483 (b) Except as authorized by subsections (c) and (d), the
1484 corporate name (including a fictitious name) of a foreign
1485 corporation must be distinguishable upon the records of the
1486 Secretary of State from:

1487 (1) The corporate name of a corporation incorporated or
1488 authorized to transact business in this state;

1489 * * *

1490 (2) The fictitious name of another foreign corporation
1491 or foreign limited liability company authorized to transact
1492 business in this state; * * *

1493 (3) The corporate name of a nonprofit corporation
1494 incorporated or authorized to transact business in this state;

1495 (4) The name of a limited partnership, limited
1496 liability partnership or limited liability company that is
1497 organized or registered under the laws of this state and which has
1498 not been dissolved; and

1499 (5) A name that is reserved or registered in the Office
1500 of the Secretary of State for any of the entities named in
1501 subsection (b) of this section which reservation or registration
1502 has not expired.

1503 (c) A foreign corporation may apply to the Secretary of
1504 State for authorization to use in this state the name of another
1505 corporation (incorporated or authorized to transact business in
1506 this state) that is not distinguishable upon his records from the
1507 name applied for. The Secretary of State shall authorize use of
1508 the name applied for if:

1509 (1) The other corporation consents to the use in
1510 writing and submits an undertaking in form satisfactory to the
1511 Secretary of State to change its name to a name that is
1512 distinguishable upon the records of the Secretary of State from
1513 the name of the applying corporation; or

1514 (2) The applicant delivers to the Secretary of State a
1515 certified copy of a final judgment of a court of competent
1516 jurisdiction establishing the applicant's right to use the name
1517 applied for in this state.

1518 (d) A foreign corporation may use in this state the name
1519 (including the fictitious name) of another domestic or foreign
1520 corporation that is used in this state if the other corporation is
1521 incorporated or authorized to transact business in this state and
1522 the foreign corporation:

1523 (1) Has merged with the other corporation;

1524 (2) Has been formed by reorganization of the other
1525 corporation; or

1526 (3) Has acquired all or substantially all of the
1527 assets, including the corporate name, of the other corporation.

1528 (e) If a foreign corporation authorized to transact business
1529 in this state changes its corporate name to one that does not
1530 satisfy the requirements of Section 79-4-4.01, it may not transact
1531 business in this state under the changed name until it adopts a
1532 name satisfying the requirements of Section 79-4-4.01 and obtains
1533 an amended certificate of authority under Section 79-4-15.04.

1534 **SECTION 38.** Section 79-4-15.07, Mississippi Code of 1972, is
1535 amended as follows: [SS0136]

1536 79-4-15.07. **Registered office an agent required.** Each
1537 foreign corporation authorized to transact business in this state
1538 must continuously maintain in this state:

1539 (1) A registered office that may be the same as any of
1540 its places of business; and

1541 (2) A registered agent, who may be:

1542 (i) An individual who resides in this state and
1543 whose business office is identical with the registered office;

1544 (ii) A domestic corporation, domestic limited
1545 liability company or * * * domestic nonprofit corporation whose
1546 business office is identical with the registered office; or

1547 (iii) A foreign corporation, foreign domestic
1548 limited liability company or foreign nonprofit corporation
1549 authorized to transact business in this state whose business
1550 office is identical with the registered office.

1551 **SECTION 39.** Section 79-4-15.08, Mississippi Code of 1972, is
1552 amended as follows: [SS0137]

1553 79-4-15.08. **Changing registered office or agent.** (a) A
1554 foreign corporation authorized to transact business in this state
1555 may change its registered office or registered agent by delivering
1556 to the Secretary of State for filing a statement of change that
1557 sets forth:

1558 (1) Its name;

1559 (2) The street address of its current registered
1560 office;

1561 (3) If the current registered office is to be changed,
1562 the street address of its new registered office;

1563 (4) The name of its current registered agent;

1564 (5) If the current registered agent is to be changed,
1565 the name of its new registered agent and the new agent's written
1566 consent (either on the statement or attached to it) to the
1567 appointment; and

1568 (6) That after the change or changes are made, the
1569 street addresses of its registered office and the business office
1570 of its registered agent will be identical.

1571 (b) If the street address of a registered agent's business
1572 office changes, he may change the street address of the registered
1573 office of any foreign corporation for which the person is the
1574 registered agent by notifying the corporation in writing of the
1575 change and signing * * * and delivering to the Secretary of State
1576 for filing a statement of change that complies with the
1577 requirements of subsection (a) and recites that the corporation
1578 has been notified of the change.

1579 **SECTION 40.** Section 79-4-15.31, Mississippi Code of 1972, is
1580 amended as follows: [SS0138]

1581 79-4-15.31. **Procedure and effect.** (a) If the Secretary of
1582 State determines that one or more grounds exist under Section
1583 79-4-15.30 for revocation of a certificate of authority, he shall
1584 serve the foreign corporation with written notice of his
1585 determination under Section 79-4-15.10, except that such
1586 determination may be served by first-class mail.

1587 (b) If the foreign corporation does not correct each ground
1588 for revocation or demonstrate to the reasonable satisfaction of
1589 the Secretary of State that each ground determined by the
1590 Secretary of State does not exist within sixty (60) days after
1591 service of the notice is perfected under Section 79-4-15.10, the
1592 Secretary of State may revoke the foreign corporation's
1593 certificate of authority by signing a certificate of revocation
1594 that recites the ground or grounds for revocation and its

1595 effective date. The Secretary of State shall file the original of
1596 the certificate and serve a copy on the foreign corporation under
1597 Section 79-4-15.10, except that such certificate may be served by
1598 first-class mail.

1599 (c) The authority of a foreign corporation to transact
1600 business in this state ceases on the date shown on the certificate
1601 revoking its certificate of authority.

1602 (d) The Secretary of State's revocation of a foreign
1603 corporation's certificate of authority appoints the Secretary of
1604 State the foreign corporation's agent for service of process in
1605 any proceeding based on a cause of action which arose during the
1606 time the foreign corporation was authorized to transact business
1607 in this state. Service of process on the Secretary of State under
1608 this subsection is service on the foreign corporation. Upon
1609 receipt of process, the Secretary of State shall mail a copy of
1610 the process to the secretary of the foreign corporation at its
1611 principal office shown in its most recent annual report or in any
1612 subsequent communication received from the corporation stating the
1613 current mailing address of its principal office, or, if none are
1614 on file, in its application for a certificate of authority.

1615 (e) Revocation of a foreign corporation's certificate of
1616 authority does not terminate the authority of the registered agent
1617 of the corporation.

1618 (f) The administrative revocation of a foreign corporation's
1619 certificate of authority shall not impair the validity of any
1620 contact, deed, mortgage, security interest, lien or act of such
1621 foreign corporation or prevent the foreign corporation from
1622 defending any action, suit or proceeding with any court of this
1623 state.

1624 (g) A foreign corporation whose registration has been
1625 administratively revoked may not maintain any action, suit or

1626 proceeding in any court of this state until such foreign
1627 corporation's certificate of authority has been reinstated.

1628 **SECTION 41.** Section 79-4-16.01, Mississippi Code of 1972, is
1629 amended as follows: [SS0139]

1630 79-4-16.01. **Records required.** (a) A corporation shall keep
1631 as permanent records minutes of all meetings of its shareholders
1632 and board of directors, a record of all actions taken by the
1633 shareholders or board of directors without a meeting, and a record
1634 of all actions taken by a committee of the board of directors in
1635 place of the board of directors on behalf of the corporation.

1636 (b) A corporation shall maintain appropriate accounting
1637 records.

1638 (c) A corporation or its agent shall maintain a record of
1639 its shareholders, in a form that permits preparation of a list of
1640 the names and addresses of all shareholders, in alphabetical order
1641 by class of shares showing the number and class of shares held by
1642 each.

1643 (d) A corporation shall maintain its records in the form of
1644 a document, including an electric record, or in another form
1645 capable of conversion into paper form within a reasonable time.

1646 (e) A corporation shall keep a copy of the following records
1647 at its principal office:

1648 (1) Its articles or restated articles of incorporation,
1649 all amendments to them currently in effect and any notices to
1650 shareholders referred to in Section 79-4-1.20(k)(5) regarding
1651 facts on which a filed document is dependent;

1652 (2) Its bylaws or restated bylaws and all amendments to
1653 them currently in effect;

1654 (3) Resolutions adopted by its board of directors
1655 creating one or more classes or series of shares, and fixing their

1656 relative rights, preferences and limitations, if shares issued
1657 pursuant to those resolutions are outstanding;

1658 (4) The minutes of all shareholders' meetings, and
1659 records of all action taken by shareholders without a meeting, for
1660 the past three (3) years;

1661 (5) All written communications to shareholders
1662 generally within the past three (3) years, including the financial
1663 statements furnished for the past three (3) years under Section
1664 79-4-16.20;

1665 (6) A list of the names and business addresses of its
1666 current directors and officers; and

1667 (7) Its most recent annual report delivered to the
1668 Secretary of State under Section 79-4-16.22.

1669 **SECTION 42.** Section 79-4-16.02, Mississippi Code of 1972, is
1670 amended as follows: [SS0140]

1671 79-4-16.02. **Inspection and copying by shareholder.** (a)
1672 Subject to Section 79-4-16.03(c), a shareholder of a corporation
1673 is entitled to inspect and copy, during regular business hours at
1674 the corporation's principal office, any of the records of the
1675 corporation described in Section 79-4-16.01(e) if he gives the
1676 corporation a signed written notice of his demand at least five
1677 (5) business days before the date on which he wishes to inspect
1678 and copy.

1679 (b) A shareholder of a corporation is entitled to inspect
1680 and copy, during regular business hours at a reasonable location
1681 specified by the corporation, any of the following records of the
1682 corporation if the shareholder meets the requirements of
1683 subsection (c) and gives the corporation a signed written notice
1684 of his demand at least five (5) business days before the date on
1685 which he wishes to inspect and copy:

1686 (1) Excerpts from minutes of any meeting of the board
1687 of directors, records of any action of a committee of the board of
1688 directors while acting in place of the board of directors on
1689 behalf of the corporation, minutes of any meeting of the
1690 shareholders, and records of action taken by the shareholders or
1691 board of directors without a meeting, to the extent not subject to
1692 inspection under subsection (a) of this section;

1693 (2) Accounting records of the corporation; and

1694 (3) The record of shareholders.

1695 (c) A shareholder may inspect and copy the records
1696 identified in subsection (b) only if:

1697 (1) His demand is made in good faith and for a proper
1698 purpose;

1699 (2) He describes with reasonable particularity his
1700 purpose and the records he desires to inspect; and

1701 (3) The records are directly connected with his
1702 purpose.

1703 (d) The right of inspection granted by this section may not
1704 be abolished or limited by a corporation's articles of
1705 incorporation or bylaws.

1706 (e) This section does not affect:

1707 (1) The right of a shareholder to inspect records under
1708 Section 79-4-7.20 or, if the shareholder is in litigation with the
1709 corporation, to the same extent as any other litigant;

1710 (2) The power of a court, independently of Section
1711 79-4-1.01 et seq., to compel the production of corporate records
1712 for examination.

1713 (f) For purposes of this section, "shareholder" includes a
1714 beneficial owner whose shares are held in a voting trust or by a
1715 nominee on his behalf.

1716 **SECTION 43.** Section 79-4-16.06, Mississippi Code of 1972, is
1717 amended as follows: [SS0141]

1718 79-4-16.06. **Notice; requirements.** (a) Whenever notice
1719 would otherwise be required to be given under any provision of
1720 this act to a shareholder, such notice need not be given if:

1721 (1) Notices to the shareholders of two (2) consecutive
1722 annual meetings, and all notices of meetings during the period
1723 between such two (2) consecutive annual meetings, have been sent
1724 to such shareholder at such shareholder's address as shown on the
1725 records of the corporation and have been returned undeliverable or
1726 could not be delivered; or

1727 (2) All, but not less than two (2), payments or
1728 dividends on securities during a twelve-month period, or two (2)
1729 consecutive payments of dividends on securities during a period of
1730 more than twelve (12) months, have been sent to such shareholder
1731 at such shareholder's address as shown on the records of the
1732 corporation and have been returned undeliverable or could not be
1733 delivered.

1734 (b) If any such shareholder shall deliver to the corporation
1735 a written notice setting forth such shareholder's then current
1736 address, the requirement that notice be given to such shareholder
1737 shall be reinstated.

1738 **SECTION 44.** Section 79-4-16.20, Mississippi Code of 1972, is
1739 amended as follows: [SS0142]

1740 79-4-16.20. **Annual financial statements to shareholders.**

1741 (a) A corporation shall furnish its shareholders annual financial
1742 statements, which may be consolidated or combined statements of
1743 the corporation and one or more of its subsidiaries, as
1744 appropriate, that include a balance sheet as of the end of the
1745 fiscal year, an income statement for that year, and a statement of
1746 changes in shareholders' equity for the year unless that

1747 information appears elsewhere in the financial statements. If
1748 financial statements are prepared for the corporation on the basis
1749 of generally accepted accounting principles, the annual financial
1750 statements must also be prepared on that basis.

1751 (b) If the annual financial statements are reported upon by
1752 a public accountant, his report must accompany them. If not, the
1753 statements must be accompanied by a statement of the president or
1754 the person responsible for the corporation's accounting records:

1755 (1) Stating his reasonable belief whether the
1756 statements were prepared on the basis of generally accepted
1757 accounting principles and, if not, describing the basis of
1758 preparation; and

1759 (2) Describing any respects in which the statements
1760 were not prepared on a basis of accounting consistent with the
1761 statements prepared for the preceding year.

1762 (c) A corporation shall deliver the annual financial
1763 statements to each shareholder within one hundred twenty (120)
1764 days after the close of each fiscal year. Thereafter, on written
1765 request from a shareholder to whom the statements were not
1766 delivered, the corporation shall send the shareholder the latest
1767 financial statements. A public corporation may fulfill its
1768 responsibilities under this section by delivering the specified
1769 financial statements, or otherwise making them available, in any
1770 manner permitted by the applicable rules and regulations of the
1771 United States Securities and Exchange Commission.

1772 **SECTION 45.** Section 79-4-16.21, Mississippi Code of 1972,
1773 dealing with the reporting of the indemnification of or expense
1774 advances to a director in connection with a proceeding as well as
1775 certain issues of shares by the corporation, is repealed.

1776 **SECTION 46.** The following shall be codified as Section
1777 79-4-17.05, Mississippi Code of 1972: [SS0143]

1778 79-4-17.05. **Relation to Electronic Signatures in Global and**
1779 **National Commerce Act.** In the event that any provisions of this
1780 chapter are deemed to modify, limit or supersede the Federal
1781 Electronic Signatures in Global and National Commerce Act, 15 USC
1782 Section 7001 et seq., the provisions of this chapter shall control
1783 to the maximum extent permitted by Section 102(a)(2) of that
1784 federal act.

1785 **SECTION 47.** This act shall take effect and be in force from
1786 and after July 1, 2012.