

Corporation Laws Study Group (7/6/2011)

	Name	Organization	City	Phone	E-mail
1.	Mr. Carl Adkins	Sheldon Laboratory Systems, Inc.	Crystal Springs	601-892-7105	eadkins@sheldonlabs.com
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3.	Ms. Cheryn Baker	Hancock Bank	Gulfport	228-822-4314	Cheryn_Baker@hancockbank.com
4.	Mr. Billy Boutwell or Larry Lefoldt	Lefoldt & Company, P.A.	Ridgeland	601-956-2374	bboutwell@lefoldt.com
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6.	Mr. Henry Chatham	Wise Carter Child & Caraway, P.A.	Jackson	601-968-5520	henrychatham@gmail.com
7.	Rep. Angela Cockerham	Mississippi House of Representatives	Magnolia	601-783-4979	acockerham@house.ms.gov
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12.	Mr. Albert Delgadillo	Mitchell McNutt & Sams, PA	Tupelo	662-620-6284	adelgadillo@mitchellmcnutt.com
13.	Prof. Cecile Edwards	Mississippi College School of Law	Jackson	601-594-0256	edwards@mc.edu
14.	Mr. Gordon Fellows	Lane Furniture, Inc.	Tupelo	662-566-3103	gordonwfellows@gmail.com
15.	Mr. John Flynt	Brunini Grantham Grower & Hewes	Jackson	601-973-8797	jflynt@brunini.com
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21.	Mr. Mark Hosemann	Brunini Grantham Grower & Hewes	Jackson	601-973-8732	mhosemann@brunini.com
22.	Mr. Thomas R. Hudson	BankPlus	Ridgeland	601-898-4840	tomhudson@bankplus.net
23.	Mr. Carson Hughes	Telapex Inc.	Ridgeland	601-487-5262	carsonmh@telapexinc.com
24.	Dr. John Igwebuike	Alcorn State University School of Business	Clinton	601-877-2466	bizlawprofessionals@gmail.com
25.	Mr. Barry Jones CoChair	Wise, Carter, Child & Caraway, P.A.	Jackson	601-968-5567	bkj@wisecarter.com
26.	Ms. Dawn Jones	Nicholson & Company, PLLC	Hattiesburg	601-264-3519	dawn@nicholsoncpas.com
27.	Mr. Billy Klauser	Bureau Manager/Financial Resources, Mississippi Development Authority	Jackson	601-359-5769	bklauser@mississippi.org

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	Name	Organization	City	Phone	E-mail
28.	Mr. Larry Lefoldt or Billy Boutwell	Lefoldt & Company, P.A.	Ridgeland	601-956-2374	mllefoldt@lefoldt.com
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31.	Mr. Jay Moon	Mississippi Manufacturers Association	Jackson	601-292-1113	jay@mma-web.org
32.	Mr. Ryan O'Beirne	Butler Snow O'Mara Stevens & Cannada	Ridgeland	601-985-4541	ryan.obeirne@butlersnow.com
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35.	Mr. Brian Sanderson	Brunini Grantham Grower & Hewes	Biloxi	228-435-8318	bsanderson@brunini.com
36.	Mr. Thomas. Shepherd	Watkins Ludlam Winter & Stennis	Jackson	601-949-4711	tshepherd@watkinsludlam.com
37.	Mr. George Simmerman	Huntington Ingalls Industries, Inc.	Pascagoula	228-935-3661	george.simmerman@hii-co.com
38.	Rep. Greg Snowden	Mississippi House of Representatives Greg Snowden, Attorney	Meridian	601-693-5700	snowlaw@comcast.net greg@gregsnowden.com

2011 Corporations Law Study Group

Minutes of the Corporation Law Study Group, Meeting #1

June 8, 2011

This meeting of the Corporations Law Study Group (hereinafter the “Study Group” or the “Committee”) was called to order on Wednesday, June 08, 2011 at 11:05 A.M. at the Office of the Secretary of State, 700 North Street, Jackson, Mississippi. A list of the persons in attendance is attached as Exhibit A.

Welcome and Introduction

Ryan Pratt, Assistant Secretary of State for the Policy and Research Division (the “Division”), welcomed everyone, and thanked all participants for giving their time and dedication to this year’s group. An Introduction of all those members in attendance was made, as well as those members who were in attendance by phone.

Remarks by the Secretary

Secretary of State Delbert Hosemann introduced himself and thanked all of the members for their presence and dedication to this year’s group. Secretary Hosemann discussed the work of past year’s study groups and the successes which they have achieved in the Mississippi legislature. The Secretary addressed his goals for this year’s Corporations Study Group, emphasizing his desire for Mississippi’s business laws to be the most favorable to today’s business climate, in order to attract and retain profitable business activity in the state. Secretary Hosemann noted fiduciary standards of directors and electronic communication as a means of addressing provisions favorable to corporations.

Overview of Business Services Division

Tom Riley, Assistant Secretary of State for the Business Services Division, welcomed everyone, thanked them for coming, and gave a brief update on the current status of his division. He noted the success of the UCC filing software as well as recent changes to LLC filings with his division. He discussed the changes in Nonprofit Corporations Act and noted that his office has begun to implement a provision which was passed in 1988 to allow for status reports and the dissolution of inactive Nonprofits.

Remarks by Co-Chairs

Co-Chairs Joyce Hall and Barry Jones were introduced to the group and each made a few remarks.

Ms. Hall thanked everyone for their time and participation and confirmed her desires for this group were the same as Secretary Hosemann’s, that Mississippi’s business laws will be the most favorable to today’s business climate. She also expressed her desire for Mississippi’s business laws to attract new corporations to the state and to retain those already located here, in an effort to promote economic growth and job creation in Mississippi. Further, Ms. Hall stated

that sub-groups would be formed following the direction of the topics covered in this meeting, and that individuals were free to sign up for those which were of interest to them.

Barry Jones welcomed and thanked the group for their participation in this year's study group.

Overview of the Issues

Mr. Pratt outlined some issues which had already been researched or discussed by the Division in recent months or in prior years, and he also encouraged everyone to offer any new ideas or topics which they wished to see discussed.

Senate Bill 2699. Mr. Pratt mentioned Senate Bill 2699, which was the product of last year's study group, and the possibility of revisiting those provisions which were not passed, including electronic communications and liabilities among members.

Corporate Headquarter Incentives. Another focus of this year's group will be on incentives for corporate headquarters. Mr. Pratt directed everyone's attention to the chart provided in today's meeting materials, which provides a general overview of how Mississippi's incentive program stacks up to those of surrounding states. He also discussed that research had been done, and will continue to be done, on the laws in Delaware and Nevada, since they seem to currently be the most favorable to corporate entities.

Domestication. Another idea offered by Mr. Pratt and further discussed by Mr. Riley was the topic of domesticating other state's corporations in Mississippi. Mr. Riley covered some of the logistical complications he has seen many foreign corporations have to go through as they try to establish themselves in Mississippi. He proposed the idea of looking into a way to change the statutory laws to provide a more streamlined system for such corporations. Mr. Henry Chatham and Ms. Cheryn Baker added that the implications of such a change to the statute would require a number of cross references therefore producing a large bill, which would likely have a low possibility of passage in the Legislature.

Model Act. Ms. Baker proposed the idea that the Study Group review the Model Act to determine if any new changes have been made since the previous year. Mr. Chatham indicated there were no significant changes to the Model Act.

Series LLCs. Mr. Pratt then mentioned the prospect of Series LLCs, which Mr. Patrick McCraney explained to the group. Mr. McCraney suggested that from his knowledge, such a set up seems like a good idea and that perhaps this is something which the group could look at in more detail. Mr. McCraney noted Delaware's lead role in utilizing Series LLCs.

Request for Input from Study Group Members

Mr. Pratt asked the members if there was any other topic which the group should address. Mr. Tom Riley brought up the issue of business identity theft happening in Colorado and the trend of many states to reduce the number of years from 5 to 1 when requiring court approval to reinstate a dissolved corporation in an effort to avoid such theft. He poses this question in light

of the extraordinary number of LLCs which will be dissolved this coming year under the newly implemented policies of his division. Mr. Riley also brought up the idea of virtual corporations and noted that Vermont is currently the only state which allows such a thing to exist. Mr. Mark Hosemann suggested adding a member to the group from the Mississippi Tax Commission, since they are the agency given the discretion to define many of the requirements for corporate headquarters, in order to be eligible for available tax incentives under the applicable statute.

There being no further questions or comments, Mr. Pratt announced that he is open for suggestions in the future. Mr. Pratt and Ms. Hall reminded everyone that an email would be sent out with finalized sub groups for which they could sign up.

Reminder of Upcoming Meetings

After a reminder of the upcoming meeting scheduled for July 6th at 11:00 in the Ladner Building on Mississippi Street, the meeting was adjourned at 11:52 P.M.

2011 Corporation Laws Subgroups

<i>Study Group Co-Chairs (and also member of each Subgroup)</i>				
Ms. Joyce Hall		Watkins & Eager	601-965-1982	jhall@watkinseager.com
Mr. Barry Jones		Wise, Carter, Child & Caraway	601-968-5567	bkj@wisecarter.com

Series LLC					
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	2.	Mr. Chad Davidson	Phelps Dunbar	601-360-9312	chad.davidson@phelps.com
	3.	Mr. Cecil Harper	Harper, Rains, Knight & Company	601-605-0722	c.harper@hrkcpa.com
	4.	Mr. Russell Hawkins	May and Company, CPAs	601-636-4762	rhawkins@maycpa.com
	5.	Dr. John Igwebuike	Alcorn State University School of Business	601-877-2466	bizlawprofessionals@gmail.com
	6.	Ms. Dawn Jones	Nicholson & Company	601-264-3519	dawn@nicholsoncpas.com
Chair	7.	Mr. Patrick McCraney	McCraney Coco	601-899-0065	patrick@wlglegal.com
	8.	Mr. Ryan O'Beirne	Butler Snow O'Mara Stevens & Cannada	601-985-4541	ryan.obeirne@butlersnow.com

Model Act					
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Co-Chair	2.	Mr. Henry Chatham	Wise Carter Child & Caraway	601-968-5520	henrychatham@gmail.com
	3.	Mr. Stephen Corban	Renasant Bank	662-680-1403	stevec@renasant.com
	4.	Prof. Cecile Edwards	Mississippi College School of Law	601-594-0256	edwards@mc.edu
	5.	Mr. John Flynt	Brunini Grantham Grower & Hewes	601-973-8797	jflynt@brunini.com
	6.	Dr. Daniel Hise	Butler Snow O'Mara Stevens & Cannada	601-985-4509	dan.hise@butlersnow.com
	7.	Mr. Clifton Hodge	Wise Carter Child & Caraway	601-968-5575	ech@wisecarter.com
	8.	Mr. Thomas Hudson	BankPlus	601-898-4840	tomhudson@bankplus.net
	9.	Mr. William Mendenhall	Baker, Donelson, Bearman, Caldwell & Berkowitz	601-969-4647	bmendenhall@bakerdonelson.com
Co-Chair	10.	Mr. Thomas Shepherd	Watkins Ludlam Winter & Stennis	601-949-4711	tshepherd@watkinsludlam.com

2011 Corporation Laws Subgroups

Corporate HQ Incentives					
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	3.	Mr. Pat Caldwell	BancorpSouth	662-678-8290	caldwell@tsixroads.com
	4.	Rep. Angela Cockerham	MS House of Representatives	601-783-4979	acockerham@house.ms.gov
	5.	Mr. Eustis Corrigan	Horne	601-326-1043	eustis.corrigan@horne-llp.com
	6.	Ms. Jan Craig	MS Department of Revenue	601-923-7005	jan.craig@dor.ms.gov
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	8.	Mr. Gordon Fellows	Lane Furniture	662-566-3103	gordonwfellows@gmail.com
Chair	9.	Mr. Mark Hosemann	Brunini Grantham Grower & Hewes	601-973-8732	mhosemann@brunini.com
	10.	Mr. Carson Hughes	Telapex	601-487-5262	carsonmh@telapexinc.com
	11.	Mr. Billy Klauser	Bureau Manager/Financial Resources, MS Development Authority	601-359-5769	bklauser@mississippi.org
	12.	Mr. Jay Moon	MS Manufacturers Association	601-292-1113	jay@mma-web.org
	13.	Mr. Bill Renick	Three Rivers Planning and Development District	662-489-2415	brenick@trpdd.com
	14.	Mr. Brian Sanderson	Brunini Grantham Grower & Hewes	228-435-8318	bsanderson@brunini.com
	15.	Mr. George Simmerman	Huntington Ingalls Industries	228-935-3661	george.simmerman@hii-co.com

2010 PROPOSED AMENDMENTS TO MISSISSIPPI BUSINESS CORPORATION ACT

- **1 Repealed Section Clean Up Change to conform with Model Act**
- **19 Electronic Technology (ET)**
- **2 Remote Shareholder Meetings**
- **1 Force the Vote**
- **2 Board of Director Duty Provisions**
- **11 Other Clean Up Changes to conform with Model Act and LLC Act**

1. § 79-4-1.22. Fees - **CONFORMING AMENDMENT**
2. § 79-4-1.25. Role of Secretary of State - **CONFORMING AMENDMENT**
3. § 79-4-1.29. Knowingly signing false document- **CONFORMING AMENDMENT**
4. § 79-4-1.40. Definitions in general- **ET and Model Clean Up Changes**
5. § 79-4-1.41. Form of notice – **ET**
6. § 79-4-4.01. Requirements - **CONFORMING AMENDMENT**
7. § 79-4-4.02. Reservation - **CONFORMING AMENDMENT**
8. § 79-4-5.01. Registered office and agent required - **CONFORMING AMENDMENT**
9. § 79-4-5.02. Changing registered office or agent- **ET**
10. § 79-4-6.20. Subscriptions- **ET**
11. § 79-4-7.04. Actions taken without meetings; written notice; written consent-**ET**
12. § 79-4-7.05. Notice to shareholders – **REMOTE SHAREHOLDER MEETINGS**
13. [§ 79-4-7.09. Remote participation in annual and special meetings](#) - **NEW**
14. § 79-4-7.22. Appointment of proxy - **ET**
15. § 79-4-7.42. Written demand- **ET**
16. § 79-4-8.01. Board required; role – **BOARD DUTY and MODEL CLEAN UP CHANGES**
17. § 79-4-8.05. Terms – **CLEAN UP**
18. § 79-4-8.06. Staggered terms – **CLEAN UP**
19. § 79-4-8.07. Resignation –**CLEAN UP**
20. § 79-4-8.10. Vacancies – **CLEAN UP**
21. § 79-4-8.24. Quorum; assent to action presumed – **CLEAN UP**
22. [§ 79-4-8.26. Submission of matters for shareholder vote](#)- **FORCE THE VOTE - NEW**
23. § 79-4-8.31. Liability of director; burden of proof – **BOARD DUTY and CLEAN UP**
24. § 79-4-8.50. Definitions - **CLEAN UP**
25. § 79-4-8.53. Litigation expenses -**ET**
26. § 79-4-8.60. Definitions - **CLEAN UP**
27. § 79-4-11.01. Definitions - **CLEAN UP**
28. § 79-4-11.06. Filing articles; contents; effectiveness - **ET**
29. § 79-4-11.08. Abandonment - **ET**
30. § 79-4-13.20. Notice to shareholders of rights– **ET**
31. § 79-4-13.21. Eligibility for payment – **ET**
32. § 79-4-13.22. Appraisal notice and form - **ET**
33. § 79-4-14.21. Notice and certificate; effects - **CONFORMING AMENDMENT**
34. § 79-4-14.22. Reinstatement - **CONFORMING AMENDMENT**
35. § 79-4-15.01. Activities requiring certificate; exempt activities - **CONFORMING AMENDMENT**
36. § 79-4-15.02. Transacting business without authority, effects - **CONFORMING AMENDMENT**
37. § 79-4-15.06. Corporate name - **CONFORMING AMENDMENT**
38. § 79-4-15.07. Registered office and agent required - **CONFORMING AMENDMENT**
39. § 79-4-15.08. Changing registered office or agent - **ET**
40. § 79-4-15.31. Procedure and effect - **CONFORMING AMENDMENT**

- 41. § 79-4-16.01. Records required- **ET**
- 42. § 79-4-16.02. Inspection and copying by shareholder – **ET**
- 43. § 79-4-16.06. Notice; requirements - **ET**
- 44. § 79-4-16.20. Annual financial statements to shareholders - **ET**
- 45. ~~§ 79-4-16.21. Indemnification, advances, certain share issues~~ **REPEAL- CLEAN UP**
- 46. § 79-4-17.05. Relation to Electronic Signatures in Global and National Commerce Act – **ET - NEW**

§ 79-4-1.22. Fees

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him for filing:

Document	Fee
(1) Articles of incorporation	\$ 50.00
(2) Application for use of indistinguishable name	25.00
(3) Application for reserved name	25.00
(4) Notice of transfer or cancellation of reserved name	25.00
(5) Application for registered name	50.00
(6) Application for renewal of registered name	50.00
(7) Corporation's statement of change of registered agent or registered office or both	10.00
(8) Agent's statement of change of registered office for each affected corporation	10.00
not to exceed a total of	1,000.00
(9) Agent's statement of resignation	No fee
(10) Amendment of articles of Incorporation	50.00
(11) Restatement of articles of incorporation	50.00
with amendment of articles	50.00
(12) Articles of merger or share exchange	50.00
(13) Articles of dissolution	25.00
(14) Articles of revocation of dissolution	25.00
(15) Certificate of administrative dissolution	No fee
(16) Application for reinstatement following administrative dissolution	50.00
(17) Certificate of reinstatement	No fee
(18) Certificate of judicial dissolution	No fee
(19) Application for certificate of authority	500.00
(20) Application for amended certificate of authority	50.00
(21) Application for certificate of withdrawal	25.00
(22) Certificate of revocation of authority to transact business	No fee
(23) Application for reinstatement following administrative revocation	100.00
(24) Certificate of reinstatement	No fee
(25) Annual report	25.00
(26) Articles of correction	50.00
(27) Application for certificate of existence or authorization	25.00
(28) Any other document required or permitted to be filed by Section 79-4-1. 01 et seq.	25.00

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

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

(1) One Dollar (\$1.00) a page for copying; and

(2) Ten Dollars (\$10.00) for the certificate.

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

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

- (1) Reduce the filing fees prescribed in this section or provide for discounts of fees to encourage online filing of documents or for other reasons as determined by the Secretary of State; and
- (2) Provide for documents to be filed and accepted on an expedited basis upon the request of the applicant. The Secretary of State may promulgate rules to provide for an additional reasonable filing fee ~~not to exceed Twenty five Dollars (\$25.00)~~ to be paid by the applicant and collected by the Secretary of State for the expedited filing services.

§ 79-4-1.25. Role of Secretary of State

(a) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of Section 79-4-1.20, the Secretary of State shall file it.

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

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

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

- (1) Affect the validity or invalidity of the document in whole or part;
- (2) Relate to the correctness or incorrectness of information contained in the document;
- (3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

§ 79-4-1.29. Knowingly signing false document

(a) A person commits an offense if he signs a document he knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing.

(b) An offense under this section is a misdemeanor punishable by a fine of not to exceed ~~Five Hundred One Thousand~~ Dollars (\$~~51,000.00~~).

§ 79-4-1.40. Definitions in general

In Section 79-4-1.01 et seq.:

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

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

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

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

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

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

(67) “Document” means (i) any tangible medium on which information is inscribed, and includes any writing or written instrument, or (ii) an electronic record.

(78) “Domestic unincorporated entity” means an unincorporated entity whose internal affairs are governed by the laws of this state.

(9) “Effective date of notice” is defined in Section 79-4-1.41.

~~(810) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.~~

(8A11) “Electronic record” means information that is stored in an electronic or other medium and is retrievable in paper form through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with Section 79-4-1.41(j).

(8B12) “Electronic transmission” or “electronically transmitted” means any form or process of communication, not directly involving the physical transfer of paper ~~that or another tangible medium, which (i) is suitable for the retention, retrieval and reproduction of information by the recipient, and (ii) is retrievable in paper form by the recipient through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with Section 79-4-1.41(j).~~

(913) “Eligible entity” means a domestic or foreign unincorporated entity or a domestic or foreign nonprofit corporation.

(149) “Employee” includes an officer but not a director. A director may accept duties that make him also an employee.

(159A) “Expenses” means reasonable expenses of any kind that are incurred in connection with a matter.

~~(1640) “Entity” includes corporation and foreign corporation; not for profit corporation; profit and not for profit unincorporated association; business trust, estate, partnership, trust and two (2) or more persons having a joint or common economic interest; and state, United States and foreign government.~~ domestic and foreign business corporation; domestic and foreign nonprofit corporation; estate; trust; business trust; domestic and foreign unincorporated entity; two (2) or more persons having a joint or common economic interest, and state, United States, and foreign government.

~~(1744) “Facts objectively ascertainable” outside of a filed document or plan is defined in Section 79-4-1.20(k).~~

(1842) “Filing entity” means another entity that is of a type that is created by filing a public organic document.

(1943) “Foreign corporation” means a corporation ~~for profit~~ incorporated under a law other than the law of this state; which would be a business corporation if incorporated under the laws of this state.

(4520) “Foreign nonprofit corporation” means a corporation incorporated under a law other than the law of this state, which would be a nonprofit corporation if incorporated under the laws of this state.

(4621) “Foreign unincorporated entity” means an unincorporated entity whose internal affairs are governed by an organic law of a jurisdiction other than this state.

(4722) “Governmental subdivision” includes authority, county, district and municipality.

(4823) “Includes” denotes a partial definition.

(4924) “Individual” means a natural person, and includes the estate of an incompetent or deceased ~~individual~~ natural person.

(25) “Means” denotes an exhaustive definition.

(26) “Nonprofit corporation” or “ domestic nonprofit corporation” means a corporation incorporated under the laws of this state and subject to the provisions of Sections 79-11-101 et seq.

(2718) “Notice” is defined in Section 79-4-1.41.

(2849) “Person” includes an individual and an entity.

(2929) “Principal office” means the office (in or out of this state) so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located.

(3024) “Proceeding” includes civil suit and criminal, administrative and investigatory action.

(3122) “Public corporation” means a corporation that has shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national ~~or affiliated~~ securities association.

(32) “Qualified director” is defined in Section 79-4-1.43.

(3323) “Record date” means the date established under Article 6 or 7 on which a corporation determines the identity of its shareholders and their shareholdings for purposes of Section 79-4-1.01 et seq. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(3424) “Secretary” means the corporate officer to whom the board of directors has delegated responsibility under Section 79-4-8.40(c) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(3525) “Shares” means the unit into which the proprietary interests in a corporation are divided.

(3626) “Shareholder” means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(3727) “Sign” or “signature” ~~includes any manual, facsimile, conformed or electronic signature~~ means, with present intent to authenticate or adopt a document:

- (i) to execute or adopt a tangible symbol to a document, and includes any manual, facsimile, or conformed signature;
- or
- (ii) to attach to or logically associate with an electronic transmission, an electronic sound, symbol, or process, and includes an electronic signature in an electronic transmission.

(2838) “State,” when referring to a part of the United States, includes a state and commonwealth (and their agencies and governmental subdivisions) and a territory, and insular possession (and their agencies and governmental subdivisions) of the United States.

(2939) “Subscriber” means a person who subscribes for shares in a corporation, whether before or after incorporation.

(3540) “Unincorporated entity” means an organization or artificial legal person that either has a separate legal existence or has the power to acquire an estate in real property in its own name and that is not any of the following: a domestic or foreign business or nonprofit corporation, an estate, a trust, a state, the United States, or a foreign government. The term includes a general partnership, limited liability company, limited partnership, business trust, joint stock association and unincorporated nonprofit association.

(3641) “United States” includes district, authority, bureau, commission, department and any other agency of the United States.

(3742) “Voting group” means all shares of one or more classes or series that under the articles of incorporation or Section 79-4-1.01 et seq. are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or Section 79-4-1.01 et seq. to vote generally on the matter are for that purpose a single voting group.

(3843) “Voting power” means the current power to vote in the election of directors.

(3944) “Writing” or “written” means any information in the form of a document.

§ 79-4-1.41. Form of notice

(a) Notice under Section 79-4-1.01 et seq. shall must be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission is written notice. in the circumstances. Unless otherwise agreed between the sender and the recipient, words in a notice or other communication under this chapter must be in English.

(b) ~~Notice~~ A notice or other communication may be ~~communicated in person; by mail or other~~ given or sent by any method of delivery; ~~or by telephone, voice mail or other, except that electronic means transmissions must be in accordance with this section.~~ If these ~~forms of personal notice~~ methods of delivery are impracticable, a notice or other communication may be communicated by a newspaper of general circulation in the area where published, or by radio, television or other form of public broadcast communication.

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

~~(dc) Written notice to a domestic or foreign corporation~~ Notice or other communication to a domestic or foreign corporation authorized to transact business in this state may be addressed delivered to its registered agent at its registered office or to the secretary of the corporation at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

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

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

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

(1) it enters an information processing system that the recipient has designated or uses for the purposes of receiving electronic transmissions or information of the type sent, and from which the recipient is able to retrieve the electronic transmission and;

(2) it is in a form capable of being processed by that system.

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

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

~~(e) Except as provided in subsection (c), written notice,~~ (i) Notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

(1) When received;

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

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

(B) a director's residence or usual place of business; or

(C) the corporation's principal place of business;

(2) Five (5) days after its deposit in the United States mail, (2) if mailed postpaid postage prepaid and correctly addressed; to a shareholder, upon deposit in the United States mail;

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

~~(3) On the date shown on the return receipt, (A) if sent by registered or certified mail, return receipt requested, and the date shown on the return receipt is signed by or on behalf of the addressee; or~~

~~(B) five (5) days after it is deposited in the United States mail;~~

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

~~(5) if oral, when communicated.~~

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

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

~~(j) (g) If Section 79-4-1.01 et seq. prescribes notice requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements for notices or other communications, not inconsistent with this section or other provisions of Section 79-4-1.01 et seq., those requirements govern. The articles of incorporation or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.~~

§ 79-4-4.01. Requirements

(a) A corporate name:

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

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

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

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

~~(2) A corporate name reserved or registered under Section 79-4-4.02 or 79-4-4.03;~~

~~(32) The fictitious name adopted by a foreign corporation or foreign limited liability company authorized to transact business in this state because its real name is unavailable; and~~

~~(43) The corporate name of a not for profit nonprofit corporation incorporated or authorized to transact business in this state;~~

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

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

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

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

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

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

(1) Has merged with the other corporation;

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

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

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

§ 79-4-4.02. Reservation

(a) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the Secretary of State for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the corporate name applied for is available, he shall reserve the name for the applicant's exclusive use for a nonrenewable 180-day period.

(b) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer that states the name and address of the transferee.

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

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

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

§ 79-4-5.01. Registered office and agent required

Each corporation must continuously maintain in this state:

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

(2) A registered agent, who may be:

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

(ii) A domestic corporation, a domestic limited liability company or ~~not for profit~~ domestic nonprofit corporation whose business office is identical with the registered office; or

(iii) A foreign corporation, foreign limited liability company -or ~~not for profit~~ foreign nonprofit corporation authorized to transact business in this state whose business office is identical with the registered office.

§ 79-4-5.02. Changing registered office or agent

(a) A corporation may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) The name of the corporation;

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

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

(4) The name of its current registered agent;

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

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

(b) If a registered agent changes the street address of his a registered agent's business office changes, the registered agent may change the street address of the registered office of any corporation for which he is the registered agent by notifying delivering a signed written notice of the change to the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing a signed statement that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.

§ 79-4-6.20. Subscriptions

(a) A subscription for shares entered into before incorporation is irrevocable for six (6) months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

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

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

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

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

§ 79-4-7.04. Actions taken without meetings; written notice; written consent

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

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

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

(d) A consent signed pursuant to the provisions of this section has the effect of a vote taken at a meeting and may be described as such in any document. Unless the articles of incorporation, bylaws, or a resolution of the board of directors provides for a

reasonable delay to permit tabulation of written consents, the action taken by less than unanimous written consent shall be effective when written consents signed by the holders of shares having sufficient votes to take the action are delivered to the corporation.

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

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

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

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

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

§ 79-4-7.05. Notice to shareholders

(a) A corporation shall notify shareholders of the date, time and place of each annual and special shareholders' meeting no fewer than ten (10) nor more than sixty (60) days before the meeting date. If the board of directors has authorized participation by means of remote communication pursuant to Section 79-4-7.09 for any class or series of shareholders, the notice of such class or series of shareholders shall describe the means of remote communication to be used. Unless Section 79-4-1.01 et seq. or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

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

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

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

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

§ 79-4-7.09. Remote participation in annual and special meetings

(a) Shareholders of any class or series may participate in any meeting of shareholders by means of remote communication to the extent the board of directors authorizes such participation for such class or series. Participation by means of remote communication shall be subject to such guidelines and procedures as the board of directors adopts, and shall be in conformity with subsection (b) of this section.

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

- (1) To verify that each person participating remotely is a shareholder, and
- (2) To provide such shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to communicate, and to read or hear the proceedings of the meeting, substantially concurrently with such proceeding.

§ 79-4-7.22. Appointment of proxy

(a) A shareholder may vote his shares in person or by proxy.

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

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

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

- (1) A pledgee;
- (2) A person who purchased or agreed to purchase the shares;
- (3) A creditor of the corporation who extended it credit under terms requiring the appointment;
- (4) An employee of the corporation whose employment contract requires the appointment; or
- (5) A party to a voting agreement created under Section 79-4-7.31.

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

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

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

(h) Subject to Section 79-4-7.24 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

§ 79-4-7.42. Written demand

No shareholder may commence a derivative proceeding until:

- (1) A written demand has been made upon the corporation to take suitable action; and
- (2) Ninety (90) days have expired from the date delivery of the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the ninety-day period.

§ 79-4-8.01. Board required; role

(a) Except as provided in Section 79-4-7.32, each corporation must have a board of directors.

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

§ 79-4-8.05. Terms

(a) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

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

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

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

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

§ 79-4-8.06. Staggered terms

The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two (2) or three (3) groups, with each group containing one-half (1/2) or one-third (1/3) of the total, as near as may be practicable. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two (2) years or three (3) years, as the case may be, to succeed those whose terms expire.

§ 79-4-8.07. Resignation

(a) A director may resign at any time by delivering written notice to the board of directors, or its chairman ~~or~~ to the secretary of the corporation.

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

§ 79-4-8.10. Vacancies

(a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(1) The shareholders may fill the vacancy;

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

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

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

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

§ 79-4-8.24. Quorum; assent to action presumed

(a) Unless the articles of incorporation or bylaws require a greater number or unless otherwise specifically provided in this chapter, a quorum of a board of directors consists of:

- (1) A majority of the fixed number of directors if the corporation has a fixed board size; or
 - (2) A majority of the number of directors prescribed, or if no number is prescribed, the number in office immediately before the meeting begins, if the corporation has a variable-range size board.
- (b) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third (1/3) of the fixed or prescribed number of directors determined under subsection (a).
- (c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.
- (d) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless: (1) the director ~~he~~ objects at the beginning of the meeting (or promptly upon his arrival) to holding it or transacting business at the meeting; (2) ~~his~~the dissent or abstention from the action taken is entered in the minutes of the meeting; or (3) the director~~he~~ delivers written notice of the director's~~his~~ dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

§ 79-4-8.26. Submission of matters for shareholder vote

A corporation may agree to submit a matter to a vote of its shareholders even if, after approving the matter, the board of directors determines it no longer recommends the matter.

§ 79-4-8.31. Liability of director; burden of proof

(a) A director shall not be liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as a director, unless the party asserting liability in a proceeding establishes that:

(1) No defense by the director based on (i) aAny provision in the articles of incorporation authorized by Section 79-4-2.02(b)(4) or, the protection afforded by Section 79-4-8.61 for action taken in compliance with Section 79-4-8.62 or 79-4-8.63~~or~~ interposed as a bar to the proceeding by the director does not preclude liability or (ii) the protection afforded by Section 79-4-8.70, precludes liability; and

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

(i) Action not in good faith; or

(ii) A decision

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

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

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

(A) Which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation, and

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

(iv) A sustained failure of the director to devote attention to ongoing oversight of ~~be informed about~~ the business and affairs of the corporation, or a failure to devote timely attention, by making (or causing to be made) appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need therefore; or or other material failure of the director to discharge the oversight function; or

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

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

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

(i) Harm to the corporation or its shareholders has been suffered, and

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

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

(3) For other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, shall also have whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

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

§ 79-4-8.50. Definitions

In this subchapter subarticle:

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

(2) "Director" or "officer" means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, manager, partner, trustee, employee or agent of another ~~entity domestic or foreign corporation, partnership, joint venture, trust, or~~ employee benefit plan ~~or other entity~~. A director or officer is considered to be serving an employee benefit plan at the corporation's request if the individual's duties to the corporation also impose duties on, or otherwise involve services by, the individual to the plan or to participants in or beneficiaries of the plan. "Director" or "officer" includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

(3) "Expenses" ~~includes counsel fees.~~ means reasonable expenses of any kind that are incurred in connection with a matter.

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

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

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

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

§ 79-4-8.53. Litigation expenses

(a) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred in connection with the proceeding by an individual who is a party to the proceeding because that individual is a member of the board of directors if the director delivers to the corporation:

- (1) A [signed](#) written affirmation of the director's good faith belief that the relevant standard of conduct described in Section 79-4-8.51 has been met by the director or that the proceeding involves conduct for which liability has been eliminated under a provision of the articles of incorporation as authorized by Section 79-4-2.02(b)(4); and
- (2) A [signed](#) written undertaking of the director to repay any funds advanced if the director is not entitled to mandatory indemnification under Section 79-4-8.52 and it is ultimately determined under Section 79-4-8.54 or Section 79-4-8.55 that the director has not met the relevant standard of conduct described in Section 79-4-8.51.

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

(c) Authorizations under this section shall be made:

(1) By the board of directors:

- (i) If there are two (2) or more qualified directors, by a majority vote of all the qualified directors (a majority of whom shall for such purpose constitute a quorum) or by a majority of the members of a committee of two (2) or more qualified directors appointed by such a vote; or
- (ii) If there are fewer than two (2) qualified directors, by the vote necessary for action by the board in accordance with Section 79-4-8.24(c), in which authorization directors who are not qualified directors may participate; or

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

§ 79-4-8.60. Definitions

In Sections 79-4-8.60 through 79-4-8.63 and Section 79-4-8.70:

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

- (i) To which, at the relevant time, the director is a party; or
- (ii) Respecting which, at the relevant time, the director had knowledge and a material financial interest known to the director; or
- (iii) Respecting which, at the relevant time, the director knew that a related person was a party or had a material financial interest.

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

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

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

(5) "Related person" means:

- (i) The director's spouse;
- (ii) A child, stepchild, grandchild, parent, stepparent, grandparent, sibling, [step sibling, half sibling, aunt, uncle, niece or nephew](#) (or spouse of any thereof) of the director or of the director's spouse;

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

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

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

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

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

(7) “Required disclosure” means disclosure of (i) the existence and nature of the director's conflicting interest, and (ii) all facts known to the director respecting the subject matter of the transaction that a director free of such conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction.

§ 79-4-11.01. Definitions

As used in this chapter:

(a) “Interests” means the proprietary interests in another entity.

(b) “Merger” means a business combination pursuant to Section 79-4-11.02.

(c) “Organizational documents” means the basic document or documents that create, or determine the internal governance of, another entity.

(d) ~~“Other entity” means any association or legal entity, other than a domestic or foreign corporation, organized to conduct business, including, without limitation, limited partnerships, general partnerships, limited liability partnerships, limited liability companies, joint ventures, joint stock companies, and business trusts.~~Reserved.

(e) “Party to a merger” or “party to a share exchange” means any domestic or foreign corporation or ~~other-eligible~~ entity that will-
~~either:~~

(1) Merge under a plan of merger;

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

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

(f) “Share exchange” means a business combination pursuant to Section 79-4-11.03.

(g) “Survivor” in a merger means the corporation or ~~other-eligible~~ entity into which one or more other corporations or other entities are merged. A survivor of a merger may preexist the merger or be created by the merger.

§ 79-4-11.06. Filing articles; contents; effectiveness

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

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

- (2) If the articles of incorporation of the survivor of a merger are amended, or if a new corporation is created as a result of a merger, the amendments to the survivor's articles of incorporation or the articles of incorporation of the new corporation,
- (3) If the plan of merger or share exchange required approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by the Mississippi Business Corporation Act and the articles of incorporation;
- (4) If the plan of merger or share exchange did not require approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement to that effect; and
- (5) As to each foreign corporation and each other entity that was a party to the merger or share exchange, a statement that the plan and the performance of its terms were duly authorized by all action required by the laws under which the corporation or other entity is organized or by which it is governed, and by its articles of incorporation or organizational documents.

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

§ 79-4-11.08. Abandonment

(a) Unless otherwise provided in a plan of merger or share exchange or in the laws under which a foreign corporation or a domestic or foreign other entity that is a party to a merger or a share exchange is organized or by which it is governed, after the plan has been adopted and approved as required by this article, and at any time before the merger or share exchange has become effective, it may be abandoned by any party thereto without action by the party's shareholders or owners of interests, in accordance with any procedures set forth in the plan of merger or share exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of directors of a corporation, or the managers of another entity, subject to any contractual rights of other parties to the merger or share exchange.

(b) If a merger or share exchange is abandoned under subsection (a) after articles of merger or share exchange have been filed with the Secretary of State but before the merger or share exchange has become effective, a statement that the merger or share exchange has been abandoned in accordance with this section, executed signed on behalf of a party to the merger or share exchange by an officer or other duly authorized representative, shall be delivered to the Secretary of State for filing prior to the effective date of the merger or share exchange. Upon filing, the statement shall take effect and the merger or share exchange shall be deemed abandoned and shall not become effective.

§ 79-4-13.20. Notice to shareholders of rights

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

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

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

- (1) Written notice that appraisal rights are, are not or may be available must be given sent to each record shareholder from whom a consent is solicited at the time consent of such shareholder is first solicited and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of this article; and
- (2) Written notice that appraisal rights are, are not or may be available must be delivered together with the notice to nonconsenting and nonvoting shareholders required by Section 79-4-7.04(e) and (f), may include the materials described in Section 79-4-13.22 and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of this article.

§ 79-4-13.21. Eligibility for payment

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

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

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

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

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

§ 79-4-13.22. Appraisal notice and form

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

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

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

(2) State:

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

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

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

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

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

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

§ 79-4-14.21. Notice and certificate; effects

(a) If the Secretary of State determines that one or more grounds exist under Section 79-4-14.20 for dissolving a corporation, he shall serve the corporation with written notice of his determination under Section 79-4-5.04, except that such determination may be served by first class mail.

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

~~(c) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under Section 79-4-14.05 and notify claimants under Sections 79-4-14.06 and 79-4-14.07. Reserved.~~

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

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

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

§ 79-4-14.22. Reinstatement

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

- (1) Recite the name of the corporation and the effective date of its administrative dissolution;
- (2) State that the ground or grounds for dissolution either did not exist or have been eliminated
- (3) State that the corporation's name satisfies the requirements of Section 79-4-4.01; and
- (4) Contain a certificate from the Mississippi State Tax Commission reciting that all taxes owed by the corporation have been paid.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) and that the information is correct, he shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites his determination and the effective date of reinstatement, file the original of the certificate and serve a copy on the corporation under Section 79-4-5.04.

(c) When the reinstatement is effective:

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

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

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

~~(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.~~

§ 79-4-15.01. Activities requiring certificate; exempt activities

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

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

- (1) Maintaining, defending or settling any proceeding;
- (2) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

- (3) Maintaining bank accounts;
- (4) Maintaining offices or agencies for the transfer, exchange and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities;
- (5) Selling through independent contractors;
- (6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
- (7) Creating or acquiring indebtedness, mortgages and security interests in real or personal property;
- (8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
- (9) Owning, without more, real or personal property;
- (10) Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature;

(11) Transacting business in interstate commerce-;

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

(13) Being a limited partner of a limited partnership or foreign limited partnership that is transacting business in this state; or

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

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

(d) A foreign corporation which is a ~~partner or member of any~~ general partner of any general or limited partnership; ~~limited partnership (other than a limited partner), joint venture, syndicate, pool or other association of any kind, whether or not such foreign corporation shares with or delegates to others control of such entity,~~ which entity-partnership is transacting business in this state, is hereby declared to be transacting business in this state.

§ 79-4-15.02. Transacting business without authority, effects

(a) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

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

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

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

(e) Notwithstanding subsections (a) and (b), the failure of a foreign corporation to obtain a certificate of authority ~~does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.~~ shall not impair the validity of any contract, deed, mortgage, security interest, lien or act of such foreign corporation or prevent the foreign corporation from defending any action, suit or proceeding with any court of this state.

§ 79-4-15.06. Corporate name

(a) If the corporate name of a foreign corporation does not satisfy the requirements of Section 79-4-4.01, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state:

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

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

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

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

(2) A corporate name reserved or registered under Section 79-4-4.02 or 79-4-4.03;

(3) The fictitious name of another foreign corporation or foreign limited liability company authorized to transact business in this state; ~~and~~

(4) The corporate name of a ~~not-for-profit~~ nonprofit corporation incorporated or authorized to transact business in this state;

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

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

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

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

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

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

(1) Has merged with the other corporation;

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

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

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

§ 79-4-15.07. Registered office and agent required

Each foreign corporation authorized to transact business in this state must continuously maintain in this state:

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

(2) A registered agent, who may be:

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

(ii) A domestic corporation, domestic limited liability company or ~~not for profit~~ domestic nonprofit corporation whose business office is identical with the registered office; or

(iii) A foreign corporation, foreign domestic limited liability company or foreign ~~not for profit~~ nonprofit corporation authorized to transact business in this state whose business office is identical with the registered office.

§ 79-4-15.08. Changing registered office or agent

(a) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) Its name;

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

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

(4) The name of its current registered agent;

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

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

(b) If the street address of a registered agent ~~changes the street address of his~~ business office changes, he may change the street address of the registered office of any foreign corporation for which he the person is the registered agent by notifying the corporation in writing of the change and signing ~~(either manually or in facsimile)~~ and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.

§ 79-4-15.31. Procedure and effect

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

(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after service of the notice is perfected under Section 79-4-15.10, the Secretary of State may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation under Section 79-4-15.10, except that such certificate may be served by first class mail.

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

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

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

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

(g) A foreign corporation whose registration has been administratively revoked may not maintain any action, suit or proceeding in any court of this state until such foreign corporation's certificate of authority has been reinstated.

§ 79-4-16.01. Records required

(a) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

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

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

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

- (1) Its articles or restated articles of incorporation, all amendments to them currently in effect and any notices to shareholders referred to in Section 79-4-1.20(k)(5) regarding facts on which a filed document is dependent;
- (2) Its bylaws or restated bylaws and all amendments to them currently in effect;
- (3) Resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences and limitations, if shares issued pursuant to those resolutions are outstanding;
- (4) The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three (3) years;
- (5) All written communications to shareholders generally within the past three (3) years, including the financial statements furnished for the past three (3) years under Section 79-4-16.20;
- (6) A list of the names and business addresses of its current directors and officers; and
- (7) Its most recent annual report delivered to the Secretary of State under Section 79-4-16.22.

§ 79-4-16.02. Inspection and copying by shareholder

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

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

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

- (2) Accounting records of the corporation; and
 - (3) The record of shareholders.
- (c) A shareholder may inspect and copy the records identified in subsection (b) only if:
- (1) His demand is made in good faith and for a proper purpose;
 - (2) He describes with reasonable particularity his purpose and the records he desires to inspect; and
 - (3) The records are directly connected with his purpose.
- (d) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.
- (e) This section does not affect:
- (1) The right of a shareholder to inspect records under Section 79-4-7.20 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant;
 - (2) The power of a court, independently of Section 79-4-1.01 et seq., to compel the production of corporate records for examination.
- (f) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on his behalf.

§ 79-4-16.06. Notice; requirements

- (a) Whenever notice ~~is would otherwise be~~ required to be given under any provision of this act to ~~any a~~ shareholder, such notice ~~shall need~~ not ~~be required to~~ be given if:
- (1) ~~Notice-Notices to the shareholders~~ of two (2) consecutive annual meetings, and all notices of meetings during the period between such two (2) consecutive annual meetings, have been sent to such shareholder at such shareholder's address as shown on the records of the corporation and have been returned undeliverable or could not be delivered; or
 - (2) All, but not less than two (2), payments or dividends on securities during a twelve-month period, or two (2) consecutive payments of dividends on securities during a period of more than twelve (12) months, have been sent to such shareholder at such shareholder's address as shown on the records of the corporation and have been returned undeliverable or could not be delivered.
- (b) If any such shareholder shall deliver to the corporation a written notice setting forth such shareholder's then current address, the requirement that notice be given to such shareholder shall be reinstated.

§ 79-4-16.20. Annual financial statements to shareholders

- (a) A corporation shall furnish its shareholders annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.
- (b) If the annual financial statements are reported upon by a public accountant, his report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records:
- (1) Stating his reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and
 - (2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

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

§ 79-4-16.21. Indemnification, advances, certain share issues

(a) If a corporation indemnifies or advances expenses to a director under Section 79-4-8.51, 79-4-8.52, 79-4-8.53 or 79-4-8.54 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next shareholders' meeting.

(b) If a corporation issues or authorizes the issuance of shares for promissory notes or for promises to render services in the future, the corporation shall report in writing to the shareholders the number of shares authorized or issued, and the consideration received by the corporation, with or before the notice of the next shareholders' meeting.

§ 79-4-17.05. Relation to Electronic Signatures in Global and National Commerce Act

In the event that any provisions of this chapter are deemed to modify, limit or supersede the Federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001 *et seq.*, the provisions of this chapter shall control to the maximum extent permitted by section 102(a)(2) of that federal Act.



West's Annotated Mississippi Code [Currentness](#)

Title 57. Planning, Research and Development

[Chapter 73](#). Economic Development Reform Act

→ § 57-73-21. Categorizing counties; tax credits for jobs

<Section effective for cases involving business enterprises that received or applied for the job tax credit authorized by this Section from or after January 1, 2005. See also, Section effective for cases involving business enterprises that received or applied for the job tax credit authorized by this Section prior to January 1, 2005>

(1) Annually by December 31, using the most current data available from the University Research Center, Mississippi Department of Employment Security and the United States Department of Commerce, the State Tax Commission shall rank and designate the state's counties as provided in this section. The twenty-eight (28) counties in this state having a combination of the highest unemployment rate and lowest per capita income for the most recent thirty-six-month period, with equal weight being given to each category, are designated Tier Three areas. The twenty-seven (27) counties in the state with a combination of the next highest unemployment rate and next lowest per capita income for the most recent thirty-six-month period, with equal weight being given to each category, are designated Tier Two areas. The twenty-seven (27) counties in the state with a combination of the lowest unemployment rate and the highest per capita income for the most recent thirty-six-month period, with equal weight being given to each category, are designated Tier One areas. Counties designated by the Tax Commission qualify for the appropriate tax credit for jobs as provided in this section. The designation by the Tax Commission is effective for the tax years of permanent business enterprises which begin after the date of designation. For companies which plan an expansion in their labor forces, the Tax Commission shall prescribe certification procedures to ensure that the companies can claim credits in future years without regard to whether or not a particular county is removed from the list of Tier Three or Tier Two areas.

(2) Permanent business enterprises in counties designated by the Tax Commission as Tier Three areas are allowed a job tax credit for taxes imposed by [Section 27-7-5](#) equal to ten percent (10%) of the payroll of the enterprise for net new full-time employee jobs for five (5) years beginning with years two (2) through six (6) after the creation of the minimum number of jobs required by this subsection; however, if the permanent business enterprise is located in an area that has been declared by the Governor to be a disaster area and as a direct result of the disaster the permanent business enterprise is unable to maintain the required number of jobs, the Chairman of the State Tax Commission may extend this time period for not more two (2) years. The number of new full-time jobs must be determined by comparing the monthly average number of full-time employees subject to the Mississippi income tax withholding for the taxable year with the corresponding period of the prior taxable year. Only those permanent business enterprises that increase employment by ten (10) or more in a Tier Three area are eligible for the credit. Credit is not allowed during any of the five (5) years if the net employment increase falls below ten (10). The Tax Commission shall adjust the credit allowed each year for the net new employment fluctuations above the minimum level of ten (10).

(3) Permanent business enterprises in counties that have been designated by the Tax Commission as Tier Two areas are allowed a job tax credit for taxes imposed by [Section 27-7-5](#) equal to five percent (5%) of the payroll of the enterprise for net new full-time employee jobs for five (5) years beginning with years two (2) through six (6) after the creation of the minimum number of jobs required by this subsection; however, if the permanent business enterprise is located in an area that has been declared by the Governor to be a disaster area and as a direct result of the disaster the

permanent business enterprise is unable to maintain the required number of jobs, the Chairman of the State Tax Commission may extend this time period for not more two (2) years. The number of new full-time jobs must be determined by comparing the monthly average number of full-time employees subject to Mississippi income tax withholding for the taxable year with the corresponding period of the prior taxable year. Only those permanent business enterprises that increase employment by fifteen (15) or more in Tier Two areas are eligible for the credit. The credit is not allowed during any of the five (5) years if the net employment increase falls below fifteen (15). The Tax Commission shall adjust the credit allowed each year for the net new employment fluctuations above the minimum level of fifteen (15).

(4) Permanent business enterprises in counties designated by the Tax Commission as Tier One areas are allowed a job tax credit for taxes imposed by [Section 27-7-5](#) equal to two and one-half percent (2.5%) of the payroll of the enterprise for net new full-time employee jobs for five (5) years beginning with years two (2) through six (6) after the creation of the minimum number of jobs required by this subsection; however, if the permanent business enterprise is located in an area that has been declared by the Governor to be a disaster area and as a direct result of the disaster the permanent business enterprise is unable to maintain the required number of jobs, the Chairman of the State Tax Commission may extend this time period for not more two (2) years. The number of new full-time jobs must be determined by comparing the monthly average number of full-time employees subject to Mississippi income tax withholding for the taxable year with the corresponding period of the prior taxable year. Only those permanent business enterprises that increase employment by twenty (20) or more in Tier One areas are eligible for the credit. The credit is not allowed during any of the five (5) years if the net employment increase falls below twenty (20). The Tax Commission shall adjust the credit allowed each year for the net new employment fluctuations above the minimum level of twenty (20).

(5) In addition to the other credits authorized in this section, an additional Five Hundred Dollars (\$500.00) credit for each net new full-time employee or an additional One Thousand Dollars (\$1,000.00) credit for each net new full-time employee who is paid a salary, excluding benefits which are not subject to Mississippi income taxation, of at least one hundred twenty-five percent (125%) of the average annual wage of the state or an additional Two Thousand Dollars (\$2,000.00) credit for each net new full-time employee who is paid a salary, excluding benefits which are not subject to Mississippi income taxation, of at least two hundred percent (200%) of the average annual wage of the state, shall be allowed for any company establishing or transferring its national or regional headquarters from within or outside the State of Mississippi. A minimum of twenty (20) jobs must be created to qualify for the additional credit. The Mississippi Development Authority shall establish criteria and prescribe procedures to determine if a company qualifies as a national or regional headquarters for purposes of receiving the credit awarded in this subsection. As used in this subsection, the average annual wage of the state is the most recently published average annual wage as determined by the Mississippi Department of Employment Security.

(6) In addition to the other credits authorized in this section, any job requiring research and development skills (chemist, engineer, etc.) shall qualify for an additional One Thousand Dollars (\$1,000.00) credit for each net new full-time employee.

(7) In lieu of the other tax credits provided in this section, any commercial or industrial property owner which remediates contaminated property in accordance with [Sections 49-35-1](#) through [49-35-25](#), is allowed a job tax credit for taxes imposed by [Section 27-7-5](#) equal to the percentage of payroll provided in subsection (2), (3) or (4) of this section for net new full-time employee jobs for five (5) years beginning with years two (2) through six (6) after the creation of the jobs. The number of new full-time jobs must be determined by comparing the monthly average number of full-time employees subject to Mississippi income tax withholding for the taxable year with the corresponding period of the prior taxable year. This subsection shall be administered in the same manner as subsections (2), (3) and (4), except the landowner shall not be required to increase employment by the levels provided in subsections (2), (3) and (4) to be eligible for the tax credit.

(8)(a) Tax credits for five (5) years for the taxes imposed by [Section 27-7-5](#) shall be awarded for increases in the annual payroll for net new full-time jobs created by business enterprises qualified under this section. The Tax Com-

mission shall adjust the credit allowed in the event of payroll fluctuations during the additional five (5) years of credit.

(b) Tax credits for five (5) years for the taxes imposed by [Section 27-7-5](#) shall be awarded for additional net new full-time jobs created by business enterprises qualified under subsections (5) and (6) of this section. The Tax Commission shall adjust the credit allowed in the event of employment fluctuations during the additional five (5) years of credit.

(9)(a) The sale, merger, acquisition, reorganization, bankruptcy or relocation from one (1) county to another county within the state of any business enterprise may not create new eligibility in any succeeding business entity, but any unused job tax credit may be transferred and continued by any transferee of the business enterprise. The Tax Commission shall determine whether or not qualifying net increases or decreases have occurred or proper transfers of credit have been made and may require reports, promulgate regulations, and hold hearings as needed for substantiation and qualification.

(b) This subsection shall not apply in cases in which a business enterprise has ceased operation, laid off all its employees and is subsequently acquired by another unrelated business entity that continues operation of the enterprise in the same or a similar type of business. In such a case the succeeding business entity shall be eligible for the credit authorized by this section unless the cessation of operation of the business enterprise was for the purpose of obtaining new eligibility for the credit.

(10) Any tax credit claimed under this section but not used in any taxable year may be carried forward for five (5) years from the close of the tax year in which the qualified jobs were established but the credit established by this section taken in any one (1) tax year must be limited to an amount not greater than fifty percent (50%) of the taxpayer's state income tax liability which is attributable to income derived from operations in the state for that year. If the permanent business enterprise is located in an area that has been declared by the Governor to be a disaster area and as a direct result of the disaster the business enterprise is unable to use the existing carry-forward, the Chairman of the State Tax Commission may extend the period that the credit may be carried forward for a period of time not to exceed two (2) years.

(11) No business enterprise for the transportation, handling, storage, processing or disposal of hazardous waste is eligible to receive the tax credits provided in this section.

(12) The credits allowed under this section shall not be used by any business enterprise or corporation other than the business enterprise actually qualifying for the credits.

(13) As used in this section:

(a) "Business enterprises" means entities primarily engaged in:

(i) Manufacturing, processing, warehousing, distribution, wholesaling and research and development, or

(ii) Permanent business enterprises designated by rule and regulation of the Mississippi Development Authority as air transportation and maintenance facilities, final destination or resort hotels having a minimum of one hundred fifty (150) guest rooms, recreational facilities that impact tourism, movie industry studios, telecommunications enterprises, data or information processing enterprises or computer software development enterprises or any technology intensive facility or enterprise.

(b) "Telecommunications enterprises" means entities engaged in the creation, display, management, storage, processing, transmission or distribution for compensation of images, text, voice, video or data by wire or by wireless means, or entities engaged in the construction, design, development, manufacture, maintenance or distribution for

compensation of devices, products, software or structures used in the above activities. Companies organized to do business as commercial broadcast radio stations, television stations or news organizations primarily serving in-state markets shall not be included within the definition of the term “telecommunications enterprises.”

(14) The tax credits provided for in this section shall be in addition to any tax credits described in [Sections 57-51-13\(b\)](#), [57-53-1\(1\)\(a\)](#) and [57-54-9\(b\)](#) and granted pursuant to official action by the Mississippi Development Authority prior to July 1, 1989, to any business enterprise determined prior to July 1, 1989, by the Mississippi Development Authority to be a qualified business as defined in [Section 57-51-5\(f\)](#) or [Section 57-54-5\(d\)](#) or a qualified company as described in [Section 57-53-1](#), as the case may be; however, from and after July 1, 1989, tax credits shall be allowed only under either this section or [Sections 57-51-13\(b\)](#), [57-53-1\(1\)\(a\)](#) and [Section 57-54-9\(b\)](#) for each net new full-time employee.

CREDIT(S)

Laws 1989, Ch. 524, § 11; Laws 1990, Ch. 502, § 8; [Laws 1991, Ch. 584, § 9](#); [Laws 1994, Ch. 558, § 19](#); [Laws 1995, Ch. 527, § 2](#), eff. from and after passage (approved April 5, 1995). Amended by [Laws 2000, 2nd Ex. Sess., Ch. 1, § 40](#), eff. January 1, 2001; [Laws 2005, Ch. 497, § 7](#), eff. January 1, 2005; [Laws 2005, 3rd Ex. Sess., Ch. 1, § 66](#), eff. July 1, 2005; [Laws 2007, Ch. 452, § 1](#), eff. July 1, 2007; [Laws 2009, Ch. 557, § 22](#), eff. from and after passage (approved April 17, 2009); [Laws 2010, Ch. 533, § 37](#), eff. January 1, 2010.

RETROACTIVE EFFECTIVE DATE

<Laws 2010, Ch. 533, § 37 amended both texts of this section. Section 52 of Laws 2010, Ch. 533 provides:
 ”Sections 12 through 23 of this act shall take effect and be in force from and after July 1, 2010, Section 37 of this act shall take effect and be in force from and after January 1, 2010, and the remainder of this act shall take effect and be in force from and after its passage”>

HISTORICAL AND STATUTORY NOTES

Laws 2000, 2nd Ex. Sess., Ch. 1, § 1 provides:

“This act may be cited as the ‘Advantage Mississippi Initiative.’ ”

Sections 8 and 9 of Laws 2005, Ch. 497 (§ 7 of which amended this section), provide:

“SECTION 8. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective or are begun thereafter. The provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws.

“SECTION 9. This act shall take effect and be in force from and after January 1, 2005.”

For construction of the terms “Mississippi State Tax Commission”, “State Tax Commission”, “Tax Commission”, “commission”, “Chairman of the State Tax Commission”, “Chairman of the Tax Commission”, and “chairman” subsequent to Laws 2009, Ch. 492, see § 27-3-4.

CROSS REFERENCES

Brownfields Voluntary Cleanup and Redevelopment Act, see [§ 49-35-1 et seq.](#)
Family-oriented entertainment enterprise projects, see [§ 57-30-1 et seq.](#)
Mississippi Major Economic Impact Act, tax credits, see [§§ 27-7-22.17, 27-7-22.19.](#)
Regional Economic Development Act, see [§ 57-64-1 et seq.](#)
Sales tax, industrial exemptions, see [§ 27-65-101.](#)
Tax credit, Mississippi Brownfields Voluntary Cleanup and Redevelopment Incentives Act, see [§ 27-7-22.16.](#)

RESEARCH REFERENCES

Encyclopedias

[Encyclopedia of Mississippi Law § 70:61](#), Tax Credits.

JUDICIAL DECISIONS

In general [1](#)

[1](#). In general

Taxpayer had to create 20 new full-time jobs in one taxable year, as opposed to the cumulation of 20 net new full-time jobs over several years, in order to qualify for the “jobs tax credit.” [Manufab, Inc. v. Mississippi State Tax Com'n \(Miss. 2002\) 808 So.2d 947. Taxation 3517](#)

Miss. Code Ann. § 57-73-21, MS ST § 57-73-21

Current through the 2010 Regular and 1st and 2nd Extraordinary Sessions

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END OF DOCUMENT

CWest's Delaware Code Annotated [Currentness](#)

Title 6. Commerce and Trade

Subtitle II. Other Laws Relating to Commerce and Trade

[Chapter 18](#). Limited Liability Company Act[Subchapter II](#). Formation; Certificate of Formation**→ § 18-215. Series of members, managers, limited liability company interests or assets**

(a) A limited liability company agreement may establish or provide for the establishment of 1 or more designated series of members, managers, limited liability company interests or assets. Any such series may have separate rights, powers or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations, and any such series may have a separate business purpose or investment objective.

(b) Notwithstanding anything to the contrary set forth in this chapter or under other applicable law, in the event that a limited liability company agreement establishes or provides for the establishment of 1 or more series, and if the records maintained for any such series account for the assets associated with such series separately from the other assets of the limited liability company, or any other series thereof, and if the limited liability company agreement so provides, and if notice of the limitation on liabilities of a series as referenced in this subsection is set forth in the certificate of formation of the limited liability company, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular series shall be enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof, and, unless otherwise provided in the limited liability company agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally or any other series thereof shall be enforceable against the assets of such series. Assets associated with a series may be held directly or indirectly, including in the name of such series, in the name of the limited liability company, through a nominee or otherwise. Records maintained for a series that reasonably identify its assets, including by specific listing, category, type, quantity, computational or allocational formula or procedure (including a percentage or share of any asset or assets) or by any other method where the identity of such assets is objectively determinable, will be deemed to account for the assets associated with such series separately from the other assets of the limited liability company, or any other series thereof. Notice in a certificate of formation of the limitation on liabilities of a series as referenced in this subsection shall be sufficient for all purposes of this subsection whether or not the limited liability company has established any series when such notice is included in the certificate of formation, and there shall be no requirement that any specific series of the limited liability company be referenced in such notice. The fact that a certificate of formation that contains the foregoing notice of the limitation on liabilities of a series is on file in the office of the Secretary of State shall constitute notice of such limitation on liabilities of a series.

(c) A series established in accordance with subsection (b) of this section may carry on any lawful business, purpose or activity, whether or not for profit, with the exception of the business of banking as defined in [§ 126 of Title 8](#). Unless otherwise provided in a limited liability company agreement, a series established in accordance with subsection (b) of this section shall have the power and capacity to, in its own name, contract, hold title to assets (including real, personal and intangible property), grant liens and security interests, and sue and be sued.

(d) Notwithstanding [§ 18-303\(a\)](#) of this title, under a limited liability company agreement or under another agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations and liabilities of one

or more series.

(e) A limited liability company agreement may provide for classes or groups of members or managers associated with a series having such relative rights, powers and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of members or managers associated with the series having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members or managers associated with the series. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or manager or class or group of members or managers, including an action to create under the provisions of the limited liability company agreement a class or group of the series of limited liability company interests that was not previously outstanding. A limited liability company agreement may provide that any member or class or group of members associated with a series shall have no voting rights.

(f) A limited liability company agreement may grant to all or certain identified members or managers or a specified class or group of the members or managers associated with a series the right to vote separately or with all or any class or group of the members or managers associated with the series, on any matter. Voting by members or managers associated with a series may be on a per capita, number, financial interest, class, group or any other basis.

(g) Unless otherwise provided in a limited liability company agreement, the management of a series shall be vested in the members associated with such series in proportion to the then current percentage or other interest of members in the profits of the series owned by all of the members associated with such series, the decision of members owning more than 50 percent of the said percentage or other interest in the profits controlling; provided, however, that if a limited liability company agreement provides for the management of the series, in whole or in part, by a manager, the management of the series, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the limited liability company agreement. The manager of the series shall also hold the offices and have the responsibilities accorded to the manager as set forth in a limited liability company agreement. A series may have more than 1 manager. Subject to [§ 18-602](#) of this title, a manager shall cease to be a manager with respect to a series as provided in a limited liability company agreement. Except as otherwise provided in a limited liability company agreement, any event under this chapter or in a limited liability company agreement that causes a manager to cease to be a manager with respect to a series shall not, in itself, cause such manager to cease to be a manager of the limited liability company or with respect to any other series thereof.

(h) Notwithstanding [§ 18-606](#) of this title, but subject to subsections (i) and (l) of this section, and unless otherwise provided in a limited liability company agreement, at the time a member associated with a series that has been established in accordance with subsection (b) of this section becomes entitled to receive a distribution with respect to such series, the member has the status of, and is entitled to all remedies available to, a creditor of the series, with respect to the distribution. A limited liability company agreement may provide for the establishment of a record date with respect to allocations and distributions with respect to a series.

(i) Notwithstanding [§ 18-607\(a\)](#) of this title, a limited liability company may make a distribution with respect to a series that has been established in accordance with subsection (b) of this section. A limited liability company shall not make a distribution with respect to a series that has been established in accordance with subsection (b) of this section to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of such series, other than liabilities to members on account of their limited liability company interests with respect to such series and liabilities for which the recourse of creditors is limited to specified property of such series, exceed the fair value of the assets associated with such series, except that the fair value of property of the series that is subject to a liability for which the recourse of creditors is limited shall be included in the assets associated with such series only to the extent that the fair value of that property exceeds that liability. For purposes of the immediately preceding sentence, the term “distribution” shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or

other benefits program. A member who receives a distribution in violation of this subsection, and who knew at the time of the distribution that the distribution violated this subsection, shall be liable to a series for the amount of the distribution. A member who receives a distribution in violation of this subsection, and who did not know at the time of the distribution that the distribution violated this subsection, shall not be liable for the amount of the distribution. Subject to [§ 18-607\(c\)](#) of this title, which shall apply to any distribution made with respect to a series under this subsection, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

(j) Unless otherwise provided in the limited liability company agreement, a member shall cease to be associated with a series and to have the power to exercise any rights or powers of a member with respect to such series upon the assignment of all of the member's limited liability company interest with respect to such series. Except as otherwise provided in a limited liability company agreement, any event under this chapter or a limited liability company agreement that causes a member to cease to be associated with a series shall not, in itself, cause such member to cease to be associated with any other series or terminate the continued membership of a member in the limited liability company or cause the termination of the series, regardless of whether such member was the last remaining member associated with such series.

(k) Subject to [§ 18-801](#) of this title, except to the extent otherwise provided in the limited liability company agreement, a series may be terminated and its affairs wound up without causing the dissolution of the limited liability company. The termination of a series established in accordance with subsection (b) of this section shall not affect the limitation on liabilities of such series provided by subsection (b) of this section. A series is terminated and its affairs shall be wound up upon the dissolution of the limited liability company under [§ 18-801](#) of this title or otherwise upon the first to occur of the following:

- (1) At the time specified in the limited liability company agreement;
- (2) Upon the happening of events specified in the limited liability company agreement;
- (3) Unless otherwise provided in the limited liability company agreement, upon the affirmative vote or written consent of the members of the limited liability company associated with such series or, if there is more than 1 class or group of members associated with such series, then by each class or group of members associated with such series, in either case, by members associated with such series who own more than two-thirds of the then-current percentage or other interest in the profits of the series of the limited liability company owned by all of the members associated with such series or by the members in each class or group of such series, as appropriate; or
- (4) The termination of such series under subsection (m) of this section.

(l) Notwithstanding [§ 18-803\(a\)](#) of this title, unless otherwise provided in the limited liability company agreement, a manager associated with a series who has not wrongfully terminated the series or, if none, the members associated with the series or a person approved by the members associated with the series or, if there is more than 1 class or group of members associated with the series, then by each class or group of members associated with the series, in either case, by members who own more than 50 percent of the then current percentage or other interest in the profits of the series owned by all of the members associated with the series or by the members in each class or group associated with the series, as appropriate, may wind up the affairs of the series; but, if the series has been established in accordance with subsection (b) of this section, the Court of Chancery, upon cause shown, may wind up the affairs of the series upon application of any member associated with the series, the member's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee. The persons winding up the affairs of a series may, in the name of the limited liability company and for and on behalf of the limited liability company and such series, take all actions with respect to the series as are permitted under [§ 18-803\(b\)](#) of this title. The persons winding up the affairs of a series shall provide for the claims and obligations of the series and distribute the assets of the series as provided in [§](#)

[18-804](#) of this title, which section shall apply to the winding up and distribution of assets of a series. Actions taken in accordance with this subsection shall not affect the liability of members and shall not impose liability on a liquidating trustee.

(m) On application by or for a member or manager associated with a series established in accordance with subsection (b) of this section, the Court of Chancery may decree termination of such series whenever it is not reasonably practicable to carry on the business of the series in conformity with a limited liability company agreement.

(n) If a foreign limited liability company that is registering to do business in the State of Delaware in accordance with [§ 18-902](#) of this title is governed by a limited liability company agreement that establishes or provides for the establishment of designated series of members, managers, limited liability company interests or assets having separate rights, powers or duties with respect to specified property or obligations of the foreign limited liability company or profits and losses associated with specified property or obligations, that fact shall be so stated on the application for registration as a foreign limited liability company. In addition, the foreign limited liability company shall state on such application whether the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series, if any, shall be enforceable against the assets of such series only, and not against the assets of the foreign limited liability company generally or any other series thereof, and whether any of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the foreign limited liability company generally or any other series thereof shall be enforceable against the assets of such series.

CREDIT(S)

[70 Laws 1995, ch. 186, § 1, eff. July 10, 1995; 70 Laws 1996, ch. 360, § 9, eff. Aug. 1, 1996; 71 Laws 1997, ch. 77, §§ 19-23, eff. Aug. 1, 1997; 71 Laws 1998, ch. 341, §§ 9, 10, eff. Aug. 1, 1998; 72 Laws 2000, ch. 389, §§ 14-18, eff. Aug. 1, 2000; 74 Laws 2003, ch. 85, §§ 12, 13, eff. Aug. 1, 2003; 74 Laws 2004, ch. 275, § 9, eff. Aug. 1, 2004; 76 Laws 2007, ch. 105, §§ 22-28, eff. Aug. 1, 2007.](#)

HISTORICAL AND STATUTORY NOTES

76 Laws 2007, ch. 105, §§ 22 to 28, amended this section by adding “assets” in the section heading, and by substantially rewriting various provisions. Prior to amendment this section read:

“(a) A limited liability company agreement may establish or provide for the establishment of 1 or more designated series of members, managers or limited liability company interests having separate rights, powers or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations, and any such series may have a separate business purpose or investment objective.

“(b) Notwithstanding anything to the contrary set forth in this chapter or under other applicable law, in the event that a limited liability company agreement establishes or provides for the establishment of 1 or more series, and if separate and distinct records are maintained for any such series and the assets associated with any such series are held in such separate and distinct records (directly or indirectly, including through a nominee or otherwise) and accounted for in such separate and distinct records separately from the other assets of the limited liability company, or any other series thereof, and if the limited liability company agreement so provides, and if notice of the limitation on liabilities of a series as referenced in this subsection is set forth in the certificate of formation of the limited liability company, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular series shall be enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof, and, unless otherwise provided in the limited liability company agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally or any other series thereof shall be enforceable against the assets of such series. Notice in a certificate of formation of the limitation on liabilities of a series as referenced in this subsection

shall be sufficient for all purposes of this subsection whether or not the limited liability company has established any series when such notice is included in the certificate of formation, and there shall be no requirement that any specific series of the limited liability company be referenced in such notice. The fact that a certificate of formation that contains the foregoing notice of the limitation on liabilities of a series is on file in the office of the Secretary of State shall constitute notice of such limitation on liabilities of a series.

“(c) Notwithstanding § 18-303(a) of this title, under a limited liability company agreement or under another agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations and liabilities of one or more series.

“(d) A limited liability company agreement may provide for classes or groups of members or managers associated with a series having such relative rights, powers and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of members or managers associated with the series having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members or managers associated with the series. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or manager or class or group of members or managers, including an action to create under the provisions of the limited liability company agreement a class or group of the series of limited liability company interests that was not previously outstanding. A limited liability company agreement may provide that any member or class or group of members associated with a series shall have no voting rights.

“(e) A limited liability company agreement may grant to all or certain identified members or managers or a specified class or group of the members or managers associated with a series the right to vote separately or with all or any class or group of the members or managers associated with the series, on any matter. Voting by members or managers associated with a series may be on a per capita, number, financial interest, class, group or any other basis.

“(f) Unless otherwise provided in a limited liability company agreement, the management of a series shall be vested in the members associated with such series in proportion to the then current percentage or other interest of members in the profits of the series owned by all of the members associated with such series, the decision of members owning more than 50 percent of the said percentage or other interest in the profits controlling; provided, however, that if a limited liability company agreement provides for the management of the series, in whole or in part, by a manager, the management of the series, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the limited liability company agreement. The manager of the series shall also hold the offices and have the responsibilities accorded to the manager as set forth in a limited liability company agreement. A series may have more than 1 manager. Subject to § 18-602 of this title, a manager shall cease to be a manager with respect to a series as provided in a limited liability company agreement. Except as otherwise provided in a limited liability company agreement, any event under this chapter or in a limited liability company agreement that causes a manager to cease to be a manager with respect to a series shall not, in itself, cause such manager to cease to be a manager of the limited liability company or with respect to any other series thereof.

“(g) Notwithstanding § 18-606 of this title, but subject to subsections (h) and (k) of this section, and unless otherwise provided in a limited liability company agreement, at the time a member associated with a series that has been established in accordance with subsection (b) of this section becomes entitled to receive a distribution with respect to such series, the member has the status of, and is entitled to all remedies available to, a creditor of the series, with respect to the distribution. A limited liability company agreement may provide for the establishment of a record date with respect to allocations and distributions with respect to a series.

“(h) Notwithstanding § 18-607(a) of this title, a limited liability company may make a distribution with respect to a series that has been established in accordance with subsection (b) of this section. A limited liability company shall not make a distribution with respect to a series that has been established in accordance with subsection (b) of this section

to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of such series, other than liabilities to members on account of their limited liability company interests with respect to such series and liabilities for which the recourse of creditors is limited to specified property of such series, exceed the fair value of the assets associated with such series, except that the fair value of property of the series that is subject to a liability for which the recourse of creditors is limited shall be included in the assets associated with such series only to the extent that the fair value of that property exceeds that liability. For purposes of the immediately preceding sentence, the term “distribution” shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program. A member who receives a distribution in violation of this subsection, and who knew at the time of the distribution that the distribution violated this subsection, shall be liable to a series for the amount of the distribution. A member who receives a distribution in violation of this subsection, and who did not know at the time of the distribution that the distribution violated this subsection, shall not be liable for the amount of the distribution. Subject to § 18-607(c) of this title, which shall apply to any distribution made with respect to a series under this subsection, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

“(i) Unless otherwise provided in the limited liability company agreement, a member shall cease to be associated with a series and to have the power to exercise any rights or powers of a member with respect to such series upon the assignment of all of the member's limited liability company interest with respect to such series. Except as otherwise provided in a limited liability company agreement, any event under this chapter or a limited liability company agreement that causes a member to cease to be associated with a series shall not, in itself, cause such member to cease to be associated with any other series or terminate the continued membership of a member in the limited liability company or cause the termination of the series, regardless of whether such member was the last remaining member associated with such series.

“(j) Subject to 18-801 of this title, except to the extent otherwise provided in the limited liability company agreement, a series may be terminated and its affairs wound up without causing the dissolution of the limited liability company. The termination of a series established in accordance with subsection (b) of this section shall not affect the limitation on liabilities of such series provided by subsection (b) of this section. A series is terminated and its affairs shall be wound up upon the dissolution of the limited liability company under 18-801 of this title or otherwise upon the first to occur of the following:

“(1) At the time specified in the limited liability company agreement;

“(2) Upon the happening of events specified in the limited liability company agreement;

“(3) Unless otherwise provided in the limited liability company agreement, upon the affirmative vote or written consent of the members of the limited liability company associated with such series or, if there is more than 1 class or group of members associated with such series, then by each class or group of members associated with such series, in either case, by members associated with such series who own more than two-thirds of the then-current percentage or other interest in the profits of the series of the limited liability company owned by all of the members associated with such series or by the members in each class or group of such series, as appropriate; or

“(4) The termination of such series under subsection (l) of this section.


“(k) Notwithstanding § 18-803(a) of this title, unless otherwise provided in the limited liability company agreement, a manager associated with a series who has not wrongfully terminated the series or, if none, the members associated with the series or a person approved by the members associated with the series or, if there is more than 1 class or group of members associated with the series, then by each class or group of members associated with the series, in either case, by members who own more than 50 percent of the then current percentage or other interest in the profits of the

series owned by all of the members associated with the series or by the members in each class or group associated with the series, as appropriate, may wind up the affairs of the series; but, if the series has been established in accordance with subsection (b) of this section, the Court of Chancery, upon cause shown, may wind up the affairs of the series upon application of any member associated with the series, the member's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee. The persons winding up the affairs of a series may, in the name of the limited liability company and for and on behalf of the limited liability company and such series, take all actions with respect to the series as are permitted under § 18-803(b) of this title. The persons winding up the affairs of a series shall provide for the claims and obligations of the series and distribute the assets of the series as provided in § 18-804 of this title, which section shall apply to the winding up and distribution of assets of a series. Actions taken in accordance with this subsection shall not affect the liability of members and shall not impose liability on a liquidating trustee.

“(l) On application by or for a member or manager associated with a series established in accordance with subsection (b) of this section, the Court of Chancery may decree termination of such series whenever it is not reasonably practicable to carry on the business of the series in conformity with a limited liability company agreement.

“(m) If a foreign limited liability company that is registering to do business in the State of Delaware in accordance with § 18-902 of this title is governed by a limited liability company agreement that establishes or provides for the establishment of designated series of members, managers or limited liability company interests having separate rights, powers or duties with respect to specified property or obligations of the foreign limited liability company or profits and losses associated with specified property or obligations, that fact shall be so stated on the application for registration as a foreign limited liability company. In addition, the foreign limited liability company shall state on such application whether the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series, if any, shall be enforceable against the assets of such series only, and not against the assets of the foreign limited liability company generally or any other series thereof, and, unless otherwise provided in the limited liability company agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the foreign limited liability company generally or any other series thereof shall be enforceable against the assets of such series.”

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6 Del.C. § 18-215, DE ST TI 6 § 18-215

Current through 78 Laws 2011, chs. 1 - 32. Revisions by the Delaware Code Revisors were unavailable at the time of publication.

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