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Chapter No. 440
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JW / ajika

SENATE BILL NO. 2444

Originated in Senate [signature] Secretary

SENATE BILL NO. 2444

AN ACT TO AMEND SECTION 79-11-121, MISSISSIPPI CODE OF 1972, TO REVISE PROVISIONS DEALING WITH THE ISSUANCE OF CERTIFICATES OF EXISTENCE TO CONFORM TO THE MODEL NONPROFIT CORPORATION ACT; TO AMEND SECTION 79-11-127, MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS; TO AMEND SECTION 79-11-129, MISSISSIPPI CODE OF 1972, TO CLARIFY FORM AND DELIVERY OF NOTICE UNDER THE ACT; TO AMEND SECTION 79-11-137, MISSISSIPPI CODE OF 1972, TO REQUIRE NONPROFITS FORMED AFTER THE EFFECTIVE DATE TO STATE A PRINCIPAL PURPOSE IN THEIR ARTICLES OF INCORPORATION AND TO REVISE DIRECTOR LIABILITY; TO AMEND SECTION 79-11-165, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR CHANGE OF A REGISTERED AGENT FOR SERVICE; TO AMEND SECTION 79-11-197, MISSISSIPPI CODE OF 1972, TO ALLOW ELECTRONIC MEETINGS OF MEMBERS; TO AMEND SECTION 79-11-199, MISSISSIPPI CODE OF 1972, TO ALLOW ELECTRONIC SPECIAL MEETINGS; TO AMEND SECTION 79-11-203, MISSISSIPPI CODE OF 1972, TO REVISE THE APPROVAL OF ACTIONS WITHOUT MEETING; TO AMEND SECTION 79-11-211, MISSISSIPPI CODE OF 1972, TO REVISE WRITTEN BALLOT REQUIREMENTS; TO AMEND SECTION 79-11-221, MISSISSIPPI CODE OF 1972, TO CLARIFY PROXY AUTHORIZATION; TO AMEND SECTION 79-11-235, MISSISSIPPI CODE OF 1972, TO REQUIRE A MINIMUM NUMBER OF DIRECTORS FOR NONPROFITS THAT SOLICIT IN THE STATE; TO AMEND SECTION 79-11-267, MISSISSIPPI CODE OF 1972, TO CLARIFY A DIRECTOR'S LIABILITY TO THE NONPROFIT; TO AMEND SECTION 79-11-283, MISSISSIPPI CODE OF 1972, TO CLARIFY ELECTRONIC RECORD KEEPING; TO AMEND SECTION 79-11-287, MISSISSIPPI CODE OF 1972, TO ALLOW ELECTRONIC COPIES; TO AMEND SECTION 79-11-347, MISSISSIPPI CODE OF 1972, TO REVISE THE GROUNDS FOR ADMINISTRATIVE DISSOLUTION; TO AMEND SECTION 79-11-349, MISSISSIPPI CODE OF 1972, TO REVISE THE PROCEDURE FOR ADMINISTRATIVE DISSOLUTION; TO AMEND SECTION 79-11-377, MISSISSIPPI CODE OF 1972, TO REVISE THE PROCEDURE FOR THE CHANGE OF A REGISTERED AGENT FOR SERVICE; TO AMEND SECTION 79-11-399, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE RELATIONSHIP OF THE ACT TO THE FEDERAL ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT; TO CREATE NEW CODE SECTION 79-11-405, MISSISSIPPI CODE OF 1972, TO MAKE CERTAIN PROVISIONS REGARDING A NONPROFIT'S EXEMPTION FROM TAX; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 79-11-121, Mississippi Code of 1972, is amended as follows:

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

(2) The certificate of existence sets forth:

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

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

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

(d) That its most recent status report required by Section 79-11-391 has been delivered to the Secretary of State;

(e) That articles of dissolution have not been filed; and

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

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

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

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

(a) "Approved by (or approval by) the members" means approved or ratified by the affirmative vote of a majority of the

votes represented and voting at a duly held meeting at which a quorum is present (which affirmative votes also constitute a majority of the required quorum) or by a written ballot or written consent in conformity with Section 79-11-101 et seq. or by the affirmative vote, written ballot or written consent of such greater proportion, including the votes of all the members of any class, unit or grouping as may be provided in the articles, bylaws or Section 79-11-101 et seq. for any specified member action.

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

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

(d) "Bylaws" means the code or codes of rules (other than the articles) adopted pursuant to Section 79-11-101 et seq. for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

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

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

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

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

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

(j) "Directors" means individuals, designated in the articles or bylaws or elected by the incorporators, and their successors and individuals elected or appointed by any other name or title to act as members of the board.

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

(l) "Domestic corporation" means a corporation.

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

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

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

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

(q) "Entity" includes corporation and foreign corporation; business corporation and foreign business corporation; profit and nonprofit unincorporated association;

corporation sole; business trust, estate, partnership, trust and two (2) or more persons having a joint or common economic interest; and state, United States and foreign government.

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

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

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

(u) "Includes" denotes a partial definition.

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

(w) "Means" denotes a complete definition.

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

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

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

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

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

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

(z) "Nonprofit corporation" means a corporation, no part of the assets, income or profit of which is distributed to or enures to the benefit of its members, directors or officers, except as otherwise provided under this chapter. In a corporation all of whose members are nonprofit corporations, distribution to

members does not deprive it of the status of a nonprofit corporation.

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

(bb) "Person" includes any individual or entity.

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

(dd) "Proceeding" includes civil suit and criminal, administrative and investigatory action.

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

(ff) "Record date" means the date established under Section 79-11-209 on which a corporation determines the identity of its members for the purposes of Section 79-11-101 et seq.

(gg) "Religious corporation" means a corporation organized and operating primarily or exclusively for religious purposes.

(hh) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under Section 79-11-273 for custody of the minutes of the directors' and members' meetings and for authenticating the records of the corporation.

(ii) "Sign" means with present intent to authenticate or adopt a record:

(i) To execute or adopt a tangible symbol; or

(ii) To attach to or logically associate with the record an electronic sound, symbol, or process as defined under Mississippi law.

(jj) "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.

(kk) "United States" includes any district, authority, bureau, commission, department and any other agency of the United States.

(ll) "Vote" includes authorization by written ballot and written consent.

(mm) "Voting power" means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made, excluding a vote which is contingent upon the happening of a condition or event that has not occurred at the time. Where a class is entitled to vote as a class for directors, the determination of voting power of the class shall be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

SECTION 3. Section 79-11-129, Mississippi Code of 1972, is amended as follows:

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

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

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

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

(a) Upon deposit in the United States mail, if the postage or delivery charge is paid and the notice is correctly

addressed to the member's address shown in the corporation's current record of members, or

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

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

(a) When received;

(b) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed;

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

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

(7) A written notice or report delivered as part of a newsletter, magazine or other publication regularly sent to members shall constitute a written notice or report if addressed or delivered to the member's address shown in the corporation's current list of members, or in the case of members who are residents of the same household and who have the same address in the corporation's current list of members, if addressed or delivered to one of such members, at the address appearing on the current list of members.

(8) Written notice is correctly addressed to a domestic or foreign corporation (authorized to transact business in this state), other than in its capacity as a member, if addressed to its registered agent or to its secretary at its principal office shown in its most recent status report or, in the case of a foreign corporation that has not yet delivered a status report, in its application for a certificate of authority.

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

(10) With respect to electronic communications:

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

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

(ii) It is in a form capable of being processed by that system.

(b) An electronic communication is received under paragraph (10)(a) even if no individual is aware of its receipt.

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

(11) An authorization by a member of delivery of notices or communications by e-mail or similar electronic means may be revoked by the member by notice to the nonprofit corporation in the form of a record. Such an authorization is deemed revoked if (a) the corporation is unable to deliver two (2) consecutive notices or other communications to the member in the manner authorized; and (b) the inability becomes known to the secretary or other person responsible for giving the notice or other

communication; but the failure to treat the inability as a revocation does not invalidate any meeting or other action.

SECTION 4. Section 79-11-137, Mississippi Code of 1972, is amended as follows:

79-11-137. (1) The articles of incorporation must set forth:

(a) A corporate name for the corporation that satisfies the requirements of Section 79-11-157;

(b) The period of duration, which may be perpetual;

(c) The street address of the corporation's initial registered office and the name of its initial registered agent at that office;

(d) The name and address of each incorporator;

(e) If the corporation is incorporated on or after January 1, 2012, the corporation's initial planned, primary nonprofit activity; and

(f) Any other information the Secretary of State may reasonably require by rule, including, without limitation, the contact name, electronic mail address, telephone number or business or mailing address of the corporation or that can be used to contact the corporation.

(2) The articles of incorporation may set forth:

(a) The names and addresses of the individuals who are to serve as the initial directors;

(b) Provisions not inconsistent with law regarding:

(i) The purpose or purposes for which the corporation is organized;

(ii) Managing the business and regulating the affairs of the corporation;

(iii) Defining, limiting and regulating the powers of the corporation, its board of directors and members; * * *

(c) Any provision that under Section 79-11-101 et seq. is required or permitted to be set forth in the bylaws; and

(d) A provision permitting or making obligatory indemnification of a director for liability (as defined in Section 79-11-281(1)(c)) to any person for any action taken, or any failure to take any action as a director, except liability for:

(i) Receipt of a financial benefit to which the director is not entitled;

(ii) An intentional infliction of harm;

(iii) A violation of Section 79-11-270; or

(iv) An intentional violation of criminal law.

(3) The articles of incorporation need not set forth any of the corporate powers enumerated in Section 79-11-101 et seq.

(4) The liability of a director of a corporation that is not a charitable organization as defined in Section 79-11-501 may be eliminated or limited by a provision of the articles of incorporation that a director shall not be liable to the corporation or its members for money damages for any action taken or any failure to take any action as a director, except liability for:

(a) The amount of a financial benefit received by the director to which the director is not entitled;

(b) An intentional infliction of harm;

(c) A violation of Section 79-11-270; or

(d) An intentional violation of criminal law.

SECTION 5. Section 79-11-165, Mississippi Code of 1972, is amended as follows:

79-11-165. (1) A corporation may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change on a form prescribed by the Secretary of State and in a method prescribed by the Secretary of State that sets forth:

(a) The name of the corporation;

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

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

(d) The name of its current registered agent;

(e) 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

(f) A representation that after the change or changes are made, the street addresses of its registered office and the principal office of its registered agent will be identical.

(2) If * * * the street address of a registered agent's business office is changed, the registered agent may change the street address of the registered office of any corporation for which he is the registered agent by notifying the corporation in the form of a record of the change and signing * * * and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.

SECTION 6. Section 79-11-197, Mississippi Code of 1972, is amended as follows:

79-11-197. (1) A corporation with members shall hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws.

(2) Annual membership meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(3) At the annual meeting:

(a) The president and chief financial officer shall report on the activities and financial condition of the corporation; and

(b) The members shall consider and act upon such other matters as may be raised consistent with the requirements of Sections 79-11-205 and 79-11-219.

(4) The failure to hold an annual meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

(5) The articles of incorporation or bylaws may provide that an annual or regular meeting of members does not need to be held at a geographic location if the meeting is held by means of the Internet or other electronic communications technology in a fashion pursuant to which the members have the opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matters submitted to the members, pose questions, and make comments.

SECTION 7. Section 79-11-199, Mississippi Code of 1972, is amended as follows:

79-11-199. (1) A corporation with members shall hold a special meeting of members:

(a) On call of its board or the person or persons authorized to do so by the articles or bylaws; or

(b) If the holders of at least five percent (5%) of the voting power sign, date and deliver to any corporate officer one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(2) The close of business on the thirtieth day before delivery of the demand for a special meeting to any corporate officer is the record date for the purpose of determining whether the five percent (5%) requirement of subsection (1) of this section has been met.

(3) If a notice for a special meeting demanded under subsection (1)(b) of this section is not given pursuant to Section 79-11-205 within thirty (30) days after the date the written demand or demands are delivered to a corporate officer, regardless

of the requirements of subsection (4) of this section, a person signing the demand or demands may set the time and place of the meeting and give notice pursuant to Section 79-11-205.

(4) Special meetings of members may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(5) Only those matters that are within the purpose or purposes described in the meeting notice required by Section 79-11-205 may be conducted at a special meeting of members.

(6) The articles of incorporation or bylaws may provide that a special meeting of members does not need to be held at a geographic location if the meeting is held by means of the Internet or other electronic communications technology in a fashion pursuant to which the members have the opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matters submitted to the members, pose questions, and make comments.

SECTION 8. Section 79-11-203, Mississippi Code of 1972, is amended as follows:

79-11-203. (1) Unless limited or prohibited by the articles or bylaws, action required or permitted by Section 79-11-101 et seq. to be approved by the members may be approved without a meeting of members if the action is approved by members holding at least eighty percent (80%) of the voting power. The action must be evidenced by one or more consents in the form of a record bearing the date of signature and describing the action taken, signed by those members representing at least eighty percent (80%) of the voting power, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) If not otherwise determined under Section 79-11-201 or 79-11-209, the record date for determining members entitled to

take action without a meeting is the date the first member signed the consent under subsection (1) of this section.

(3) A consent signed under this section has the effect of a meeting vote and may be described as such in any document filed with the Secretary of State.

(4) Written notice of member approval pursuant to this section shall be given to all members who have not signed the written consent. If written notice is required, member approval pursuant to this section shall be effective ten (10) days after such written notice is given.

SECTION 9. Section 79-11-211, Mississippi Code of 1972, is amended as follows:

79-11-211. (1) Except as provided in subsection (5) of this section and unless prohibited or limited by the articles or bylaws, any action which may be taken at any annual or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

(2) A * * * ballot shall:

(a) Be in the form of a record;

(b) Set forth each proposed action; and

(c) Provide an opportunity to vote for or against each proposed action.

(3) Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(4) All solicitations for votes by written ballot shall:

(a) Indicate the number of responses needed to meet the quorum requirements;

(b) State the percentage of approvals necessary to approve each matter other than election of directors; and

(c) Specify the time by which a ballot must be received by the corporation in order to be counted.

(5) Except as otherwise provided in the articles or bylaws, a written ballot may not be revoked.

SECTION 10. Section 79-11-221, Mississippi Code of 1972, is amended as follows:

79-11-221. (1) Unless the articles or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form either personally or by an attorney-in-fact <u>in the form of a record</u>.

(2) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven (11) months unless a different period is expressly provided in the appointment form; provided, however, that no proxy shall be valid for more than three (3) years from its date of execution.

(3) An appointment of a proxy is revocable by the member.

(4) The death or incapacity of the member 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 authority under the appointment.

(5) Appointment of a proxy is revoked by the person appointing the proxy:

(a) Attending any meeting and voting in person; or

(b) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing <u>in the form of a record</u> stating that the appointment of the proxy is revoked or a subsequent appointment form.

(6) Subject to Section 79-11-227 and any express limitation on the proxy's authority appearing on the face of the appointment

form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

SECTION 11. Section 79-11-235, Mississippi Code of 1972, is amended as follows:

79-11-235. (1) (a) Except as provided in paragraph (b) of this subsection, the number of directors shall be specified in or fixed in accordance with the articles or bylaws.

(b) If the corporation: (i) is a charitable organization as defined in Section 79-11-501; (ii) which solicits contributions or intends to solicit contributions in the state by any means whatsoever; and (iii) is incorporated on or after January 1, 2012, the board must consist of not less than three (3) directors, with the number of directors specified in or fixed in accordance with the articles or bylaws.

(2) The number of directors may be increased or decreased in conformance with law from time to time by amendment to or in the manner prescribed in the articles or bylaws.

SECTION 12. Section 79-11-267, Mississippi Code of 1972, is amended as follows:

79-11-267. (1) A director shall discharge his duties as a director, including his duties as a member of a committee, in accordance with his good faith belief that he is acting in the best interests of the corporation.

(2) Unless he has knowledge or information concerning the matter in question that makes reliance unwarranted, a director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the director believes, in good faith, to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants or other persons as to matters the director believes, in good faith, are within the person's professional or expert competence; or

(c) A committee of the board of directors of which he is not a member if the director believes, in good faith, that the committee merits confidence.

(3) A director is not liable for any action taken as a director, or any failure to take any action, if he performed the duties of his office in compliance with this section.

(4) A person alleging a violation of this section has the burden of proving the violation.

(5) Notwithstanding any other provision of this section, a director of a corporation that is a charitable organization as defined in Section 79-11-501 shall not be liable to the corporation or its members for money damages for any action taken, or any failure to take any action, as a director, except liability for:

(a) The amount of a financial benefit received by the director to which the director is not entitled;

(b) An intentional infliction of harm;

(c) A violation of Section 79-11-270; or

(d) An intentional violation of criminal law.

SECTION 13. Section 79-11-283, Mississippi Code of 1972, is amended as follows:

79-11-283. (1) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized by Section 79-11-265.

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class showing the number of votes each member is entitled to vote.

(4) A corporation shall maintain its records in written form or in <u>any other</u> form <u>of a record</u> * * *.

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

(a) Its articles or restated articles of incorporation and all amendments to them currently in effect;

(b) Its bylaws or restated bylaws and all amendments to them currently in effect;

(c) Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations and obligations of members or any class or category of members;

(d) The minutes of all meetings of members and records of all actions approved by the members for the past three (3) years;

(e) All written communications to members generally within the past three (3) years;

(f) A list of the names and business or home addresses of its current directors and officers; and

(g) Its most recent status report delivered to the Secretary of State under Section 79-11-391.

SECTION 14. Section 79-11-287, Mississippi Code of 1972, is amended as follows:

79-11-287. (1) A member's agent or attorney has the same inspection and copying rights as the member the agent or attorney represents.

(2) The right to copy records under Section 79-11-285 includes, if reasonable, the right to receive copies * * *.

Copies may be provided through an electronic transmission if available and so requested by the member.

(3) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production or reproduction of the records.

(4) The corporation may comply with a member's demand to inspect the record of members under Section 79-11-285(2)(c) by providing the member with a list of its members that was compiled no earlier than the date of the member's demand.

SECTION 15. Section 79-11-347, Mississippi Code of 1972, is amended as follows:

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

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

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

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

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

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

(f) The corporation fails to report within the time period specified in Section 79-11-405 the suspension or revocation

of its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

SECTION 16. Section 79-11-349, Mississippi Code of 1972, is amended as follows:

79-11-349. (1) Upon determining that one or more grounds exist under Section 79-11-347 for dissolving a corporation, the Secretary of State shall notify the corporation in form of a record of that determination * * *. For purpose of this section, notice may be made by publication by newspaper of general circulation in the area of the corporation's last-known location.

(2) 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 at least sixty (60) days after service of the notice is perfected, * * * the Secretary of State may 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 * * * if the corporation has filed a valid address or registered agent with the Secretary of State within the previous calendar year.

(3) A corporation administratively dissolved continues its corporate existence but may not carry on any activities except those necessary to wind up and liquidate its affairs under Section 79-11-341 and notify its claimants under Sections 79-11-343 and 79-11-345.

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

SECTION 17. Section 79-11-377, Mississippi Code of 1972, is amended as follows:

79-11-377. (1) 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 on a form prescribed by the Secretary of State and in a method prescribed by the Secretary of State that sets forth:

(a) Its name;

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

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

(d) The name of its current registered agent;

(e) 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

(f) A representation that after the change or changes are made, the street address of its registered office and the office of its registered agent will be identical.

(2) If a registered agent changes the street address of its business office, the agent may change the address of the registered office of any foreign corporation for which the agent is the registered agent by delivering notice to the corporation in the form of a record of the change and signing * * * and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.

SECTION 18. Section 79-11-399, Mississippi Code of 1972, is amended as follows:

79-11-399. (1) Except as provided in subsection (2) of this section, the repeal of a statute by Section 79-11-101 et seq. does not affect:

(a) The operation of the statute or any action taken under it before its repeal;

(b) Any ratification, right, remedy, privilege, obligation or liability acquired, accrued or incurred under the statute before its repeal;

(c) Any violation of the statute or any penalty, forfeiture or punishment incurred because of the violation before its repeal;

(d) Any proceeding, reorganization or dissolution commenced under the statute before its repeal, and the proceeding, reorganization or dissolution may be completed in accordance with the statute as if it had not been repealed; or

(e) Any meeting of members or directors or action by written consent noticed or any action taken before its repeal as a result of a meeting of members or directors or action by written consent.

(2) If a penalty or punishment imposed for violation of a statute repealed by Section 79-11-101 et seq. is reduced by Section 79-11-101 et seq., the penalty or punishment, if not already imposed, shall be imposed in accordance with Section 79-11-101 et seq.

(3) This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 USC Section 7001 et seq., but this chapter does not modify, limit, or supersede Section 101(c) of that act or authorize electronic delivery of any of the notices described in Section 103(b) of that act.

SECTION 19. The following shall be codified as Section 79-11-405, Mississippi Code of 1972:

79-11-405. (1) A nonprofit corporation granted a determination of exemption from tax as an organization described in Section 501(c)(3) of the Internal Revenue Code shall notify the Secretary of State, in the form and manner prescribed by the Secretary of State, within thirty (30) calendar days of the determination of exemption.

(2) If a nonprofit corporation's exemption from tax as an organization described in Section 501(c)(3) of the Internal Revenue Code is suspended or revoked, the nonprofit corporation shall notify the Secretary of State of the suspension or revocation, in the form and manner prescribed by the Secretary of State, within thirty (30) calendar days of the suspension or revocation.

* * *

SECTION 20. This act shall take effect and be in force from and after January 1, 2012.

PASSED BY THE SENATE
February 10, 2011

PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 1, 2011

SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

GOVERNOR

3/23/11 4:23pm