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HOUSE BILL NO. 789

Originated in House _____ Clerk

HOUSE BILL NO. 789

AN ACT TO AMEND SECTION 79-4-1.22, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO. 1162, 2012 REGULAR SESSION, TO CLARIFY FEES CHARGED AND COLLECTED BY THE SECRETARY OF STATE UNDER THE BUSINESS CORPORATION ACT; TO AMEND SECTION 79-4-1.25, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO. 1162, 2012 REGULAR SESSION, TO REVISE THE TIME IN WHICH THE SECRETARY OF STATE MUST DELIVER NOTICE OF A REFUSAL TO FILE A DOCUMENT; TO AMEND SECTION 79-4-1.29, MISSISSIPPI CODE OF 1972, TO REVISE THE FINE FOR KNOWINGLY SIGNING A FALSE DOCUMENT; TO AMEND SECTION 79-4-1.40, MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS; TO AMEND SECTION 79-4-1.41, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO. 1162, 2012 REGULAR SESSION, TO REVISE FORMS OF NOTICE CONSIDERED SUFFICIENT UNDER THE ACT; TO AMEND SECTION 79-4-4.01, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO. 1162, 2012 REGULAR SESSION, TO REVISE REQUIREMENTS PERTAINING TO CORPORATION NAMES; TO AMEND SECTION 79-4-4.02, MISSISSIPPI CODE OF 1972, TO REVISE RESERVATION OF A CORPORATE NAME; TO AMEND SECTION 79-4-6.20, MISSISSIPPI CODE OF 1972, TO MAKE A TECHNICAL REVISION TO THE PROVISION DEALING WITH SUBSCRIPTION OF SHARES; TO AMEND SECTION 79-4-7.04, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO. 1162, 2012 REGULAR SESSION, TO REVISE THE ELECTRONIC TRANSMISSION OF CONSENT TO AN ACTION; TO AMEND SECTION 79-4-7.05, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR REMOTE PARTICIPATION; TO CREATE SECTION 79-4-7.09, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR ELECTRONIC SHAREHOLDER MEETINGS; TO AMEND SECTION 79-4-7.22, MISSISSIPPI CODE OF 1972, TO ALLOW ELECTRONIC APPOINTMENT OF A PROXY; TO AMEND SECTION 79-4-7.42, MISSISSIPPI CODE OF 1972, TO CLARIFY THE DATE OF DELIVERY OF A WRITTEN DEMAND; TO AMEND SECTION 79-4-8.01, MISSISSIPPI CODE OF 1972, TO CLARIFY THE EXERCISE OF POWER BY THE BOARD OF DIRECTORS; TO AMEND SECTION 79-4-8.05, MISSISSIPPI CODE OF 1972, TO CLARIFY THE EXPIRATION OF TERMS OF THE BOARD OF DIRECTORS; TO AMEND SECTION 79-4-8.06, MISSISSIPPI CODE OF 1972, TO CLARIFY THE STAGGERING OF TERMS OF THE BOARD OF DIRECTORS; TO AMEND SECTION 79-4-8.07, MISSISSIPPI CODE OF 1972, TO CLARIFY THE RESIGNATION OF DIRECTORS; TO AMEND SECTION 79-4-8.10, MISSISSIPPI CODE OF 1972, TO CLARIFY THE FILLING OF VACANCIES ON THE BOARD OF DIRECTORS; TO AMEND SECTION 79-4-8.24, MISSISSIPPI CODE OF 1972, TO CLARIFY THE PRESUMPTION OF ASSENT TO CORPORATE ACTIONS; TO CREATE SECTION 79-4-8.26, MISSISSIPPI CODE OF 1972, TO CLARIFY THE SUBMISSION OF A MATTER TO THE SHAREHOLDERS FOR A VOTE WHEN THE ACTION IS NOT RECOMMENDED BY THE BOARD; TO AMEND SECTION 79-4-8.31, MISSISSIPPI CODE OF 1972, TO REVISE THE POTENTIAL LIABILITY OF A DIRECTOR; TO AMEND SECTION 79-4-8.50, MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS; TO AMEND SECTION 79-4-8.53, MISSISSIPPI CODE OF 1972, TO CLARIFY PAYMENT OF EXPENSES OF LITIGATION; TO AMEND SECTION 79-4-8.58, MISSISSIPPI

CODE OF 1972, TO RESTRICT IMPAIRMENT OF ANY EXISTING RIGHT OF INDEMNIFICATION OR RIGHT TO ADVANCES FOR EXPENSES BY THE SUBSEQUENT AMENDMENT OF CORPORATE ARTICLES OR BYLAWS; TO AMEND SECTION 79-4-8.60, MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS; TO AMEND SECTION 79-4-11.01, MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS; TO AMEND SECTIONS 79-4-11.02, 79-4-11.03 AND 79-4-11.04, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE NEW DEFINITIONS OF "INTERESTS," "ELIGIBLE INTERESTS" AND "MEMBERSHIP"; TO AMEND SECTION 79-4-11.06, MISSISSIPPI CODE OF 1972, TO CLARIFY FILING OF ARTICLES OF INCORPORATION; TO AMEND SECTION 79-4-11.07, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO. 1162, 2012 REGULAR SESSION, TO CONFORM TO THE NEW DEFINITIONS OF "INTERESTS," "ELIGIBLE INTERESTS" AND "MEMBERSHIP"; TO AMEND SECTION 79-4-11.08, MISSISSIPPI CODE OF 1972, TO CLARIFY ABANDONMENT OF A PLAN OF MERGER OR SHARE EXCHANGE; TO AMEND SECTION 79-4-13.20, MISSISSIPPI CODE OF 1972, TO CLARIFY CERTAIN NOTICES TO SHAREHOLDERS; TO AMEND SECTION 79-4-13.21, MISSISSIPPI CODE OF 1972, TO CLARIFY ASSENT TO AN ACTION TO ASSERT APPRAISAL RIGHTS; TO AMEND SECTION 79-4-13.22, MISSISSIPPI CODE OF 1972, TO REVISE THE FORM OF NOTICE OF AN ACTION REQUIRING APPRAISAL RIGHTS; TO AMEND SECTION 79-4-14.21, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO. 1162, 2012 REGULAR SESSION, TO REVISE NOTICE OF DISSOLUTION; TO AMEND SECTION 79-4-14.22, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO. 1162, 2012 REGULAR SESSION, TO REVISE REINSTATEMENT; TO AMEND SECTION 79-4-15.01, MISSISSIPPI CODE OF 1972, TO REVISE THE ACTIVITIES REQUIRING CERTIFICATE; TO AMEND SECTION 79-4-15.02, MISSISSIPPI CODE OF 1972, TO CLARIFY THE TRANSACTION OF BUSINESS WITHOUT AUTHORITY; TO AMEND SECTION 79-4-15.06, MISSISSIPPI CODE OF 1972, TO REVISE THE REQUIREMENTS THAT APPLY TO A CORPORATE NAME; TO AMEND SECTION 79-4-15.31, MISSISSIPPI CODE OF 1972, TO REVISE REVOCATION OF A FOREIGN CORPORATION'S CERTIFICATE OF AUTHORITY; TO AMEND SECTION 79-4-15.32, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO. 1162, 2012 REGULAR SESSION, TO CLARIFY THE CONTINUATION IN BUSINESS OF A FOREIGN CORPORATION THAT IS REINSTATED AFTER ADMINISTRATIVE DISSOLUTION; TO AMEND SECTION 79-4-16.01, MISSISSIPPI CODE OF 1972, TO CLARIFY REQUIRED RECORD KEEPING; TO AMEND SECTION 79-4-16.02, MISSISSIPPI CODE OF 1972, TO CLARIFY A SHAREHOLDER'S RIGHT OF INSPECTION; TO AMEND SECTION 79-4-16.06, MISSISSIPPI CODE OF 1972, TO CLARIFY NOTICE TO SHAREHOLDERS; TO AMEND SECTION 79-4-16.20, MISSISSIPPI CODE OF 1972, TO CLARIFY THE ANNUAL FINANCIAL STATEMENT REQUIREMENT; TO CREATE SECTION 79-4-17.05, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE RELATION OF THE ACT TO THE FEDERAL ELECTRONIC SIGNATURES ACT; TO REPEAL SECTION 79-4-16.21, MISSISSIPPI CODE OF 1972, DEALING WITH THE REPORTING OF THE INDEMNIFICATION OF OR EXPENSE ADVANCES TO A DIRECTOR AND CERTAIN SHARE ISSUES BY THE CORPORATION; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 79-4-1.22, Mississippi Code of 1972, as amended by House Bill No. 1162, 2012 Regular Session, is amended as follows:

79-4-1.22. (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 <u>or cancellation</u> of reserved name	25.00
(5) Application for registered name	50.00
(6) Application for renewal of registered name	50.00
(7) <u>[Reserved]</u>	
(8) <u>[Reserved]</u>	
(9) <u>[Reserved]</u>	
(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.

SECTION 2. Section 79-4-1.25, Mississippi Code of 1972, as amended by House Bill No. 1162, 2012 Regular Session, is amended as follows:

79-4-1.25. (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, * * * 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 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 in 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.

SECTION 3. Section 79-4-1.29, Mississippi Code of 1972, is amended as follows:

79-4-1.29. (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 One Thousand Dollars ($1,000.00).

SECTION 4. Section 79-4-1.40, Mississippi Code of 1972, is amended as follows:

79-4-1.40. In Section 79-4-1.01 et seq.:

(1) "Articles of incorporation" 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, text in italics, boldface, contrasting color, * * * 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.

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

(8) "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.

* * *

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

(11) "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).

(12) "Electronic transmission" or "electronically transmitted" means any form or process of communication, not directly involving the physical transfer of paper 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).

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

(14) "Eligible interest" means interests or membership.

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

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

(17) "Entity" includes 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.

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

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

(20) "Foreign corporation" means a corporation * * * 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.

(21) "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.

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

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

(24) "Includes" denotes a partial definition.

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

(26) "Interest" means either or both of the following rights under the organic law of an unincorporated entity:

(i) The right to receive distributions from the entity either in the ordinary course or upon liquidation; or

(ii) The right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business and affairs.

(27) "Means" denotes an exhaustive definition.

(28) "Membership" means the rights of a member in a domestic or foreign nonprofit corporation.

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

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

(31) "Organic law" means the statute governing the internal affairs of a domestic or foreign business or nonprofit corporation or unincorporated entity.

(32) "Person" includes an individual and an entity.

(33) "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.

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

(35) "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 * * * securities association.

(36) "Qualified director" is defined in Section 79-4-1.43.

(37) "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.

(38) "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.

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

(40) "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.

(41) "Sign" or "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.

(42) "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.

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

(44) "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.

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

(46) "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.

(47) "Voting power" means the current power to vote in the election of directors.

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

SECTION 5. Section 79-4-1.41, Mississippi Code of 1972, as amended by House Bill No. 1162, 2012 Regular Session, is amended as follows:

79-4-1.41. (a) Notice under Section 79-4-1.01 et seq. must be in writing unless oral notice is reasonable 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) A notice or other communication may be given or sent by any method of delivery, except that electronic transmissions must be in accordance with this section. If these 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) Notice or other communication to a domestic or foreign corporation authorized to transact business in this state may be delivered to its registered agent * * * 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 communication 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; 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 electronic transmission is received when:

(1) It enters an information-processing system that the recipient has designated or uses for the purpose 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 acknowledgement 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.

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

* * *

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

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

(ii) A director's residence or usual place of business; or

(iii) The corporation's principal place of business;

(2) * * * If mailed 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:

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

(ii) 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.

* * *

(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 (1) the electronic transmission is otherwise retrievable in perceivable form, and (2) the sender and the recipient have consented in writing to the use of such form of electronic transmission.

(k) If Section 79-4-1.01 et seq. prescribes * * * requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe * * * 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.

SECTION 6. Section 79-4-4.01, Mississippi Code of 1972, is amended as follows:

79-4-4.01. (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) 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; * * *

(3) The corporate name of a 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) Section 79-4-1.01 et seq. does not control the use of fictitious names.

SECTION 7. Section 79-4-4.02, Mississippi Code of 1972, is amended as follows:

79-4-4.02. (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 one-hundred-eighty-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 of State 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.

SECTION 8. Section 79-4-6.20, Mississippi Code of 1972, is amended as follows:

79-4-6.20. (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.

SECTION 9. Section 79-4-7.04, Mississippi Code of 1972, as amended by House Bill No. 1162, 2012 Regular Session, is amended as follows:

79-4-7.04. (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.

* * *

SECTION 10. Section 79-4-7.05, Mississippi Code of 1972, is amended as follows:

79-4-7.05. (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.

SECTION 11. The following shall be codified as Section 79-4-7.09, Mississippi Code of 1972:

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.

SECTION 12. Section 79-4-7.22, Mississippi Code of 1972, is amended as follows:

79-4-7.22. (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.

(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.

SECTION 13. Section 79-4-7.42, Mississippi Code of 1972, is amended as follows:

79-4-7.42. 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.

SECTION 14. Section 79-4-8.01, Mississippi Code of 1972, is amended as follows:

79-4-8.01. (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.

SECTION 15. Section 79-4-8.05, Mississippi Code of 1972, is amended as follows:

79-4-8.05. (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 * * *.

(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.

SECTION 16. Section 79-4-8.06, Mississippi Code of 1972, is amended as follows:

79-4-8.06. 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.

SECTION 17. Section 79-4-8.07, Mississippi Code of 1972, is amended as follows:

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

SECTION 18. Section 79-4-8.10, Mississippi Code of 1972, is amended as follows:

79-4-8.10. (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 <u>and only the directors elected by that voting group are entitled to fill the vacancy if it is filled by the director</u>.

(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.

SECTION 19. Section 79-4-8.24, Mississippi Code of 1972, is amended as follows:

79-4-8.24. (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 objects at the beginning of the meeting (or promptly upon his arrival) to holding it or transacting business at the meeting; (2) the dissent or abstention from the action taken is entered in the minutes of the meeting; or (3) the director delivers written notice of the director's 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.

SECTION 20. The following shall be codified as Section 79-4-8.26, Mississippi Code of 1972:

79-4-8.26. 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.

SECTION 21. Section 79-4-8.31, Mississippi Code of 1972, is amended as follows:

79-4-8.31. (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) any 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 (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 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 therefor; 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.

SECTION 22. Section 79-4-8.50, Mississippi Code of 1972, is amended as follows:

79-4-8.50. In this 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 or employee benefit plan * * *. 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" 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, arbitrative or investigative and whether formal or informal.

SECTION 23. Section 79-4-8.53, Mississippi Code of 1972, is amended as follows:

79-4-8.53. (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.

SECTION 24. Section 79-4-8.58, Mississippi Code of 1972, is amended as follows:

79-4-8.58. (a) A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with Section 79-4-8.51 or advance funds to pay for or reimburse expenses in accordance with Section 79-4-8.53. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with Section 79-4-8.53 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

(b) A right of indemnification or to advances for expenses created by this subarticle or under subsection (a) that is in effect at the time of an act or omission shall not be eliminated or impaired with respect to the act or omission by an amendment of the articles of incorporation or bylaws or a resolution of the directors or shareholders adopted after the occurrence of the act or omission, unless, in the case of a right created under subsection (a), the provision creating the right that is in effect at the time of the act or omission explicitly authorizes elimination or impairment after the act or omission has occurred.

(c) Any provision pursuant to subsection (a) shall not obligate the corporation to indemnify or advance expenses to a

director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by Section 79-4-11.06(a)(3).

(d) Subject to subsection (b), a corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to this subarticle.

(e) This subarticle does not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with his appearance as a witness in a proceeding at a time when he is not a party.

(f) This subarticle does not limit a corporation's power to indemnify, advance expenses to or provide or maintain insurance on behalf of an employee or agent.

SECTION 25. Section 79-4-8.60, Mississippi Code of 1972, is amended as follows:

79-4-8.60. 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 are 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, <u>stepsiblings, half-siblings, aunt, uncle, niece or nephew</u> (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.

SECTION 26. Section 79-4-11.01, Mississippi Code of 1972, is amended as follows:

79-4-11.01. As used in this chapter:

* * *

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

(b) "Organizational documents" means the basic document or documents that create, or determine the internal governance of, an eligible entity.

* * *

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

(1) Merge under a plan of merger;

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

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

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

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

SECTION 27. Section 79-4-11.02, Mississippi Code of 1972, is amended as follows:

79-4-11.02. (a) One or more domestic corporations may merge with a domestic or foreign corporation or eligible entity pursuant to a plan of merger.

(b) A foreign corporation, or a domestic or foreign eligible entity, may be a party to the merger, or may be created by the terms of the plan of merger, only if:

(1) The merger is permitted by the laws under which the corporation or eligible entity is organized or by which it is governed; and

(2) In effecting the merger, the corporation or eligible entity complies with such laws and with its articles of incorporation or organizational documents.

(c) The plan of merger must include:

(1) The name of each corporation or eligible entity that will merge and the name of the corporation or eligible entity that will be the survivor of the merger;

(2) The terms and conditions of the merger;

(3) The manner and basis of converting the shares of each merging corporation and eligible interest of each merging eligible entity into shares or other securities, eligible interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing;

(4) The articles of incorporation of any corporation, or the organizational documents of any eligible entity to be created by the merger, or if a new corporation or eligible entity is not to be created by the merger, any amendments to the survivor's articles of incorporation, or organizational documents; and

(5) Any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the articles of incorporation or organizational documents of any such party.

(d) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with Section 79-4-1.20(k).

(e) The plan of merger may also include a provision that the plan may be amended prior to filing the articles of merger with the Secretary of State, provided that if the shareholders of a domestic corporation that is a party to the merger are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan may not be amended to:

(1) Change the amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares or other securities, cash, or other property to be received by the shareholders of or owners of interests in any party to the merger upon conversion of their shares or interests under the plan;

(2) Change the articles of incorporation of any corporation or the organizational documents of any eligible entity, that will survive or be created as a result of the merger, except for changes permitted by Section 79-4-10.05 or by comparable provisions of the laws under which the foreign corporation or eligible entity is organized or governed; or

(3) Change any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

(f) Liability from a merger shall be limited as provided in Sections 79-33-1 through 79-33-9.

SECTION 28. Section 79-4-11.03, Mississippi Code of 1972, is amended as follows:

79-4-11.03. (a) Through a share exchange:

(1) A domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign corporation, or all of the interests of one or more classes or series of interests of a domestic or foreign eligible entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange; or

(2) All of the shares of one or more classes or series of shares of a domestic corporation may be acquired by another domestic or foreign corporation or eligible entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange.

(b) A foreign corporation, or a domestic or foreign eligible entity, may be a party to the share exchange only if:

(1) The share exchange is permitted by the laws under which the corporation or eligible entity is organized or by which it is governed; and

(2) In effecting the share exchange, the corporation or eligible entity complies with such laws and with its articles of incorporation or organizational documents.

(c) The plan of share exchange must include:

(1) The name of each corporation or eligible entity whose shares or interests will be acquired and the name of the corporation or eligible entity that will acquire those shares or interests;

(2) The terms and conditions of the share exchange;

(3) The manner and basis of exchanging shares of a corporation or interests in an eligible entity whose shares or interests will be acquired under the share exchange into shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing; and

(4) Any other provisions required by the laws under which any party to the share exchange is organized or by the articles of incorporation or organizational documents of any such party.

(d) Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with Section 79-4-1.20(k).

(e) The plan of share exchange may also include a provision that the plan may be amended prior to filing of the articles of share exchange with the Secretary of State, provided that if the shareholders of a domestic corporation that is a party to the share exchange are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan may not be amended to:

(1) Change the amount or kind of shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, or other property to be issued by the corporation or to be received by the shareholders of or owners of interests in any party to the share exchange in exchange for their shares or interests under the plan; or

(2) Change any of the terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

(f) Section 79-4-11.03 does not limit the power of a domestic corporation to acquire shares of another corporation or interests in another entity in a transaction other than a share exchange.

SECTION 29. Section 79-4-11.04, Mississippi Code of 1972, is amended as follows:

79-4-11.04. In the case of a domestic corporation that is a party to a merger or share exchange:

(a) The plan of merger or share exchange must be adopted by the board of directors.

(b) Except as provided in subsection (g) and in Section 79-4-11.05, after adopting the plan of merger, the board of directors must submit the plan to the shareholders for their approval. After adopting the plan of share exchange, the board of directors of the corporation whose shares will be acquired in the share exchange must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan of merger or share exchange, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the shareholders the basis for that determination.

(c) The board of directors may condition its submission of the plan of merger or share exchange to the shareholders on any basis.

(d) If the plan of merger or share exchange is required to be approved by the shareholders, and if the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation or eligible entity, the notice shall also include or be accompanied by a copy or summary of the articles of incorporation or organizational documents of that corporation or eligible entity. If the corporation is to be merged into a corporation or eligible entity that is to be created pursuant to the merger, the notice shall include or be accompanied by a copy or a summary of the articles of incorporation or organizational documents of the new corporation or eligible entity.

(e) Unless the articles of incorporation, or the board of directors acting pursuant to subsection (c), requires a greater vote or a greater number of votes to be present, the approval of the plan of merger or share exchange shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists, and, if any class or series of shares is entitled to vote as a separate group on the plan of merger or share exchange, the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the merger or share exchange by that voting group is present.

(f) Separate voting by voting groups is required:

(1) On a plan of merger, by each class or series of shares that (A) are to be converted, pursuant to the provisions of the plan of merger, into shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, or (B) would have a right to vote as a separate group on a provision of the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under Section 79-4-10.04;

(2) On a plan of share exchange, by each class or series of shares included in the exchange, with each class or series constituting a separate voting group; and

(3) On a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange.

(g) Unless the articles of incorporation otherwise provide, approval by the corporation's shareholders of a plan of merger is not required if:

(1) The corporation will survive the merger; and

(2) Except for amendments permitted by Section 79-4-10.05, its articles of incorporation will not be changed; and

(3) Each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical preferences, limitations, and relative rights, immediately after the effective date of change; and

(4) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty percent (20%) the total number of voting shares

of the surviving corporation outstanding immediately before the merger; and

(5) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty percent (20%) the total number of participating shares outstanding immediately before the merger.

(h) As used in subsection (g):

(1) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(2) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(i) If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to personal liability for the obligations or liabilities of any other person or entity, approval of the plan of merger shall require the execution, by each such shareholder, of a separate written consent to become subject to such personal liability.

SECTION 30. Section 79-4-11.06, Mississippi Code of 1972, is amended as follows:

79-4-11.06. (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 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 eligible 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 eligible 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.

SECTION 31. Section 79-4-11.07, Mississippi Code of 1972, as amended by House Bill No. 1162, 2012 Regular Session, is amended as follows:

79-4-11.07. (a) When a merger becomes effective:

(1) The corporation or eligible entity that is designated in the plan of merger as the survivor continues or comes into existence, as the case may be;

(2) The separate existence of every corporation or eligible entity that is merged into the survivor ceases;

(3) All property owned by, and every contract right possessed by, each corporation or eligible entity that merges into the survivor is vested in the survivor without reversion or impairment;

(4) All liabilities of each corporation or eligible entity that is merged into the survivor are vested in the survivor subject to the limitations as provided in Sections 79-33-1 through 79-33-9;

(5) The name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

(6) The articles of incorporation or organizational documents of the survivor are amended to the extent provided in the plan of merger;

(7) The articles of incorporation or organizational documents of a survivor that is created by the merger become effective; and

(8) The shares of each corporation that is a party to the merger, and the interests in an eligible entity that is a party to a merger, that are to be converted under the plan of merger into shares, interests, obligations, rights to acquire securities, other securities, cash, other property, or any combination of the foregoing, are converted and the former holders of such shares or interests are entitled only to the rights provided to them in the plan of merger or to any rights they may have under Title 79, Chapter 4, Article 13.

(b) When a share exchange becomes effective, the shares of each domestic corporation that are to be exchanged for shares or

other securities, interests, obligations, rights to acquire shares or securities, other securities, cash, other property, or any combination of the foregoing, are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under Title 79, Chapter 4, Article 13.

(c) Any shareholder of a domestic corporation that is a party to a merger or share exchange who, prior to the merger or share exchange, was liable for the liabilities or obligations of such corporation, shall not be released from such liabilities or obligations by reason of the merger or share exchange.

(d) Upon a merger becoming effective, a foreign corporation, or a foreign eligible entity, that is the survivor of the merger is deemed to:

(1) Agree that service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights, may be made in the manner provided in Section 79-35-13; and

(2) Agree that it will promptly pay the amount, if any, to which such shareholders are entitled under Title 79, Chapter 4, Article 13.

SECTION 32. Section 79-4-11.08, Mississippi Code of 1972, is amended as follows:

79-4-11.08. (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 eligible 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, * * * 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, 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.

SECTION 33. Section 79-4-13.20, Mississippi Code of 1972, is amended as follows:

79-4-13.20. (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 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.

SECTION 34. Section 79-4-13.21, Mississippi Code of 1972, is amended as follows:

79-4-13.21. (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 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.

SECTION 35. Section 79-4-13.22, Mississippi Code of 1972, is amended as follows:

79-4-13.22. (a) If proposed corporate action requiring appraisal rights under Section 79-4-13.02(a) becomes effective, the corporation must 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 an appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

(b) The appraisal notice must be 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 that sixty (60) days after the date the subsection (a) appraisal notice 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.

SECTION 36. Section 79-4-14.21, Mississippi Code of 1972, as amended by House Bill No. 1162, 2012 Regular Session, is amended as follows:

79-4-14.21. (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 * * *, 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 * * *, 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 * * *, except that such certificate may be served by first-class mail.

(c) [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 the corporation or prevent the corporation from defending any action, suit or proceeding in 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 the corporation is reinstated.

SECTION 37. Section 79-4-14.22, Mississippi Code of 1972, as amended by House Bill No. 1162, 2012 Regular Session, is amended as follows:

79-4-14.22. (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 Department of Revenue 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 * * *.

(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.

SECTION 38. Section 79-4-15.01, Mississippi Code of 1972, is amended as follows:

79-4-15.01. (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;

(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 * * * general partner of any general or limited partnership * * *, which partnership is transacting business in this state, is hereby declared to be transacting business in this state.

SECTION 39. Section 79-4-15.02, Mississippi Code of 1972, is amended as follows:

79-4-15.02. (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 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 in any court of this state.

SECTION 40. Section 79-4-15.06, Mississippi Code of 1972, is amended as follows:

79-4-15.06. (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) The fictitious name of another foreign corporation or foreign limited liability company authorized to transact business in this state; * * *

(3) The corporate name of a 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) 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.

SECTION 41. Section 79-4-15.31, Mississippi Code of 1972, as amended by House Bill No. 1162, 2012 Regular Session, is amended as follows:

79-4-15.31. (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 the Mississippi Rules of Civil Procedure 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.

SECTION 42. Section 79-4-15.32, Mississippi Code of 1972, as amended by House Bill No. 1162, 2012 Regular Session, is amended as follows:

79-4-15.32. (a) A foreign corporation whose certificate of authority is administratively revoked under Section 79-4-15.31 may apply to the Secretary of State for reinstatement at any time after the effective date of such revocation. The application must:

(1) Recite the name of the corporation and the effective date of the administrative revocation;

(2) State that the ground or grounds for revocation 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 Department of Revenue reciting that the corporation has properly filed all reports and paid all taxes and penalties required by revenue laws of this state.

(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 reinstate the certificate of authority, prepare a certificate 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 79-35-13.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative

revocation. Any liability incurred by the foreign corporation or a director, officer or shareholder after the administrative revocation and before the reinstatement shall be determined as if the administrative revocation had never occurred, and the corporation resumes carrying on its business as if the administrative revocation had never occurred.

SECTION 43. Section 79-4-16.01, Mississippi Code of 1972, is amended as follows:

79-4-16.01. (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 the form of a document, including an electronic record, or in another form capable of conversion into 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.

SECTION 44. Section 79-4-16.02, Mississippi Code of 1972, is amended as follows:

79-4-16.02. (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.

SECTION 45. Section 79-4-16.06, Mississippi Code of 1972, is amended as follows:

79-4-16.06. (a) Whenever notice <u>would otherwise be</u> required to be given under any provision of this act to a shareholder, such notice need not be given if:

(1) 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.

SECTION 46. Section 79-4-16.20, Mississippi Code of 1972, is amended as follows:

79-4-16.20. (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 send 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.

SECTION 47. The following shall be codified as Section 79-4-17.05, Mississippi Code of 1972:

79-4-17.05. 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 USCS Section 7001 et seq., the provisions of this chapter shall control to the maximum extent permitted by Section 102(a)(2) of that federal act.

SECTION 48. Section 79-4-16.21, Mississippi Code of 1972, dealing with the reporting of the indemnification of or expense advances to a director in connection with a proceeding as well as certain issues of shares by the corporation, is repealed.

SECTION 49. This act shall take effect and be in force from and after January 1, 2013.

PASSED BY THE HOUSE OF REPRESENTATIVES
March 7, 2012

Philip Gunn

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
April 9, 2012

Tate Reeves

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

Phil Bryant

GOVERNOR

3:49pm