

Country Guide

USA - Mississippi

Prepared by

Butler Snow LLP



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DOING
BUSINESS IN
MISSISSIPPI

A LEGAL GUIDE

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OVERVIEW OF LEGAL GUIDE

Mississippi created one of the first formal plans in the country designed to incentivize businesses to locate in the state and continues to offer a top-of-the-scale environment for both new and existing businesses. We have written the following legal guide as one tool for any existing businesses, but more particularly for businesses that are interested in pursuing Mississippi as a location of choice.

Butler Snow attorneys specialize in helping to lead these efforts for new or existing businesses. Butler Snow regularly works with a cross-section of government agencies for permitting, legislation, tax and incentive negotiations, land acquisitions and other critical site selection issues. We frequently assist companies with restructurings, tax increment financing, mergers, acquisitions, and regulatory and administrative issues. In support of those efforts, we have developed extensive relationships at local, state and national levels with governmental, economic development, civic, legislative and environmental leaders.

Our attorneys are experienced in all types of tax and financing incentives offered by state and local governments to encourage economic development. Members of our Economic Development Group have represented numerous manufacturing, processing, distribution, warehousing and other clients in site acquisition, governmental financing programs, other financing transactions and tax incentives. Whether the deal is large or small, we structure transactions to take advantage of numerous economic development incentives, including:

- Industrial development bonds (IDBs) both taxable and tax-exempt
- New Markets Tax Credits
- Sales, use and contractors' tax exemptions on construction costs
- Local ad valorem tax exemptions
- State income tax credits

The firm has longstanding relationships with local economic development professionals and local governmental officials (Boards of Aldermen, Boards of Supervisors, City Councils), as well as officials of the Mississippi Development Authority, the Mississippi Business Finance Corporation, the Mississippi Department of Revenue, the Mississippi Bond Commission and the Mississippi Attorney General's office among others.

In sum, we know economic development law in Mississippi, in large part because we helped draft much of it. We are proud of what we have done to improve the economic climate of our state, and we are eager to do more to help our existing and new businesses succeed.

OVERVIEW OF BUTLER SNOW LLP

THE FIRM

With more than 400 attorneys and with 28 offices across the United States and in London and Singapore, Butler Snow's practice areas include the full range of public finance, business law and litigation services. We offer the depth to represent a broad spectrum of international, national and regional clients in a variety of legal areas, including Business Services, Public Finance and Incentives, Government and Environmental, Tax, Pharmaceutical, Medical Device and Healthcare, Product Liability, Environmental, Intellectual Property, Commercial Litigation, Appellate and Written Advocacy, Investigations, General Litigation and Labor and Employment.

Our team approach allows us to use resources across the firm to match legal experience with client needs. As a result, clients benefit from our strategic counsel, efficient execution and innovative solutions to complex challenges.

Butler Snow has been recognized repeatedly for our teamwork and our clients' successes, across a variety of service areas. Ranked as a leading firm for client relations and one of America's Top 100 law firms in the BTI Power Rankings, Butler Snow is recognized as one of the nation's top law firms for client service, including being named to the Client Service A-Team for three consecutive years. Additionally, the firm was ranked 48th out of 650 firms in the BTI Client Relationship Scorecard for understanding client business, anticipating client needs, unprompted communication, legal skills, quality and keeping clients informed. Butler Snow's Public Finance, Tax Incentives and Credit Markets practice has also routinely ranked as one of the nation's most active.

In an increasingly sophisticated business environment, clients need law firms that have the experience and depth to handle significant matters. Our attorneys offer diverse legal, business and governmental backgrounds, bringing vast experience and practical knowledge to each client they represent. Our practice areas are focused on specific legal disciplines, but we also have teams that are equipped to address the needs of particular industries, including healthcare, banking and finance, gaming, environmental, manufacturing, governmental, pharmaceutical, telecommunications and insurance.

We have represented clients in all 50 states and in the District of Columbia, as well as internationally in more than 40 countries, including Australia, Canada, the Peoples Republic of China, Colombia, Hong Kong, Kuwait, Mexico, Saudi Arabia, Singapore and the United Kingdom.

Chambers USA - America's Leading Lawyers for Business describes Butler Snow as having "enormous power and presence" with a team of attorneys who have achieved national prominence because of "sheer, unambiguous quality." According to Chambers, our clients refer to the firm as "well-known for being successful" and our attorneys as "real deal-makers." Chambers also noted the firm's ability to deliver to the client "the whole package – intelligence, presence and trial experience."

The attorneys of Butler Snow are ready to meet your legal needs - whether in multi-million-dollar appeals where vital interests are at stake or in more routine business and corporate matters. At Butler Snow, our clients' interests are paramount, and we focus on exceeding expectations.

OUR PEOPLE

Butler Snow lawyers are recognized regionally, nationally and internationally for their expertise and contributions to the profession. Butler Snow's core values are reflected by these honors and in the satisfaction of our clients.

Nine attorneys are Fellows of the American College of Trial Lawyers, five are Fellows of the International Academy of Trial Lawyers, six are members of the American Board of Trial Advocates, six are recognized in the *International Who's Who of Business Lawyers*, four are named in the *Who's Who Among International Product Liability Lawyers*, and six are members of the Product Liability Advisory Council (PLAC). The firm's trial lawyers have directed and served on the faculty of the IADC Defense Counsel Trial Academy, the ABA's TIPS National Trial Academy and the National Advocacy Center for the United States Department of Justice. Butler Snow attorneys also hold leadership positions in the Business Law and Litigation Sections of the American Bar Association, and almost half are rated AV by Martindale-Hubbell.

Over half of all Butler Snow attorneys are listed in *The Best Lawyers in America*®, including 267 listings in multiple practice areas from litigation, alternative dispute resolution, bankruptcy and real estate, to intellectual property, corporate law practices, appellate law, and labor and employment.

Over 75 Butler Snow attorneys were named to Super Lawyers® and Rising Stars® 2023, an honor bestowed upon less than five percent of attorneys nationwide. Some of the practice areas included were Securities and Corporate Finance, Business Litigation, Employment and Labor and Appellate.

For more information on Butler Snow, please visit our website at www.butlersnow.com.

Table of Contents

	Page
I. INTRODUCTION	1
1. Cultural Background.....	1
2. Investment Climate and Recent Significant Economic Events.....	2
II. MISSISSIPPI BUSINESS ENTITIES	4
1. Corporations.....	4
2. General and Limited Liability Partnerships.....	7
3. Limited Partnerships.....	8
4. Limited Liability Companies.....	8
5. Sole Proprietorships.....	10
6. Joint Ventures.....	10
7. Nonprofit Corporations.....	11
8. Mississippi Entity Conversion.....	12
9. Notes.....	12
III. MISSISSIPPI TRADE REGULATIONS	12
1. Mississippi Consumer Protection Laws.....	12
IV. MISSISSIPPI TAX LAWS	13
1. Income Tax Overview.....	13
2. Personal Income Tax.....	13
3. Corporate Income Tax.....	14
4. Partnership Income Tax.....	14
5. Insurance Company Premium Tax.....	15
6. Subchapter-S Corporations.....	16
7. Corporate Franchise Tax.....	16
8. Ad Valorem Tax.....	17
9. Sales and Use Tax.....	17
10. Contractor's Tax.....	18
11. Tax Incentives.....	18
V. MISSISSIPPI LABOR AND EMPLOYMENT LAWS	19
1. State Employment Laws.....	19
2. State Discrimination Statutes.....	20
3. Drug and Alcohol Testing.....	21
4. Covenants Not to Compete.....	22
5. Wage and Hour Laws.....	22
6. Child Labor.....	22
7. Workers' Compensation.....	23
8. Unemployment Insurance.....	23
9. Right to Work Act.....	23
VI. MISSISSIPPI ENVIRONMENTAL LAWS	23
1. Mississippi Air and Water Pollution Control Law.....	23
2. Mississippi Solid Waste Disposal Act.....	24
3. Underground Storage Tank Act of 1988.....	24
4. Radioactive Waste Transportation Act.....	24

5.	Mississippi Safe Drinking Water Act of 1997.....	24
6.	Mississippi Surface Coal Mining and Reclamation Law.....	24
7.	Mississippi Surface Mining and Reclamation Law.....	24
8.	Channel Maintenance Act.....	25
9.	Coastal Wetlands Protection Act.....	25
10.	Mississippi Water Resources Law.....	25
11.	Mississippi Scenic Streams Stewardship Act.....	25
12.	Mississippi Prescribed Burning Act.....	25
13.	Mississippi Brownfields Voluntary Cleanup and Redevelopment Act.....	25
14.	Mississippi Individual Onsite Wastewater Systems Law.....	25
15.	Mississippi Oil and Gas Development, Production and Distribution Law.....	26
16.	Mississippi Lender Liability Law.....	26
17.	Mississippi Geologic Sequestration of Carbon Dioxide Act.....	26
18.	Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act.....	26
19.	Mississippi Municipality and County Water Infrastructure Grant Program Act of 2022.....	27
20.	Protection of Confidential Information.....	27
VII.	MISSISSIPPI INTELLECTUAL PROPERTY LAWS.....	27
1.	Trademarks/Service Marks.....	27
2.	Trade Names.....	28
3.	Trade Secrets.....	28
4.	Rights of Publicity/Privacy.....	29
5.	Unfair Competition/Deceptive Trade Practices.....	29
6.	Bad Faith Assertions of Patent Infringement.....	30
VIII.	MISSISSIPPI COURT SYSTEM.....	31
1.	State Trial Courts.....	31
2.	State Appellate Courts.....	33
3.	State Tax Court.....	33
IX.	FINANCING INVESTMENTS IN MISSISSIPPI.....	34
1.	Tax-Exempt Financing.....	34
2.	Mississippi Commercial Banking.....	36
3.	Mississippi Securities Regulation.....	37
4.	Mississippi Usury Laws.....	38
X.	MISSISSIPPI REAL ESTATE LAWS.....	39
1.	Ownership.....	39
2.	Concurrent Ownership.....	39
3.	Spousal Rights.....	40
4.	Purchase and Sale of Real Property.....	40
5.	Foreclosures.....	41
6.	Easements.....	41
7.	Leases.....	42
8.	Zoning.....	42
9.	Eminent Domain.....	43
10.	Mineral Rights.....	43

I. INTRODUCTION

1. Cultural Background.

Mississippi has five distinct regions. The culture in these five regions varies greatly, which is one attribute that makes Mississippi so attractive. Within a day's driving time, one can enjoy the rich literary legacies of Oxford in the hills and stroll on the white sands of the beaches in Biloxi.

The coastal region is home to casinos and resorts that offer golf and charter fishing, as well as spas, 24-hour gaming, dining and live entertainment. The Coast is also home to the Stennis Space Center, one of NASA's leading facilities for technology development, and the Northrop Grumman shipyards in Pascagoula. Further north are the historic districts of Hattiesburg and Laurel, which showcase exquisite Victorian and turn-of-the-century mansions built by lumber barons. Located in Laurel is the Lauren Rogers Museum of Art, Mississippi's oldest and one of its finest art museums, as well as the popular "Home Town" television series on HGTV.

The Capitol/River region stretches from Jackson to the historic towns that line the bluffs of the Mississippi River. Jackson is home to exceptional historical, art and natural science museums, boutique shopping, and restaurants representing virtually every culinary style. Other history-rich cities include Natchez, home to the nation's largest collection of antebellum mansions; Port Gibson, the town that General Grant deemed "too beautiful to burn;" and Vicksburg, where the tide of Civil War turned most emphatically in favor of a United States of America.

The Pines region is home to sacred Native American homelands and postcard-pretty historic towns. Columbus was the site of America's first Memorial Day observance, when a group of Civil War widows decorated the graves of both the Confederate and Union dead. To the west, the Natchez Trace Parkway towns of French Camp and Kosciusko still boast the frontier charm that has made them popular stops since the 1700s. The Mississippi Band of Choctaw Indians' reservation is located near Philadelphia, where one of the state's popular casino resorts attracts thousands of visitors each day. Each summer, Philadelphia also hosts the Neshoba County Fair, also known as "Mississippi's Giant House Party."

Even before the casinos sprang out of the cotton fields, the Delta was already famous as the birthplace of the blues and as the repository of the richest farmland "this side of the Valley Nile." Cities like Greenville and Greenwood are known for hosting lively festivals celebrating the area's rich musical and cultural heritage. Clarksdale's Delta Blues Museum showcases the history and cultural influence of America's only original music. Beloved southern writer Willie Morris grew up in Yazoo City and immortalized his hometown in the book *My Dog Skip*. In nearby Cleveland, musical events and Broadway plays often grace the stages of the Bologna Performing Arts Center located on the campus of Delta State University. Acclaimed actor and Delta resident Morgan Freeman can often be found enjoying a meal at his own gourmet restaurant, Madidi, in Clarksdale.

The Hills region stretches across the northeastern quarter of Mississippi, from the edge of the Mississippi River Delta to the foothills of the Appalachian Mountains. Most of the more than 500 Civil War battles waged on Mississippi soil were fought in this area. Aspiring authors and lovers of literature are drawn to Oxford, home of the University of Mississippi (or Ole Miss, as it is affectionately known), hoping some of the magic that inspired William Faulkner or John Grisham, and dozens of others, still lingers. One of the world's most enduring cultural icons, Elvis Presley, was born in Tupelo, where a museum of his birthplace has become a busy tourist attraction.

2. Investment Climate and Recent Significant Economic Events.

In recent years, Mississippi has made significant strides in creating an environment that is conducive for the growth of existing businesses, and businesses seeking to locate new operations in the state. Examples include Nissan's \$1.5 billion capital investment and creation of over 5,000 direct jobs, and Toyota USA's announcement of manufacturing operations in the northern part of the state. Other significant investments include Toyota's Blue Spring plant, and Continental Tire which was one of the most significant economic development projects in the country.

Many factors have contributed to the decisions of these and other companies to locate their businesses in Mississippi. These factors include ample state and local tax and other economic incentives; a quality workforce subject to balanced labor and employment laws; a central US location with direct access to the Mississippi River, Tennessee-Tombigbee River Waterway, and deep-water ports located on the Gulf of Mexico; a solid rail and highway transportation infrastructure; relatively low income and franchise taxation; and a balanced legal system vastly improved with the passage of major tort reform. Additional details about the business climate in Mississippi are provided below.

Economic Incentives

Tax-exempt financing programs in Mississippi offer eligible companies below-market borrowing costs and other economic development incentives. These financing programs are administered at two levels: state-wide through the Mississippi Business Finance Corporation (<http://www.msbusinessfinance.com/>) and the Mississippi Development Authority (<http://www.mississippi.org/>), and locally through cities, counties, regional planning and development districts, and economic development authorities.

The Mississippi Business Finance Corporation (MBFC) is a statewide financing source that allows eligible companies to obtain tax-exempt financing and other incentives. MBFC offers tax-exempt variable and fixed rate financing through several programs including the Small Enterprise Development Finance Program and the Industrial Development Revenue Bond Program. MBFC also offers a sale/use tax exemption for eligible projects financed through MBFC programs.

The Mississippi Development Authority (MDA) administers the Community Development Block Grant Program (CDBG) to fund publicly owned infrastructure through

both grants and loans. Funding from the CDBG program can be used by Mississippi municipalities and counties to assist with the construction, renovation or expansion of Mississippi businesses and industrial facilities.

Mississippi cities and counties may issue tax increment financing bonds to encourage economic development within designated areas by financing public infrastructure improvements for public or private development projects without the necessity of issuing general obligation bonds. Developers may use a special public improvement district to finance various public infrastructure improvements. These financings are repaid with tax assessments levied on real property within the district.

Favorable Labor and Employment Laws

Mississippi is a right-to-work state, with Mississippi statutory and constitutional law showing that the state supports the right of a person to work without regard to membership or non-membership in any labor union or labor organization. Mississippi is also an at-will employment state and, absent a contract to the contrary and subject to limited exceptions, the employer is free to terminate an employee's employment. In addition, employee non-compete clauses, though not favored, generally will be enforced in Mississippi if reasonable as to duration and as to geographic scope.

Corporate Income and Franchise Taxes

Mississippi imposes an income tax on the net income of corporations doing business in this state. The Mississippi taxable income of multi-state corporations doing business in Mississippi is generally calculated by multiplying an apportionment formula (consisting of one or more of property, payroll and sales factors) against the total net income of the corporation. Mississippi income tax rates are three percent (3%) of the first \$5,000.00 of taxable income, four percent (4%) of the next \$5,000.00 of taxable income, and five percent (5%) of all remaining taxable income. Several credits are available to reduce the Mississippi corporate income tax liability including the Jobs Tax Credit, the National or Regional Headquarters Tax Credit and the Research and Development Skills Tax Credit.

Mississippi imposes a franchise tax on the taxable capital value of most corporations doing business in Mississippi. Taxable capital is the greater of (i) the assessed value of the corporation's tangible property in Mississippi or (ii) the book value of its outstanding capital stock, paid-in capital, surplus, retained earnings, deferred taxes, contingent liabilities and true reserves. The Mississippi taxable capital of multi-state corporations doing business in Mississippi is generally calculated by multiplying an apportionment formula (consisting of the property and receipts factors) multiplied against the corporation's total taxable capital. The Mississippi corporate franchise tax rate is Two and 50/100 Dollars (\$2.50) per \$1,000.00 of taxable capital. Mississippi offers a franchise tax exemption for corporations locating in growth and prosperity areas.

Fair Legal System

Mississippi enacted major tort law reform that has significantly enhanced the business climate. Among these reforms, the Mississippi Legislature adopted reasonable limits on both noneconomic and punitive damages and venue provisions more favorable to potential defendants. The above and other legislative reforms, combined with the Mississippi Supreme Court decision to return to traditional plaintiff joinder rules, have significantly decreased mass tort litigation in Mississippi and have provided a more positive legal environment for corporations doing business within the state.

Thus, Mississippi has become more attractive to business development in the state. With more protection for business from lawsuit abuse and the advancement of the workforce with other significant projects, the future of Mississippi's business community is bright.

II. MISSISSIPPI BUSINESS ENTITIES

1. Corporations.

(a) **Introduction.** Patterned after the Model Business Corporation Act, the Mississippi Business Corporation Act (the "Corporation Act") was adopted in 1987, replacing the existing statutory framework governing business corporations. The Corporation Act is contained in Miss. Code Ann. § 79-4-1.01 *et seq.*

(b) **Formation.** A Mississippi corporation is formed by the filing of articles of incorporation with the Mississippi Secretary of State (the "Secretary of State"). Articles of incorporation must be signed by one or more incorporators and submitted with the applicable filing fee, which is currently \$50.00. Unless a later effective date is specified in the articles of incorporation, corporate existence begins when the articles are filed. The Constitution of the State of Mississippi provides that a corporation must be organized and commence doing business within two (2) years from the filing date of the articles of incorporation.

(c) **Articles of Incorporation.** The articles of incorporation must include the following: the proper name of the corporation; the number of shares the corporation is authorized to issue and information as to any classes of stock, and any preferences, rights and limitations of such classes; the street address of the corporation's initial registered office; the street address, name, and email address of the corporation's non-commercial registered agent or name of the corporation's commercial registered agent (the "Required § 79-35-5(a) Information"); and the name and address of each incorporator. The articles may set forth the names and addresses of initial directors, the purposes, management, and powers of the corporation, any provision allowed or required to be set forth in the bylaws, certain provisions limiting the directors' liability, a provision requiring the corporation to indemnify the directors for certain obligations, and a provision requiring that derivative proceedings be brought in the county in which the corporation's principal office is located.

(d) **Name.** Mississippi requires that the name of a business corporation contain the word "Corporation," "Incorporated," "Company," "Limited," or an abbreviation of one of these words. The name of a corporation must be distinguishable from the names of entities organized or qualified to do business in Mississippi and must comply with other guidelines provided for under the Corporation Act.

(e) **Bylaws.** The bylaws of the corporation must be adopted by the incorporators or the board of directors. The bylaws may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with applicable law or the articles of incorporation. Generally, the bylaws may be amended by the board of directors or the shareholders, provided, however, the bylaws or articles of incorporation may provide that only the shareholders may amend the bylaws.

(f) **Shares.** Unless the power is reserved to the shareholders in the articles of incorporation, the board of directors has the authority to issue shares of the corporation for any consideration deemed adequate. The corporation must authorize one or more classes of shares that together have unlimited voting rights, as well as one or more classes of shares (which may be the same class(es) as those with voting rights) that together are entitled to receive the net assets of the corporation at dissolution. A corporation may acquire its own shares, and such shares that are acquired by the corporation constitute authorized but unissued shares. If, however, the articles of incorporation prohibit reissuance of the acquired shares, the number of authorized shares is reduced by the number of shares acquired.

(g) **Limited Liability.** A shareholder is not liable to the corporation or its creditors with respect to his shares except to pay the consideration for which the shares were authorized to be issued. Furthermore, a shareholder is not personally liable for the acts or debts of the corporation except that he may become personally liable by reason of his own acts or conduct.

(h) **Preemptive Rights.** The shareholders of a Mississippi corporation do not have a preemptive right to acquire the corporation's unissued shares unless the articles of incorporation expressly provide such right.

(i) **Shareholders.** Generally, shareholders act by resolutions approved by a majority vote at a meeting at which a quorum is present. Unless the articles of incorporation or the Corporation Act requires otherwise, a quorum is a majority of the votes entitled to be cast by the shareholders. Unless directors are elected by written consent, a Mississippi corporation is required to hold an annual meeting of the shareholders at the time and place stated in the bylaws. At the annual meeting, the shareholders elect the board of directors. Unless otherwise provided in the articles, directors are elected by a plurality of the vote at a meeting at which a quorum is present. For corporations incorporated before July 1, 2002, shareholders have a right to cumulate their votes for directors unless otherwise

provided in the articles; for corporations incorporated on or after July 1, 2002, shareholders do not have a right to cumulate their votes for directors unless otherwise provided in the articles. A Mississippi corporation must hold a special shareholders' meeting if: (i) one is called by the board of directors or the person or persons authorized to do so by the articles or bylaws; or (ii) unless the articles of incorporation provide otherwise, shareholders having ten percent (10%) or more of all votes entitled to be cast upon the issue proposed to be considered at the special meeting provide a written demand for the meeting. Unless prohibited by the bylaws, the corporation may elect to hold both annual and special meetings virtually. In lieu of an actual meeting (either annual or special), the shareholders may act by unanimous written consent.

(j) **Board of Directors.** Absent an agreement among all the shareholders as permitted by Miss. Code Ann. § 79-4-7.32, a corporation must have a board of directors, and the board must manage and direct the business and affairs of the corporation. If the articles of incorporation do not name the initial board of directors, the incorporator(s) will elect the initial board of directors. The board must consist of one or more individuals as specified in the corporation's articles or bylaws. The directors must be elected at the first annual shareholders' meeting and at each annual meeting held thereafter, unless the corporation has provided in its articles for staggered terms for its directors. Directors may act by resolution at a regular or special meeting of the directors where a quorum is present, or directors may act by unanimous written consent. Each director is charged by Mississippi law to discharge the duties of a director in good faith, and in a manner that the director reasonably believes to be in the best interests of the corporation.

(k) **Officers.** Every Mississippi corporation must have at least one officer charged with keeping minutes of the directors' and shareholders' meetings and maintaining and authenticating the records of the corporation. Corporations typically have a president, vice president, secretary and treasurer, and may have a chairman of the board, chief financial officer or other officers specified in the articles of incorporation or the bylaws. Mississippi law allows for one individual to simultaneously hold more than one office.

(l) **Authority of Shareholders, Directors and Officers.** The shareholders must vote on certain fundamental matters, such as amendments to the articles of incorporation (subject to certain exceptions), mergers and share exchanges (subject to certain exceptions), a sale, lease, exchange, or other disposition of the assets of the corporation that would leave the corporation without a significant continuing business activity, and dissolution. Generally, all other matters are within the authority of the board of directors, and the board of directors may delegate to certain officers the authority to perform actions within the ordinary course of business of the corporation.

(m) **Mergers.** A Mississippi corporation may merge with a Mississippi or foreign corporation or other eligible entity pursuant to a plan of merger. The plan

of merger must be approved by the board of directors and, except in certain circumstances, recommended by the board for approval to the shareholders and actually approved by the shareholders. A foreign corporation or other entity may be a party to the merger only if the merger is permitted by the laws under which the corporation or other entity is governed, and in effecting the merger, the entity complies with such laws and with its articles of incorporation or organizational documents. The plan of merger must include the name of each entity, the name of the surviving entity, the terms and conditions of the merger, the manner of converting the shares of each merging corporation and interests of each other entity, and the organizational documents of the surviving entity. A merger is made effective by filing articles of merger with the Secretary of State.

(n) **Annual Reports.** A corporation organized in the State of Mississippi and all foreign corporations authorized to transact business in the State of Mississippi must file an annual report with the Secretary of State each year.

2. General and Limited Liability Partnerships.

(a) **General Partnership.** Mississippi general partnerships are governed by the Uniform Partnership Act, which is contained in Miss. Code Ann. § 79-13-101 *et seq.* (the “Partnership Act”). The Partnership Act defines a partnership as “an association of two (2) or more persons to carry on as co-owners a business for profit.” Mississippi does not require general partnerships to file or register with any governmental authority. To determine if a partnership has been formed, Mississippi law will look to (i) the intent of the parties, (ii) the control of the undertaking, and (iii) and profit sharing. Mississippi courts have found profit sharing to be the most important factor in determining whether a partnership has been formed.

(b) **Agency and Liability.** Generally, every partner is an agent of the partnership, and the act of a partner in carrying out the usual business of the partnership is binding on the partnership. Subject to certain exceptions, each partner of a general partnership is jointly and severally liable for all debts and obligations of the partnership.

(c) **Annual Reports.** A general partnership is not required to file an annual report with the Secretary of State.

(d) **Limited Liability Partnership.** A Mississippi general partnership may obtain limited liability for its partners by registering with the Secretary of State as a limited liability partnership. In order to receive such protection, the partnership must file a statement of qualification with the Secretary of State. A partner in a limited liability partnership is not liable for any debt or obligation of the partnership incurred while the partnership is a limited liability partnership, whether arising in tort, contract or otherwise, solely by reason of being or acting as a partner. The name of a limited liability partnership must end with “Registered Limited Liability Partnership,” “Limited Liability Partnership,” “R.L.L.P.,” “L.L.P.,” “RLLP” or “LLP.”

3. Limited Partnerships.

(a) **Introduction.** The Mississippi Uniform Limited Partnership Act is contained in Miss. Code Ann. § 79-14-101 *et seq.* (the "Limited Partnership Act") and became effective July 1, 2015. Prior to the Limited Partnership Act, limited partnerships were governed by the Mississippi Limited Partnership Act. The Limited Partnership Act governs all limited partnerships, except that, for limited partnerships formed before July 1, 2015, certain provisions do not apply unless the partners elect otherwise.

(b) **Formation.** To form a limited partnership, a certificate of limited partnership must be filed with the Secretary of State and must become effective, the limited partnership must have at least two partners, at least one person must have become a general partner, and at least one person must have become a limited partner. The certificate of limited partnership must state the name of the limited partnership (which must comply with § 79-14-114), the Required § 79-35-5(a) Information, the street and mailing addresses of the limited partnership's principal office, the street and mailing addresses of each general partner, and whether the limited partnership is a limited liability limited partnership.

(c) **Limited Partners.** Upon formation of a limited partnership, a person may become a limited partner by agreement of the initial partners. After formation, a person becomes a limited partner pursuant to the partnership agreement, as the result of a merger, by a vote or consent of all the partners, or pursuant to § 79-14-801(a)(4) or (5). A limited partner is not an agent of the limited partnership solely by reason of being a limited partner. The debts and obligations of a limited partnership are not the debts and obligations of a limited partner, and a limited partner is not personally liable for the debts and obligations of the partnership solely by reason of being or acting as a limited partner, even if the limited partner participates in the management and control of the limited partnership.

(d) **General Partners.** Upon formation of a limited partnership, a person may become a general partner by agreement of the initial partners. After formation, a person becomes a general partner pursuant to the partnership agreement, as the result of a merger, by a vote or consent of all the partners, or in connection with the dissociation of a general partner pursuant to § 79-14-801(a)(3)(B). Each general partner is the agent of the limited partnership. Each general partner has equal rights in the management and conduct of the limited partnership's activities and affairs. Subject to certain exceptions, general partners are liable jointly and severally for all debts and obligations of the limited partnership.

4. Limited Liability Companies.

(a) **Introduction.** The Revised Mississippi Limited Liability Company Act (the "LLC Act") became effective January 1, 2011 and replaced The Mississippi

Limited Liability Company Act which was enacted in 1994. The LLC Act is contained in Miss. Code Ann. § 79-29-101 *et seq.*

(b) **Formation.** To form a Mississippi limited liability company, a certificate of formation must be filed with the Secretary of State. The certificate of formation must be signed and submitted with the applicable filing fee, currently \$50.00. Unless a later effective date is specified in the certificate of formation, limited liability company (“LLC”) existence begins when the certificate is filed.

(c) **Certificate of Formation.** The certificate of formation must set forth the name of the LLC, the required § 79-35-5(a) Information, and the date of dissolution of the LLC (if any). The certificate of formation may contain any other matters the members elect to include. All members must agree to any amendment of the certificate of formation.

(d) **Name.** The name of each LLC must contain the words “Limited Liability Company,” “L.L.C.,” or “LLC,” and must be distinguishable from the name of any entity organized or registered in Mississippi. The name of an LLC may not contain the following words: “bank,” “banker,” “bankers,” “banking,” “trust company,” “insurance,” “trust,” “corporation,” “incorporated,” “partnership,” “limited partnership,” or any words or abbreviations of similar meaning, and must comply with other guidelines provided for under the LLC Act.

(e) **Operating Agreement.** The members of the LLC may enter into an operating agreement to govern the affairs of the LLC, the conduct of the LLC’s business, the relationship between the LLC’s members, and the relationship between the LLC’s members and the LLC. Generally, the operating agreement must be initially adopted by all of the members, and unless otherwise provided in the certificate of formation or the operating agreement, all members must agree to any amendment of the operating agreement.

(f) **Members.** Except to the extent that the operating agreement provides for management of an LLC by a manager or managers, management of an LLC is vested in its members. Generally, if an LLC has no manager, each member is an agent of the LLC for the purpose of conducting the business and affairs of the LLC. Unless otherwise provided by the certificate of formation or the operating agreement, if the LLC has managers, no member (acting as a member) is an agent of the LLC. Unless otherwise provided by the certificate of formation or the operating agreement, each member votes in proportion to that member’s interest in the profits of the LLC. The certificate of formation or operating agreement may provide for classes of members and the relative rights, powers and duties (including voting rights) of the members.

(g) **Managers.** Management of an LLC is vested in managers only if so, provided in the operating agreement or the certificate of formation. Generally, if an LLC has managers, every manager is an agent of the LLC. Managers are not required to be residents of Mississippi or members of the LLC. Unless otherwise

provided in the certificate of formation or the operating agreement, managers are elected by the members.

(h) **Limited Liability.** A member is not liable, solely because he is a member, for any debt, obligation or liability of the LLC arising in contract, tort or otherwise.

(i) **Interest in the LLC.** A “Financial Interest” in an LLC is the right to share in the profits, losses, and distributions of the LLC. Financial interests may be owned by members and nonmembers of an LLC. Unless otherwise provided by an LLC's certificate of formation or operating agreement, Financial Interests are assignable. A “Governance Interest” is a member's rights as a member in the LLC other than the financial rights described above. Only members shall have governance rights or own governance interests in an LLC.

(j) **Assignment of Financial Interests.** An assignee of a Financial Interest may become a member and gain Governance Interest in the LLC pursuant to the certificate of formation or operating agreement, if all of the members consent, or if immediately following the assignment of the Financial Interest, the LLC would no longer have any members.

(k) **Mergers.** A Mississippi LLC may merge with a Mississippi or foreign entity pursuant to an agreement of merger. The agreement of merger must include the name of each entity, the name of the surviving entity, the terms and conditions of the merger, the manner of converting the interests of each entity into shares or other securities of the surviving entity, the organizational documents of the surviving entity, and any other provision required by the laws under which any party to the merger is organized or governed, or required by the organizational documents of any party.

(l) **Annual Reports.** Mississippi LLCs and foreign LLCs authorized to do business in Mississippi are required to file an annual report with the Secretary of State.

5. Sole Proprietorships. Mississippi does not recognize a sole proprietorship as a formal business entity and thus does not require any special filings other than any licensing requirements related to the specific kind of business or profession. The chief disadvantage of a sole proprietorship is that all of the assets of the individual owner are subject to claims of creditors of the business.

6. Joint Ventures. A joint venture is not a statutory entity but rather a relationship recognized under the common law. Mississippi courts have defined a joint venture as a single purpose partnership. Accordingly, a joint venture differs from a general partnership because it relates to a single transaction, while a partnership usually relates

to a continuing business. A joint venture is typically of a shorter duration than a general partnership.

7. Nonprofit Corporations.

(a) **Formation.** To form a Mississippi nonprofit corporation, articles of incorporation must be filed with the Secretary of State. Articles of incorporation must be submitted with the applicable filing fee, which is currently \$50.00. If the articles of incorporation do not name the initial board of directors, then the incorporator(s) will elect the initial board of directors. The Constitution of the State of Mississippi provides that a corporation must be organized and business is commenced within two (2) years from the date of the articles of incorporation.

(b) **Articles of Incorporation.** The articles of incorporation must include the following: the name of the corporation (which must comply with § 79-11-157); the period of duration (the duration may be perpetual); the Required § 79-35-5(a) Information; the name and address of each incorporator; if the corporation is incorporated on or after January 1, 2012, the corporation's primary nonprofit activity; and any other information the Secretary of State may reasonably require.

(c) **Membership.** A Mississippi nonprofit corporation is not required to have members. If a Mississippi nonprofit corporation has members, all members have the same rights and obligations with respect to voting, dissolution, redemption and transfer, unless the articles of incorporation or bylaws provide otherwise. No member may transfer his or her membership unless the articles or bylaws authorize such a transfer. A member may resign at any time, but no member may be expelled or suspended except pursuant to a procedure that is fair and reasonable and carried out in good faith.

(d) **Members.** Generally, members act by resolutions approved by a majority of the vote at a meeting at which a quorum is present. Unless the articles, bylaws or the nonprofit act requires otherwise, a quorum is ten percent (10%) of the votes entitled to be cast by the members. A Mississippi nonprofit corporation must hold an annual meeting of the members of the corporation at the time and place stated in the bylaws. A nonprofit corporation must hold a special members' meeting if: (i) one is called by the board of directors; (ii) one is called by a person authorized to call a meeting by the articles or bylaws; or (iii) the holders of five percent or more of the voting power demand a meeting be held. Unless limited or prohibited by the articles or bylaws, in lieu of an actual meeting (either annual or special), the members may act by the written approval of members holding at least eighty percent (80%) of the voting power.

(e) **Directors.** A nonprofit corporation must have a board of directors, and the board must manage and direct the business and affairs of the corporation. The board must consist of one or more individuals as specified in the corporation's articles or bylaws, provided, however, if the nonprofit corporation is a charitable

corporation and solicits contributions, the board must consist of not less than three directors pursuant to § 79-11-235.

If the nonprofit corporation has members, the directors must be elected at the first annual members' meeting and at each annual meeting held thereafter, unless the articles or bylaws provide for some other method of election of directors or provide that some of the directors are appointed or designated. The articles or bylaws must specify the terms for directors and, except for designated or appointed directors, Mississippi law prohibits such terms from exceeding five (5) years. Directors may act by resolution at a regular or special meeting of the directors where a quorum is present, or directors may act by unanimous written consent.

(f) **Officers.** A nonprofit corporation has the officers set forth in its bylaws or appointed by the board pursuant to the bylaws.

(g) **Annual Reports.** A nonprofit corporation organized in the State of Mississippi is not required to file an annual report with the Secretary of State.

8. Mississippi Entity Conversion.

The Mississippi Entity Conversion and Domestication Act (the "Conversion Act") became effective January 1, 2015 and is contained in § 79-37-101 *et seq.* The Conversion Act permits Mississippi entities to convert to other forms of Mississippi entities, permits Mississippi entities to become foreign entities, and permits foreign entities to become Mississippi entities.

9. Notes.

The Secretary of State provides its forms online. Although the forms are mandatory, entities should consult the relevant statute before making any Secretary of State filings to ensure the required information is included and the appropriate actions are taken.

III. MISSISSIPPI TRADE REGULATIONS

1. Mississippi Consumer Protection Laws.

Miss. Code Ann. § 75-24-1 grants the authority to the Mississippi Attorney General to create the "Office of Consumer Protection," which may bring actions in the name of the State against persons who have violated Mississippi's consumer protection laws. District and county attorneys have a duty to assist the Attorney General's office in prosecuting such matters. Section 75-24-5 sets forth a list of activities that are deemed to constitute unfair or deceptive trade practices. In addition, in interpreting what constitutes unfair or deceptive trade practices under Mississippi law, courts will look to the rules and standards enforced by the Federal Trade Commission and the federal courts.

Violations of the consumer protection laws can result in injunctive relief (Miss. Code Ann. § 75-24-9) – civil penalties not to exceed Ten Thousand Dollars (\$10,000.00),

one-half of which must be paid to the Attorney General's office (Miss. Code Ann. § 75-24-19), or criminal penalties, including fines ranging from \$1,000.00 to \$5,000.00 (Miss. Code Ann. § 75-24-20).

Under Miss. Code Ann. § 75-24-25, there are restrictions on prices that may be lawfully charged for goods during a state of emergency. When the total value received during a twenty-four-hour period is \$500.00 or more, the violation is punishable by confinement for a term of not less than one (1) year nor more than five (5) years or a fine of not more than \$5,000.00, or both. When the total value received during a twenty-four-hour period is less than \$500.00, the violation is punishable by a fine of no more than \$1,000.00 or by imprisonment in the county jail for a term not to exceed six (6) months, or both.

In addition to the above general consumer protection statutes, there are specific consumer protection laws that address issues ranging from pyramid schemes to franchise arrangements. See Miss. Code Ann. § 75-24-51 through Miss. Code Ann. § 75-24-63.

IV. MISSISSIPPI TAX LAWS

1. Income Tax Overview.

As a general proposition, the net income of every resident individual, business corporation, association, trust or estate is subject to Mississippi income tax. The net income earned in Mississippi by nonresidents is also subject to Mississippi income tax. All Mississippi taxes are administered by the Department of Revenue ("DOR"), and administrative and judicial review is available to taxpayers to protest DOR decisions. Generally, Mississippi follows federal rules and regulations in determining the income tax consequences of most transactions. Regulations adopted by the DOR provide additional guidance for determining Mississippi taxable income.

2. Personal Income Tax.

For calendar year 2023 and all calendar years thereafter, personal income tax is not assessed on the first \$10,000.00 of income. The personal income tax rate for 2023 in the State of Mississippi is five percent (5%) on all taxable income in excess of \$10,000.00. The five percent (5%) tax rate will decrease to four and seven-tenths percent (4.7%) in 2024, four and four-tenths percent (4.4%) in 2025, and four percent in 2026 (4%). See Miss. Code Ann. § 27-7-5. The brackets are doubled for married taxpayers filing a joint return where both have Mississippi taxable income. In the case of nonresident individuals, income derived from employment, trade, business or other activities performed or carried on within the State of Mississippi is subject to taxation in Mississippi. This includes the sale or rental of real or tangible personal property located in Mississippi.

Persons subject to Mississippi income tax may either itemize their non-business deductions or claim the standard deduction in arriving at net income. Mississippi generally follows federal income tax law for purposes of determining itemized deductions. A

nonresident is allowed deductions against Mississippi income to the extent the deductions are allowable and attributable to the Mississippi income.

Resident taxpayers are allowed a personal exemption, the amount of which depends on their filing status. Nonresidents and part-year residents are entitled to the same exemptions as residents; however, they must prorate these exemptions on the basis of net income from sources in the State of Mississippi.

3. Corporate Income Tax.

If the business activity of a corporation occurs only in Mississippi, the entire net income of the corporation is subject to Mississippi income tax. All income of multi-state corporations is allocated or apportioned depending upon where the production of income takes place and whether such income is classified as either business or nonbusiness. Business income consists of (1) income arising from activities or transactions in the ordinary course of a taxpayer's trade or business (the "transactional test"); and (2) income from the acquisition, management and/or disposition of tangible or intangible property provided such acquisition, management and/or disposition constitutes an integral part of the taxpayer's regular trade or business operations (the "functional test"). See Miss. Code Ann. § 27-7-23.

If business income of the corporation is derived in part from activity within Mississippi and in part from activity outside Mississippi, an applicable apportionment formula is generally used to determine that portion of business income that is subject to Mississippi income tax. The non-business income of a multi-state corporation is generally allocated to the state where the income is earned.

Special allocation and apportionment rules apply to multi-state mineral or natural resource producers, contractors, airlines, motor carriers, utilities, retailers, wholesalers, service companies, lessors, pipeline companies and manufacturers. 35 Miss. Admin. Code Pt. III, R. 8.06.

Mississippi income tax law contains an exclusion for gain from sale of equity interests in certain financial institutions domiciled in Mississippi, domestic corporations, limited partnerships (but not limited liability partnerships) or limited liability companies held for more than one year. Miss. Code Ann. § 27-7-9(f)(10). Mississippi follows federal income tax law regarding corporate reorganizations to the extent they are consistent with Mississippi law. 35 Miss. Admin. Code Pt. III, R. 8.02.

4. Partnership Income Tax.

Every partnership, domestic or foreign, deriving income from property owned within Mississippi or business conducted in Mississippi is required to file a Mississippi partnership income tax return for each applicable taxable year. The return is required to include the names, addresses and social security numbers or identification numbers of all partners. 35 Miss. Admin. Code Pt. III, R. 9.01.

A nonresident partner of a partnership owning property or doing business in Mississippi is subject to Mississippi income tax on his share of the partnership net income, whether distributed or not. If the partnership does business in Mississippi and in other states, it is required to use an apportionment formula to compute the amount of income (or loss) from sources within the Mississippi. Different types of apportionment formulas are applicable to taxpayers in different industries. 35 Miss. Admin. Code Pt. III, R. 9.01.

The partnership is liable for any Mississippi income tax owed but not paid by its partners. However, the partnership may withhold and remit to the Department of Revenue five percent (5%) of its net profit to avoid this entity level liability. This is deemed to be an estimated income tax payment of the partners and is allocated pro rata to the partners estimated tax account and would be available for refund if the actual Mississippi income tax liability of a partner is less than the five percent (5%) withheld. 35 Miss. Admin. Code Pt. III, R. 9.01.

A partnership is allowed to file a composite return on behalf of its partners in certain circumstances. A composite return is a return in which a partnership pays the income tax due for some, or all, of its partners. The only partners who are eligible to be included in the composite return are nonresident partners without any activity in Mississippi other than that from the partnership. 35 Miss. Admin. Code Pt. III, R. 9.01.

5. Insurance Company Premium Tax.

A privilege tax of three percent (3%) is imposed upon all domestic and foreign insurance companies and associations on the gross amount of premiums received on insurance policies written in, or covering risks located in, Mississippi. Miss. Code Ann. § 27-15-103 and § 27-15-109.

For domestic insurance companies, receipts received from policies issued to fund a retirement, thrift, or deferred compensation plan qualified as tax exempt under Section 401, Section 403, or Section 457 of the Internal Revenue Code are exempt from this tax in calculating the amount of the taxable premiums. Miss. Code Ann. § 27-15-109. For foreign insurance companies and associations, receipts received from policies issued to fund a deferred compensation plan qualified as tax exempt under Section 457 of the Internal Revenue Code are exempt from this tax in calculating the amount of the taxable premiums. Miss. Code Ann. § 27-15-103. For both domestic and foreign companies, no credit or deduction from gross premium receipts is allowed for any commission, fee, or compensation paid to any agent, solicitor, or representative. See Miss. Code Ann. § 27-15-103 and § 27-15-109.

A credit may be taken against the premium tax for any Mississippi income tax paid by the insurance company for the preceding calendar year. See Miss. Code Ann. § 27-15-103(3) and § 27-15-109. The purpose of this credit is to cause the insurance company's Mississippi tax liability to be the greater of the insurance company premium tax or the income tax.

A credit may also be taken against the premium tax if the insurance company invests in and maintains qualifying Mississippi investments. Miss. Code Ann. § 27-15-129(1). The amount of the credit increases as the percentage of the insurance company's investment in Mississippi increases. The maximum credit is 50% of the normal premium tax liability if at least 25% of the insurance company's total assets are invested in qualifying Mississippi investments. Qualifying Mississippi investments include the following assets: certificates of deposit issued by, or cash on deposit with, financial institutions domiciled in Mississippi; bonds issued by political subdivisions of Mississippi; loans secured by deeds of trust on property located in Mississippi; real property located in Mississippi; policy loans to Mississippi residents; and stock, bonds or other debt of corporations domiciled in Mississippi. See Miss. Code Ann. § 27-15-129(2).

6. Subchapter-S Corporations.

Mississippi generally follows federal income tax law regarding the income taxation of subchapter S corporations. Any corporation that has made a valid election to be an S corporation under federal income tax law must make a similar election for Mississippi income tax purposes. The granting of the election for Mississippi purposes is contingent upon the granting and approval of the election for federal purposes. The S election must be filed with the DOR within 60 days of the date filed for federal purposes. The prescribed form must contain, in addition to any required information, a consent statement from each shareholder of the corporation. Termination of an election for federal purposes will automatically terminate the election for Mississippi purposes. 35 Miss. Admin. Code Pt. III, R. 8.03.

7. Corporate Franchise Tax.

The Mississippi Corporate Franchise Tax is an excise tax on the privilege of doing business in Mississippi in corporate form. The Mississippi corporate franchise tax is imposed on all corporations, associations, joint-stock companies and partnerships treated as corporations for tax purposes. Miss. Code Ann. § 27-13-5. The amount of tax due for tax years beginning on or after January 1, 2023, but before January 1, 2024, is equal to one dollar and 25/100 (\$1.25) for each \$1,000.00, or fraction thereof, of the employed capital used within the State that exceeds \$100,000. Miss. Code Ann. § 27-13-5. The amount of tax due for tax years beginning on or after January 1, 2024, but before January 1, 2025, is equal to one dollar (\$1.00) for each \$1,000.00, or fraction thereof, of the employed capital used within this State that exceeds \$100,000. For each subsequent tax year, the amount of tax due will decrease by Twenty-Five Cents (\$.25) for each \$1,000.00 of the employed capital used within the State that exceeds \$100,000. The tax will be phased out completely for tax years beginning in 2028 and for all subsequent tax years.

Employed capital is measured by all outstanding stock, paid in capital, retained earnings and surplus of the corporate taxpayer. Miss. Code Ann. § 27-13-9(1). Taxable capital also includes deferred taxes, deferred gains and deferred income, as well as contingent liabilities and all true reserves. Miss. Code Ann. § 27-13-9(1). Taxable capital generally does not include reserves for bad debts, accumulated depreciation, debts or other obligations of the corporation. Miss. Code Ann. § 27-13-9(1). In addition, taxable

capital of a parent corporation does not include the capital of its subsidiaries provided such parent corporation meets the statutory definition of a holding company. See Miss. Code Ann. §§ 27-13-1 and 27-13-9(2). Organizations exempt from the corporate franchise tax include, among others, mutual savings banks, many non-profit organizations, and business and civic leagues. See Miss. Code Ann. § 27-13-63.

Corporations doing business both within and without Mississippi must apportion taxable capital among or between states based upon a two-factor formula consisting of the real and tangible personal property ratio and the gross receipts ratio. See Miss. Code Ann. §27-13-13.

8. Ad Valorem Tax.

An annual ad valorem or property tax is imposed on the “true value” of all taxable real and personal property situated in Mississippi, except property that is specifically exempted by statute. Miss. Code Ann § 27-35-3. Ad valorem taxes are levied by the county, city and district in which the property is located. Miss. Code Ann. § 27-35-7. True value for purposes of the property tax generally means the fair market value that a willing buyer would pay a willing seller. See Miss. Code Ann. § 27-35-50.

Once true value is determined for tax purposes (an annual determination), the relevant tax assessor applies an “assessment ratio” to determine assessed value. Miss. Code Ann. § 27-35-4. The tax assessor then multiplies this assessed value by the appropriate millage rate to compute taxes due.

The Mississippi Constitution includes five (5) classes of taxable property and establishes the assessment ratio for each class of property. Section 112, Mississippi Constitution of 1890. Class I property (single family owner-occupied real property) is assessed at ten percent (10%) of true value, Class II (all other real property other than Class II or Class IV) at 15% of true value, Class III (all personal property not included in Class IV or Class V) at 15% of true value, Class IV (property owned by public service corporations) and Class V (motor vehicles) at 30% of true value. Miss. Code Ann. § 27-35-4.

Mississippi law establishes several partial and full exemptions to the ad valorem tax. Among the full exemptions are farm products, tools, livestock and timber, and certain nonprofit organizations such as charities, churches, schools and hospitals. Miss. Code Ann. § 27-31-1. Certain government property may also be exempt. Miss. Code Ann. § 27-31-1, et seq.

9. Sales and Use Tax.

The Mississippi Sales Tax applies to transactions involving the retail sale or rental of tangible personal property. See Miss. Code Ann. § 27-65-17 and § 27-65-23. The sales tax may also apply to revenue earned from the performance of certain enumerated taxable services. Miss. Code Ann. § 27-65-23. The use tax is imposed on persons who use, store, or consume tangible personal property within Mississippi. Miss. Code Ann. § 27-67-5.

The rates for the sales and use tax are the same but vary depending upon the type of property sold or used. Miss. Code Ann. § 27-67-5. Rates range from seven percent (7%) for most tangible personal property to one percent (1%) for certain property used to generate electric power. Miss. Code Ann. § 27-65-17. In addition, Mississippi Sales and Use Tax Rules exclude certain isolated or casual sales, except for sales of motor vehicles. See *Harry D. Kantor & Son v. Stone*, 203 Miss. 260 (1948); Miss. Code Ann. § 27-65-201.

10. Contractor's Tax.

Mississippi generally imposes a tax at the rate of three and one-half percent (3.5%) on the total contract price (materials, machinery, equipment, labor, overhead, profit, etc.) charged by a contractor to construct, build or erect various types of real property improvements when the compensation received exceeds \$10,000. Miss. Code Ann. § 27-65-21. The “contractor’s tax” does not apply to that portion of the contract price charged for “constructing, repairing or adding to property which retains its identity as personal property.” Miss. Code Ann. § 27-65-21. The tax is imposed on the prime contractor. Miss. Code Ann. § 27-65-21.

If the contract is over \$75,000.00, the contractor is required to pay the tax on the project to, or post a performance bond with, the DOR before construction commences. Miss. Code Ann. § 27-65-21. A contractor liable for tax may apply for and obtain a Material Purchase Certificate (Miss. Code Ann. § 27-65-3) from the DOR which may entitle them to purchase materials and services for the project free of the retail sales tax. Miss. Code Ann. § 27-65-21.

A business desiring to construct a new facility or expand an existing facility can avoid paying the three and one-half percent (3.5%) “contractor’s tax” on the component materials, machinery and equipment used in the construction process by financing the project with bonds issued by Mississippi Business Finance Corporation (“MBFC”). The project owner must use bond proceeds to purchase the component materials, machinery and equipment directly from the supplier, and not from the prime contractor, since purchases made or reimbursed out of MBFC bond proceeds by the project owner are exempt from sales and use tax. See Miss. Code Ann. § 27-65-111(w) and § 57-61-14. Removing these owner-direct purchases from the contract reduces the amount of the contract price remaining subject to the contractor’s tax to the labor, overhead, and profit components of the transaction. The component materials, machinery and equipment, when purchased by the project owner with proceeds from bonds, thus both avoid the contractor’s tax and are exempt from sales and use tax.

11. Tax Incentives.

Mississippi law provides for incentive tax credits against the state income tax aimed at general economic development. Among these are the Job Tax Credit, the Income Tax Credit for Ad Valorem Tax Paid on Inventory, Miss. Code Ann. § 27-7-22.5 the National and Regional Headquarters Credit, Miss. Code Ann. § 57-73-21(5) the Research and Development Skills Credit, Miss. Code Ann. § 57-73-21(6) and the

Mississippi Bond Financing Corporation Debt Service Credit. Miss. Code Ann. § 27-7-22.3. In addition, the Mississippi Broadband Technology Development Act, see Miss. Code Ann. § 57-87-1 offers an income and franchise tax credit for telecommunications companies investing in infrastructure needed for broadband technologies in Mississippi, and the Mississippi Reforestation Credit, Miss. Code Ann. § 27-7-22.15 is available to owners of nonindustrial private land who engage in approved reforestation practices. There are also numerous types of ad valorem property tax exemptions and sales and use tax exemptions for various types of targeted new enterprises and expansions of or additions to existing enterprises.

In addition, in 2022, the Mississippi Legislature adopted the Mississippi Flexible Tax Incentive Act, which provides a tax credit to eligible companies meeting certain requirements that are locating or expanding in the State. This credit can be used to offset state income, franchise, sales, use, and payroll withholding taxes. This incentive is intended to simplify and streamline the application and approval process for obtaining tax credits in the State. Miss. Code Ann. § 57-114-1, et seq.

V. MISSISSIPPI LABOR AND EMPLOYMENT LAWS

1. State Employment Laws.

Mississippi remains an at-will employment state. This means, absent a contract to the contrary, the employer is free to terminate an employee's employment for a good reason, a bad reason or no reason at all that does not violate federal law or the small handful of exceptions to the common law at-will doctrine (*Southwood Door Co. v. Burton*, 847 So. 2d 833 (Miss. 2003)). The Mississippi Supreme Court has created an exception to the employment-at-will doctrine.

Discharged employees may bring a tort claim for wrongful termination when the employee is discharged for either refusing to participate in the employer's illegal acts or for reporting the employer's illegal acts to the employer or anyone else (*McArn v. Allied Bruce-Terminix Company, Inc.*, 626 So.2d 603 (Miss. 1993)).

The employment-at-will doctrine can be limited by the existence of a written contract governing the employment relationship (*Shaw v. Burchfield*, 481 So.2d 247 (Miss. 1985)). Employment documents such as employee handbooks, manuals or personnel policies may also constitute a written employment contract or an implied employment contract that alters the at-will nature of the employment relationship. (*Hartell v. Packard Electric*, 626 So.2d 106, 110 (Miss. 1993)). Employers should include a clear and conspicuous disclaimer in any such document stating the document does not create a legal contract and that all employment is at-will (*Buchanan v. Ameristar Casino Vicksburg, Inc.*, 852 So. 2d 25 (Miss. 2003)).

The Mississippi Supreme Court has recognized a statutory exception to Mississippi's employment-at-will doctrine where an employee is discharged in violation of "express legislative action and/or prohibitions found in federal or state law." *Swindol v. Aurora Flight Scis. Corp.*, 194 So. 3d 847, 852-54 (Miss. 2016). The Mississippi Supreme

Court first recognized a statutory exception to employment at-will in *Swindol* where the employer discharged the employee for having a firearm in his locked vehicle on company property. The discharge was expressly prohibited by a Mississippi statute, Miss. Code Ann. § 45-9-55, which prohibits employers from creating or enforcing any rule that prohibits an employee from transporting or storing a firearm in a locked personal vehicle in an unsecured parking lot, parking garage, or other designated parking area. The Court held that the employee had a wrongful discharge claim against the employer.

The United States Court of Appeals for the Fifth Circuit, in an unpublished opinion following *Swindol*, held that an employee could bring a wrongful discharge claim against an employer for violating a statute that prohibits an employer from “subject[ing] an employee to adverse employment action as a result of jury service.” *Simmons v. Pac. Bells, LLC*, 787 F. App’x 837 (5th Cir. 2019) (quoting Miss. Code Ann. § 13-5-35).

2. State Discrimination Statutes.

(a) **Equal Pay Act.** Under Mississippi’s Equal Pay Act, an employer cannot pay a full-time employee who works 40 or more hours per week a wage less than the rate at which an employee of the opposite sex in the same establishment is paid for equal work on a job that requires equal skill, education, effort, and responsibility and is performed under similar working conditions (Miss. Code Ann. §§ 71-17-3(a) and 71-17-5(1).) However, an employer may pay a different rate as compared to employees of the opposite sex if the employer demonstrates that the payment is made under a differential based on a seniority system; a merit system; a system measuring earnings by quantity or quality of production; or any factor other than sex, including:

- salary history or continuity of employment history as compared to employees of the opposite sex in the same establishment;
- the extent to which there was competition with other employers for the employee’s services as compared to employees of the opposite sex in the same establishment; and
- the extent to which the employee attempted to negotiate for higher wages as compared to employees of the opposite sex in the same establishment.

(Miss. Code Ann. § 71-17-5(1).)

An employer also cannot discharge, discriminate, or retaliate against an employee for any action the employee takes to invoke or assist in enforcing the Equal Pay law (Miss. Code Ann. § 71-17-5(4)). This law covers all Mississippi employers with five or more employees (Miss. Code Ann. § 71-17-3(b)).

(b) **Military Service.** Mississippi has a statute that prohibits discrimination in employment on the basis of a person’s military service (Miss. Code Ann. § 33-1-15). Mississippi statute also mandates that employees required to leave their employment for reasons connected with serving in the military be

restored to the same or similar position upon their return (Miss. Code Ann. § 33-1-19).

(c) **Discrimination in Public Employment.** Mississippi prohibits public employers, political subdivisions of the state, public schools, and any other employer supported in whole or in part by public funds from discriminating against an employee who is blind, visually handicapped, deaf, or otherwise physically handicapped. (Miss. Code Ann. § 43-6-15). In public employment, it is unlawful to discriminate on the basis of race, sex, or religion (Miss. Code Ann. § 25-9-149).

Mississippi prohibits a public or private employer from requiring an employee or job applicant to abstain from smoking or using tobacco products during nonworking hours. However, the individual must comply with the laws or policies regulating smoking on the employer's premises during working hours. (Miss. Code Ann. § 71-7-33.)

(d) **COVID-19 Vaccine Mandates.** Mississippi law prohibits COVID-19 vaccine mandates for public employers and prohibits private and public employers from requiring a COVID-19 vaccine for employees who have a sincerely held religious objection to receiving a vaccine for COVID-19. (Miss. Code Ann. § 41-23-49.) This law applies to any “state agency, public official, state institution of higher learning, public community or junior college, county, municipality or other political subdivision of the state.” (Id.) The law defines COVID-19 vaccination status as “an indication of whether a person has received one or more doses of a vaccine for COVID-19.” (Id.) The act defines immunity passport as “a document, digital record, or software application indicating that a person has immunity to COVID-19, either through vaccination or infection and recovery.” (Id.) The law makes it unlawful for public employers “to refuse employment to a person, to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment based on the person’s COVID-19 vaccination status or whether the person has an immunity passport.” (Id.)

The law provides some exceptions for public healthcare facilities. Mississippi’s new law also clarifies that healthcare facilities are not violating Mississippi’s new law when implementing reasonable accommodation measures for employees (and others) who are not vaccinated for COVID-19 to protect the safety and health of employees (and others) and are permitted to ask for employee vaccination status when determining whether measures need to be implemented to protect employees, patients, and others. (Id.)

3. Drug and Alcohol Testing.

Mississippi does have an alcohol and drug testing statute (Miss. Code Ann. § 71-7-1 et seq). The statute applies to all public employers and to private employers who choose to be covered, with an exception for private employers who are subject to federal law or federal regulation governing the administering of drug and alcohol tests. A private employer elects to be covered by the statute by publishing written notice to employees

and applicants containing certain information required by the statute. The statute also requires employers utilizing a testing program under the Act to have a Medical Review Officer who is the sole person authorized to review the test results.

For private employers, opting coverage under the statute does not make the testing program per se legal; the law does limit successful claimants to reinstatement, lost compensation, court costs and attorney fees. The law also requires courts to draw certain presumptions in favor of employers who comply; namely, the presumption that challenged test results are accurate and that the employer had reasonable cause to test an employee whose test sample is confirmed positive.

4. Covenants Not to Compete.

Employee non-compete clauses, though not favored, generally will be enforced in Mississippi if the clause is reasonable (*Frierson v. Sheppard Bldg. Supply Co.*, 154 So.2d 151 (Miss. 1963)). When determining the reasonableness of a non-compete clause, courts look to duration of the restriction and geographic scope involved (*Redd Pest Control Co. v. Heatherly*, 157 So.2d 133 (Miss.1963)). The Court has refused to enforce a non-compete agreement when the employee was terminated in bad faith (*Empiregas, Inc. of Kosciusko v. Bain*, 599 So. 2d 971 (Miss. 1992)).

5. Wage and Hour Laws.

Aside from child labor laws, Mississippi does not have state law governing wages or hours in the private employment context.

Mississippi statute requires employers engaged in manufacturing with 50 or more employees and every public service corporation, to make full payment to employees for services performed at least once every two weeks or twice during a calendar month (Miss. Code Ann. § 71-1-35). The payment must include all amounts due for services performed up to not more than ten (10) days previous to the time of payment (Miss. Code Ann. § 71-1-35).

6. Child Labor.

Mississippi statutory law provides no child under the age of 14 may be employed in any mill, cannery, workshop, factory or manufacturing establishment (Miss. Code Ann. § 71-1-19). The state also regulates child labor in accord with school attendance. No child between the ages of 14 and 16 may be employed in any mill, cannery, workshop, factory or manufacturing establishment unless that child has complied or is complying with Mississippi compulsory school attendance law (Miss. Code Ann. § 71-1-19). Employers must keep on file an affidavit from the child's parent or guardian, and a certificate of the superintendent or principal of the school of the district in which the child resides or in which they last attended school, stating the place and date of the child's birth, the child's last school attendance, the grade of study pursued, the name of the school, and the teacher in charge (Miss. Code Ann. § 71-1-19).

State statute also regulates the hours children are allowed to work. Children between the ages of fourteen (14) and sixteen (16) are permitted to work in any mill, cannery, workshop, factory or manufacturing establishment no more than eight (8) hours in one (1) day, and no more than 44 hours in any one (1) week (Miss. Code Ann. § 71-1-21). In addition, children between the ages of 14 and 16 cannot work in any such establishment between the hours of 7 p.m. and 6 a.m. (Miss. Code Ann. § 71-1-21). Fruit and vegetable canneries are exempt from Mississippi's child labor laws (Miss. Code Ann. § 71-1-31).

The Mississippi Supreme Court held that an employer that employs a minor under age 14 in violation of the statute is civilly liable for any injury to the child proximately caused by that violation under a negligence per se theory of liability (*Hartwell Handle Co. v. Jack*, 115 So. 586, 587-88 (Miss. 1928)).

7. Workers' Compensation.

As in other states, Mississippi has a complex system of workers' compensation insurance, which provides payments to employees off work due to a work injury. The Workers' Compensation Act applies to all employers with five (5) or more employees (Miss. Code Ann. § 71-3-5). The Act provides employees the exclusive remedy for accidents arising out of and in the course of employment (Miss. Code Ann. § 71-3-9). It is worth noting that the Mississippi Supreme Court has consistently refused to recognize a cause of action for termination based upon retaliation for filing a workers' compensation claim (*Buchanan v. Ameristar Casino Vicksburg*, 852 So.2d 25 (Miss. 2003)).

8. Unemployment Insurance.

Mississippi does provide unemployment insurance (Miss. Code Ann. § 71-5-1 *et seq.*). The Mississippi Employment Security Commission administers the unemployment insurance program.

9. Right to Work Act.

Mississippi is a right to work state (Miss. Code Ann. § 71-1-47). In addition, Article 7, Section 198-A of the Mississippi Constitution as amended June 7, 1960, declares that the public policy of the state supports the right of a person to work without regard to membership or non-membership in any labor union or labor organization.

VI. MISSISSIPPI ENVIRONMENTAL LAWS

1. Mississippi Air and Water Pollution Control Law.

The Mississippi Air and Water Pollution Control Law, Miss. Code Ann. § 49-17-1 through § 49-17-43, creates the Mississippi Commission on Environmental Quality. The Commission has supervision of administration and enforcement of the Mississippi Air and Water Pollution Control Law and the Mississippi Solid Waste Disposal Law (Miss. Code Ann. § 17-17-1 through § 17-17-67). The statutory authority granted to the Commission includes promulgating rules and regulations to prevent, control and abate pollution by

setting air and water quality standards. The standards are set after conducting a public hearing and publishing due notice. The commission has authority to hold hearings, enter orders and assess penalties against alleged violators. In addition to the creation of the Commission, the law creates a Permit Board. (Miss. Code Ann. § 49-17-28 and § 49-17-29). The Permit Board has authority to issue, reissue, modify, revoke or deny permits regarding air and water pollution as well as solid and hazardous waste.

2. Mississippi Solid Waste Disposal Act.

The Mississippi Solid Waste Disposal Act, Miss. Code Ann. § 17-17-1 through § 17-17-67, implements the responsibilities and restrictions in the disposal of solid waste. The Commission on Environmental Quality is charged with its enforcement.

3. Underground Storage Tank Act of 1988.

The Underground Storage Tank Act of 1988, Miss. Code Ann. § 49-17-401 through § 49-17-433, creates the Mississippi Groundwater Protection Trust Fund. This Act levies a tax on motor fuels, which is used to sustain the Trust Fund. The Trust Fund is used for investigation of contaminated sites, replacement of potable water and rehabilitation of contaminated sites.

4. Radioactive Waste Transportation Act.

The Radioactive Waste Transportation Act, Miss. Code Ann. § 45-14-51 through § 45-14-69, establishes that transportation of radioactive waste is a safety threat and that the cost of emergency response should be borne by the shippers. A permit and fee process is created to manage the transportation of radioactive waste.

5. Mississippi Safe Drinking Water Act of 1997.

The Mississippi Safe Drinking Water Act of 1997, Miss. Code Ann. § 41-26-1 *et seq.*, is Mississippi's version of the federal Safe Drinking Water Act.

6. Mississippi Surface Coal Mining and Reclamation Law.

The Mississippi Surface Coal Mining and Reclamation Law, Miss. Code Ann. § 53-9-1 *et seq.*, is Mississippi's assumption of exclusive jurisdiction over regulation of surface coal mining and reclamation operations.

7. Mississippi Surface Mining and Reclamation Law.

The Mississippi Surface Mining and Reclamation Law, Miss. Code Ann. § 53-7-1 *et seq.*, establishes a regulatory system of uniform standards and permitting governing mining and reclamation of materials such as clay, sand, gravel, soil and the like.

8. Channel Maintenance Act.

The Channel Maintenance Act, Miss. Code Ann. § 49-26-1 *et seq.*, declares governmental responsibility for channel maintenance and the minimization of environmental impact.

9. Coastal Wetlands Protection Act.

The Coastal Wetlands Protection Act, Miss. Code Ann. § 49-27-1 *et seq.*, recognizes the importance of preserving coastal wetlands and creates a permit-based system of wetland use.

10. Mississippi Water Resources Law.

The Mississippi Water Resources Law, Miss. Code Ann. § 51-3-1 *et seq.*, establishes that the state will control and develop beneficial water use by effective and efficient management.

11. Mississippi Scenic Streams Stewardship Act.

The Mississippi Scenic Streams Stewardship Act, Miss. Code Ann. § 51-4-1 *et seq.*, attempts to maximize voluntary private conservation and maintain sense of stewardship between stream users and riparian landowners by way of a nonregulatory framework.

12. Mississippi Prescribed Burning Act.

The Mississippi Prescribed Burning Act, Miss. Code Ann. § 49-19-301 *et seq.*, authorizes and promotes the continued use of prescribed burning for ecological, silvicultural and wildlife management purposes.

13. Mississippi Brownfields Voluntary Cleanup and Redevelopment Act.

The Mississippi Brownfields Voluntary Cleanup and Redevelopment Act, Miss. Code Ann. § 49-35-1 *et seq.*, provides incentives for voluntary cleanup of land which is perceived to be contaminated due to past activities.

14. Mississippi Individual Onsite Wastewater Systems Law.

The Mississippi Individual Onsite Wastewater Systems Law, Miss Code Ann. § 41-67-1 *et seq.*, established controls for implementing individual and community wastewater systems.

15. Mississippi Oil and Gas Development, Production and Distribution Law.

The Mississippi Oil and Gas Development, Production and Distribution Law, Miss. Code Ann. § 53-3-1 *et seq.*, establishes that the waste of oil and gas is unlawful as well as establishing a permit-based system of drilling and exploration.

16. Mississippi Lender Liability Law.

The Mississippi Lender Liability Law, Miss. Code Ann. § 49-17-42, indicates that lenders may not be held liable for pollution control or environmental protection law under specified conditions.

17. Mississippi Geologic Sequestration of Carbon Dioxide Act.

Mississippi Geologic Sequestration of Carbon Dioxide Act, Miss. Code Ann. §§ 53-11-1 to -33, established the Mississippi Oil and Gas Board as the regulatory body for carbon capture and storage (“CCS”) facilities. The Act declares that “the geologic sequestration of carbon dioxide will benefit the citizens of the state and the state’s environment” and that “carbon dioxide is a valuable commodity to the citizens of Mississippi.” Miss. Code Ann. § 51-11-3(1). The Act calls for the establishment of a “coordinated statewide program” for CCS that will “provide procedures, in a manner fair to all interests, for the cooperative management of surface and subsurface property interests to ensure the maximum uses of natural resources.” *Id.* at (1)(j). The Act was originally enacted in 2011 to allow the construction of a carbon dioxide pipeline to carry carbon dioxide from a geological formation known as the Jackson dome to pipelines running in a southeastern direction for use in enhanced oil recovery. The Act was amended in 2022 to permit the entry by the Mississippi Oil and Gas Board of a preliminary technical order even if a majority of the ownership interests of an underground storage facility have not consented as long as the operator (aka developer) has made a good-faith effort to obtain the consent of a majority of the surface and mineral owners, and the operator obtains majority consent within twenty-four months from the date of the preliminary technical order..

18. Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act.

The Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, Miss. Code. Ann. §§ 49-17-81. *et seq.* established in the State Treasury a fund known as the “Water Pollution Control Revolving Fund,” which shall be administered by the Commission acting through the Mississippi Department of Environmental Quality. The revolving fund may receive bond proceeds and funds appropriated or otherwise made available by the Legislature in any manner and funds from any other source, public or private. The revolving fund shall be maintained in perpetuity for purposes established in the Act.

19. Mississippi Municipality and County Water Infrastructure Grant Program Act of 2022.

The Mississippi Municipality and County Water Infrastructure Grant Program Act of 2022, Miss. Code Ann. § 49-2-131, established a grant program under which municipalities, counties and certain public utilities not regulated by the Public Service Commission may apply until February 1, 2023, for reimbursable grants to make necessary investments in water, wastewater, and stormwater infrastructure to be funded by the Legislature utilizing Coronavirus State Fiscal Recovery Funds made available under the federal American Rescue Plan Act of 2021 (“ARPA”).

20. Protection of Confidential Information.

A person desiring to submit information to MDEQ, the Commission or the Permit Board may submit the information as “Business Confidential Information” in accordance with the provisions set forth in Miss. Code Ann. § 49-17-39.

VII. MISSISSIPPI INTELLECTUAL PROPERTY LAWS

1. Trademarks/Service Marks.

Mississippi’s trademark statute (Miss. Code Ann. § 75-25-1 et seq.) is based on the International Trademark Association’s Model State Trademark Bill and is largely consistent with the federal Trademark Act of 1946. Mississippi’s statute also expressly preserves common law trademark rights. A person acquires common law rights to a mark by being the first to adopt and use a mark in a geographic region which attains special significance through its association with certain goods or services.

A mark may be registered by filing an application with the Mississippi Secretary of State. In order to be registered, a mark must currently be in use in the ordinary course of business in Mississippi. A person may not reserve a right to use a mark in the future and nonuse of a mark for two (2) consecutive years is prima facie evidence of abandonment. A registration is effective for five (5) years, and may be renewed for successive five-year periods by filing an application within six (6) months prior to the expiration of the current term. A mark and its registration are freely assignable with the goodwill of the business, or that part of the goodwill of the business that such mark represents. Actions to cancel a registration or appeal the Secretary of State’s refusal to register a mark, must be brought in the First Judicial District of the Hinds County Chancery Court in Mississippi.

The remedies for the infringement of a mark may include injunctive relief, profits derived by the infringer, actual damages incurred by the owner, destruction of any counterfeit/imitation goods and, in certain circumstances, treble damages.

The owner of a “famous” mark may have further protection under the anti-dilution provision of Mississippi’s statute. A famous mark is one that is widely recognized by the general consuming public of the State or a geographic area within the State as a designation of source of the goods or services of the mark’s owner and a non-exclusive list of factors that a court may consider in determining whether a mark is “famous.” The

standard for maintaining a cause of action for dilution is whether such subsequent use is after the mark has become famous and likely to cause dilution of the famous mark. An owner of a famous mark is entitled only to injunctive relief throughout the geographic area in which the mark is found to be famous prior to commencement of the subsequent, junior use. However, if the subsequent user willfully intended to cause dilution of the owner's mark, then the owner of the famous mark may be entitled to all other remedies, including monetary damages, under the statute, subject to the court's discretion and principles of equity. Mississippi's statute also provides that "fair use" of another's mark, as defined in the Act, will not be an actionable claim of dilution of a famous mark. On July 1, 2009, the statutory definition of "dilution" was amended to adopt the concepts of "dilution by blurring" and "dilution by tarnishment" consistent with the Model State Trademark Bill and federal law.

2. Trade Names.

Mississippi has adopted the Fictitious Business Name Registration Act (Miss. Code Ann. § 75-93-1 *et seq.*), which allows any business entity, including any corporation, limited liability company, partnership or sole proprietorship, to register a fictitious name, assumed name or trade name used to conduct business in Mississippi with the Business Services Division of the Secretary of State's Office for a nominal fee.

The registration of a fictitious name in Mississippi is voluntary. Registration is for public notice only and does not give the registrant's exclusive rights to own or use the fictitious business name, nor does it affect trademark, service mark, trade name, or other name rights previously acquired by others in the same or a similar name. Registration under the statute does not preserve a fictitious business name against future use or registration by others. The issuance of a fictitious name registration will not constitute due organization or authority to transact business in Mississippi.

The registration period for a fictitious business name is five (5) years, expiring on December 31 of the year in which the fifth (5th) anniversary of registration occurs. Renewal of a fictitious business name registration may be made on or between January 1 and December 31 of the expiration year. A registrant must file an amendment within 30 days of any material change to the information on the registration. The registration may be withdrawn by the registrant at any time.

Any fictitious business name registered in Mississippi may be assigned by filing a duly executed written instrument with the Secretary of State.

3. Trade Secrets.

Mississippi has adopted the Uniform Trade Secrets Act (Miss. Code Ann. § 75-26-1 *et seq.*). A trade secret is defined as any information, including a formula, pattern, compilation, program; device, method, technique or process that: (i) derives independent economic value, actual or potential, that is not generally known to or readily ascertainable by other persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The Mississippi Uniform Trade Secrets Act displaces conflicting tort, restitutionary and other laws of Mississippi providing civil remedies for misappropriation of a trade secret but does not affect civil remedies that are not based on misappropriation of a trade secret and also does not affect contractual or criminal remedies.

The Mississippi Trade Secret Act provides injunctive relief to control both actual and threatened misappropriation of trade secrets. Actions for misappropriation must be brought within three years after the misappropriation is discovered or should have been discovered by the exercise of reasonable diligence. Damages may include both actual loss caused by the misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other method, damages may be measured by the imposition of liability for a reasonable royalty for unauthorized use or disclosure of a trade secret. Exemplary damages may also be awarded in cases of willful and malicious misappropriation. Additionally, in cases of bad faith, attorney fees may be awarded to the prevailing party.

4. Rights of Publicity/Privacy.

Mississippi does not have a statute addressing the rights of publicity or privacy. Mississippi courts, however, recognize four distinct theories underlying a cause of action for invasion of privacy: (1) intentional intrusion on another's seclusion; (2) appropriation of another's identity for an unpermitted use; (3) public disclosure of private facts; and (4) presenting another to the public in a false light. (*Deaton v. Delta Democrat Publishing Co.*, 326 So. 2d 471 (Miss. 1976)).

Commercial misappropriation is recognized as one of the variants of the common law right of privacy. Often referred to as the right of publicity, this tort protects the commercial value of individual identity and prevents unjust enrichment. Public figures are protected against dilution of the value of their identity and all individuals are protected against false implications of endorsement. The test for misappropriation is whether the primary purpose of the publicity is to gain economic advantage for which the user should be expected to pay. Damages are recoverable for proprietary or pecuniary loss as well as for mental and emotional suffering. A claim for invasion of privacy will only lie in cases of substantial interference with seclusion or privacy.

5. Unfair Competition/Deceptive Trade Practices.

Mississippi has enacted statutes protecting consumers from certain unfair or deceptive business practices (Miss. Code Ann. § 75-24-1 et seq.). Those who violate certain provisions of these statutes are subject to the authority of the Attorney General who may bring an action in the name of the state against such person to restrain by temporary or permanent injunction the use of such method, act or practice. Any person who willfully and knowingly engages in unfair competition or deceptive trade practices may be subject to criminal and civil penalties. The following unfair methods competition or deceptive trade practices, among others, are statutorily prohibited:

- (i) passing off goods or services as those of another;
- (ii) misrepresentation of the source, sponsorship, approval or certification of good or services;
- (iii) misrepresentation of affiliation, connection or association with, or certification by another;
- (iv) misrepresentation of designations of geographic origin in connection with goods and services;
- (v) representing the goods or services as having sponsorship, approval, characteristics, ingredients, uses, benefits or qualities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;
- (vi) representing the goods are original or new if they are reconditioned, reclaimed, used or second hand;
- (vii) representing the goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
- (viii) disparaging the goods, services or business of another by false or misleading representation of fact;
- (ix) advertising, goods or services with intent not to sell them as advertised;
- (x) advertising goods or services with intent not to supply reasonably expected public demand, unless the advertisement discloses a limitation of quality; and
- (xi) misrepresentations of fact concerning the reasons for, existence of, or amounts of price reductions.

6. Bad Faith Assertions of Patent Infringement.

Following in the footsteps of other states in recent years, Mississippi has enacted a law to counter abuses surrounding assertions of patent infringement (Miss. Code Ann. §§ 75-24-351 – 75-24-357). This statute prohibits communication stating that another is infringing or has infringed a patent and bears liability or owes compensation, if the communication (a) is one among many empty litigation threats, (b) falsely states that litigation has commenced, or (c) lacks a reasonable basis in fact or law. A victim of a bad faith assertion of patent infringement who prevails in an action is entitled to recover litigation costs and fees, including reasonable attorney's fees. In addition, the court may award actual damages and treble damages. The statute also gives the Attorney General the power to conduct investigations and bring civil actions for violations. The statute took effect July 1, 2015 and is set to be repealed July 1, 2025.

VIII. MISSISSIPPI COURT SYSTEM

1. State Trial Courts.

(a) **Organization of the State Trial Court System.** The state trial court system is comprised of courts of general jurisdiction and courts of limited jurisdiction. The courts of general jurisdiction are divided into the Circuit Court, dealing with matters of law, and the Chancery Court, overseeing matters in equity. The courts of limited jurisdiction are comprised of the Municipal Court, the Justice Court, and the County Court.

The Mississippi Circuit Court is divided into twenty-three (23) districts and is comprised of fifty-seven (57) judges, each elected to serve a term of four (4) years. The Circuit Court has original jurisdiction in all actions when the amount in controversy exceeds Two Hundred Dollars (\$200.00) and all other matters arising under the Constitution and laws of Mississippi which are not exclusively cognizable in another court (Miss. Code Ann. § 9-7-81). Trials are heard with a twelve (12)-member jury and usually one or two alternate jurors. A judge may preside without a jury if the dispute is a question of law rather than fact. The Circuit Court hears appeals from County, Justice and Municipal courts and from administrative boards and commissions such as the Workers' Compensation Commission and the Mississippi Department of Employment Security. Additionally, the Circuit Court has appellate jurisdiction as prescribed by law and jurisdiction over cases transferred by the Chancery Court and cases remanded to it by the Mississippi Supreme Court (Miss. Code Ann. § 9-7-83).

The Mississippi Chancery Court is divided into 20 districts with 52 Chancery Court justices elected to serve a term of four (4) years. The Chancery Court has jurisdiction over disputes in matters involving equity; domestic matters including adoptions, custody disputes and divorces; guardianships; sanity hearings; wills; and challenges to constitutionality of state laws. In counties which have no County Court, the Chancery Court has jurisdiction over juvenile matters as well. Trials are typically heard by a chancellor without a jury, although state law allows parties to request a jury in Chancery Court. The Chancery Court also has jurisdiction over matters transferred by the Circuit Court or remanded to it by the Mississippi Supreme Court (Miss. Code Ann. § 9-5-81).

The County Court is a court of limited jurisdiction. The County Court has jurisdiction concurrent with the Justice Court in all matters, civil and criminal of which the Justice Court has jurisdiction; and it has jurisdiction concurrent with the Circuit and Chancery Courts in all matters of law and equity wherein the amount of value of the controversy does not exceed, exclusive of costs and interest, the sum of \$200,000.00 (Miss. Code Ann. § 9-9-21). The County Court also has exclusive jurisdiction over matters concerning eminent domain, the partition of personal property, and actions of unlawful entry and detainer. *Id.* County Court judges may issue search warrants, set bond and preside over preliminary

hearings. The County Court has 30 judges and 22 county courts, each of which is elected to serve a term of four (4) years.

The Justice Court is also a court of limited jurisdiction. The Justice Court has jurisdiction over all actions for the recovery of debts or damages or personal property, where the principal of the debt, the amount of the demand, or the value of the property sought to be recovered does not exceed \$3,500.00 (Miss. Code Ann. § 9-11-9). The court also has jurisdiction to hear misdemeanors and felony preliminaries. Justice Court judges are the only Mississippi judges elected in partisan races. The number of Justice Court judges per county is based on population, and increases with population, with five (5) judges being the maximum number allowed per county (Miss. Code Ann. § 9-11-2). There is presently 82 Justice Courts with 197 judges. They serve four (4) year terms.

The Municipal Court is another court of limited jurisdiction. Municipal courts have jurisdiction over misdemeanor crimes, municipal ordinances and city traffic violations. Municipal judges may conduct initial appearances in which defendants are advised of the charges being filed, as well as bond hearings and preliminary hearings. Each municipality with a population of 10,000 or more must have a municipal judge and prosecuting attorney appointed by the governing authorities of the municipality (Miss. Code Ann. § 21-23-3). There are 237 Municipal Courts. Most municipalities have one municipal judge, although a few jurisdictions have several. Most municipal judges are appointed by governing bodies of municipalities. Terms of office vary.

The Youth Court is a court of limited jurisdiction. Youth Courts deal with matters involving abuse and neglect of juveniles, as well as offenses committed by juveniles. In the 22 counties with County Courts, the County Court judges act as Youth Court judges. In counties without a County Court, the Chancery Court judge may hear Youth Court matters.

(b) **Personal Jurisdiction.** In order to establish personal jurisdiction over a nonresident defendant, a plaintiff must satisfy both the laws of the State of Mississippi and the terms of the Fourteenth Amendment to the United States Constitution. First, the nonresident defendant must be amenable to jurisdiction under Mississippi's long-arm statute, Miss. Code Ann. § 13-3-57, which provides in relevant part that any nonresident person, firm, general or limited partnership, or any foreign or other corporation not qualified to do business in Mississippi, shall be deemed "doing business" in Mississippi (and subject to the jurisdiction of Mississippi courts) under three scenarios: (1) if such person makes a contract with a resident of Mississippi to be performed in whole or in part by any party in Mississippi; (2) if such person commits a tort in whole or in part in Mississippi; or (3) if such person does business or performs any character of work or service in Mississippi. As noted above, the exercise of jurisdiction must also comport with the dictates of the Due Process Clause of the Fourteenth Amendment.

(c) **Venue.** Regarding venue, generally a civil action may be filed in the defendant's county of residence; where a substantial alleged act or omission occurred; or where an event that caused the injury occurred. If pursuing a claim against a corporation, the county of its principal place of business is also appropriate. Cases alleging a defective product may also be commenced in the county where the plaintiff obtained the product. If for some reason, venue is not established through any of these methods, a plaintiff may then bring an action in the county of his/her residence or domicile. This option, while still available, is limited to circumstances where venue cannot be asserted under any of the other venue provisions (Miss. Code Ann. § 11-11-3). In cases involving multiple plaintiffs, each plaintiff must establish proper venue independently. Lastly, medical malpractice claims must *only* be filed in the county in which the alleged act or omission occurred.

2. State Appellate Courts.

The appellate court system is comprised of the Supreme Court and the Court of Appeals. The Supreme Court is the court of last resort in Mississippi. The Mississippi Supreme Court has appellate jurisdiction and has original jurisdiction in certain cases concerning public utility rates (Miss. Code Ann. § 9-3-9). Appeals from the Circuit Courts and Chancery Court go directly to the Supreme Court which may then assign cases to the Court of Appeals. A case originating in the Justice or Municipal Court which has been appealed to the County Court and then to the Circuit Court, can be appealed to the Supreme Court only when a constitutional question is implicated. The Supreme Court retains appeals concerning cases involving the death penalty, utility rates, annexations, bond issues, election contests and cases involving statutes found to be unconstitutional by the lower courts (Miss. Code Ann. § 9-4-3(1)). The Supreme Court also retains cases involving attorney discipline, judicial performance, and certified questions from a federal court. The Supreme Court is comprised of nine (9) justices, three (3) from each Supreme Court District, each of which is elected for a term of eight (8) years. The longest continuously serving justice serves as Chief Justice (Miss. Code Ann. § 9- 3-11).

The Court of Appeals has the power to determine or dispose of any proceeding assigned to it by the Supreme Court (Miss. Code Ann. § 9-4-3(1)). Decisions of the Court of Appeals are not subject to review by the Supreme Court, except by writ of certiorari. The Supreme Court may also order any case pending before the Court of Appeals to be transferred back to the Supreme Court (Miss Code Ann. § 9-4-3(2)). The Court of Appeals consists of ten (10) judges, two (2) from each court of appeals' districts (as defined in Miss. Code Ann. § 9-4-5(5)), each of which is elected for a term of eight (8) years (Miss Code Ann. § 9-4-5(1)).

3. State Tax Court.

Mississippi has no state tax court. Instead, a taxpayer may challenge an assessment of taxes, a denial of refund, or a denial of waiver of a tag penalty through an administrative appeals process within the State Department of Revenue, formerly the State Tax Commission (Miss. Code Ann. § 27-77-5). First, the taxpayer wishing to contest

the action of the agency shall, within 60 days from the date the agency mailed or delivered written notice of the action, file an appeal in writing with the Board of Review requesting a hearing and a correction of the action. Following a hearing and decision by the board, a taxpayer wishing to contest the order shall, within 60 days from the date of the order, file a written appeal to the Board of Tax Appeals. If unsuccessful in its administrative appeals, a taxpayer may file a petition in chancery court for judicial review within 60 days from the date of the mailing of the order of the Board of Tax Appeals.

The Commissioner of Revenue has the power to institute proceedings, actions and prosecutions against persons, officers or agents of corporations or others required to make returns of taxable property, for failure to comply with the tax law (Miss. Code Ann. § 27-3-33(1)). The Commissioner of Revenue has the power to bring suit in the Chancery Court of the residence of the taxpayer or, in the case of a nonresident, in the Chancery Court of the First Judicial District of Hinds County (Miss. Code Ann. § 27-3- 33(2)).

IX. FINANCING INVESTMENTS IN MISSISSIPPI

1. Tax-Exempt Financing.

Tax-exempt and taxable financing programs in Mississippi offer eligible companies the ability to take advantage of certain economic development incentives and/or below market borrowing costs. These financing programs are administered at two levels: (1) statewide, through the Mississippi Business Finance Corporation and (2) locally, through cities, counties, regional planning and development districts, and economic development authorities.

The Mississippi Business Finance Corporation (MBFC) is a body corporate and politic and instrumentality of the State of Mississippi organized pursuant to Miss. Code Ann. §57-10-167. MBFC serves as a statewide conduit financing entity that allows eligible companies to obtain tax-exempt and/or taxable financing and other state tax incentives through a sole source. Bonds issued through MBFC can have a variable or fixed-rate of interest. MBFC has a variety of programs through which it provides tax-exempt and/or taxable bonds, including the Industrial Development Revenue Bond Program (Tax-Exempt and Taxable) (see Miss. Code Ann. §57-10-201 *et seq.* and §57-10-401 *et seq.*) and the Small Enterprise Development Finance Program (see Miss. Code Ann. §57-71-1 *et seq.*) Eligible projects financed through MBFC can also avail themselves of various state tax incentives, including sales/use tax exemption, income tax credits on Mississippi corporate income taxes through the Rural Economic Development Assistance Program (i.e., RED Credits), and an ad valorem tax exemption for up to ten (10) years (subject to city/county approval); for many companies, these exemptions are the key determinant in utilizing financing through MBFC.

Local government issuers offer tax-exempt financing to eligible companies through Industrial Development Revenue Bonds (see Miss. Code Ann. §57-3-1 *et seq.* and Miss. Code Ann. §19-5-99). Local government issuers may also grant certain ten-year ad valorem tax exemptions to eligible companies.

Pursuant to Miss. Code Ann. § 21-45-1 *et seq.*, Mississippi cities or counties may issue tax increment financing bonds to encourage economic development within designated areas by financing or reimbursing developers for certain infrastructure improvements for public or private development projects without the necessity of issuing general obligation bonds. Infrastructure improvements such as roads, utilities and drainage improvements are eligible to be financed by tax increment financing bonds and can either be publicly or privately owned. Tax increment financing bonds may have a maximum term of thirty (30) years and are eligible for a tax-exempt interest rate for eligible public improvements and a taxable interest rate for other projects. Tax increment financing bonds are limited obligations of the issuing local government secured solely by the additional ad valorem taxes and/or sales taxes generated by the project within a tax increment financing district described under the tax increment-financing plan for such bond issue.

Pursuant to Miss. Code Ann. § 19-31-35 *et seq.*, private developers in Mississippi may also take advantage of a significant economic incentive for the financing of basic project infrastructure through the creation of a public improvement district, commonly referred to as a "PID." Once established by a local government, a PID offers private developers the opportunity to have tax-exempt revenue bonds issued for the purpose of financing qualified infrastructure. Special assessments levied on the land and improvements within a PID serve as collateral for the bonds issued by the PID and are used to satisfy the debt service for the PID bonds. Interest rates, maturity, and terms and conditions of any bonds issued by a PID will be based on the financial strength of the private developer, the type of development, and the specifications of the bond purchaser.

For economic development projects which have a regional impact, affected governmental entities, including cities and counties, can create an alliance, subject to certain state approvals, to issue taxable or tax-exempt bonds and assist developers in financing related to the project pursuant to the Regional Economic Development Act, Miss. Code Ann. § 57-64-1 *et seq.* The improvements allowed under this act can be publicly or privately owned and are wide ranging to include buildings in addition to infrastructure such as roads, water and sewer, etc. Bonds can also be secured by public and private revenue sources, including taxes, depending on the nature or the project.

The New Markets Tax Credit (NMTC) Program was enacted by Congress in 2000 as part of the Community Renewal and Tax Relief Act of 2000 (P.L. 106-554, 113 Stat. 2763) in order to spur new or increased investments into operating businesses and real estate projects located in low-income communities. NMTCs are allocated by the Community Development Financial Institutions Fund (CDFI Fund), a bureau within the United States Department of the Treasury that runs the NMTC Program, under a competitive application process. There have been 1,563 allocation awards to date totaling \$76 billion in allocation authority.

The NMTC Program was designed to stimulate growth and development in low-income communities in rural and urban America. The NMTC Program does this by providing a credit against federal income taxes for investors who make Qualified Equity Investments (QEI) into specially designated financial institutions called Community

Development Entities (CDEs). CDEs are domestic corporations or partnerships that serve as an intermediary vehicle for the provision of loans, investments or financial counseling in low-income communities. The CDEs use the tax credits to raise QEIs made by investors to make Qualified Low-Income Community Investments (QLICIs) in communities. QLICIs include investments in businesses and real estate projects in low-income communities.

The NMTC Program attracts investment capital to low-income communities by permitting individual and corporate investors to receive a credit against their federal income taxes in exchange for making equity investments in qualifying projects. The tax credit is equal to 39% of the original investment amount and is claimed over a period of seven (7) years (five percent (5%) for each of the first three (3) years and six percent (6%) for each of the remaining four (4) years). At least 85% of the QEI must in turn be used by the CDE to make investments in low-income communities. These tax credits create a substantial financial benefit for the investor as well as economic benefit for the low-income community due to the additional investment capital.

In addition, many states have developed programs that work similarly to the federal NMTC Program, but offer a reduction of state tax liability. The Mississippi Equity Investment (New Markets) Tax Credit Program was created as a “piggy back” credit to the federal NMTC Program. This state credit is a credit against income or insurance premium taxes in an amount equivalent to 24% of the QEI, and it is utilized over a three (3) year period (eight percent (8%) per year). The maximum amount of state credits that can be generated from a single project is \$2,400,000 or \$800,000 per year. Purchase prices vary depending on the current market, but generally speaking, borrowers can expect (assuming a maximum project cost of \$10,000,000) to generate an additional \$1.2M of subsidy.

The NMTC Program provides significant financial assistance in the form of below market debt and/or equity to qualifying businesses and developments located within certain qualified low-income census tracts. The firm offers clients guidance in complex legal and regulatory issues that may arise in these transactions. Butler Snow has represented tax credit investors, leveraged lenders, community development entities and developers in NMTC transactions. In addition, the firm has substantial expertise in transactions utilizing NMTCs in conjunction with other federal, state and local economic development incentives, including combining NMTC financing with tax-exempt bond financing.

2. Mississippi Commercial Banking.

Mississippi’s state-chartered and national banks provide businesses in Mississippi with a full range of banking opportunities. These institutions range in size from small community banks to large regional banks. Most banks in Mississippi are community banks serving local communities, while several multi-state banks are headquartered in Mississippi, and large and regional banks headquartered outside of Mississippi have branch offices within the state. The larger banks in Mississippi are centered in Jackson, the state capital, in Tupelo in northeast Mississippi, and on the Mississippi Gulf Coast.

Mississippi banks offer businesses a broad array of services, including financing alternatives such as working capital loans, real estate construction and term loans, Small Business Administration and U.S. Department of Agriculture loans, factoring and asset-based loans, and leveraged leasing transactions. Some Mississippi banks also offer tax-exempt financing, interest rate swaps, bankers' acceptance financing, private placement of debt and agency services. Additionally, many Mississippi banks offer relocation services in order to assist companies relocating to Mississippi. These services include personal banking services, home mortgage financing, community orientation programs, home-finding assistance, discount brokerage services and trust and financial planning. Several banks offer international banking services, including export and import financing and letter of credit and foreign currency transactions.

3. Mississippi Securities Regulation.

The Mississippi Securities Act of 2010 (Miss. Code Ann. §§ 75-71-101, *et seq.*, hereinafter the "Securities Act"), regulates the offer and sale of securities in Mississippi. The Securities Act exists for the protection of investors and is based substantially on the Uniform Securities Act of 2002. The Mississippi Secretary of State is vested with the primary responsibility for enforcement of the Securities Act.

Miss. Code Ann. § 75-77-301 makes it unlawful to offer or sell a security in Mississippi unless: (a) the security is a federal covered security; (b) the security, transaction or offer qualifies for an exemption from registration; (c) or the security is registered under the Securities Act. Securities can be registered with the Mississippi Secretary of State by coordination under Miss. Code Ann. § 75-71-303 or by qualification under Miss. Code Ann. § 75-71-304.

The Securities Act recognizes a number of exempt securities and transactions. Miss. Code Ann. § 75-71-201 sets forth ten (10) categories of exempt securities; Miss. Code Ann. § 75-71-202 sets forth twenty-three (23) transactional exemptions; and Miss. Code Ann. § 75-71-203 provides that the Mississippi Secretary of State may create additional exemptions via rules or orders. Such additional exemptions created by rules are set forth in the Securities Act Rules 7.01 through 7.23.

Pursuant to § 75-71-401 and § 75-71-402, respectively, of the Securities Act, it is unlawful for any person to transact business in Mississippi as a broker-dealer or agent unless that person is (a) registered with the Securities Division of the Secretary of State or (b) exempt from registration. Pursuant to § 75-71-403 and § 75-71-404, respectively, of the Securities Act, it is unlawful for any person to transact business in Mississippi as an investment adviser or investment adviser representative unless that person is (a) registered with the Securities Division of the Secretary of State or (b) exempt from registration. In order to apply for registration, the Securities Act Rules 5.01 and 5.02 require FINRA-member broker-dealers and agents to submit certain information to the Securities Division of the Secretary of State (via the Central Registration Depository (CRD)), which includes (a) Form BD, (b) certain financial information, and (c) a non-refundable registration fee of \$200.00 for broker-dealers and \$50.00 for agents. In addition to the above-required items, non-FINRA members must also post a \$30,000.00

surety bond. Investment advisers and investment adviser representatives have similar registration requirements pursuant to the Securities Act Rules 6.05 and 6.13, respectively.

Miss Code Ann. § 75-71-501 sets forth Mississippi's antifraud provisions related to the offer, sale, or purchase of securities. The provisions are similar, in substance, to the federal antifraud prohibitions and standards. The registration exemptions contained in Miss. Code Ann. §§ 75-71-201 and 75-71-202 do not limit the application of the antifraud provisions of the Securities Act.

4. Mississippi Usury Laws.

(a) **Closed-end credit.** The legal rate of interest on all notes, accounts and contracts is eight percent (8%). The rate is calculated according to the actuarial method. Parties may enter into a written contract for additional finance charges as authorized by law. A borrower may contract to pay a finance charge for any loan or credit that would result in a yield not to exceed ten percent (10%) or five percent (5%) per annum above the discount rate, excluding any surcharges, on 90-day commercial paper in effect at the Federal Reserve Bank. This rate is known as the "contract rate." Partnerships, joint ventures, religious societies, unincorporated associations, or domestic or foreign corporations may contract for a rate not to exceed 15% or five percent (5%) per annum above the discount rate, excluding surcharges, on 90-day commercial paper and other lending transactions where the principal balance exceeds \$2,500.00. In addition, any borrower may contract for and agree to pay, and any lender may contract for and receive any financial charge agreed to in writing by the parties, regardless of the security taken or the purpose of the extension of credit, when the original principal balance or any aggregated advances exceeds \$2,000.00, including renewals or extensions. (See Miss. Code Ann. § 75-17-1.) Usury is not a crime under state law; limits on interest rates are enforceable only by civil remedies. Liability for usury violations falls upon the lender and not the borrower. *Watkins v. Mississippi Bar*, 589 So. 2d 660 (Miss. 1991).

(b) **Special Interest Rate Provisions.** Special interest rate provisions apply to revolving charge agreements and credit cards (Miss. Code Ann. § 75-17-19); factory manufactured moveable homes (Miss. Code Ann. § 75-17-23); and small loan licensees (Miss. Code Ann. § 75-17-21).

(c) **Finance Charge.** Finance charge is defined as any amount or rate paid or payable, directly or indirectly as an incident to or condition of an extension of credit, including, but not limited to, interest, fees, points, service charges, transaction charges, activity charges, carrying charges, time price differential, finder's fee or any other cost or expense to the debtor related to making, arranging or negotiating an extension of credit. Miss. Code Ann. § 75-17-25.

(d) **Prepayment Penalties.** On loans secured by a single family dwelling or real estate used for agricultural or livestock purposes, prepayment penalties are limited to a maximum of five percent (5%) of the unpaid balance if

prepaid during the first year, four percent (4%) in year two (2), three percent (3%) in year three (3), two percent (2%) in year four (4), and one percent (1%) in year five (5), and no penalty may be charged after year five (5). Miss. Code Ann. §75-17-31.

X. MISSISSIPPI REAL ESTATE LAWS

1. Ownership.

Generally, any natural person or legal entity may hold title to real property in Mississippi, with the exception of nonresident aliens. Miss. Code Ann. § 89-1-23. Although resident aliens may own and dispose of land, nonresident aliens may not normally acquire or hold land except in limited circumstances. *Id.* In addition, nonresident aliens may own up to three hundred twenty (320) acres of land in Mississippi for industrial development and five (5) acres for residential purposes. *Id.*

Any legal business entity may own land in Mississippi, including corporations (Miss. Code Ann. § 79-4-3.02), partnerships (Miss. Code Ann. § 79-13-203) and limited liability companies (Miss. Code Ann. § 79-29-117). In connection with any sale exceeding \$100,000.00 involving a nonresident seller or entity not qualified to do business in Mississippi, five percent (5%) of the amount realized by the seller must be withheld by the seller and paid to the Mississippi Department of Revenue. Miss. Code Ann. § 27-7-308(1).

The power to purchase and sell property is an express power of corporations. Miss. Code Ann. § 79-4-3.02. Mississippi law provides that shareholder approval of the sale of assets is not necessary. Miss. Code Ann. § 79-4-12.01. However, a corporation's articles of incorporation may limit these express powers. *Id.*

Partnerships may also freely own land in the state, and the property of a partnership is held by the partners as tenants in partnership. Each partner has an equal right with his partners to possess specific partnership property for partnership purposes. Miss. Code Ann. § 79-13-401(g). A determination of whether specific real property is an asset of the partnership is a fact question and is based upon the parties' intent. *Crowe v. Smith*, 603 So. 2d 301, 305-06 (Miss. 1992).

An LLC may own property in Mississippi without limitation unless its certificate of formation or operating agreement prohibits such ownership. Miss. Code Ann. § 79-29-117(1).

2. Concurrent Ownership.

Concurrent ownership in Mississippi is similar to most other common law jurisdictions, and there is a preference for a tenancy in common in Mississippi. Miss. Code Ann. § 89-1-7. Otherwise, an instrument must clearly convey the intent of the parties to create any other type of estate. *Id.* A straw man is not necessary to create a joint tenancy or a tenancy by the entirety. However, because of the statutory preference for tenancy in common, the conveying language must explicitly state that a tenancy in common is not being created. *Id.* When the parties to an estate of tenancy by the entirety

divorce, the estate becomes a joint tenancy, not a tenancy in common, *Shepherd v. Shepherd*, 336 So. 2d 497, 499 (Miss. 1976).

3. Spousal Rights.

A spouse has many rights and responsibilities as to real estate and other property under Mississippi law. For example, Mississippi uses the right of renunciation to allow a surviving spouse to inherit property from the deceased spouse, regardless of the deceased spouse's will. Miss. Code Ann. § 91-5-25. Under this right, a surviving spouse may renounce the will and elect to receive his/her intestate share of the estate (but not exceeding one-half of the estate). *Id.* Additionally, any instrument purporting to convey an interest in a homestead, including a deed of trust, must be signed by both spouses (with limited exceptions). Miss. Code Ann. § 89-1-29.

4. Purchase and Sale of Real Property.

The manner in which real property is acquired in Mississippi is similar to other common law states. Purchase agreements customarily contain the following information: the buyer's identity and obligations; the seller's identity and type of deed; the purchase price and method of payment; a legal description of the property; any contingencies to the obligation to consummate the sale; stipulations for prorations; title evidence requirements; procedures for closing and transfer of the property; remedies if either party breaches the contract; and the terms in case of property damage or destruction prior to closing.

All freehold conveyances of real property and all conveyances of an estate for a term of more than one year must be in writing, signed and delivered by the transferor. Miss. Code Ann. § 89-1-3. To be recorded, a deed must be acknowledged, and deeds are filed for record in the office of the Chancery Clerk of the county where the land is located. Miss. Code Ann. § 89-5-1. Real property may be conveyed by general warranty deed, special warranty deed or by a quitclaim deed. Miss. Code Ann. §§ 89-1-33, -35, -37, and -39.

In Mississippi, there is no mortgage or transfer tax, but a mineral documentary tax is imposed for the transfer of mineral interests in the state. Miss. Code Ann. § 27-31-77. Otherwise, the recording of a deed or deed of trust only requires the payment of nominal recording fees.

Subject to certain exceptions, any document or instrument presented to the clerk of the chancery court for recording must meet certain requirements, including: (a) at least 10-point font; (b) at least at three-inch margin at the top of the first page; and (c) on the first page, the name, physical business mailing address and business or employment telephone number of the individual who prepared the document and the name, mailing address and telephone number of every grantor, grantee, borrower, beneficiary, trustee or other party to the instrument. Miss. Code Ann. § 89-5-24. The chancery clerk will record a document or instrument that does not substantially conform to the format standards upon payment of an additional recording fee of Ten Dollars (\$10.00) per document or

instrument, and the failure to conform to the format standards does not affect the validity or enforceability of the document or instrument. *Id.*

A lender may acquire a lien on real property by virtue of a deed of trust or a mortgage. However, the deed of trust is the instrument customarily used in Mississippi. Both a deed of trust and mortgage are void as to all creditors and subsequent purchasers without notice unless they are acknowledged by a notary public or other authorized officer and recorded with the Chancery Clerk of the county where the land is located. Miss. Code Ann. § 89-5-3.

5. Foreclosures.

Mortgages and deeds of trust can be foreclosed judicially or non-judicially. While the lengthy judicial foreclosure process can be used, the nonjudicial power of sale foreclosure is the most common. Mississippi does not have a statutory redemption period after foreclosure. Deficiency suits on installment obligations must be commenced within one (1) year of the date of the foreclosure. Miss. Code Ann. § 15-1-23.

After a default has occurred, foreclosure requires publication of notice in a newspaper of general circulation in the county in which the property is located for three consecutive weeks (although most practitioners publish four times), followed by conducting the sale at the county courthouse. Miss. Code Ann. § 89-1-55. Unless contractually required, the lender is not obligated to notify junior lienholders of the default or the sale. The debtor may “de-accelerate” a loan by paying the amount due plus expenses before the foreclosure sale concludes. Miss. Code Ann. § 89-1-59.

6. Easements.

The creation of an easement under Mississippi law is very similar to the laws of other states. The termination or abandonment of the easement occurs if the dominant owner does not use the easement for a period of time. *R & S Dev., Inc. v. Wilson*, 534 So. 2d 1008, 1010 (Miss. 1988). A presumption of abandonment exists if the dominant owner does or allows any action inconsistent with the easement. *Columbus & G.R. Co. v. Dunn*, 185 So. 583, 585 (Miss. 1939).

State legislation creates certain easements, including conservation easements. A conservation easement is a nonpossessory interest of a holder in real property imposing limitations or obligations for the purpose of protecting natural, scenic, historical or open-space values of real property while assuring its availability for agricultural, forest, recreational, educational, or any other use consistent with the easement. Miss. Code Ann. § 89-19-3(1). Government entities and private, nonprofit, charitable or educational groups may hold conservation easements. Miss. Code Ann. § 89-19-3(2)(a)-(b). These easements are valid even if they do not comply with the normal requirements for an easement. Miss. Code Ann. § 89-19-9.

Implied easements occur when a person shows a continuous, apparent, permanent and necessary use for the property. *Delancey v. Mallette*, 912 So. 2d 483, 488 (Miss. Ct. App. 2005). In order for a use to be apparent, a person must demonstrate only

that a reasonable inspection would discover the easement. *King v. Gale*, 166 So. 3d 589, 594 (Miss. Ct. App. 2015). The Mississippi Supreme Court distinguished two types of implied easements by necessity. An implied easement for utility services may be established by evidence that access to the property is extremely convenient or necessary for the person to fully enjoy the property even though not strictly necessary. *Fourth Davis Island Land Co. v. Parker*, 469 So. 2d 516, 521 (Miss. 1985). However, a heightened standard of “strict necessity” applies when a person attempts to obtain an implied easement by necessity to ingress and egress over another landowner’s property. *Harkness v. Butterworth Hunting Club, Inc.*, 58 So. 3d 703, 707 (Miss. Ct. App. 2011).

7. Leases.

There are few differences between residential and commercial leases in Mississippi. State law requires leases with a term of more than one (1) year be written, signed and delivered; and there is an additional recording requirement to give notice to a third party. Miss. Code Ann. § 89-5-3.

Landlords have a statutory lien on the tenant's property to secure payment of rent. Miss. Code Ann. § 89-7-51. The lien is against agricultural products and has priority over all other liens once perfected under Article 9 of the UCC. The lien is also against the tenant's personal property, other than inventory.

The Residential Landlord and Tenant Act governs residential leases, including issues related to payment, use, retention, return and lien status of security deposits. Miss. Code Ann. § 89-8-1 *et seq.* Provisions for the termination of a residential lease are contained in the Residential Landlord and Tenant Act and require different degrees of notice for different types of leases. Miss. Code Ann. § 89-8-19.

A tenant holding over after the expiration of the lease is liable for double the amount of rent normally due. Miss. Code Ann. § 89-7-25.

Self-help eviction is allowed only when the lease agreement expressly gives the landlord that right and even then, only when eviction can be accomplished peaceably. *Clark v. Serv. Auto Co.*, 108 So. 704, 707 (Miss. 1926). Otherwise, evicting a commercial tenant requires removal by unlawful entry and detainer (Mississippi Code Section 11-25-1, *et seq.*) or removal for tenant holdover (Mississippi Code Section 89-7-27), each of which requires notice and a hearing. Eviction of a residential tenant is governed by the Residential Landlord and Tenant Act.

8. Zoning.

Counties and municipalities within the state have the authority to determine zoning in their area. These governing bodies may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. Miss. Code Ann. § 17-1-7. Regulations within a zone must be the same, but regulations from zone to zone may be different. *Id.*

Zoning ordinances must abide by a comprehensive plan, and their purpose must be to lessen congestion in the streets; to secure property and persons from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Miss. Code Ann. § 17-1-9. A local planning commission may direct the comprehensive plan to oversee the zoning of the county or municipality, and this commission may be local or regional. § 17-1-11.

When a state statute conflicts with a local ordinance or zoning regulation, the local ordinance or regulation governs if it imposes a higher standard. Miss. Code Ann. § 17-1-21. Otherwise, the state statute governs in any other instance. *Id.*

9. Eminent Domain.

Under Mississippi's eminent domain law, complaints are filed in the Circuit Court of the county where the land is located, as well as filing a *lis pendens* notice in the office of the Clerk of the Chancery Court. Miss. Code Ann. § 11-27-7. The defendants are then entitled to a hearing and must be given notice as to the fair market value of the property and be paid an amount of damages necessary to make the landowner whole. *Id.* The State Highway Commission, counties, municipalities, boards of supervisors, Mississippi Wayport Authority and the Mississippi Major Economic Impact Authority have authority to exercise eminent domain for public purposes. Mississippi also has a "quick take" procedure whereby the condemning authority can obtain immediate possession of the property after obtaining an appraisal and placing a deposit with the court, and the owner is permitted to appeal the valuation. Miss. Code. Ann. §§ 11-27-81 et seq.

10. Mineral Rights.

In Mississippi, the mineral estate may be severed from the surface estate, and the mineral owner has the dominant estate with the right to use the surface to the extent reasonably necessary. *Reynolds v. Amerada Hess Corp.*, 778 So. 2d 759, 762 (Miss. 2000). The drilling, production and storage of minerals in Mississippi is governed by the State Oil and Gas Board.

The information contained in this publication is not intended as a substitute for legal or other professional advice, and the authors neither intend nor accept any responsibility for omissions or statements that might prove to be misleading. The guide does not reflect any changes in Mississippi statutes or laws that may have occurred since the conclusion of the 2023 Regular Session of the Mississippi Legislature.
