

By: Representative Ford

To: Judiciary A

HOUSE BILL NO. 542
(As Passed the House)

1 AN ACT TO AMEND SECTION 73-3-401, MISSISSIPPI CODE OF 1972,
2 TO EXTEND THE DATE OF THE REPEALER ON SECTION 73-3-2 THROUGH
3 SECTION 73-3-59, MISSISSIPPI CODE OF 1972, WHICH CREATE THE BOARD
4 OF BAR ADMISSIONS AND PRESCRIBE ITS POWERS AND DUTIES AND
5 ESTABLISH REGULATIONS REGARDING THE PRACTICE OF LAW IN
6 MISSISSIPPI; TO REENACT SECTIONS 73-3-2, 73-3-25, 73-3-31, 73-3-35
7 THROUGH 73-3-51 AND 73-3-55 THROUGH 73-3-59, MISSISSIPPI CODE OF
8 1972, WHICH RELATE TO THE BOARD OF BAR ADMISSIONS AND THE PRACTICE
9 OF LAW; AND FOR RELATED PURPOSES.

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

11 SECTION 1. Section 73-3-401, Mississippi Code of 1972, is
12 amended as follows:

13 73-3-401. Sections 73-3-2 through 73-3-59, which create the
14 Board of Bar Admissions and prescribe its duties and powers, and
15 which provide certain regulations regarding the practice of law in
16 this state, shall stand repealed as of December 31, 2000.

17 SECTION 2. Section 73-3-2, Mississippi Code of 1972, is
18 reenacted as follows:

19 73-3-2. (1) **Power to admit persons to practice.** The power
20 to admit persons to practice as attorneys in the courts of this
21 state is vested exclusively in the Supreme Court of Mississippi.

22 (2) **Qualifications.** (a) Each applicant for admission to
23 the bar, in order to be eligible for examination for admission,
24 shall be at least twenty-one (21) years of age, of good moral
25 character, and shall present to the Board of Bar Admissions
26 satisfactory evidence:

27 (i) That he has successfully completed, or is
28 within sixty (60) days of completion of, a general course of study
29 of law in a law school which is provisionally or fully approved by
30 the section on legal education and admission to the bar of the

31 American Bar Association, and that such applicant has received, or
32 will receive within sixty (60) days, a diploma or certificate from
33 such school evidencing the satisfactory completion of such course,
34 but in no event shall any applicant under this paragraph be
35 admitted to the bar until such applicant actually receives such
36 diploma or certificate. However, an applicant who, as of November
37 1, 1981, was previously enrolled in a law school in active
38 existence in Mississippi for more than ten (10) years prior to the
39 date of application shall be eligible for examination for
40 admission; provided that such an applicant graduated prior to
41 November 1, 1984;

42 (ii) That he has notified the Board of Bar
43 Admissions in writing of an intention to pursue a general course
44 of study of law under the supervision of a Mississippi lawyer
45 prior to July 1, 1979, and in fact began study prior to July 1,
46 1979, and who completed the required course of study prior to
47 November 1, 1984, in accordance with Sections 73-3-13(b) and
48 73-3-15 as the same exist prior to the effective date of this
49 section; or

50 (iii) That in addition to complying with either of
51 the above requirements, he has received a bachelor's degree from
52 an accredited college or university or that he has received credit
53 for the requirements of the first three (3) years of college work
54 from a college or university offering an integrated six-year
55 prelaw and law course, and has completed his law course at a
56 college or university offering such an integrated six-year course.
57 However, applicants who have already begun the general course of
58 study of law as of November 1, 1979, either in a law school or
59 under the supervision of a Mississippi lawyer shall submit proof
60 he has successfully completed two (2) full years of college work.

61 (b) The applicant shall bear the burden of establishing
62 his or her qualifications for admission to the satisfaction of the
63 Board of Bar Admissions. An applicant denied admission for
64 failure to satisfy qualifications for admission shall have the
65 right to appeal from the final order of the board to the Chancery
66 Court of Hinds County, Mississippi, within thirty (30) days of
67 entry of such order of denial.

68 (3) **Creation of Board of Bar Admissions.** There is hereby

69 created a board to be known as the "Board of Bar Admissions" which
70 shall be appointed by the Supreme Court of Mississippi. The board
71 shall consist of nine (9) members, who shall be members in good
72 standing of the Mississippi State Bar and shall serve for terms of
73 three (3) years. Three (3) members shall be appointed from each
74 Supreme Court district, one (1) by each Supreme Court Justice from
75 his district, with the original appointments to be as follows:
76 Three (3) to be appointed for a term of one (1) year, three (3) to
77 be appointed for a term of two (2) years, and three (3) to be
78 appointed for a term of three (3) years, one (1) from each
79 district to be appointed each year. No member of the Board of Bar
80 Admissions may be a member of the Legislature. Vacancies during a
81 term shall be filled by the appointing justice or his successor
82 for the remainder of the unexpired term.

83 The board shall promulgate the necessary rules for the
84 administration of their duties, subject to the approval of the
85 Chief Justice of the Supreme Court.

86 (4) **Written examination or graduation as prerequisite to**
87 **admission.** Every person desiring admission to the bar, shall be
88 required to take and pass a written bar examination in a manner
89 satisfactory to the Board of Bar Admissions. The Board of Bar
90 Admissions shall conduct not less than two (2) bar examinations
91 each year.

92 (5) **Oath and compensation of board members.** The members of
93 the Board of Bar Admissions shall take and subscribe an oath to be
94 administered by one (1) of the judges of the Supreme Court to
95 faithfully and impartially discharge the duties of the office.
96 The members shall receive compensation as established by the
97 Supreme Court for preparing, giving and grading the examination
98 plus all reasonable and necessary travel expenses incurred in the
99 performance of their duties under the provisions of this section.

100 (6) **Procedure for applicants who have failed.** Any applicant
101 who fails the examination shall be allowed to take the next
102 scheduled examination. A failing applicant may request in writing

103 from the board, within thirty (30) days after the results of the
104 examination have been made public, copies of his answers and model
105 answers used in grading the examination, at his expense. If a
106 uniform, standardized examination is administered, the board shall
107 only be required to provide the examination grade and such other
108 information concerning the applicant's examination results which
109 are available to the board. Any failing applicant shall have a
110 right to a review of his failure by the board. The board shall
111 enter an order on its minutes, prior to the administration of the
112 next bar examination, either granting or denying the applicant's
113 review, and shall notify the applicant of such order. The
114 applicant shall have the right to appeal from this order to the
115 Chancery Court of Hinds County, Mississippi, within thirty (30)
116 days of entry of such order.

117 (7) **Fees.** The board shall set and collect the fees for
118 examination and for admission to the bar. The fees for
119 examination shall be based upon the annual cost of administering
120 the examinations. The fees for admission shall be based upon the
121 cost of conducting an investigation of the applicant and the
122 administrative costs of sustaining the board, which shall include,
123 but shall not be limited to:

- 124 (a) Expenses and travel for board members;
125 (b) Office facilities, supplies and equipment; and
126 (c) Clerical assistance.

127 All fees collected by the board shall be paid to the State
128 Treasurer, who shall issue receipts therefor and who shall deposit
129 such funds in the State Treasury in a special fund to the credit
130 of said board. All such funds shall be expended only in
131 accordance with the provisions of Chapter 496, Laws of 1962, as
132 amended, being Section 27-103-1 et seq., Mississippi Code of 1972.

133 (8) The board, upon finding the applicant qualified for
134 admission, shall issue to the applicant a certificate of
135 admission. The applicant shall file the certificate and a
136 petition for admission in the Chancery Court of Hinds County,

137 Mississippi, or in the chancery court in the county of his
138 residence, or, in the case of an applicant who is a nonresident of
139 the State of Mississippi, in the chancery court of a county in
140 which the applicant intends to practice. The chancery court
141 shall, in termtime or in vacation, enter on the minutes of that
142 court an order granting to the applicant license to practice in
143 all courts in this state, upon taking by the applicant in the
144 presence of the court, the oath prescribed by law, Section
145 73-3-35, Mississippi Code of 1972.

146 (9) Each application or filing made under this section shall
147 include the social security number(s) of the applicant in
148 accordance with Section 93-11-64, Mississippi Code of 1972.

149 SECTION 3. Section 73-3-25, Mississippi Code of 1972, is
150 reenacted as follows:

151 73-3-25. Any lawyer from another state whose requirements
152 for admission to the bar are equivalent to those of this state,
153 who has practiced not less than five (5) years in a state where he
154 was then admitted may be admitted to the practice in this state
155 upon taking and passing such examination as to his knowledge of
156 law as may be prescribed by rules adopted by the Board of Bar
157 Admissions and approved by the Supreme Court and upon complying
158 with the other requirements as set out in the laws and rules
159 governing admission to the bar. Provided, however, the laws of
160 the state from which the applicant comes grant similar privileges
161 to the applicants from this state.

162 Any lawyer from another state desiring to be admitted to
163 practice in Mississippi must make application to the Board of Bar
164 Admissions. Such applicant shall present to the bar evidence of
165 his good standing in the state from which he came, including a
166 certificate from the clerk of the highest appellate court of the
167 state from which he came, and from two (2) members of the bar of
168 such state, certifying to his qualifications, good standing and
169 moral character of the applicant, and may require the submission
170 of additional evidence by the applicant. Upon satisfactory proof

171 of the applicant's qualifications and upon the applicant's
172 compliance with the requirements of this section, the board shall
173 issue a certificate of admission to the applicant, as prescribed
174 in Section 73-3-2(8). Each such applicant shall pay an
175 application fee prescribed by the Board of Bar Admissions
176 according to Section 73-3-2(7).

177 SECTION 4. Section 73-3-31, Mississippi Code of 1972, is
178 reenacted as follows:

179 73-3-31. The educational requirements both as to general
180 education and legal education shall not apply to any person who
181 may have graduated from a law school prior to October 1, 1954.

182 SECTION 5. Section 73-3-35, Mississippi Code of 1972, is
183 reenacted as follows:

184 73-3-35. Every attorney and counselor-at-law, before he
185 shall be permitted to practice, shall produce his license in each
186 court where he intends to practice, and in the presence of such
187 court, shall take the following oath or affirmation to wit:

188 "I do solemnly swear (or affirm) that I will demean myself,
189 as an attorney and counselor of this court, according to the best
190 of my learning and ability, and with all good fidelity as well to
191 the court as to the client; that I will use no falsehood nor delay
192 any person's cause for lucre or malice, and that I will support
193 the Constitution of the State of Mississippi so long as I continue
194 a citizen thereof. So help me God."

195 And thereupon the name of such person, with the date of his
196 admission, shall be entered in a roll or book to be kept in each
197 court for that purpose.

198 SECTION 6. Section 73-3-37, Mississippi Code of 1972, is
199 reenacted as follows:

200 73-3-37. It is the duty of attorneys:

201 (1) To support the Constitution and laws of this state and
202 of the United States;

203 (2) To maintain the respect due to courts of justice and
204 judicial officers;

205 (3) To employ for the purpose of maintaining the causes
206 confided to them, such means only as are consistent with truth,
207 and never to seek to mislead by any artifice or false statement of
208 the law;

209 (4) To maintain inviolate the confidence and, at every peril
210 to themselves, to preserve the secrets of their clients;

211 (5) To abstain from all offensive personalities, and to
212 advance no fact prejudicial to the honor or reputation of a party
213 or witness, unless required by the justice of the cause with which
214 they are charged;

215 (6) To encourage neither the commencement nor continuance of
216 an action or proceeding from any motives of passion or personal
217 interest;

218 (7) Never to reject, for any consideration personal to
219 themselves, the cause of the defenseless or oppressed.

220 SECTION 7. Section 73-3-39, Mississippi Code of 1972, is
221 reenacted as follows:

222 73-3-39. (1) It is hereby declared to be the public policy
223 of the State of Mississippi that the practice of law before any
224 court or administrative agency is a matter of privilege and not a
225 matter of right.

226 (2) Subject to the conditions, rules and regulations adopted
227 by the Supreme Court of Mississippi, any attorney or
228 counselor-at-law of another state, in good professional standing,
229 of good moral character and who is familiar with the ethics,
230 principles, practices, customs and usages of the legal profession
231 in the State of Mississippi may appear and plead in any special
232 cause before any court or administrative agency in this state;
233 provided, however, that in so appearing such attorney or
234 counselor-at-law shall subject himself to the jurisdiction of the
235 State Board of Bar Admissions and shall consent to the application
236 of the provisions of this article.

237 (3) Upon petition of two (2) members in good standing of the
238 bar of any county of the State of Mississippi, not members of the

239 same firm, representing that any attorney or counselor-at-law of
240 another state is appearing in any cause before any court or
241 administrative agency of this state and raising the question of
242 the qualifications of such attorney or counselor-at-law as set out
243 in subsection (2) of this section or compliance by such attorney
244 with the conditions, rules and regulations adopted by the Supreme
245 Court of Mississippi, the State Board of Bar Admissions shall, or
246 upon its own initiative may, make inquiry as to the professional
247 standing, moral character, familiarity with the ethics,
248 principles, practices, customs and usages of the legal profession
249 in the State of Mississippi of any such attorney or
250 counselor-at-law of another state and shall inquire as to such
251 attorney's professional standing with his local bar and into the
252 question of whether or not such attorney is familiar with and
253 willing to abide by the ethics, principles, practices, customs and
254 usages of the legal profession in the State of Mississippi.

255 (4) In conducting the inquiry referred to in the preceding
256 section, the State Board of Bar Admissions shall have authority to
257 require the appearance of the attorney or counselor-at-law
258 involved before it and shall have the power to subpoena witnesses
259 and require the production of evidence, oral and documentary, and
260 issue appropriate process therefor, and to do any and all other
261 things which may be required to determine fully and completely the
262 facts as issued before it. After such hearing the State Board of
263 Bar Admissions shall make such determination as, in its opinion
264 and sound discretion, is justified from the evidence before it and
265 may permit or refuse to permit the said attorney or
266 counselor-at-law to continue to appear and plead in such special
267 cause.

268 (5) The action or decision of the Board of Bar Admissions in
269 administering this section is hereby declared to be a judicial
270 function and not administrative in character, and appeals from the
271 decision of said board may be taken in accordance with the
272 provisions of Section 11-51-75, Mississippi Code of 1972.

273 (6) Any attorney or counselor-at-law who wilfully makes any
274 false or misleading statement to said board touching upon the
275 matters under inquiry shall be guilty of perjury, shall be
276 punished according to law upon conviction thereof, and the
277 judgment of the court imposing such punishment shall, in addition,
278 provide that such attorney or counselor-at-law shall be
279 perpetually barred from practice before any court or
280 administrative agency of this state.

281 (7) Any such attorney or counselor-at-law of another state
282 who shall appear or plead in any court or administrative agency in
283 this state after his qualifications shall have been called into
284 question by the petition hereinbefore mentioned or by the State
285 Board of Bar Admissions acting upon its own initiative and before
286 having obtained an order from the said State Board of Bar
287 Admissions authorizing his appearance shall be guilty of a
288 misdemeanor and, upon conviction thereof, shall be fined not less
289 than One Hundred Dollars (\$100.00) nor more than One Thousand
290 Dollars (\$1,000.00), or imprisoned in the county jail for not more
291 than six (6) months, or both such fine and imprisonment.

292 SECTION 8. Section 73-3-41, Mississippi Code of 1972, is
293 reenacted as follows:

294 73-3-41. Every person who has been or shall hereafter be
295 convicted of felony in a court of this or any other state or a
296 court of the United States, manslaughter or a violation of the
297 Internal Revenue Code excepted, shall be incapable of obtaining a
298 license to practice law. Any court of the State of Mississippi in
299 which a licensed attorney shall have been convicted of a felony,
300 other than manslaughter or a violation of the Internal Revenue
301 Code, shall enter an order disbarring the attorney.

302 SECTION 9. Section 73-3-43, Mississippi Code of 1972, is
303 reenacted as follows:

304 73-3-43. It shall not be lawful for a clerk of any court of
305 record or the deputy or assistant of any such clerk, or for any
306 sheriff or his deputy, to exercise the profession or employment of

307 an attorney or counselor-at-law, or to be engaged in the practice
308 of law, or to receive any fee or reward for any such services
309 rendered during his continuance in such position; and any person
310 offending herein shall be guilty of a misdemeanor, and, upon
311 conviction, to be fined in a sum not exceeding Five Hundred
312 Dollars (\$500.00) and be removed from office; but this shall not
313 prohibit the clerk of any court of record or the sheriff of any
314 county from practicing in any of the courts so far as to enable
315 them to bring to conclusion civil cases in which such clerk or
316 sheriff are employed and which are actually filed and pending at
317 the time when such clerk or sheriff is appointed or nominated in a
318 party primary and subsequently elected to office.

319 SECTION 10. Section 73-3-45, Mississippi Code of 1972, is
320 reenacted as follows:

321 73-3-45. If any justice court judge or the partner in the
322 practice of law of any justice court judge shall appear before a
323 justice court judge of his district as attorney or counsel in any
324 misdemeanor case over which he has jurisdiction, or in any appeal
325 of any such case from the judgment of such officer, or in any
326 certiorari to any such officer for the same, he shall be guilty of
327 a misdemeanor and, on conviction, shall be fined not more than
328 Five Hundred Dollars (\$500.00), or be imprisoned not more than six
329 (6) months, or both.

330 SECTION 11. Section 73-3-47, Mississippi Code of 1972, is
331 reenacted as follows:

332 73-3-47. If the partner in the practice of law of any
333 justice court judge shall appear before such justice court judge
334 of his district, as attorney or counsel in any case, civil or
335 criminal, or in any appeal from the judgment of such officer, or
336 in any certiorari to such officer, he shall be guilty of a
337 misdemeanor and, on conviction, shall be fined not more than Five
338 Hundred Dollars (\$500.00), or be imprisoned not more than six (6)
339 months, or both.

340 SECTION 12. Section 73-3-49, Mississippi Code of 1972, is

341 reenacted as follows:

342 73-3-49. Where two (2) or more attorneys at law of this
343 state are associated together in practice as attorneys or
344 counselors-at-law, and one (1) of such attorneys shall be district
345 attorney of his district or the county attorney of his county, it
346 shall be unlawful for such other attorney, or partner, to appear
347 and defend in any of the courts of that county any person charged
348 with a misdemeanor or felony, and this section shall apply, even
349 though such association may exist only for the transaction of
350 civil business in a particular court.

351 Any attorney violating this section shall be deemed guilty of
352 a misdemeanor and, on conviction shall be fined in the sum of not
353 less than Ten Dollars (\$10.00) nor more than One Hundred Dollars
354 (\$100.00), and shall forfeit his license to practice law in this
355 state.

356 SECTION 13. Section 73-3-51, Mississippi Code of 1972, is
357 reenacted as follows:

358 73-3-51. It shall be unlawful for the Attorney General or
359 any assistant attorney general, or any district attorney, or any
360 attorney at law associated in the practice as attorney or
361 counselor-at-law with any attorney general or district attorney,
362 to accept employment from or to represent as attorney or
363 counselor-at-law any railroad corporation, street railway
364 corporation, telephone or telegraph corporation, express company,
365 or other common carrier, or public service corporation whatsoever,
366 and any attorney violating this section shall be guilty of a
367 misdemeanor and, on conviction, shall be fined in a sum not less
368 than Ten Dollars (\$10.00) nor more than One Hundred Dollars
369 (\$100.00), and shall forfeit his license to practice law in this
370 state.

371 SECTION 14. Section 73-3-55, Mississippi Code of 1972, is
372 reenacted as follows:

373 73-3-55. It shall be unlawful for any person to engage in
374 the practice of law in this state who has not been licensed

375 according to law. Any person violating the provisions of this
376 section shall be deemed guilty of a misdemeanor, and, upon
377 conviction, shall be punished in accordance with the provisions of
378 Section 97-23-43. Any person who shall for fee or reward or
379 promise, directly or indirectly, write or dictate any paper or
380 instrument of writing, to be filed in any cause or proceeding
381 pending, or to be instituted in any court in this state, or give
382 any counsel or advice therein, or who shall write or dictate any
383 bill of sale, deed of conveyance, deed of trust, mortgage,
384 contract, or last will and testament, or shall make or certify to
385 any abstract of title to real estate other than his own or in
386 which he may own an interest, shall be held to be engaged in the
387 practice of law. This section shall not, however, prevent title
388 or abstract of title guaranty companies incorporated under the
389 laws of this state from making abstract or certifying titles to
390 real estate where it acts through some person as agent, authorized
391 under the laws of the State of Mississippi to practice law; nor
392 shall this section prevent any abstract company chartered under
393 the laws of the State of Mississippi with a paid-up capital of
394 Fifty Thousand Dollars (\$50,000.00) or more from making or
395 certifying to abstracts of title to real estate through the
396 president, secretary or other principal officer of such company.

397 SECTION 15. Section 73-3-57, Mississippi Code of 1972, is
398 reenacted as follows:

399 73-3-57. It shall be unlawful for an attorney at law, either
400 before or after action brought, to promise, or give or offer to
401 promise or give, a valuable consideration to any person as an
402 inducement to placing, or in consideration of having placed in his
403 hands, or in the hands of any partnership of which he is a member,
404 a demand of any kind, for the purpose of bringing suit or making
405 claim against another, or to employ a person to search for and
406 procure clients to be brought to such attorney.

407 SECTION 16. Section 73-3-59, Mississippi Code of 1972, is
408 reenacted as follows:

409 73-3-59. Any attorney at law who shall violate the
410 provisions of the preceding section shall be guilty of a
411 misdemeanor and shall be removed and disbarred from acting as an
412 attorney at law, and any person who shall, before or after suit
413 brought, receive or agree to receive from any attorney at law,
414 compensation for services in seeking out or placing in the hands
415 of an attorney a demand of any kind for suit or a compromise,
416 shall be guilty of a misdemeanor.

417 SECTION 17. This act shall take effect and be in force from
418 and after July 1, 1999.