

By: Representatives Chaney (By Request),
Holden, Simpson

To: Judiciary A

HOUSE BILL NO. 938

1 AN ACT TO CREATE THE "MISSISSIPPI ADMINISTRATIVE PROCEDURE
2 LAW OF 1999"; TO DEFINE CERTAIN TERMS AS USED IN THE ACT; TO
3 PRESCRIBE THE ACT'S APPLICABILITY AND RELATION TO OTHER LAWS; TO
4 PROVIDE FOR THE SUSPENSION OF THE ACT'S PROVISIONS WHEN NECESSARY
5 TO AVOID LOSS OF FEDERAL FUNDS OR SERVICES; TO PRESCRIBE HOW
6 RIGHTS UNDER THE ACT MAY BE WAIVED, HOW MATTERS MAY BE SETTLED
7 INFORMALLY UNDER THE ACT AND HOW PROCEEDINGS UNDER THE ACT MAY BE
8 CONVERTED TO ANOTHER TYPE OF AGENCY PROCEEDING; TO PRESCRIBE THE
9 MANNER OF SERVICE AND COMPUTATION OF TIME UNDER THE ACT; TO
10 PROVIDE FOR THE PUBLICATION, COMPILATION, INDEXING AND PUBLIC
11 INSPECTION OF AGENCY RULES AND ORDERS; TO ESTABLISH A RIGHT AND
12 PRESCRIBE THE PROCEDURE FOR REQUESTING DECLARATORY OPINIONS FROM
13 STATE AGENCIES WITH REGARD TO THE APPLICABILITY AND EFFECT OF
14 AGENCY RULES; TO REQUIRE EVERY AGENCY TO ADOPT CERTAIN RULES
15 RELATING TO THE AGENCY'S ORGANIZATIONAL STRUCTURE; TO REQUIRE THE
16 SECRETARY OF STATE TO ADOPT MODEL RULES OF PROCEDURE FOR USE BY
17 STATE AGENCIES; TO PROVIDE FOR NOTICE OF PROPOSED RULES BEFORE
18 THEIR ADOPTION; TO ALLOW PUBLIC PARTICIPATION IN THE RULE-MAKING
19 PROCESS; TO PROVIDE FOR A PUBLIC RULE-MAKING DOCKET; TO REQUIRE
20 SUBMISSION OF A REGULATORY ANALYSIS OF PROPOSED RULES IN CERTAIN
21 SITUATIONS; TO PROVIDE FOR THE TIME AND MANNER OF RULE ADOPTION;
22 TO PROHIBIT ANY VARIANCE BETWEEN AN ADOPTED RULE AND PUBLISHED
23 NOTICE OF THE RULE'S ADOPTION; TO EXEMPT CERTAIN RULES FROM
24 PROCEDURES PROVIDED IN THE ACT; TO PRESCRIBE THE CONTENTS, STYLE
25 AND FORM OF RULES; TO REQUIRE AGENCIES TO MAINTAIN A RULE-MAKING
26 RECORD AND TO FILE RULES IN THE OFFICE OF THE SECRETARY OF STATE;
27 TO PRESCRIBE THE METHOD FOR CONTESTING THE VALIDITY OF RULES; TO
28 PROVIDE FOR THE EFFECTIVE DATE OF RULES; TO PROVIDE THAT THE ACT
29 SHALL BE INAPPLICABLE TO CERTAIN CLASSES OF RULES; TO AUTHORIZE
30 PETITIONS FOR THE ADOPTION, AMENDMENT, REPEAL OR WAIVER OF A RULE;
31 TO REQUIRE EACH AGENCY TO PERIODICALLY REVIEW ITS RULES; TO
32 PRESCRIBE WHEN ADJUDICATIVE PROCEEDINGS ARE REQUIRED, AND WHEN
33 COMMENCED; TO CREATE EXCEPTIONS; TO ESTABLISH TIME LIMITS; TO
34 REQUIRE A LICENSEE TO BE GIVEN NOTICE OF ANY INTENDED REVOCATION,
35 SUSPENSION, ANNULMENT OR WITHDRAWAL OF HIS LICENSE EXCEPT IN CASE
36 OF EMERGENCY; TO PROVIDE FOR INFORMAL SETTLEMENT, ALTERNATIVE
37 DISPUTE RESOLUTION AND WAIVER; TO PRESCRIBE THE REQUIREMENTS FOR A
38 FORMAL ADJUDICATIVE HEARING, THE PRESIDING OFFICER AND
39 REPRESENTATION; TO PROVIDE FOR THE AVAILABILITY OF A PREHEARING
40 CONFERENCE, NOTICE THEREOF AND PROCEDURE THEREFOR; TO PRESCRIBE
41 RULES OF PROCEDURE; TO PROVIDE FOR REVIEW; TO CREATE THE DIVISION
42 OF INDEPENDENT HEARING OFFICERS; TO PROVIDE FOR INFORMAL
43 ADJUDICATIVE HEARINGS AND PRESCRIBE RULES OF PROCEDURE; TO
44 PRESCRIBE WHEN BASIC ADJUDICATIVE PROCEEDING IS SUFFICIENT AND TO
45 PROVIDE RULES OF PROCEDURE THEREFOR, APPEAL THEREFROM, AND FOR
46 ADMINISTRATIVE REVIEW; TO PROVIDE FOR EMERGENCY ADJUDICATIVE
47 PROCEEDINGS; TO PROVIDE FOR JUDICIAL REVIEW; TO PRESCRIBE RELIEF
48 THAT MAY BE GRANTED; TO PROVIDE FOR CIVIL ENFORCEMENT; TO PROVIDE
49 THAT STATUTORY PROVISIONS THAT CONFLICT WITH THE PROVISIONS OF
50 THIS ACT SHALL GOVERN TO THE EXTENT OF SUCH CONFLICT; TO PRESCRIBE
51 THE PROCEEDINGS TO WHICH THIS ACT IS APPLICABLE; TO AMEND SECTIONS
52 5-8-17, 7-17-5, 9-1-19, 9-13-107, 9-13-117, 11-41-1, 11-41-3,

53 17-17-29, 17-17-45, 17-17-231, 19-5-353, 21-27-221, 21-29-217,
54 23-15-69, 25-9-115, 25-9-119, 25-9-131, 25-9-132, 25-11-11,
55 25-11-105, 25-11-120, 25-53-111, 25-53-125, 25-59-9, 25-61-13,
56 27-3-29, 27-7-73, 27-7-315, 27-7-515, 27-9-47, 27-13-45,
57 27-19-337, 27-33-41, 27-35-163, 27-55-41, 27-55-339, 27-55-359,
58 27-57-29, 27-57-345, 27-59-43, 27-59-317, 27-67-25, 27-71-5,
59 27-73-1, 29-1-131, 29-7-17, 31-3-13, 31-3-23, 33-13-607, 33-15-31,
60 35-1-7, 35-7-7, 37-3-2, 37-17-5, 37-23-73, 37-33-263, 37-45-27,
61 37-45-31, 37-45-33, 37-45-37, 37-45-41, 37-45-47, 37-45-51,
62 37-45-57, 37-45-61, 37-47-17, 37-47-67, 37-151-61, 41-4-7,
63 41-7-201, 41-7-202, 41-9-31, 41-26-5, 41-26-7, 41-26-19, 41-26-21,
64 41-26-23, 41-26-31, 41-29-129, 41-29-131, 41-29-163, 41-29-165,
65 41-35-7, 41-51-25, 41-51-29, 41-58-3, 41-59-49, 41-61-59,
66 41-61-63, 41-61-65, 41-67-3, 41-67-4, 41-67-21, 41-67-25,
67 41-67-29, 41-71-9, 41-71-11, 41-71-13, 41-75-11, 41-75-13,
68 41-75-21, 41-75-23, 41-77-11, 41-77-19, 41-77-21, 41-83-13,
69 41-83-23, 41-86-11, 41-91-15, 41-95-5, 43-3-7, 43-11-11,
70 43-11-23, 43-13-117, 43-13-121, 43-17-5, 43-19-57, 43-19-58,
71 43-20-14, 45-1-21, 45-6-11, 45-9-101, 45-11-2, 45-14-21, 45-23-9,
72 45-23-25, 45-23-57, 45-23-59, 47-5-192, 49-15-15, 49-15-67,
73 49-17-25, 49-17-29, 49-17-34, 49-17-35, 49-17-37, 49-17-41,
74 49-17-43, 49-27-39, 49-27-41, 51-3-49, 51-3-55, 51-5-9, 53-1-19,
75 53-1-39, 53-1-47, 53-3-7, 53-3-119, 53-7-45, 53-7-65, 53-9-7,
76 53-9-69, 53-9-77, 61-1-45, 63-1-31, 63-15-7, 63-17-95, 63-17-99,
77 63-19-52, 65-1-2, 65-1-46, 65-2-15, 65-9-1, 67-1-39, 69-1-18,
78 69-1-25, 69-3-115, 69-7-267, 69-7-613, 69-7-667, 69-15-51,
79 69-15-53, 69-15-55, 69-15-57, 69-15-59, 69-15-63, 69-15-117,
80 69-19-1, 69-21-7, 69-21-109, 69-21-121, 69-21-125, 69-21-151,
81 69-21-153, 69-21-155, 69-21-157, 69-21-159, 69-21-161, 69-23-9,
82 69-23-11, 69-25-7, 69-25-51, 69-25-53, 69-25-55, 69-25-57,
83 69-25-59, 69-35-21, 69-36-7, 69-37-25, 69-37-31, 69-37-35,
84 69-39-19, 69-43-3, 71-3-51, 71-3-55, 71-3-66, 71-3-85, 71-5-115,
85 71-5-117, 71-5-119, 71-5-519, 71-5-523, 71-5-525, 73-1-13,
86 73-1-29, 73-2-16, 73-5-27, 73-13-15, 73-13-37, 73-13-89, 73-13-93,
87 73-14-37, 73-14-39, 73-19-41, 73-24-13, 73-25-27, 73-25-63,
88 73-25-65, 73-25-95, 73-29-39, 73-30-7, 73-30-11, 73-33-5,
89 73-33-11, 73-34-29, 73-34-43, 73-35-18, 73-43-14, 73-59-13,
90 73-63-17, 73-63-49, 75-35-15, 75-43-23, 75-49-13, 75-55-6,
91 75-57-9, 75-57-105, 75-57-109, 75-57-117, 75-59-5, 75-60-4,
92 75-60-19, 75-67-129, 75-67-243, 75-67-325, 75-67-423, 75-76-83,
93 75-76-121, 75-76-127, 75-76-167, 75-76-173, 75-79-21, 77-1-39,
94 77-3-45, 77-3-47, 77-3-57, 77-7-15, 77-7-295, 79-11-389,
95 79-11-504, 79-22-13, 79-22-27, 81-1-87, 81-3-13, 81-7-1,
96 81-12-205, 81-14-175, 81-19-17, 81-21-3, 81-21-5, 81-21-7,
97 83-5-39, 83-5-41, 83-5-43, 83-5-47, 83-5-209, 83-9-23, 83-11-21,
98 83-17-125, 83-17-223, 83-17-423, 83-19-109, 83-21-17, 83-34-19,
99 83-38-19, 83-39-19, 83-41-339, 83-53-29, 83-53-33, 83-53-37,
100 83-53-39, 83-53-41, 83-53-45, 83-57-65, 93-21-307, 99-41-13,
101 MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO REPEAL SECTIONS
102 25-43-1, 25-43-3, 25-43-5, 25-43-6, 25-43-7, 25-43-9, 25-43-11,
103 25-43-13, 25-43-15, 25-43-17 AND 25-43-19, MISSISSIPPI CODE OF
104 1972, WHICH CREATE THE MISSISSIPPI ADMINISTRATIVE PROCEDURES LAW,
105 PROVIDE DEFINITIONS FOR TERMS USED IN SUCH LAW, PRESCRIBE
106 PROCEDURES THAT MUST BE FOLLOWED BY AGENCIES IN THE ADOPTION,
107 AMENDMENT AND REPEAL OF AGENCY RULES, REQUIRE THE FILING OF AN
108 ECONOMIC IMPACT STATEMENT FOR THE ADOPTION OF A RULE, REQUIRE
109 FILING AND NOTICE BEFORE SUCH RULES MAY BECOME EFFECTIVE, REQUIRE
110 AGENCIES TO INDEX ALL EFFECTIVE RULES ADOPTED, PROVIDE THAT
111 REVOCATION OR SUSPENSION OF ANY LICENSE SHALL NOT BE EFFECTIVE
112 UNLESS NOTICE OF SUCH INTENDED ACTION IS GIVEN TO THE LICENSEE,
113 AND REQUIRE AGENCIES TO ADOPT PROCEDURES TO ASSURE THAT OPPONENTS
114 OF PROPOSED RULES HAVE THE OPPORTUNITY TO PRESENT THEIR VIEWS AND
115 REVIEW ADVERSE RULINGS; TO REPEAL SECTIONS 37-45-39, 37-45-59 AND
116 37-45-61, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE
117 PRESERVATION OF THE REPORTER'S NOTES, TRANSCRIPTION AND
118 PREPARATION OF THE RECORD FOR APPEAL, AND FURTHER APPEAL TO THE
119 SUPREME COURT IN CERTAIN HEARINGS HELD BEFORE THE STATE DEPARTMENT

120 OF EDUCATION; TO REPEAL SECTION 41-51-27, MISSISSIPPI CODE OF
121 1972, WHICH DEALS WITH THE RECORD IN HEARINGS HELD UNDER THE
122 ANIMAL AND POULTRY BY-PRODUCTS DISPOSAL LAW OF 1964; TO REPEAL
123 SECTIONS 49-27-43, 49-27-45 AND 49-27-47, MISSISSIPPI CODE OF
124 1972, WHICH DEAL WITH APPEAL TO THE CHANCERY COURT UNDER THE
125 PROVISIONS OF THE COASTAL PROTECTION WETLANDS ACT; TO REPEAL
126 SECTION 53-1-45, MISSISSIPPI CODE OF 1972, WHICH DEALS WITH
127 APPEALS TO THE SUPREME COURT IN THE MATTER OF A HEARING HELD
128 BEFORE THE STATE OIL AND GAS BOARD; TO REPEAL SECTIONS 63-17-91
129 AND 63-17-93, MISSISSIPPI CODE OF 1972, WHICH DEAL WITH HEARINGS
130 HELD UNDER THE MISSISSIPPI MOTOR VEHICLE COMMISSION LAW; TO REPEAL
131 SECTION 65-2-17, MISSISSIPPI CODE OF 1972, WHICH DEALS WITH THE
132 APPEAL TO THE SUPREME COURT FROM A DECISION OF THE CIRCUIT COURT
133 IN AN APPEAL FROM A HEARING HELD BY THE STATE HIGHWAY ARBITRATION
134 BOARD; TO REPEAL SECTION 83-53-35, MISSISSIPPI CODE OF 1972, WHICH
135 PRESCRIBES THE ISSUANCE OF AN ORDER FOLLOWING A HEARING BEFORE THE
136 COMMISSIONER OF INSURANCE CONCERNING CREDIT LIFE AND CREDIT
137 DISABILITY INSURANCE; AND FOR RELATED PURPOSES.

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

139

140

ARTICLE I

141

GENERAL PROVISIONS

142 SECTION 1. The following shall be codified as Section

143 25-43-1.101, Mississippi Code of 1972:

144 25-43-1.101. **Title; Statement of Purpose.**

145 (1) This chapter may be cited as the "Mississippi

146 Administrative Procedure Law of 1999."

147 (2) This chapter is intended to provide a minimum procedural
148 code for the operation of all state agencies when they take action
149 affecting the rights and duties of the public. Nothing in this
150 chapter shall be construed as invalidating any rule or regulation
151 adopted before July 1, 1999, if such rule or regulation was
152 properly adopted in accordance with the law as it existed at the
153 time of adoption. Nothing in this chapter is meant to discourage
154 agencies from adopting procedures providing greater protections to
155 the public or conferring additional rights upon the public; and
156 save for express provisions of this chapter to the contrary,
157 nothing in this chapter is meant to abrogate in whole or in part
158 any statute prescribing procedural duties for an agency which are
159 greater than or in addition to those provided here. This chapter
160 is meant to apply to all rule-making and adjudicative proceedings
161 and all suits for the judicial review of agency action that are
162 not specifically excluded from this chapter or some portion

163 thereof by its express terms or by the express terms of another
164 chapter.

165 The purposes of the Mississippi Administrative Procedure Law
166 of 1999 are: To provide legislative oversight of powers and
167 duties delegated to administrative agencies; to increase public
168 accountability of administrative agencies; to simplify government
169 by assuring a uniform minimum procedure to which all agencies will
170 be held in the conduct of their most important functions; to
171 increase public access to governmental information; to increase
172 public participation in the formulation of administrative rules;
173 to increase the fairness of agencies in their conduct of contested
174 case proceedings; and to simplify the process of judicial review
175 of agency action as well as increase its ease and availability.
176 In accomplishing its objectives, the intention of this chapter is
177 to strike a fair balance between these purposes and the need for
178 efficient, economical and effective government administration.
179 The chapter is not meant to alter the substantive rights of any
180 person or agency. Its impact is limited to procedural rights with
181 the expectation that better substantive results will be achieved
182 in the everyday conduct of state government by improving the
183 process by which those results are attained.

184 (3) From and after July 1, 1999, any reference to the
185 Mississippi Administrative Procedures Act or Mississippi
186 Administrative Procedures Law, being Sections 25-43-1, et seq.,
187 Mississippi Code of 1972, shall be deemed to mean and refer to the
188 Mississippi Administrative Procedure Law of 1999.

189 SECTION 2. The following shall be codified as Section
190 25-43-1.102, Mississippi Code of 1972:

191 25-43-1.102. **Definitions.**

192 As used in this chapter the following terms shall have the
193 meanings ascribed to them in this section unless the context
194 otherwise requires:

195 (a) "Adjudicative Proceeding" means an agency
196 proceeding conducted for the purpose of formulating and issuing an

197 order which determines the rights of one or more persons. A
198 "basic adjudicative proceeding" is an adjudicative proceeding
199 conducted in accordance with the provisions of Sections
200 25-43-4.501 through 25-43-4.505. An "emergency adjudicative
201 proceeding" is an adjudicative proceeding conducted in accordance
202 with the provisions of Section 25-43-4.601. A "formal
203 adjudicative hearing" is an adjudicative proceeding conducted in
204 accordance with the provisions of Section 25-43-4.201 through
205 25-43-4.222. An "informal adjudicative hearing" is an
206 adjudicative proceeding conducted in accordance with the
207 provisions of Section 25-43-4.401 through 25-43-4.403.

208 (b) "Agency" means a board, commission, department,
209 officer or other administrative unit of this state, including the
210 agency head, and one or more members of the agency head or agency
211 employees directly or indirectly purporting to act on behalf or
212 under the authority of the agency head. The term does not include
213 the Legislature or any of its component units, the judiciary or
214 any of its component units or the Governor. The term does not
215 include a political subdivision of the state or any of the
216 administrative units of a political subdivision. To the extent it
217 purports to exercise authority subject to any provision of this
218 chapter, an administrative unit otherwise qualifying as an
219 "agency" must be treated as a separate agency even if the unit is
220 located within or subordinate to another agency.

221 (c) "Agency action" means: (i) the whole or a part of
222 a rule, an order or a declaratory opinion; or (ii) the failure to
223 issue a rule, an order, or a declaratory opinion. "Nonfinal agency
224 action" means the whole or a part of any agency determination,
225 investigation, proceeding, hearing, conference, or other process
226 that is preliminary, preparatory, procedural, or intermediate with
227 regard to subsequent agency action of that agency or another
228 agency. "Final agency action" means the whole or a part of any
229 agency action other than nonfinal agency action. Final agency
230 action occurs when the action is reduced to writing and approved

231 by the agency head.

232 (d) "Agency head" or "head of the agency" means an
233 individual or body of individuals in whom the ultimate legal
234 authority of the agency is vested by any provision of law.

235 (e) "Agency proceeding" or "proceeding" means the
236 process by which an agency considers:

237 (i) A declaratory opinion pursuant to Section
238 25-43-2.103,

239 (ii) A rule pursuant to Article III of this
240 chapter, or

241 (iii) Any form of adjudicative proceeding pursuant
242 to Article IV of this chapter.

243 (f) "Agency record" means the official record of an
244 agency adjudicative proceeding pursuant to Section 25-43-4.222 and
245 the official rule-making record of an agency pursuant to Section
246 25-43-3.112.

247 (g) "Basic adjudicative proceeding" is an adjudicative
248 proceeding conducted in accordance with the provisions of Sections
249 25-43-4.501 through 25-43-4.505.

250 (h) "Declaratory opinion" means an agency opinion
251 rendered in accordance with the provisions of Section 25-43-2.103.

252 (i) "Emergency adjudicative proceeding" is an
253 adjudicative proceeding conducted in accordance with the
254 provisions of Section 25-43-4.601.

255 (j) "Final agency action" means the whole or a part of
256 any agency action other than nonfinal agency action. Final agency
257 action occurs when the action is reduced to writing and approved
258 by the agency head.

259 (k) "Formal adjudicative hearing" is an adjudicative
260 proceeding conducted in accordance with the provisions of Section
261 25-43-4.201 through 25-43-4.222.

262 (l) "Informal adjudicative hearing" is an adjudicative
263 proceeding conducted in accordance with the provisions of Section
264 25-43-4.401 through 25-43-4.403.

265 (m) "License" means a franchise, permit, certification,
266 approval, registration, charter or similar form of authorization
267 required by law. The holder of a "license" may be referred to as
268 a "licensee," "permittee" or "franchisee."

269 (n) "Nonfinal agency action" means the whole or a part
270 of any agency determination, investigation, proceeding, hearing,
271 conference, or other process that is preliminary, preparatory,
272 procedural, or intermediate with regard to subsequent agency
273 action of that agency or another agency.

274 (o) "Order" means an agency action of particular
275 applicability that determines the legal rights, duties,
276 privileges, immunities or other legal interests of one or more
277 specific persons. An order shall be in writing signed by a person
278 with authority to render the order, or if more than one (1) person
279 has such authority by at least that number of such persons as
280 jointly have the authority to render the order, or by a person
281 authorized to render the order on behalf of all such persons. The
282 term does not include an executive order issued by the Governor
283 pursuant to Section 25-43-1.104, an opinion issued by the Attorney
284 General pursuant to Section 7-5-25, an opinion issued by the
285 Ethics Commission pursuant to Section 25-4-17, or a declaratory
286 opinion rendered in accordance with Section 25-43-2.103.

287 (p) "Party to agency proceedings," or "party" in a
288 context so indicating, means:

289 (i) A person to whom the agency action is
290 specifically directed;

291 (ii) A person named as a party to an agency
292 proceeding or allowed to intervene or participate as a party in
293 the proceeding; or

294 (iii) The agency, except where the agency is
295 essentially neutral regarding the outcome of the proceedings and
296 the agency's primary interest is that the proceeding be fair,
297 speedy and cost effective.

298 (q) "Party to judicial review or civil enforcement

299 proceedings," or "party" in a context so indicating, means:

300 (i) A person who files a notice for judicial
301 review or a complaint for civil enforcement;

302 (ii) A person named as a party in a proceeding for
303 judicial review or civil enforcement or allowed to participate as
304 a party in the proceeding; or

305 (iii) The agency in a proceeding for judicial
306 review or civil enforcement.

307 (r) "Person" means an individual, partnership,
308 corporation, association, governmental subdivision or unit
309 thereof, or public or private organization or entity of any
310 character, and includes another agency.

311 (s) "Presiding officer" means a person designated as
312 the principal hearing officer in an adjudicative proceeding.

313 (t) "Provision of law" or "law" means the whole or a
314 part of the federal or state Constitution, or of any federal or
315 state (i) statute, (ii) case law or common law, (iii) rule of
316 court, (iv) executive order, or (v) rule or order of an
317 administrative agency.

318 (u) "Rule" means the whole or a part of an agency
319 regulation or other statement of general applicability that
320 implements, interprets, or prescribes:

321 (i) Law or policy, or

322 (ii) The organization, procedure or practice
323 requirements of an agency. The term includes the amendment,
324 repeal or suspension of an existing rule. "Rule" does not
325 include:

326 1. A regulation or statement concerning only
327 the internal management of an agency which does not directly and
328 substantially affect the procedural or substantive rights or
329 duties of any segment of the public;

330 2. A regulation or statement that establishes
331 criteria or guidelines to be used by the staff of an agency in
332 performing audits, investigations or inspections, settling

333 commercial disputes, negotiating commercial arrangements or in the
334 defense, prosecution or settlement of cases, if disclosure of the
335 criteria or guidelines would:

336 a. Enable law violators to avoid
337 detection;

338 b. Facilitate disregard of requirements
339 imposed by law; or

340 c. Give a clearly improper advantage to
341 persons who are in an adverse position to the state;

342 3. A regulation or statement that only
343 establishes specific prices to be charged for particular goods or
344 services sold by an agency;

345 4. A regulation or statement concerning only
346 the physical servicing, maintenance or care of agency owned or
347 operated facilities or property;

348 5. A regulation or statement relating only to
349 the use of a particular facility or property owned, operated or
350 maintained by the state or any of its subdivisions, if the
351 substance of the regulation or statement is adequately indicated
352 by means of signs or signals to persons who use the facility or
353 property;

354 6. A regulation or statement concerning only
355 inmates of a correctional or detention facility, students enrolled
356 in an educational institution or patients admitted to a hospital,
357 if adopted by that facility, institution or hospital;

358 7. A form whose contents or substantive
359 requirements are prescribed by rule or statute, and instructions
360 for the execution or use of the form;

361 8. An agency budget;

362 9. A compact or agreement between an agency
363 of this state and one or more agencies of another state or states;
364 or

365 10. An opinion of the Attorney General
366 pursuant to Section 7-5-25, an opinion of the Ethics Commission

367 pursuant to Section 25-4-17, or an executive order of the
368 Governor.

369 (v) "Rule making" means the process for formulation and
370 adoption of a rule.

371 SECTION 3. The following shall be codified as Section
372 25-43-1.103, Mississippi Code of 1972:

373 25-43-1.103. **Applicability and Relation to Other Law.**

374 (1) This chapter applies to all agencies and all proceedings
375 not expressly exempted under this chapter.

376 (2) This chapter creates only procedural rights and imposes
377 only procedural duties. They are in addition to those created and
378 imposed by other statutes.

379 (3) Specific statutory provisions which govern agency
380 proceedings and which are in conflict with any of the provisions
381 of this chapter shall continue to be applied to all proceedings of
382 any such agency to the extent of such conflict only.

383 (4) The provisions of this chapter shall not be construed to
384 amend, repeal or supersede the provisions of any other law; and,
385 to the extent that the provisions of any other law conflict or are
386 inconsistent with the provisions of this act, the provisions of
387 such other law shall govern and control.

388 (5) An agency may grant procedural rights to persons in
389 addition to those conferred by this chapter so long as rights
390 conferred upon other persons by any provision of law are not
391 substantially prejudiced.

392 SECTION 4. The following shall be codified as Section
393 25-43-1.104, Mississippi Code of 1972:

394 25-43-1.104. **Suspension of Chapter's Provisions When
395 Necessary to Avoid Loss of Federal Funds or Services.**

396 (1) To the extent necessary to avoid a denial of funds or
397 services from the United States which would otherwise be available
398 to the state, the Governor, by executive order, may suspend, in
399 whole or in part, one or more provisions of this chapter. The
400 Governor, by executive order, shall declare the termination of a

401 suspension as soon as it is no longer necessary to prevent the
402 loss of funds or services from the United States.

403 (2) If any provision of this chapter is suspended pursuant
404 to this section, the Governor shall promptly report the suspension
405 to the Legislature. The report may include recommendations
406 concerning desirable legislation that may be necessary to conform
407 this chapter to federal law, including the exemption, if
408 appropriate, of a particular program from the provisions of this
409 chapter.

410 SECTION 5. The following shall be codified as Section
411 25-43-1.105, Mississippi Code of 1972:

412 25-43-1.105. **Waiver of Rights.**

413 Except to the extent precluded by another provision of law, a
414 person may waive any right conferred upon that person by this
415 chapter, or by any rule made pursuant to this chapter.

416 SECTION 6. The following shall be codified as Section
417 25-43-1.106, Mississippi Code of 1972:

418 25-43-1.106. **Filings with Agency; Service; Computation of**
419 **Time.**

420 (1) (a) Whenever a presiding officer, a party or any person
421 is permitted or required to file with an agency any application,
422 pleading, motion or other document, filing must be made by
423 delivery of the document to the agency, by mailing it to the
424 agency, or by transmitting it to the agency by electronic means,
425 including, but not limited to, facsimile transfer or e-mail.
426 Filing by electronic means is complete when the electronic
427 equipment being used by the agency acknowledges receipt of the
428 material. If the equipment used by the agency does not
429 automatically acknowledge transmission, service is not complete
430 until the filing party obtains an acknowledgment from the agency.

431 Filing by mail is complete upon receipt by the agency.

432 (b) The agency may implement this section by agency
433 rule.

434 (2) (a) Whenever service is required by this article, and

435 whether the service is made by a party, an agency, or a presiding
436 officer, service of orders, notices, pleadings, motions, and other
437 documents upon a party shall be made by delivering a copy to the
438 party, by transmitting it to the party by electronic means,
439 including but not limited to facsimile transfer or e-mail, or by
440 mailing it to the party at the party's last known address.

441 Delivery of a copy means handing it to a party, leaving it at the
442 office of a party with a person in charge thereof, or leaving it
443 at the dwelling house or usual place of abode of the party with
444 some person of suitable age and discretion then residing therein.

445 Service by electronic means is complete when the electronic
446 equipment being used by the party being served acknowledges
447 receipt of the material. If the equipment used by the party being
448 served does not automatically acknowledge the transmission,
449 service is not complete until the sending party obtains an
450 acknowledgment from the recipient. Service by mail is complete
451 upon mailing.

452 (b) Whenever service is required or permitted to be
453 made upon a party who is represented by an attorney of record in
454 the proceedings, the service shall be made upon such attorney.

455 (c) Whenever an agency or presiding officer issues an
456 order or serves a notice or other document, the order or notice or
457 other document shall be dated and shall be deemed to have been
458 issued on the day it is served on the parties to the matter. If
459 the order or notice or other document is to be served by mail, it
460 shall be dated and shall be deemed to have been issued on the day
461 it is mailed.

462 (3) (a) In computing any period of time prescribed or
463 allowed by this article, by order of an agency, or by any
464 applicable statute or agency rule, the day of the act, event or
465 default from which the designated period of time begins to run
466 shall not be included. The last day of the period so computed
467 shall be included, unless it is a Saturday, a Sunday, or a legal
468 holiday, as defined by statute, or any other day when the agency's

469 office is in fact closed, whether with or without legal authority,
470 in which event the period runs until the end of the next day which
471 is not a Saturday, a Sunday, a legal holiday, or any other day
472 when the agency's office is closed. When the period of time
473 prescribed or allowed is less than seven (7) days, intermediate
474 Saturdays, Sundays, and legal holidays shall be excluded in the
475 computation. In the event any legal holiday falls on a Sunday,
476 the next following day shall be a legal holiday.

477 (b) Whenever a party has the right or is required to do
478 some act or take some proceedings within a prescribed period after
479 the service of a notice, order, pleading, motion or other paper
480 upon him and the notice or paper is served upon him by mail, three
481 (3) days shall be added to the prescribed period.

482 **ARTICLE II**

483 **PUBLIC ACCESS TO AGENCY LAW AND POLICY**

484 SECTION 7. The following shall be codified as Section
485 25-43-2.101, Mississippi Code of 1972:

486 **25-43-2.101. Publication, Compilation, Indexing and Public** 487 **Inspection of Rules.**

488 (1) Subject to the provisions of this chapter, the Secretary
489 of State shall prescribe a uniform numbering system, form, style
490 and transmitting format for all proposed and adopted rules caused
491 to be published by him and, with prior approval of each respective
492 agency involved, may edit rules for publication and codification
493 without changing the meaning or effect of any rule.

494 (2) The Secretary of State shall cause an administrative
495 bulletin to be published in a format and at such regular intervals
496 as the Secretary of State shall prescribe by rule. Upon proper
497 filing of proposed rules, the Secretary of State shall publish
498 them in the administrative bulletin as expeditiously as possible.

499 The administrative bulletin must contain:

500 (a) Notices of proposed rule adoption prepared so that
501 the text of the proposed rule shows the text of any existing rule
502 proposed to be changed and the change proposed;

503 (b) Any other notices and materials designated by law
504 for publication therein; and

505 (c) An index to its contents by subject.

506 (3) The Secretary of State shall cause an administrative
507 bulletin to be published in a format and at such regular intervals
508 as the Secretary of State shall prescribe by rule. Upon proper
509 filing of newly adopted rules, the Secretary of State shall
510 publish them as expeditiously as possible. The administrative
511 bulletin must contain:

512 (a) Newly filed adopted rules prepared so that the text
513 of the newly filed adopted rule shows the text of any existing
514 rule being changed and the change being made;

515 (b) Any other notices and materials designated by law
516 for publication therein; and

517 (c) An index to its contents by subject.

518 (4) The Secretary of State retains the authority to reject
519 proposed and newly adopted rules not properly filed in accordance
520 with the Secretary of State's rules prescribing the numbering
521 system, form, style or transmitting format for such filings. In
522 addition, a filing with the Secretary of State may be rejected if
523 it fails to comply with any of the provisions of Articles II and
524 III of this chapter. The Secretary of State shall notify the
525 agency of its rejection of a proposed or newly adopted rule as
526 expeditiously as possible and accompany such notification with a
527 stated reason for the rejection. A rejected filing of a proposed
528 or newly adopted rule does not constitute filing pursuant to
529 Section 25-43-3.101 et seq. of this chapter.

530 (5) (a) The Secretary of State shall cause an
531 administrative code to be compiled, indexed by subject and
532 published in a format prescribed by the Secretary of State by
533 rule. All of the effective rules of each agency must be published
534 and indexed in that publication. The Secretary of State shall
535 also cause supplements to the administrative code to be published
536 in a format and at such regular intervals as the Secretary of

537 State shall prescribe by rule.

538 (b) The Secretary of State is hereby authorized to
539 contract with a reputable and competent publishing company on such
540 terms and conditions and at such prices as he may deem proper to
541 digest, compile, annotate, index and publish the state agency
542 rules and regulations.

543 (6) (a) Copyrights of the Mississippi Administrative Code,
544 including, but not limited to, cross references, tables of cases,
545 notes of decisions, tables of contents, indices, source notes,
546 authority notes, numerical lists and codification guides, other
547 than the actual text of rules or regulations, shall be taken by
548 and in the name of the publishers of said compilation. Such
549 publishers shall thereafter promptly assign the same to the State
550 of Mississippi and said copyright shall be owned by the state.

551 (b) Any information appearing on the same leaf with the
552 text of any rule or regulation may be incidentally reproduced in
553 connection with the reproduction of such rule or regulation, if
554 such reproduction is for private use and not for resale.

555 (7) The Secretary of State may omit from the administrative
556 bulletin or code any proposed or filed adopted rule the
557 publication in hard copy of which would be unduly cumbersome,
558 expensive or otherwise inexpedient, if:

559 (a) Knowledge of the rule is likely to be important to
560 only a small class of persons;

561 (b) On application to the issuing agency, the proposed
562 or adopted rule in printed or processed form is made available at
563 no more than its cost of reproduction; and

564 (c) The administrative bulletin or code contains a
565 notice stating in detail the specific subject matter of the
566 omitted proposed or adopted rule and how a copy of the omitted
567 material may be obtained.

568 (8) The administrative bulletin and administrative code with
569 supplements must be furnished to designated officials without
570 charge and to all subscribers at a reasonable cost to be

571 determined by the Secretary of State. Each agency shall also make
572 available for public inspection and copying those portions of the
573 administrative bulletin and administrative code containing all
574 rules adopted or used by the agency in the discharge of its
575 functions, and the index to those rules.

576 SECTION 8. The following shall be codified as Section
577 25-43-2.102, Mississippi Code of 1972:

578 25-43-2.102. **Public Inspection and Indexing of Agency**
579 **Orders.**

580 (1) In addition to other requirements imposed by any
581 provision of law, and subject to any confidentiality provisions
582 established by law, each agency shall make all written final
583 orders available for public inspection and copying and index them
584 by name and subject.

585 (2) A written final order may not be relied on as precedent
586 by an agency to the detriment of any person until it has been made
587 available for public inspection and indexed in the manner
588 described in subsection (1) of this section. This provision is
589 inapplicable to any person who has actual, timely knowledge of the
590 order. The burden of proving that knowledge is on the agency.

591 SECTION 9. The following shall be codified as Section
592 25-43-2.103, Mississippi Code of 1972:

593 25-43-2.103. **Declaratory Opinions.**

594 (1) Any person with a substantial interest in the subject
595 matter may make a written request of an agency for a declaratory
596 opinion as to the applicability to specified circumstances of a
597 statute, rule or order within the primary jurisdiction of the
598 agency. An agency, through the agency head or its designee(s) by
599 rule, shall issue a declaratory opinion in response to a written
600 request for that opinion unless the agency determines that
601 issuance of the opinion under the circumstances would be contrary
602 to a rule adopted in accordance with subsection (2) of this
603 section.

604 (2) Each agency shall issue rules that provide for: (a) the

605 form, contents and filing of written requests for declaratory
606 opinions; (b) the procedural rights of persons in relation to the
607 written requests and (c) the disposition of the written requests.

608 Those rules must describe the classes of circumstances in which
609 the agency will not issue a declaratory opinion.

610 (3) Within forty-five (45) days after receipt of a written
611 request for a declaratory opinion an agency, in writing, shall:

612 (a) Issue an opinion declaring the applicability of the
613 statute, rule or order in question to the specified circumstances;

614 (b) Agree to issue a declaratory opinion by a specified
615 time but no later than ninety (90) days after receipt of the
616 written request; or

617 (c) Decline to issue a declaratory opinion, stating the
618 reasons for its action.

619 (4) A copy of all opinions issued in response to a written
620 request for a declaratory opinion must be mailed promptly to the
621 requesting party.

622 (5) (a) When any person receives a declaratory opinion from
623 an agency and shall have stated all the facts to govern such
624 opinion, there shall be no liability, civil or criminal, accruing
625 to or against any such person who, in good faith, follows the
626 direction of such opinion and acts in accordance therewith unless
627 a court of competent jurisdiction, after a full hearing, shall
628 judicially declare that such opinion is manifestly wrong and
629 without any substantial support. No declaratory opinion shall be
630 given or considered if the opinion is requested after suit is
631 filed or prosecution begun.

632 (b) The authority of persons to request and receive
633 agency declaratory opinions in no way affects the ability of any
634 person authorized by Section 7-5-25 to request a legal opinion
635 from the Attorney General.

636 (c) Each agency shall make all declaratory opinions
637 available for public inspection and copying and shall index them
638 by name and subject, unless information contained within such

639 opinions is confidential by statute or exempt from public
640 disclosure pursuant to another provision of law.

641 SECTION 10. The following shall be codified as Section
642 25-43-2.104, Mississippi Code of 1972:

643 25-43-2.104. **Required Rule Making.**

644 In addition to other rule-making requirements imposed by law,
645 each agency shall:

646 (a) Adopt as a rule a description of the organization
647 of the agency which states the general course and method of its
648 operations and where and how the public may obtain information or
649 make submissions or requests;

650 (b) Adopt rules of practice setting forth the nature
651 and requirements of all formal and informal proceedings available
652 to the public.

653 SECTION 11. The following shall be codified as Section
654 25-43-2.105, Mississippi Code of 1972:

655 25-43-2.105. **Model Rules of Procedure.**

656 In accordance with the rule-making requirements of this
657 chapter, the Secretary of State shall adopt model rules of
658 procedure appropriate for use by as many agencies as possible.
659 The model rules must deal with all general functions and duties
660 performed in common by several agencies. Each agency may adopt as
661 much of the model rules as is practicable under its circumstances.

662 To the extent an agency adopts the model rules, it shall do so in
663 accordance with the rule-making requirements of this chapter.

664 **ARTICLE III**

665 **RULE MAKING**

666 **ADOPTION AND EFFECTIVENESS OF RULES**

667 SECTION 12. The following shall be codified as Section
668 25-43-3.101, Mississippi Code of 1972:

669 25-43-3.101. **Advice on Possible Rules before Notice of
670 Proposed Rule Adoption.**

671 (1) In addition to seeking information by other methods, an
672 agency, before filing of a notice of proposed rule adoption under

673 Section 25-43-3.103, may solicit comments from the public on a
674 subject matter of possible rule making under active consideration
675 within the agency by causing notice to be filed with the Secretary
676 of State for publication in the administrative bulletin of the
677 subject matter and indicating where, when and how persons may
678 comment.

679 (2) Each agency may also appoint committees to comment,
680 before filing of a notice of proposed rule adoption under Section
681 25-43-3.103, on the subject matter of a possible rule making under
682 active consideration within the agency. The membership of those
683 committees must be filed with the Secretary of State for
684 publication in the administrative bulletin.

685 SECTION 13. The following shall be codified as Section
686 25-43-3.102, Mississippi Code of 1972:

687 25-43-3.102. **Public Rule-making Docket.**

688 (1) Each agency shall maintain a current, public rule-making
689 docket.

690 (2) The rule-making docket may, but need not, contain a
691 listing of the subject matter of possible rules currently under
692 active consideration within the agency for proposal under Section
693 25-43-3.103 and the name and address of agency personnel with whom
694 persons may communicate with respect to the matter.

695 (3) The rule-making docket must list each pending
696 rule-making proceeding. A rule-making proceeding is pending from
697 the time it is commenced, by proper filing with the Secretary of
698 State of a notice of proposed rule adoption, to the time it is
699 terminated by the filing with the Secretary of State of a notice
700 of termination or the rule becoming effective. For each pending
701 rule-making proceeding, the docket must indicate:

702 (a) The subject matter of the proposed rule;

703 (b) A citation to all published notices relating to the
704 proceeding;

705 (c) Where written submissions or written requests for a
706 opportunity to make oral presentations on the proposed rule may be

707 inspected;

708 (d) The time during which written submissions may be
709 made;

710 (e) If applicable, where and when oral presentations
711 may be made;

712 (f) Where any economic impact statement and written
713 requests for the issuance of and other information concerning an
714 economic impact statement of the proposed rule may be inspected;

715 (g) The current status of the proposed rule;

716 (h) The date of the rule's adoption; and

717 (i) When the rule will become effective.

718 SECTION 14. The following shall be codified as Section
719 25-43-3.103, Mississippi Code of 1972:

720 25-43-3.103. **Notice of Proposed Rule Adoption.**

721 (1) At least twenty-five (25) days before the adoption of a
722 rule an agency shall cause notice of its contemplated action to be
723 properly filed with the Secretary of State for publication in the
724 administrative bulletin. The notice of proposed rule adoption
725 must include:

726 (a) A short explanation of the purpose of the proposed
727 rule and the agency's reasons for proposing the rule;

728 (b) The specific legal authority authorizing the
729 proposed rule;

730 (c) A reference to all rules repealed, amended or
731 suspended by the proposed rule;

732 (d) Subject to Section 25-43-2.101(5), the text of the
733 proposed rule;

734 (e) Where, when and how persons may present their views
735 on the proposed rule; and

736 (f) Where, when and how persons may demand an oral
737 proceeding on the proposed rule if the notice does not already
738 provide for one.

739 (2) Within three (3) days after its proper filing with the
740 Secretary of State for publication in the administrative bulletin,

741 the agency shall cause a copy of the notice of proposed rule
742 adoption to be mailed to each person who has made a timely request
743 to the agency to be placed on the mailing list maintained by the
744 agency of persons who have requested notices of proposed rule
745 adoptions. An agency may charge persons a reasonable fee for such
746 service, which fee may be in excess of the actual cost of
747 providing persons with mailed copies.

748 SECTION 15. The following shall be codified as Section
749 25-43-3.104, Mississippi Code of 1972:

750 25-43-3.104. **Public Participation.**

751 (1) For at least twenty-five (25) days after proper filing
752 with the Secretary of State of the notice of proposed rule
753 adoption, an agency shall afford persons the opportunity to
754 submit, in writing, argument, data and views on the proposed rule.

755 (2) (a) An agency in its discretion may schedule an oral
756 proceeding on any proposed rule. However, an agency shall
757 schedule an oral proceeding on a proposed rule if, within twenty
758 (20) days after the proper filing of the notice of proposed rule
759 adoption, a written request for an oral proceeding is submitted by
760 a political subdivision, an agency, or twenty-five (25) persons.
761 At that proceeding, persons may present oral or written argument,
762 data, and views on the proposed rule.

763 (b) An oral proceeding on a proposed rule, if required,
764 may not be held earlier than twenty (20) days after notice of its
765 location and time is properly filed with the Secretary of State
766 for publication in the administrative bulletin. Within three (3)
767 days after its proper filing with the Secretary of State for
768 publication in the administrative bulletin, the agency shall cause
769 a copy of the notice of the location and time of the oral
770 proceeding to be mailed to each person who has made a timely
771 request to the agency to be placed on the mailing list maintained
772 by the agency of persons who have requested notices of proposed
773 rule adoptions.

774 (c) The agency, a member of the agency, or another

775 presiding officer designated by the agency shall preside at a
776 required oral proceeding on a proposed rule. Oral proceedings
777 must be open to the public and may be recorded by stenographic or
778 other means.

779 (d) An agency may issue rules for the conduct of oral
780 rule-making proceedings or prepare reasonable guidelines or
781 procedures for the conduct of any such proceedings. Those rules
782 may include, but not be limited to, provisions calculated to
783 prevent undue repetition in the oral proceedings.

784 SECTION 16. The following shall be codified as Section
785 25-43-3.105, Mississippi Code of 1972:

786 25-43-3.105. **Economic Impact Statement, Requirement and**
787 **Conditions.**

788 (1) Prior to giving the notice required in Section
789 25-43-3.103, each agency proposing the adoption of a rule or
790 significant amendment of an existing rule imposing a duty,
791 responsibility or requirement on any person shall consider the
792 economic impact the rule will have on the citizens of our state
793 and the benefits the rule will cause to accrue to those citizens.

794 For purposes of this section, a "significant amendment" means any
795 amendment to a rule for which the total aggregate cost to all
796 persons required to comply with that rule exceeds One Hundred
797 Thousand Dollars (\$100,000.00).

798 (2) Each agency shall prepare a written report providing an
799 economic impact statement for the adoption of a rule or
800 significant amendment to an existing rule imposing a duty,
801 responsibility or requirement on any person, except as provided in
802 subsection (7) of this section. The economic impact statement
803 shall include the following:

804 (a) A description of the need for and the benefits
805 which will likely accrue as the result of the proposed action;

806 (b) An estimate of the cost to the agency, and to any
807 other state or local government entities, of implementing and
808 enforcing the proposed action, including the estimated amount of

809 paperwork, and any anticipated effect on state or local revenues;

810 (c) An estimate of the cost or economic benefit to all
811 persons directly affected by the proposed action;

812 (d) An analysis of the impact of the proposed rule on
813 small business;

814 (e) A comparison of the costs and benefits of the
815 proposed rule to the probable costs and benefits of not adopting
816 the proposed rule or significantly amending an existing rule;

817 (f) A determination of whether less costly methods or
818 less intrusive methods exist for achieving the purpose of the
819 proposed rule where reasonable alternative methods exist which are
820 not precluded by law;

821 (g) A description of reasonable alternative methods,
822 where applicable, for achieving the purpose of the proposed action
823 which were considered by the agency and a statement of reasons for
824 rejecting those alternatives in favor of the proposed rule; and

825 (h) A detailed statement of the data and methodology
826 used in making estimates required by this subsection.

827 (3) No rule or regulation shall be declared invalid based on
828 a challenge to the economic impact statement for the rule unless
829 the issue is raised in the agency proceeding. No person shall
830 have standing to challenge a rule, based upon the economic impact
831 statement or lack thereof, unless that person provided the agency
832 with information sufficient to make the agency aware of specific
833 concerns regarding the statement in an oral proceeding or in
834 written comments regarding the rule. The grounds for invalidation
835 of an agency action, based upon the economic impact statement, are
836 limited to the agency's failure to adhere to the procedure for
837 preparation of the economic impact statement as provided in this
838 section, or the agency's failure to consider information submitted
839 to the agency regarding specific concerns about the statement, if
840 that failure substantially impairs the fairness of the rule-making
841 proceeding.

842 (4) A concise summary of the economic impact statement must

843 be properly filed with the Secretary of State for publication in
844 the administrative bulletin and the period during which persons
845 may make written submissions on the proposed rule shall not expire
846 until at least twenty (20) days after the date of such proper
847 filing.

848 (5) The properly filed summary of the economic impact
849 statement must also indicate where persons may obtain copies of
850 the full text of the economic impact statement and where, when,
851 and how persons may present their views on the proposed rule and
852 demand an oral proceeding on the proposed rule if one is not
853 already provided.

854 (6) If the agency has made a good faith effort to comply
855 with the requirements of subsections (1) and (2) of this section,
856 the rule may not be invalidated on the ground that the contents of
857 the economic impact statement are insufficient or inaccurate.

858 (7) This section does not apply to the adoption of:

859 (a) Any rule which is required by the federal
860 government pursuant to a state/federal program delegation
861 agreement or contract;

862 (b) Any rule which is expressly required by state law;
863 and

864 (c) A temporary rule adopted pursuant to Section
865 25-43-3.108.

866 SECTION 17. The following shall be codified as Section
867 25-43-3.106, Mississippi Code of 1972:

868 25-43-3.106. **Time and Manner of Rule Adoption.**

869 (1) An agency may not adopt a rule until the period for
870 making written submissions and oral presentations has expired.

871 (2) Following the proper filing with the Secretary of State
872 of the notice of proposed rule adoption, an agency shall adopt a
873 rule pursuant to the rule-making proceeding or terminate the
874 proceeding by proper filing with the Secretary of State of a
875 notice to that effect for publication in the administrative
876 bulletin.

877 (3) Before the adoption of a rule, an agency shall consider
878 the written submissions, oral submissions or any memorandum
879 summarizing oral submissions, and any economic impact statement,
880 provided for by this article.

881 (4) Within the scope of its delegated authority, an agency
882 may use its own experience, technical competence, specialized
883 knowledge and judgment in the adoption of a rule.

884 SECTION 18. The following shall be codified as Section
885 25-43-3.107, Mississippi Code of 1972:

886 25-43-3.107. **Variance between Adopted Rule and Published**
887 **Notice of Proposed Rule Adoption.**

888 (1) An agency shall not adopt a rule that differs from the
889 rule proposed in the notice of proposed rule adoption on which the
890 rule is based unless all of the following apply:

891 (a) The differences are within the scope of the matter
892 announced in the notice of proposed rule adoption and are in
893 character with the issues raised in that notice;

894 (b) The differences are a logical outgrowth of the
895 contents of that notice of proposed rule adoption and the comments
896 submitted in response thereto; and

897 (c) The notice of proposed rule adoption provided fair
898 warning that the outcome of that rule-making proceeding could be
899 the rule in question.

900 (2) In determining whether the notice of proposed rule
901 adoption provided fair warning that the outcome of that
902 rule-making proceeding could be the rule in question an agency
903 shall consider all of the following factors:

904 (a) The extent to which persons who will be affected by
905 the rule should have understood that the rule-making proceeding on
906 which it is based could affect their interests;

907 (b) The extent to which the subject matter of the rule
908 or issues determined by the rule are different from the subject
909 matter or issues contained in the notice of proposed rule
910 adoption; and

911 (c) The extent to which the effects of the rule differ
912 from the effects of the proposed rule contained in the notice of
913 proposed rule adoption.

914 SECTION 19. The following shall be codified as Section
915 25-43-3.108, Mississippi Code of 1972:

916 25-43-3.108. **Exemption from Public Rule-making Procedures**
917 **for Temporary Rules.**

918 (1) To the extent an agency for good cause finds that any
919 requirements of Sections 25-43-3.103 through 25-43-3.107 are
920 unnecessary, impracticable or contrary to the public interest in
921 the process of adopting a temporary rule, those requirements do
922 not apply. The agency shall incorporate the required finding and
923 a brief statement of its supporting reasons in each temporary rule
924 adopted in reliance on this subsection. The supporting reasons
925 for the issuance of a temporary rule in accordance with this
926 provision may include, but are not limited to, a serious and
927 unforeseen threat to the public health, safety or welfare; an
928 impending effective date of a recent act of the Legislature of the
929 State of Mississippi or the United States Congress that requires
930 the issuance of implementing or conforming rules or regulations;
931 an impending effective date of a regulation recently issued by an
932 agency or authority of the federal government of the United States
933 that requires the issuance of implementing or conforming rules or
934 regulations; or a court order or other controlling judicial
935 decision that requires the issuance of implementing or conforming
936 rules or regulations. Unless a shorter period of time is stated
937 in the temporary rule, a temporary rule shall expire no later than
938 one hundred eighty (180) days after adoption. A temporary rule
939 may not be renewed after its expiration or early termination by
940 the agency. However, an agency may adopt a rule which is
941 identical or similar to a temporary rule to become effective
942 following the expiration or early termination of the temporary
943 rule, provided that the rule is adopted in accordance with the
944 requirements of Sections 23-43-3.103 through 25-43-3.107.

945 (2) In an action contesting a temporary rule adopted under
946 subsection (1) of this section, the burden is upon the agency to
947 demonstrate that any omitted requirements of Sections 25-43-3.103
948 through 25-43-3.107 were impracticable, unnecessary or contrary to
949 the public interest in the particular circumstances involved.

950 SECTION 20. The following shall be codified as Section
951 25-43-3.109, Mississippi Code of 1972:

952 25-43-3.109. **Contents, Style, and Form of Rule.**

953 (1) Each rule adopted by an agency must contain the text of
954 the rule and:

955 (a) The date the agency adopted the rule;

956 (b) An indication of any change between the text of the
957 proposed rule contained in the published notice of proposed rule
958 adoption and the text of the rule as finally adopted, with the
959 reasons for any substantive change;

960 (c) Any changes to the information contained in the
961 notice of proposed rule adoption as required by subsections (a),
962 (b) or (c) of Section 25-43-3.103;

963 (d) Any findings required by any provision of law as a
964 prerequisite to adoption or effectiveness of the rule; and

965 (e) The effective date of the rule if other than that
966 specified in Section 25-43-3.113(1).

967 (2) To the extent feasible, each rule should be written in
968 clear and concise language understandable to persons who may be
969 affected by it.

970 (3) An agency may incorporate, by reference in its rules and
971 without publishing the incorporated matter in full, all or any
972 part of a code, standard, rule or regulation that has been adopted
973 by an agency of the United States or of this state, another state
974 or by a nationally recognized organization or association, if
975 incorporation of its text in agency rules would be unduly
976 cumbersome, expensive or otherwise inexpedient. The reference in
977 the agency rules must fully identify the incorporated matter with
978 an appropriate citation. An agency may incorporate by reference

979 such matter in its rules only if the agency, organization or
980 association originally issuing that matter makes copies of it
981 readily available to the public. The rules must state if copies
982 of the incorporated matter are available from the agency issuing
983 the rule or where copies of the incorporated matter are available
984 from the agency of the United States, this state, another state or
985 the organization or association originally issuing that matter.

986 (4) In preparing its rules pursuant to this article, each
987 agency shall follow the uniform numbering system, form and style
988 prescribed by the Secretary of State.

989 SECTION 21. The following shall be codified as Section
990 25-43-3.110, Mississippi Code of 1972:

991 25-43-3.110. **Agency Rule-making Record.**

992 (1) An agency shall maintain an official rule-making record
993 for each rule it (a) proposes, or (b) adopts. The agency has the
994 exclusive authority to prepare and exclusive authority to certify
995 the record or any part thereof, including, but not limited to, any
996 transcript of the proceedings, and the agency's certificate shall
997 be accepted by the court and by any other agency. The record must
998 be available for public inspection.

999 (2) The agency rule-making record must contain:

1000 (a) Copies of all notices of proposed rule making or
1001 oral proceedings or other publications in the administrative
1002 bulletin with respect to the rule or the proceeding upon which the
1003 rule is based;

1004 (b) Copies of any portions of the agency's public
1005 rule-making docket containing entries relating to the rule or the
1006 proceeding upon which the rule is based;

1007 (c) All written petitions, requests, submissions and
1008 comments received by the agency and all other written materials
1009 considered by the agency in connection with the formulation,
1010 proposal or adoption of the rule or the proceeding upon which the
1011 rule is based;

1012 (d) Any official transcript of oral presentations made

1013 in the proceeding upon which the rule is based or, if not
1014 transcribed, any tape recording or stenographic record of those
1015 presentations, and any memorandum prepared by a presiding official
1016 summarizing the contents of those presentations;

1017 (e) A copy of any economic impact statement prepared
1018 for the proceeding upon which the rule is based;

1019 (f) A copy of the rule and related information set out
1020 in Section 25-43-3.109 as filed in the Office of the Secretary of
1021 State; and

1022 (g) All petitions for exceptions to, amendments of, or
1023 repeal or suspension of, the rule.

1024 (3) The agency shall have authority to engage such persons
1025 and acquire such equipment as may be reasonably necessary to
1026 record and preserve in any technically and practicably feasible
1027 manner all matters and all proceedings had at any rule-making
1028 proceeding.

1029 (4) Upon judicial review, the record required by this
1030 section constitutes the official agency rule-making record with
1031 respect to a rule. Except as otherwise required by a provision of
1032 law, the agency rule-making record need not constitute the
1033 exclusive basis for agency action on that rule or for judicial
1034 review thereof.

1035 SECTION 22. The following shall be codified as Section
1036 25-43-3.111, Mississippi Code of 1972:

1037 25-43-3.111. **Invalidity of Rules Not Adopted According to**
1038 **Article; Time Limitation.**

1039 (1) A rule adopted after July 1, 2000, is invalid unless
1040 adopted in substantial compliance with the provisions of Sections
1041 25-43-3.102 through 25-43-3.110. Inadvertent failure to mail a
1042 notice of proposed rule adoption to any person as required by
1043 Section 24-43-3.103(2) does not invalidate a rule.

1044 (2) An action to contest the validity of a rule on the
1045 grounds of its noncompliance with any provision of Sections
1046 25-43-3.102 through 25-43-3.110 must be commenced within one (1)

1047 year after the effective date of the rule.

1048 SECTION 23. The following shall be codified as Section
1049 25-43-3.112, Mississippi Code of 1972:

1050 25-43-3.112. **Filing of Rules.**

1051 An agency shall file in the Office of the Secretary of State
1052 each rule it adopts and all rules existing on July 1, 2000, that
1053 have not previously been filed. The filing must be done as soon
1054 after adoption of the rule as is practicable. At the time of
1055 filing, each rule adopted after July 1, 2000, must have included
1056 in or attached to it the material set out in Section 25-43-3.109.

1057 The Secretary of State shall affix to each rule and statement a
1058 certification of the date of filing and keep a permanent register
1059 open to public inspection of all filed rules and attached
1060 material. In filing a rule, each agency shall use a standard
1061 format prescribed by the Secretary of State.

1062 SECTION 24. The following shall be codified as Section
1063 25-43-3.113, Mississippi Code of 1972:

1064 25-43-3.113. **Effective Date of Rules.**

1065 (1) Except to the extent subsection (2) or (3) of this
1066 section provides otherwise, each rule adopted after July 1, 2000,
1067 becomes effective thirty (30) days after its proper filing in the
1068 Office of the Secretary of State.

1069 (2) (a) A rule becomes effective on a date later than that
1070 established by subsection (1) of this section if a later date is
1071 required by another statute or specified in the rule.

1072 (b) A rule may become effective immediately upon its
1073 filing or on any subsequent date earlier than that established by
1074 subsection (1) of this section if the agency establishes such an
1075 effective date and finds that:

1076 (i) It is required by constitution, statute or
1077 court order;

1078 (ii) The rule only confers a benefit or removes a
1079 restriction on the public or some segment thereof;

1080 (iii) The rule only delays the effective date of

1081 another rule that is not yet effective; or

1082 (iv) The earlier effective date is necessary
1083 because of imminent peril to the public health, safety or welfare.

1084 (c) The finding and a brief statement of the reasons
1085 therefor required by paragraph (b) of this subsection must be made
1086 a part of the rule. In any action contesting the effective date
1087 of a rule made effective under paragraph (b) of this subsection,
1088 the burden is on the agency to justify its finding.

1089 (d) A temporary rule may become effective immediately
1090 upon its filing or on any subsequent date earlier than that
1091 established by subsection (1) of this section.

1092 (e) Each agency shall make a reasonable effort to make
1093 known to persons who may be affected by it a rule made effective
1094 before any date established by subsection (1) of this section.

1095 (3) This section does not relieve an agency from compliance
1096 with any provision of law requiring that some or all of its rules
1097 be approved by other designated officials or bodies before they
1098 become effective.

1099 SECTION 25. The following shall be codified as Section
1100 25-43-3.114, Mississippi Code of 1972:

1101 25-43-3.114. **Review by Agency.**

1102 At least every five (5) years, each agency shall review all
1103 of its rules to determine whether any rule should be repealed,
1104 amended or a new rule adopted.

1105 **ARTICLE IV**

1106 **ADJUDICATIVE PROCEEDINGS**

1107 **PART I**

1108 **AVAILABILITY OF ADJUDICATIVE PROCEEDINGS;**

1109 **APPLICATIONS; LICENSES**

1110 SECTION 26. The following shall be codified as Section
1111 25-43-4.101, Mississippi Code of 1972:

1112 25-43-4.101. **Adjudicative Proceedings - When Required;**
1113 **Exceptions.**

1114 (1) An agency shall conduct an adjudicative proceeding as

1115 the process for formulating and issuing an order, unless the order
1116 is a decision:

1117 (a) To issue or not to issue a complaint, demand,
1118 charge of violation or other obligation, summons, assessment or
1119 similar accusation subject to administrative review;

1120 (b) To initiate or not to initiate an investigation,
1121 prosecution, or other proceeding before the agency, another
1122 agency, or a court;

1123 (c) Under Section 25-43-4.103, not to conduct an
1124 adjudicative proceeding;

1125 (d) To issue notice of intent to take agency action;

1126 (e) To issue a license where by law the applicant is
1127 entitled to an adjudicative proceeding if the license is denied,
1128 or where after issuance of the license by law there is provided an
1129 opportunity for an adjudicative proceeding upon application of an
1130 interested person;

1131 (f) To take an agency action where after the agency
1132 action is taken by law there is provided an opportunity for the
1133 person affected for an adjudicative proceeding before the
1134 Mississippi Employee Appeals Board;

1135 (g) To issue an order granting the request of the
1136 agency staff which may take effect only upon authorization by the
1137 agency head;

1138 (h) To open or close a season for hunting or fishing,
1139 or to set limits for kill or catch;

1140 (i) To restrict access to levees protecting against
1141 rivers at flood stage;

1142 (j) Under Sections 93-11-155 et seq., to suspend a
1143 state-issued license;

1144 (k) To acquire, administer or dispose of interests in
1145 real or personal property, except where by another provision of
1146 law a party with standing may complain of agency action; or

1147 (l) To take action in a nonregulatory matter which is
1148 in the normal scope of business of the agency, including entering

1149 into contracts or agreements with any other state or federal
1150 agency, or with any private person, organization or group capable
1151 of contracting, if it finds such action to be in the public
1152 interest, except where by another provision of law a party with
1153 standing may complain of agency action; to accept gifts, trusts,
1154 bequests, grants, endowments or transfers of property of any kind;
1155 to receive monies coming to it by way of fees for services or by
1156 appropriations; to employ, qualified professional personnel, and
1157 such other technical and clerical staff as may be required for the
1158 operation of the agency.

1159 (2) This article does not apply to rule-making proceedings
1160 unless a statute other than contained in this chapter expressly so
1161 requires.

1162 (3) This article does not apply to a public hearing held by
1163 an agency where the principal purpose of such hearing is to invite
1164 the public to appear and receive information or provide comment on
1165 a proposed agency action.

1166 (4) This article provides minimum standards for adjudicative
1167 proceedings. Nothing in this article provides that an agency may
1168 not employ additional procedures as may be required or permitted
1169 by other law, including valid agency rules that the agency may
1170 make, so long as the rights conferred by this article are not
1171 prejudiced.

1172 (5) Except as provided otherwise in this chapter or another
1173 provision of law, an agency may conduct an adjudicative proceeding
1174 as the process for resolving any matter within the jurisdiction of
1175 the agency. If an agency commences an adjudicative proceeding in
1176 any matter, that proceeding shall be governed by this article
1177 unless the parties agree otherwise.

1178 SECTION 27. The following shall be codified as Section
1179 25-43-4.102, Mississippi Code of 1972:

1180 25-43-4.102. **Adjudicative Proceedings - Commencement.**

1181 (1) An agency may commence an adjudicative proceeding at any
1182 time with respect to a matter within the jurisdiction of the

1183 agency.

1184 (2) An agency shall commence an adjudicative proceeding upon
1185 the application of any person responding to a complaint, demand,
1186 denial of a benefit, notice of agency action affecting that
1187 person, charge of violation or other obligation, summons,
1188 assessment or similar accusation served on that person by the
1189 agency.

1190 (3) In addition to its obligations provided in paragraph
1191 (b), an agency shall commence an adjudicative proceeding upon the
1192 application of any person, unless:

1193 (a) The agency lacks jurisdiction of the subject
1194 matter;

1195 (b) Resolution of the matter requires the agency to
1196 exercise discretion within the scope of Section 25-43-4.101(1),
1197 subject to the provision of subsection (2) of this section;

1198 (c) The Constitution or a statute vests the agency with
1199 discretion to conduct or not to conduct an adjudicative proceeding
1200 before issuing an order to resolve the matter and, in the exercise
1201 of that discretion, the agency has determined not to conduct an
1202 adjudicative proceeding;

1203 (d) Resolution of the matter will not require the
1204 agency to issue an order that may adjudge the applicant's legal
1205 rights, duties, privileges, immunities, or other legal interests;

1206 (e) The applicant claims only (i) that he is a citizen,
1207 a voter, or a taxpayer, or (ii) that he has an interest that the
1208 law be enforced, and nothing more;

1209 (f) The matter was not timely submitted to the agency;
1210 or

1211 (g) The matter was not submitted in a form
1212 substantially complying with any applicable provision of law, and
1213 was not amended within a reasonable time so that it substantially
1214 complies with any applicable provision of law. Any timely
1215 amendment relates back to the date of the original application.

1216 (4) (a) An application for an agency to issue an order is

1217 deemed to include an application for the agency to conduct
1218 appropriate adjudicative proceedings, whether or not the applicant
1219 expressly requests those proceedings.

1220 (b) An application for an agency to conduct an
1221 adjudicative proceeding shall be deemed to include an application
1222 for the agency to issue an appropriate order, whether or not the
1223 applicant expressly requests the agency to issue an order.

1224 (5) An adjudicative proceeding commences when the agency:

1225 (a) Serves notice on a party that a prehearing
1226 conference, hearing, or other stage of an adjudicative proceeding
1227 will be conducted; or

1228 (b) Begins to take action on a matter that
1229 appropriately may be determined by an adjudicative proceeding,
1230 unless the action is:

1231 (i) An investigation for the purpose of
1232 determining whether an adjudicative proceeding should be
1233 conducted; or

1234 (ii) A decision which, under Section
1235 25-43-4.101(1), the agency may make without conducting an
1236 adjudicative proceeding.

1237 SECTION 28. The following shall be codified as Section
1238 25-43-4.103, Mississippi Code of 1972:

1239 25-43-4.103. **Decision Not to Conduct Adjudicative**
1240 **Proceeding.**

1241 If an agency decides not to conduct an adjudicative
1242 proceeding in response to an application, the agency shall serve
1243 on any applicant therefor a copy of its decision in writing, with
1244 a brief statement of the agency's reasons and of any
1245 administrative review available to the applicant.

1246 SECTION 29. The following shall be codified as Section
1247 25-43-4.104, Mississippi Code of 1972:

1248 25-43-4.104. **Agency Action on Applications.**

1249 (1) Except to the extent that the time limits in this
1250 subsection are inconsistent with limits established by another

1251 statute for any stage of a proceeding, an agency shall process an
1252 application for an order, as follows:

1253 (a) Within thirty (30) days after receipt of the
1254 application, the agency shall examine the application, notify the
1255 applicant of any apparent errors or omissions, request any
1256 additional information the agency wishes to obtain and is
1257 permitted by law to require, and notify the applicant of the name,
1258 official title, mailing address and telephone number of an agency
1259 member or employee who may be contacted regarding the status of
1260 the application or other procedural information relating to the
1261 matter.

1262 (b) Any timely response the applicant makes to a timely
1263 request made by the agency pursuant to paragraph (a) shall relate
1264 back to the date of the original application.

1265 (c) Except in situations governed by paragraph (d),
1266 within and no later than ninety (90) days after receipt of the
1267 application or of a response to a timely request made by the
1268 agency pursuant to paragraph (a), whichever is later, the agency
1269 shall:

1270 (i) Approve or deny the application, in whole or
1271 in part, on the basis of emergency or basic adjudicative
1272 proceedings, if those proceedings are available under this chapter
1273 for disposition of the matter;

1274 (ii) Commence a formal adjudicative hearing or an
1275 informal adjudicative hearing in accordance with this chapter; or

1276 (iii) Dispose of the application in accordance
1277 with Section 25-43-4.103.

1278 (d) If the application pertains to subject matter that
1279 is not available when the application is filed but may be
1280 available in the future, the agency may proceed to make a
1281 determination of eligibility within the time provided in paragraph
1282 (c) of this subsection. If the agency determines that the
1283 applicant is eligible, the agency shall maintain the application
1284 on the agency's list of eligible applicants as provided by law

1285 and, upon request, shall notify the applicant of the status of the
1286 application.

1287 (2) If a timely and sufficient application has been made for
1288 renewal of a license with reference to any activity of a
1289 continuing nature, and if at the time of the application, the
1290 license is held by applicant in good standing, the existing
1291 license does not expire until the agency has taken final action
1292 upon the application for renewal or, if the agency's action is
1293 unfavorable, until the last day for seeking judicial review of the
1294 agency's action or a later date fixed by the court.

1295 SECTION 30. The following shall be codified as Section
1296 25-43-4.105, Mississippi Code of 1972:

1297 25-43-4.105. **Agency Action Against Licensees.**

1298 An agency may not revoke, suspend, modify, annul, withdraw,
1299 or amend a license unless the agency first serves notice of the
1300 anticipated action on the licensee and affords a reasonable
1301 opportunity for an appropriate adjudicative proceeding in
1302 accordance with this chapter and any other applicable statute.
1303 This section does not preclude an agency from (1) taking immediate
1304 action to protect the public interest in accordance with Section
1305 25-43-4.601 or (2) adopting rules otherwise within the scope of
1306 its authority, pertaining to a class of licensees, including rules
1307 affecting the existing licenses of a class of licensees.

1308 SECTION 31. The following shall be codified as Section
1309 25-43-4.106, Mississippi Code of 1972:

1310 25-43-4.106. **Informal Settlements; Alternative Dispute
1311 Resolution; Waiver.**

1312 (1) Unless precluded by statute, parties are encouraged to
1313 consider settlement, including the entry of a consent order, in a
1314 matter that may lead to adjudicative proceedings according to the
1315 provisions of this article. Unless precluded by statute, agencies
1316 may make rules that may regulate and facilitate settlements of
1317 matters prior to the commencement of and in the course of
1318 adjudicative proceedings. This subsection shall not be construed

1319 to require any party to an adjudicative proceeding to utilize any
1320 such settlement procedures or to settle the matter.

1321 (2) Unless precluded by statute, parties are encouraged to
1322 consider alternative dispute resolution as a means that may
1323 resolve a matter that may lead to adjudicative proceedings.

1324 Unless precluded by statute, agencies may make rules that may
1325 regulate and facilitate alternative dispute resolution of matters
1326 prior to the commencement of or in the course of adjudicative
1327 proceedings. This subsection shall not be construed to require
1328 any party to utilize alternative dispute resolution.

1329 (3) Unless precluded by statute, the parties to an
1330 adjudicative proceeding may, by written instrument manifesting an
1331 informed consent and agreement, enter a consent order resolving
1332 all or part of an adjudicative proceeding.

1333 (4) Unless precluded by statute, the parties to an
1334 adjudicative proceeding may, by written stipulation manifesting an
1335 informed consent and agreement, waive any provision of this
1336 article relating to such proceeding.

1337 SECTION 32. The following shall be codified as Section
1338 25-43-4.110, Mississippi Code of 1972:

1339 25-43-4.110. **Party; Defined.**

1340 "Party to agency proceedings," or "party" in contexts so
1341 indicating, means:

1342 (a) A person to whom the agency action is specifically
1343 directed, a person named as a party to an agency proceeding or
1344 allowed to intervene or participate as a party in the proceeding;
1345 or

1346 (b) The agency, insofar as the staff of a department or
1347 division of the agency prosecutes, defends or acts as an advocate
1348 or otherwise pursues an interest, but not where the agency is
1349 essentially neutral regarding the outcome of the proceedings and
1350 the agency's primary interest is that the proceeding be fair,
1351 speedy and cost effective.

1352 **PART II**

1353 **FORMAL ADJUDICATIVE HEARING**

1354 SECTION 33. The following shall be codified as Section
1355 25-43-4.201, Mississippi Code of 1972:

1356 25-43-4.201. **Applicability.**

1357 An adjudicative proceeding is governed by this part, except
1358 as otherwise provided by:

1359 (a) A statute other than one contained in this chapter;

1360 (b) A rule lawfully made pursuant to such statute,
1361 where such rule is not inconsistent with the standards in this
1362 chapter or an applicable statute other than one contained in this
1363 chapter;

1364 (c) A rule that adopts the procedures for the informal
1365 adjudicative hearing or basic adjudicative proceeding in
1366 accordance with the standards provided in this chapter for those
1367 proceedings;

1368 (d) Section 25-43-4.601 pertaining to emergency
1369 adjudicative proceedings; or

1370 (e) Section 25-43-2.103 pertaining to proceedings for
1371 declaratory opinions.

1372 SECTION 34. The following shall be codified as Section
1373 25-43-4.202, Mississippi Code of 1972:

1374 25-43-4.202. **Presiding Officer - Disqualification;**
1375 **Substitution.**

1376 (1) "Presiding officer" means a person or persons acting in
1377 accordance with this section.

1378 (2) The agency head, one or more members of the agency head,
1379 one or more hearing officers or administrative judges employed or
1380 appointed by the agency, or one or more hearing officers assigned
1381 by the Division of Independent Hearing Officers in accordance with
1382 Section 25-43-4.301, or any combination thereof, in the discretion
1383 of the agency head, may be the presiding officer.

1384 (3) Ordinarily, the presiding officer should be, but is not
1385 required to be a person or persons assigned by the Division of
1386 Independent Hearing Officers,

1387 (a) Unless the agency head is the presiding officer, or
1388 (b) Unless the agency is essentially neutral regarding
1389 the outcome of the proceeding and the agency's primary interest is
1390 that the proceeding be fair, speedy and cost-effective;

1391 provided, however, that nothing in this article shall prohibit any
1392 agency from using hearing officers who may be employed or
1393 appointed by the agency. Hearing officers utilized by the agency
1394 who are not employed or otherwise engaged by the division shall
1395 have the same qualifications as those engaged by the division.

1396 (4) Any person serving or designated to serve alone or with
1397 others as presiding officer is subject to disqualification for
1398 bias, prejudice, interest, or any other cause provided in this
1399 chapter or for which a judge is or may be disqualified in a civil
1400 action.

1401 (5) Any party may move to disqualify a person promptly after
1402 receipt of notice indicating that the person will preside or
1403 promptly upon discovering facts establishing grounds for
1404 disqualification, whichever is later.

1405 (6) A person whose disqualification is requested shall
1406 determine whether to grant the motion, stating facts and reasons
1407 for the determination.

1408 (7) If a substitute is required for a person who is
1409 disqualified or becomes unavailable for any other reason, the
1410 substitute may be appointed as provided in subsections (2) and (3)
1411 of this section.

1412 (8) Any action taken by a duly-appointed substitute for a
1413 disqualified or unavailable person is as effective as if taken by
1414 the latter.

1415 SECTION 35. The following shall be codified as Section
1416 25-43-4.203, Mississippi Code of 1972:

1417 25-43-4.203. **Representation.**

1418 (1) Any party may participate in the hearing in person or,
1419 if the party is a corporation or other artificial person, by its
1420 duly authorized representative.

1421 (2) Whether or not participating in person, any party may be
1422 advised and represented at the party's own expense by a lawyer or,
1423 except as limited but not prohibited by agency rule, by any other
1424 representative. The agency may implement this subsection by rule
1425 designating the qualifications of representative(s) that may
1426 appear on behalf of a party and what binding effect the actions of
1427 the representative(s) will have on the party so represented.

1428 (3) Any application, pleading, or other document prepared by
1429 a lawyer or other representative of a party shall contain the
1430 typed or printed name, mailing address (including fax number and
1431 e-mail address, if available), and telephone number of the
1432 preparer.

1433 SECTION 36. The following shall be codified as Section
1434 25-43-4.204, Mississippi Code of 1972:

1435 25-43-4.204. **Prehearing Conference - Availability; Notice.**

1436 (1) Any party may request a prehearing conference. In
1437 response to a request by a party, or on the presiding officer's
1438 own motion, the presiding officer may determine, subject to any
1439 applicable agency rules, that a prehearing conference will be
1440 conducted.

1441 (2) If the prehearing conference is to be conducted:

1442 (a) The presiding officer shall promptly notify the
1443 agency that a prehearing conference will be conducted. The
1444 presiding officer shall conduct the prehearing conference except
1445 as provided by agency rule or unless that presiding officer is
1446 disqualified or becomes unavailable for any other reason.

1447 (b) The presiding officer shall set the time and place
1448 of the prehearing conference, subject to any applicable agency
1449 rules, and direct the agency to serve notice of the prehearing
1450 conference to all parties and to all persons who have motions to
1451 intervene pending in the matter. The agency shall also serve
1452 notice to other persons entitled to notice under any provision of
1453 law or agency rule.

1454 (c) The notice must include:

1455 (i) The official agency file or other reference
1456 number and the style of the proceeding;

1457 (ii) A statement of the time, place, and nature of
1458 the prehearing conference;

1459 (iii) A statement of the legal authority and
1460 jurisdiction under which the hearing is to be held;

1461 (iv) The name, official title, and mailing address
1462 of the presiding officer for the prehearing conference;

1463 (v) The name, official title, and mailing address
1464 (including fax number and e-mail address, if available) of any
1465 counsel or employee who has been designated to appear for the
1466 agency;

1467 (vi) The names and mailing addresses of all
1468 parties and other persons to whom notice is being given;

1469 (vii) The name, official title, mailing address
1470 (including fax number and e-mail address, if available), and
1471 telephone number of the agency employee or other person who may be
1472 able to answer procedural questions about the prehearing
1473 conference;

1474 (viii) A statement that at the prehearing
1475 conference the proceeding, without further notice, may be
1476 converted into an informal adjudicative hearing or basic
1477 adjudicative proceeding for disposition of the matter as provided
1478 by this chapter; and

1479 (ix) A statement with an explanation of its
1480 consequences that a party who fails to attend or participate in a
1481 prehearing conference, hearing, or other stage of an adjudicative
1482 proceeding may be held in default under this chapter.

1483 (d) The notice may include any other matters that the
1484 presiding officer considers desirable to expedite the proceedings,
1485 subject to any applicable provision of law including agency rules.

1486 SECTION 37. The following shall be codified as Section
1487 25-43-4.205, Mississippi Code of 1972:

1488 25-43-4.205. **Prehearing Conference - Procedure; Prehearing**

1489 **Order.**

1490 (1) The presiding officer may conduct all or part of the
1491 prehearing conference by telephone, television, or other
1492 electronic means if each participant in the prehearing conference
1493 has an opportunity to participate in, to hear, and, if technically
1494 and practicably feasible, to see the entire proceeding while it is
1495 taking place.

1496 (2) Any matters respecting the fair, speedy and
1497 cost-effective determination of the issues may be considered at
1498 the prehearing conference, including without limitation such
1499 matters as:

1500 (a) Conversion of the proceeding to another type,

1501 (b) Use of alternative dispute resolution,

1502 (c) Whether there are other persons to be joined if
1503 feasible,

1504 (d) Any motions, petitions or other applications,

1505 (e) Exploration of settlement possibilities,

1506 (f) Preparation of stipulations,

1507 (g) Clarification of issues,

1508 (h) Identity and limitation of the number of witnesses,

1509 (i) Identity and authenticity of exhibits,

1510 (j) Objections to proffers of evidence,

1511 (k) Determination of the extent to which direct
1512 evidence, rebuttal evidence, or cross-examination will be
1513 presented in written form,

1514 (l) Determination of the extent to which telephone,
1515 television, or other electronic means may be used to conduct the
1516 hearing as a substitute for proceedings in person,

1517 (m) Order of presentation of evidence and
1518 cross-examination,

1519 (n) Rulings regarding issuance of subpoenas,

1520 (o) Matters regarding discovery, the adequacy of
1521 responses to discovery, orders compelling discovery, or protective
1522 orders as may be appropriate, and

1523 (p) Such other matters as may aid in the conduct of the
1524 proceeding or the disposition of the matter.

1525 (3) If a prehearing conference is held, the presiding
1526 officer shall issue a prehearing order incorporating and
1527 memorializing the matters determined at the prehearing conference.

1528 The presiding officer may require that the agency and the parties
1529 assist in preparing the prehearing order.

1530 (4) If a prehearing conference is not held, the presiding
1531 officer may issue a prehearing order, based on the pleadings, to
1532 regulate the conduct of the proceedings.

1533 (5) Whether a prehearing conference is held or not, the
1534 presiding officer, subject to any applicable agency rules, may
1535 require the parties, jointly or severally, to prepare a prehearing
1536 statement or order addressing such matters as set out in
1537 subsection (2) of this section. Any prehearing statement shall be
1538 included within "prehearing order" for purposes of this article.

1539 SECTION 38. The following shall be codified as Section
1540 25-43-4.206, Mississippi Code of 1972:

1541 25-43-4.206. **Notice of Hearing.**

1542 (1) The presiding officer for the hearing shall set the time
1543 and place of the hearing, subject to any applicable agency rules,
1544 and direct the agency to serve notice of the hearing on all
1545 parties, all persons who have written motions to intervene pending
1546 in the matter, and any other person entitled to notice under any
1547 provision of law.

1548 (2) The notice may include a copy of any prehearing order
1549 issued in the matter.

1550 (3) To the extent not included in a prehearing order
1551 accompanying it, the notice must include:

1552 (a) The official agency file or other reference number
1553 and the style of the proceeding;

1554 (b) A statement of the time, place, and nature of the
1555 hearing;

1556 (c) A statement of the legal authority and jurisdiction

1557 under which the hearing is to be held;

1558 (d) The name, official title, and mailing address of
1559 the presiding officer;

1560 (e) The name, official title, mailing address
1561 (including fax number and e-mail address, if available) and
1562 telephone number of any counsel or employee who has been
1563 designated to appear for the agency;

1564 (f) The names and mailing addresses of all parties and
1565 other persons to whom notice is being given;

1566 (g) The name, official title, mailing address
1567 (including fax number and e-mail address, if available) and
1568 telephone number of the agency employee(s) or other person who may
1569 be able to answer procedural questions about the hearing;

1570 (h) A statement with an explanation of its consequences
1571 that a party who fails to attend or participate in a prehearing
1572 conference, hearing, or other stage of an adjudicative proceeding
1573 may be held in default.

1574 (4) The notice may include any other matters the agency or
1575 presiding officer considers appropriate to expedite and facilitate
1576 the proceedings.

1577 SECTION 39. The following shall be codified as Section
1578 25-43-4.207, Mississippi Code of 1972:

1579 25-43-4.207. **Pleadings; Briefs; Motions.**

1580 (1) The presiding officer, at all stages of the proceedings,
1581 and subject to any applicable provision of law, including agency
1582 rules, shall give all parties fair opportunity to file pleadings,
1583 and amendments thereto, motions, responses, objections, and other
1584 statements of position as may be required by agency rule. A
1585 timely amendment to a pleading relates back to the date of the
1586 original pleading.

1587 (2) The presiding officer, at appropriate stages of the
1588 proceedings, and subject to any applicable provision of law,
1589 including agency rules, may give all parties fair opportunity to
1590 file briefs, proposed findings of fact and conclusions of law, and

1591 proposed initial or final orders.

1592 (3) A party shall serve copies of any pleading, motion,
1593 brief or other paper that the party files in the proceeding on all
1594 other parties by any means provided in this chapter and, in
1595 addition, by any means provided by agency rule.

1596 SECTION 40. The following shall be codified as Section
1597 25-43-4.208, Mississippi Code of 1972:

1598 25-43-4.208. **Default.**

1599 (1) If a party fails to attend or participate in a duly
1600 noticed prehearing conference, hearing, or other stage of a formal
1601 adjudicative proceeding, the presiding officer may serve upon all
1602 parties written notice of a proposed default order, including a
1603 statement of the grounds, or, if the presiding officer so directs,
1604 the agency must serve such proposed default order.

1605 (2) Within ten (10) days after service of a proposed default
1606 order, the party against whom it is proposed to be issued may
1607 object in writing to the issuance of the proposed default order
1608 and state the grounds of the objection. During the time within
1609 which a party may file a written objection under this subsection,
1610 the presiding officer may adjourn the proceedings or conduct them
1611 without the participation of the party against whom a proposed
1612 default order may be issued, having due regard for the interests
1613 of justice and fairness and the orderly and prompt conduct of the
1614 proceedings.

1615 (3) The presiding officer shall either issue or deny the
1616 default order promptly after expiration of the time within which
1617 the party may object under subsection (2) of this section.

1618 (4) After issuing a default order, the presiding officer
1619 shall conduct any further proceedings necessary to complete the
1620 proceeding without the participation of the party in default and
1621 shall determine all issues in the proceeding, including those
1622 affecting the defaulting party. The presiding officer may allow
1623 the defaulting party to participate in the proceeding subject to
1624 the terms and conditions of the default order.

1625 SECTION 41. The following shall be codified as Section
1626 25-43-4.209, Mississippi Code of 1972:

1627 25-43-4.209. **Intervention - Persons Needed for Full and Fair**
1628 **Determination.**

1629 (1) Subject to any applicable provision of law or agency
1630 rule, the presiding officer shall grant a motion to intervene in
1631 an adjudicative proceeding if:

1632 (a) The motion is filed with the agency, with copies
1633 served on all parties named in the official notice of the hearing,
1634 at least ten (10) days before the hearing, or, for good cause and
1635 having due regard for the interests of the agency and the parties,
1636 less than ten (10) days before the hearing; and

1637 (i) The motion states facts demonstrating that the
1638 movant's legal rights, duties, privileges, immunities, or other
1639 legal interests may be affected by the outcome of the proceeding
1640 or that the movant qualifies as an intervener under any provision
1641 of law; or

1642 (ii) The movant's asserted interests are among
1643 those the agency is required to consider in the proceeding; and

1644 (iii) The presiding officer determines that the
1645 interests of justice and the orderly and prompt conduct of the
1646 proceeding will not be impaired by allowing the intervention.

1647 (2) Upon filing a motion to intervene, the would be
1648 intervener becomes a person who, pending ruling on the motion,
1649 should receive all notices provided thereafter to parties and all
1650 papers parties may thereafter file and serve.

1651 (3) The fact that a person moving to intervene in a
1652 proceeding claims (1) that he is a citizen, a voter or a taxpayer
1653 or (2) that he has an interest that the law be enforced is,
1654 without more, insufficient grounds upon which the presiding
1655 officer may grant a motion to intervene.

1656 (4) The presiding officer may grant a motion to intervene at
1657 any time, upon determining that the intervention sought is in the
1658 interests of justice and fairness and will not impair the orderly

1659 and prompt conduct of the proceedings.

1660 (5) An association of persons, some of whose members are
1661 eligible for intervention, may be allowed to intervene upon the
1662 same showing and subject to the same conditions as its members who
1663 may be eligible to intervene.

1664 (6) If a movant qualifies for intervention, the presiding
1665 officer may impose conditions upon the intervener's participation
1666 in the proceedings, subject to any applicable provision of law,
1667 including agency rules, either at the time that intervention is
1668 granted or at any subsequent time. Conditions may include:

1669 (a) Limiting the intervener's participation to
1670 designated issues in which the intervener has a particular
1671 interest;

1672 (b) Limiting the intervener's use of discovery,
1673 subpoenas, cross-examination, and other procedures so as to
1674 promote the orderly and prompt conduct of the proceedings; and

1675 (c) Requiring two (2) or more interveners to combine
1676 their presentations of evidence and argument, cross-examination,
1677 discovery, and other participation in the proceedings.

1678 (7) The presiding officer shall issue an order granting or
1679 denying each pending motion to intervene, specifying any
1680 conditions, and briefly stating the reasons for the order. The
1681 presiding officer may modify the order at any time, briefly
1682 stating the reasons for the order.

1683 (8) A person who is subject to the jurisdiction of the
1684 agency shall be joined as a party in the proceeding if:

1685 (a) In the person's absence complete relief cannot be
1686 accorded among those already parties, or

1687 (b) The person claims an interest relating to the
1688 subject of the proceeding and is so situated that the disposition
1689 of the proceeding in the person's absence may (i) as a practical
1690 matter impair or impede the person's ability to protect that
1691 interest or (ii) leave any of the parties subject to a substantial
1692 risk of incurring double, multiple, or otherwise inconsistent

1693 obligations by reason of the person's claimed interest. If the
1694 person has not been so joined, the presiding officer may order
1695 that the person be made a party and summoned to appear.

1696 (9) After entry of an order allowing intervention or for
1697 joinder, the intervener or the person being joined shall be a
1698 party, subject to any conditions provided under the authority of
1699 subsection (6) of this section.

1700 SECTION 42. The following shall be codified as Section
1701 25-43-4.210, Mississippi Code of 1972:

1702 25-43-4.210. **Subpoenas; Discovery Orders; Protective Orders.**

1703 (1) Prehearing discovery is authorized in formal
1704 adjudicative proceedings under this part. The presiding officer,
1705 at the request of any party or upon the presiding officer's own
1706 motion, and subject to any applicable provision of law, including
1707 agency rules, may but is not required to allow discovery and issue
1708 protective orders, compel discovery, or grant sanctions in
1709 accordance with the Mississippi Rules of Civil Procedure as if the
1710 proceeding were a civil action governed by the Mississippi Rules
1711 of Civil Procedure.

1712 (2) Each agency is authorized to issue subpoenas. The
1713 subpoena power of each agency extends throughout the entire State
1714 of Mississippi. The presiding officer, at the request of any
1715 party shall, or upon the presiding officer's own motion may,
1716 direct the agency to issue subpoenas. Every subpoena shall be
1717 issued by the agency, shall state the name and address of the
1718 agency, the official agency file or other reference number, and
1719 the style of the proceeding, and shall command each person to whom
1720 it is directed to attend and give testimony, or to produce and
1721 permit inspection, testing and copying of designated books,
1722 documents or tangible things in the possession, custody or control
1723 of that person, or to which that person has reasonable access, or
1724 to permit inspection or testing of premises, at a time that may be
1725 before or at a hearing and at a place therein specified. Pursuant
1726 to agency rule, the subpoena may be issued by the person

1727 designated by agency rule to issue subpoenas on behalf of the
1728 agency or by the presiding officer, but otherwise in blank, to a
1729 party requesting it, who shall fill it in before service. A
1730 command to produce evidence or to permit inspection may be joined
1731 with a command to appear at hearing or at deposition, or may be
1732 issued separately.

1733 (3) Subpoenas and other orders issued under this section may
1734 be enforced pursuant to the provisions of this chapter on civil
1735 enforcement of agency action. A subpoena shall be treated as an
1736 order for purposes of civil enforcement subpoenas.

1737 (4) Witnesses subpoenaed to appear in agency proceedings
1738 shall receive at least the same fees and mileage as witnesses in
1739 civil actions in courts of record.

1740 (5) A subpoena may be served by a sheriff, or by sheriff's
1741 deputy, or by a representative of the agency, or by any other
1742 person who is not less than eighteen (18) years of age, and his or
1743 her return endorsed thereon shall be prima facie proof of service,
1744 or the person served may acknowledge service in writing on the
1745 subpoena. Service of the subpoena shall be executed upon the
1746 witness personally. Proof of service shall be made by filing with
1747 the agency from which the subpoena was issued a statement,
1748 certified by the person who made the service, setting forth the
1749 date and manner of service, the address, including the city and
1750 county in which it was served, and the names of the person or
1751 persons served.

1752 (6) The agency may adopt rules that implement and elaborate
1753 this section.

1754 SECTION 43. The following shall be codified as Section
1755 25-43-4.211, Mississippi Code of 1972:

1756 25-43-4.211. **Agency Records; Staff Recommendations;**
1757 **Proceedings.**

1758 (1) An agency that relies on a witness in an adjudicative
1759 proceeding, whether or not an agency employee, who has made prior
1760 statements or reports with respect to the subject matter of the

1761 witness' testimony, shall, on request, promptly make such
1762 statements or reports available to parties, unless those
1763 statements or reports are otherwise expressly protected from
1764 disclosure by another provision of law. Identifiable agency
1765 records that are relevant to disputed material facts involved in
1766 an adjudicative proceeding, shall, upon request, promptly be made
1767 available to a party unless the requested records are expressly
1768 protected from disclosure by another provision of law. The
1769 provisions of this subsection are independent of and in addition
1770 to any provisions of the Mississippi Public Records Act.

1771 (2) Not less than ten (10) days before a hearing under this
1772 part, the agency staff shall serve upon all parties any
1773 recommendation the staff will make at the hearing, including the
1774 substance of the facts and circumstances supporting the
1775 recommendation, and identification of all persons who have
1776 provided facts or opinions upon which the staff recommendation is
1777 based, and a summary of the grounds for each such opinion. The
1778 agency staff shall serve upon all parties all other materials it
1779 provides to the presiding officer.

1780 (3) In the discretion of and within such time frames as he
1781 may deem appropriate, the presiding officer may allow discovery
1782 with respect to the staff recommendation and other materials the
1783 staff provides to the presiding officer.

1784 (4) The agency may adopt rules that implement and elaborate
1785 this section.

1786 SECTION 44. The following shall be codified as Section
1787 25-43-4.212, Mississippi Code of 1972:

1788 25-43-4.212. **Procedure at Hearing.**

1789 At a hearing:

1790 (a) The presiding officer shall regulate the course of
1791 the proceedings in conformity with any prehearing order and
1792 subject to any applicable provision of law, including agency rule.

1793 The presiding officer may expedite the proceedings, grant
1794 continuances, recess or bifurcate hearings, and shall exercise

1795 reasonable control over the mode and order of questioning
1796 witnesses and presenting evidence so as to (a) make the
1797 questioning and presentation effective for the ascertainment of
1798 the facts, (b) avoid needless consumption of time, (c) protect
1799 privacy rights, trade secrets, and other similar interests created
1800 by another provision of law and (d) protect witnesses from
1801 harassment or undue embarrassment.

1802 (b) To the extent necessary for full disclosure of all
1803 relevant facts and issues, the presiding officer shall afford to
1804 all parties the opportunity to respond, present evidence and
1805 argument, conduct cross-examination, and submit rebuttal evidence,
1806 except as restricted by a limited grant of intervention, by agency
1807 rule, or by a prehearing order.

1808 (c) The presiding officer may give nonparties an
1809 opportunity to present oral or written statements. If the
1810 presiding officer proposes to consider a statement by a nonparty,
1811 the presiding officer shall give all parties an opportunity to
1812 challenge or rebut it and, on motion of any party, the presiding
1813 officer shall require the statement to be given under oath or
1814 affirmation.

1815 (d) The presiding officer may conduct all or part of
1816 the hearing by telephone, television, or other electronic means,
1817 if each participant in the hearing has an opportunity to
1818 participate in, to hear, and, if technically and practicably
1819 feasible, to see the entire proceeding while it is taking place.

1820 (e) The presiding officer shall cause all proceedings
1821 at the hearing to be recorded and preserved, stenographically,
1822 mechanically or electronically, by any means technically and
1823 practicably feasible, and at the agency's expense. The agency is
1824 not required, at its expense, to prepare a transcript, unless
1825 required to do so by a provision of law. Upon written request,
1826 the agency shall make available to any party to the proceeding,
1827 for a reasonable cost of reproduction, a copy of any electronic
1828 recording of the proceeding. Any party, at the party's expense,

1829 may cause a qualified reporter to prepare a transcript from the
1830 agency's record or to appear at the hearing to record the
1831 proceedings stenographically, or cause additional electronic
1832 recordings to be made during the hearing if the making of the
1833 additional recordings does not cause undue distraction or
1834 disruption.

1835 (f) The hearing is open to public observation, except
1836 for the parts that the presiding officer rules should be closed
1837 pursuant to a provision of law authorizing closure, imposing
1838 confidentiality requirements or protecting privacy rights. To the
1839 extent that a hearing is conducted by telephone, television, or
1840 other electronic means, and is not closed, the availability of
1841 public observation is satisfied by giving members of the public an
1842 opportunity, at reasonable times, to hear or inspect the agency's
1843 record, and to inspect any transcript obtained by the agency.
1844 Members of the public, including the news media, may record,
1845 photograph, broadcast, videotape or telecast all or any part of
1846 the hearing that is otherwise open to the public. The presiding
1847 officer has full authority to provide such restrictions as will
1848 avoid disruption or interference with the orderly conduct of the
1849 hearing or with any other person's participation in or observance
1850 of the hearing.

1851 SECTION 45. The following shall be codified as Section
1852 25-43-4.213, Mississippi Code of 1972:

1853 25-43-4.213. **Evidence; Official Notice.**

1854 (1) Within his discretion the presiding officer may receive
1855 and consider such evidence as reasonably prudent persons are
1856 accustomed to relying on in the conduct of their serious affairs
1857 even if such evidence would not be admissible in the trial of a
1858 civil action. To this end, the presiding officer may consider the
1859 Mississippi Rules of Evidence for guidance but should relax the
1860 formal provisions and requisites of those rules, except rules
1861 providing evidentiary privileges. The presiding officer shall
1862 respect and enforce any provision of law providing privileges,

1863 including the deliberative process privilege, imposing
1864 confidentiality requirements or protecting privacy rights, trade
1865 secrets, and other similar interests, and may enter protective
1866 orders to those ends, except that the person for whose benefit any
1867 such provision of law has been made may waive that protection.
1868 Any party waives any privacy right and any other privilege, with
1869 the exception of the lawyer-client privilege as defined in the
1870 Mississippi Rules of Evidence and the deliberative process
1871 privilege, with respect to evidence relevant to any issue, claim
1872 or defense the party asserts or puts in issue in the proceeding.
1873 The presiding officer may enter an appropriate protective order to
1874 prevent use or disclosure of such evidence outside the context of
1875 the adjudicative proceeding or judicial review thereof.

1876 (2) Upon proper objection, and in the absence of waiver, the
1877 presiding officer shall exclude evidence that is irrelevant,
1878 immaterial, unduly repetitious, or excludable on constitutional or
1879 statutory grounds or on the basis of any evidentiary privilege
1880 recognized in the courts of this state, or any other provision of
1881 law imposing confidentiality requirements or protecting privacy
1882 rights. In the absence of proper objection, the presiding officer
1883 may exclude objectionable evidence sua sponte. Evidence may not
1884 be excluded solely because it is hearsay. If evidence is excluded
1885 by the hearing officer, the party offering the evidence may make
1886 an offer of proof for the record.

1887 (3) All testimony of parties and witnesses must be made
1888 under oath or affirmation.

1889 (4) Statements presented by nonparties in accordance with
1890 Section 25-43-4.212(c) may be received as evidence.

1891 (5) Subject to any applicable provision of law, including
1892 agency rule, any part of the testimony or other evidence may be
1893 received in written form, including prefiled direct testimony of
1894 witnesses who will appear at the hearing, if doing so will
1895 expedite the hearing without substantial prejudice to the
1896 interests of any party, subject to any applicable agency rule.

1897 (6) Documentary evidence may be received in the form of a
1898 copy or excerpt. Upon request, parties must be given an
1899 opportunity to compare the copy with the original if available.

1900 (7) Official notice may be taken of (1) any fact that could
1901 be judicially noticed in the courts of this state, (2) the record
1902 of other proceedings before the agency, (3) technical or
1903 scientific matters within the agency's specialized knowledge, and
1904 (4) codes or standards that have been adopted by an agency of the
1905 United States, of this state or of another state, or by a
1906 nationally recognized organization or association. Parties must
1907 be notified before or during the hearing, or before the issuance
1908 of any initial or final order that is based in whole or in part on
1909 facts or material noticed, of the specific facts or material
1910 noticed and the source thereof, including any staff memoranda and
1911 data, and be afforded an opportunity to contest and rebut the
1912 facts or material so noticed.

1913 (8) The presiding officer should consider the agency's
1914 expertise, technical competence, and specialized knowledge in the
1915 evaluation of the evidence.

1916 SECTION 46. The following shall be codified as Section
1917 25-43-4.214, Mississippi Code of 1972:

1918 25-43-4.214. **Ex parte Communications.**

1919 (1) Except as provided in subsection (2) or (3) of this
1920 section or unless required for the disposition of ex parte matters
1921 specifically authorized by statute, a presiding officer serving in
1922 an adjudicative proceeding, and any person or persons with
1923 authority to determine the outcome of such proceeding, or the
1924 agency head that may eventually review the matter on behalf of the
1925 agency, may not communicate, directly or indirectly, regarding any
1926 issue in the proceeding, while the proceeding is pending at either
1927 the adjudicative level or agency review level, with any party,
1928 with any representative of a party, with any person who has a
1929 direct or indirect interest in the outcome of the proceeding, or
1930 with any person who presided at a previous stage of the

1931 proceeding, without notice and opportunity for all parties to
1932 participate in the communication.

1933 (2) A presiding officer or any other person within
1934 subsection (1) may communicate with a party or representative
1935 regarding scheduling of hearings or other routine ministerial
1936 details not bearing on the issues in the proceeding.

1937 (3) A member of a multi-member panel of presiding officers
1938 may communicate with other members of the panel regarding a matter
1939 pending before the panel, and any presiding officer may receive
1940 aid from staff assistants if the assistants do not (1) receive ex
1941 parte communications of a type that the presiding officer would be
1942 prohibited from receiving or (2) furnish, augment, diminish, or
1943 modify the evidence in the record.

1944 (4) Unless required for the disposition of ex parte matters
1945 specifically authorized by statute, no party to an adjudicative
1946 proceeding, no representative of a party, and no person who has a
1947 direct or indirect interest in the outcome of the proceeding or
1948 who presided at a previous stage of the proceeding, may
1949 communicate, directly or indirectly, in connection with any issue
1950 in that proceeding, while the proceeding is pending at either the
1951 initial adjudicative level or agency review level, with any person
1952 serving as presiding officer, or with any person or persons with
1953 authority to determine the outcome of such proceeding, or with any
1954 agency head who may eventually review the matter on behalf of the
1955 agency, without notice and opportunity for all parties to
1956 participate in the communication.

1957 (5) If, before serving as presiding officer in an
1958 adjudicative proceeding, a person receives an ex parte
1959 communication of a type that could not properly be received while
1960 serving, the person, promptly after starting to serve, shall
1961 disclose the communication in the manner prescribed in subsection
1962 (6) of this section.

1963 (6) A presiding officer or other person who receives an ex
1964 parte communication prohibited by this section shall place on the

1965 record of the pending matter all written communications received,
1966 all written responses to the communications, and a memorandum
1967 stating the substance of all oral communications received, all
1968 responses made, and the identity of each person from whom the
1969 presiding officer or other person received an ex parte
1970 communication, and shall serve notice on all parties that these
1971 matters have been placed on the record. Any party desiring to
1972 rebut the ex parte communication must be allowed to do so, upon
1973 requesting the opportunity for rebuttal within ten (10) days after
1974 service of notice of the communication and its substance.

1975 (7) If necessary to eliminate the effect of an ex parte
1976 communication received in violation of this section, a presiding
1977 officer or other person who receives the communication may be
1978 disqualified and the portions of the record pertaining to the
1979 communication may be sealed by protective order.

1980 (8) The agency shall, and any party may, report any willful
1981 violation of this section to appropriate authorities for any
1982 disciplinary proceedings provided by law. In addition, each
1983 agency by rule may provide for appropriate sanctions, including
1984 default, for any violations of this section.

1985 SECTION 47. The following shall be codified as Section
1986 25-43-4.215, Mississippi Code of 1972:

1987 25-43-4.215. **Separation of Functions.**

1988 (1) A person who has served as investigator, prosecutor or
1989 advocate in an adjudicative proceeding or in its preadjudicative
1990 stage may not serve as presiding officer or assist or advise a
1991 presiding officer in the same proceeding.

1992 (2) A person who is subject to the authority or direction,
1993 of one who has served as investigator, prosecutor, or advocate in
1994 an adjudicative proceeding or in its preadjudicative stage may not
1995 serve as presiding officer or assist or advise a presiding officer
1996 in the same proceeding.

1997 (3) A person who has participated in a determination of
1998 probable cause or other equivalent preliminary determination in an

1999 adjudicative proceeding may serve as presiding officer or assist
2000 or advise a presiding officer in the same proceeding, unless a
2001 party demonstrates grounds for disqualification in accordance with
2002 Section 25-43-4.202.

2003 (4) A person may serve as presiding officer at successive
2004 stages of the same adjudicative proceeding, unless a party
2005 demonstrates grounds for disqualification in accordance with
2006 Section 25-43-4.202.

2007 SECTION 48. The following shall be codified as Section
2008 25-43-4.216, Mississippi Code of 1972:

2009 25-43-4.216. **Final Order; Initial Order.**

2010 (1) If the presiding officer is the agency head, the
2011 presiding officer shall issue a final order.

2012 (2) If the presiding officer is not the agency head, the
2013 presiding officer shall issue an initial order, which becomes a
2014 final order unless reviewed in accordance with Section
2015 25-43-4.217.

2016 (3) A final order or initial order must include, separately
2017 stated:

2018 (a) Findings of fact,

2019 (b) Conclusions of law,

2020 (c) Reasoned application of law to facts, and

2021 (d) Policy reasons for the decision if it is an

2022 exercise of the agency's discretion, for all aspects of the order,
2023 including the remedy prescribed and, if applicable, the action
2024 taken on a motion for stay of effectiveness. Findings of fact, if
2025 set forth in language that is no more than mere repetition or
2026 paraphrase of the relevant provision of law, must be accompanied
2027 by a concise and explicit statement of the underlying facts of
2028 record to support the findings. The order must also include a
2029 statement of the available procedures and time limits for seeking
2030 reconsideration or other administrative relief. An initial order
2031 must include a statement of any circumstances under which the
2032 initial order, without further notice, may become a final order.

2033 (4) Findings of fact must be based on the evidence of record
2034 in the adjudicative proceeding and on matters officially noticed
2035 in that proceeding. Findings may be based upon the kind of
2036 evidence on which reasonably prudent persons are accustomed to
2037 rely in the conduct of their serious affairs and may be based on
2038 such evidence even if it would be inadmissible in a civil trial.
2039 The presiding officer may utilize his experience, technical
2040 competence, and specialized knowledge in evaluating evidence. The
2041 presiding officer should consider the legislative facts and policy
2042 judgments underlying and justifying the rule of law that is
2043 applicable to the issues at the hearing.

2044 (5) If a person serving or designated to serve as presiding
2045 officer becomes unavailable, for any reason, before issuance of
2046 the final order or initial order, a substitute presiding officer
2047 must be appointed as provided in Section 25-43-4.202. The
2048 substitute presiding officer shall use any existing record and may
2049 conduct any further proceedings appropriate in the interests of
2050 justice.

2051 (6) The presiding officer may allow the parties a designated
2052 amount of time after conclusion of the hearing for the submission
2053 of proposed findings and conclusions.

2054 (7) A final order or initial order pursuant to this section
2055 must be issued in writing within ninety (90) days after conclusion
2056 of the hearing or after submission of proposed findings in
2057 accordance with subsection (6) of this section unless this period
2058 is waived or extended with the written consent of all parties or
2059 for good cause shown.

2060 (8) The presiding officer shall serve copies of the final
2061 order or initial order on each party and on the agency head. The
2062 presiding officer may direct the agency to serve the final order
2063 or initial order.

2064 SECTION 49. The following shall be codified as Section
2065 25-43-4.217, Mississippi Code of 1972:

2066 25-43-4.217. **Review of Initial Order; Exceptions to**

2067 **Reviewability.**

2068 (1) The agency head, upon its own motion may, and upon
2069 motion by any party for review by the agency head shall, review an
2070 initial order, except to the extent that:

2071 (a) A provision of law precludes or limits agency
2072 review of the initial order; or

2073 (b) The agency head, in the exercise of discretion
2074 conferred by a provision of law,

2075 (i) Determines to review some but not all issues,
2076 or not to exercise any review,

2077 (ii) Delegates its authority to review the initial
2078 order to one or more persons, or

2079 (iii) Authorizes one or more persons to review the
2080 initial order, subject to further review by the agency head.

2081 (2) A motion for review from an initial order must be filed
2082 with the agency head, or with any person designated for this
2083 purpose by rule of the agency, and served on all parties within
2084 twenty (20) days after issuance of the initial order. If the
2085 agency head on its own motion decides to review an initial order,
2086 the agency head shall serve on all parties notice of its intention
2087 to review the initial order within twenty (20) days after its
2088 issuance.

2089 (3) The twenty (20) day period for a party to file a motion
2090 for review by the agency head or for the agency head to serve
2091 notice of its intention to review an initial order on the agency
2092 head's own motion is tolled by the filing of a timely motion for
2093 reconsideration of the initial order pursuant to Section
2094 25-43-4.219, and a new twenty-day period starts to run upon
2095 disposition of the motion for reconsideration. If an initial
2096 order is subject both to a timely motion for reconsideration and
2097 to a motion for review or to review by the agency head on its own
2098 motion, the motion for reconsideration must be disposed of first,
2099 unless the agency head determines that action on the motion for
2100 reconsideration has been unreasonably delayed.

2101 (4) A party filing a motion for agency review must state its
2102 basis within the motion. If the agency head on its own motion
2103 serves notice of its intent to review an initial order, the agency
2104 head shall identify the issues that it intends to review.

2105 (5) The reviewing officer, the agency head or other
2106 appropriate presiding officer for the review of an initial order,
2107 shall exercise all the decision-making power that the presiding
2108 officer would have had to issue a final order had the presiding
2109 officer presided over the hearing, except to the extent that the
2110 issues subject to review are limited by a provision of law or by
2111 the agency head or other presiding officer upon notice to all
2112 parties.

2113 (6) The reviewing officer, the agency head or other
2114 presiding officer reviewing the matter, shall afford each party an
2115 opportunity to present written briefs and may afford each party an
2116 opportunity to present oral argument. The reviewing officer in
2117 his discretion may allow supplemental briefs and briefs in the
2118 nature of amicus curiae briefs.

2119 (7) Before issuing a final order, the agency head or other
2120 reviewing officer may cause a transcript to be prepared, at the
2121 agency's expense, of such portions of the proceeding under review
2122 as the agency head or reviewing officer considers necessary.

2123 (8) The agency head or other reviewing officer may issue a
2124 final order disposing of the proceeding or may remand the matter
2125 for further proceedings with instructions to the presiding officer
2126 who issued the initial order. Upon remanding a matter, the agency
2127 head or other presiding officer reviewing the matter may order
2128 such temporary relief as may be authorized and appropriate.

2129 (9) A final order or an order remanding the matter for
2130 further proceedings must be issued in writing within sixty (60)
2131 days after service of the last brief or oral argument, if any,
2132 whichever is later, unless that period is waived or extended with
2133 the written consent of all parties or for good cause shown.

2134 (10) A final order or an order remanding the matter for

2135 further proceedings under this section must identify any
2136 difference between this order and the initial order and must
2137 include, or incorporate by express reference to the initial order,
2138 all the matters required by Section 25-43-216(c).

2139 (11) Upon remand, the presiding officer shall issue in
2140 writing an initial order resolving the matter on remand within
2141 sixty (60) days after service of the order of remand, unless this
2142 period is waived or extended with the written consent of all of
2143 the parties or for good cause shown.

2144 (12) The agency head or other presiding officer reviewing
2145 the matter shall serve copies of the final order or order
2146 remanding the matter for further proceedings on each party and, if
2147 issued by other presiding officer, on the agency head.

2148 SECTION 50. The following shall be codified as Section
2149 25-43-4.218, Mississippi Code of 1972:

2150 25-43-4.218. **Stay.**

2151 (1) Except as otherwise provided by law, no action for
2152 enforcement of a final order may be taken until the expiration of
2153 ten (10) days after the later of (1) the issuance of the order or
2154 (2) the issuance of the final disposition of a motion made under
2155 Section 25-43-4.219.

2156 (2) A party may move for a stay of effectiveness of an
2157 initial or final order within ten (10) days after its issuance
2158 unless otherwise provided by statute or stated in the initial or
2159 final order. The agency head or other presiding officer may take
2160 action on the motion for stay, either before or after the
2161 effective date of the initial or final order, and, if the stay is
2162 granted, provide appropriate terms that must be satisfied before
2163 the stay becomes effective.

2164 SECTION 51. The following shall be codified as Section
2165 25-43-4.219, Mississippi Code of 1972:

2166 25-43-4.219. **Alteration; Amendment; Reconsideration.**

2167 Unless otherwise provided by statute or rule:

2168 (a) Any party, within twenty (20) days after issuance

2169 of an initial order or final order, may move for alteration,
2170 amendment, or reconsideration of the order, in whole or in part,
2171 stating the specific grounds upon which relief is requested. The
2172 filing of the motion is not a prerequisite for seeking
2173 administrative or judicial review.

2174 (b) The motion must be disposed of by the same person
2175 or persons who issued the initial order or final order, if
2176 available.

2177 (c) The agency head or presiding officer that issued
2178 the initial order or final order shall issue a written order
2179 denying the motion; granting the motion and altering, amending, or
2180 otherwise modifying the initial order or final order; or granting
2181 the motion and setting the matter for further proceedings. The
2182 motion may be granted, in whole or in part, only if the agency
2183 head or other presiding officer states, in the written order,
2184 findings of fact, conclusions of law, reasoned application of law
2185 to fact, and policy reasons for the decision if it is an exercise
2186 of the agency's discretion, to justify the order. The motion is
2187 deemed to have been denied if the agency head or other presiding
2188 officer does not serve an order disposing of it within twenty (20)
2189 days after the filing of the motion.

2190 SECTION 52. The following shall be codified as Section
2191 25-43-4.220, Mississippi Code of 1972:

2192 25-43-4.220. **Review by Superior Agency.**

2193 If, pursuant to statute, an agency may review the final order
2194 of another agency, the review is deemed to be a continuous
2195 proceeding as if before a single agency. The final order of the
2196 first agency is treated as an initial order, and the second agency
2197 functions as though it were reviewing an initial order in
2198 accordance with Section 25-43-4.217.

2199 SECTION 53. The following shall be codified as Section
2200 25-43-4.221, Mississippi Code of 1972:

2201 25-43-4.221. **Effectiveness of Orders.**

2202 (1) Unless a later date is stated in a final order or a stay

2203 is granted, a final order is effective twenty (20) days after
2204 issuance, but:

2205 (a) A party may not be required to comply with a final
2206 order unless the party has been served with or otherwise has
2207 actual knowledge of the final order;

2208 (b) A nonparty may not be required to comply with a
2209 final order unless the agency has made the final order available
2210 for public inspection and copying or the nonparty has actual
2211 knowledge of the final order.

2212 (2) Unless a later date is stated in an initial order or a
2213 stay is granted, the time when an initial order becomes a final
2214 order in accordance with Section 25-43-4.216 is determined as
2215 follows:

2216 (a) When the initial order is issued, if administrative
2217 review is unavailable;

2218 (b) When the agency head issues an order stating, after
2219 a motion for review has been filed, that review will not be
2220 exercised, if discretion is available to make a determination to
2221 this effect; or

2222 (c) Twenty (20) days after issuance of the initial
2223 order, if:

2224 (i) No party has filed a motion for administrative
2225 review,

2226 (ii) No party has filed a motion to alter, amend
2227 or reconsider the order, and

2228 (iii) The agency head has not given written notice
2229 of its intention to exercise review.

2230 (3) Unless a later date is stated in an initial order or a
2231 stay is granted, an initial order that becomes a final order in
2232 accordance with subsection (2) of this section and Section
2233 25-43-4.216 is effective after becoming a final order, but:

2234 (a) A party may not be required to comply with the
2235 final order unless the party has been served with or has actual
2236 knowledge of the initial order or of an order stating that review

2237 will not be exercised; and

2238 (b) A nonparty may not be required to comply with the
2239 final order unless the agency has made the initial order available
2240 for public inspection and copying or the nonparty has actual
2241 knowledge of the initial order or of an order stating that review
2242 will not be exercised.

2243 (4) This section does not preclude an agency from taking
2244 immediate action to protect the public interest in accordance with
2245 Section 25-43-4.601.

2246 SECTION 54. The following shall be codified as Section
2247 25-43-4.222, Mississippi Code of 1972:

2248 25-43-4.222. **Agency Record.**

2249 (1) An agency shall maintain an official record of each
2250 adjudicative proceeding under this part.

2251 (2) The agency record consists of all matters received by
2252 the agency pertaining to the proceeding, which may include but are
2253 not limited to:

2254 (a) Applications for adjudicative proceedings and
2255 amendments thereto;

2256 (b) Notices of all proceedings;

2257 (c) Any prehearing order;

2258 (d) Any pleadings, motions, requests, and intermediate
2259 rulings;

2260 (e) Evidence received or considered;

2261 (f) A statement of matters officially noticed;

2262 (g) Any public comment received by the agency;

2263 (h) Any comment received by the agency from another
2264 agency, including federal agencies;

2265 (i) Proffers of evidence and objections and rulings
2266 thereon;

2267 (j) Proposed findings and conclusions, requested
2268 orders, and exceptions;

2269 (k) The record prepared for the presiding officer at
2270 the hearing, together with any transcript of all or part of the

2271 hearing considered before final disposition of the proceeding;
2272 (l) Staff memoranda, data or recommendations submitted
2273 to the presiding officer, unless prepared and submitted by
2274 personal assistants and not inconsistent with Section
2275 25-43-4.214(3);

2276 (m) Matters placed on the record after an ex parte
2277 communication;

2278 (n) Any and all other matters filed with the agency by
2279 any person with the apparent purpose of affecting the outcome of
2280 the proceeding; and

2281 (o) Any final order, initial order, or order of
2282 alteration, amendment or reconsideration.

2283 (3) Except to the extent that this chapter or another
2284 statute provides otherwise, the agency record constitutes the
2285 exclusive basis for agency action in adjudicative proceedings
2286 under this part and for judicial review thereof.

2287 (4) Upon appropriate and timely suggestion, the agency may
2288 require or permit subsequent corrections or additions to the
2289 agency record.

2290 (5) Upon request and as may be required by law, on judicial
2291 review, civil enforcement or otherwise, the agency shall prepare
2292 the agency record. The agency has the exclusive responsibility to
2293 prepare and exclusive authority to certify the record or any part
2294 thereof, including but not limited to any transcript of
2295 proceedings, and the agency's certificate shall be accepted by the
2296 court and by any other agency.

2297 (6) Subject to the limitations of this chapter, an agency
2298 may by rule provide the formal process for its preparation and
2299 certification of the agency record.

2300 **PART III**

2301 **DIVISION OF INDEPENDENT HEARING OFFICERS**

2302 SECTION 55. The following shall be codified as Section
2303 25-43-4.301, Mississippi Code of 1972:

2304 25-43-4.301. **Division of Independent Hearing Officers -**

2305 **Creation, Powers, Duties.**

2306 (1) There is created the Division of Independent Hearing
2307 Officers within the Executive Department of the government of
2308 the State of Mississippi, to be headed by a director appointed
2309 by the Governor by and with the consent of the Senate. The
2310 director shall be a lawyer who was licensed to practice law at
2311 least five (5) years prior to appointment and who is an active
2312 member of The Mississippi Bar. The director shall receive an
2313 annual salary set by the Legislature.

2314 (2) The Division of Independent Hearing Officers shall
2315 employ persons as necessary to service the needs of agencies for
2316 hearing officers to conduct adjudicative proceedings as required
2317 by this chapter or other provision of law. The division may
2318 employ persons as full-time employees of the division or as
2319 part-time employees of the division. The division may engage
2320 the services of persons on any other contractual basis. The
2321 director may serve as a hearing officer. The division will
2322 ordinarily provide hearing officers to preside at adjudicative
2323 proceedings only where requested by an agency and where an
2324 agency is an interested party to the proceedings and not merely
2325 a neutral arbiter with no significant stake in the outcome of
2326 the proceedings beyond an interest that the proceedings be
2327 promptly, efficiently, fairly, and justly administered.

2328 (3) The Division of Independent Hearing Officers is
2329 authorized to hire persons with the following qualifications:

2330 (a) Attorneys licensed to practice law for a minimum
2331 of five (5) years;

2332 (b) Certified public accountants with a minimum of
2333 five (5) years of professional experience;

2334 (c) Such other qualified professionals in areas other
2335 than law and accounting as needed by the agencies requiring the
2336 services of hearing officers whose services have been engaged or
2337 contracted for by the Division of Independent Hearing Officers.

2338 (4) The persons whose services are engaged by the division

2339 to preside at adjudicative proceedings shall be known as hearing
2340 officers.

2341 (5) The division may furnish hearing officers to any agency
2342 on a contractual basis and charge the agency reasonable fees for
2343 the services rendered. Any agency receiving the services of
2344 hearing officers provided by the division is authorized to pay
2345 the fees charged by the division.

2346 (6) The division shall have authority:

2347 (a) To further specify qualifications for hearing
2348 officers as the needs of agencies become known, to establish
2349 salaries for the hearing officers, procedures by which applicants
2350 will be considered for employment, and the manner in which public
2351 notice of vacancies in the staff of the division will be given;

2352 (b) To enter into contracts with qualified persons who
2353 will serve as part-time hearing officers on such terms and
2354 conditions as may be appropriate and agreed upon subject to the
2355 provisions of this chapter;

2356 (c) To establish procedures for agencies to request
2357 and for the director to assign hearing officers consistent with
2358 this chapter;

2359 (d) To receive, consider and respond to agency needs
2360 for hearing officers with special education, training and
2361 experience in the area or field in which the agency is charged
2362 with regulatory and administrative responsibilities;

2363 (e) To solicit and receive from agencies
2364 recommendations for individuals who may serve as hearing
2365 officers, part-time hearing officers or contract hearing
2366 officers;

2367 (f) From time to time, to survey the agencies and a
2368 representative sampling of persons regulated by the respective
2369 agencies to discover the history, experience, current
2370 requirements and future needs of and for hearing officers in
2371 adjudicative proceedings and, with the cooperation of the
2372 agencies, to assess the professional quality, experience and

2373 performance of hearing officers;

2374 (g) To establish internal procedures that apply only
2375 within the division and adopt forms consistent with this chapter,
2376 the model rules of procedure, and other provision of law, to
2377 govern the hearing officers and to assure their independence in
2378 the performance of their duties;

2379 (h) To establish, implement and enforce policies and
2380 standards for the fair, speedy and cost-effective determination
2381 of each matter requiring an adjudicative proceeding under this
2382 chapter or other provision of law;

2383 (i) To establish standards and procedures for the
2384 evaluation, training, promotion, and discipline of the hearing
2385 officers;

2386 (j) To convene conferences, continuing legal,
2387 regulatory and administrative education programs and training
2388 seminars in the fields of administrative law, public regulation,
2389 and public administration;

2390 (k) To participate in, and expend any funds available
2391 to it, to enable its hearing officers and other employees to
2392 participate in conferences in state and out of state for
2393 continuing legal, regulatory and administrative education and
2394 training, colleges, seminars and other programs;

2395 (l) To maintain a library for use by the division, its
2396 employees, contractors, agencies and the public;

2397 (m) To accept monies, gifts, grants, equipment or
2398 services from any public or private source and use those for any
2399 purpose authorized by this section;

2400 (n) To cooperate with any individual or public agency,
2401 whether state or federal, or with any law school, school of
2402 political science, government, public administration, business or
2403 other similar school, public or private, to improve the quality
2404 of administrative law, public regulation and public
2405 administration in this state;

2406 (o) To maintain records, compile statistics and

2407 otherwise gather and keep information reasonably necessary to
2408 maintain and enhance the quality of administrative law, public
2409 regulation and public administration in this state;

2410 (p) To employ such personnel as may be necessary to
2411 carry out its duties and responsibilities;

2412 (q) To engage such persons and acquire such equipment
2413 as may be reasonably necessary to record and preserve in any
2414 technically and practicably feasible manner all matters and
2415 proceedings had at any adjudicative hearing and to assist the
2416 agency in preparing the record under Section 25-43-4.222(5) and
2417 generally to facilitate the preparation of the agency record of
2418 any such proceeding for administrative review, judicial review,
2419 civil enforcement or other purposes;

2420 (r) To purchase, lease or otherwise acquire the use of
2421 office space and equipment and maintain the same as may be
2422 reasonably necessary;

2423 (s) To prepare an annual budget for the operation of
2424 the division, to make appropriate and timely requests for
2425 funding, and to administer and otherwise oversee the
2426 implementation of such funding requests and budget;

2427 (t) To adopt rules to implement the powers and
2428 authorities conferred upon the division by law;

2429 (u) To otherwise implement the provisions of this
2430 section and rules adopted under the authority of the division.

2431 **PART IV**

2432 **INFORMAL ADJUDICATIVE HEARING**

2433 SECTION 56. The following shall be codified as Section
2434 25-43-4.401, Mississippi Code of 1972:

2435 25-43-4.401. **Informal Adjudicative Hearing -**
2436 **Applicability.**

2437 (1) An agency may use an informal adjudicative hearing if
2438 its use in the circumstances does not violate any provision of
2439 law and the matter is entirely within one or more categories for
2440 which the agency by rule has adopted this part; however, those

2441 categories may include only the following:

2442 (a) A matter in which there is no genuine issue of
2443 material fact; or

2444 (b) A matter in which there is a genuine issue of
2445 material fact, if the matter involves only;

2446 (i) A claim for unemployment compensation
2447 benefits within Title 71, Chapter 5, Article 11, Mississippi Code
2448 of 1972;

2449 (ii) A disciplinary sanction against a prisoner;

2450 (iii) A disciplinary sanction against a student
2451 which may involve expulsion from an academic institution or
2452 suspension for more than ten (10) days;

2453 (iv) A disciplinary sanction against a public
2454 employee which does not involve discharge from employment or
2455 suspension for more than ten (10) days;

2456 (v) A disciplinary sanction against a licensee
2457 which does not involve revocation, suspension, annulment,
2458 withdrawal, or amendment of a license or does not involve a
2459 potential penalty of more than Five Thousand Dollars (\$5,000);

2460 (vi) Revocation or suspension of a hunting,
2461 fishing, trapping or other similar license issued under Title 49,
2462 Chapter 7, Mississippi Code of 1972; or

2463 (vii) Any other matter that involves an amount in
2464 controversy of not more than Five Thousand Dollars (\$5,000);

2465 (c) A matter in which all of the parties give their
2466 informed consent and agreement that an informal adjudicative
2467 hearing may be used.

2468 (2) The agency may by rule adopt and implement this part.

2469 SECTION 57. The following shall be codified as Section
2470 25-43-4.402, Mississippi Code of 1972:

2471 25-43-4.402. **Informal Adjudicative Hearing - Procedures.**

2472 The procedures of this chapter pertaining to formal
2473 adjudicative hearings apply to an informal adjudicative hearing,
2474 except to the following extent:

2475 (a) If a matter is initiated as an informal
2476 adjudicative hearing, no prehearing conference may be held.

2477 (b) The provisions of Section 25-43-4.210 do not apply
2478 to informal adjudicative hearings insofar as those provisions
2479 authorize the issuance and enforcement of subpoenas and discovery
2480 orders, but do apply to informal adjudicative hearings insofar as
2481 those provisions authorize the presiding officer to issue
2482 protective orders at the request of any party or upon the
2483 presiding officer's motion.

2484 (c) Sections 25-43-4.212(a), (b) and (c) and
2485 25-43-4.213 do not apply; but,

2486 (i) The presiding officer shall regulate the
2487 course of the proceedings,

2488 (ii) Only the parties may testify and present
2489 exhibits or other evidence except that the presiding officer for
2490 good cause shown may allow others to testify and present exhibits
2491 or other evidence, and

2492 (iii) The parties may comment on the issues.

2493 SECTION 58. The following shall be codified as Section
2494 25-43-4.403, Mississippi Code of 1972:

2495 25-43-4.403. **Informal Adjudicative Hearing - Proposed**
2496 **Proof.**

2497 (1) If the presiding officer has reason to believe that
2498 there are genuine issues of material fact, the presiding officer
2499 may require any party to state the identity of the witnesses or
2500 other sources through whom the party would propose to present
2501 proof if the proceeding were converted to a formal adjudicative
2502 hearing, but the presiding officer shall respect and enforce any
2503 provision of law providing privileges, including the deliberative
2504 process privilege, imposing confidentiality requirements or
2505 protecting privacy rights, trade secrets, and other similar
2506 interests, and may enter protective orders to those ends, except
2507 that the person for whose benefit any such provision of law has
2508 been made may waive that protection. Any party waives any

2509 privacy right or any other privilege, with the exception of the
2510 lawyer-client privilege as defined in the Mississippi Rules of
2511 Evidence, and the deliberative process privilege, with respect to
2512 evidence relevant to any issue, claim or defense the party
2513 asserts or puts in issue in the proceeding. The presiding
2514 officer may enter an appropriate protective order to prevent use
2515 or disclosure of such evidence outside the context of the
2516 adjudicative proceeding or judicial review thereof.

2517 (2) If a party has reason to believe that essential facts
2518 must be obtained in order to permit an adequate presentation of
2519 the case, the party may inform the presiding officer regarding
2520 the general nature of the facts and the sources from whom the
2521 party would propose to obtain those facts if the proceeding were
2522 converted to a formal adjudicative hearing.

2523 PART V

2524 BASIC ADJUDICATIVE PROCEEDINGS

2525 SECTION 59. The following shall be codified as Section
2526 25-43-4.501, Mississippi Code of 1972:

2527 25-43-4.501. **Basic Adjudicative Proceedings -**
2528 **Applicability.**

2529 (1) An agency may use a basic adjudicative proceeding if
2530 its use in the circumstances does not violate any provision of
2531 law and the matter is entirely within one or more categories for
2532 which the agency by rule has adopted Sections 25-43-4.502 through
2533 25-43-4.505; however, these categories may include only the
2534 following:

2535 (a) A matter in which the protection of the public
2536 interest does not require the agency to serve notice and give an
2537 opportunity to participate to persons other than the parties;

2538 (b) A disciplinary sanction against a student which
2539 does not involve expulsion from an academic institution or
2540 suspension for more than ten (10) days;

2541 (c) A matter in which the amount in controversy is not
2542 more than One Hundred Dollars (\$100.00);

2543 (d) A reprimand, warning, disciplinary report, or
2544 other purely verbal sanction without continuing impact against a
2545 prisoner, student, public employee or a licensee;

2546 (e) The denial of an application after the applicant
2547 has abandoned the application;

2548 (f) The denial of an application for admission to an
2549 educational institution or for employment by an agency;

2550 (g) The denial, in whole or in part, of an application
2551 if the applicant has an opportunity for administrative review in
2552 accordance with Section 25-43-4.503;

2553 (h) A matter that, or tests;

2554 (i) Any matter having only trivial potential impact
2555 upon the affected parties; or

2556 (j) A matter in which all of the parties have given
2557 their informed consent and agreement that a basic adjudicative
2558 hearing may be used.

2559 (2) An agency may by rule adopt and implement this part.

2560 SECTION 60. The following shall be codified as Section
2561 25-43-4.502, Mississippi Code of 1972:

2562 25-43-4.502. **Basic Adjudicative Proceedings - Procedures.**

2563 (1) The agency head, one or more members of the agency
2564 head, one or more hearing officers or administrative judges
2565 employed or appointed by the agency, or one or more hearing
2566 officers assigned by the Division of Independent Hearing Officers
2567 in accordance with Section 25-43-4.301, or any combination
2568 thereof, in the discretion of the agency head, may be the
2569 presiding officer. Unless prohibited by law, a person exercising
2570 authority over the matter is the presiding officer.

2571 (2) If the proceeding involves a monetary matter or a
2572 reprimand, warning, disciplinary report, or other sanction:

2573 (a) The presiding officer, before taking action, shall
2574 give each party an opportunity to be informed of the agency's
2575 view of the matter and to explain the party's view of the matter;
2576 and

2577 (b) The presiding officer, at the time any unfavorable
2578 action is taken, shall give each party a brief statement of
2579 findings of fact, conclusions of law, and policy reasons for the
2580 decision if it is an exercise of the agency's discretion, to
2581 justify the action, and a notice of any available administrative
2582 review.

2583 (3) The agency, by reasonable means, shall serve a copy of
2584 the order in a basic adjudicative proceeding on each party. The
2585 order must include at least a statement of the agency's action
2586 and a notice of any available administrative review.

2587 (4) If after reasonable advance notice of a basic
2588 adjudicative hearing, a party fails to attend or participate in
2589 the hearing, the presiding officer may declare the party in
2590 default and enter a default order. The agency must promptly
2591 serve the default order on the party found in default. For good
2592 cause, the presiding officer may modify or rescind the default
2593 order.

2594 (5) An agency may by rule provide for additional procedures
2595 for basic adjudicative proceedings, not inconsistent with this
2596 chapter or other provision of law.

2597 SECTION 61. The following shall be codified as Section
2598 25-43-4.503, Mississippi Code of 1972:

2599 25-43-4.503. **Administrative Review of Basic Adjudicative**
2600 **Proceedings - Applicability.**

2601 Unless prohibited by any provision of law, an agency, on its
2602 own motion, may conduct administrative review of an order
2603 resulting from basic adjudicative proceedings, and shall conduct
2604 this review upon the written request of a party if the agency
2605 receives the request within twenty (20) days after serving notice
2606 under section 25-5-4.502(3).

2607 SECTION 62. The following shall be codified as Section
2608 25-43-4.504, Mississippi Code of 1972:

2609 25-43-4.504. **Administrative Review of Basic Adjudicative**
2610 **Proceedings - Procedures.**

2611 Unless otherwise provided by statute or rule:

2612 (a) An agency need not serve notification of the
2613 pendency of administrative review to any person who did not
2614 request the review, but the agency may not take any action on
2615 review less favorable to any party than the original order
2616 without giving that party notice and an opportunity to explain
2617 that party's view of the matter.

2618 (b) The reviewing officer, in the discretion of the
2619 agency head, may be any person who could have presided at the
2620 basic adjudicative proceeding, but the reviewing officer must be
2621 one who is authorized to grant appropriate relief upon review.

2622 (c) The reviewing officer shall give each party an
2623 opportunity to explain the party's view of the matter unless the
2624 party's view is apparent from the written materials in the file
2625 submitted to the reviewing officer. The reviewing officer shall
2626 make any inquiries necessary to ascertain whether the proceeding
2627 must be converted to an informal adjudicative hearing or a formal
2628 adjudicative hearing.

2629 (d) The reviewing officer may issue an order disposing
2630 of the proceeding in any manner that was available to the
2631 presiding officer at the basic adjudicative proceeding, or the
2632 reviewing officer may remand the matter for further proceedings,
2633 with or without conversion to an informal adjudicative hearing or
2634 a formal adjudicative hearing.

2635 (e) The order on review must be in writing, including
2636 a brief statement of reasons for the decision, and a notice of
2637 any further available administrative review.

2638 (f) A request for administrative review is deemed to
2639 have been denied if the reviewing officer does not dispose of the
2640 matter or remand it for further proceedings within twenty (20)
2641 days after the request is submitted.

2642 SECTION 63. The following shall be codified as Section
2643 25-43-4.505, Mississippi Code of 1972:

2644 25-43-4.505. **Agency Record of Basic Adjudicative**

2645 **Proceedings and Administrative Review.**

2646 (1) The agency record consists of any documents regarding
2647 the matter that were considered or prepared by the presiding
2648 officer for the basic adjudicative proceeding or by the reviewing
2649 officer for any review. The agency shall maintain these
2650 documents as its official record.

2651 (2) Unless otherwise required by a provision of law, the
2652 agency record need not constitute the exclusive basis for agency
2653 action in basic adjudicative proceedings or for judicial review
2654 thereof.

2655 **PART VI**

2656 **EMERGENCY ADJUDICATIVE PROCEEDINGS**

2657 SECTION 64. The following shall be codified as Section
2658 25-43-4.601, Mississippi Code of 1972:

2659 25-43-4.601. **Emergency Adjudicative Proceedings.**

2660 (1) An agency may use emergency adjudicative proceedings in
2661 a situation involving a clear and present danger to the public
2662 health, safety or welfare requiring immediate agency action.
2663 Subject to this chapter and other applicable law, an agency may
2664 provide by rule for the use of emergency adjudicative
2665 proceedings, including rules providing for the delegation of
2666 initial decision-making authority.

2667 (2) Except as provided in subsection (3) of this section,
2668 an agency may take only such action as is necessary to prevent or
2669 avoid a clear and present danger to the public health, safety or
2670 welfare that justifies use of emergency adjudication.

2671 (3) An agency may comply with more stringent immediate
2672 requirements of federal law or regulation or with any interstate
2673 compact.

2674 (4) An agency may respect any party's due process right to
2675 reasonable advance notice and the opportunity to be heard.

2676 (5) The agency shall issue an order, including a brief
2677 statement of findings of fact, conclusions of law, and policy
2678 reasons for the decision if it is an exercise of the agency's

2679 discretion, to justify the finding of a clear and present danger
2680 and the agency's decision to take the specific action.

2681 (6) The agency shall give such notice as is practicable to
2682 persons who are required to comply with the order. The order is
2683 effective when served.

2684 (7) After service of an order pursuant to this section, any
2685 person subject to the order may, upon the filing of a written
2686 request, require the agency to provide within three (3) days of
2687 filing the request an emergency hearing before a person or
2688 persons assigned by the Division of Independent Hearing Officers
2689 who shall hear the person subject to the order present any matter
2690 in objection to the order and who shall hear the agency on any
2691 matter in support and justification of the order. After hearing
2692 these matters, the hearing officer shall have authority to modify
2693 the order subject to the criteria of subsections (2) and (3) of
2694 this section.

2695 (8) After issuing an order pursuant to this section, the
2696 agency shall treat the matter as a preference case and expedite
2697 the proceedings, as feasible, to complete any proceedings that
2698 would be required if the matter did not involve a clear and
2699 present danger.

2700 (9) The agency record consists of any documents regarding
2701 the matter that were considered or prepared by the agency. The
2702 agency shall maintain these documents as its official record.

2703 (10) Unless otherwise required by a provision of law, the
2704 agency record need not constitute the exclusive basis for agency
2705 action in emergency adjudicative proceedings or for judicial
2706 review thereof.

2707 **ARTICLE V**

2708 **JUDICIAL REVIEW AND CIVIL ENFORCEMENT**

2709 **PART I**

2710 **JUDICIAL REVIEW**

2711 SECTION 65. The following shall be codified as Section
2712 25-43-5.101, Mississippi Code of 1972:

2713 25-43-5.101. **Relationship Between this chapter and Other**
2714 **Law on Judicial Review and Other Judicial Remedies.**

2715 (1) Except as provided in subsection (3),(4),(5) or (6) of
2716 this section, this chapter establishes the exclusive means of
2717 judicial review of agency action.

2718 (2) Proceedings for judicial review shall be governed by
2719 the Mississippi Rules of Appellate Procedure. Any matter of
2720 practice or procedure respecting judicial review of agency action
2721 which is not addressed by the Mississippi Rules of Appellate
2722 Procedure shall be governed by this chapter.

2723 (3) If the relief available under this chapter is not equal
2724 or substantially equivalent to the relief otherwise available
2725 under law, the relief otherwise available and the related
2726 procedures supersede and supplement this chapter to the extent
2727 reasonably necessary for their effectuation. The applicable
2728 provisions of this chapter and other law must be combined and
2729 harmonized to the extent reasonably practicable to govern a
2730 single proceeding or, if the court orders, two (2) or more
2731 separate proceedings, but no type of relief may be sought in a
2732 combined proceeding after expiration of the time limit for doing
2733 so.

2734 (4) Proceedings for declaratory judgments and injunctive
2735 relief respecting agency action, where expressly allowed by a
2736 statute other than as contained in this chapter, shall be
2737 governed by the Mississippi Rules of Civil Procedure and other
2738 applicable law.

2739 (5) Proceedings for extraordinary writs such as writs of
2740 mandamus and prohibition with regard to agency action may be
2741 brought only before the Supreme Court or the Court of Appeals.
2742 Such proceedings shall be governed by Mississippi Code, Title 11,
2743 Chapter 41, the Mississippi Rules of Appellate Procedure and
2744 other provisions of law. In a proceeding for judicial review a
2745 party, in addition or in the alternative, may seek an
2746 extraordinary writ.

2747 (6) Upon the motion of a party, or upon the court's own
2748 motion, acting sua sponte, a proceeding for judicial review of
2749 agency action may be converted to an application for an
2750 extraordinary writ, and, conversely, an application for an
2751 extraordinary writ may be converted to a proceeding for judicial
2752 review. In the event of conversion, the converted action shall
2753 relate back to the time of the original action.

2754 (7) Declaratory opinions issued pursuant to Section
2755 25-43-2.103 are not subject to judicial review.

2756 (8) "Party to judicial review or civil enforcement
2757 proceedings," or "party" in contexts so indicating, means:

2758 (a) A person who files a notice of judicial review or
2759 a complaint for civil enforcement,

2760 (b) A person named as a party in a proceeding for
2761 judicial review or civil enforcement or allowed to participate as
2762 a party in the proceeding,

2763 (c) The agency in a proceeding for judicial review or
2764 civil enforcement.

2765 SECTION 66. The following shall be codified as Section
2766 25-43-5.102, Mississippi Code of 1972:

2767 25-43-5.102. **Final Agency Action Reviewable.**

2768 A person who qualifies under this chapter regarding (a)
2769 standing (Section 25-43-5.106), (b) exhaustion of administrative
2770 remedies (Section 25-43-5.107), and (c) time for filing the
2771 notice of judicial review (Section 25-43-5.108), and other
2772 applicable provisions of law regarding bond, compliance, and
2773 other preconditions, is entitled to judicial review of final
2774 agency action, whether or not the person has sought judicial
2775 review of any related nonfinal agency action.

2776 SECTION 67. The following shall be codified as Section
2777 25-43-5.103, Mississippi Code of 1972:

2778 25-43-5.103. **Nonfinal Agency Action Reviewable.**

2779 Except as provided in Sections 25-43-5.101(3), (4), (5) and
2780 (6), a person is entitled to judicial review of nonfinal agency

2781 action only if:

2782 (a) It appears likely that the person will qualify
2783 under Section 25-43-5.102 for judicial review of the related
2784 final agency action;

2785 (b) The person has applied to the agency for an order
2786 for judicial review of nonfinal agency action and the agency has
2787 granted or denied the application, provided that the agency
2788 ordinarily should give its reasons for granting or denying the
2789 application; and

2790 (c) The criteria of the Mississippi Rules of Appellate
2791 Procedure respecting interlocutory appeals or of the Mississippi
2792 Rules of Civil Procedure respecting a judgment upon multiple
2793 claims or involving multiple parties are satisfied.

2794 SECTION 68. The following shall be codified as Section
2795 25-43-5.104, Mississippi Code of 1972:

2796 25-43-5.104. **Jurisdiction.**

2797 (1) Except as provided:

2798 (a) In Title 77, in the case of judicial review of
2799 agency action of the Mississippi Public Service Commission,

2800 (b) In Sections 71-5-529, 71-5-531, 71-5-533 in the
2801 case of judicial review of agency action of the Mississippi
2802 Employment Security Commission,

2803 (c) In Sections 25-43-5.101(3), (4), (5) and (6), the
2804 Court of Appeals of the State of Mississippi has authority to
2805 conduct judicial review.

2806 (2) If evidence is to be adduced in the court in accordance
2807 with Section 25-43-5.114(1), the court may remand the matter:

2808 (a) To the agency with appropriate directions, or

2809 (b) If the court determines in its sound discretion
2810 that the nature of one or more issues upon which new evidence may
2811 be taken is such that remand to the agency would be
2812 inappropriate, to a master as provided by the Mississippi Rules
2813 of Civil Procedure, provided that, in addition to the provisions
2814 of the Mississippi Rules of Civil Procedure,

2815 (i) Any person eligible for appointment as a
2816 special judge under Section 9-1-105(6) is eligible for
2817 appointment as a master; or

2818 (ii) The Division of Independent Hearing Officers
2819 may supply a person who becomes eligible for appointment as a
2820 master.

2821 (3) Except as provided otherwise by this chapter or other
2822 statute, an agency retains jurisdiction as may be appropriate,
2823 convenient and otherwise necessary pending judicial review.

2824 SECTION 69. The following shall be codified as Section
2825 25-43-5.105, Mississippi Code of 1972:

2826 25-43-5.105. **Notice of Judicial Review; Relief Available.**

2827 (1) Except as provided in Title 77, and in Sections
2828 71-5-529, 71-5-531, and 71-5-533, judicial review is initiated by
2829 filing a notice of judicial review in the Court of Appeals.
2830 Failure of a party initiating a proceeding for judicial review to
2831 take any step other than the timely filing of a notice of
2832 judicial review does not affect the perfection of the proceeding
2833 for judicial review, but is grounds only for such action as the
2834 court deems appropriate, which may include dismissal o the
2835 proceeding for judicial review.

2836 (2) A party initiating a proceeding for judicial review may
2837 seek any type of relief available under Section 25-43-5.101(3),
2838 (4), (5) or (6) or 25-43-5.117 or other law.

2839 SECTION 70. The following shall be codified as Section
2840 25-43-5.106, Mississippi Code of 1972:

2841 25-43-5.106. **Standing.**

2842 (1) The following persons have standing to obtain judicial
2843 review of final or nonfinal agency action:

2844 (a) A person to whom the agency action is specifically
2845 directed;

2846 (b) A person who was a party to the agency proceedings
2847 that led to the agency action;

2848 (c) If the agency action, review of which is sought,

2849 is a rule, a person subject to that rule or an association some
2850 of whose members are subject to that rule;

2851 (d) A person eligible for standing under another
2852 provision of law; or

2853 (e) A person otherwise aggrieved or adversely affected
2854 by the agency action or an association one or more of whose
2855 members are aggrieved or adversely affected by the agency action.

2856 For purposes of this paragraph, no person has standing as one
2857 otherwise aggrieved or adversely affected unless:

2858 (i) The agency action has arguably affected or is
2859 arguably likely to affect that person;

2860 (ii) That person's asserted interests are
2861 arguably among those that the agency was required to consider
2862 when it engaged in the agency action review of which is sought;
2863 and

2864 (iii) A judgment in favor of that person may
2865 substantially eliminate or redress the arguable effect to or upon
2866 that person caused or arguably likely to be caused by the agency
2867 action.

2868 (2) A claim that the decision in a proceeding for judicial
2869 review may be given precedential effect that may affect a person
2870 is, without more, insufficient grounds upon which the court may
2871 find that the person has standing. Even though he may lack
2872 standing, the person may apply for leave to file a brief as
2873 amicus curiae under the Mississippi Rules of Appellate Procedure.

2874 (3) A claim (1) that he is a citizen, a voter or a taxpayer
2875 or (2) that he has an interest that the law be enforced is,
2876 without more, insufficient grounds upon which the court may find
2877 that a person has standing.

2878 SECTION 71. The following shall be codified as Section
2879 25-43-5.107, Mississippi Code of 1972:

2880 25-43-5.107. **Exhaustion of Administrative Remedies.**

2881 A person may file a notice of judicial review under this
2882 chapter only after exhausting all administrative remedies

2883 available within the agency review of whose action is being
2884 sought and within any other agency authorized to exercise
2885 administrative review, but:

2886 (a) A person seeking judicial review of a rule need
2887 not have participated in the rule-making proceeding upon which
2888 that rule is based, or have moved for its amendment or repeal;

2889 (b) A person seeking judicial review need not exhaust
2890 administrative remedies to the extent that this chapter or any
2891 other law provides that exhaustion is not required; or

2892 (c) The court may relieve a person seeking judicial
2893 review of the requirement to exhaust any or all administrative
2894 remedies, to the extent that the administrative remedies are
2895 inadequate, or requiring their exhaustion would result in
2896 irreparable harm disproportionate to the public benefit derived
2897 from requiring exhaustion.

2898 SECTION 72. The following shall be codified as Section
2899 25-43-5.108, Mississippi Code of 1972:

2900 25-43-5.108. **Time for Filing Notice of Judicial Review.**

2901 Subject to other requirements of this chapter or of any
2902 other law:

2903 (a) A notice of judicial review of a rule may be filed
2904 at any time, except as limited by Section 25-43-3.113(2).

2905 (b) A notice of judicial review of an order is not
2906 timely unless filed within thirty (30) days after issuance of the
2907 written order by a person authorized to act for the agency.

2908 (c) The time for filing notice of judicial review is
2909 extended during the pendency of the person's timely attempts to
2910 exhaust administrative remedies.

2911 SECTION 73. The following shall be codified as Section
2912 25-43-5.109, Mississippi Code of 1972:

2913 25-43-5.109. **Notice of Judicial Review - Filing and**
2914 **Contents.**

2915 (1) Except as provided in Title 77, and in Sections
2916 71-5-529, 71-5-31, and 71-5-533, a notice of judicial review must

2917 be filed with the clerk of the Court of Appeals, who is the clerk
2918 of the Supreme Court.

2919 (2) A notice of judicial review should set forth:

2920 (a) The name and mailing address of each person
2921 seeking judicial review;

2922 (b) The name and mailing address of the agency whose
2923 action is at issue;

2924 (c) Identification of the agency action at issue,
2925 together with a duplicate copy, summary or brief description of
2926 the agency action;

2927 (d) Identification of persons who were parties to, or
2928 persons who participated in, any adjudicative proceedings that
2929 led to the agency action.

2930 (3) A notice of judicial review in substantial compliance
2931 with the requirements of subsection (2) of this section may not
2932 be dismissed for failure of complete compliance. Judicial review
2933 shall not be denied for informality of form or title of the
2934 notice of judicial review.

2935 SECTION 74. The following shall be codified as Section
2936 25-43-5.110, Mississippi Code of 1972:

2937 25-43-5.110. **Notice of Judicial Review - Service and**
2938 **Notification.**

2939 A person filing a notice of judicial review shall,
2940 contemporaneously therewith, serve a copy of the notice in the
2941 manner provided for service of papers by Section 25-43-4.108
2942 respecting service:

2943 (a) Upon the agency review of whose action is sought;
2944 and

2945 (b) Upon all other parties to, or persons who
2946 participated in, any adjudicative proceedings that led to the
2947 agency action.

2948 SECTION 75. The following shall be codified as Section
2949 25-43-5.111, Mississippi Code of 1972:

2950 25-43-5.111. **Stay and Other Temporary Remedies Pending**

2951 **Final Disposition.**

2952 (1) Unless otherwise provided by law or by order of the
2953 court for good cause shown, no proceedings for enforcement of
2954 final agency action ordering monetary payment may be taken until
2955 the expiration of thirty (30) days after (a) the final agency
2956 action is taken or (b) the disposition of a motion for
2957 reconsideration of the final agency action made under Section
2958 25-43-4.219, whichever last occurs.

2959 (2) Unless otherwise provided by law, the agency may grant
2960 a stay on appropriate terms or other temporary remedies during
2961 the pendency of judicial review.

2962 (3) A party may move the court, during the pendency of
2963 judicial review, for interlocutory review of the agency's action
2964 on an application for stay or other temporary remedies.

2965 (4) If the agency has found that its action on an
2966 application for stay or other temporary remedies is justified to
2967 protect against a clear and present threat to the public health,
2968 safety, or welfare, the court may not grant relief unless it
2969 finds that:

2970 (a) The applicant is likely to prevail when the court
2971 finally disposes of the matter;

2972 (b) Without relief the applicant will suffer
2973 irreparable injury;

2974 (c) The grant of relief to the applicant will not
2975 substantially harm other parties to the proceedings; and

2976 (d) The threat to the public health, safety or welfare
2977 relied on by the agency is not sufficiently serious to justify
2978 the agency's action in the circumstances.

2979 (5) If subsection (4) of this section does not apply, the
2980 court shall grant relief if it finds that the agency's action on
2981 the application for stay or the terms thereof or other temporary
2982 remedies was unreasonable in the circumstances.

2983 (6) If the court determines that relief should be granted
2984 from the agency's action on an application for stay or other

2985 temporary remedies, the court may remand the matter to the agency
2986 with directions to deny a stay, to grant a stay on appropriate
2987 terms, or to grant other temporary remedies, or the court may
2988 issue an order denying a stay, granting a stay on appropriate
2989 terms, or granting other temporary remedies.

2990 SECTION 76. The following shall be codified as Section
2991 25-43-5.112, Mississippi Code of 1972:

2992 25-43-5.112. **Limitation on New Issues.**

2993 (1) A person may obtain judicial review of an issue that
2994 was not raised before the agency, only to the extent that:

2995 (a) The agency did not have jurisdiction to grant an
2996 adequate remedy based on a determination of the issue; and

2997 (b) The agency action subject to judicial review is a
2998 rule, and the person has not been a party in adjudicative
2999 proceedings that provided an adequate opportunity to raise the
3000 issue.

3001 (2) The court may notice plain error as in other cases.

3002 SECTION 77. The following shall be codified as Section
3003 25-43-5.113, Mississippi Code of 1972:

3004 25-43-5.113. **Judicial Review of Facts Confined to Record
3005 for Judicial Review and Additional Evidence Taken Pursuant to
3006 Act.**

3007 Judicial review of disputed issues of fact must be confined
3008 to the agency record for judicial review as defined in this
3009 chapter, supplemented by additional evidence taken pursuant to
3010 this chapter or judicially noticed consistent with Section
3011 25-43-4.213(7).

3012 SECTION 78. The following shall be codified as Section
3013 25-43-5.114, Mississippi Code of 1972:

3014 25-43-5.114. **New Evidence Taken by Court or Agency Before
3015 Final Disposition.**

3016 (1) The court, in its discretion assisted by the agency or
3017 by a master as provided in Section 25-43-5.104(2), may receive
3018 evidence, in addition to that contained in the agency record for

3019 judicial review, only if it relates to the validity of the agency
3020 action at the time it was taken and is needed to decide disputed
3021 issues regarding:

3022 (a) Improper constitution as a decision-making body,
3023 or improper motive or behavior on grounds for disqualification,
3024 of those taking the agency action;

3025 (b) The apparent reliance by the agency taking the
3026 agency action on facts or evidence not included in the record;

3027 (c) Unlawfulness of procedure or of decision-making
3028 process;

3029 (d) A failure by the agency to explain its action
3030 where such failure may frustrate judicial review;

3031 (e) The explanation of technical terms or complex
3032 subjects;

3033 (f) The apparent failure of the agency to consider
3034 adequately some reasonable alternative to the agency action; or

3035 (g) Any material fact that was not required by any
3036 provision of law to be determined exclusively on an agency record
3037 of a type reasonably suitable for judicial review.

3038 (2) The court may remand a matter to the agency or a
3039 master, before final disposition of a proceeding for judicial
3040 review, with directions that the agency conduct fact-finding and
3041 other proceedings the court considers necessary, within such time
3042 limits as the court may prescribe, and that the agency or a
3043 master take such further action on the basis thereof as the court
3044 directs, if:

3045 (a) The agency was required by this chapter or any
3046 other provision of law to base its action on a record of a type
3047 reasonably suitable for judicial review, but the agency failed to
3048 prepare or preserve an adequate record;

3049 (b) The court finds that (i) new evidence has become
3050 available that relates to the validity of the agency action at
3051 the time it was taken, that one or more of the parties did not
3052 know and was under no duty to discover, or did not know and was

3053 under a duty to discover but could not reasonably have
3054 discovered, until after the agency action, and (ii) the interests
3055 of justice would be served by remand to the agency;

3056 (c) The agency improperly excluded or omitted evidence
3057 from the record; or

3058 (d) A relevant provision of law changed after the
3059 agency action and the court determines that the new provision may
3060 control the outcome.

3061 (3) The court may take judicial notice of adjudicative
3062 facts consistent with the Mississippi Rules of Evidence and
3063 Section 25-43-4.213(g).

3064 SECTION 79. The following shall be codified as Section
3065 25-43-5.115, Mississippi Code of 1972:

3066 25-43-5.115. **Agency Record for Judicial Review - Contents,**
3067 **Preparation, Transmittal, Cost.**

3068 (1) In the event of judicial review of agency action, the
3069 agency shall have full and exclusive authority and responsibility
3070 of preparing the agency record and certifying the agency record
3071 to the court. Subject only to the limitations of this part, an
3072 agency may by rule provide the formal process for its preparation
3073 and certification of the agency record.

3074 (2) Within thirty (30) days after service of notice of
3075 judicial review, or within further time allowed by the court or
3076 by other provision of law, the agency shall transmit to the clerk
3077 of the Court of Appeals the agency record certified by the agency
3078 for judicial review of the agency action, consisting of any
3079 agency documents expressing the agency action, other documents
3080 identified by the agency as having been considered by it before
3081 its action and used as a basis for its action, and any other
3082 material described in this chapter as the agency record for the
3083 type of agency action at issue, subject to the provisions of this
3084 section.

3085 (3) If part of the record has been preserved without a
3086 transcript, the agency shall prepare a transcript for inclusion

3087 in the record transmitted to the court, except for portions that
3088 the parties stipulate to omit in accordance with subsection (5)
3089 of this section. The word "transcript" includes a written
3090 transcript, a printed transcript, and an audible audiotape or
3091 videotape that is indexed and annotated so that it is readily
3092 accessible.

3093 (4) The agency may charge the person filing the notice of
3094 judicial review with the reasonable cost of preparing the record
3095 and any necessary copies and transcripts for transmittal to the
3096 court. A failure by the person seeking judicial review to pay
3097 any of this cost to the agency does not relieve the agency from
3098 the responsibility for timely preparation of the record,
3099 including any transcript and transmittal to the court. The
3100 agency may set criteria and terms for payment of costs of the
3101 record. The agency may by rule implement and elaborate this
3102 subsection.

3103 (5) By stipulation of all parties to the review
3104 proceedings, the record may be shortened, summarized,
3105 supplemented or organized.

3106 (6) The court may tax the cost of preparing transcripts and
3107 copies for the record:

3108 (a) Against a party who unreasonably refuses to
3109 stipulate to shorten, summarize, or organize the record;

3110 (b) As provided by Section 25-43-5.117; or

3111 (c) In accordance with any other provision of law.

3112 (7) Additions to the record pursuant to Section 25-43-5.114
3113 must be made as ordered by the court.

3114 (8) The court may require or permit subsequent corrections
3115 or additions to the record.

3116 SECTION 80. The following shall be codified as Section
3117 25-43-5.116, Mississippi Code of 1972:

3118 25-43-5.116. **Scope of Review; Grounds for Invalidity.**

3119 (1) Except to the extent that this chapter provides
3120 otherwise:

3121 (a) The burden of demonstrating the invalidity of
3122 agency action is on the party asserting invalidity; and

3123 (b) The validity of agency action must be determined
3124 in accordance with the standards of review provided in this
3125 section, as applied to the agency action at the time it was
3126 taken.

3127 (2) The court should make a separate and distinct ruling on
3128 each material issue on which the court's decision is based.

3129 (3) The court shall grant relief from agency action only if
3130 it determines that a person seeking judicial relief may have been
3131 prejudiced by any one or more of the following:

3132 (a) The agency action, or the law on which the agency
3133 action is based, is unconstitutional on its face or as applied.

3134 (b) The agency has acted beyond the jurisdiction
3135 conferred by any provision of law.

3136 (c) The agency has not decided all issues requiring
3137 resolution.

3138 (d) The agency has erroneously interpreted or applied
3139 or failed to apply the law.

3140 (e) The agency has engaged in an unlawful procedure or
3141 decision-making process, or has failed to follow prescribed
3142 procedure.

3143 (f) The persons taking the agency action were not
3144 constituted as a decision-making body as required by law, were
3145 motivated by an improper purpose, or were subject to
3146 disqualification.

3147 (g) The agency action is based on a determination of
3148 fact, made or implied by the agency, that is not supported by
3149 evidence that is substantial when viewed in light of the whole
3150 record before the court, which includes the agency record for
3151 judicial review, supplemented by any additional evidence received
3152 or noticed by the court under this chapter.

3153 (h) The agency action is:

3154 (i) Outside the range of discretion delegated to

3155 the agency law;

3156 (ii) Agency action, other than a rule, that is
3157 inconsistent with a rule of the agency;

3158 (iii) Agency action, other than a rule, that is
3159 inconsistent with the agency's prior practice unless the agency
3160 justifies the inconsistency by stating facts and reasons to
3161 demonstrate a fair and rational basis for the inconsistency; or

3162 (iv) Otherwise unreasonable, arbitrary or
3163 capricious.

3164 (4) In performing its review under subsection (3) of this
3165 section, the court shall give substantial deference to the view
3166 of the agency with respect to particular matters that have been
3167 vested by a law within the discretion of the agency.

3168 SECTION 81. The following shall be codified as Section
3169 25-43-5.117, Mississippi Code of 1972:

3170 25-43-5.117. **Type of Relief.**

3171 (1) The court may award damages or compensation only to the
3172 extent expressly authorized by another provision of law.

3173 (2) The court may grant other appropriate relief, whether
3174 mandatory, prohibitory, injunctive or declaratory; preliminary or
3175 final; temporary or permanent; equitable or legal. In granting
3176 relief, the court may order agency action required by law, order
3177 agency exercise of discretion required by law, set aside or
3178 modify agency action, enjoin or stay the effectiveness of agency
3179 action, remand the matter for further proceedings, issue a
3180 declaratory judgment or take any other action that is authorized
3181 and appropriate.

3182 (3) The court may also grant necessary and ancillary relief
3183 to redress the effects of agency action wrongfully taken or
3184 withheld, but the court may award attorney's fees or witness fees
3185 only to the extent authorized by other law.

3186 (4) If the court sets aside or modifies agency action or
3187 remands the matter to the agency for further proceedings, the
3188 court may make any interlocutory order it finds necessary to

3189 preserve or protect the interests of the parties and the public
3190 pending further proceedings or agency action.

3191 SECTION 82. The following shall be codified as Section
3192 25-43-5.118, Mississippi Code of 1972:

3193 25-43-5.118. **Decisions of Court of Appeals Reviewable by**
3194 **Writ of Certiorari.**

3195 Decisions on proceedings for judicial review of agency
3196 action made in the Court of Appeals are subject to review in the
3197 Supreme Court as provided by the Mississippi Rules of Appellate
3198 Procedure.

3199 SECTION 83. The following shall be codified as Section
3200 25-43-5.119, Mississippi Code of 1972:

3201 25-43-5.119. **Filed Rate Doctrine.**

3202 (1) If a person offering a service to the public:

3203 (a) Is required by law to file with an agency to whose
3204 regulatory jurisdiction the person is subject a rate or tariff or
3205 the terms or conditions for the provision of that service, and

3206 (b) Has filed with the agency a rate or tariff or the
3207 terms or conditions relating in any way to the provision of the
3208 service, and the agency has accepted the filing and has not
3209 disapproved the filing within the time allowed by law, and the
3210 time for judicial review of the agency action in approving or in
3211 failing to disapprove the filing has expired, the filing is final
3212 and in full force and effect for the period of time provided by
3213 law.

3214 (2) A rate or tariff or terms or conditions that have
3215 become final, either in the manner described in subsection (1) of
3216 this section or as a result of being lawfully ordered into effect
3217 by the agency, may be subject to review and reconsideration by
3218 the agency prospectively only and as provided by another
3219 provision of law.

3220 (3) In the case of a rate or tariff or the terms or
3221 conditions for the provision of a service that have become final,
3222 in the manner described in subsection (1) or (2) of this section,

3223 a claim by the agency or by any other person that the rate or
3224 tariff or terms or conditions are invalid or unenforceable for
3225 any of the grounds set forth in Section 25-43-5.116(3)(b), (c),
3226 (d), (e), (f), (g) or (h) may be made only in the form of a
3227 request that the agency, acting prospectively only, review and
3228 reconsider the filing as provided by another provision of law.

3229 (4) The acts or omissions of a person in the provision of a
3230 service pursuant to a filed rate or tariff, or terms or
3231 conditions that have become final in the manner described in
3232 subsection (1) or (2) of this section shall be subject to
3233 judicial review, civil enforcement or collateral attack only on
3234 grounds:

3235 (a) (i) The rate or tariff or terms or conditions, or
3236 (ii) the agency action in approving or in failing to disapprove
3237 the rate or tariff or terms, conditions or provisions, or (iii)
3238 the law on which the agency action is based, is unconstitutional
3239 on its face or as applied; or

3240 (b) The person has deviated from the filed rate tariff
3241 or terms or conditions in the provision of the service.

3242 PART II

3243 CIVIL ENFORCEMENT

3244 SECTION 84. The following shall be codified as Section
3245 25-43-5.201, Mississippi Code of 1972:

3246 25-43-5.201. **Complaint by Agency for Civil Enforcement of**
3247 **Rule or Order.**

3248 (1) In addition to other remedies provided by law:

3249 (a) An agency may seek enforcement of its rule or
3250 order, including a subpoena or other order compelling the
3251 testimony of persons, the production of documents or other
3252 discovery, by filing a complaint for civil enforcement in the
3253 chancery court.

3254 (b) The complaint must name, as defendants, each
3255 person against whom the agency seeks to obtain civil enforcement.

3256 (c) Venue is determined as in other civil cases.

3257 (d) A complaint for civil enforcement filed by an
3258 agency may request, and the court may grant, declaratory relief,
3259 temporary or permanent injunctive relief, any penalty, sanction
3260 or other civil remedy provided by law or any combination of the
3261 foregoing.

3262 (2) In the case of an order, and in addition to other
3263 remedies provided by law:

3264 (a) A copy of a written order certified by the agency
3265 may be filed in the office of the circuit clerk of any county in
3266 this state. The circuit clerk shall enroll the order in the
3267 judgment roll and shall otherwise treat the order in the same
3268 manner as a judgment of the circuit court of any county in this
3269 state. An order so filed and enrolled has the same effect and is
3270 subject to the same procedures, defenses and proceedings for
3271 reopening, vacating or staying as a judgment of a circuit court
3272 of any county in this state and may be enforced or satisfied in
3273 like manner.

3274 (b) At the time of the filing of the order with the
3275 circuit clerk, the agency, party or person filing same shall
3276 serve notice of the filing upon each party or person against whom
3277 enforcement is sought in the manner provided for service of
3278 papers in a civil action by the Mississippi Rules of Civil
3279 Procedure.

3280 SECTION 85. The following shall be codified as Section
3281 25-43-5.202, Mississippi Code of 1972:

3282 25-43-5.202. **Complaint by Qualified Person for Civil**
3283 **Enforcement of Agency's Order.**

3284 (1) Any person who would qualify under this chapter as
3285 having standing to seek judicial review of an agency's failure to
3286 enforce its order may file a complaint for civil enforcement of
3287 that order in the chancery court, but the action may not be
3288 commenced:

3289 (a) Until at least thirty (30) days after the person
3290 has given notice of the alleged violation or failure and of the

3291 person's intent to seek civil enforcement to the agency head of
3292 the agency that issued the order, to the Attorney General, and to
3293 each person against whom the person filing the complaint seeks
3294 civil enforcement;

3295 (b) If the agency has filed and is diligently
3296 prosecuting a complaint for civil enforcement of the same order
3297 against the same defendant or defendants; provided, however, that
3298 the person may move to intervene in the pending civil enforcement
3299 proceeding as provided by the Mississippi Rules of Civil
3300 Procedure; or

3301 (c) If a notice of judicial review of the same order
3302 has been filed and is pending in court; provided, however, that
3303 the person may move to intervene in the pending judicial review
3304 proceeding if the person has standing under Section 25-43-5.106
3305 or as provided by the Mississippi Rules of Appellate Procedure;

3306 (2) The complaint must name, as defendants, the agency
3307 whose order is sought to be enforced and each person against whom
3308 the person filing the complaint seeks civil enforcement. The
3309 court may realign the parties as may be appropriate.

3310 (3) The agency whose order is sought to be enforced may
3311 move to dismiss on the grounds that the complaint fails to
3312 qualify under this section or that enforcement would be contrary
3313 to the lawful policy of the agency. The court shall grant the
3314 motion to dismiss unless the person filing the complaint
3315 demonstrates that (i) the complaint qualifies under this section
3316 and (ii) the agency's failure to enforce its order is based on an
3317 exercise of discretion that is improper on one or more of the
3318 grounds provided in Section 25-43-5.116(3)(h).

3319 (4) Except to the extent authorized by law, a complaint for
3320 civil enforcement filed under this part may not request, and the
3321 court may not grant, any monetary relief or require any monetary
3322 payment apart from taxable costs.

3323 SECTION 86. The following shall be codified as Section
3324 25-43-5.203, Mississippi Code of 1972:

3325 25-43-5.203. **Defenses; Limitation on New Issues and New**
3326 **Evidence.**

3327 (1) A defendant, who would be qualified under Sections
3328 25-43-5.106, 25-43-5.107 and 25-43-5.108 to do so in a proceeding
3329 for judicial review, may assert, in a proceeding for civil
3330 enforcement:

3331 (a) That the rule or order sought to be enforced is
3332 invalid on any of the grounds stated in Section 25-43-5.116(3)
3333 and (4). If that defense is raised, the court may consider
3334 issues and receive evidence only within the limitations provided
3335 by Sections 25-43-5.112, 25-43-5.113 and 25-43-5.114; and

3336 (b) Any of the following defenses on which the court,
3337 to the extent necessary for the determination of the matter, may
3338 take new evidence:

3339 (i) The rule or order does not apply to the
3340 party;

3341 (ii) The party has not violated the rule or
3342 order;

3343 (iii) The party has violated the rule or order
3344 but has subsequently complied, but a party who establishes this
3345 defense is not necessarily relieved from any sanction provided by
3346 law for past violations; or

3347 (iv) Other defenses, if any, allowed by law.

3348 (2) Except as expressly provided in this section, a
3349 defendant may not assert as a defense in a proceeding for civil
3350 enforcement any fact or issue that the defendant had an
3351 opportunity to assert before the agency or a court on judicial
3352 review and did not, or upon which the final determination of the
3353 agency or court on judicial review was adverse to the defendant.

3354 SECTION 87. The following shall be codified as Section
3355 25-43-5.204, Mississippi Code of 1972:

3356 25-43-5.204. **Rules of Practice, Procedure and Evidence;**
3357 **Incorporation of Certain Provisions on Judicial Review.**

3358 Proceedings for civil enforcement are governed by:

- 3359 (a) The Mississippi Rules of Civil Procedure;
- 3360 (b) The Mississippi Rules of Evidence;
- 3361 (c) Any other valid and applicable rule of practice or
- 3362 procedure; and
- 3363 (d) Unless inconsistent with a rule or rules by its
- 3364 terms applicable to such proceedings, the provisions of this
- 3365 chapter.

3366 SECTION 88. The following shall be codified as Section

3367 25-43-5.205, Mississippi Code of 1972:

3368 25-43-5.205. **Review by Supreme Court.**

3369 Judgments and orders on complaints for civil enforcement are

3370 reviewable by the Supreme Court, and/or by the Court of Appeals,

3371 as in other civil cases.

3372 SECTION 89. Section 5-8-17, Mississippi Code of 1972, is

3373 amended as follows:

3374 5-8-17. (1) In addition to any other penalty permitted by

3375 law, the Secretary of State shall require any person who fails to

3376 file a report as required under Sections 5-8-1 through 5-8-19 of

3377 this chapter, or who shall file a report which fails to comply

3378 with the material particulars of Sections 5-8-1 through 5-8-19 of

3379 this chapter or any rules, regulations or procedures implemented

3380 pursuant to Sections 5-8-1 through 5-8-19 of this chapter, to be

3381 assessed a civil penalty as follows:

3382 (a) Within five (5) calendar days after any deadline

3383 for filing a report pursuant to Sections 5-8-1 through 5-8-19 of

3384 this chapter, the Secretary of State shall compile a list of

3385 those lobbyists and lobbyists' clients who have failed to file a

3386 required report. The Secretary of State shall provide each

3387 lobbyist or lobbyist's client who has failed to file such a

3388 report notice of such failure by certified mail.

3389 (b) Beginning with the tenth calendar day after which

3390 any report shall be due, the Secretary of State shall assess the

3391 delinquent lobbyist and delinquent lobbyist's client a civil

3392 penalty of Fifty Dollars (\$50.00) per day and part of any day

3393 until a valid report is delivered to the Secretary of State, up
3394 to a maximum of ten (10) days. However, in the discretion of the
3395 Secretary of State, the assessing of such fine may be waived if
3396 the Secretary of State shall determine that unforeseeable
3397 mitigating circumstances, such as the health of the lobbyist,
3398 shall interfere with timely filing of a required report.

3399 (c) Filing of the required report and payment of the
3400 fine within ten (10) calendar days of notice by the Secretary of
3401 State that a required statement has not been filed constitutes
3402 compliance with Sections 5-8-1 through 5-8-19 of this chapter.

3403 (d) Payment of the fine without filing the required
3404 report does not in any way excuse or exempt any person required
3405 to file from the filing requirements of Sections 5-8-1 through
3406 5-8-19 of this chapter.

3407 (2) (a) Upon the sworn application of a lobbyist or
3408 lobbyist's client against whom a civil penalty has been assessed
3409 pursuant to subsection (1), the Secretary of State shall forward
3410 the application to the Mississippi Ethics Commission. The
3411 commission shall conduct an adjudicative proceeding in accordance
3412 with the Mississippi Administrative Procedure Law of 1999 and
3413 shall cause a written notice specifying the civil penalties that
3414 have been assessed against the lobbyist or lobbyist's client and
3415 notice of the time and place of the hearing to be served upon the
3416 lobbyist or lobbyist's client at least twenty (20) calendar days
3417 prior to the hearing date. * * *

3418 * * *

3419 (3) * * * The right to judicial review of the decision of
3420 the commission in an adjudicative proceeding concerning the
3421 assessment of civil penalties authorized pursuant to this section
3422 is hereby granted. Such judicial review shall be in accordance
3423 with the Mississippi Administrative Procedure Law of 1999. The
3424 person perfecting judicial review shall file a bond in the sum of
3425 Two Hundred Dollars (\$200.00), conditioned that if the decision
3426 of the commission be affirmed by the court, the lobbyist or

3427 lobbyist's client will pay the costs of the appeal and the action
3428 in court. If the decision is reversed by the court, the
3429 Secretary of State will pay the costs of the appeal and the
3430 action in court. In the event of judicial review, the order of
3431 the commission should be stayed pending review.

3432 * * *

3433 (4) If, after forty-five (45) calendar days of the date of
3434 the commencement of the adjudicative proceeding, the lobbyist or
3435 lobbyist's client shall not file a valid report as required by
3436 law, the commission shall notify the Attorney General of the
3437 delinquency. The Attorney General shall investigate said offense
3438 in accordance with the provisions of this chapter.

3439 SECTION 90. Section 7-17-5, Mississippi Code of 1972, is
3440 amended as follows:

3441 7-17-5. (1) Effective July 1, 1989, all employees of any
3442 agency abolished or affected by the Mississippi Executive
3443 Reorganization Act of 1989 [Laws, 1989, Chapter 544] shall be
3444 transferred according to the merger of their duties by the
3445 Mississippi Executive Reorganization Act of 1989 [Laws, 1989,
3446 Chapter 544]. All personnel actions initiated as a result of the
3447 Mississippi Executive Reorganization Act of 1989 [Laws, 1989,
3448 Chapter 544] shall be subject to State Personnel Board
3449 procedures.

3450 (2) The executive director of any agency of State
3451 Government as defined in Section 25-9-107(d) shall have the
3452 authority to employ staff and to expend funds authorized to the
3453 agency for the performance of the duties and responsibilities
3454 accorded to the agency by the laws of the State of Mississippi.

3455 (3) All records, personnel, property and unexpended
3456 balances of appropriations, allocations or other funds of any
3457 agency or department abolished or affected by the Mississippi
3458 Executive Reorganization Act of 1989 [Laws, 1989, Chapter 544]
3459 shall be transferred to the appropriate agency according to the
3460 merger of their functions under the Mississippi Executive

3461 Reorganization Act of 1989 [Laws, 1989, Chapter 544].

3462 (4) The executive directors of agencies shall determine
3463 which employees shall be bonded, set the amount of bond, which
3464 shall be made by a surety company approved by the Secretary of
3465 State and the premiums paid as other expenses of administering
3466 the Mississippi Executive Reorganization Act of 1989 [Laws, 1989,
3467 Chapter 544].

3468 (5) The executive director of any agency, where permitted
3469 by the rules, regulations and policies of the board, commission
3470 or authority of the agency, if any, shall also have authority to:

3471 (a) Accept on behalf of the state gifts, trusts,
3472 bequests, grants, endowments, or transfers of property of any
3473 kind to be used for the sole benefit of the state;

3474 (b) Use and expend funds coming to the agency from
3475 state, federal and private sources;

3476 (c) Establish such rules and regulations as may be
3477 necessary in carrying out the provisions of the Mississippi
3478 Executive Reorganization Act of 1989 [Laws, 1989, Chapter 544];

3479 (d) Formulate and administer policies of their
3480 respective agencies;

3481 (e) Coordinate, supervise and direct all
3482 administrative and technical activities of the agency;

3483 (f) Enter into contracts, grants and cooperative
3484 agreements with any federal or state agency, department or
3485 subdivision thereof, or any public or private institution located
3486 inside or outside the State of Mississippi, or any person,
3487 corporation or association in connection with the carrying out of
3488 the provisions of the Mississippi Executive Reorganization Act of
3489 1989 [Laws, 1989, Chapter 544], provided the agreements do not
3490 have a financial cost in excess of the amounts appropriated for
3491 such purposes by the Legislature;

3492 (g) Except where otherwise prescribed by law, prepare
3493 and deliver to the Legislature and the Governor on or before
3494 January 1 of each year, and at such other times as may be

3495 required by the Legislature or Governor, a full report of the
3496 work of the agency and the offices thereof, including a detailed
3497 statement of expenditures of the agency and any recommendations;

3498 (h) Make provisions for adoption of rules, regulations
3499 and policy and provide for public inspection and filing of same;
3500 and other requirements set forth in the Mississippi
3501 Administrative Procedure Law of 1999, except as otherwise
3502 provided by law.

3503 (i) Conduct adjudicative proceedings in accordance
3504 with the Mississippi Administrative Procedure Law of 1999, or any
3505 part of such proceedings.

3506 SECTION 91. Section 9-1-19, Mississippi Code of 1972, is
3507 amended as follows:

3508 9-1-19. (1) Except as provided in subsection (2) of this
3509 section, the judges of the Supreme and circuit courts and
3510 chancellors and judges of the Court of Appeals, in termtime and
3511 in vacation, may severally order the issuance of writs of habeas
3512 corpus, mandamus, certiorari, supersedeas and attachments, and
3513 grant injunctions and all other remedial writs, in all cases
3514 where the same may properly be granted according to right and
3515 justice, returnable to any court, whether the suit or proceedings
3516 be pending in the district of the judge or chancellor granting
3517 the same or not. The fiat of such judge or chancellor shall
3518 authorize the issuance of the process for a writ returnable to
3519 the proper court or before the proper officer; and all such
3520 process or writs may be granted, issued and executed on Sunday.

3521 (2) In the event that the respondent is an agency or an
3522 agency head within the Mississippi Administrative Procedure Law
3523 of 1999, or an officer or employee of an agency or agency head,
3524 original jurisdiction to consider and issue writs of mandamus and
3525 of prohibition is vested in the Supreme Court and in the Court of
3526 Appeals of the State of Mississippi.

3527 SECTION 92. Section 9-13-107, Mississippi Code of 1972, is
3528 amended as follows:

3529 9-13-107. No person shall be qualified or authorized to
3530 report testimony or proceedings relevant to matters under the
3531 jurisdiction of the courts of the State of Mississippi, all state
3532 agencies or the Legislature or any committee or subcommittee
3533 thereof, or where appeal to or judicial review of any court of
3534 the State of Mississippi is allowable by law, unless such person
3535 satisfies the provisions of Sections 9-13-101 through 9-13-121
3536 with respect to certification. Sections 9-13-101 through
3537 9-13-121 shall not be construed to apply to any proceedings that
3538 take place outside the borders of the State of Mississippi.

3539 Every applicant for examination for certification as a
3540 Certified Shorthand Reporter shall file with the person
3541 designated by the board a written application in the form
3542 prescribed by the board. At the time the application is filed,
3543 the applicant shall pay to the board an application fee
3544 established by regulation, which fee shall not be subject to
3545 withdrawal by the applicant in the event he should decide not to
3546 take the examination or is denied the right to take the
3547 examination. Upon request, the board shall forward to any
3548 interested person application forms together with the text of
3549 this chapter and copies of regulations promulgated by the board
3550 under the provisions of this chapter.

3551 SECTION 93. Section 9-13-117, Mississippi Code of 1972, is
3552 amended as follows:

3553 9-13-117. The board, for good cause shown and in keeping
3554 with its regulations and after an adjudicative proceeding
3555 conducted in accordance with the Mississippi Administrative
3556 Procedure law of 1999 conducted in a manner consistent with due
3557 process, may revoke or suspend any certificate issued or may
3558 disqualify any applicant from certification.

3559 SECTION 94. Section 11-41-1, Mississippi Code of 1972, is
3560 amended as follows:

3561 11-41-1. (1) Except as provided in subsection (2) of this
3562 section, on the complaint of the state, by its Attorney General

3563 or a district attorney, in any matter affecting the public
3564 interest, or on the complaint of any private person who is
3565 interested, the judgment shall be issued by the circuit court,
3566 commanding any inferior tribunal, corporation, board, officer, or
3567 person to do or not to do an act the performance or omission of
3568 which the law specially enjoins as a duty resulting from an
3569 office, trust, or station, where there is not a plain, adequate,
3570 and speedy remedy in the ordinary course of law. All procedural
3571 aspects of this action shall be governed by the Mississippi Rules
3572 of Civil Procedure.

3573 (2) In the event that the respondent is an agency or an
3574 agency head within the Mississippi Administrative Procedure Law
3575 of 1999, or an officer or employee of an agency or agency head,
3576 jurisdiction to issue and consider writs of mandamus and of
3577 prohibition is vested in the Supreme Court and in the Court of
3578 Appeals of the State of Mississippi. All procedural aspects of
3579 this action shall be governed by the Mississippi Rules of
3580 Appellate Procedure and other applicable law.

3581 SECTION 95. Section 11-41-3, Mississippi Code of 1972, is
3582 amended as follows:

3583 11-41-3. (1) Except as provided in subsection (2) of this
3584 section, the complaint shall be filed in the circuit court of the
3585 county in which the tribunal, corporation, board, officer, or
3586 person made defendant, or some one or more of them, shall reside
3587 or be found; but if the judge of that court be interested, the
3588 complaint may be filed in an adjoining circuit court district.

3589 (2) In the event that the respondent is an agency or agency
3590 head within the Mississippi Administrative Procedure Law of 1999,
3591 or an officer or employee of an agency or agency head, the
3592 complaint may be filed in the Supreme court or in the Court of
3593 Appeals of the State of Mississippi.

3594 SECTION 96. Section 17-17-29, Mississippi Code of 1972, is
3595 amended as follows:

3596 17-17-29. (1) Any person found by the commission violating

3597 any of the provisions of Sections 17-17-1 through 17-17-47, or
3598 any rule or regulation or written order of the commission in
3599 pursuance thereof, or any condition or limitation of a permit,
3600 shall be subject to a civil penalty of not more than Twenty-five
3601 Thousand Dollars (\$25,000.00) for each violation, such penalty to
3602 be assessed and levied by the commission after an adjudicative
3603 proceeding conducted in accordance with the Mississippi
3604 Administrative Procedure Law of 1999. Any person assessed with
3605 such a penalty shall have the right to judicial review in
3606 accordance with the Mississippi Administrative Procedure Law of
3607 1999. If the person seeking judicial review desires to stay the
3608 execution of a civil penalty assessed by the commission, he shall
3609 give bond with sufficient resident sureties of one or more
3610 guaranty or surety companies authorized to do business in this
3611 state, payable to the State of Mississippi, in an amount equal to
3612 double the amount of any civil penalty assessed by the
3613 commission, as to which the stay of execution is desired,
3614 conditioned, if the judgment shall be affirmed, to pay all costs
3615 of the assessment entered against the person seeking judicial
3616 review. Each day upon which such violation occurs shall be
3617 deemed a separate and additional violation.

3618 (2) In lieu of, or in addition to, the penalty provided in
3619 subsection (1) of this section, the commission shall have the
3620 power to institute and maintain in the name of the state any and
3621 all proceedings necessary or appropriate to enforce the
3622 provisions of Sections 17-17-1 through 17-17-47, rules and
3623 regulations in force pursuant thereto, and orders and permits
3624 made and issued under those sections, in the * * * chancery * * *
3625 court of the county in which venue may lie. The commission may
3626 obtain mandatory or prohibitory injunctive relief, either
3627 temporary or permanent, and in cases of imminent and substantial
3628 hazard as set forth in Section 17-17-27, subsection (4), it shall
3629 not be necessary in such cases that the state plead or prove (a)
3630 that irreparable damage would result if the injunction did not

3631 issue; (b) that there is no adequate remedy at law; or (c) that a
3632 written complaint or commission order has first been issued for
3633 the alleged violation.

3634 (3) Any person who violates any of the provisions of, or
3635 fails to perform any duty imposed by, Sections 17-17-1 through
3636 17-17-47, or any rule or regulation issued hereunder, or who
3637 violates any order or determination of the commission promulgated
3638 pursuant to such sections, and causes the death of wildlife shall
3639 be liable, in addition to the penalties provided in subsection
3640 (1) and/or (2) of this section, to pay to the state an additional
3641 amount equal to the sum of money reasonably necessary to
3642 replenish such wildlife as determined by the commission after
3643 consultation with the Mississippi Commission on Wildlife,
3644 Fisheries and Parks. Such amount may be recovered by the
3645 commission on behalf of the state in a civil action brought in
3646 the chancery court of the county in which venue may lie.

3647 (4) Any person creating, or responsible for creating,
3648 through misadventure, happenstance, or otherwise, an immediate
3649 necessity for remedial or clean-up action involving solid waste
3650 shall be liable for the cost of such remedial or clean-up action
3651 and the commission may recover the cost of same by a civil action
3652 brought in the chancery court of the county in which venue may
3653 lie. This penalty may be recovered in lieu of or in addition to
3654 the penalties provided in subsection (1), (2) and/or (3) of this
3655 section.

3656 In the event of the necessity for immediate remedial or
3657 clean-up action, the commission may contract for same and advance
3658 funds from the Pollution Emergency Fund to pay the costs thereof,
3659 such advancements to be repaid to the Pollution Emergency Fund
3660 upon recovery by the commission as provided herein.

3661 (5) Any person who knowingly violates any provision of this
3662 chapter or violates any order issued by the commission under the
3663 authority of this chapter shall, upon conviction, be guilty of a
3664 misdemeanor and shall be subject to a fine of not more than

3665 Twenty-five Thousand Dollars (\$25,000.00) for each day of
3666 violation or to imprisonment not to exceed one (1) year, or both.
3667 Each day's violation shall constitute a separate offense.

3668 (6) All fines, penalties and other sums recovered or
3669 collected by the commission for and in behalf of the state under
3670 this section shall be deposited in the Pollution Emergency Fund
3671 established by Sections 49-17-61 through 49-17-70, and the
3672 commission is authorized to receive and accept, from any and all
3673 available sources whatsoever, additional funds to be deposited in
3674 such fund and expended for the purpose of remedial, clean-up or
3675 abatement actions involving the introduction of solid waste upon
3676 or into the land, air or waters of this state in violation of
3677 Sections 17-17-1 through 17-17-47, any rule or regulation or
3678 written order of the commission in pursuance thereof, or any
3679 condition or limitation of a permit.

3680 (7) In determining the amount of any penalty under this
3681 chapter, the commission shall consider at a minimum:

- 3682 (a) The willfulness of the violation;
- 3683 (b) Any damage to air, water, land or other natural
3684 resources of the state or their uses;
- 3685 (c) Costs of restoration and abatement;
- 3686 (d) Economic benefit as a result of noncompliance;
- 3687 (e) The seriousness of the violation, including any
3688 harm to the environment and any hazard to the health, safety and
3689 welfare of the public;

3690 (f) Past performance history; and

3691 (g) Whether the noncompliance was discovered and
3692 reported as the result of a voluntary self-evaluation. If a
3693 person discovers as a result of a voluntary self-evaluation,
3694 information related to noncompliance with an environmental law
3695 and voluntarily discloses that information to the department,
3696 commission or any employee thereof, the commission shall, to the
3697 greatest extent possible, reduce a penalty, if any, determined by
3698 the commission, except for economic benefit as a result of

3699 noncompliance, to a de minimis amount if all of the following are
3700 true:

3701 (i) The disclosure is made promptly after
3702 knowledge of the information disclosed is obtained by the person;

3703 (ii) The person making the disclosure initiates
3704 the appropriate corrective actions and pursues those corrective
3705 actions with due diligence;

3706 (iii) The person making the disclosure cooperates
3707 with the commission and the department regarding investigation of
3708 the issues identified in the disclosure;

3709 (iv) The person is not otherwise required by an
3710 environmental law to make the disclosure to the commission or the
3711 department;

3712 (v) The information was not obtained through any
3713 source independent of the voluntary self-evaluation or by the
3714 department through observation, sampling or monitoring; and

3715 (vi) The noncompliance did not result in a
3716 substantial endangerment threatening the public health, safety or
3717 welfare or the environment.

3718 (8) Any provision of this section and chapter regarding
3719 liability for the costs of clean-up, removal, remediation or
3720 abatement of any pollution, hazardous waste or solid waste shall
3721 be limited as provided in Section 49-17-42 and rules adopted
3722 thereto.

3723 SECTION 97. Section 17-17-45, Mississippi Code of 1972, is
3724 amended as follows:

3725 17-17-45. In addition to any other remedies that might now
3726 be available, any person or interested party aggrieved by an
3727 order of the commission or of the permit board of the bureau of
3728 pollution control shall have the right of judicial review in
3729 accordance with the Mississippi Administrative Procedure Law of
3730 1999.

3731 SECTION 98. Section 17-17-231, Mississippi Code of 1972, is
3732 amended as follows:

3733 17-17-231. (1) The Commission on Environmental Quality may
3734 adopt rules and regulations governing municipal solid waste
3735 landfills that accept household wastes, but any rules and
3736 regulations for such landfills shall, except for the adoption of
3737 criteria and standards to be considered in the location of such
3738 facilities, be no more stringent or extensive in scope, coverage
3739 and effect than Subtitle D regulations promulgated by the United
3740 States Environmental Protection Agency.

3741 (2) If Subtitle D regulations do not provide a standard,
3742 criteria or guidance addressing matters relating to landfills,
3743 the commission may promulgate rules and regulations to address
3744 these matters in accordance with the Mississippi Administrative
3745 Procedure Law of 1999 when the commission determines that such
3746 rules and regulation are necessary to protect human health,
3747 welfare or the environment.

3748 (3) Nothing in this section shall prohibit the commission
3749 by order or the Permit Board in the issuance or modification of a
3750 permit from placing additional requirements on a landfill on a
3751 case by case basis in order to prevent, abate, control or correct
3752 groundwater contamination, public endangerment or as otherwise
3753 determined necessary to protect human health, welfare or the
3754 environment.

3755 SECTION 99. Section 19-5-353, Mississippi Code of 1972, is
3756 amended as follows:

3757 19-5-353. (1) The initial minimum standard of training for
3758 local public safety and 911 telecommunicators shall be determined
3759 by the Board of Emergency Telecommunications Standards and
3760 Training. All courses approved for minimum standards shall be
3761 taught by instructors certified by the course originator as
3762 instructors for such courses.

3763 (2) The minimum standards may be changed at any time by the
3764 Board of Emergency Telecommunications Standards and Training.

3765 (3) Changes in the minimum standards may be made upon
3766 request from any bona fide public safety, emergency medical or

3767 fire organization operating within the State of Mississippi.
3768 Requests for change shall be in writing submitted to either the
3769 State Law Enforcement Training Academy; the State Fire Academy;
3770 the Mississippi Chapter of the Associated Public Safety
3771 Communications Officers, Incorporated; the Mississippi Chapter of
3772 the National Emergency Number Association; the Mississippi State
3773 Board of Health, Emergency Medical Services Division; the
3774 Mississippi Justice Information Center; the Mississippi Sheriff's
3775 Association; the Mississippi Fire Chief's Association; the
3776 Mississippi Association of Chiefs of Police; or Mississippians
3777 for Emergency Medical Service.

3778 (4) The minimum standards in no way are intended to
3779 restrict or limit any additional training which any department or
3780 agency may wish to employ, or any state or federal required
3781 training, but to serve as a basis or foundation for basic
3782 training.

3783 (5) Persons in the employment of any public safety, fire,
3784 911 PSAP or emergency medical agency as a telecommunicator on
3785 July 1, 1993, shall have three (3) years to be certified in the
3786 minimum standards courses provided they have been employed by
3787 such agency for a period of more than one (1) year prior to July
3788 1, 1993.

3789 (6) Persons having been employed by any public safety,
3790 fire, 911 PSAP or emergency medical agency as a telecommunicator
3791 for less than one (1) year prior to July 1, 1993, shall be
3792 required to have completed all the requirements for minimum
3793 training standards, as set forth in this act [Laws, 1993, Ch.
3794 536], within one (1) year from July 1, 1993. Persons certified
3795 on or before July 1, 1993, in any course or courses chosen shall
3796 be given credit for these courses, provided the courses are still
3797 current and such persons can provide a course completion
3798 certificate.

3799 (7) Any person hired to perform the duties of a
3800 telecommunicator in any public safety, fire, 911 PSAP or

3801 emergency medical agency after July 1, 1993, shall complete the
3802 minimum training standards as set forth in this act [Laws, 1993,
3803 Ch. 536] within twelve (12) months of their employment or within
3804 twelve (12) months from the date that the Board of Emergency
3805 Telecommunications Standards and Training shall become
3806 operational.

3807 (8) Professional certificates remain the property of the
3808 board, and the board reserves the right to either reprimand the
3809 holder of a certificate, suspend a certificate upon conditions
3810 imposed by the board, or cancel and recall any certificate when:

3811 (a) The certificate was issued by administrative
3812 error;

3813 (b) The certificate was obtained through
3814 misrepresentation or fraud;

3815 (c) The holder has been convicted of any crime
3816 involving moral turpitude;

3817 (d) The holder has been convicted of a felony; or

3818 (e) Other due cause as determined by the board.

3819 When the board believes there is a reasonable basis for
3820 either the reprimand, suspension, cancellation of, or recalling
3821 the certification of a telecommunicator, the board shall provide
3822 notice and opportunity for an adjudicative proceeding in
3823 accordance with the Mississippi Administrative Procedure Law of
3824 1999. Any telecommunicator aggrieved by the findings and order
3825 of the board shall have a right to judicial review thereof in
3826 accordance with the Mississippi Administrative Procedure Law of
3827 1999. Any telecommunicator whose certification has been
3828 cancelled pursuant to this act [Laws, 1993, Ch. 536] may reapply
3829 for certification but not sooner than two (2) years after the
3830 date on which the order of the board cancelling such
3831 certification became final.

3832 (9) Any state agency or political subdivision that employs
3833 a person as a telecommunicator who does not meet the requirements
3834 of this act [Laws, 1993, Ch. 536], or who employs a person whose

3835 certificate has been suspended or revoked under provisions of
3836 this act [Laws, 1993, Ch. 536], is prohibited from paying the
3837 salary of such person, and any person violating this subsection
3838 shall be personally liable for making such payment.

3839 (10) These minimum standards and time limitations shall in
3840 no way conflict with other state and federal training as may be
3841 required to comply with established laws or regulations.

3842 SECTION 100. Section 21-27-221, Mississippi Code of 1972,
3843 is amended as follows:

3844 21-27-221. (1) Any person aggrieved by the final decision
3845 of any duly designated hearing officer appointed by the board or
3846 commission as a result of any hearing held under the provisions
3847 of Sections 21-27-201 through 21-27-221, which shall have been an
3848 adjudicative proceeding in accordance with the Mississippi
3849 Administrative Procedure Law of 1999, may, within thirty (30)
3850 days of receipt of written notice of the action of the hearing
3851 officer, appeal such final decision to the full board or
3852 commission, as the case may be, by filing therewith a written
3853 notice of appeal. No cost bond or other security shall be
3854 required to perfect such appeal. The hearing officer shall
3855 forthwith prepare and submit to the board or commission the
3856 record made at the hearing, which shall thereupon become the
3857 record of the cause. Appeals to the board or commission shall be
3858 considered only upon the record made before the hearing officer.

3859 The board or commission shall review all findings of fact and
3860 conclusions of law of the hearing officer, together with any
3861 penalties levied, and may affirm, modify or reverse and remand
3862 the decision of the hearing officer, as may be determined to be
3863 necessary or appropriate. Judicial review of the final decision
3864 of the board or commission shall be perfected as hereinafter
3865 provided.

3866 (2) Any person aggrieved by the final decision of the board
3867 or commission as a result of any hearing held under the
3868 provisions of Sections 21-27-201 through 21-27-221, including

3869 hearings requested incidental to the issuance, denial,
3870 modification or revocation of any operator certification issued
3871 hereunder, shall have a right to judicial review thereof in
3872 accordance with the Mississippi Administrative Procedure Law of
3873 1999. The person perfecting judicial review shall file a cost
3874 bond with sufficient sureties, payable to the state in the sum of
3875 not less than One Hundred Dollars (\$100.00) nor more than Five
3876 Hundred Dollars (\$500.00), to be fixed by the board or commission
3877 and to be filed with and approved by the chief administrative
3878 officer of the appropriate agency * * *.

3879 SECTION 101. Section 21-29-217, Mississippi Code of 1972,
3880 is amended as follows:

3881 21-29-217. Any applicant for benefits of the disability and
3882 relief fund for firemen and policemen, or any two (2) active
3883 members of said fire department, or any two (2) active members of
3884 said police department, being aggrieved at the decision or order
3885 of the board of trustees, may file with the board of trustees and
3886 with said board of disability and relief appeals duplicate copies
3887 of a petition for a rehearing of the matter in which such
3888 decision or order was made. Within thirty (30) days thereafter
3889 the board of trustees shall file with said appeal board, true
3890 copies of all papers and documents which were before it, all
3891 evidence of record before it and a statement of all evidence
3892 heard by it and not of record, all certified to be true and
3893 correct, whereupon said appeal board shall fix a time for hearing
3894 and shall give the board of trustees and the petitioner or
3895 petitioners for appeal notice of said such time for hearing.
3896 When the matter shall come on for hearing said appeal board shall
3897 have before it all papers, statements, matters and things
3898 certified to it by the board of trustees, as well as such
3899 additional evidence and documents as it may hear and receive and
3900 upon all of the same shall hear, consider and decide said matter
3901 fully and finally according to this article and the facts. Said
3902 appeal board may cause witnesses to be sworn by any one (1) of

3903 its members, or by any other authority competent to administer
3904 oaths. Said appeal board may meet for all purposes at any time
3905 in the State of Mississippi when all are present, or upon the
3906 call of two (2) members thereof. Said appeal board shall certify
3907 its decision to the board of trustees, and such decision or order
3908 shall be final and binding and said fund shall be disbursed
3909 according thereto, subject to judicial review in accordance with
3910 the Mississippi Administrative Procedure Law of 1999.

3911 SECTION 102. Section 23-15-69, Mississippi Code of 1972, is
3912 amended as follows:

3913 23-15-69. All cases on appeal shall be heard by the boards
3914 of election commissioners de novo, and oral and documentary
3915 evidence may be heard by them; and they are authorized to
3916 administer oaths to witnesses before them; and they have power to
3917 subpoena witnesses, and to compel their attendance; to send for
3918 persons and papers; to require the sheriff and constables to
3919 attend them and to execute their process. The decisions of the
3920 commissioners in all cases shall be final as to questions of
3921 fact, but as to matters of law they may be revised by circuit
3922 courts and the Supreme Court. The registrar shall obey the
3923 orders of the commissioners in directing a person to be
3924 registered, or a name to be stricken from the registration books.

3925 SECTION 103. Section 25-9-115, Mississippi Code of 1972, is
3926 amended as follows:

3927 25-9-115. It shall be the specific duty and function of the
3928 State Personnel Board to:

3929 (a) Represent the public interest in the improvement
3930 of personnel administration in the state departments, agencies
3931 and institutions covered by the State Personnel System;

3932 (b) Determine appropriate goals and objectives for the
3933 State Personnel System and prescribe policies for their
3934 accomplishment, with the assistance of the Mississippi Personnel
3935 Advisory Council;

3936 (c) Adopt and amend policies, rules and regulations

3937 establishing and maintaining the State Personnel System in
3938 accordance with the Administrative Procedure Law of 1999. Such
3939 rules and regulations shall not be applicable to the emergency
3940 hiring of employees by the Public Employees' Retirement System
3941 pursuant to Section 25-11-15(7). The rules and regulations of
3942 the Mississippi Classification Commission and the Mississippi
3943 Coordinated Merit System Council serving federal grant-aided
3944 agencies in effect on February 1, 1981, shall remain in effect
3945 until amended, changed, modified or repealed by the board;

3946 (d) Ensure uniformity in all functions of personnel
3947 administration in those agencies required to comply with the
3948 provisions of this chapter. The board may delegate authority to
3949 the State Personnel Director as deemed necessary for the timely,
3950 effective and efficient implementation of the State Personnel
3951 System;

3952 (e) Appoint an employee appeals board, consisting of
3953 three (3) hearing officers, for the purpose of conducting
3954 adjudicative proceedings in accordance with the Mississippi
3955 Administrative Procedure Law of 1999, and otherwise holding
3956 hearings, compiling evidence and rendering decisions on employee
3957 dismissals and other personnel matters as provided for in
3958 Sections 25-9-127 through 25-9-131. Hearing officers are not
3959 entitled to serve beyond their appointed term unless reappointed
3960 by the State Personnel Board;

3961 (f) Assure uniformity in the administration of state
3962 and federal laws relating to merit administration;

3963 (g) Establish an annual budget covering all the costs
3964 of board operations;

3965 (h) With the assistance of the Mississippi Personnel
3966 Advisory Council, promote public understanding of the purposes,
3967 policies and practices of the State Personnel System and advise
3968 and assist the state departments, agencies and institutions in
3969 fostering sound principles of personnel management and securing
3970 the interest of institutions of learning and of civic,

3971 professional and other organizations in the improvement of
3972 personnel standards under the State Personnel System;

3973 (i) Recommend policies and procedures for the
3974 establishment and abolishment of employment positions within
3975 State Government and develop a system for the efficient use of
3976 personnel resources;

3977 (j) Cooperate with state institutions of higher
3978 learning in implementing a career management program in state
3979 agencies for graduate students in public administration in order
3980 to provide State Government with a steady flow of professional
3981 public managerial talent;

3982 (k) Prescribe rules which shall provide that an
3983 employee in state service is not obliged, by reason of his
3984 employment, to contribute to a political fund or to render
3985 political service, and that he may not be removed or otherwise
3986 prejudiced for refusal to do so;

3987 (l) Prescribe rules which shall provide that an
3988 employee in state service shall not use his official authority or
3989 influence to coerce the political action of a person or body;

3990 (m) Annually report to the Governor and Legislature on
3991 the operation of the State Personnel System and the status of
3992 personnel administration in State Government;

3993 (n) Require submission and approve organization and
3994 staffing plans of departments and agencies in state and nonstate
3995 service on such forms and according to such regulations as the
3996 board may prescribe to control and limit the growth of
3997 subordinate executive and administrative units and positions and
3998 to provide for agency staff reorganization without prior board
3999 approval when authority to reorganize has been delegated to an
4000 agency as provided in paragraph (p);

4001 (o) In coordination with appointing authorities, set
4002 the annual salaries of those appointed officials whose salaries
4003 are not otherwise set by statute who work on a full-time basis in
4004 the capacity of agency head, executive director or administrator

4005 of any state department, agency, institution, board or commission
4006 under the jurisdiction of the State Personnel Board as provided
4007 in Section 25-9-101 et seq., in conformity with the State
4008 Personnel Board's compensation plan. Salaries of incumbents
4009 required by law to serve in their professional capacity as a
4010 physician, dentist, veterinarian or attorney shall be set in
4011 accordance with Section 25-9-107(c)(xiii);

4012 (p) Authorize the director to enter into formal
4013 agreements with department executive directors and agency
4014 directors in which employment positions within their agencies may
4015 be reallocated and organization charts amended without prior
4016 State Personnel Board approval; provided, however, that such
4017 agreements shall be revocable by the State Personnel Board and
4018 continuation shall be contingent upon the reallocations and
4019 reorganizations being conducted in accordance with rules and
4020 regulations promulgated by the State Personnel Board. In the
4021 event the State Personnel Board has delegated reallocation
4022 authority to an agency, this delegation does not remove the
4023 requirement that agencies submit personal services budget
4024 requests each fiscal year for the purpose of preparing personal
4025 services continuation budget projections. Such budget requests
4026 shall be prepared in accordance with the policies, rules and
4027 regulations promulgated by the Department of Finance and
4028 Administration, the Legislative Budget Office and the State
4029 Personnel Board. Prior to making any reallocation or
4030 reorganization effective, each appointing authority who has
4031 entered into an agreement as provided in this paragraph (p) shall
4032 certify to the State Personnel Board that the total annualized
4033 cost of any reallocation or reorganization shall be equal to or
4034 less than the cost savings generated through downward
4035 reallocation or position abolishment of vacant positions.

4036 The personnel board shall maintain a record of every
4037 personnel transaction executed under authority delegated pursuant
4038 to this paragraph (p) and shall annually report the total cost of

4039 these transactions, by agency, to the Legislative Budget Office
4040 and the Department of Finance and Administration.

4041 The State Personnel Board shall prescribe rules requiring
4042 the State Personnel Director to perform a compliance audit and
4043 evaluation of personnel transactions executed under authority
4044 delegated pursuant to this paragraph (p) and to publish a report
4045 of the audit listing exceptions taken by the State Personnel
4046 Director not later than the first of October each year. In the
4047 event the State Personnel Board determines that an agency has
4048 misclassified an employee or position as a result of this
4049 delegated authority, the State Personnel Board shall be
4050 authorized to correct such misclassification regardless of the
4051 state service status of the employee holding such position.
4052 Authority to correct such misclassifications of filled positions
4053 shall be limited to one (1) year from the date which the State
4054 Personnel Board receives written notice of the reallocation;

4055 (q) Require that if an employment position has been
4056 determined to be in need of reallocation from one occupational
4057 class to another, the employee occupying the position shall meet
4058 the minimum qualifications for the occupational class to which
4059 the position is being reallocated in order for the position to be
4060 eligible for the reallocation. However, when a reallocation is
4061 based upon an agency reorganization due to documented funds
4062 constraints, documented change in agency function, or legislative
4063 mandate, a position may be reallocated with prior approval of the
4064 State Personnel Board;

4065 (r) Implement a reduction-in-force policy which shall
4066 apply uniformly to all state agencies and which shall require
4067 that the appointing authority develop an equitable and systematic
4068 plan for implementation of an agency-wide reduction-in-force. If
4069 a proposed reduction-in-force is the result of a curtailment of
4070 general funds, the State Personnel Board shall review the
4071 proposed reduction-in-force plan only upon written certification
4072 of a general funds shortage from the Department of Finance and

4073 Administration. If a proposed reduction-in-force is the result
4074 of a curtailment of special funds, the State Personnel Board
4075 shall review the proposed reduction-in-force plan only upon
4076 written certification of a special funds shortage from the
4077 agency. Further, the State Personnel Board shall ensure that any
4078 reduction-in-force plan complies with all applicable policies,
4079 rules and regulations of the State Personnel Board;

4080 (s) Implement a furlough (involuntary leave without
4081 pay) policy which shall apply uniformly to all executive and
4082 subordinate employees within an agency, regardless of job class.

4083 The State Personnel Board shall review furlough plans only upon
4084 written certification of a general funds shortage from the
4085 Department of Finance and Administration or written certification
4086 of a special funds shortage from the agency. The State Personnel
4087 Board shall ensure that any furlough plan complies with all
4088 applicable policies, rules and regulations of the State Personnel
4089 Board;

4090 (t) Establish policies which preclude any employee
4091 under the salary setting authority of the State Personnel Board
4092 from receiving an annual salary greater than the Governor, and
4093 any employee within an agency from receiving an annual salary
4094 greater than the agency head. Employees currently receiving an
4095 annual salary exceeding the Governor or their agency head may
4096 retain their present salary but shall not receive an increase
4097 until such time as the provisions of this paragraph are met;

4098 (u) In the adoption of rules, to act in accordance
4099 with the Mississippi Administrative Procedure Law of 1999.

4100 (v) This section shall stand repealed from and after
4101 June 30, 2000.

4102 SECTION 104. Section 25-9-119, Mississippi Code of 1972, is
4103 amended as follows:

4104 25-9-119. (1) There is hereby created the position of the
4105 State Personnel Director who shall be selected by the State
4106 Personnel Board, with the advice and consent of the Senate. The

4107 director shall have at least a master's degree in business
4108 administration, personnel management or the equivalent and shall
4109 have not less than five (5) years' experience therein. His
4110 salary shall be in accordance with the Mississippi Compensation
4111 Plan. The State Personnel Director shall serve at the will and
4112 pleasure of the State Personnel Board.

4113 (2) The duties and responsibilities of the director shall
4114 be:

4115 (a) To serve as executive secretary to the board, to
4116 attend meetings as directed by the board and to provide such
4117 professional, technical and other supportive assistance as may be
4118 required by the board in the performance of its duties;

4119 (b) Consistent with board policy, to administer the
4120 operations of the State Personnel System and to otherwise act in
4121 the capacity of chief executive officer to the State Personnel
4122 Board;

4123 (c) To submit for board approval proposed rules and
4124 regulations which shall require a uniform system of personnel
4125 administration within all agencies included in this chapter.
4126 Such rules and regulations, when approved by the board, shall be
4127 binding upon the state departments, agencies and institutions
4128 covered by this chapter and shall include provisions for the
4129 establishment and maintenance of classification and compensation
4130 plans, the conduct of examinations, employee recruiting, employee
4131 selection, the certification of eligible persons, appointments,
4132 promotions, transfers, demotions, separations, reinstatement,
4133 appeals, reports of performance, payroll certification, employee
4134 training, vacation and sick leave, compensatory leave,
4135 administrative leave, standardized record keeping forms and
4136 procedures for leave earned, accrued and used, and all other
4137 phases of personnel administration. Such rules and regulations
4138 shall not be applicable to the emergency hiring of employees by
4139 the Public Employees' Retirement System pursuant to Section
4140 25-11-15(7). Such rules and regulations, or modifications

4141 thereto, as are approved by the State Personnel Board shall be
4142 filed with the Secretary of the Senate in accordance with the
4143 Mississippi Administrative Procedure Law of 1999, and with the
4144 Clerk of the House of Representatives at least sixty (60) days
4145 prior to their effective date. The secretary and the clerk shall
4146 immediately forward copies of the rule or rules to the members of
4147 the Senate Fees, Salaries and Administration Committee, the
4148 members of the House Fees and Salaries of Public Officers
4149 Committee, the Lieutenant Governor, the Speaker of the House of
4150 Representatives and the Governor. The respective committees may
4151 submit comments to the board regarding such rules and regulations
4152 prior to their effective date;

4153 (i) Compensation plans and modifications thereto
4154 promulgated under rules and regulations shall become effective as
4155 adopted, upon appropriation therefor by the State Legislature;

4156 (ii) The director and the board shall provide
4157 for:

4158 (A) Cost-of-living adjustments;

4159 (B) Salary increases for outstanding
4160 performance based upon documented employee productivity and
4161 exceptional performance in assigned duties; and

4162 (C) Plans to compensate employees for
4163 suggestions which result in improved management in technical or
4164 administrative procedures and result in documented cost savings
4165 for the state. In certifying promotions, the director shall
4166 ensure that an employee's anniversary date remains the same
4167 regardless of the date of his promotion;

4168 (d) To submit to the board any proposed legislation as
4169 may be necessary to bring existing statutes relating to the
4170 administration of public employees into uniformity;

4171 (e) To administer the rules and regulations and all
4172 other operational aspects of the State Personnel System and to
4173 assure compliance therewith in all the departments, agencies and
4174 institutions covered by the State Personnel System;

4175 (f) To appoint and prescribe the duties of the State
4176 Personnel System staff, all positions of which shall be included
4177 in the state service;

4178 (g) To prepare an annual budget for the board covering
4179 all the costs of operating the State Personnel System, including
4180 the State Personnel Board, and the costs of administering such
4181 federal laws relating to personnel administration as the board
4182 may direct, including the Intergovernmental Personnel Act of
4183 1970;

4184 (h) To assist state agencies, departments and
4185 institutions in complying with all applicable state and federal
4186 statutes and regulations concerning discrimination in employment,
4187 personnel administration and related matters;

4188 (i) To recommend procedures for the establishment and
4189 abolishment of employment positions within those departments,
4190 agencies and institutions not excluded from this chapter;

4191 (j) To cooperate with appointing authorities in the
4192 administration of this chapter in order to promote public service
4193 and establish conditions of service which will attract and retain
4194 employees of character and capacity and to increase efficiency
4195 and economy in governmental departments by the improvement of
4196 methods of personnel administration with full recognition of the
4197 requirements and needs of management.

4198 SECTION 105. Section 25-9-131, Mississippi Code of 1972, is
4199 amended as follows:

4200 25-9-131. (1) Any employee in the state service may appeal
4201 his dismissal or other action adversely affecting his employment
4202 status to the employee appeals board created herein. The * * *
4203 employee appeals board shall conduct an adjudicative proceeding
4204 conducted in accordance with the Mississippi Administrative
4205 Procedure Law of 1999. * * *

4206 (2) Any employee aggrieved by a final decision of the
4207 employee appeals board shall be entitled to judicial review
4208 thereof in accordance with the Mississippi Administrative

4209 Procedure Law of 1999.

4210 (3) It is the intent of Sections 25-9-127 through 25-9-131
4211 to supersede and replace any existing statutory procedure
4212 conflicting in whole or in part which provides for the discharge
4213 of state employees in any state agency.

4214 SECTION 106. Section 25-9-132, Mississippi Code of 1972, is
4215 amended as follows:

4216 25-9-132. Any employee aggrieved by a final decision of the
4217 employee appeals board shall be entitled to judicial review
4218 thereof in the manner provided in the Mississippi Administrative
4219 Procedure Law of 1999.

4220 * * *

4221 * * * In each controversy in which the employee appeals
4222 board assumes jurisdiction, the state personnel board shall
4223 assess the respondent state agency a reasonable fee to defray the
4224 cost of recording the hearing. The state personnel board is
4225 hereby authorized to contract with certified court reporters to
4226 record hearings before the employee appeals board.

4227 SECTION 107. Section 25-11-11, Mississippi Code of 1972, is
4228 amended as follows:

4229 25-11-11. (1) Each political subdivision of the state and
4230 each instrumentality of the state or of a political subdivision,
4231 or of both, is hereby authorized to submit for approval by the
4232 board a plan for extending the benefits of this article, in
4233 conformity with applicable federal law, to employees of any such
4234 political subdivision or instrumentality. Each such plan or any
4235 amendment thereof shall be approved by the board if it finds that
4236 such plan, or such plan as amended, is in conformity with such
4237 requirements as are provided in regulations of the board, except
4238 that no such plan shall be approved unless:

4239 (a) It is in conformity with the requirements of the
4240 applicable federal law and with the agreement entered into under
4241 Section 25-11-7;

4242 (b) It provides that all services which constitute

4243 employment as defined in Section 25-11-5 and are performed in the
4244 employ of the political subdivision or instrumentality, by any
4245 employees thereof, shall be covered by the plan; except that it
4246 may exclude services performed by individuals to whom Section
4247 218(C)(3)(c) of the Social Security Act is applicable;

4248 (c) It specifies the source or sources from which the
4249 funds necessary to make the payments required by paragraph (a) of
4250 subsection (3) and by subsection (4) are expected to be derived
4251 and contains reasonable assurance that such sources will be
4252 adequate for such purpose;

4253 (d) It provides for such methods of administration of
4254 the plan by the political subdivision or instrumentality as are
4255 found by the board to be necessary for the proper and efficient
4256 administration thereof;

4257 (e) It provides that the political subdivision or
4258 instrumentality will make such reports, in such form and
4259 containing such information, as the board may from time to time
4260 require, and comply with such provisions as the board or the
4261 secretary of health and human services may from time to time find
4262 necessary to assure the correctness and verification of such
4263 reports; and

4264 (f) It authorizes the board to terminate the plan in
4265 its entirety in the discretion of the board if it finds that
4266 there has been a failure to comply substantially with any
4267 provision contained in such plan, such determination to take
4268 effect at the expiration of such notice and on such conditions as
4269 may be provided by regulations of the board and as may be
4270 consistent with applicable federal law.

4271 (2) The board shall not finally refuse to approve a plan
4272 submitted under subsection (1) and shall not terminate an
4273 approved plan, without reasonable notice and opportunity for
4274 hearing to each political subdivision or instrumentality affected
4275 thereby. The board's decision in any such case shall be final,
4276 conclusive, and binding but subject to judicial review in

4277 accordance with the Mississippi Administrative Procedure Law of
4278 1999.

4279 (3) (a) Each political subdivision or instrumentality as
4280 to which a plan has been approved under this section shall pay
4281 into the contribution fund, with respect to wages (as defined in
4282 Section 25-11-5 of this article,) at such time or times as the
4283 board may by regulation prescribe, contributions in the amounts
4284 and at the rates specified in the applicable agreement entered
4285 into by the board under Section 25-11-7.

4286 (b) Every political subdivision or instrumentality
4287 required to make payments under paragraph (a) of this subsection
4288 is authorized, in consideration of the employees' retention in,
4289 or entry upon, employment after enactment of this article, to
4290 impose upon its employees, as to services which are covered by an
4291 approved plan, a contribution with respect to wages (as defined
4292 in Section 25-11-5 of this article), not exceeding the amount of
4293 tax which would be imposed by the Federal Insurance Contributions
4294 Act if such services constituted employment within the meaning of
4295 that act, and to deduct the amount of such contribution from the
4296 wages as and when paid. Contributions so collected shall be paid
4297 into the contribution fund in partial discharge of the liability
4298 of such political subdivision or instrumentality under paragraph
4299 (a) of this subsection. Failure to deduct such contribution
4300 shall not relieve the employee or employer of liability therefor.

4301 (4) Any state agency, school, political subdivision,
4302 instrumentality or any employer that is required to submit
4303 contribution payments or wage reports under any section of this
4304 chapter shall be assessed interest on delinquent payments or wage
4305 reports as determined by the board of trustees and such assessed
4306 interest may be recovered by action in a court of competent
4307 jurisdiction against such reporting agency liable therefor or
4308 may, upon due certification of delinquency and at the request of
4309 the board, be deducted from any other moneys payable to such
4310 reporting agency by any department or agency of the state.

4311 (5) Referenda and certification. The Governor is empowered
4312 to authorize a referendum, upon request of the governing body of
4313 a political subdivision or juristic entity of the state and to
4314 designate any agency or individual to supervise its conduct, in
4315 accordance with the requirements of Section 218(d)(3) of the
4316 Social Security Act, on the question of whether service in
4317 positions covered by a retirement system established by a
4318 political subdivision or juristic entity of the state should be
4319 excluded from or included under an agreement under this article.

4320 The notice of referendum required by Section 218(d)(3)(C) of the
4321 Social Security Act to be given to employees shall contain or
4322 shall be accompanied by a statement, in such form and such detail
4323 as the agency or individual designated to supervise the
4324 referendum shall deem necessary and sufficient, to inform the
4325 employees of the rights which will accrue to them and their
4326 dependents and survivors, and the liabilities to which they will
4327 be subject, if their services are included under an agreement
4328 under this article.

4329 (6) Only those persons may be allowed to vote in the
4330 referendum who are actually employed in the employment which
4331 occasioned their membership in their retirement system at the
4332 time that the referendum is offered, and a majority of the
4333 members so qualified to vote must vote in favor of the referendum
4334 in order for it to become effective.

4335 (7) In the event of a negative vote in the referendum, no
4336 additional referendum may be held within a period of less than
4337 one (1) year; and in the event of an affirmative vote of the
4338 referendum, their agreement must be executed with the public
4339 employees' retirement system of Mississippi to cover such
4340 employees within six (6) months after the affirmative vote has
4341 been determined in the referendum.

4342 (8) Upon receiving evidence satisfactory to him that, with
4343 respect to any such referendum, the conditions specified in
4344 Section 218(d)(3) of the Social Security Act have been met, the

4345 Governor shall so certify to the secretary of health and human
4346 services.

4347 SECTION 108. Section 25-11-105, Mississippi Code of 1972,
4348 is amended as follows:

4349 25-11-105. The membership of this retirement system shall
4350 be composed as follows:

4351 (a) All persons who shall become employees in the
4352 state service after January 31, 1953, and whose wages are subject
4353 to payroll taxes and are lawfully reported on IRS Form W-2,
4354 except those specifically excluded, or as to whom election is
4355 provided in Articles 1 and 3, shall become members of the
4356 retirement system as a condition of their employment.

4357 (b) All persons who shall become employees in the
4358 state service after January 31, 1953, except those specifically
4359 excluded or as to whom election is provided in Articles 1 and 3,
4360 unless they shall file with the board prior to the lapse of sixty
4361 (60) days of employment or sixty (60) days after the effective
4362 date of the cited articles, whichever is later, on a form
4363 prescribed by the board, a notice of election not to be covered
4364 by the membership of the retirement system and a duly executed
4365 waiver of all present and prospective benefits which would
4366 otherwise inure to them on account of their participation in the
4367 system, shall become members of the retirement system; provided,
4368 however, that no credit for prior service will be granted to
4369 members until they have contributed to Article 3 of the
4370 retirement system for a minimum period of at least four (4)
4371 years. Such members shall receive credit for services performed
4372 prior to January 1, 1953, in employment now covered by Article 3,
4373 but no credit shall be granted for retroactive services between
4374 January 1, 1953, and the date of their entry into the retirement
4375 system unless the employee pays into the retirement system both
4376 the employer's and the employee's contributions on wages paid him
4377 during the period from January 31, 1953, to the date of his
4378 becoming a contributing member, together with interest at the

4379 rate determined by the board of trustees. Members reentering
4380 after withdrawal from service shall qualify for prior service
4381 under the provisions of Section 25-11-117. From and after July
4382 1, 1998, upon eligibility as noted above, the member may receive
4383 credit for such retroactive service provided:

4384 (1) The member shall furnish proof satisfactory
4385 to the board of trustees of certification of such service from
4386 the covered employer where the services were performed; and

4387 (2) The member shall pay to the retirement system
4388 on the date he or she is eligible for such credit or at any time
4389 thereafter prior to the date of retirement the actuarial cost for
4390 each year of such creditable service. The provisions of this
4391 subparagraph (2) shall be subject to the limitations of Section
4392 415 of the Internal Revenue Code and regulations promulgated
4393 thereunder.

4394 Nothing contained in this paragraph (b) shall be construed
4395 to limit the authority of the board to allow the correction of
4396 reporting errors or omissions based on the payment of the
4397 employee and employer contributions plus applicable interest.

4398 (c) All persons who shall become employees in the
4399 state service after January 31, 1953, and who are eligible for
4400 membership in any other retirement system shall become members of
4401 this retirement system as a condition of their employment unless
4402 they elect at the time of their employment to become a member of
4403 such other system.

4404 (d) All persons who are employees in the state service
4405 on January 31, 1953, and who are members of any nonfunded
4406 retirement system operated by the State of Mississippi, or any of
4407 its departments or agencies, shall become members of this system
4408 with prior service credit unless, before February 1, 1953, they
4409 shall file a written notice with the board of trustees that they
4410 do not elect to become members.

4411 (e) All persons who are employees in the state service
4412 on January 31, 1953, and who under existing laws are members of

4413 any fund operated for the retirement of employees by the State of
4414 Mississippi, or any of its departments or agencies, shall not be
4415 entitled to membership in this retirement system unless, before
4416 February 1, 1953, any such person shall indicate by a notice
4417 filed with the board, on a form prescribed by the board, his
4418 individual election and choice to participate in this system, but
4419 no such person shall receive prior service credit unless he
4420 becomes a member on or before February 1, 1953.

4421 (f) Each political subdivision of the state and each
4422 instrumentality of the state or a political subdivision, or both,
4423 is hereby authorized to submit, for approval by the board of
4424 trustees, a plan for extending the benefits of this article to
4425 employees of any such political subdivision or instrumentality.
4426 Each such plan or any amendment to the plan for extending
4427 benefits thereof shall be approved by the board of trustees if it
4428 finds that such plan, or such plan as amended, is in conformity
4429 with such requirements as are provided in Articles 1 and 3;
4430 however, upon approval of such plan or any such plan heretofore
4431 approved by the board of trustees, the approved plan shall not be
4432 subject to cancellation or termination by the political
4433 subdivision or instrumentality. No such plan shall be approved
4434 unless:

4435 (1) It provides that all services which
4436 constitute employment as defined in Section 25-11-5 and are
4437 performed in the employ of the political subdivision or
4438 instrumentality, by any employees thereof, shall be covered by
4439 the plan; with the exception of municipal employees who are
4440 already covered by existing retirement plans; provided, however,
4441 those employees in this class may elect to come under the
4442 provisions of this article;

4443 (2) It specifies the source or sources from which
4444 the funds necessary to make the payments required by subsection
4445 (d) of Section 25-11-123 and of subsections (f)(5)b and c of this
4446 section are expected to be derived and contains reasonable

4447 assurance that such sources will be adequate for such purpose;

4448 (3) It provides for such methods of
4449 administration of the plan by the political subdivision or
4450 instrumentality as are found by the board of trustees to be
4451 necessary for the proper and efficient administration thereof;

4452 (4) It provides that the political subdivision or
4453 instrumentality will make such reports, in such form and
4454 containing such information, as the board of trustees may from
4455 time to time require;

4456 (5) It authorizes the board of trustees to
4457 terminate the plan in its entirety in the discretion of the board
4458 if it finds that there has been a failure to comply substantially
4459 with any provision contained in such plan, such termination to
4460 take effect at the expiration of such notice and on such
4461 conditions as may be provided by regulations of the board and as
4462 may be consistent with applicable federal law.

4463 A. The board of trustees shall not finally
4464 refuse to approve a plan submitted under subsection (f), and
4465 shall not terminate an approved plan without reasonable notice
4466 and opportunity for hearing to each political subdivision or
4467 instrumentality affected thereby. The board's decision in any
4468 such case shall be final, conclusive and binding but subject to
4469 judicial review in accordance with the Mississippi Administrative
4470 Procedure Law of 1999.

4471 B. Each political subdivision or
4472 instrumentality as to which a plan has been approved under this
4473 section shall pay into the contribution fund, with respect to
4474 wages (as defined in Section 25-11-5), at such time or times as
4475 the board of trustees may by regulation prescribe, contributions
4476 in the amounts and at the rates specified in the applicable
4477 agreement entered into by the board.

4478 C. Every political subdivision or
4479 instrumentality required to make payments under subsection
4480 (f)(5)b hereof is authorized, in consideration of the employees'

4481 retention in or entry upon employment after enactment of Articles
4482 1 and 3, to impose upon its employees, as to services which are
4483 covered by an approved plan, a contribution with respect to wages
4484 (as defined in Section 25-11-5) not exceeding the amount provided
4485 in Section 25-11-123(d) if such services constituted employment
4486 within the meaning of Articles 1 and 3, and to deduct the amount
4487 of such contribution from the wages as and when paid.

4488 Contributions so collected shall be paid into the contribution
4489 fund as partial discharge of the liability of such political
4490 subdivisions or instrumentality under subsection (f)(5)b hereof.

4491 Failure to deduct such contribution shall not relieve the
4492 employee or employer of liability thereof.

4493 D. Any state agency, school, political
4494 subdivision, instrumentality or any employer that is required to
4495 submit contribution payments or wage reports under any section of
4496 this chapter shall be assessed interest on delinquent payments or
4497 wage reports as determined by the board of trustees in accordance
4498 with rules and regulations adopted by the board and such assessed
4499 interest may be recovered by action in the chancery court * * *
4500 against such reporting agency liable therefor or may, upon due
4501 certification of delinquency and at the request of the board of
4502 trustees, be deducted from any other monies payable to such
4503 reporting agency by any department or agency of the state.

4504 E. Each political subdivision of the state
4505 and each instrumentality of the state or a political subdivision
4506 or subdivisions which submits a plan for approval of the board,
4507 as provided in this section, shall reimburse the board for
4508 coverage into the expense account, its pro rate share of the
4509 total expense of administering Articles 1 and 3 as provided by
4510 regulations of said board.

4511 (g) The board may, in its discretion, deny the right
4512 of membership in this system to any class of employees whose
4513 compensation is only partly paid by the state or who are
4514 occupying positions on a part-time or intermittent basis. The

4515 board may, in its discretion, make optional with employees in any
4516 such classes their individual entrance into this system.

4517 (h) An employee whose membership in this system is
4518 contingent on his own election, and who elects not to become a
4519 member, may thereafter apply for and be admitted to membership;
4520 but no such employee shall receive prior service credit unless he
4521 becomes a member prior to July 1, 1953, except as provided in
4522 subsection (b).

4523 (i) In the event any member of this system should
4524 change his employment to any agency of the state having an
4525 actuarially funded retirement system, the board of trustees may
4526 authorize the transfer of the member's creditable service and of
4527 the present value of the member's employer's accumulation account
4528 and of the present value of the member's accumulated membership
4529 contributions to such other system, provided the employee agrees
4530 to the transfer of his accumulated membership contributions and
4531 provided such other system is authorized to receive and agrees to
4532 make such transfer.

4533 In the event any member of any other actuarially funded
4534 system maintained by an agency of the state changes his
4535 employment to an agency covered by this system, the board of
4536 trustees may authorize the receipt of the transfer of the
4537 member's creditable service and of the present value of the
4538 member's employer's accumulation account and of the present value
4539 of the member's accumulated membership contributions from such
4540 other system, provided the employee agrees to the transfer of his
4541 accumulated membership contributions to this system and provided
4542 the other system is authorized and agrees to make such transfer.

4543 (j) Wherever herein state employment is referred to,
4544 it shall include joint employment by state and federal agencies
4545 of all kinds.

4546 (k) Employees of a political subdivision or
4547 instrumentality who were employed by such political subdivision
4548 or instrumentality prior to an agreement between such entity and

4549 the Public Employees' Retirement System to extend the benefits of
4550 this article to its employees, and which agreement provides for
4551 the establishment of retroactive service credit, and who have
4552 been members of the retirement system and have remained
4553 contributors to the retirement system for four (4) years, may
4554 receive credit for such retroactive service with such political
4555 subdivision or instrumentality, provided the employee and/or
4556 employer, as provided under the terms of the modification of the
4557 joinder agreement in allowing such coverage, pay into the
4558 retirement system the employer's and employee's contributions on
4559 wages paid the member during such previous employment, together
4560 with interest or actuarial cost as determined by the board
4561 covering the period from the date the service was rendered until
4562 the payment for the credit for such service was made. Such wages
4563 shall be verified by the Social Security Administration or
4564 employer payroll records. Effective July 1, 1998, upon
4565 eligibility as noted above, a member may receive credit for such
4566 retroactive service with such political subdivision or
4567 instrumentality provided;

4568 (1) The member shall furnish proof satisfactory
4569 to the board of trustees of certification of such services from
4570 the political subdivision or instrumentality where the services
4571 were rendered or verification by the Social Security
4572 Administration; and

4573 (2) The member shall pay to the retirement system
4574 on the date he or she is eligible for such credit or at any time
4575 thereafter prior to the date of retirement the actuarial cost for
4576 each year of such creditable service. The provisions of this
4577 subparagraph (2) shall be subject to the limitations of Section
4578 415 of the Internal Revenue Code and regulations promulgated
4579 thereunder.

4580 Nothing contained in this paragraph (k) shall be construed
4581 to limit the authority of the board to allow the correction of
4582 reporting errors or omissions based on the payment of employee

4583 and employer contributions plus applicable interest. Payment for
4584 such time shall be made in increments of not less than
4585 one-quarter (1/4) year of creditable service beginning with the
4586 most recent service. Upon the payment of all or part of such
4587 required contributions, plus interest or the actuarial cost as
4588 provided above, the member shall receive credit for the period of
4589 creditable service for which full payment has been made to the
4590 retirement system.

4591 (l) Through June 30, 1998, any state service eligible
4592 for retroactive service credit, no part of which has ever been
4593 reported, and requiring the payment of employee and employer
4594 contributions plus interest, or, from and after July 1, 1998, any
4595 state service eligible for retroactive service credit, no part of
4596 which has ever been reported to the retirement system, and
4597 requiring the payment of the actuarial cost for such creditable
4598 service, may, at the member's option, be purchased in quarterly
4599 increments as provided above at such time as its purchase is
4600 otherwise allowed.

4601 (m) All rights to purchase retroactive service credit
4602 or repay a refund as provided in Section 25-11-101 et seq. shall
4603 terminate upon retirement.

4604 The following classes of employees and officers shall not
4605 become members of this retirement system, any other provisions of
4606 Articles 1 and 3 to the contrary notwithstanding:

4607 (a) Patient or inmate help in state charitable, penal
4608 or correctional institutions;

4609 (b) Students of any state educational institution
4610 employed by any agency of the state for temporary, part-time or
4611 intermittent work;

4612 (c) Participants of Comprehensive Employment and
4613 Training Act of 1973 (CETA) being Public Law 93-203, who enroll
4614 on or after July 1, 1979.

4615 Membership in this system shall cease by a member
4616 withdrawing his accumulated contributions, or by a member

4617 withdrawing from active service with a retirement allowance, or
4618 by a member's death.

4619 SECTION 109. Section 25-11-120, Mississippi Code of 1972,
4620 is amended as follows:

4621 25-11-120. (1) Any individual aggrieved by an
4622 administrative determination, including a determination of the
4623 medical board, relating to the eligibility for or payment of
4624 benefits, or the calculation of creditable service or other
4625 similar matters relating to the Public Employees' Retirement
4626 System or any other retirement system or program administered by
4627 the board, may request a hearing before a hearing officer
4628 designated by the board. Such hearings shall be conducted as
4629 adjudicative proceedings in accordance with the Mississippi
4630 Administrative Procedure Law of 1999 and the rules and
4631 regulations adopted by the board and normal rules of evidence
4632 shall not apply. * * *

4633 (2) Any individual aggrieved by the determination of the
4634 board shall have a right to judicial review in accordance with
4635 the Mississippi Administrative Procedure Law of 1999 * * * and
4636 this procedure shall be the exclusive method of appealing
4637 determinations of the board.

4638 (3) The board is authorized to appoint a committee of the
4639 board to serve as hearing officer or to employ or contract with
4640 qualified personnel to perform the duties of hearing officer and
4641 court reporter as may be necessary for conducting, recording and
4642 transcribing such proceedings and shall record and preserve all
4643 proceedings in accordance with the Mississippi Administrative
4644 Procedure Law of 1999. The board may assess and collect fees to
4645 offset costs related to such hearings. Said fees shall be
4646 deposited to the credit of the Public Employees' Retirement
4647 System.

4648 SECTION 110. Section 25-53-111, Mississippi Code of 1972,
4649 is amended as follows:

4650 25-53-111. The bureau shall have the following additional

4651 duties:

4652 (a) To establish and coordinate through either state
4653 ownership or commercial leasing, all telecommunications systems
4654 and services affecting the management and operations of the
4655 state.

4656 (b) To act as the sole centralized customer for the
4657 acquisition, billing and record keeping of all telecommunications
4658 systems or services provided to state agencies whether obtained
4659 through lease or purchase.

4660 (c) To charge respective user agencies for their
4661 proportionate cost of the installation, maintenance and operation
4662 of the telecommunications systems and services, including the
4663 operation of the bureau.

4664 (d) To offer or provide transmission, switch and
4665 network services on a reimbursable basis to agencies financed
4666 entirely by federal funds, to governing authorities and to other
4667 governmental agencies.

4668 (e) To approve or provide state telephone services on
4669 a reimbursable basis to full-time students at state institutions
4670 of higher learning and junior colleges, including where such
4671 services are provided by the state or the institution.

4672 (f) To develop coordinated telecommunications systems
4673 or services within and among all state agencies and require,
4674 where appropriate, cooperative utilization of telecommunications
4675 equipment and services by aggregating users. Where such
4676 cooperative utilization of telecommunications system or service
4677 would affect an agency authorized to receive information from the
4678 National Crime Information Center of the Federal Bureau of
4679 Investigation, such plans for cooperative utilization shall first
4680 be approved by the National Crime Information Center before
4681 implementation of such telecommunications systems or service can
4682 proceed.

4683 (g) To review, coordinate, approve or disapprove all
4684 requests by state agencies for the procurement, through purchase

4685 or contract for lease of telecommunications systems or services
4686 including telecommunication proposals, studies and consultation
4687 contracts and intra-LATA and inter-LATA transmission channels.

4688 (h) To establish and define telecommunications systems
4689 and services specifications and designs so as to assure
4690 compatibility of telecommunications systems and services within
4691 State Government and governing authorities.

4692 (i) To provide a continuous, comprehensive analysis
4693 and inventory of telecommunications costs, facilities and systems
4694 within State Government.

4695 (j) To promote, coordinate or assist in the design and
4696 engineering of emergency telecommunications systems, including
4697 but not limited to "911" service, emergency medical services and
4698 other emergency telecommunications services.

4699 (k) To advise and provide consultation to agencies and
4700 governing authorities with respect to telecommunications
4701 management planning and related matters and to provide training
4702 to users within State Government in telecommunications technology
4703 and system use.

4704 (l) To develop policies, procedures and long-range
4705 plans, consistent with the protection of citizens' rights to
4706 privacy and access to information, for the acquisition and use of
4707 telecommunications systems, and to base such policies on current
4708 information about state telecommunications activities in relation
4709 to the full range of emerging technologies.

4710 A state agency requesting an increase in expenditure of
4711 funds for new telecommunications equipment systems or services
4712 shall submit to the Legislative Budget Office with its budget
4713 request preceding the fiscal year for which funding is requested
4714 detailed justification for such request. The justification shall
4715 be provided on forms developed by the bureau in accordance with
4716 the Mississippi Administrative Procedure Law of 1999. In
4717 addition, all state agencies shall submit to the bureau, when
4718 requested, a long-range plan for use of telecommunications

4719 equipment, systems and services.

4720 (m) In adopting rules to act in accordance with the
4721 Mississippi Administrative Procedure Law of 1999.

4722 SECTION 111. Section 25-53-125, Mississippi Code of 1972,
4723 is amended as follows:

4724 25-53-125. The following general provisions shall apply to
4725 all procurements under Sections 25-53-101 through 25-53-125:

4726 (a) No contracts entered into hereunder shall have an
4727 initial effective date earlier than the date on which such
4728 contract receives approval as required herein.

4729 (b) All changes, modifications and amendments to any
4730 contract hereunder shall be approved in advance by the bureau, in
4731 addition to any other approvals required by law.

4732 (c) The bureau shall promulgate rules and regulations
4733 in accordance with the Mississippi Administrative Procedure Law
4734 of 1999, for the establishment of contract format.

4735 (d) Where written proposals or bids are submitted by
4736 vendors, the proposal or bid of the successful vendor shall be
4737 incorporated into the final contract consummated with that
4738 vendor.

4739 (e) The provisions of Sections 25-53-101 through
4740 25-53-125 shall, with respect to the procurement of
4741 telecommunications equipment, systems or related services,
4742 supersede specifications of any contradictory or conflicting
4743 provisions of Chapter 7, Title 31, Mississippi Code of 1972, and
4744 other laws with respect to awarding public contracts.

4745 SECTION 112. Section 25-59-9, Mississippi Code of 1972, is
4746 amended as follows:

4747 25-59-9. The Mississippi Department of Archives and
4748 History, with respect to the Mississippi Archives and Records
4749 Management Law, shall have the following powers and duties:

4750 (a) The department may make and enter into contracts
4751 and agreements with other agencies, organizations, associations,
4752 corporations and individuals or federal agencies as it may

4753 determine are necessary, expedient or incidental to the
4754 performance of its duties or the execution of its powers under
4755 this chapter.

4756 (b) The department shall adopt such rules and
4757 regulations deemed necessary to carry out its duties and
4758 responsibilities under this chapter, which rules shall be binding
4759 on all agencies and the persons affected thereby. The department
4760 shall publish said rules and regulations in accordance with the
4761 provisions of the Mississippi Administrative Procedure Law of
4762 1999.

4763 (c) Conduct a records management program including a
4764 records center and subject to the availability of staff and
4765 funds, conduct a centralized microfilming program for the benefit
4766 of all state agencies; and provide advice, assistance and
4767 training to all state agencies in matters pertaining to the
4768 economical and efficient management of public records.

4769 (d) Cooperate with and assist, insofar as possible,
4770 state institutions, departments, agencies, counties,
4771 municipalities and individuals engaged in the field of state
4772 archives, manuscripts and history.

4773 (e) Establish safeguards against unauthorized or
4774 unlawful removal or loss of records.

4775 (f) Initiate appropriate action to recover records
4776 removed unlawfully or without authorization.

4777 (g) Establish and maintain a program in cooperation
4778 with each agency for the selection and preservation of vital
4779 records considered essential to the operation of government and
4780 to the protection of the rights and privileges of citizens; make
4781 or have made preservation duplicates, or designate existing
4782 copies as preservation duplicates to be preserved in a place of
4783 safekeeping as prescribed by the department.

4784 (h) Promulgate rules and regulations permitting the
4785 storage, use and dissemination of records which are transferred
4786 by any local governmental body in this state to a local

4787 historical or archival group which has been incorporated and
4788 operates as a private, nonprofit corporation. Such rules and
4789 regulations shall be in accordance with the provisions of Section
4790 25-59-25.

4791 SECTION 113. Section 25-61-13, Mississippi Code of 1972, is
4792 amended as follows:

4793 25-61-13. (1) Any person denied the right granted by
4794 Section 25-61-5 to inspect and/or copy public records may
4795 institute a suit in the chancery court of the county in which the
4796 public body is located, and the court shall determine whether
4797 such public record is exempt from the provisions of this chapter,
4798 and in making such determination the court shall take into
4799 consideration any constitutional or statutory law or decision of
4800 any court of this state or the United States or any rule of
4801 common law. Process shall be served on the proper officials
4802 according to law.

4803 (2) In any suit filed under subsection (1) of this section,
4804 the court has the authority to prohibit the public body from
4805 withholding the public records, to order the production of any
4806 public records improperly withheld from the person seeking
4807 disclosure, and to grant such other equitable relief as may be
4808 proper. The court, on its own motion, may privately view the
4809 public records in controversy before reaching a decision.

4810 (3) Proceedings arising under this section shall take
4811 precedence on the docket over all other matters and shall be
4812 assigned for hearing and trial at the earliest practicable date
4813 and expedited in every way. Such suits may be heard in termtime
4814 or in vacation.

4815 (4) Any suit filed under this section shall be subject to
4816 all the rights and rules of appeal for other suits arising in
4817 chancery court.

4818 SECTION 114. Section 27-3-29, Mississippi Code of 1972, is
4819 amended as follows:

4820 27-3-29. When directed by the other members of the

4821 commission, and agreed to by the appealing taxpayers, an
4822 associate commissioner may hold a hearing on any appeal from a
4823 decision of the chairman at the time and place agreed to, and at
4824 such hearing shall take the testimony of witnesses, verbally, or
4825 in writing, take depositions, and shall have the power to require
4826 the production of books and other records and papers which the
4827 chairman is authorized to demand or examine, and he shall have
4828 authority to make copies of same. At the conclusion of the
4829 hearing, the associate commissioner shall submit all written
4830 evidence, documents, records and other pertinent information to
4831 the other members of the commission, together with a report in
4832 writing setting forth a review of the cause and the essential
4833 facts of the matter. Whereupon the whole commission, if the
4834 appealing taxpayer assents thereto, shall render its decision on
4835 the appeal; but if the taxpayer desires a further hearing on the
4836 cause, the whole commission shall hear the appeal at its office
4837 in the Capitol. In either case, the taxpayer may of right have
4838 judicial review in accordance with the Mississippi Administrative
4839 Procedure Law of 1999.

4840 Any person aggrieved by any assessment, order, decision or
4841 other act of the commission and/or the commissioner, except as
4842 otherwise provided in Sections 27-7-71, 27-55-41, 27-65-45,
4843 67-1-1 et seq., and other areas of the law administered by the
4844 commission which have specifically incorporated one (1) of these
4845 sections for appeal purposes, may apply to the Board of Review of
4846 the Mississippi State Tax Commission by petition in writing for a
4847 hearing within ten (10) days after receiving notice of the
4848 adverse action. At the hearing, the board of review shall try
4849 the issues presented according to the law, the facts and within
4850 the guidelines established by the commissioner and shall notify
4851 the person so appealing of its determination.

4852 If any person feels aggrieved by the decision of the board
4853 of review, he may apply to the commission by petition, in
4854 writing, within thirty (30) days after notice is mailed to him,

4855 for a hearing and correction of the decision of the said board,
4856 in which petition he shall set forth the reasons such hearing
4857 should be granted and the relief which he is seeking. The
4858 commission shall conduct an adjudicative proceeding in accordance
4859 with the Mississippi Administrative Procedure Law of 1999. After
4860 the hearing, the State Tax Commission may make such order in the
4861 matter as may appear to it just and lawful and shall furnish a
4862 copy of the order to the petitioner.

4863 * * *

4864 Any person aggrieved by the final order of the commission
4865 may of right have judicial review in accordance with the
4866 Mississippi Administrative Procedure Law of 1999.

4867 SECTION 115. Section 27-7-73, Mississippi Code of 1972, is
4868 amended as follows:

4869 27-7-73. The findings of the State Tax Commission shall be
4870 final subject to judicial review in accordance with the
4871 Mississippi Administrative Procedure Law of 1999. The party
4872 perfecting judicial review shall file a bond, to be approved by
4873 the clerk of said court, in a sum double the amount in
4874 controversy, conditioned to pay the judgment of the court. * * *

4875 SECTION 116. Section 27-7-315, Mississippi Code of 1972, is
4876 amended as follows:

4877 27-7-315. If any overpayment of any tax, interest or
4878 penalty levied or provided for by Article 1 of this chapter, or
4879 in this article, is not refunded to the taxpayer as provided in
4880 Section 27-7-313 within six (6) months after the final date for
4881 filing returns as prescribed by law, the taxpayer may file a
4882 petition with the commissioner for a hearing on the claim for
4883 refund. Within ten (10) days after the receipt of such petition,
4884 the commissioner shall either (1) make refund as requested in the
4885 return filed by the taxpayer of the amount claimed by the
4886 taxpayer; or (2) set a time and place for such hearing and give
4887 notice thereof to the petitioner by registered or certified mail
4888 with return receipt requested. The date set for such hearing

4889 shall be not less than ten (10) days, nor more than thirty (30)
4890 days after notice thereof is given to the petitioner. If, after
4891 such hearing, the commissioner shall determine that the
4892 petitioner is entitled to a refund as claimed in the return, he
4893 shall refund to the petitioner the amount determined to be due.
4894 If, after such hearing, the commissioner determines that the
4895 petitioner is not entitled to a refund for overpayment, he shall
4896 so notify the petitioner by registered mail or by certified mail
4897 with return receipt requested.

4898 If the petitioner is aggrieved by the decision of the
4899 commissioner, he may appeal from the commissioner's decision for
4900 a rehearing before the State Tax Commission. Such appeal for a
4901 rehearing shall be made within thirty (30) days from the date of
4902 notice by the commissioner, and the commission shall conduct an
4903 adjudicative proceeding in accordance with the Mississippi
4904 Administrative Procedure Law of 1999. If the petitioner feels
4905 further aggrieved by the decision of the commission, he may
4906 secure judicial review thereof in accordance with the Mississippi
4907 Administrative Procedure Law of 1999.

4908 If any overpayment of tax as reflected on a return or
4909 amended return filed, and verified by the commissioner or
4910 determined to be due by the commissioner or commission when no
4911 overpayment is shown on a return or amended return, is not
4912 refunded within ninety (90) days after the prescribed due date of
4913 the return, the date the return is filed, or the date the
4914 commissioner or commission determines a refund as being due when
4915 no overpayment is shown on a return or amended return, whichever
4916 is later, interest at the rate of one percent (1%) per month
4917 shall be allowed on such overpayment computed for the period
4918 after expiration of the ninety-day period provided herein to the
4919 date of payment.

4920 SECTION 117. Section 27-7-515, Mississippi Code of 1972, is
4921 amended as follows:

4922 27-7-515. (1) The commission is authorized to prescribe

4923 forms and adopt rules and regulations which it deems necessary to
4924 effectuate the intent and provisions of this article. All such
4925 rules and regulations shall be adopted in accordance with the
4926 Mississippi Administrative Procedure Law of 1999.

4927 (2) The commission may enter into reciprocal agreements
4928 with the departments of revenue of other states that have enacted
4929 legislation that is substantially equivalent to the setoff
4930 procedure in this article. The agreement shall authorize the
4931 commission to provide by rule for the setoff of state income tax
4932 refunds or rebates of defaulters from states with which
4933 Mississippi has a reciprocal agreement and to provide for sending
4934 lists of names of Mississippi defaulters to the states with which
4935 Mississippi has a reciprocal agreement for setoff of that state's
4936 income tax refunds.

4937 SECTION 118. Section 27-9-47, Mississippi Code of 1972, is
4938 amended as follows:

4939 27-9-47. The executor may in writing apply to the
4940 commissioner for revision of the tax assessed against the estate
4941 at any time within one year from the date of the filing of the
4942 return or from the date of notice of the assessment of an
4943 additional tax. The commissioner shall grant a hearing thereon
4944 and if, upon such hearing, he shall determine that the tax is
4945 excessive or incorrect, he shall resettle the same according to
4946 the law and the facts and adjust the computation of the tax
4947 accordingly. The commissioner shall notify the executor in
4948 writing of his determination and shall refund to the executor the
4949 amount, if any, paid in excess of the tax found by him to be due.

4950 If the executor has failed without good cause to file a return
4951 within the time prescribed by law or has filed a fraudulent
4952 return or having filed an incorrect return has failed after
4953 notice to file a proper return, the commissioner shall not reduce
4954 the tax below the amount for which the executor has been found to
4955 be properly assessed.

4956 If the executor is dissatisfied with the decision of the

4957 commissioner he may apply in writing to the entire commission for
4958 a hearing, and the commission shall conduct an adjudicative
4959 proceeding in accordance with the Mississippi Administrative
4960 Procedure Law of 1999.

4961 If the executor be dissatisfied with the decision of the
4962 commission he shall have the right of judicial review in
4963 accordance with the Mississippi Administrative Procedure Law of
4964 1999. After perfecting judicial review, the executor shall file
4965 a bond with the clerk of the court in the amount of the tax
4966 assessed, including additional tax, interest and penalties, if
4967 any, and the estimated court costs, said bond to be made by a
4968 bonding company qualified to write bonds within the State of
4969 Mississippi, conditioned that any tax found due by the * * *
4970 court will be promptly paid. * * *

4971 * * *

4972 SECTION 119. Section 27-13-45, Mississippi Code of 1972, is
4973 amended as follows:

4974 27-13-45. The findings of the State Tax Commission shall be
4975 final subject to judicial review in accordance with the
4976 Mississippi Administrative Procedure Law of 1999. The party
4977 perfecting judicial review shall file a bond, to be approved by
4978 the clerk of said court, in a sum double the amount in
4979 controversy, conditioned to pay the judgment of the court. * * *

4980 SECTION 120. Section 27-19-337, Mississippi Code of 1972,
4981 is amended as follows:

4982 27-19-337. Any person aggrieved by an assessment for
4983 license taxes, license tag or permit fees made upon him by the
4984 commission, or by any other order or act of the commission in the
4985 administration of this chapter may, where no specific remedy is
4986 prescribed, apply to the board of review by petition in writing
4987 for a hearing and a correction of the assessment or other order
4988 or act appealed from. For any assessment of license taxes, tag
4989 or permit fee and/or penalty and interest for which payment is
4990 not required to be made forthwith at the time of assessment, the

4991 petition shall be made within ten (10) days after the date of
4992 assessment or due date, whichever is later. For any assessment
4993 which has been paid, this petition shall be made within thirty
4994 (30) days after such payment. At the hearing, the board of
4995 review shall try the issues presented according to the law, the
4996 facts and within the guidelines established by the commissioner,
4997 and shall notify the person so appealing of its determination,
4998 and if the board of review orders the payment of any license
4999 taxes, tag, permit fees or penalties, the person shall pay the
5000 amount so determined, plus any damages and interest, if any,
5001 within ten (10) days after the order is issued or such further
5002 time as the board shall prescribe.

5003 If any person feels aggrieved by the decision of the board
5004 of review, he may apply to the commission by petition, in
5005 writing, within thirty (30) days after notice is mailed to him,
5006 for a hearing and correction of the decision of the said board,
5007 in which petition he shall set forth the reasons such hearing
5008 should be granted and the relief which he is seeking. The
5009 commission shall conduct an adjudicative proceeding in accordance
5010 with the Mississippi Administrative Procedure Law of 1999. After
5011 the proceeding, the State Tax Commission may make such order in
5012 the matter as may appear to it just and lawful and shall furnish
5013 a copy of the order to the petitioner.

5014 Any person aggrieved by the final order of the State Tax
5015 Commission, and required to pay the taxes, tag, permit fees or
5016 penalties, may of right secure judicial review thereof in
5017 accordance with the Mississippi Administrative Procedure Law of
5018 1999.

5019 SECTION 121. Section 27-33-41, Mississippi Code of 1972, is
5020 amended as follows:

5021 27-33-41. The administration of this article is hereby
5022 vested in the State Tax Commission, and it shall have the power
5023 and the authority necessary to secure compliance with its
5024 provisions uniformly throughout the state. The commission shall,

5025 in addition to its general duties of administration of the
5026 article, do the specific things set out in this section:

5027 (a) It shall adopt and issue to tax assessors, clerks,
5028 boards of supervisors, and all other officers or offices to which
5029 this article applies, rules and regulations in accordance with
5030 the Mississippi Administrative Procedure Law of 1999, not
5031 inconsistent with the provisions of the article, affecting the
5032 applications and all proceedings, records, hearings and other
5033 pertinent subjects, relating to property for which a homestead
5034 exemption is claimed; and such rules and regulations shall be
5035 observed by such officers, boards and offices, in all respects,
5036 and in the performance of any and all duties imposed and powers
5037 granted by this article.

5038 (b) It shall prescribe the form of and furnish
5039 suitable application forms, or blanks, for the purpose of
5040 carrying out the provisions of this article, and shall deliver to
5041 each assessor a sufficient number of such blanks for the use of
5042 homeowners.

5043 (c) It shall have authority and it shall be its duty
5044 to examine all applications for homestead exemption allowed under
5045 this article, to determine if the provisions of the article have
5046 been complied with by the applicant, the tax assessor, the board
5047 of supervisors, the clerk, and all others, and if the exemptions
5048 have been lawfully allowed; and it shall reject for reimbursement
5049 of tax loss any exemption allowed by the board which does not
5050 conform to the requirements of law in every substantial
5051 particular or for which no application has been sent to the
5052 commission as required in Section 27-33-35(a), and shall correct
5053 or have corrected any errors; and the tax loss to be reimbursed
5054 shall be adjusted to accord with the findings of the commission.

5055 When an application is rejected, notice thereof shall be
5056 given as provided by this section, and the acceptance or
5057 objection by the board shall be determined as provided by Section
5058 27-33-37(k).

5059 (d) It shall have authority to examine the assessment
5060 rolls, any account register, file, document, record or paper
5061 relating to receipts and disbursements of the taxing unit or any
5062 and all matters relating to homestead exemptions allowed and tax
5063 losses to be reimbursed. It shall also have the authority to
5064 examine any report or return received by the Tax Commission to
5065 verify any claims made on homestead exemption applications.

5066 (e) It shall have the authority to summon and examine
5067 under oath any officer or other person with respect to any matter
5068 bearing upon the exemption of a home or homes, and to do any and
5069 all other things necessary and proper to ascertain the facts with
5070 respect to any application or claim for homestead exemption; and
5071 it may require the board to furnish any information or document
5072 necessary to the performance of its duties or the correct
5073 determination of any question before it to which the board is a
5074 party.

5075 (f) The reimbursement for the annual tax loss to the
5076 taxing units shall be due and payable in two (2) installments;
5077 the first on March 1 and the second on September 1 of each year.

5078 The clerk's certificate of tax loss when in accord with the
5079 supplemental roll and the applications as filed with the
5080 commission shall constitute a request by the board for
5081 reimbursement of the tax loss.

5082 (g) It shall, on or before the first day of March each
5083 year, certify to the State Auditor the amount of the first
5084 installment to be paid to each taxing unit in the state, which
5085 shall be one-half (1/2) of the amount due, with adjustments,
5086 which is the amount of the first installment less any charges
5087 against the account and plus any credits by reason of previous
5088 charges which have been cancelled. However, if the copy of the
5089 county land roll, the supplemental roll and the clerk's
5090 certificate of tax loss have not been filed with and approved by
5091 the commission by February 1, the commission shall be allowed
5092 thirty (30) days after the filing of the rolls and the said

5093 certificate in which to perform the duties hereby imposed.

5094 (h) It shall, on or before the first day of September
5095 each year, certify to the State Auditor the amount of the second
5096 installment to be paid to each taxing unit in the state, which
5097 shall be the remainder of the amount due with adjustments, which
5098 is an amount equal to the first installment less any charges
5099 against the account and plus any credits by reason of previous
5100 charges which have been cancelled. Adjustments, either charges
5101 or credits, against the amount of tax loss to any taxing unit may
5102 be made at any time as provided in subsection (j) of this
5103 section.

5104 (i) In the event an adjustment in the amount of the
5105 tax loss has been determined by the commission, it shall give
5106 notice, in writing, to the board of supervisors, which notice
5107 shall be considered by the board at its next meeting, regular,
5108 adjourned or special. If the board accepts the adjustment, it
5109 shall promptly so advise the commission, using such form as may
5110 be prescribed and furnished by the commission. If the board
5111 objects to the adjustment, it shall promptly so advise the
5112 commission, using such forms as may be prescribed and furnished
5113 by the commission, stating in detail the grounds for its
5114 objection; and a final decision may be reached by a hearing, in
5115 person or by correspondence. Or if, within thirty (30) days
5116 after the time of consideration of the adjustment by the board,
5117 it requests a hearing on the objection, the commission shall
5118 grant the same and fix the date therefor. Such hearings before
5119 the commission shall be held as its offices in Jackson or at such
5120 other place as the commission may designate; or the commission by
5121 its duly accredited representative, may appear before the board
5122 at its usual meeting place for the hearing. In the event of
5123 disagreement between any board of supervisors on the one hand and
5124 the commission on the other hand, the decision of the commission
5125 shall be prima facie correct.

5126 (j) It shall be the duty of the commission and it

5127 shall have authority to charge the account of any taxing unit
5128 with amounts of homestead exemption tax loss claimed by the
5129 taxing unit in the certificate of tax loss and the supplemental
5130 roll and to deduct the amount from subsequent installments,
5131 either first or second. Such charges shall be made when
5132 homestead exemption applications are rejected in whole or in part
5133 for reimbursement of tax loss or when errors are discovered in
5134 the supplemental roll or clerk's certificate of tax loss.

5135 (k) The authority of the commission to reject an
5136 application for reimbursement of tax loss shall not be exercised
5137 later than one (1) year after the first day of January of the
5138 year next following that in which the application was filed by
5139 the applicant; but this limitation shall not apply in cases of
5140 fraud, nor where the same person was granted exemption on two (2)
5141 separate homes.

5142 Notice of adjustments in tax loss payments and notice of
5143 applications rejected shall be given by mail, addressed to the
5144 clerk of the board, and the notice directed to the president of
5145 the board of supervisors of the county. The date of mailing
5146 shall be the date of the notice.

5147 (l) The commission shall file and preserve full,
5148 complete and accurate records of all tax loss payments and
5149 adjustments in tax loss payments made under the provisions of
5150 this article, including the certificates of tax loss for a period
5151 of three (3) years from the date thereof. The commission shall
5152 file and preserve for a period of three (3) years all
5153 applications for homestead exemption filed with it and copies of
5154 all supplemental rolls, counting from the first day of January of
5155 the year in which they are required to be executed or made. All
5156 records enumerated may be destroyed upon the order of the
5157 commission, when kept for the time required. All other
5158 documents, records, papers and correspondence may be destroyed
5159 upon the order of the commission when considered useless.

5160 (m) The commission shall, on or before June 1 of any

5161 year, pay the second installment, or a part thereof, to any
5162 school taxing unit upon submission to the commission of proof, in
5163 the form of a certificate of necessity, executed by the county
5164 superintendent of education for the county general school fund,
5165 or for a county school district fund, and by the city
5166 superintendent of schools for a municipal separate school
5167 district, that there is not sufficient money in the maintenance
5168 fund of the taxing unit to pay the salaries of teachers and
5169 school bus drivers for the current school term. Such payment
5170 shall be made as provided in subsection (h) of this section.

5171 (n) The county tax collectors shall enter, or cause to
5172 be entered, all transactions regarding the titling or
5173 registration of vehicles into the statewide telecommunications
5174 system in compliance with the provisions of Section 63-21-18.
5175 Failure of any tax collector to comply with the provisions of
5176 this paragraph shall subject the county to the withholding of
5177 reimbursements of homestead exemption tax loss as provided under
5178 Section 63-21-18.

5179 SECTION 122. Section 27-35-163, Mississippi Code of 1972,
5180 is amended as follows:

5181 27-35-163. After an adjudicative proceeding conducted in
5182 accordance with the Mississippi Administrative procedure Law of
5183 1999, any person, firm or corporation aggrieved by an order of
5184 the State Tax Commission assessing property for the purpose of ad
5185 valorem taxation may, within twenty (20) days after the
5186 adjournment of the meeting at which such assessment is made
5187 final, of right secure judicial review in accordance with the
5188 Mississippi Administrative Procedure law of 1999. Any person may
5189 have judicial review with supersedeas as to the amount of taxes
5190 in controversy * * * upon giving bond with sufficient sureties,
5191 to be approved by the clerk of such court, in a sum equal to the
5192 amount of taxes due on the contested value of such property as
5193 assessed by the tax commission, but never less than One Hundred
5194 Dollars (\$100.00), payable to the state and conditioned to

5195 perform the judgment of the circuit court. The ad valorem taxes
5196 due on the uncontested portion of the value as set by the State
5197 Tax Commission shall be due and payable at the same time as all
5198 other ad valorem taxes are for real and personal property. * * *

5199 If the order of the State Tax Commission assessing said
5200 property be affirmed, then the person, firm or corporation who
5201 sought judicial review, and the sureties on the * * * bond, shall
5202 be liable to the state for damages at the rate of ten percent
5203 (10%) on the amount of taxes in controversy, and all cost of such
5204 judicial review.

5205 If the state shall be aggrieved by an order of the State Tax
5206 Commission as to the assessment of such property for ad valorem
5207 taxes, the Attorney General or the district attorney, if all the
5208 property sought to be taxed is located within the judicial
5209 district for which such district attorney is elected, may, within
5210 twenty (20) days after the adjournment of the meeting at which
5211 such assessment is made final, of right, secure judicial review
5212 thereof in accordance with the Mississippi Administrative
5213 Procedure Law of 1999, except no bonds shall be required of the
5214 Attorney General or district attorney who may appeal. * * *

5215 * * *

5216 In the event the proceeding for judicial review by the
5217 taxpayer delays the collection of the tax due by him, then such
5218 taxpayer shall be liable for and shall pay, at the time the taxes
5219 are paid to the tax collector whose duty it is to collect the
5220 taxes, interest at the rate of twelve percent (12%) per annum
5221 from the date the taxes were due until paid.

5222 SECTION 123. Section 27-55-41, Mississippi Code of 1972, is
5223 amended as follows:

5224 27-55-41. Any person aggrieved by an assessment for taxes
5225 made upon him by the commission, or by any other order or act of
5226 the commission in the administration of this article may, where
5227 no specific remedy is specified, apply to the board of review by
5228 petition in writing within thirty (30) days after notice is

5229 mailed to him for a hearing and a correction of the amount of tax
5230 assessed against him or other order or act appealed from. At
5231 said hearing, the board of review shall try the issues presented,
5232 according to the law, the facts and within the guidelines
5233 established by the commissioner, and shall notify the person so
5234 appealing of its determination, and if the board of review orders
5235 the payment of any taxes, the taxpayer shall pay the taxes,
5236 damages and interest, if any, within thirty (30) days after the
5237 order is issued, provided there is no application for appeal to
5238 the State Tax Commission.

5239 If any person feels aggrieved by the decision of the board
5240 of review, he may apply to the commission by petition, in
5241 writing, within thirty (30) days after notice is mailed to him,
5242 for a hearing and correction of the decision of the said board,
5243 in which petition he shall set forth the reasons such hearing
5244 should be granted and the relief which he is seeking. The
5245 commission shall conduct an adjudicative proceeding in accordance
5246 with the Mississippi Administrative procedure Law of 1999. If
5247 the commission orders the payment of any taxes, the taxpayer
5248 shall pay the tax, damages and interest, if any, within thirty
5249 (30) days after the order is issued. Interest shall accrue on
5250 the delinquent tax at the rate of one percent (1%) per month or
5251 part of a month from and after the expiration of the thirty-day
5252 period if not paid by that time.

5253 Any person aggrieved by the final order of the commission,
5254 including any person charged with any tax imposed by this article
5255 and required to pay same, may of right secure judicial review
5256 thereof in accordance with the Mississippi Administrative
5257 Procedure Law of 1999.

5258 SECTION 124. Section 27-55-339, Mississippi Code of 1972,
5259 is amended as follows:

5260 27-55-339. Any person aggrieved by any order or act of the
5261 commission in the administration of this article may have
5262 judicial review thereof in accordance with the Mississippi

5263 administrative Procedure Law of 1999.

5264 SECTION 125. Section 27-55-359, Mississippi Code of 1972,
5265 is amended as follows:

5266 27-55-359. The comptroller is hereby given power and
5267 authority to make all rules and regulations, not inconsistent
5268 with the provisions of this article, with reference to all
5269 petroleum excise tax provisions and exemptions governing the
5270 making of reports and contents of same and doing any and all
5271 other duties pertaining to the making of reports and payment of
5272 taxes, and such other matters as will, in the judgment of the
5273 comptroller, contribute to a more efficient administration of all
5274 the petroleum excise tax provisions of this article. Such rules
5275 and regulations shall be made in accordance with the Mississippi
5276 Administrative Procedure Law of 1999. Such rules and
5277 regulations, when made, shall have the same binding force and
5278 effect as if incorporated in this article.

5279 SECTION 126. Section 27-57-29, Mississippi Code of 1972, is
5280 amended as follows:

5281 27-57-29. Any person aggrieved by any order or act of the
5282 commission in the administration of this article may, of right,
5283 have judicial review thereof in accordance with the Mississippi
5284 Administrative Procedure Law of 1999.

5285 SECTION 127. Section 27-57-345, Mississippi Code of 1972,
5286 is amended as follows:

5287 27-57-345. Any person aggrieved by any order or act of the
5288 commission in the administration of this article may, of right,
5289 have judicial review thereof in accordance with the Mississippi
5290 Administrative Procedure Law of 1999.

5291 SECTION 128. Section 27-59-43, Mississippi Code of 1972, is
5292 amended as follows:

5293 27-59-43. Any person aggrieved by any order or act of the
5294 commission in the administration of this chapter may, of right,
5295 have judicial review thereof in accordance with the Mississippi
5296 Administrative Procedure Law of 1999.

5297 SECTION 129. Section 27-59-317, Mississippi Code of 1972,
5298 is amended as follows:

5299 27-59-317. Any person aggrieved by any order or act of the
5300 commission in the administration of this article may, of right,
5301 have judicial review thereof in accordance with the Mississippi
5302 Administrative Procedure Law of 1999.

5303 SECTION 130. Section 27-67-25, Mississippi Code of 1972, is
5304 amended as follows:

5305 27-67-25. Any person improperly charged with any tax
5306 imposed by this article, and required to pay the same, may have
5307 an adjudicative proceeding in accordance with the Mississippi
5308 Administrative Procedure Law of 1999 and the rules and
5309 regulations of the commission and thereafter may, of right, have
5310 judicial review in accordance with the Mississippi Administrative
5311 Procedure Law of 1999.

5312 * * *

5313 SECTION 131. Section 27-71-5, Mississippi Code of 1972, is
5314 amended as follows:

5315 27-71-5. (1) Upon each person approved for a permit under
5316 the provisions of the Alcoholic Beverage Control Law and
5317 amendments thereto, there is levied and imposed for each location
5318 for the privilege of engaging and continuing in this state in the
5319 business authorized by such permit, an annual privilege license
5320 tax in the amount provided in the following schedule:

- 5321 (a) Manufacturer's permit, Class 1, distiller's and/or
5322 rectifier's..... \$4,500.00
- 5323 (b) Manufacturer's permit, Class 2, wine manufacturer
5324 \$1,800.00
- 5325 (c) Manufacturer's permit, Class 3, native wine
5326 manufacturer per 10,000 gallons or part thereof produced.. \$10.00
- 5327 (d) Native wine retailer's permit..... \$50.00
- 5328 (e) Package retailer's permit, each..... \$900.00
- 5329 (f) On-premises retailer's permit, except for clubs
5330 and common carriers, each..... \$450.00

5331 On purchases exceeding \$5,000.00 and for each additional
5332 \$5,000.00, or fraction thereof..... \$225.00

5333 (g) On-premises retailer's permit for wine of more
5334 than four percent (4%) alcohol by volume, but not more than
5335 twenty-one percent (21%) alcohol by volume (each)..... \$225.00

5336 On purchases exceeding \$5,000.00 and for each additional
5337 \$5,000.00, or fraction thereof..... \$225.00

5338 (h) On-premises retailer's permit for clubs... \$225.00

5339 On purchases exceeding \$5,000.00 and for each additional
5340 \$5,000.00, or fraction thereof..... \$225.00

5341 (i) On-premises retailer's permit for common carriers,
5342 per car, plane, or other vehicle..... \$120.00

5343 (j) Solicitor's permit, regardless of any other
5344 provision of law, solicitor's permits shall be issued only in the
5345 discretion of the commission..... \$100.00

5346 (k) Filing fee for each application except for an
5347 employee identification card..... \$25.00

5348 (l) Temporary permit, Class 1, each..... \$10.00

5349 (m) Temporary permit, Class 2, each..... \$50.00

5350 On-premises purchases exceeding \$5,000.00 and for each
5351 additional \$5,000.00, or fraction thereof..... \$225.00

5352 (n) (i) Caterer's permit..... \$600.00

5353 On purchases exceeding \$5,000.00 and for each additional
5354 \$5,000.00, or fraction thereof..... \$250.00

5355 (ii) Caterer's permit for holders of on-premises
5356 retailer's permit..... \$150.00

5357 On purchases exceeding \$5,000.00 and for each additional
5358 \$5,000.00, or fraction thereof..... \$250.00

5359 (o) Research permit..... \$100.00

5360 (p) Filing fee for each application for an employee
5361 identification card..... \$5.00

5362 In addition to the filing fee imposed by item (k) of this
5363 subsection, a fee to be determined by the State Tax Commission
5364 may be charged to defray costs incurred to process applications.

5365 Such additional fees shall be paid into the State Treasury to
5366 the credit of a special fund account, which is hereby created,
5367 and expenditures therefrom shall be made only to defray the costs
5368 incurred by the State Tax Commission in processing alcoholic
5369 beverage applications. Any unencumbered balance remaining in the
5370 special fund account on June 30 of any fiscal year shall lapse
5371 into the State General Fund.

5372 All privilege taxes herein imposed shall be paid in advance
5373 of doing business. The additional privilege tax imposed for an
5374 on-premises retailer's permit based upon purchases shall be due
5375 and payable on demand.

5376 Any person who has paid the additional privilege license tax
5377 imposed by item (f), (g), (h), (m) or (n) of this subsection, and
5378 whose permit is renewed, may add any unused fraction of Five
5379 Thousand Dollars (\$5,000.00) purchases to the first Five Thousand
5380 Dollars (\$5,000.00) purchases authorized by the renewal permit,
5381 and no additional license tax will be required until purchases
5382 exceed the sum of the two (2) figures.

5383 (2) There is imposed and shall be collected from each
5384 permittee, except a common carrier, solicitor, holder of an
5385 employee identification card or a temporary permittee, by the
5386 commission, an additional license tax equal to the amounts
5387 imposed under subsection (1) of this section for the privilege of
5388 doing business within any municipality or county in which the
5389 licensee is located. If the licensee is located within a
5390 municipality, the commission shall pay the amount of additional
5391 license tax to the municipality, and if outside a municipality
5392 the commission shall pay the additional license tax to the county
5393 in which the licensee is located. Payments by the commission to
5394 the respective local government subdivisions shall be made once
5395 each month for any collections during the preceding month.

5396 (3) When an application for any permit, other than for
5397 renewal of a permit, has been rejected by the commission, such
5398 decision shall be final. Judicial review of an action by the

5399 commission may be obtained in accordance with the Mississippi
5400 Administrative Procedure Law of 1999. Another application from
5401 an applicant who has been denied a permit shall not be
5402 reconsidered within a twelve-month period.

5403 (4) The number of permits issued by the commission shall
5404 not be restricted or limited on a population basis; however, the
5405 foregoing limitation shall not be construed to preclude the right
5406 of the commission to refuse to issue a permit because of the
5407 undesirability of the proposed location.

5408 (5) If any person shall engage or continue in any business
5409 which is taxable hereunder without having paid the tax as
5410 provided herein, such person shall be liable for the full amount
5411 of such tax plus a penalty thereon equal to the amount thereof,
5412 and, in addition, shall be punished by a fine of not more than
5413 One Thousand Dollars (\$1,000.00), or by imprisonment in the
5414 county jail for a term of not more than six (6) months, or by
5415 both such fine and imprisonment, in the discretion of the court.

5416 (6) It shall be unlawful for any person to consume
5417 alcoholic beverages on the premises of any hotel restaurant,
5418 restaurant, club or the interior of any public place defined in
5419 Chapter 1, Title 67, Mississippi Code of 1972, when the owner or
5420 manager thereof displays in several conspicuous places inside
5421 said establishment and at the entrances thereto a sign containing
5422 the following language: NO ALCOHOLIC BEVERAGES ALLOWED.

5423 SECTION 132. Section 27-73-1, Mississippi Code of 1972, is
5424 amended as follows:

5425 27-73-1. (1) If any person, firm or corporation has paid,
5426 or shall hereafter pay to the Auditor of Public Accounts, State
5427 Tax Commission or the Commissioner of Insurance, through error or
5428 otherwise, whether paid under protest or not, any ad valorem,
5429 privilege or excise tax for which such person, firm or
5430 corporation was not liable, or if any such taxpayer has paid any
5431 tax in excess of the sum properly due and such erroneous payment
5432 or overpayment has been paid into the proper treasury, the

5433 taxpayer shall be entitled to a refund of the taxes so
5434 erroneously paid. Taxes erroneously paid within the meaning of
5435 this section shall include double payment, or overpayment, or
5436 payment on state, United States, vacant and exempt land, and the
5437 purchase price paid for the redemption of lands erroneously sold
5438 for taxes.

5439 Claims for refund under the provisions of this section shall
5440 be filed with the Auditor of Public Accounts and shall be
5441 supported by proper documents showing the overpayment or
5442 erroneous payment for which claim is made. The said auditor is
5443 hereby authorized and required to make a careful investigation
5444 and audit of all such claims and if he shall find that the taxes
5445 or moneys covered by the said claim have been erroneously paid
5446 into the treasury of the state, county, drainage or levee
5447 districts, he shall distribute such claim against each separate
5448 fund in proportion to the amount paid over to such fund in each
5449 case, and submit such audited claim with the voucher and evidence
5450 upon which the claim is based, to the Attorney General for his
5451 approval. At the request of the claimant, the Attorney General
5452 shall conduct an adjudicative proceeding in accordance with the
5453 Mississippi Administrative Procedure Law of 1999. The Attorney
5454 General shall have plenary power to require the claimant or the
5455 officer who collected the tax to furnish any such additional
5456 documents or information as may in his opinion be necessary or
5457 proper to enable him to determine the merits of the claim.

5458 If the Attorney General shall be of the opinion that the
5459 claim is in proper form and complies with the requirements of
5460 this section, he shall approve the same and return it to the
5461 Auditor of Public Accounts, who shall thereupon file in his
5462 office such audited claim, together with the Attorney General's
5463 approval and all other documents relating to the claim, as a
5464 voucher, and issue his warrant on the State Treasurer in favor of
5465 the claimant for the amount of purchase money or taxes
5466 erroneously paid into the State Treasury. The auditor shall then

5467 certify to the clerk of the board of supervisors, the secretary
5468 of the drainage district board, or the secretary of the levee
5469 board, as the case may be, the amount, if any, found to be due to
5470 the claimant by the county, drainage district or levee district.

5471 Upon receipt of such certificate, the board of supervisors, or
5472 the commissioners of the drainage district or of the levee
5473 district, shall cause a warrant to be issued on the treasurer of
5474 the county or drainage or levee district, as the case may be, in
5475 favor of the claimant for the amount erroneously paid into their
5476 respective treasuries.

5477 If the Attorney General shall disapprove the claim, he shall
5478 return it to the Auditor of Public Accounts accompanied by his
5479 opinion which shall show the reason for his disapproval,
5480 whereupon the auditor shall promptly notify the claimant of such
5481 disapproval. A claimant taxpayer being aggrieved at such
5482 disapproval may of right secure judicial review thereof in
5483 accordance with the Mississippi Administrative Procedure Law of
5484 1999. The claimant taxpayer perfecting judicial review shall
5485 file a bond in the sum of Five Hundred Dollars (\$500.00)
5486 conditioned to pay all costs which may accrue in such case, which
5487 bond shall be approved by the clerk of the said court. Upon the
5488 approval of the bond, the * * * clerk of the court shall give the
5489 Attorney General and the Auditor of Public Accounts notice, as
5490 required by law, of the filing of the petition. It shall be the
5491 duty of the said auditor to promptly transmit to the court in
5492 which said appeal is pending a certified copy of the entire
5493 record of the claim as shown by the files in his office, which
5494 record shall be docketed by the clerk in the cause * * *. It
5495 shall be the duty of the Attorney General to defend on behalf of
5496 the state, and he may request the district attorney, county
5497 attorney or attorney for the drainage or levee district, as the
5498 case may be, to defend on behalf of the county, drainage or levee
5499 district. If the claimant taxpayer shall prevail, judgment shall
5500 be entered requiring the payment of the claim in like manner as

5501 if it had been duly approved by the Attorney General. If,
5502 however, the action of the Attorney General in disapproving the
5503 claim shall be affirmed by the court, judgment shall be entered
5504 against the appealing taxpayer for the costs of the proceedings.

5505 Nothing in this section shall be so construed as to
5506 authorize the recovery or repayment of any tax heretofore levied
5507 and collected by any special road district, drainage district, or
5508 separate school district, on account of, or upon the ground that
5509 the law authorizing such tax was unconstitutional, whether the
5510 unconstitutionality of such tax be based upon the creation or
5511 mode of operation of any special road district, drainage district
5512 or separate school district. Provided further, that nothing in
5513 this section shall be construed as authorizing the refunding of
5514 state taxes paid into the State Treasury through error, or
5515 otherwise, or satisfying a judgment or decree against the state
5516 except through an appropriation therefor by the Legislature.

5517 (2) This section shall not be construed as repealing or
5518 modifying Section 27-73-7, or any other law providing for the
5519 application for or the certification of a claim for refund, but
5520 shall be taken and construed as an additional and supplemental
5521 method of refunding taxes erroneously * * *.

5522 SECTION 133. Section 29-1-131, Mississippi Code of 1972, is
5523 amended as follows:

5524 29-1-131. The commission is hereby empowered and authorized
5525 to do and require to be done the following things:

5526 (a) Prepare and furnish all necessary forms for use by
5527 persons making reports as required by Sections 29-1-125 through
5528 29-1-143; to adopt and issue rules and regulations in accordance
5529 with the Mississippi Administrative Procedure Law of 1999 for the
5530 purpose of carrying out the provisions of said sections and for
5531 the collection of all sums due the state under the provisions
5532 hereof; and to provide for orderly and reasonable procedure for
5533 details and for situations which arise from time to time.

5534 (b) To require the State Land Commissioner to furnish

5535 all needed data available in his office.

5536 (c) To require the State Oil and Gas Board to furnish
5537 all needed data available in its office.

5538 (d) To require any owner, producer, purchaser, or
5539 transporter of any oil, gas, or other minerals to furnish any
5540 needed and useful information pertinent to the administration of
5541 the cited sections, and in the possession of any such parties;
5542 and to require the said persons to furnish monthly reports with
5543 respect to current operations.

5544 (e) To require any chancery clerk, or other officer in
5545 the state having public records, to furnish copies of any needed
5546 and useful information or record in his possession.

5547 Any member of the commission or its authorized agents shall
5548 have the authority to examine any book, paper, record, or other
5549 data when considered necessary or useful in the administration of
5550 the aforesaid sections, and this shall include the right to
5551 examine the records of any bank, any common carrier, or any
5552 dealer in materials or merchandise commonly used in the severance
5553 of oil, gas, or other minerals from land; the commission shall
5554 have the right to summon any person as a witness to testify to
5555 any pertinent fact; and the commission, through the Attorney
5556 General, may have proceedings instituted in the chancery court to
5557 compel compliance with the foregoing provisions.

5558 (f) Make use of any tax return in its possession, when
5559 such return contains information relative to matters connected
5560 with the administration of said sections.

5561 SECTION 134. Section 29-7-17, Mississippi Code of 1972, is
5562 amended as follows:

5563 29-7-17. (1) Any person found by the commission to be
5564 violating any of the provisions of Section 29-7-3, or any rule or
5565 regulation or written order of the commission in pursuance
5566 thereof, or any condition or limitation of a permit shall be
5567 subject to a civil penalty of not more than Ten Thousand Dollars
5568 (\$10,000.00) for each violation, such penalty to be assessed and

5569 levied by the commission after it has conducted an adjudicative
5570 proceeding in accordance with the Mississippi Administrative
5571 Procedure Law of 1999. Each day upon which a violation occurs
5572 shall be deemed a separate and additional violation. Any person
5573 against whom a penalty may be assessed may, of right, secure
5574 judicial review thereof in accordance with the Mississippi
5575 Administrative Procedure Law of 1999. If the person perfecting
5576 judicial review desires to stay the execution of a civil penalty
5577 assessed by the commission, he shall give bond with sufficient
5578 resident sureties of one or more guaranty or surety companies
5579 authorized to do business in this state, payable to the State of
5580 Mississippi, in an amount equal to double the amount of any civil
5581 penalty assessed by the commission, as to which the stay of
5582 execution is desired, on the condition that if the judgment shall
5583 be affirmed the appellant shall pay all costs of the assessment
5584 entered against him.

5585 (2) In lieu of, or in addition to, the penalty provided in
5586 subsection (1) of this section, the commission shall have power
5587 to institute and maintain in the name of the state any and all
5588 proceedings necessary or appropriate to enforce the provisions of
5589 Section 29-7-3, rules and regulations promulgated, and orders and
5590 permits made and issued thereunder, in the * * * chancery * * *
5591 court of the county in which venue may lie. The commission may
5592 obtain mandatory or prohibitory injunctive relief, either
5593 temporary or permanent, and it shall not be necessary in such
5594 cases that the state plead or prove: (i) that irreparable damage
5595 would result if the injunction did not issue; (ii) that there is
5596 no adequate remedy at law; or (iii) that a written complaint or
5597 commission order has first been issued for the alleged violation.

5598 (3) Any person who violates any of the provisions of, or
5599 fails to perform any duty imposed by, Section 29-7-3 or any rule
5600 or regulation issued hereunder, or who violates any order or
5601 determination of the commission promulgated pursuant to such
5602 section, and causes the death of fish, shellfish, or other

5603 wildlife shall be liable, in addition to the penalties provided
5604 in subsections (1), (2), (4) and (5) of this section, to pay to
5605 the state an additional amount equal to the sum of money
5606 reasonably necessary to restock such waters or replenish such
5607 wildlife as determined by the commission after consultation with
5608 the Mississippi Commission on Wildlife Conservation. Such amount
5609 may be recovered by the commission on behalf of the state in a
5610 civil action brought in the chancery court of the county in which
5611 venue may lie.

5612 (4) Any person who, through misadventure, happenstance or
5613 otherwise causes damage to or destruction of state-owned lands or
5614 structures or other property thereon necessitating remedial or
5615 clean-up action shall be liable for the cost of such remedial or
5616 clean-up action and the commission may recover the cost of same
5617 by a civil action brought in the chancery court of the county in
5618 which venue may lie. This penalty may be recovered in lieu of or
5619 in addition to the penalties provided in subsections (1), (2),
5620 (3) and (5) of this section.

5621 (5) It shall be unlawful for any person to conduct
5622 unauthorized mineral exploration, development, or extraction
5623 activity or to violate the provisions of Section 29-7-3 or the
5624 rules and regulations of the commission which relate to mineral
5625 exploration, development, or extraction activity and, upon
5626 conviction thereof, such person shall be guilty of a misdemeanor,
5627 and fined not less than Five Hundred Dollars (\$500.00) nor more
5628 than Five Thousand Dollars (\$5,000.00) for each offense. Each
5629 day on which such violation occurs or continues shall constitute
5630 a separate offense.

5631 (6) In lieu of or in addition to the penalties prescribed
5632 hereinabove, any person convicted by a court of law or found
5633 guilty by the commission of unlawful mineral extraction activity
5634 on state-owned lands shall repay to the state the fair market
5635 value of the minerals unlawfully extracted.

5636 (7) Proceedings before the commission on civil violations

5637 prescribed hereinabove shall be conducted in the manner provided
5638 for adjudicative proceeding in the Mississippi Administrative
5639 Procedure Law of 1999. Judicial review thereof shall be in
5640 accordance with the Mississippi Administrative Procedure Law of
5641 1999.

5642 SECTION 135. Section 31-3-13, Mississippi Code of 1972, is
5643 amended as follows:

5644 31-3-13. The board shall have the following powers and
5645 responsibilities:

5646 (a) To receive applications for certificates of
5647 responsibility, to investigate and examine applicants for same by
5648 holding hearings and securing information, to conduct
5649 examinations, and to issue certificates of responsibility to such
5650 contractors as the board finds to be responsible. One-fourth
5651 (1/4) of the certificates scheduled for renewal on the last day
5652 of December 1980, shall be reviewed by the board on the first
5653 Tuesday in January 1981. The remaining certificates shall be
5654 subject to renewal in the following manner: One-fourth (1/4) on
5655 the first Tuesday in April 1981; one-fourth (1/4) on the first
5656 Tuesday in July 1981; and one-fourth (1/4) on the first Tuesday
5657 in October 1981. The board is authorized to extend the dates of
5658 expiration of certificates to coincide with the scheduled date of
5659 review of individual contractors. Except for the certificates
5660 extended from December 31, 1980, to the first Tuesday in January
5661 1981, the board shall charge fees for the extension of
5662 certificates as follows:

5663 (i) Twenty-five Dollars (\$25.00) if the date of
5664 renewal of the extended certificate is the first Tuesday in April
5665 1981;

5666 (ii) Fifty Dollars (\$50.00) if the date of
5667 renewal of the extended certificate is the first Tuesday in July
5668 1981; and

5669 (iii) Seventy-five Dollars (\$75.00) if the date
5670 of renewal of the extended certificate is the first Tuesday in

5671 October 1981.

5672 The extended certificates renewed in compliance with this
5673 paragraph (a) and all original certificates and renewals thereof
5674 issued on or after July 1, 1980, shall expire one (1) year from
5675 the date of issuance. No certificate or any renewal thereof
5676 shall be issued until the application has been on file with the
5677 board for at least thirty (30) days. Application for renewal of
5678 certificates of responsibility, together with the payment of a
5679 special privilege license tax as provided under this chapter,
5680 shall serve to extend the current certificate until the board
5681 either renews the certificate or denies the application.

5682 No certificate of responsibility or any renewal thereof
5683 shall be issued until the applicant furnishes to the board his
5684 Mississippi state sales tax number or Mississippi state use tax
5685 number and his state income tax identification numbers.

5686 Additional fees may be required as provided in Section
5687 31-3-14.

5688 The board shall conduct an objective, standardized
5689 examination of an applicant for a certificate to ascertain the
5690 ability of the applicant to make practical application of his
5691 knowledge of the profession or business of construction in the
5692 category or categories for which he has applied for a certificate
5693 of responsibility. The cost of the test and the cost of
5694 administering the test shall be paid for by applicants for
5695 certificates of responsibility at the time applications are
5696 filed. The board shall investigate thoroughly the past record of
5697 all applicants, which will include an effort toward ascertaining
5698 the qualifications of applicants in reading plans and
5699 specifications, estimating costs, construction ethics, and other
5700 similar matters. The board shall take all applicants under
5701 consideration after having examined him or them and go thoroughly
5702 into the records and examinations, prior to granting any
5703 certificate of responsibility. If the applicant is an
5704 individual, examination may be taken by his personal appearance

5705 for examination or by the appearance for examination of one or
5706 more of his responsible managing employees; and if a
5707 copartnership or corporation or any other combination or
5708 organization, by the examination of one or more of the
5709 responsible managing officers or members of the executive staff
5710 of the applicant's firm, according to its own designation.

5711 (b) To conduct thorough investigations of all
5712 applicants seeking renewal of their licenses and of all
5713 complaints filed with the board concerning the performance of a
5714 contractor on a public or private project.

5715 (c) To obtain information concerning the
5716 responsibility of any applicant for a certificate of
5717 responsibility or a holder of a certificate of responsibility
5718 under this chapter. Such information may be obtained by
5719 investigation, by hearings, or by any other reasonable and lawful
5720 means. The board shall keep such information appropriately filed
5721 and shall disseminate same to any interested person. The board
5722 shall have the power of subpoena.

5723 (d) To maintain a list of contractors to whom
5724 certificates of responsibility are issued, refused, revoked or
5725 suspended, which list shall be available to any interested
5726 person. Such list shall indicate the kind or kinds of works or
5727 projects for which a certificate of responsibility was issued,
5728 refused, revoked or suspended.

5729 (e) To revoke by order entered on its minutes a
5730 certificate of responsibility upon a finding by the board that a
5731 particular contractor is not responsible, and to suspend such
5732 certificate of responsibility in particular cases pending
5733 investigation, upon cause to be stated in the board's order of
5734 suspension. No such revocation or suspension shall be ordered
5735 without a hearing conducted upon not less than ten (10) days'
5736 notice to such certificate holder by certified or registered
5737 mail, wherein the holder of the certificate of responsibility
5738 shall be given an opportunity to present all lawful evidence

5739 which he may offer.

5740 (f) To adopt rules and regulations setting forth the
5741 requirements for certificates of responsibility, the revocation
5742 or suspension thereof, and all other matters concerning same;
5743 rules and regulations governing the conduct of the business of
5744 the board and its employees; and such other rules and regulations
5745 as the board finds necessary for the proper administration of
5746 this chapter, including those for the conduct of its hearings on
5747 the revocation or suspension of certificates of responsibility.
5748 Such rules and regulations shall not conflict with the provisions
5749 of this chapter and shall be in accordance with the Mississippi
5750 Administrative Procedure Law of 1999.

5751 (g) The board shall have the power and responsibility
5752 to classify the kind or kinds of works or projects that a
5753 contractor is qualified and entitled to perform under the
5754 certificate of responsibility issued to him. Such classification
5755 shall be specified in the certificate of responsibility.

5756 The powers of the State Board of Contractors shall not
5757 extend to fixing a maximum limit in the bid amount of any
5758 contractor, or the bonding capacity, or a maximum amount of work
5759 which a contractor may have under contract at any time, except as
5760 stated in paragraph (a) of this section; and the Board of
5761 Contractors shall not have jurisdiction or the power or authority
5762 to determine the maximum bond a contractor may be capable of
5763 obtaining. The board, in determining the qualifications of any
5764 applicant for an original certificate of responsibility or any
5765 renewal thereof, shall, among other things, take into
5766 consideration the following: (1) experience and ability, (2)
5767 character, (3) the manner of performance of previous contracts,
5768 (4) financial condition, (5) equipment, (6) personnel, (7) work
5769 completed, (8) work on hand, (9) ability to perform
5770 satisfactorily work under contract at the time of an application
5771 for a certificate of responsibility or a renewal thereof, (10)
5772 default in complying with provisions of this law, or any other

5773 law of the state, and (11) the results of objective, standardized
5774 examinations. Upon denial by the board of an original
5775 certificate of responsibility or any renewal thereof, the
5776 applicant shall upon his request have a right to an adjudicative
5777 proceeding thereon in accordance with the Mississippi
5778 Administrative Procedure Law of 1999. A record shall be made and
5779 preserved by the board of each examination of an applicant and
5780 the findings of the board thereon, and a certified copy of the
5781 record and findings shall be furnished to any applicant desiring
5782 to appeal from any order or decision of the board.

5783 (h) The board shall enter upon its minutes an order or
5784 decision upon each application filed with it, and it may state in
5785 such order or decision the reason or reasons for its order or
5786 decision.

5787 (i) The applicant shall have the right to judicial
5788 review thereof in accordance with the Mississippi Administrative
5789 Procedure Law of 1999.

5790 The holder of any valid certificate of responsibility issued
5791 by the Board of Public Contractors prior to January 1, 1986,
5792 shall be automatically issued a certificate of responsibility by
5793 the State Board of Contractors for the same classification or
5794 classifications of work which the holder was entitled to perform
5795 under the State Board of Public Contractors Act.

5796 SECTION 136. Section 31-3-23, Mississippi Code of 1972, is
5797 amended as follows:

5798 31-3-23. Any person aggrieved by any order or decision of
5799 the board may of right secure judicial review thereof in
5800 accordance with the Mississippi Administrative Procedure Law of
5801 1999. If the judgment be reversed, the * * * court * * * shall
5802 render such order or judgment as the board ought to have
5803 rendered, and certify the same to the board; and costs shall be
5804 awarded as in other cases. The board may employ counsel to
5805 defend such judicial review, to be paid out of the funds in the
5806 State Board of Contractors Fund.

5807 The remedies provided under this chapter for any aggrieved
5808 applicant shall not be exclusive, but shall be cumulative of and
5809 supplemental to any other remedies which he may otherwise have in
5810 law or in equity, whether by injunction or otherwise.

5811 SECTION 137. Section 33-13-607, Mississippi Code of 1972,
5812 is amended as follows:

5813 33-13-607. (1) Whenever complaint is made to any
5814 commanding officer that willful damage has been done to the
5815 property of any person or that his property has been wrongfully
5816 taken by members of the state military forces, he may, subject to
5817 such regulations as the Governor may prescribe, convene a board
5818 to investigate the complaint. The board shall consist of from
5819 one (1) to three (3) commissioned officers, and for the purpose
5820 of that investigation, it has power to summon witnesses and
5821 examine them upon oath or affirmation, to receive depositions or
5822 other documentary evidence, and to assess the damages sustained
5823 against the responsible parties. The assessment of damages made
5824 by the board is subject to the approval of the commanding
5825 officer, and the amount approved by him shall be charged against
5826 the pay of the offenders. The order of the commanding officer
5827 directing charges herein authorized is conclusive, except as
5828 provided in subsection (3), on any disbursing officer for the
5829 payment by him to the injured parties of the damages so assessed
5830 and approved.

5831 (2) If the offenders cannot be ascertained, but the
5832 organization or detachment to which they belong is known, charges
5833 totaling the amount of damages assessed and approved may be paid
5834 to the injured parties from the military funds of the units of
5835 the state military forces to which the offenders belonged.

5836 (3) Any person subject to this code who is accused of
5837 causing willful damage to property has the right to be
5838 represented by counsel, to summon witnesses in his behalf, and to
5839 cross-examine those appearing against him. The counsel mentioned
5840 herein will be military counsel, provided by the commanding

5841 officer instituting this injury. The accused may also employ
5842 civilian counsel of his own choosing at his own expense. He has
5843 the right of appeal to the next higher commander.

5844 SECTION 138. Section 33-15-31, Mississippi Code of 1972, is
5845 amended as follows:

5846 33-15-31. (a) The governing bodies of the political
5847 subdivisions of the state and other agencies designated or
5848 appointed by the Governor are authorized and empowered to make,
5849 amend, and rescind such orders, rules, and regulations as may be
5850 necessary for emergency management purposes and to supplement the
5851 carrying out of the provisions of this article, but not
5852 inconsistent with any orders, rules and regulations promulgated
5853 by the Governor or by any state agency exercising a power
5854 delegated to it by him.

5855 (b) All orders, rules, and regulations promulgated by the
5856 Governor, the Mississippi Emergency Management Agency or by any
5857 political subdivision or other agency authorized by this article
5858 to make orders, rules and regulations, shall have the full force
5859 and effect of law, when, in the event of issuance by the
5860 Governor, or any state agency, a copy thereof is filed in the
5861 office of the Secretary of State, or, if promulgated by a
5862 political subdivision of the state or agency thereof, when filed
5863 in the office of the clerk of the political subdivision or agency
5864 promulgating the same. All such rules and regulations may be
5865 made in accordance with the Mississippi Administrative procedure
5866 Law of 1999. All existing laws, ordinances, rules and
5867 regulations inconsistent with the provisions of this article, or
5868 of any order, rule, or regulation issued under the authority of
5869 this article, shall be suspended during the period of time and to
5870 the extent that such conflict, disaster or emergency exists.

5871 (c) In order to attain uniformity so far as practicable
5872 throughout the country in measures taken to aid emergency
5873 management, all action taken under this article and all orders,
5874 rules and regulations made pursuant thereto, shall be taken or

5875 made with due consideration to the orders, rules, regulations,
5876 actions, recommendations, and requests of federal authorities
5877 relevant thereto and, to the extent permitted by law, shall be
5878 consistent with such orders, rules, regulations, actions,
5879 recommendations and requests.

5880 SECTION 139. Section 35-1-7, Mississippi Code of 1972, is
5881 amended as follows:

5882 35-1-7. The duties of the State Veterans Affairs Board
5883 shall be to assist former and present members of the Armed Forces
5884 of the United States, and their dependents, in securing any
5885 benefits or privileges under any federal or state law or
5886 regulation to which they are entitled and to advise the Governor
5887 and Legislature on veterans affairs. Moreover, veterans or their
5888 dependents shall be given their choice of organizations to
5889 represent them in instances where a case is appealed, and the
5890 board shall lend its full cooperation in connection therewith.

5891 The board and its employees shall cooperate fully with all
5892 congressionally chartered veterans organizations within the
5893 state, including servicing the power of attorney of the
5894 congressionally chartered veterans organizations upon the request
5895 of the organizations to the State Veterans Affairs Board in the
5896 prosecution of all claims on behalf of veterans. However, all
5897 powers of attorney to the State Veterans Affairs Board shall be
5898 processed first, and thereafter, powers of attorney shall be
5899 processed for veterans organizations in the ratio that the
5900 membership of the organization bears to the total number of
5901 veterans residing in Mississippi.

5902 The State Veterans Affairs Board is designated as the "state
5903 approving agency" for the State of Mississippi. It shall be the
5904 duty of the State Veterans Affairs Board to inspect, approve and
5905 supervise schools, institutions and establishments for war orphan
5906 and veteran training as provided in Section 1771, Chapter 35,
5907 Title 38, United States Code, and in any subsequent acts passed
5908 by the Congress of the United States for the purpose of education

5909 and training of war orphans or former and present members of the
5910 Armed Forces of the United States. The State Veterans Affairs
5911 Board is authorized to employ the needed personnel to perform the
5912 duties as outlined in Section 1771, Chapter 35, Title 38, United
5913 States Code, and in any subsequent acts as enacted by the
5914 Congress of the United States, and to enter into contract with
5915 the Department of Veterans Affairs for salary and travel
5916 reimbursement for personnel employed for this purpose.

5917 The State Veterans Affairs Board shall operate all
5918 Mississippi state veterans homes when established as authorized
5919 by Sections 35-1-19 through 35-1-29.

5920 The State Veterans Affairs Board is authorized to adopt such
5921 policies and to prescribe such rules and regulations as it may
5922 deem necessary for the proper administration of this chapter in
5923 accordance with the Mississippi Administrative Procedure Law of
5924 1999. However, such policies and regulations shall not be in
5925 conflict with any of the provisions of this chapter.

5926 SECTION 140. Section 35-7-7, Mississippi Code of 1972, is
5927 amended as follows:

5928 35-7-7. The administration of the provisions hereof is
5929 vested in a Veterans' Home Purchase Board consisting of six (6)
5930 members who shall be appointed, or reappointed, by the Governor,
5931 with the advice and consent of the Senate. Members appointed to
5932 the board shall be veterans of either World War II, the Korean
5933 Conflict, the Southeast Asia Conflict, the Persian Gulf Conflict
5934 or have served in active duty for at least one hundred eighty
5935 (180) days during a time of war or a conflict in which a campaign
5936 ribbon or medal was issued and shall possess a background in
5937 business, banking, real estate or the legal profession which
5938 enables them to carry out the duties of the board. Appointments
5939 shall be staggered, with each Governor appointing or reappointing
5940 two (2) members in the first year of his administration; one (1)
5941 member in the second year, two (2) members in the third year, and
5942 one (1) member in the fourth year. Appointments for terms that

5943 expire in 1988 shall be made as follows: One (1) shall be made
5944 for a term ending on July 1, 1989; one (1) shall be made for a
5945 term ending on July 1, 1991; and two (2) shall be made for a term
5946 ending on July 1, 1992. Persons appointed to succeed the two (2)
5947 members whose terms expired in 1986, or any such member holding
5948 over after 1986 because no successor was appointed, shall serve
5949 until July 1, 1990. After the expiration of the foregoing terms,
5950 all appointments shall be for a term of four (4) years from the
5951 expiration date of the previous term. From and after July 1,
5952 1988, one (1) appointee shall be selected from each of the five
5953 (5) congressional districts of this state as such districts are
5954 composed on May 1, 1987, and one (1) appointee shall be selected
5955 from the state-at-large. Any vacancy occurring during a term
5956 shall be filled by appointment of a member for the unexpired
5957 portion of the term.

5958 The board is hereby authorized and empowered to make and
5959 promulgate such reasonable rules and regulations under this
5960 chapter as it shall deem to be necessary or advisable in
5961 accordance with the Mississippi Administrative Procedure Law of
5962 1999 and to enforce the same. The board shall have authority to
5963 render final decision on the purchase application process,
5964 approval of purchases, funding of purchase commitments, servicing
5965 loans and default, property security, management, resale, release
5966 from security, and all other matters relating to the purchases
5967 and loans made under this law. The board shall likewise by an
5968 order spread on its minutes elect a chairman and vice chairman to
5969 serve for one-year terms, and all such officers are eligible to
5970 succeed themselves in such offices. The chairman may appoint a
5971 three-member loan committee from the membership of the board and
5972 shall specify the conditions, responsibilities and authority of
5973 such committee.

5974 Each member of the board and his successor shall be
5975 reimbursed all his actual and necessary traveling and other
5976 expenses incurred in the attendance of the meetings of the board

5977 or in the performance of other duties in connection with the
5978 business of the board as provided for state officers and
5979 employees in Section 25-3-41, and shall be allowed a per diem as
5980 provided in Section 25-3-69 for such attendance; provided that
5981 the number of days per diem shall not exceed sixty-six (66) days
5982 for the chairman and fifty (50) days for other members of the
5983 board during any one (1) fiscal year. The above limitation of
5984 days per year shall not apply to board members appointed on a
5985 full-time basis to the loan committee.

5986 The director, or other executive officer employed by the
5987 board, shall execute a surety bond in the sum of One Hundred
5988 Thousand Dollars (\$100,000.00), conditioned upon the faithful
5989 performance of his duties and upon his accounting for all moneys
5990 coming into his hands; and each employee handling funds shall
5991 execute a like bond in the sum of Fifteen Thousand Dollars
5992 (\$15,000.00), and the premiums thereon shall be paid from the
5993 funds provided for administering this chapter.

5994 The board may designate one (1) of its employees as the
5995 acting director or executive officer by a vote of the majority of
5996 the members of the board, officially recorded in the minutes of a
5997 regular or special meeting, and such acting director shall be
5998 vested with all the authority conferred upon the director by the
5999 provisions of this chapter; but such acting director may not
6000 serve for a continuous period of time in excess of six (6)
6001 months, and the acting director, when so designated, will be
6002 required to furnish surety bond in the same amount and under the
6003 same conditions as the director. The purpose of this provision
6004 is to designate an executive officer during any temporary
6005 illness, absence or incapacity of the regularly designated
6006 director.

6007 The board may select and employ such expert, technical and
6008 clerical assistance as in its judgment may be necessary in the
6009 proper administration of said board and fix the salaries of such
6010 employees.

6011 The board is empowered to employ auditors and accountants to
6012 examine the books, accounts and records of the board if it so
6013 desires, and the board is also authorized to employ legal counsel
6014 if it deems such a course necessary in the proper administration
6015 of its affairs.

6016 SECTION 141. Section 37-3-2, Mississippi Code of 1972, is
6017 amended as follows:

6018 37-3-2. (1) There is hereby established within the State
6019 Department of Education the Commission on Teacher and
6020 Administrator Education, Certification and Licensure and
6021 Development. It shall be the purpose and duty of the commission
6022 to make recommendations to the State Board of Education regarding
6023 standards for the certification and licensure and continuing
6024 professional development of those who teach or perform tasks of
6025 an educational nature in the public schools of Mississippi.

6026 (2) The commission shall be composed of fifteen (15)
6027 qualified members. The membership of the commission shall be
6028 composed of the following members to be appointed three (3) from
6029 each congressional district: four (4) classroom teachers; three
6030 (3) school administrators; one (1) representative of schools of
6031 education of institutions of higher learning located within the
6032 state to be recommended by the Board of Trustees of State
6033 Institutions of Higher Learning; one (1) representative from the
6034 schools of education of independent institutions of higher
6035 learning to be recommended by the Board of the Mississippi
6036 Association of Independent Colleges; one (1) representative from
6037 public community and junior colleges located within the state to
6038 be recommended by the State Board for Community and Junior
6039 Colleges; one (1) local school board member; and four (4) lay
6040 persons. All appointments shall be made by the State Board of
6041 Education after consultation with the State Superintendent of
6042 Public Education. The first appointments by the State Board of
6043 Education shall be made as follows: five (5) members shall be
6044 appointed for a term of one (1) year; five (5) members shall be

6045 appointed for a term of two (2) years; and five (5) members shall
6046 be appointed for a term of three (3) years. Thereafter, all
6047 members shall be appointed for a term of four (4) years.

6048 (3) The State Board of Education when making appointments
6049 shall designate a chairman. The commission shall meet at least
6050 once every two (2) months or more often if needed. Members of
6051 the commission shall be compensated at a rate of per diem as
6052 authorized by Section 25-3-69 and be reimbursed for actual and
6053 necessary expenses as authorized by Section 25-3-41.

6054 (4) An appropriate staff member of the State Department of
6055 Education shall be designated and assigned by the State
6056 Superintendent of Public Education to serve as executive
6057 secretary and coordinator for the commission. No less than two
6058 (2) other appropriate staff members of the State Department of
6059 Education shall be designated and assigned by the State
6060 Superintendent of Public Education to serve on the staff of the
6061 commission.

6062 (5) It shall be the duty of the commission to:

6063 (a) Set standards and criteria, subject to the
6064 approval of the State Board of Education, for all educator
6065 preparation programs in the state;

6066 (b) Recommend to the State Board of Education each
6067 year approval or disapproval of each educator preparation program
6068 in the state;

6069 (c) Establish, subject to the approval of the State
6070 Board of Education, standards for initial teacher certification
6071 and licensure in all fields;

6072 (d) Establish, subject to the approval of the State
6073 Board of Education, standards for the renewal of teacher licenses
6074 in all fields;

6075 (e) Review and evaluate objective measures of teacher
6076 performance, such as test scores, which may form part of the
6077 licensure process, and to make recommendations for their use;

6078 (f) Review all existing requirements for certification

6079 and licensure;

6080 (g) Consult with groups whose work may be affected by
6081 the commission's decisions;

6082 (h) Prepare reports from time to time on current
6083 practices and issues in the general area of teacher education and
6084 certification and licensure;

6085 (i) Hold hearings concerning standards for teachers'
6086 and administrators' education and certification and licensure
6087 with approval of the State Board of Education;

6088 (j) Hire expert consultants with approval of the State
6089 Board of Education;

6090 (k) Set up ad hoc committees to advise on specific
6091 areas; and

6092 (l) Perform such other functions as may fall within
6093 their general charge and which may be delegated to them by the
6094 State Board of Education.

6095 (6) (a) **Standard License—Approved Program Route.** An
6096 educator entering the school system of Mississippi for the first
6097 time and meeting all requirements as established by the State
6098 Board of Education shall be granted a standard five-year license.

6099 Persons who possess two (2) years of classroom experience as an
6100 assistant teacher or who have taught for one (1) year in an
6101 accredited public or private school shall be allowed to fulfill
6102 student teaching requirements under the supervision of a
6103 qualified participating teacher approved by an accredited college
6104 of education. The local school district in which the assistant
6105 teacher is employed shall compensate such assistant teachers at
6106 the required salary level during the period of time such
6107 individual is completing student teaching requirements.

6108 Applicants for a standard license shall submit to the department:

6109 (i) An application on a department form;

6110 (ii) An official transcript of completion of a
6111 teacher education program approved by the department or a

6112 nationally accredited program, subject to the following:

6113 Licensure to teach in Mississippi kindergarten through Grade 4
6114 shall require the completion of an interdisciplinary program of
6115 studies. Licenses for Grades 4 through 8 shall require the
6116 completion of an interdisciplinary program of studies with two
6117 (2) or more areas of concentration. Licensure to teach in
6118 Mississippi Grades 7 through 12 shall require a major in an
6119 academic field other than education, or a combination of
6120 disciplines other than education. Students preparing to teach a
6121 subject shall complete a major in the respective subject
6122 discipline. All applicants for standard licensure shall
6123 demonstrate that such person's college preparation in those
6124 fields was in accordance with the standards set forth by the
6125 National Council for Accreditation of Teacher Education (NCATE)
6126 or the National Association of State Directors of Teacher
6127 Education and Certification (NASDTEC);

6128 (iii) A copy of test scores evidencing
6129 satisfactory completion of nationally administered examinations
6130 of achievement, such as the Educational Testing Service's teacher
6131 testing examinations. The State Board of Education is directed
6132 to study and develop a report on the progress of the nationally
6133 administered examination of achievement for students in an
6134 approved teacher education program. This report shall develop
6135 data for the period beginning July 1, 1997, and ending June 30,
6136 1998. The state board, with the assistance of the commission,
6137 shall prepare the results of the study and make a report thereon
6138 to the Education Committees of the Legislature utilizing the
6139 following components:

- 6140 1. Collect data on entrance and exit
6141 performance of students in a teacher education program;
- 6142 2. Report on student performance as compared
6143 to the required examination score;
- 6144 3. Develop and make recommendations on
6145 necessary requirement revisions as may be appropriate based on
6146 student performance results;

6147 4. Include other such formats as may best
6148 describe the profile of the student examination results; and
6149 (iv) Any other document required by the State
6150 Board of Education.

6151 (b) **Standard License—Alternate Teaching Route.**

6152 Applicants for a standard license-alternate teaching route shall
6153 submit to the department:

6154 (i) An application on a department form;

6155 (ii) An official transcript evidencing a
6156 bachelors degree from an accredited institution of higher
6157 learning;

6158 (iii) A copy of test scores evidencing
6159 satisfactory completion of an examination of achievement
6160 specified by the commission and approved by the State Board of
6161 Education;

6162 (iv) An official transcript evidencing
6163 appropriate credit hours or a copy of test scores evidencing
6164 successful completion of tests as required by the State Board of
6165 Education; and

6166 (v) Any other document required by the State
6167 Board of Education.

6168 A Standard License-Approved Program Route and a Standard
6169 License-Alternate Teaching Route shall be issued for a five-year
6170 period, and may be renewed. Recognizing teaching as a
6171 profession, a hiring preference shall be granted to persons
6172 holding a Standard License-Approved Program Route or Standard
6173 License-Alternate Teaching Route over persons holding any other
6174 license.

6175 (c) **Special License—Expert Citizen.** In order to allow
6176 a school district to offer specialized or technical courses, the
6177 State Department of Education, in accordance with rules and
6178 regulations established by the State Board of Education, may
6179 grant a one-year expert citizen-teacher license to local business
6180 or other professional personnel to teach in a public school or

6181 nonpublic school accredited or approved by the state. Such
6182 person may begin teaching upon his employment by the local school
6183 board and licensure by the Mississippi Department of Education.
6184 The board shall adopt rules and regulations to administer the
6185 expert citizen-teacher license. A special license-expert citizen
6186 may be renewed in accordance with the established rules and
6187 regulations of the State Department of Education.

6188 (d) **Special License–Nonrenewable.** The State Board of
6189 Education is authorized to establish rules and regulations to
6190 allow those educators not meeting requirements in subsection
6191 (6)(a), (b) or (c) to be licensed for a period of not more than
6192 three (3) years, except by special approval of the State Board of
6193 Education.

6194 (e) **Nonlicensed Teaching Personnel.** A nonlicensed
6195 person may teach for a maximum of three (3) periods per teaching
6196 day in a public school or a nonpublic school accredited/approved
6197 by the state. Such person shall submit to the department a
6198 transcript or record of his education and experience which
6199 substantiates his preparation for the subject to be taught and
6200 shall meet other qualifications specified by the commission and
6201 approved by the State Board of Education. In no case shall any
6202 local school board hire non-licensed personnel as authorized
6203 under this paragraph in excess of five percent (5%) of the total
6204 number of licensed personnel in any single school.

6205 (f) In the event any school district meets Level 4 or
6206 5 accreditation standards, the State Board of Education may, in
6207 its discretion, exempt such school district from any restrictions
6208 in paragraph (e) relating to the employment of non-licensed
6209 teaching personnel.

6210 (7) **Administrator License.** The State Board of Education is
6211 authorized to establish rules and regulations and to administer
6212 the licensure process of the school administrators in the State
6213 of Mississippi. There will be four (4) categories of
6214 administrator licensure with exceptions only through special

6215 approval of the State Board of Education.

6216 (a) **Administrator License–Nonpracticing.** Those
6217 educators holding administrative endorsement but have no
6218 administrative experience or not serving in an administrative
6219 position on January 15, 1997.

6220 (b) **Administrator License–Entry Level.** Those
6221 educators holding administrative endorsement and having met the
6222 department's qualifications to be eligible for employment in a
6223 Mississippi school district. Administrator license – entry level
6224 shall be issued for a five-year period and shall be
6225 non-renewable.

6226 (c) **Standard Administrator License–Career Level.** An
6227 administrator who has met all the requirements of the department
6228 for standard administrator licensure.

6229 (d) **Administrator License–Alternate Route.** The board
6230 may establish an alternate route for licensing administrative
6231 personnel. Such alternate route for administrative licensure
6232 shall be available for persons holding, but not limited to, a
6233 masters of business administration degree, a masters of public
6234 administration degree or a masters of public planning and policy
6235 degree from an accredited college or university, with five (5)
6236 years of administrative or supervisory experience. Successful
6237 completion of the requirements of alternate route licensure for
6238 administrators shall qualify the person for a standard
6239 administrator license.

6240 Beginning with the 1997-1998 school year, individuals
6241 seeking school administrator licensure under paragraph (b), (c)
6242 or (d) shall successfully complete a training program and an
6243 assessment process prescribed by the State Board of Education.
6244 Applicants seeking school administrator licensure prior to June
6245 30, 1997, and completing all requirements for provisional or
6246 standard administrator certification and who have never
6247 practiced, shall be exempt from taking the Mississippi Assessment
6248 Battery Phase I. Applicants seeking school administrator

6249 licensure during the period beginning July 1, 1997, through June
6250 30, 1998, shall participate in the Mississippi Assessment
6251 Battery, and upon request of the applicant, the department shall
6252 reimburse the applicant for the cost of the assessment process
6253 required. After June 30, 1998, all applicants for school
6254 administrator licensure shall meet all requirements prescribed by
6255 the department under paragraph (b), (c) or (d), and the cost of
6256 the assessment process required shall be paid by the applicant.

6257 (8) **Reciprocity.** (a) The department shall grant a
6258 standard license to any individual who possesses a valid standard
6259 license from another state and has a minimum of two (2) years of
6260 full-time teaching or administrator experience.

6261 (b) The department shall grant a nonrenewable special
6262 license to any individual who possesses a credential which is
6263 less than a standard license or certification from another state,
6264 or who possesses a standard license from another state but has
6265 less than two (2) years of full-time teaching or administration
6266 experience. Such special license shall be valid for the current
6267 school year plus one (1) additional school year to expire on June
6268 30 of the second year, not to exceed a total period of
6269 twenty-four (24) months, during which time the applicant shall be
6270 required to complete the requirements for a standard license in
6271 Mississippi.

6272 (9) **Renewal and Reinstatement of Licenses.** The State Board
6273 of Education is authorized to establish rules and regulations for
6274 the renewal and reinstatement of educator and administrator
6275 licenses.

6276 (10) All controversies involving the issuance, revocation,
6277 suspension or any change whatsoever in the licensure of an
6278 educator required to hold a license shall be initially heard in
6279 an adjudicative proceeding in accordance with the Mississippi
6280 Administrative Procedure Law of 1999, by the commission or by a
6281 subcommittee established by the commission and composed of
6282 commission members for the purpose of holding hearings. Any

6283 complaint seeking the denial of issuance, revocation or
6284 suspension of a license shall be by sworn affidavit filed with
6285 the Commission of Teacher and Administrator Education,
6286 Certification and Licensure and Development. The decision
6287 thereon by the commission or its subcommittee shall be final,
6288 unless the aggrieved party shall appeal to the State Board of
6289 Education, within ten (10) days, of the decision of the committee
6290 or its subcommittee. An appeal to the State Board of Education
6291 shall be on the record previously made before the commission or
6292 its subcommittee unless otherwise provided by rules and
6293 regulations adopted by the board. The State Board of Education
6294 in its authority may reverse, or remand with instructions, the
6295 decision of the committee or its subcommittee. The decision of
6296 the State Board of Education shall be final.

6297 (11) The State Board of Education, acting through the
6298 commission, may deny an application for any teacher or
6299 administrator license for one or more of the following:

6300 (a) Lack of qualifications which are prescribed by law
6301 or regulations adopted by the State Board of Education;

6302 (b) Has a physical, emotional or mental disability
6303 that renders the applicant unfit to perform the duties authorized
6304 by the license, as certified by a licensed psychologist or
6305 psychiatrist;

6306 (c) Is actively addicted to or actively dependent on
6307 alcohol or other habit-forming drugs or is a habitual user of
6308 narcotics, barbiturates, amphetamines, hallucinogens, or other
6309 drugs having similar effect, at the time of application for a
6310 license;

6311 (d) Revocation of a certificate or license by another
6312 state;

6313 (e) Committed fraud or deceit in securing or
6314 attempting to secure such certification and license;

6315 (f) Fails or refuses to furnish reasonable evidence of
6316 identification;

6317 (g) Has been convicted, has pled guilty or entered a
6318 plea of nolo contendere to a felony, as defined by federal or
6319 state law; or

6320 (h) Has been convicted, has pled guilty or entered a
6321 plea of nolo contendere to a sex offense as defined by federal or
6322 state law.

6323 (12) The State Board of Education, acting on the
6324 recommendation of the commission, may revoke or suspend any
6325 teacher or administrator license for specified periods of time
6326 for one or more of the following:

6327 (a) Breach of contract or abandonment of employment
6328 may result in the suspension of the license for one (1) school
6329 year as provided in Section 37-9-57, Mississippi Code of 1972;

6330 (b) Obtaining a license by fraudulent means shall
6331 result in immediate suspension and continued suspension for one
6332 (1) year after correction is made;

6333 (c) Suspension or revocation of a certificate or
6334 license by another state shall result in immediate suspension or
6335 revocation and shall continue until records in the prior state
6336 have been cleared;

6337 (d) Has been convicted, has pled guilty or entered a
6338 plea of nolo contendere to a felony, as defined by federal or
6339 state law;

6340 (e) Has been convicted, has pled guilty or entered a
6341 plea of nolo contendere to a sex offense, as defined by federal
6342 or state law; or

6343 (f) Knowingly and willfully committing any of the acts
6344 affecting validity of mandatory uniform test results as provided
6345 in Section 37-16-4(1), Mississippi Code of 1972.

6346 (13) (a) Dismissal or suspension of a licensed employee by
6347 a local school board pursuant to Section 37-9-59, Mississippi
6348 Code of 1972, may result in the suspension or revocation of a
6349 license for a length of time which shall be determined by the
6350 commission and based upon the severity of the offense.

6351 (b) Any offense committed or attempted in any other
6352 state shall result in the same penalty as if committed or
6353 attempted in this state.

6354 (c) A person may voluntarily surrender a license. The
6355 surrender of such license may result in the commission
6356 recommending any of the above penalties without the necessity of
6357 a hearing. However, any such license which has voluntarily been
6358 surrendered by a licensed employee may be reinstated by a
6359 unanimous vote of all members of the commission.

6360 (14) A person whose license has been suspended on any
6361 grounds except criminal grounds may petition for reinstatement of
6362 the license after one (1) year from the date of suspension, or
6363 after one-half (1/2) of the suspended time has lapsed, whichever
6364 is greater. A license suspended on the criminal grounds may be
6365 reinstated upon petition to the commission filed after expiration
6366 of the sentence and parole or probationary period imposed upon
6367 conviction. A revoked license may be reinstated upon
6368 satisfactory showing of evidence of rehabilitation. The
6369 commission shall require all who petition for reinstatement to
6370 furnish evidence satisfactory to the commission of good
6371 character, good mental, emotional and physical health and such
6372 other evidence as the commission may deem necessary to establish
6373 the petitioner's rehabilitation and fitness to perform the duties
6374 authorized by the license.

6375 (15) Reporting procedures and hearing procedures for
6376 dealing with infractions under this section shall be promulgated
6377 by the commission, subject to the approval of the State Board of
6378 Education. The revocation or suspension of a license shall be
6379 effected at the time indicated on the notice of suspension or
6380 revocation. The commission shall immediately notify the
6381 superintendent of the school district or school board where the
6382 teacher or administrator is employed of any disciplinary action
6383 and also notify the teacher or administrator of such revocation
6384 or suspension and shall maintain records of action taken. The

6385 State Board of Education may reverse or remand with instructions
6386 any decision of the commission regarding a petition for
6387 reinstatement of a license, and any such decision of the State
6388 Board of Education shall be final.

6389 (16) Any action of the State Board of Education in denying
6390 an application, revoking or suspending a license or otherwise
6391 disciplining any person under the provisions of this section,
6392 shall be subject to judicial review as provided in the
6393 Mississippi Administrative Procedure Law of 1999. The party
6394 perfecting judicial review shall prepay all costs, including the
6395 cost of preparation of the record of the proceedings by the State
6396 Board of Education, and file a bond in the sum of Two Hundred
6397 Dollars (\$200.00) conditioned that if the action of the board be
6398 affirmed by the * * * court, the applicant or license holder
6399 shall pay the costs of the judicial review.

6400 (17) All such programs, rules, regulations, standards and
6401 criteria recommended or authorized by the commission shall become
6402 effective upon approval by the State Board of Education as
6403 designated by appropriate orders entered upon the minutes thereof
6404 and upon compliance with the Mississippi Administrative Procedure
6405 Law of 1999.

6406 (18) The granting of a license shall not be deemed a
6407 property right nor a guarantee of employment in any public school
6408 district. A license is a privilege indicating minimal
6409 eligibility for teaching in the public schools of Mississippi.
6410 This section shall in no way alter or abridge the authority of
6411 local school districts to require greater qualifications or
6412 standards of performance as a prerequisite of initial or
6413 continued employment in such districts.

6414 (19) In addition to the reasons specified in subsection (8)
6415 of this section, the board shall be authorized to suspend the
6416 license of any licensee for being out of compliance with an order
6417 for support, as defined in Section 93-11-153. The procedure for
6418 suspension of a license for being out of compliance with an order

6419 for support, and the procedure for the reissuance or
6420 reinstatement of a license suspended for that purpose, and the
6421 payment of any fees for the reissuance or reinstatement of a
6422 license suspended for that purpose, shall be governed by Section
6423 93-11-157 or 93-11-163, as the case may be. Actions taken by the
6424 board in suspending a license when required by Section 93-11-157
6425 or 93-11-163 are not actions from which an appeal may be taken
6426 under this section. Any appeal of a license suspension that is
6427 required by Section 93-11-157 or 93-11-163 shall be taken in
6428 accordance with the appeal procedure specified in Section
6429 93-11-157 or 93-11-163, as the case may be, rather than the
6430 procedure specified in this section. If there is any conflict
6431 between any provision of Section 93-11-157 or 93-11-163 and any
6432 provision of this chapter, the provisions of Section 93-11-157 or
6433 93-11-163, as the case may be, shall control.

6434 SECTION 142. Section 37-17-5, Mississippi Code of 1972, is
6435 amended as follows:

6436 37-17-5. It shall be the purpose of the Commission on
6437 School Accreditation to continually review the standards on
6438 accreditation and the enforcement thereof and to make
6439 recommendations thereon to the State Board of Education. All
6440 controversies involving the accreditation of schools shall be
6441 initially heard by a duly authorized representative of the
6442 commission as an adjudicative hearing in accordance with the
6443 Mississippi Administrative Procedure Law of 1999. After the
6444 conclusion of the proceeding, the duly authorized representative
6445 of the commission shall make a recommendation to the commission
6446 as to the resolution of the controversies, and the commission,
6447 after considering the * * * record and the recommendation of its
6448 representative, shall make its decision which becomes final
6449 unless the local school board of the school district involved
6450 shall appeal to the State Board of Education, which appeal shall
6451 be on the record previously made before the commission's
6452 representative except as may be provided by rules and regulations

6453 adopted by the State Board of Education in accordance with the
6454 Mississippi Administrative Procedure Law of 1999. Such rules and
6455 regulations may provide for the submission of new factual
6456 evidence. Any party aggrieved by the final decision of the State
6457 Board of Education shall have a right to judicial review in
6458 accordance with the Mississippi Administrative Procedure Law of
6459 1999. The commission may select a competent and qualified court
6460 reporter to record and transcribe all hearings held before its
6461 duly authorized representative whose fees and costs of
6462 transcription shall be paid by the school district involved
6463 within forty-five (45) days after having been notified of such
6464 costs and fees by the commission. An appropriate member of the
6465 staff of the State Department of Education shall be designated by
6466 the State Superintendent of Public Education to serve as
6467 executive secretary of the commission.

6468 SECTION 143. Section 37-23-73, Mississippi Code of 1972, is
6469 amended as follows:

6470 37-23-73. In the event of disapproval by the State
6471 Department of Education of an application for financial
6472 assistance payable from department funds, the department shall
6473 give notice to the applicant, through the parent or guardian of,
6474 or person standing in loco parentis to, the applicant, or to the
6475 public school district, by certified mail. Any applicant,
6476 through the parent or guardian of, or the person standing in loco
6477 parentis to, the applicant, or to the public school district,
6478 may, within ten (10) days after receipt of such notice, apply to
6479 the State Board of Education for a hearing, and shall be afforded
6480 an adjudicative proceeding in accordance with the Mississippi
6481 Administrative Procedure Law of 1999. If the board shall affirm
6482 the previous action of disapproval of the application, notice
6483 shall be given to the applicant, through the parent or guardian
6484 of, or the person standing in loco parentis to, the applicant, or
6485 to the public school district, by certified mail. Any applicant
6486 aggrieved by the action of the board may, through the parent or

6487 guardian of, or the person standing in loco parentis to, the
6488 applicant or to the public school district secure judicial review
6489 in accordance with the Mississippi Administrative Procedure Law
6490 of 1999.

6491 SECTION 144. Section 37-33-263, Mississippi Code of 1972,
6492 is amended as follows:

6493 37-33-263. (1) The State Board of Health shall establish
6494 in the State Department of Health a program to:

6495 (a) Identify and investigate spinal cord and traumatic
6496 brain injuries; and

6497 (b) Maintain a central registry for cases of spinal
6498 cord and traumatic brain injuries.

6499 (2) The State Department of Health shall design the
6500 registry program so that it will:

6501 (a) Provide information in a central data bank of
6502 accurate, precise and current information on spinal cord and
6503 traumatic brain injuries;

6504 (b) Provide for the collection of such data to
6505 identify risk factors and causes of spinal cord and traumatic
6506 brain injuries;

6507 (c) Provide information for early identification of
6508 spinal cord and traumatic brain injuries:

6509 (d) Provide for the dissemination of such data for the
6510 purposes of care and support for persons with spinal cord and
6511 traumatic brain injuries;

6512 (e) Provide for the analysis of such data for the
6513 purpose of prevention.

6514 (3) The State Board of Health shall adopt rules,
6515 regulations and procedures to govern the operation of the
6516 registry program and to carry out the intent of this section.

6517 (4) The State Board of Health in its rules and regulations
6518 shall specify the types of information to be provided to the
6519 spinal cord and traumatic brain injuries registry and the persons
6520 and entities who are required to provide such information to the

6521 registry.

6522 (5) The State Board of Health by rule shall prescribe the
6523 manner in which records and other information are made available
6524 to the State Department of Health.

6525 (6) Information collected and analyzed by the State
6526 Department of Health under this section shall be placed in a
6527 central registry to facilitate research and to maintain security.

6528 (a) Data obtained under this section directly from the
6529 medical records of a patient is for the confidential use of the
6530 State Department of Health and the persons or public or private
6531 entities that the State Department of Health determines are
6532 necessary to carry out the intent of this section. The data is
6533 privileged and may not be divulged or made public in a manner
6534 that discloses the identity of an individual whose medical
6535 records have been used for obtaining data under this section.

6536 (b) Information that may identify an individual whose
6537 medical records have been used for obtaining data under this
6538 section is not available for public inspection under the
6539 Mississippi Public Records Act of 1983.

6540 (c) Statistical information collected under this
6541 section is public information.

6542 (7) The State Department of Health may use the registry to:

6543 (a) Investigate the causes of spinal cord and
6544 traumatic brain injuries and other health conditions as
6545 authorized by statute;

6546 (b) Design and evaluate measures to prevent the
6547 occurrence of spinal cord and traumatic brain injuries, and other
6548 conditions;

6549 (c) Conduct other investigations and activities
6550 necessary for the State Board of Health and the State Department
6551 of Health to fulfill their obligation to protect the public
6552 health; and

6553 (d) Identify those persons who cannot achieve complete
6554 independence after suffering spinal cord and traumatic brain

6555 injuries.

6556 (8) Any person or entity who misuses the information
6557 provided to the registry shall be subject to a civil penalty of
6558 Five Hundred Dollars (\$500.00) for each such failure or misuse.
6559 Such penalty shall be assessed and levied by the State Board of
6560 Health after an adjudicative proceeding in accordance with the
6561 Administrative Procedure Law of 1999, and all such penalties
6562 collected shall be deposited into the State General Fund.

6563 (9) The State Health Officer may appoint or delegate his
6564 authority to establish and appoint an advisory council, for the
6565 purposes of this section, to the State Department of
6566 Rehabilitation Services Advisory Council on Spinal Cord Injuries
6567 and Traumatic Brain Injuries. The advisory council may designate
6568 a subcommittee to act as the registry's advisor. The State Board
6569 of Health shall consult and be advised by the committee on the
6570 promulgation of rules, regulations and procedures for the
6571 purposes of this section.

6572 SECTION 145. Section 37-45-27, Mississippi Code of 1972, is
6573 amended as follows:

6574 37-45-27. In conducting any hearing, the commission shall
6575 not be required to follow common law or statutory rules of
6576 evidence or the technical or formal rules of procedure but the
6577 commission shall not conduct such hearings inconsistent with the
6578 Mississippi Administrative procedure Law of 1999. Any such
6579 hearing may be conducted in such manner as the commission may
6580 deem best to ascertain and determine the physical, mental, moral,
6581 social and educational welfare of the educable children involved,
6582 the efficiency of the operation of the schools, and the economic
6583 and social welfare of the various school areas involved.

6584 SECTION 146. Section 37-45-31, Mississippi Code of 1972, is
6585 amended as follows:

6586 37-45-31. The commission, or the chairman thereof, at any
6587 regular or recessed meeting, or the chairman in vacation, or the
6588 executive secretary in vacation pursuant to the direction of the

6589 chairman made at any time, is hereby empowered to issue under the
6590 seal of the commission and in its name, subpoenas in accordance
6591 with the Mississippi Administrative Procedure Law of 1999.

6592 SECTION 147. Section 37-45-33, Mississippi Code of 1972, is
6593 amended as follows:

6594 37-45-33. In case of the failure or refusal on the part of
6595 any person to comply with any subpoena issued as authorized in
6596 Section 37-45-31, or in case of the refusal of any witness to
6597 testify or answer to any matter regarding which he may be
6598 lawfully interrogated, the compliance of that person may be
6599 secured in accordance with the Mississippi Administrative
6600 Procedure Law of 1999.

6601 SECTION 148. Section 37-45-37, Mississippi Code of 1972, is
6602 amended as follows:

6603 37-45-37. At any hearing held by the commission under the
6604 provisions of Chapter 47 of this title, or under any other
6605 statute, the proceedings shall be recorded and preserved in
6606 accordance with the Mississippi Administrative Procedure Law of
6607 1999, at the expense of any county board of education or board of
6608 trustees of any municipal separate school district involved,
6609 jointly or severally * * *. The proceedings shall be recorded
6610 and preserved under the supervision of said commission, or the
6611 secretary thereof * * *.

6612 * * *

6613 SECTION 149. Section 37-45-41, Mississippi Code of 1972, is
6614 amended as follows:

6615 37-45-41. In the event of judicial review, the transcript
6616 and record of proceeding before the commission shall be prepared
6617 in accordance with the Mississippi Administrative Procedure Law
6618 of 1999.

6619 SECTION 150. Section 37-45-47, Mississippi Code of 1972, is
6620 amended as follows:

6621 37-45-47. All costs taxed by the commission in any hearing
6622 or proceeding shall be had within forty-five (45) days after the

6623 date of any * * * order of the commission becomes final and is
6624 subject to no further judicial review.

6625 In the event said costs are not so paid, said commission
6626 shall certify the same to the State Board of Education and unless
6627 said costs shall have been paid the said State Board of Education
6628 shall deduct the amount thereof, as to any county board of
6629 education, from the next allotment to said county for
6630 administrative expenses, and as to any municipal separate school
6631 district from its next allotment of Two Hundred Dollars (\$200.00)
6632 per teacher unit. Such amount shall be paid to the commission,
6633 which shall deposit same in the State Treasury, and the same
6634 shall then be disbursed to the person to whom it is owing by
6635 proper warrant upon order of the commission. The provisions of
6636 this section shall not relieve the obligation of any surety upon
6637 any * * * bond.

6638 SECTION 151. Section 37-45-51, Mississippi Code of 1972, is
6639 amended as follows:

6640 37-45-51. Any school board of a school district aggrieved
6641 by any final rule, regulation or order of the commission shall
6642 have the right of judicial review in accordance with the
6643 Mississippi Administrative Procedure Law of 1999.

6644 After the perfection of judicial review, the party seeking
6645 judicial review shall file a bond in the sum of Five Hundred
6646 Dollars (\$500.00) with two (2) sufficient sureties or with a
6647 surety company qualified to do business in Mississippi as the
6648 surety, conditioned to pay the cost of such judicial review.
6649 Said bond shall be approved by the clerk of the court. The
6650 perfection of a proceeding for judicial review shall not stay or
6651 suspend the operation of any rule, regulation or order of the
6652 commission * * *.

6653 SECTION 152. Section 37-45-57, Mississippi Code of 1972, is
6654 amended as follows:

6655 37-45-57. In the event of judicial review at the instance
6656 of any county board of education or board of trustees of any

6657 municipal separate school district from any final rule,
6658 regulation or order of the State Educational Finance Commission,
6659 it shall be the duty and responsibility of such * * * county
6660 board or board of trustees seeking judicial review, under the
6661 supervision of the executive secretary of said commission, to
6662 prepare or cause to be prepared the record in accordance with the
6663 Mississippi Administrative Procedure Law of 1999. The cost of
6664 making and filing such record shall be an item of cost of
6665 judicial review, which shall be paid by party seeking judicial
6666 review. The cost of such record shall not be in excess of the
6667 cost of a similar record on appeal from a chancery court of this
6668 state to the Supreme Court of Mississippi.

6669 SECTION 153. Section 37-45-61, Mississippi Code of 1972, is
6670 amended as follows:

6671 37-45-61. From an adverse decision of the chancery court,
6672 either party may appeal to the supreme court of the State of
6673 Mississippi. Said appeal shall be taken and perfected within
6674 thirty days and in the same manner provided by law for other
6675 appeals to the supreme court from the judgments of chancery
6676 courts, and upon appeal to the supreme court, the same shall be
6677 heard and disposed of as a preference cause as promptly and as
6678 expeditiously as the circumstances will permit.

6679 SECTION 154. Section 37-47-17, Mississippi Code of 1972, is
6680 amended as follows:

6681 37-47-17. Applications for the expenditure of funds to the
6682 credit of any school district in the state public school building
6683 fund shall originate with the school board of the school district
6684 entitled to such funds. Before any funds to the credit of a
6685 school district shall be expended for capital improvements or the
6686 retirement of outstanding bonded indebtedness, the school board
6687 of such school district shall prepare and submit an application
6688 in such form as may be prescribed by the commission. There shall
6689 be included with such application a statement in which there is
6690 set forth the enrollment and average daily attendance in the

6691 schools of the district divided as to schools and grades, the
6692 number of teachers employed, the facilities in use, the
6693 facilities to be provided with the funds to be expended, the
6694 outstanding school indebtedness, and such other information as
6695 the commission may require. Such application and statement shall
6696 be submitted directly to the commission and approved or
6697 disapproved by it. The decision of the commission shall be final
6698 subject to judicial review in accordance with the Mississippi
6699 Administrative Procedure Law of 1999. In the event any
6700 application shall be disapproved by the commission, the school
6701 board submitting same shall be notified of such disapproval,
6702 which notice of disapproval shall be accompanied by a statement
6703 of the reason or reasons for such disapproval.

6704 The commission shall approve only those applications which
6705 are found to be proper under the provisions of this chapter and
6706 the applicable rules and regulations of the commission. When an
6707 application is approved for the expenditure of funds for capital
6708 improvements, the contract for the construction of such capital
6709 improvements shall be entered into and awarded by the school
6710 board of the school district in the manner provided in this
6711 chapter; however, the contract for construction of a secondary
6712 vocational and technical training center for exclusive use and
6713 operation by a school district may be entered into and awarded by
6714 the board of trustees of a junior college district where a grant
6715 of federal funds by the Appalachian Commission has been made to
6716 the board of trustees of such junior college district to assist
6717 in financing construction of such secondary vocational and
6718 technical training facility for such school district.

6719 SECTION 155. Section 37-47-67, Mississippi Code of 1972, is
6720 amended as follows:

6721 37-47-67. Any county board of education or board of
6722 trustees of any school district, including a municipal separate
6723 school district, which may be aggrieved by any final rule,
6724 regulation, or order of the state educational finance commission

6725 adopted under the provisions of this chapter shall have the right
6726 of judicial review in accordance with the Mississippi
6727 Administrative Procedure Law of 1999.

6728 SECTION 156. Section 37-151-61, Mississippi Code of 1972,
6729 is amended as follows:

6730 37-151-61. Any school board of any school district which
6731 may be aggrieved by any final rule, regulation or order of the
6732 State Board of Education adopted under the provisions of this
6733 chapter shall have the right to judicial review in accordance
6734 with the Mississippi Administrative Procedure Law of 1999.

6735 SECTION 157. Section 41-4-7, Mississippi Code of 1972, is
6736 amended as follows:

6737 41-4-7. The State Board of Mental Health shall have the
6738 following powers and duties:

6739 (a) To appoint a full-time executive director of the
6740 Department of Mental Health, who shall be employed by the board
6741 and shall serve as executive secretary to the board. The first
6742 director shall be a duly licensed physician with special interest
6743 and competence in psychiatry, and shall possess a minimum of
6744 three (3) years' experience in clinical and administrative
6745 psychiatry. Subsequent directors shall possess at least a
6746 master's degree or its equivalent, and shall possess at least ten
6747 (10) years' administrative experience in the field of mental
6748 health. The salary of the executive director shall be determined
6749 by the board;

6750 (b) To set up state plans for the purpose of
6751 controlling and treating any and all forms of mental and
6752 emotional illness, alcoholism, drug misuse and developmental
6753 disabilities;

6754 (c) To supervise, coordinate and establish standards
6755 for all operations and activities of the state related to mental
6756 health and providing mental health services, including but not
6757 limited to: The requirement that no person be approved for
6758 treatment which is paid for by funds made available through the

6759 department who has not had a treatment plan established as a
6760 result of having been seen by a licensed physician or licensed
6761 clinical psychologist and that physician or clinical psychologist
6762 signing these plans stating that he/she has personally evaluated
6763 the client and that the treatment plan is medically necessary. A
6764 physician or clinical psychologist shall recertify each client's
6765 record at least semiannually (except for persons with a diagnosis
6766 of mental retardation/developmental disability which shall be
6767 completed annually), and more often if medically indicated by
6768 physically visiting the client and certifying same in the record.

6769 The board shall have the authority to develop and implement all
6770 standards and plans and shall have the authority to establish
6771 appropriate actions, including financially punitive actions, to
6772 insure enforcement of these established standards, in accordance
6773 with the Mississippi Administrative Procedure Law of 1999.

6774 (Section 25-43-1.101 et seq.);

6775 (d) To enter into contracts with any other state or
6776 federal agency, or with any private person, organization or group
6777 capable of contracting, if it finds such action to be in the
6778 public interest;

6779 (e) To collect reasonable fees for its services;
6780 provided, however, if it is determined that a person receiving
6781 services is unable to pay the total fee, the department shall
6782 collect any amount such person is able to pay;

6783 (f) To certify, coordinate and establish minimum
6784 standards and establish minimum required services for regional
6785 mental health and mental retardation commissions and other
6786 community service providers for community or regional programs
6787 and services in mental health, mental retardation, alcoholism,
6788 drug misuse, developmental disabilities, compulsive gambling,
6789 addictive disorders and related programs throughout the state.
6790 Such regional mental health and mental retardation commissions
6791 and other community service providers shall submit an annual
6792 operational plan to the State Department of Mental Health for

6793 approval or disapproval based on the minimum standards and
6794 minimum required services established by the department for
6795 certification. If the department finds deficiencies in the plan
6796 of any regional commission or community service provider based on
6797 the minimum standards and minimum required services established
6798 for certification, the department shall give the regional
6799 commission or community service provider a six-month probationary
6800 period to bring its standards and services up to the established
6801 minimum standards and minimum required services. After the
6802 six-month probationary period, if the department determines that
6803 the regional commission or community service provider still does
6804 not meet the minimum standards and minimum required services
6805 established for certification, the department may remove the
6806 certification of the commission or provider. However, the
6807 department shall not mandate a standard or service, or decertify
6808 a regional commission or community service provider for not
6809 meeting a standard or service, if the standard or service does
6810 not have funding appropriated by the Legislature or have a
6811 funding source from the State Department of Mental Health or a
6812 local funding source. The State Board of Mental Health shall
6813 promulgate rules and regulations necessary to implement the
6814 provisions of this paragraph (f), in accordance with the
6815 Mississippi Administrative Procedure Law of 1999. (Section
6816 25-43-1.101 et seq.);

6817 (g) To establish and promulgate reasonable minimum
6818 standards for the construction and operation of state and all
6819 Department of Mental Health certified facilities, including
6820 reasonable minimum standards for the admission, diagnosis, care,
6821 treatment, transfer of patients and their records, and also
6822 including reasonable minimum standards for providing day care,
6823 outpatient care, emergency care, inpatient care and follow-up
6824 care, when such care is provided for persons with mental or
6825 emotional illness, mental retardation, alcoholism, drug misuse
6826 and developmental disabilities;

6827 (h) To assist community or regional programs
6828 consistent with the purposes of this chapter by making grants and
6829 contracts from available funds;

6830 (i) To establish and collect reasonable fees for
6831 necessary inspection services incidental to certification or
6832 compliance;

6833 (j) To accept gifts, trusts, bequests, grants,
6834 endowments or transfers of property of any kind;

6835 (k) To receive monies coming to it by way of fees for
6836 services or by appropriations;

6837 (l) To serve as the single state agency in receiving
6838 and administering any and all funds available from any source for
6839 the purpose of service delivery, training, research and education
6840 in regard to all forms of mental illness, mental retardation,
6841 alcoholism, drug misuse and developmental disabilities, unless
6842 such funds are specifically designated to a particular agency or
6843 institution by the federal government, the Mississippi
6844 Legislature or any other grantor;

6845 (m) To establish mental health holding centers for the
6846 purpose of providing short-term emergency mental health
6847 treatment, places for holding persons awaiting commitment
6848 proceedings or awaiting placement in a state mental health
6849 facility following commitment, and for diverting placement in a
6850 state mental health facility. These mental health holding
6851 facilities shall be readily accessible, available statewide, and
6852 be in compliance with emergency services' minimum standards.
6853 They shall be comprehensive and available to triage and make
6854 appropriate clinical disposition including the capability to
6855 access inpatient services or less restrictive alternatives, as
6856 needed, as determined by medical staff. Such facility shall have
6857 medical, nursing and behavioral services available on a
6858 24-hour-a-day basis. The board may provide for all or part of
6859 the costs of establishing and operating the holding centers in
6860 each district from such funds as may be appropriated to the board

6861 for such use, and may participate in any plan or agreement with
6862 any public or private entity under which the entity will provide
6863 all or part of the costs of establishing and operating a holding
6864 center in any district;

6865 (n) To certify/license case managers, mental health
6866 therapists, mental retardation therapists, mental
6867 health/retardation program administrators, addiction counselors
6868 and others as deemed appropriate by the board. Persons already
6869 professionally licensed by another state board or agency are not
6870 required to be certified/licensed under this section by the
6871 Department of Mental Health. The department shall not use
6872 professional titles in its certification/licensure process for
6873 which there is an independent licensing procedure. Such
6874 certification/licensure shall be valid only in the state mental
6875 health system, in programs funded and/or certified by the
6876 Department of Mental Health, and/or in programs
6877 certified/licensed by the State Department of Health that are
6878 operated by the state mental health system serving the mentally
6879 ill, mentally retarded, developmental disabled or persons with
6880 addictions, and shall not be transferrable;

6881 (o) To develop formal mental health worker
6882 qualifications for regional mental health and mental retardation
6883 commissions and other community service providers. The State
6884 Personnel Board shall develop and promulgate a recommended salary
6885 scale and career ladder for all regional mental
6886 health/retardation center therapists and case managers who work
6887 directly with clients. The State Personnel Board shall also
6888 develop and promulgate a career ladder for all direct care
6889 workers employed by the State Department of Mental Health;

6890 (p) The employees of the department shall be governed
6891 by personnel merit system rules and regulations, the same as
6892 other employees in state services;

6893 (q) To establish such rules and regulations as may be
6894 necessary in carrying out the provisions of this chapter,

6895 including the establishment of a formal grievance procedure to
6896 investigate and attempt to resolve consumer complaints;

6897 (r) To grant easements for roads, utilities and any
6898 other purpose it finds to be in the public interest;

6899 (s) To survey statutory designations, building markers
6900 and the names given to mental health/retardation facilities and
6901 proceedings in order to recommend deletion of obsolete and
6902 offensive terminology relative to the mental health/retardation
6903 system;

6904 (t) To ensure an effective case management system
6905 directed at persons who have been discharged from state and
6906 private psychiatric hospitals to ensure their continued
6907 well-being in the community;

6908 (u) To develop formal service delivery standards
6909 designed to measure the quality of services delivered to
6910 community clients, as well as the timeliness of services to
6911 community clients provided by regional mental health/retardation
6912 commissions and other community services providers;

6913 (v) To establish regional state offices to provide
6914 mental health crisis intervention centers and services available
6915 throughout the state to be utilized on a case-by-case emergency
6916 basis. The regional services director, other staff and delivery
6917 systems shall meet the minimum standards of the Department of
6918 Mental Health;

6919 (w) To require performance contracts with community
6920 mental health/mental retardation service providers to contain
6921 performance indicators to measure successful outcomes, including
6922 diversion of persons from inpatient psychiatric hospitals,
6923 rapid/timely response to emergency cases, client satisfaction
6924 with services and other relevant performance measures;

6925 (x) To enter into interagency agreements with other
6926 state agencies, school districts and other local entities as
6927 determined necessary by the department to ensure that local
6928 mental health service entities are fulfilling their

6929 responsibilities to the overall state plan for behavioral
6930 services;

6931 (y) To establish and maintain a toll-free grievance
6932 reporting telephone system for the receipt and referral for
6933 investigation of all complaints by clients of state and community
6934 mental health/retardation facilities; * * *

6935 (z) To establish a peer review/quality assurance
6936 evaluation system that assures that appropriate assessment,
6937 diagnosis and treatment is provided according to established
6938 professional criteria and guidelines;

6939 (aa) To develop and implement state plans for the
6940 purpose of assisting with the care and treatment of persons with
6941 Alzheimer's disease and other dementia. This plan shall include
6942 education and training of service providers, care-givers in the
6943 home setting and others who deal with persons with Alzheimer's
6944 disease and other dementia, and development of adult day care,
6945 family respite care and counselling programs to assist families
6946 who maintain persons with Alzheimer's disease and other dementia
6947 in the home setting. No agency shall be required to provide any
6948 services under this section until such time as sufficient funds
6949 have been appropriated or otherwise made available by the
6950 Legislature specifically for the purposes of the treatment of
6951 persons with Alzheimer's and other dementia;

6952 **(bb) To make rules and regulations in accordance with**
6953 **the Mississippi Administrative Procedure Law of 1999; and**

6954 **(cc) To conduct adjudicative proceedings in accordance**
6955 **with the Mississippi Administrative Procedure Law of 1999.**

6956 Nothing in this section shall be construed as applying to or
6957 affecting mental health/retardation services provided by
6958 hospitals as defined in Section 41-9-3(a), and/or their
6959 subsidiaries and divisions, which hospitals, subsidiaries and
6960 divisions are licensed and regulated by the Mississippi State
6961 Department of Health unless such hospitals, subsidiaries or
6962 divisions voluntarily request certification by the Mississippi

6963 State Department of Mental Health.

6964 All new programs authorized under this section shall be
6965 subject to the availability of funds appropriated therefor by the
6966 Legislature.

6967 SECTION 158. Section 41-7-201, Mississippi Code of 1972, is
6968 amended as follows:

6969 41-7-201. (1) The provisions of this subsection (1) shall
6970 apply to any party appealing any final order of the State
6971 Department of Health pertaining to a certificate of need for a
6972 home health agency, as defined in Section 41-7-173(h)(ix):

6973 (a) In addition to other remedies now available at law
6974 or in equity, any party aggrieved by any such final order of the
6975 State Department of Health shall have the right to judicial
6976 review in accordance with the Mississippi Administrative
6977 Procedure Law of 1999.

6978 * * *

6979 (b) The filing of such an application for judicial
6980 review of a final order of the State Department of Health * * *
6981 shall not stop the purchase of medical equipment or development
6982 or offering of institutional health services granted in a
6983 certificate of need issued by the State Department of Health. A
6984 certificate of need issued by the State Department of Health
6985 shall take effect immediately upon issuance.

6986 * * *

6987 SECTION 159. Section 41-7-202, Mississippi Code of 1972, is
6988 amended as follows:

6989 41-7-202. There shall be a "stay of proceedings" of any
6990 written decision of the State Department of Health pertaining to
6991 a certificate of need for a home health agency, as defined in
6992 Section 41-7-173(h)(ix), for a period of thirty (30) days from
6993 the date of that decision. The stay of proceedings shall expire
6994 at the termination of thirty (30) days; however, no license to
6995 operate any such home health agency that is the subject of the
6996 decision shall be issued by the licensing agency, and no

6997 certification for such home health agency to participate in the
6998 Title XVIII or Title XIX programs of the Social Security Act
6999 shall be granted until all proceedings for judicial review have
7000 been exhausted or the time for perfecting such judicial review
7001 has expired. The stay of proceedings provided for in this
7002 section shall not apply to any party pursuing judicial review of
7003 any final order of the State Department of Health pertaining to a
7004 certificate of need for any health care facility as defined in
7005 Section 41-7-173(h), with the exception of any home health agency
7006 as defined in Section 41-7-173(h)(ix).

7007 SECTION 160. Section 41-9-31, Mississippi Code of 1972, is
7008 amended as follows:

7009 41-9-31. Any applicant or licensee aggrieved by the
7010 decision of the licensing agency may upon request have an
7011 adjudicative hearing in accordance with the Mississippi
7012 Administrative Procedure Law of 1999. The decision of the
7013 licensing agency shall be subject to judicial review in
7014 accordance with the Mississippi Administrative Procedure Law of
7015 1999. Pending final disposition of the matter on judicial review
7016 the status quo of the applicant or licensee shall be preserved,
7017 except as the court otherwise orders in the public interest.
7018 Rules with respect to court costs in other cases in chancery
7019 shall apply equally to cases hereunder.

7020 SECTION 161. Section 41-26-5, Mississippi Code of 1972, is
7021 amended as follows:

7022 41-26-5. (1) In addition to any other duties required by
7023 law, the board shall have the following powers and duties
7024 concerning safe drinking water:

7025 (a) To establish policies, requirements or standards
7026 governing the source, collection, distribution, purification,
7027 treatment and storage of water for public water systems as it
7028 deems necessary for the provision of safe drinking water;

7029 (b) To adopt, modify, repeal and promulgate, after due
7030 notice and hearing and in accordance with the Mississippi

7031 Administrative Procedure Law of 1999 and Section 41-26-6, and
7032 where not otherwise prohibited by federal or state law, to make
7033 exceptions to and grant exemptions and variances from, and to
7034 enforce rules and regulations implementing the powers and duties
7035 of the board under this chapter;

7036 (c) To enter into, and to authorize the director to
7037 execute contracts, grants and cooperative agreements with, any
7038 federal or state agency or subdivision thereof, interstate
7039 agency, or any other person in connection with carrying out this
7040 chapter; and

7041 (d) To discharge other powers, duties and
7042 responsibilities which may be necessary to implement this
7043 chapter.

7044 (2) (a) Except as provided in Section 41-26-5(2)(b),
7045 regulations adopted under this section shall apply to each public
7046 water system in the state.

7047 (b) Regulations shall not apply to a public water
7048 system:

7049 (i) Which consists only of distribution and
7050 storage facilities, and which does not have any collection and
7051 treatment facilities;

7052 (ii) Which obtains all of its water from, but is
7053 not owned or operated by, a public water system to which such
7054 regulations apply;

7055 (iii) Which does not sell water to any person;
7056 and

7057 (iv) Which is not a carrier which conveys
7058 passengers in interstate commerce.

7059 (3) The board shall develop and implement a technical
7060 assistance program to help existing potentially non-viable
7061 community public water systems to become viable and to improve
7062 the technical, managerial or financial capabilities of small
7063 community public water systems. In developing this program, the
7064 board shall work cooperatively with organizations which currently

7065 provide training and assistance to public water systems.

7066 SECTION 162. Section 41-26-7, Mississippi Code of 1972, is
7067 amended as follows:

7068 41-26-7. (1) In addition to any other duties required by
7069 law, the director shall have the following powers and duties
7070 concerning safe drinking water:

7071 (a) To exercise general supervision over the
7072 administration and enforcement of this chapter and applicable
7073 rules and regulations;

7074 (b) To make inspections and investigations, collect
7075 samples and carry on research and analyses as may be necessary to
7076 carry out this chapter and applicable rules and regulations;

7077 (c) To enter at all reasonable times onto any property
7078 other than the interior of a private dwelling to make
7079 inspections, conduct investigations or studies or enforce this
7080 chapter and applicable rules and regulations;

7081 (d) To enter into contracts, grants or cooperative
7082 arrangements with any federal or state agency or subdivision
7083 thereof, interstate agency or any other person;

7084 (e) To receive financial and technical assistance from
7085 the federal government and other public or private agencies or
7086 organizations;

7087 (f) To participate in related programs of the federal
7088 government, other states, interstate agencies, or other public or
7089 private agencies or organizations;

7090 (g) To establish adequate fiscal controls and
7091 accounting procedures to assure proper disbursement of and
7092 account for funds appropriated or otherwise necessary to carry
7093 out this chapter;

7094 (h) To conduct adjudicative proceedings in accordance
7095 with the Mississippi Administrative Procedure Law of 1999 and
7096 otherwise hold hearings, issue, modify or revoke orders, levy and
7097 collect any administrative fine or penalty and to enforce the
7098 laws, rules and regulations governing safe drinking water;

7099 (i) To keep any records and make reports with respect
7100 to the activities of the department;

7101 (j) To delegate any powers, duties and
7102 responsibilities as deemed appropriate to administer this chapter
7103 including delegation of any powers and duties regarding
7104 administrative enforcement to a designated administrative law
7105 judge or hearing officer; and

7106 (k) To perform all acts necessary to carry out this
7107 chapter or the federal act.

7108 SECTION 163. Section 41-26-19, Mississippi Code of 1972, is
7109 amended as follows:

7110 41-26-19. (1) Any hearing under this chapter may be
7111 conducted by the director or an administrative law judge or an
7112 administrative hearing officer designated by the director as an
7113 adjudicative proceeding in accordance with the Mississippi
7114 Administrative Procedure Law of 1999.

7115 In case of contumacy or refusal to obey a notice of hearing
7116 or subpoena issued, the chancery court shall have jurisdiction as
7117 other matters of civil enforcement in accordance with the
7118 Mississippi Administrative Procedure Law of 1999. At the
7119 conclusion of the proceedings, an order may be entered, including
7120 the assessment of a penalty, which, in the opinion of the
7121 director, will best further the purposes of this chapter.

7122 (2) All proceedings shall be recorded and preserved in
7123 accordance with the Mississippi Administrative Procedure Law of
7124 1999 and subject to transcription upon order of the director or
7125 any interested person. If the request for transcription
7126 originates with an interested person, that person shall pay the
7127 cost prior to the production of the transcription.

7128 SECTION 164. Section 41-26-21, Mississippi Code of 1972, is
7129 amended as follows:

7130 41-26-21. Following the hearing, the presiding official
7131 shall enter an order which shall become a final order of the
7132 director * * * within thirty (30) days after the date * * * the

7133 final order was made * * *. Any person who is aggrieved by any
7134 final order, thereafter may seek judicial review of the final
7135 order in the Court of Appeals of the State of Mississippi in
7136 accordance with the Mississippi Administrative Procedure Law of
7137 1999.

7138 * * *

7139 SECTION 165. Section 41-26-23, Mississippi Code of 1972, is
7140 amended as follows:

7141 41-26-23. (1) There is created in the State Treasury a
7142 fund to be designated as the "Drinking Water Quality Analysis
7143 Fund." The fund shall be treated as a special trust fund.
7144 Interest earned on the principal in the fund shall be credited by
7145 the Treasurer to the fund. The fund may receive monies from any
7146 available public or private source, including fees, proceeds and
7147 grants. The department shall expend or utilize monies in the
7148 fund to pay all reasonable direct and indirect costs of water
7149 quality analysis and related activities as required by the
7150 federal Safe Drinking Water Act, as amended. Monies in the fund
7151 at the end of the fiscal year shall be retained in the fund for
7152 use in the succeeding fiscal year. Except as provided in
7153 subsection (5) of this section, if the annual fees collected
7154 exceed the cost of administering the water quality analysis
7155 program in that fiscal year, the excess shall be applied to the
7156 cost of administering the program in the succeeding fiscal year.
7157 In the succeeding fiscal year, the total to be collected from
7158 fees shall be reduced by the excess retained in the fund and the
7159 assessment rates shall be adjusted proportionately.

7160 (2) The department annually shall assess and collect fees
7161 for water quality analysis and related activities as required by
7162 the federal Safe Drinking Water Act, as amended, which shall not
7163 exceed One Dollar and Ninety Cents (\$1.90) per connection or
7164 Forty Thousand Dollars (\$40,000.00) per system, whichever is
7165 less. The department annually shall adopt by rule, in accordance
7166 with the Mississippi Administrative Procedure Law of 1999 and

7167 following a public hearing, a fee schedule to cover all
7168 reasonable direct and indirect costs of water quality analysis
7169 and related activities as required by the federal Safe Drinking
7170 Water Act, as amended. In adopting a fee schedule, the
7171 department shall consider the recommendations of the advisory
7172 committee created in this section, if those recommendations are
7173 made in a timely manner as provided.

7174 (3) An advisory committee is created to study the program
7175 needs and costs for the implementation of the water quality
7176 analysis program and to conduct an annual review of the needs and
7177 costs of administering that program. The annual review shall
7178 include an independent recommendation on an equitable fee
7179 schedule for the succeeding fiscal year. Each annual review
7180 report shall be due to the department by May 1. The advisory
7181 committee shall consist of one (1) member appointed by the
7182 Mississippi Rural Water Association, one (1) member appointed by
7183 the Mississippi Municipal Association, one (1) member appointed
7184 by the Mississippi Association of Supervisors and one (1) member
7185 appointed by the Mississippi Water and Pollution Control
7186 Operators Association, Inc.

7187 (4) All suppliers of water for which water quality analysis
7188 and related activities as required by the federal Safe Drinking
7189 Water Act, as amended, are performed by the State Department of
7190 Health shall pay the water quality analysis fee within forty-five
7191 (45) days following receipt of an invoice from the department.
7192 In the discretion of the department, any supplier of water
7193 required to pay the fee shall be liable for a penalty equal to a
7194 maximum of two (2) times the amount of fees due and payable plus
7195 an amount necessary to reimburse the costs of delinquent fee
7196 collection for failure to pay the fee within ninety (90) days
7197 following the receipt of the invoice. Any person making sales to
7198 customers of water for residential, noncommercial or
7199 nonagricultural use and who recovers the fee required by this
7200 section or any portion thereof from any customer shall indicate

7201 on each statement rendered to customers that these fees are for
7202 water quality analyses required by the federal government under
7203 the Safe Drinking Water Act, as amended.

7204 (5) There is created within the Drinking Water Quality
7205 Analysis Fund an equipment capital expenditure account,
7206 hereinafter referred to as the "account." The department may
7207 transfer any excess fees, not exceeding ten percent (10%) of the
7208 total fees assessed under this section, to the account. The
7209 balance in the account shall not exceed Five Hundred Thousand
7210 Dollars (\$500,000.00). Funds in the account shall be used by the
7211 department, as appropriated by the Legislature, to defray the
7212 costs of purchasing new equipment or repairing existing equipment
7213 for the analysis of drinking water.

7214 SECTION 166. Section 41-26-31, Mississippi Code of 1972, is
7215 amended as follows:

7216 41-26-31. (1) If the director finds any person guilty of a
7217 violation of this chapter, any rule or regulation or written
7218 order of the director or any condition or limitation of an
7219 approval, the director may assess and levy a civil penalty of not
7220 more than Twenty-five Thousand Dollars (\$25,000.00) for each
7221 violation, except as provided in Section 41-26-8(3). Each day of
7222 a continuing violation is a separate violation. Any penalty
7223 shall be assessed and levied by the director after a hearing as
7224 provided in this chapter. Judicial review of the imposition of
7225 the civil penalty may be had with the Mississippi Administrative
7226 Procedure Law of 1999. If the appellant desires to stay the
7227 execution of a civil penalty assessed under this section, the
7228 appellant shall give bond with sufficient sureties of one or more
7229 guaranty or surety companies authorized to do business in this
7230 state, payable to the State of Mississippi, in an amount equal to
7231 double the amount of any civil penalty assessed by the director,
7232 as to which the stay of execution is desired. If the judgment is
7233 affirmed, the appellant shall pay all costs of the assessment
7234 entered against the appellant.

7235 (2) In addition to or in lieu of the penalty provided in
7236 subsection (1) of this section, the director may institute and
7237 maintain in the name of the state any administrative proceedings
7238 in accordance with the Mississippi Administrative Procedure Law
7239 of 1999 necessary or appropriate to enforce this chapter, any
7240 rule or regulation or written order of the director or any
7241 condition or limitation of an approval. The proceedings may be
7242 filed and heard in the appropriate circuit, chancery, county or
7243 justice court of the county in which venue may lie, or in the
7244 Circuit, Chancery or County Court of the First Judicial District
7245 of Hinds County, as the case may be. The director may obtain
7246 mandatory or prohibitory injunctive relief, either temporary or
7247 permanent. In cases of imminent and substantial hazard or
7248 endangerment, it shall not be necessary that the state plead or
7249 prove: (a) that irreparable damage would result if the
7250 injunction did not issue; (b) that there is no adequate remedy at
7251 law; or (c) that a written order has first been issued for the
7252 alleged violation.

7253 (3) In determining the amount of any penalty under this
7254 section, the director shall consider at a minimum:

- 7255 (a) The willfulness of the violation;
- 7256 (b) Costs of restoration and abatement;
- 7257 (c) Economic benefit as a result of noncompliance;
- 7258 (d) The seriousness of the violation, including any
7259 harm or hazard to the public health and welfare; and
- 7260 (e) Past performance history.

7261 (4) (a) The owner of any public water system found in
7262 violation of this chapter may submit to the director a plan for:

7263 (i) The physical consolidation of the system with
7264 one or more other viable public water systems;

7265 (ii) The consolidation of significant management
7266 and administrative functions of the system with one or more other
7267 viable public water systems or contract or satellite management
7268 of the system; or

7269 (iii) The transfer of ownership of the system.

7270 (b) If the director approves the plan and the plan is
7271 fully implemented as determined by the director, the director
7272 shall waive any penalty assessed under this section for a
7273 violation identified in the approved plan before the date on
7274 which the action specified in the approved plan was completed.

7275 (5) (a) In addition to or in lieu of any other penalty
7276 imposed under this section, the director may require the owner of
7277 any public water system found in violation to provide a
7278 performance bond or other acceptable financial security
7279 instrument including, but not limited to, cash, negotiable bonds
7280 of the United States government or the state, or negotiable
7281 certificates of deposit or a letter of credit of any bank
7282 organized or transacting business in the state and insured by the
7283 Federal Deposit Insurance Corporation or the Federal Savings and
7284 Loan Insurance Corporation or a similar federal banking or
7285 savings and loan insurance organization to the department. The
7286 bond or financial security must be approved by the director. The
7287 purpose of the bond or other financial security shall be the
7288 protection of the health and welfare of the customers of the
7289 system. The board shall establish by regulation the acceptable
7290 forms of financial security and the amount of financial security
7291 required for the various types and sizes of facilities. The
7292 director shall notify the owner, in writing, of the form and
7293 amount of security required.

7294 (b) The director may petition the Chancery Court of
7295 the First Judicial District of Hinds County for forfeiture of the
7296 bond or other financial security, if the director determines
7297 that:

7298 (i) The continued operation or lack of operation
7299 of the system covered by this section represents a threat to the
7300 public health and welfare;

7301 (ii) All reasonable and practical efforts under
7302 the circumstances have been made to obtain corrective actions

7303 from the violators; and

7304 (iii) It does not appear that corrective actions
7305 can or will be taken within an appropriate time as determined by
7306 the director, or it appears the facility has been abandoned.

7307 (c) The proceeds of any forfeiture shall be deposited
7308 in the Public Water Systems Bond Operations Account of the Public
7309 Water Systems Assistance Fund and shall be used as ordered by the
7310 court to address or correct the noncompliance at the system. The
7311 proceeds shall be in addition to any other funds otherwise
7312 appropriated to the department and may be expended under the
7313 authority of this section without additional action of the
7314 Legislature or the Department of Finance and Administration.

7315 (d) If the court finds that a system has been
7316 abandoned or that services of a system have been terminated, the
7317 court may enter any orders regarding continued operations of that
7318 system as it deems necessary to protect the public health and
7319 welfare.

7320 (6) (a) Any penalty assessed by the director under this
7321 section shall be due and payable within thirty (30) days after
7322 notification of the violator of the order, and shall be due and
7323 payable jointly or severally, as the order may require or allow.

7324 (b) If the assessed penalty is not paid within the
7325 thirty (30) days, or within any additional time as the director
7326 may allow, the director may file suit in the Circuit Court of the
7327 First Judicial District of Hinds County or any other court with
7328 appropriate jurisdiction to enforce the order, collect the
7329 penalty and recover reasonable attorney's fees and all court
7330 costs.

7331 (c) A copy of the administrative order shall be
7332 sufficient proof as to the decision of the director.

7333 (7) All fines and penalties recovered or collected by the
7334 director under subsection 1 of this section shall be deposited in
7335 the Public Water Systems Technical Assistance Account of the
7336 Public Water Systems Assistance Fund.

7337 SECTION 167. Section 41-29-129, Mississippi Code of 1972,
7338 is amended as follows:

7339 41-29-129. (1) A registration to manufacture, distribute,
7340 or dispense a controlled substance may be suspended or revoked by
7341 the State Board of Pharmacy upon a finding that the registrant:

7342 (a) Has willfully furnished false or fraudulent
7343 material information in any application filed under this article;

7344 (b) Has been convicted of a felony within the past
7345 five (5) years and has not been pardoned and his citizenship
7346 restored under any state or federal law relating to any
7347 controlled substance;

7348 (c) Has had his federal registration suspended or
7349 revoked to manufacture, distribute, or dispense controlled
7350 substances;

7351 (d) Has violated or failed to comply with any duly
7352 promulgated regulation of the State Board of Pharmacy which
7353 reflects adversely on the registrant's reliability and integrity
7354 with respect to controlled substances;

7355 (e) Has violated the Uniform Controlled Substances Law
7356 of the State of Mississippi;

7357 (f) Has violated any duly promulgated rule or
7358 regulation of the State Board of Pharmacy pertaining to the
7359 manufacture, distribution, storage, possession, control or
7360 dispensing of controlled substances;

7361 (g) Has been convicted of a violation relating to any
7362 substance defined in this article as a controlled substance.

7363 (2) The State Board of Pharmacy may limit revocation or
7364 suspension of a registration to the particular controlled
7365 substance with respect to which grounds for revocation or
7366 suspension exist.

7367 (3) If the board or the State Board of Pharmacy suspends or
7368 revokes a registration, all controlled substances owned or
7369 possessed by the registrant at the time of suspension or the
7370 effective date of the revocation order may be placed under seal.

7371 No disposition may be made of substances under seal until the
7372 time for perfecting judicial review has lapsed or until judicial
7373 review has been concluded unless a court, upon application
7374 therefor, orders the sale of perishable substances and the
7375 deposit of the proceeds of the sale with the court. Upon a
7376 revocation order becoming final, all controlled substances may be
7377 forfeited to the state. All state professional or business
7378 licensing agencies shall promptly notify the bureau of all orders
7379 of suspensions or revocations which are the result of drug
7380 violations or drug-related matters.

7381 (4) The bureau shall promptly notify the federal bureau of
7382 narcotics and dangerous drugs of all orders suspending or
7383 revoking registration and all forfeitures of controlled
7384 substances.

7385 SECTION 168. Section 41-29-131, Mississippi Code of 1972,
7386 is amended as follows:

7387 41-29-131. (1) Upon presentation before the State Board of
7388 Pharmacy by any person showing grounds for denying, suspending or
7389 revoking a controlled substance registration, or refusing a
7390 renewal of registration, the State Board of Pharmacy may, in its
7391 discretion, deny such registration, revoke or suspend such
7392 registration or refuse a renewal of such registration.

7393 (2) Before denying, suspending or revoking a registration,
7394 or refusing a renewal of registration, the State Board of
7395 Pharmacy shall serve upon the applicant or registrant an order to
7396 show cause why registration should not be denied, revoked or
7397 suspended, or why the renewal should not be refused. The order
7398 to show cause shall contain a statement of the basis therefor and
7399 shall call upon the applicant or registrant to appear before the
7400 State Board of Pharmacy for an adjudicative proceeding conducted
7401 in accordance with the Mississippi Administrative Procedure Law
7402 of 1999. * * *

7403 * * *

7404 (3) Judicial review of orders of the State Board of

7405 Pharmacy shall be had in accordance with the Mississippi
7406 Administrative Procedure Law of 1999. The party seeking judicial
7407 review shall, together with the notice of judicial review,
7408 forward to and post with the board a satisfactory bond in the
7409 amount of Two Hundred Dollars (\$200.00) for the payment of any
7410 costs which may be adjudged against him.

7411 * * *

7412 (4) These proceedings shall be conducted in accordance with
7413 the Mississippi Administrative Procedure Law of 1999 without
7414 regard to any criminal prosecution or other proceeding.
7415 Proceedings to refuse renewal of registration shall not abate the
7416 existing registration, which shall remain in effect pending the
7417 outcome of the administrative hearing.

7418 (5) The Mississippi Bureau of Drug Enforcement or the State
7419 Board of Pharmacy may suspend, without an order to show cause,
7420 any registration simultaneously with the institution of
7421 proceedings under Section 41-29-129, or where renewal of
7422 registration is refused, if it finds that there is an imminent
7423 danger to the public health or safety which warrants this action.
7424 The suspension shall continue in effect until the conclusion of
7425 the proceedings, including judicial review thereof, unless sooner
7426 withdrawn by the suspending agency or dissolved by the reviewing
7427 court * * *.

7428 SECTION 169. Section 41-29-163, Mississippi Code of 1972,
7429 is amended as follows:

7430 41-29-163. All final determinations, findings and
7431 conclusions of the board, the bureau or the State Board of
7432 Pharmacy under this article are final and conclusive decisions of
7433 the matters involved. Except as otherwise provided by Section
7434 41-29-176, any person aggrieved by the decision may obtain
7435 judicial review of the decision in accordance with the
7436 Mississippi Administrative Procedure Law of 1999.

7437 SECTION 170. Section 41-29-165, Mississippi Code of 1972,
7438 is amended as follows:

7439 41-29-165. Any person being aggrieved by any conviction or
7440 order of any board or commission authorized under this article
7441 shall have a right to judicial review of said order or conviction
7442 in accordance with the Mississippi Administrative Procedure Law
7443 of 1999.

7444 SECTION 171. Section 41-35-7, Mississippi Code of 1972, is
7445 amended as follows:

7446 41-35-7. It shall be the duty of the State Board of Health:
7447 (1) to enforce the provisions of this chapter; (2) to promulgate
7448 such rules and regulations as shall, under this chapter, be
7449 necessary for the purpose under this chapter, and such as the
7450 state board of health may deem necessary for the further and
7451 proper guidance of local health officers, etc., in accordance
7452 with the Mississippi Administrative Procedure Law of 1999; (3) to
7453 provide for the gratuitous distribution of a scientific
7454 prophylactic for inflammation of the eyes of the new born,
7455 together with proper directions for the use and administration
7456 thereof, to all physicians and midwives as may be engaged in the
7457 practice of obstetrics or assisting at childbirth; (4) to
7458 provide, if necessary, daily inspection and prompt and gratuitous
7459 treatment to any infant whose eyes are infected with inflammation
7460 of the eyes; the state board of health, if necessary, shall
7461 defray the expenses of such treatment from such sums as may be
7462 appropriated for its use; (5) to publish and promulgate such
7463 further advice and information concerning the dangers of
7464 inflammation of the eyes of the new born and the necessity for
7465 prompt and effective treatment; (6) to furnish copies of this
7466 chapter to all physicians and midwives as may be engaged in the
7467 practice of obstetrics or assisting at childbirth; (7) to keep a
7468 proper record of any and all such cases of inflammation of the
7469 eyes of the new born, as shall be filed in the office of the
7470 state board of health, in pursuance with this chapter, and as may
7471 come to its attention in any way, and to constitute such record a
7472 part of the annual report to the governor and legislature; (8) to

7473 report any and all violations of this chapter as may come to its
7474 attention, to the local police, county prosecutor, or district
7475 attorney in the county wherein such violation may have been
7476 committed, and to assist such official in every way possible,
7477 such as securing necessary evidence, etc.

7478 SECTION 172. Section 41-51-25, Mississippi Code of 1972, is
7479 amended as follows:

7480 41-51-25. The commissioner shall have power to suspend for
7481 any fixed period, or to revoke, the license held by any licensee
7482 under this chapter in the event that such licensee shall violate
7483 and fail or refuse to obey any of the provisions of this chapter,
7484 or of the rules and regulations promulgated by the commissioner,
7485 or in the event the State Board of Health shall certify in
7486 writing to the commissioner that any particular disposal plant or
7487 rendering plant is a menace to the public health, stating the
7488 charges specifically and definitely, in which case the hearing
7489 hereinafter provided for shall be held within thirty (30) days
7490 after such charges of said board are so filed.

7491 Before any license shall be suspended or revoked, the
7492 licensee shall be furnished with a written copy of the charges
7493 made against him and an adjudicative proceeding shall be had
7494 before the commissioner, or his authorized representative, at
7495 such time and place as he may fix, in accordance with the
7496 Mississippi Administrative Procedure Law of 1999, to determine
7497 whether such license shall be suspended or revoked. Such notice
7498 may be served upon * * * such licensee in accordance with the
7499 Mississippi Administrative Procedure Law of 1999. * * * When an
7500 adjudicative proceeding under this section is conducted before a
7501 representative of the commissioner, a written report and summary
7502 of the evidence at such hearing shall be made by him to the
7503 commissioner, with recommendation for action thereon. The
7504 commissioner, after such adjudicative proceeding before him, or
7505 after considering such report and summary of the evidence by his
7506 representative, shall render such decision and make such order as

7507 he may deem just, either dismissing the proceedings, or
7508 suspending the license for any fixed period, or revoking the
7509 license. Such order shall be entered on his records and written
7510 notice thereof shall be forthwith served upon such license in
7511 accordance with the Mississippi Administrative Procedure Law of
7512 1999.

7513 SECTION 173. Section 41-51-29, Mississippi Code of 1972, is
7514 amended as follows:

7515 41-51-29. Any licensee or other person, aggrieved by any
7516 final decision or order of the commissioner made or entered in or
7517 on such decision or order may of right have judicial review
7518 thereof in accordance with the Mississippi Administrative
7519 Procedure Law of 1999. Any party perfecting a proceeding for
7520 judicial review shall file with the clerk of the court a bond
7521 with such surety or sureties and in such penalty as shall be
7522 approved by the commissioner or the clerk * * * of said court,
7523 conditioned that such appellant will pay all costs of the
7524 judicial review in event such review is unsuccessful. The state
7525 may seek judicial review of such decision or order in like time
7526 and manner without giving bond. * * * All appeal and supersedeas
7527 bonds shall be payable to the state and may from time to time and
7528 upon cause shown be ordered increased or ordered replaced by
7529 other bonds with approved sureties, and may be enforced in the
7530 manner provided by law for the enforcement of other similar
7531 bonds. * * * On judicial review, the court may affirm or set
7532 aside the decision or order from which the appeal was taken and
7533 shall thereupon certify its judgment to the commissioner. In
7534 case the decision or order of the commissioner be set aside on
7535 judicial review, the court shall enter and render such judgment,
7536 decision or order as the commissioner should have rendered,
7537 unless it be necessary, in consequence of its decision, that some
7538 decision or ruling entirely administrative or legislative in
7539 nature be made, or that some fact or question of fact not
7540 appearing in or not settled by the record be ascertained or

7541 determined, in which cases the matter shall be remanded to the
7542 commissioner for further proceedings and action or decision in
7543 accord with the judgment and direction of the court from which
7544 further proceedings, action, or decision of the commissioner
7545 further judicial review in accordance with the Mississippi
7546 Administrative Procedure Law of 1999.

7547 SECTION 174. Section 41-58-3, Mississippi Code of 1972, is
7548 amended as follows:

7549 41-58-3. (1) The department shall have full authority to
7550 adopt such rules and regulations not inconsistent with the laws
7551 of this state as may be necessary to effectuate the provisions of
7552 this chapter, and may amend or repeal the same as may be
7553 necessary for such purposes, all in accordance with the
7554 Mississippi Administrative Procedure Law of 1999.

7555 (2) There shall be established a Medical Radiation Advisory
7556 Council to be appointed as provided in this section. The council
7557 shall consist of ten (10) members as follows:

7558 (a) One (1) radiologist who is an active practitioner
7559 and member of the Mississippi Radiological Society;

7560 (b) One (1) licensed family physician;

7561 (c) One (1) licensed practitioner;

7562 (d) Two (2) registered radiologic technologists;

7563 (e) One (1) nuclear medicine technologist;

7564 (f) One (1) radiation therapist;

7565 (g) One (1) limited radiologic technician;

7566 (h) One (1) radiation physicist;

7567 (i) One (1) hospital administrator; and

7568 (j) The State Health Officer, or his designee, who
7569 shall serve as ex officio chairman with no voting authority.

7570 (3) The department shall, following the recommendations
7571 from the appropriate professional state societies and
7572 organizations, including the Mississippi Radiological Society,
7573 the Mississippi Society of Radiologic Technologists, and the
7574 Mississippi State Nuclear Medicine Society, and other nominations

7575 that may be received from whatever source, appoint the members of
7576 the council as soon as possible after the effective date of
7577 subsections (2) and (3) of this section. Any person serving on
7578 the council who is a practitioner of a profession or occupation
7579 required to be licensed, credentialed or certified in the state
7580 shall be a holder of an appropriate license, credential or
7581 certificate issued by the state. All members of the council
7582 shall be residents of the State of Mississippi. The council
7583 shall promulgate such rules and regulations by which it shall
7584 conduct its business. Members of the council shall receive no
7585 salary for services performed on the council but may be
7586 reimbursed for their reasonable and necessary actual expenses
7587 incurred in the performance of the same, from funds provided for
7588 such purpose. The council shall assist and advise the department
7589 in the development of regulations and standards to effectuate the
7590 provisions of this chapter.

7591 (4) A radiologic technologist, nuclear medicine
7592 technologist or radiation therapist shall not apply ionizing or
7593 x-radiation or administer radiopharmaceuticals to a human being
7594 or otherwise engage in the practice of medical radiation
7595 technology unless the person possesses a valid registration
7596 issued under the provisions of this chapter.

7597 (5) The department may issue a temporary registration to
7598 practice a specialty of medical radiation technology to any
7599 applicant who has completed an approved program, who has complied
7600 with the provisions of this chapter, and is awaiting examination
7601 for that specialty. This registration shall convey the same
7602 rights as the registration for which the applicant is awaiting
7603 examination and shall be valid for one (1) six-month period.

7604 (6) The department may charge a registration fee of not
7605 more than Twenty-five Dollars (\$25.00) annually to each person to
7606 whom it issues a registration under the provisions of this
7607 chapter.

7608 (7) Registration is not required for:

7609 (a) A student enrolled in and participating in an
7610 approved course of study for diagnostic radiologic technology,
7611 nuclear medicine technology or radiation therapy, who as a part
7612 of his clinical course of study applies ionizing radiation to a
7613 human being while under the supervision of a licensed
7614 practitioner, registered radiologic technologist, registered
7615 nuclear medicine technologist or registered radiation therapist;

7616 (b) Laboratory personnel who use radiopharmaceuticals
7617 for in vitro studies;

7618 (c) A dental hygienist or a dental assistant who is
7619 not a radiologic technologist, nuclear medicine technologist or
7620 radiation therapist, who possesses a radiology permit issued by
7621 the Board of Dental Examiners and applies ionizing radiation
7622 under the specific direction of a licensed dentist;

7623 (d) A chiropractic assistant who is not a radiologic
7624 technologist, nuclear medicine technologist or radiation
7625 therapist, who possesses a radiology permit issued by the Board
7626 of Chiropractic Examiners and applies ionizing radiation under
7627 the specific direction of a licensed chiropractor;

7628 (e) An individual who is not a radiologic
7629 technologist, nuclear medicine technologist or radiation
7630 therapist, who possesses a radiology permit issued by the Board
7631 of Medical Licensure and applies ionizing radiation in a
7632 physician's office or a radiology clinic under the specific
7633 direction of a licensed physician; and

7634 (f) An individual who is not a radiologic
7635 technologist, nuclear medicine technologist or radiation
7636 therapist, who is employed by a licensed hospital in Mississippi
7637 and applies ionizing radiation under the specific direction of a
7638 licensed practitioner.

7639 (8) Nothing in this chapter is intended to limit, preclude,
7640 or otherwise interfere with the practices of a licensed
7641 practitioner who is duly licensed or registered by the
7642 appropriate agency of the State of Mississippi, provided that the

7643 agency specifically recognizes that the procedures covered by
7644 this chapter are within the scope of practice of the licensee or
7645 registrant.

7646 (9) (a) If any radiologic technologist, nuclear medicine
7647 technologist or radiation therapist violates any provision of
7648 this chapter, the department shall suspend or revoke the
7649 registration and practice privileges of the person, in accordance
7650 with statutory procedures and rules and regulations of the
7651 department.

7652 (b) If any person violates any provision of this
7653 chapter, the department shall issue a written warning to the
7654 licensed practitioner or medical institution that employs the
7655 person; and if that person violates any provision of this chapter
7656 again within three (3) years after the first violation, the
7657 department may suspend or revoke the permit or registration for
7658 the x-radiation and ionizing radiation equipment of the licensed
7659 practitioner or medical institution that employs the person, in
7660 accordance with statutory procedures and rules and regulations of
7661 the department regarding suspension and revocation of such
7662 permits or registrations.

7663 (10) This section shall stand repealed on July 1, 2001.

7664 SECTION 175. Section 41-59-49, Mississippi Code of 1972, is
7665 amended as follows:

7666 41-59-49. Any person, firm, corporation, association,
7667 county, municipality or metropolitan government or agency whose
7668 application for a permit or license has been rejected or whose
7669 permit or license is suspended or revoked by the board shall have
7670 the right of judicial review in accordance with the Mississippi
7671 Administrative Procedure Law of 1999.

7672 SECTION 176. Section 41-61-59, Mississippi Code of 1972, is
7673 amended as follows:

7674 41-61-59. (1) A person's death which affects the public
7675 interest as specified in subsection (2) of this section shall be
7676 promptly reported to the medical examiner by the physician in

7677 attendance, any hospital employee, any law enforcement officer
7678 having knowledge of the death, the embalmer or other funeral home
7679 employee, any emergency medical technician, any relative or any
7680 other person present. The appropriate medical examiner shall
7681 notify the municipal or state law enforcement agency or sheriff
7682 and take charge of the body.

7683 (2) A death affecting the public interest includes, but is
7684 not limited to, any of the following:

7685 (a) Violent death, including homicidal, suicidal or
7686 accidental death.

7687 (b) Death caused by thermal, chemical, electrical or
7688 radiation injury.

7689 (c) Death caused by criminal abortion, including
7690 self-induced abortion, or abortion related to or by sexual abuse.

7691 (d) Death related to disease thought to be virulent or
7692 contagious which may constitute a public hazard.

7693 (e) Death that has occurred unexpectedly or from an
7694 unexplained cause.

7695 (f) Death of a person confined in a prison, jail or
7696 correctional institution.

7697 (g) Death of a person where a physician was not in
7698 attendance within thirty-six (36) hours preceding death, or in
7699 prediagnosed terminal or bedfast cases, within thirty (30) days
7700 preceding death.

7701 (h) Death of a person where the body is not claimed by
7702 a relative or a friend.

7703 (i) Death of a person where the identity of the
7704 deceased is unknown.

7705 (j) Death of a child under the age of two (2) years
7706 where death results from an unknown cause or where the
7707 circumstances surrounding the death indicate that sudden infant
7708 death syndrome may be the cause of death.

7709 (k) Where a body is brought into this state for
7710 disposal and there is reason to believe either that the death was

7711 not investigated properly or that there is not an adequate
7712 certificate of death.

7713 (1) Where a person is presented to a hospital
7714 emergency room unconscious and/or unresponsive, with
7715 cardiopulmonary resuscitative measures being performed, and dies
7716 within twenty-four (24) hours of admission without regaining
7717 consciousness or responsiveness, unless a physician was in
7718 attendance within thirty-six (36) hours preceding presentation to
7719 the hospital, or in cases in which the decedent had a
7720 prediagnosed terminal or bedfast condition, unless a physician
7721 was in attendance within thirty (30) days preceding presentation
7722 to the hospital.

7723 (3) The State Medical Examiner is empowered to investigate
7724 deaths, under the authority hereinafter conferred, in any and all
7725 political subdivisions of the state. The county medical
7726 examiners and county medical examiner investigators, while
7727 appointed for a specific county, may serve other counties on a
7728 regular basis with written authorization by the State Medical
7729 Examiner, or may serve other counties on an as-needed basis upon
7730 the request of the ranking officer of the investigating law
7731 enforcement agency. The county medical examiner or county
7732 medical examiner investigator of any county which has established
7733 a regional medical examiner district under subsection (4) of
7734 Section 41-61-77 may serve other counties which are parties to
7735 the agreement establishing the district, in accordance with the
7736 terms of the agreement, and may contract with counties which are
7737 not part of the district to provide medical examiner services for
7738 such counties. If a death affecting the public interest takes
7739 place in a county other than the one where injuries or other
7740 substantial causal factors leading to the death have occurred,
7741 jurisdiction for investigation of the death may be transferred,
7742 by mutual agreement of the respective medical examiners of the
7743 counties involved, to the county where such injuries or other
7744 substantial causal factors occurred, and the costs of autopsy or

7745 other studies necessary to the further investigation of the death
7746 shall be borne by the county assuming jurisdiction.

7747 (4) The chief county medical examiner or chief county
7748 medical examiner investigator may receive from the county in
7749 which he serves a salary of Seven Hundred Fifty Dollars (\$750.00)
7750 per month, in addition to the fees specified in Sections 41-61-69
7751 and 41-61-75, provided that no county shall pay the chief county
7752 medical examiner or chief county medical examiner investigator
7753 less than One Hundred Dollars (\$100.00) per month as a salary, in
7754 addition to other compensation provided by law. In any county
7755 having one or more deputy medical examiners or deputy medical
7756 examiner investigators, each deputy may receive from the county
7757 in which he serves, in the discretion of the board of
7758 supervisors, a salary of not more than Seven Hundred Fifty
7759 Dollars (\$750.00) per month, in addition to the fees specified in
7760 Sections 41-61-69 and 41-61-75. For this salary the chief shall
7761 assure twenty-four-hour daily and readily available death
7762 investigators for the county, and shall maintain copies of all
7763 medical examiner death investigations for the county for at least
7764 the previous five (5) years. He shall coordinate his office and
7765 duties and cooperate with the State Medical Examiner, and the
7766 State Medical Examiner shall cooperate with him.

7767 (5) A body composed of the State Medical Examiner, whether
7768 appointed on a permanent or interim basis, the Director of the
7769 State Board of Health or his designee, the Attorney General or
7770 his designee, the President of the Mississippi Coroners'
7771 Association (or successor organization) or his designee, and a
7772 certified pathologist appointed by the Mississippi State Medical
7773 Association shall adopt, promulgate, amend and repeal rules and
7774 regulations as may be deemed necessary by them from time to time
7775 for the proper enforcement, interpretation and administration of
7776 Sections 41-61-51 through 41-61-79, in accordance with the
7777 provisions of the Mississippi Administrative Procedure Law of
7778 1999 * * *.

7779 SECTION 177. Section 41-61-63, Mississippi Code of 1972, is
7780 amended as follows:

7781 41-61-63. (1) The State Medical Examiner shall:

7782 (a) Provide assistance, consultation and training to
7783 county medical examiners, county medical examiner investigators
7784 and law enforcement officials.

7785 (b) Keep complete records of all relevant information
7786 concerning deaths or crimes requiring investigation by the
7787 medical examiners.

7788 (c) Promulgate rules and regulations regarding the
7789 manner and techniques to be employed while conducting autopsies;
7790 the nature, character and extent of investigations to be made
7791 into deaths affecting the public interest to allow a medical
7792 examiner to render a full and complete analysis and report; the
7793 format and matters to be contained in all reports rendered by the
7794 medical examiners; and all other things necessary to carry out
7795 the purposes of Sections 41-61-51 through 41-61-79. The State
7796 Medical Examiner shall make such amendments to these rules and
7797 regulations as may be necessary. All medical examiners, coroners
7798 and law enforcement officers shall be subject to such rules.

7799 (d) Cooperate with the crime detection and medical
7800 examiner laboratories authorized by Section 45-1-17, the
7801 University Medical Center, the Attorney General, law enforcement
7802 agencies, the courts and the State of Mississippi.

7803 (2) In addition, the medical examiners shall:

7804 (a) Upon receipt of notification of a death affecting
7805 the public interest, make inquiries regarding the cause and
7806 manner of death, reduce the findings to writing and promptly make
7807 a full report to the State Medical Examiner on forms prescribed
7808 for that purpose. The medical examiner shall be authorized to
7809 inspect and copy the medical reports of the decedent whose death
7810 is under investigation. However, the records copied shall be
7811 maintained as confidential so as to protect the doctor/patient
7812 privilege. The medical examiners shall be authorized to request

7813 the issuance of subpoenas, in accordance with the Mississippi
7814 Administrative Procedure Law of 1999, for the attendance of
7815 persons and for the production of documents as may be required by
7816 their investigation.

7817 (b) Complete the medical examiner's portion of the
7818 certificate of death within seventy-two (72) hours of assuming
7819 jurisdiction over a death, and forward the certificate to the
7820 funeral director or to the family. The medical examiner's
7821 portion of the certificate of death shall include the decedent's
7822 name, the date and time of death, the cause of death and the
7823 certifier's signature. If determination of the cause and/or
7824 manner of death are pending an autopsy or toxicological or other
7825 studies, these sections on the certificate may be marked
7826 "pending," with amendment and completion to follow the completion
7827 of the postmortem studies. The State Medical Examiner shall be
7828 authorized to amend a death certificate; however, the State
7829 Medical Examiner is not authorized to change or amend any death
7830 certificate after he has resigned or been removed from his office
7831 as the State Medical Examiner. Where an attending physician
7832 refuses to sign a certificate of death, or in case of any death,
7833 the State Medical Examiner or properly qualified designee may
7834 sign the death certificate.

7835 (c) Cooperate with other agencies as provided for the
7836 State Medical Examiner in subsection (1)(d) of this section.

7837 (d) In all investigations of deaths affecting the
7838 public interest where an autopsy will not be performed, obtain or
7839 attempt to obtain postmortem blood, urine and/or vitreous fluids.
7840 Medical examiners may also obtain rectal temperature
7841 measurements, known hair samples, radiographs, gunshot
7842 residue/wiping studies, fingerprints, palm prints and other
7843 noninvasive studies as the case warrants and/or as directed by
7844 the State Medical Examiner. Decisions may be made in
7845 consultation with investigating law enforcement officials and/or
7846 the State Medical Examiner. The cost of all studies not

7847 performed by the Mississippi Crime Laboratory shall be borne by
7848 the county. County medical examiner investigators shall be
7849 authorized to obtain these postmortem specimens themselves
7850 following successful completion of the death investigation
7851 training school.

7852 (3) The medical examiner shall not use his position or
7853 authority to favor any particular funeral home or funeral homes.

7854 (4) The State Medical Examiner shall obtain such liability
7855 insurance as deemed appropriate to the needs of the office, and
7856 may be sued by anyone affected to the extent of such insurance
7857 carried; however, immunity from suit is only waived to the extent
7858 of such liability insurance carried, and a judgment creditor
7859 shall have recourse only to the proceeds or right to proceeds of
7860 such liability insurance. No attempt shall be made in the trial
7861 of any case to suggest the existence of any insurance which
7862 covers in whole or in part any judgment or award rendered in
7863 favor of a claimant, but if the verdict rendered by the jury
7864 exceeds the limit of applicable insurance, the court on motion
7865 shall reduce the amount of the judgment to a sum equal to the
7866 applicable limit stated in the insurance policy. This subsection
7867 (4) shall stand repealed from and after July 1, 1993, by
7868 operation of law.

7869 SECTION 178. Section 41-61-65, Mississippi Code of 1972, is
7870 amended as follows:

7871 41-61-65. (1) If, in the opinion of the medical examiner
7872 investigating the case, it is advisable and in the public
7873 interest that an autopsy or other study be made for the purpose
7874 of determining the primary and/or contributing cause of death, an
7875 autopsy or other study shall be made by the State Medical
7876 Examiner or by a competent pathologist designated by the State
7877 Medical Examiner. The State Medical Examiner or designated
7878 pathologist may retain any tissues as needed for further
7879 postmortem studies or documentation. A complete autopsy report
7880 of findings and interpretations, prepared on forms designated for

7881 this purpose, shall be submitted promptly to the State Medical
7882 Examiner. Copies of the report shall be furnished to the
7883 authorizing medical examiner, district attorney and court clerk.

7884 A copy of the report shall be furnished to one (1) adult member
7885 of the immediate family of the deceased or the legal
7886 representative or legal guardian of members of the immediate
7887 family of the deceased upon request. In determining the need for
7888 an autopsy, the medical examiner may consider the request from
7889 the district attorney or county prosecuting attorney, law
7890 enforcement or other public officials or private persons.
7891 However, if the death occurred in the manner specified in
7892 subsection (2)(j) of Section 41-61-59, Mississippi Code of 1972,
7893 an autopsy shall be performed by the State Medical Examiner or
7894 his designated pathologist, and the report of findings shall be
7895 forwarded promptly to the State Medical Examiner, investigating
7896 medical examiner, the infant's attending physician and the local
7897 sudden infant death syndrome coordinator.

7898 (2) Any medical examiner or duly licensed physician
7899 performing authorized investigations and/or autopsies as provided
7900 in Sections 41-61-51 through 41-61-79, Mississippi Code of 1972,
7901 who, in good faith, complies with the provisions of Sections
7902 41-61-51 through 41-61-79, Mississippi Code of 1972, in the
7903 determination of the cause and/or manner of death for the purpose
7904 of certification of that death, shall not be liable for damages
7905 on account thereof, and shall be immune from any civil liability
7906 that might otherwise be incurred or imposed.

7907 (3) Family members or others who disagree with the medical
7908 examiner's determination shall be able to petition * * * the
7909 State Medical Examiner for further review in an adjudicative
7910 proceeding in accordance with the Mississippi Administrative
7911 Procedure Law of 1999. * * *

7912 SECTION 179. Section 41-67-3, Mississippi Code of 1972, is
7913 amended as follows:

7914 41-67-3. (1) The State Board of Health shall have the

7915 following duties and responsibilities:

7916 (a) To exercise general supervision over the design,
7917 construction, operation and maintenance of individual on-site
7918 wastewater disposal systems with flows substantially equivalent
7919 to a single family residential generator, except when the
7920 property owner or lessee chooses to employ a professional
7921 engineer to comply with this chapter. To effectively administer
7922 this law, the department and the Department of Environmental
7923 Quality shall enter into a memorandum of understanding, which at
7924 a minimum shall clearly define the jurisdiction of each
7925 department with regard to wastewater disposal and procedures for
7926 interdepartmental interaction and cooperation;

7927 (b) To adopt, modify, repeal and promulgate rules and
7928 regulations, after due notice and hearing, and where not
7929 otherwise prohibited by federal or state law, to make exceptions
7930 to, to grant exemptions from and to enforce rules and regulations
7931 implementing or effectuating the duties of the board under this
7932 chapter to protect the public health. The board may grant
7933 variances from rules and regulations adopted under this chapter,
7934 including requirements for buffer zones, or from setbacks
7935 required under Section 41-67-7 where the granting of a variance
7936 shall not subject the public to unreasonable health risks or
7937 jeopardize environmental resources;

7938 (c) To provide or deny certification for persons
7939 engaging in the business of the design, construction or
7940 installation of individual on-site wastewater disposal systems
7941 and persons engaging in the removal and disposal of the sludge
7942 and liquid waste from those systems;

7943 (d) To suspend or revoke certifications issued to
7944 persons engaging in the business of the design, construction or
7945 installation of individual on-site wastewater disposal systems or
7946 persons engaging in the removal and disposal of the sludge and
7947 liquid waste from those systems, when it is determined the person
7948 has violated this chapter or applicable rules and regulations;

7949 and

7950 (e) To require the submission of information deemed
7951 necessary by the department to determine the suitability of
7952 individual lots for individual on-site wastewater disposal
7953 systems.

7954 (2) Nothing in this chapter shall preclude a professional
7955 engineer from providing services relating to the design,
7956 construction or installation of an individual on-site wastewater
7957 disposal system to comply with this chapter. Except as otherwise
7958 required by subsection (4) of this section or Section 41-67-8, a
7959 professional engineer shall notify the department in writing of
7960 those services being provided. If a professional engineer
7961 designs, constructs or installs or directly supervises the
7962 construction or installation of a design-based individual on-site
7963 wastewater disposal system consistent with this chapter and
7964 stamps the appropriate documentation with that professional
7965 engineer's seal, the department shall approve the design,
7966 construction or installation of the system, if requested.
7967 Professional engineers engaging in the design, construction or
7968 installation of individual on-site wastewater disposal systems
7969 shall not require certification under this chapter.

7970 (3) To assure the effective and efficient administration of
7971 this chapter, the board shall adopt rules governing the design,
7972 construction or installation, operation and maintenance of
7973 individual on-site wastewater disposal systems, including rules
7974 concerning the:

7975 (a) Review and approval of individual on-site
7976 wastewater disposal systems in accordance with Section 41-67-6;

7977 (b) Certification of installers of individual on-site
7978 wastewater disposal systems and persons engaging in the removal
7979 and disposal of the sludge and liquid waste from those systems;
7980 and

7981 (c) Registration and requirements for testing and
7982 listing of manufacturers of aerobic treatment systems.

7983 (4) In addition, the board shall adopt rules establishing
7984 performance standards for individual on-site wastewater disposal
7985 systems for single family residential generators and rules
7986 concerning the operation and maintenance of individual on-site
7987 wastewater disposal systems designed to meet those standards.
7988 The performance standards shall be consistent with the federal
7989 Clean Water Act, maintaining the wastes on the property of the
7990 generator except as authorized under Section 41-67-8, and
7991 protection of the public health. Rules for the operation and
7992 maintenance of individual on-site wastewater disposal systems
7993 designed to meet performance standards shall include rules
7994 concerning the following:

7995 (a) A standard application form and requirements for
7996 supporting documentation;

7997 (b) Application review;

7998 (c) Approval or denial of authorization for proposed
7999 systems;

8000 (d) Requirements, as deemed appropriate by the board,
8001 for annual renewal of authorization;

8002 (e) Enforcement of the requirements and conditions of
8003 authorization; and

8004 (f) Inspection, monitoring, sampling and reporting on
8005 the performance of the system.

8006 Any system proposed for authorization in accordance with
8007 performance standards must be designed and certified by a
8008 professional engineer and must be authorized by the board before
8009 installation. Judicial review of a final decision of the board
8010 regarding the authorization of an individual on-site wastewater
8011 disposal system based upon performance standards shall be in
8012 accordance with the Mississippi Administrative Procedure Law of
8013 1999.

8014 (5) To the extent practicable, all rules and regulations
8015 adopted under this chapter shall give maximum flexibility to
8016 persons installing individual on-site wastewater disposal systems

8017 and a maximum number of options consistent with the federal Clean
8018 Water Act, consistent with maintaining the wastes on the property
8019 of the generator except as authorized under Section 41-67-8, and
8020 consistent with protection of the public health. In addition,
8021 all rules and regulations, to the extent practicable, shall
8022 encourage the use of economically feasible systems, including
8023 alternative techniques and technologies for individual on-site
8024 wastewater disposal.

8025 (6) All regulations shall be applied uniformly in all areas
8026 of the state and shall take into consideration and make provision
8027 for different types of soil in the state when performing soil and
8028 site evaluations.

8029 (7) In the adoption of rules, to act in accordance with the
8030 Mississippi Administrative Procedure Law of 1999.

8031 SECTION 180. Section 41-67-4, Mississippi Code of 1972, is
8032 amended as follows:

8033 41-67-4. (1) The Commission on Environmental Quality shall
8034 determine the feasibility of establishing community sewerage
8035 systems upon the submission by the developer of a preliminary
8036 design and feasibility study prepared by a professional engineer.

8037 The developer may request and obtain an adjudicative proceeding
8038 before the commission if the developer is dissatisfied with the
8039 commission's determination of feasibility. Upon request of a
8040 developer, the commission shall conduct an adjudicative
8041 proceeding in accordance with the Mississippi Administrative
8042 Procedure Law of 1999. The determination that a sewerage system

8043 must be established shall be made without regard to whether the
8044 establishment of a sewerage system is authorized by law or is
8045 subject to approval by one or more state or local government or
8046 public bodies.

8047 (2) Where residential subdivisions are proposed which are
8048 composed of fewer than thirty-five (35) building sites, and no
8049 system of sanitary sewers is available to which collection sewers
8050 may be feasibly connected, the board may waive the requirement

8051 for a feasibility study. If the feasibility study is waived, all
8052 sites within the subdivision shall be approved, if a certified
8053 installer attests that each site can be adequately served by an
8054 individual on-site wastewater disposal system.

8055 (3) No feasibility study or community sewerage system shall
8056 be required for subdivisions designed, laid out, platted or
8057 partially constructed before July 1, 1988, or for any subdivision
8058 that was platted and recorded during the period from July 1, 1995
8059 through June 30, 1996.

8060 SECTION 181. Section 41-67-21, Mississippi Code of 1972, is
8061 amended as follows:

8062 41-67-21. (1) The board or the department may require a
8063 property owner or lessee to repair a malfunctioning individual
8064 on-site wastewater disposal system on the owner's or lessee's
8065 property before the thirtieth day after the date on which the
8066 owner or lessee is notified by the department of the
8067 malfunctioning system.

8068 (2) The property owner or lessee shall take adequate
8069 measures as soon as practicable to abate an immediate health
8070 hazard.

8071 (3) The property owner or lessee may be assessed a civil
8072 penalty not to exceed Five Dollars (\$5.00) for each day the
8073 individual on-site wastewater disposal system remains unrepaired
8074 after the thirty-day period specified in subsection (1) of this
8075 section.

8076 (4) The board may assess the property owner or lessee of an
8077 individual on-site wastewater disposal system authorized pursuant
8078 to Section 41-67-3(4) a civil penalty not to exceed Fifty Dollars
8079 (\$50.00) for each day the system fails to meet the performance
8080 standards of that system after the thirty-day period specified in
8081 subsection (1) of this section.

8082 (5) All penalties collected by the board under this section
8083 shall be deposited in the State General Fund.

8084 (6) Judicial review of appeals from the imposition of civil

8085 penalty under this section may be had in accordance with the
8086 Mississippi Administrative Procedure Law of 1999.

8087 SECTION 182. Section 41-67-25, Mississippi Code of 1972, is
8088 amended as follows:

8089 41-67-25. (1) A person may not operate as an installer in
8090 this state unless that person is certified by the board except
8091 any individual who installs an individual on-site wastewater
8092 disposal system on his own property or a professional engineer.

8093 (2) An installer of aerobic treatment plants or subsurface
8094 drip disposal systems must be a factory-trained and authorized
8095 representative. The manufacturer must furnish documentation to
8096 the department certifying the satisfactory completion of factory
8097 training and the establishment of the installer as an authorized
8098 manufacturer's representative.

8099 (3) The board shall issue a certification to an installer
8100 if the installer:

8101 (a) Completes an application form that complies with
8102 this chapter and rules adopted under this chapter;

8103 (b) Satisfactorily completes the training program
8104 provided by the department; and

8105 (c) Pays the annual certification fee.

8106 (4) Each installer shall furnish proof of certification to
8107 a property owner, lessee, the owner's representative or occupant
8108 of the property on which an individual on-site wastewater
8109 disposal system is to be designed, constructed, repaired or
8110 installed by that installer and to the department or its
8111 authorized representative, if requested.

8112 (5) The department shall provide for annual renewal of
8113 certifications.

8114 (6) (a) An installer's certification may be suspended or
8115 revoked by the board after notice and hearing if the installer
8116 violates this chapter or any rule or regulation adopted under
8117 this chapter.

8118 (b) The installer may appeal a suspension or

8119 revocation under this section and may have an adjudicative
8120 proceeding regarding the matter in accordance with the
8121 Mississippi Administrative Procedure Law of 1999.

8122 (7) The department semiannually shall disseminate to the
8123 public an official list of certified installers and provide to
8124 county health departments a monthly update of the list.

8125 SECTION 183. Section 41-67-29, Mississippi Code of 1972, is
8126 amended as follows:

8127 41-67-29. Any person who is aggrieved by any final decision
8128 of the board may secure judicial review of that final decision in
8129 accordance with the Mississippi Administrative Procedure Law of
8130 1999.

8131 SECTION 184. Section 41-71-9, Mississippi Code of 1972, is
8132 amended as follows:

8133 41-71-9. The licensing agency, after notice and opportunity
8134 for an adjudicative proceeding to the applicant or licensee, is
8135 authorized to deny, suspend or revoke a license in any case in
8136 which it finds that the applicant or licensee has failed to
8137 comply with the requirements established by this chapter or the
8138 rules, regulations or standards promulgated in furtherance of
8139 this chapter. * * * The applicant or licensee shall be given an
8140 opportunity for an adjudicative proceeding in accordance with the
8141 Mississippi Administrative Procedure Law of 1999. Any decision
8142 revoking, suspending or denying the license or application shall
8143 become final thirty (30) days after it is so mailed or served,
8144 unless the applicant or licensee seeks judicial review in
8145 accordance with the Mississippi Administrative Procedure Law of
8146 1999. The procedure governing hearings shall be in accordance
8147 with rules and regulations promulgated by the licensing agency.
8148 A full and complete record shall be kept of all proceedings, and
8149 all testimony shall be recorded but need not be transcribed
8150 unless judicial review is sought. Each party shall pay the
8151 expense of his own witnesses. The cost of the record shall be
8152 paid by the licensing agency, but any other party desiring a copy

8153 of the transcript shall pay therefor the reasonable cost of
8154 preparing the same.

8155 SECTION 185. Section 41-71-11, Mississippi Code of 1972, is
8156 amended as follows:

8157 41-71-11. Any applicant or licensee aggrieved by the
8158 decision of the licensing agency after a hearing may, within
8159 thirty (30) days after the mailing or serving of notice of the
8160 decision, file a notice of judicial review in accordance with the
8161 Mississippi Administrative Procedure Law of 1999. Pending final
8162 disposition of the matter on judicial review, the status quo of
8163 the applicant or licensee shall be preserved, except as the court
8164 otherwise orders in the public interest. Rules with respect to
8165 court costs as in other cases in chancery shall apply equally to
8166 cases under this section.

8167 SECTION 186. Section 41-71-13, Mississippi Code of 1972, is
8168 amended as follows:

8169 41-71-13. The licensing agency shall adopt, amend,
8170 promulgate and enforce rules, regulations and standards,
8171 including classifications, with respect to home health agencies
8172 licensed, or which may be licensed, to further the accomplishment
8173 of the purpose of this chapter in protecting and promoting the
8174 health, safety and welfare of the public by insuring adequate
8175 care of individuals receiving such services. Such rules,
8176 regulations and standards shall be adopted and promulgated by the
8177 licensing agency in accordance with the provisions of the
8178 Mississippi Administrative Procedure Law of 1999, Section
8179 25-43-1.101 et seq., and shall be recorded and indexed in a book
8180 to be maintained by the licensing agency in its office in the
8181 city of Jackson, Mississippi, entitled "Records of Rules,
8182 Regulations and Standards." The book shall be open and available
8183 to all home health agencies and the public generally at all
8184 reasonable times.

8185 SECTION 187. Section 41-75-11, Mississippi Code of 1972, is
8186 amended as follows:

8187 41-75-11. The licensing agency after notice and opportunity
8188 for an adjudicative proceeding in accordance with the Mississippi
8189 Administrative Procedure Law of 1999 to the applicant or licensee
8190 is authorized to deny, suspend or revoke a license in any case in
8191 which it finds that there has been a substantial failure to
8192 comply with the requirements established under this
8193 chapter. * * * The applicant or licensee shall be given an
8194 opportunity for an adjudicative proceeding. On the basis of any
8195 such adjudicative proceeding, or upon default of the applicant or
8196 licensee, the licensing agency shall make a determination
8197 specifying its findings of fact and conclusions of law. A copy
8198 of such determination shall be sent by registered mail or served
8199 personally upon the applicant or licensee. The decision
8200 revoking, suspending or denying the license or application shall
8201 become final thirty (30) days after it is so mailed or served,
8202 unless the applicant or licensee seeks judicial review in
8203 accordance with the Mississippi Administrative Procedure Law of
8204 1999. The procedure governing adjudicative proceeding authorized
8205 by this section shall be in accordance with rules promulgated by
8206 the licensing agency in accordance with the Mississippi
8207 Administrative Procedure Law of 1999. A full and complete record
8208 shall be kept of all proceedings, and all testimony shall be
8209 recorded but need not be transcribed unless the decision is
8210 appealed * * *. Witnesses may be subpoenaed by either party.
8211 Compensation shall be allowed to witnesses as in cases in the
8212 chancery court. Each party shall pay the expense of his own
8213 witnesses. The cost of the record shall be paid by the licensing
8214 agency provided any other party desiring a copy of the transcript
8215 shall pay therefor the reasonable cost of preparing the same.

8216 SECTION 188. Section 41-75-13, Mississippi Code of 1972, is
8217 amended as follows:

8218 41-75-13. The licensing agency shall adopt, amend,
8219 promulgate and enforce rules, regulations and standards,
8220 including classifications, with respect to ambulatory surgical

8221 facilities and abortion facilities licensed, or which may be
8222 licensed, to further the accomplishment of the purpose of this
8223 chapter in protecting and promoting the health, safety and
8224 welfare of the public by ensuring adequate care of individuals
8225 receiving services from such facilities. The licensing agency
8226 also shall adopt, amend, promulgate and enforce rules,
8227 regulations and standards with respect to the enforcement of the
8228 informed consent requirements of Sections 41-41-31 through
8229 41-41-39 at abortion facilities. Such rules, regulations and
8230 standards shall be adopted and promulgated by the licensing
8231 agency in accordance with the provisions of the Mississippi
8232 Administrative Procedure Law of 1999 and shall be recorded and
8233 indexed in a book to be maintained by the licensing agency in its
8234 main office in the State of Mississippi, entitled "Rules and
8235 Regulations for Operation of Ambulatory Surgical Facilities and
8236 Abortion Facilities." The book shall be open and available to
8237 all ambulatory surgical facilities and abortion facilities and
8238 the public during regular business hours.

8239 SECTION 189. Section 41-75-21, Mississippi Code of 1972, is
8240 amended as follows:

8241 41-75-21. The licensing agency shall prepare and publish an
8242 annual report of its activities and operations under this
8243 chapter. Copies of such publications shall be available in the
8244 office of the licensing agency and in the office of the Secretary
8245 of State, in compliance with the Mississippi Administrative
8246 Procedure Law of 1999. A reasonable number of such
8247 publication(s) shall be available in the office of the licensing
8248 agency to be furnished to persons requesting, for a nominal fee.

8249 SECTION 190. Section 41-75-23, Mississippi Code of 1972, is
8250 amended as follows:

8251 41-75-23. Any applicant or licensee aggrieved by the
8252 decision of the licensing agency after an adjudicative proceeding
8253 in accordance with the Mississippi Administrative Procedure Law
8254 of 1999, may within thirty (30) days after the mailing or serving

8255 of notice of the decision as provided in Section 43-11-11,
8256 Mississippi Code of 1972, file a notice of judicial review in
8257 accordance with the Mississippi Administrative Procedure Law of
8258 1999. Pending final disposition of the matter on judicial
8259 review, the status quo of the applicant or licensee shall be
8260 preserved, except as the court otherwise orders in the public
8261 interest. Rules with respect to court costs in other cases in
8262 the reviewing court shall apply equally to cases hereunder. * * *

8263 SECTION 191. Section 41-77-11, Mississippi Code of 1972, is
8264 amended as follows:

8265 41-77-11. The licensing agency shall adopt, amend,
8266 promulgate and enforce rules, regulations and standards,
8267 including classifications, with respect to "birthing centers,"
8268 licensed or which may be licensed, to further the accomplishment
8269 of the purpose of this chapter in protecting and promoting the
8270 health, safety and welfare of the public by ensuring adequate
8271 care of individuals receiving such services. Such rules,
8272 regulations and standards shall be adopted and promulgated by the
8273 licensing agency in accordance with the provisions of the
8274 Mississippi Administrative Procedure Law of 1999 Section
8275 25-43-1.101 et seq., Mississippi Code of 1972, and shall be
8276 recorded and indexed in a book to be maintained by the licensing
8277 agency in its office in the City of Jackson, Mississippi,
8278 entitled "Record of Rules, Regulations and Standards." The book
8279 shall be open and available to all "birthing centers" and the
8280 public during regular business hours.

8281 SECTION 192. Section 41-77-19, Mississippi Code of 1972, is
8282 amended as follows:

8283 41-77-19. The licensing agency, after notice and
8284 opportunity for an adjudicative proceeding in accordance with the
8285 Mississippi Administrative Procedure Law of 1999, to the
8286 applicant or licensee, is authorized to deny, suspend or revoke a
8287 license in any case in which it finds that there has been a
8288 substantial failure to comply with the requirements established

8289 under this chapter. Such notice shall be effected by registered
8290 mail or by personal service setting forth the particular reasons
8291 for the proposed action and fixing a date not less than thirty
8292 (30) days from the date of such mailing or such service, at which
8293 time the applicant or licensee shall be given an opportunity for
8294 an adjudicative proceeding in accordance with the Mississippi
8295 Administrative Procedure Law of 1999. A copy of such
8296 determination shall be sent by registered mail or served
8297 personally upon the applicant or licensee. The decision
8298 revoking, suspending or denying the license or application shall
8299 become final thirty (30) days after it is so mailed or served,
8300 unless the applicant or licensee, within such thirty-day period,
8301 seeks judicial review in accordance with the Mississippi
8302 Administrative Procedure Law of 1999. The procedure governing
8303 adjudicative proceedings authorized by this section shall be in
8304 accordance with rules promulgated by the licensing agency in
8305 accordance with the Mississippi Administrative Procedure Law of
8306 1999. Testimony shall be recorded but not be transcribed unless
8307 the decision is appealed. * * * Each party shall pay the expense
8308 of his own witnesses. The cost of the record shall be paid by
8309 the licensing agency, provided any other party desiring a copy of
8310 the transcript shall pay therefor the reasonable cost of
8311 preparing the same.

8312 SECTION 193. Section 41-77-21, Mississippi Code of 1972, is
8313 amended as follows:

8314 41-77-21. Any applicant or licensee aggrieved by the
8315 decision of the licensing agency after a hearing may, of right,
8316 have judicial review thereof in accordance with the Mississippi
8317 Administrative Procedure Law of 1999.

8318 SECTION 194. Section 41-83-13, Mississippi Code of 1972, is
8319 amended as follows:

8320 41-83-13. (1) The department shall deny a certificate to
8321 any applicant if, upon review of the application, the department
8322 finds that the applicant proposing to conduct utilization review

8323 does not:

8324 (a) Have available the services of a physician to
8325 carry out its utilization review activities;

8326 (b) Meet any applicable regulations the department
8327 adopted under this chapter relating to the qualifications of
8328 private review agents or the performance of utilization review;
8329 and

8330 (c) Provide assurances satisfactory to the department
8331 that the procedure and policies of the private review agent will
8332 protect the confidentiality of medical records and the private
8333 review agent will be reasonably accessible to patients and
8334 providers for five (5) working days a week during normal business
8335 hours in this state.

8336 (2) The department may revoke or deny a certificate if the
8337 holder does not comply with the performance assurances under this
8338 section, violates any provision of this chapter, or violates any
8339 regulation adopted pursuant to this chapter.

8340 (3) Before denying or revoking a certificate under this
8341 section, the department shall provide the applicant or
8342 certificate holder with reasonable time to supply additional
8343 information demonstrating compliance with the requirements of
8344 this chapter and the opportunity to request an adjudicative
8345 proceeding. If an applicant or certificate holder requests a
8346 hearing, the department shall conduct an adjudicative proceeding
8347 in accordance with the Mississippi Administrative Procedure Law
8348 of 1999.

8349 SECTION 195. Section 41-83-23, Mississippi Code of 1972, is
8350 amended as follows:

8351 41-83-23. Any person aggrieved by a final decision of the
8352 department or a private review agent in a contested case under
8353 this chapter shall have the right of judicial review in
8354 accordance with the Mississippi Administrative Procedure Law of
8355 1999.

8356 * * *

8357 SECTION 196. Section 41-86-11, Mississippi Code of 1972, is
8358 amended as follows:

8359 41-86-11. (1) The administering agency shall adopt, in
8360 accordance with the Mississippi Administrative Procedure Law of
8361 1999, Section 25-43-1.101 et seq., rules and regulations for the
8362 implementation of the program, and for the coordination of the
8363 program with the state's other medical assistance programs.

8364 (2) If the Division of Medicaid is designated as the
8365 administering agency for the program, the division shall have all
8366 of the authority set forth in Section 43-13-101 et seq.

8367 (3) The administering agency shall make reports to the
8368 federal government and to the Legislature on the providing of
8369 benefits to those children under the program.

8370 (4) (a) If the commission provides that the administering
8371 agency will have such authority, the administering agency shall
8372 execute a contract or contracts to provide the health care
8373 coverage and services under the program, after first receiving
8374 bids. The contract or contracts may be executed with one or more
8375 corporations or associations authorized to do business in
8376 Mississippi. All of the coverage and services to be provided
8377 under the program may be included in one or more similar
8378 contracts, or the coverage and services may be classified into
8379 different types with each type included under one or more similar
8380 contracts issued by the same or different corporations or
8381 associations.

8382 (b) The administering agency shall execute a contract
8383 or contracts with one or more corporations or associations that
8384 have submitted the best and most cost-effective bids, or shall
8385 reject all bids. If the administering agency rejects all bids,
8386 it shall notify all bidders of the rejection and shall actively
8387 solicit new bids.

8388 SECTION 197. Section 41-91-15, Mississippi Code of 1972, is
8389 amended as follows:

8390 41-91-15. Any person or entity who fails to provide the

8391 information required to be provided to the cancer registry or who
8392 misuses the information provided to the cancer registry shall be
8393 subject to a civil penalty of Fifty Dollars (\$50.00) for each
8394 such failure or misuse. Such penalty shall be assessed and
8395 levied by the board after an adjudicative proceeding in
8396 accordance with the Mississippi Administrative Procedure Law of
8397 1999, and all such penalties collected shall be deposited into
8398 the State General Fund.

8399 SECTION 198. Section 41-95-5, Mississippi Code of 1972, is
8400 amended as follows:

8401 41-95-5. (1) The Mississippi Health Finance Authority is
8402 created. The authority shall be supervised and directed by the
8403 Mississippi Health Finance Authority Board.

8404 (2) The Mississippi Health Finance Authority Board is
8405 created. The Mississippi Health Finance Authority Board shall
8406 consist of seven (7) members, one (1) from each of the five (5)
8407 congressional districts of Mississippi and two (2) from the state
8408 at large, who shall be appointed by the Governor with the advice
8409 and consent of the Senate. All members shall be qualified
8410 electors of the State of Mississippi who have no financial or
8411 other interest in any health care provider or insurer. It is the
8412 intent of the Legislature that the appointments to the board
8413 reflect the racial and sexual demographics of the entire state.
8414 The initial appointments to the Health Finance Authority Board
8415 shall be for staggered terms, to be designated by the Governor at
8416 the time of appointment as follows: Two (2) members to serve for
8417 terms ending June 30, 1997; three (3) members to serve for terms
8418 ending June 30, 1996; and two (2) members to serve for terms
8419 ending June 30, 1995. Thereafter, Mississippi Health Finance
8420 Authority Board members shall be appointed for a term of four (4)
8421 years from the expiration date of the previous term. All
8422 vacancies occurring on the board shall be filled by the Governor
8423 in the same manner as original appointments are made within sixty
8424 (60) days after the vacancy occurs.

8425 (3) The members of the Mississippi Health Finance Authority
8426 Board shall be paid a per diem as authorized by Section 25-3-69
8427 and shall be reimbursed for necessary and ordinary expenses and
8428 mileage incurred while performing their duties as members of the
8429 board, at the rate authorized by Section 25-3-41.

8430 (4) The members of the Mississippi Health Finance Authority
8431 Board shall take an oath to perform faithfully the duties of
8432 their office. The oath shall be administered by a person
8433 qualified by law to administer oaths. Within thirty (30) days
8434 after taking the oath of office, the first board appointed under
8435 this section shall meet for an organizational meeting on call by
8436 the Governor. At such meeting and at an organizational meeting
8437 in January every odd-numbered year thereafter, the board shall
8438 elect from its members a chairman, vice-chairman and
8439 secretary-treasurer to serve for terms of two (2) years.

8440 (5) The Mississippi Health Finance Authority Board shall
8441 adopt rules and regulations not inconsistent with Sections
8442 41-95-1 through 41-95-9, in compliance with the Mississippi
8443 Administrative Procedure Law of 1999, for the conduct of its
8444 business and the carrying out of its duties.

8445 (6) The Mississippi Health Finance Authority Board shall
8446 hold at least two (2) regular meetings each year, and additional
8447 meetings may be held upon the call of the chairman or at the
8448 written request of any three (3) members.

8449 (7) The members of the Mississippi Health Finance Authority
8450 Board are individually exempt from any civil liability as a
8451 result of any action taken by the board.

8452 (8) There shall be a Joint Oversight Committee of the
8453 Mississippi Health Finance Authority composed of three (3)
8454 members of the Senate appointed by the Lieutenant Governor to
8455 serve at the will and pleasure of the Lieutenant Governor, and
8456 three (3) members of the House of Representatives appointed by
8457 the Speaker of the House to serve at the will and pleasure of the
8458 Speaker. The chairmanship of the committee shall alternate for

8459 twelve-month periods between the Senate members and the House
8460 members, with the first chairman appointed by the Lieutenant
8461 Governor from among the Senate membership. The committee shall
8462 meet once each month, or upon the call of the chairman at such
8463 times as he deems necessary or advisable, and may make
8464 recommendations to the Legislature pertaining to any matter
8465 within the jurisdiction of the Mississippi Health Finance
8466 Authority. The appointing authorities may designate an alternate
8467 member from their respective houses to serve when the regular
8468 designee is unable to attend such meetings of the oversight
8469 committee. For attending meetings of the oversight committee,
8470 such legislators shall receive per diem and expenses which shall
8471 be paid from the contingent expense funds of their respective
8472 houses in the same amounts as provided for committee meetings
8473 when the Legislature is not in session; however, no per diem and
8474 expenses for attending meetings of the committee will be paid
8475 while the Legislature is in session. No per diem and expenses
8476 will be paid except for attending meetings of the oversight
8477 committee without prior approval of the proper committee in their
8478 respective houses.

8479 (9) The Mississippi Health Finance Authority Board shall
8480 appoint the following five (5) advisory committees to assist in
8481 administering the provisions of Sections 41-95-1 through 41-95-9:

- 8482 (a) The Benefits and Ethics Committee;
- 8483 (b) The Provider and Standards Committee;
- 8484 (c) The Consumer/Customer Satisfaction Committee;
- 8485 (d) The Data Committee; and
- 8486 (e) The Health Finance Advisory Committee.

8487 Each committee shall consist of at least five (5) and no
8488 more than seven (7) members. The qualifications of the committee
8489 members for the committees listed in paragraphs (a), (b), (c) and
8490 (d) shall be set forth by the board in its bylaws and
8491 regulations. It is the intent of the Legislature that the
8492 appointments to each of the committees listed in paragraphs (a),

8493 (b), (c) and (d) reflect the racial and sexual demographics of
8494 the entire state. The Health Finance Advisory Committee shall be
8495 composed of the chairman of the other committees and the
8496 Executive Director of the Mississippi Health Finance Authority.
8497 All such committee members shall be appointed by the Mississippi
8498 Health Finance Authority Board for a term of four (4) years. If
8499 a member is unable to complete his term, a successor shall be
8500 appointed to serve the unexpired term. No person may serve as a
8501 member of the committee for more than ten (10) years. The terms
8502 of the initial committees shall be staggered. Two (2) members
8503 shall be appointed to a term of two (2) years, two (2) members
8504 shall be appointed to a term of three (3) years, and three (3)
8505 members shall be appointed to a term of four (4) years, to be
8506 designated by the board at the time of appointment. Members
8507 shall receive no salary for services performed, but may be
8508 reimbursed for necessary and actual expenses incurred in
8509 connection with attendance at meetings or for authorized business
8510 from funds made available for such purpose. The committees shall
8511 meet at least once in each quarter of the year at a time and
8512 place fixed by the committees, and at such other times as
8513 requested by the board. The organization, meetings and
8514 management of the committees shall be established by regulations
8515 promulgated by the board. The board, in its discretion, may
8516 appoint additional committees as deemed necessary to carry out
8517 its duties and responsibilities.

8518 (10) The Mississippi Health Finance Authority Board shall
8519 elect a full-time director who holds a graduate degree in
8520 finance, economics, business, health policy or health finance, or
8521 the equivalent, and who has no financial or other interest in any
8522 health care provider or payor. The director shall have a minimum
8523 of five (5) years' appropriate experience to be certified by the
8524 State Personnel Board. The director shall serve at the will and
8525 pleasure of the Mississippi Health Finance Authority Board. The
8526 director shall be the chief administrative officer of the

8527 Mississippi Health Finance Authority Board, shall be the agent of
8528 the board for the purpose of receiving all services of process,
8529 summonses and notices directed to the board, shall direct the
8530 daily operations of the board, and shall perform such other
8531 duties as the board may delegate to him. The position of
8532 attorney for the Mississippi Health Finance Authority is
8533 authorized, who shall be a duly licensed attorney and whose
8534 salary and qualifications shall be fixed by the board. Such
8535 attorney shall be employed by the Mississippi Health Finance
8536 Authority Board. The Director of the Mississippi Health Finance
8537 Authority shall appoint heads of offices, who shall serve at the
8538 pleasure of the director, and shall appoint any necessary
8539 supervisors, assistants and employees. The salary and
8540 compensation of such employees shall be subject to the rules and
8541 regulations adopted and promulgated by the State Personnel Board
8542 created under Section 25-9-101 et seq. The director shall have
8543 the authority to organize offices as deemed appropriate to carry
8544 out the responsibilities of the Mississippi Health Finance
8545 Authority. All new positions, before staff is to be hired to
8546 fill them, must be authorized and approved by the board itself in
8547 accordance with the laws and regulations set forth by the State
8548 Personnel Board. The organizational structure of the staff shall
8549 provide for the performance of assigned functions and shall be
8550 subject to the approval of the board.

8551 (11) The Director of the Mississippi Health Finance
8552 Authority is authorized:

8553 (a) To enforce rules and regulations adopted and
8554 promulgated by the board implementing or effectuating the powers
8555 and duties of the Mississippi Health Finance Authority under any
8556 and all statutes within the Mississippi Health Finance
8557 Authority's jurisdiction;

8558 (b) To apply for, receive and expend any federal or
8559 state funds or contributions, gifts, devises, bequests or funds
8560 from any other source;

8561 (c) To enter into and execute contracts, grants and
8562 cooperative agreements with any federal or state agency or
8563 subdivision thereof, or any public or private institution located
8564 inside or outside the State of Mississippi, or any person,
8565 corporation or association in connection with carrying out the
8566 programs of the Mississippi Health Finance Authority; and

8567 (d) To discharge such other duties, responsibilities
8568 and powers as are necessary to implement the programs of the
8569 Mississippi Health Finance Authority.

8570 SECTION 199. Section 43-3-7, Mississippi Code of 1972, is
8571 amended as follows:

8572 43-3-7. The governing authorities shall promulgate such
8573 reasonable rules and regulations in accordance with the
8574 Mississippi Administrative Procedure Law of 1999 as are necessary
8575 to carry out the intent of sections 43-3-1 to 43-3-15. Any such
8576 rules and regulations shall be published and kept on file in the
8577 office of the director and shall be available to the general
8578 public on demand.

8579 SECTION 200. Section 43-11-11, Mississippi Code of 1972, is
8580 amended as follows:

8581 43-11-11. The licensing agency after notice and opportunity
8582 for an adjudicative proceeding in accordance with the Mississippi
8583 Administrative Procedure Law of 1999, to the applicant or
8584 licensee is authorized to deny, suspend or revoke a license in
8585 any case in which it finds that there has been a substantial
8586 failure to comply with the requirements established under this
8587 chapter.

8588 Such notice shall be effected by registered mail, or by
8589 personal service setting forth the particular reasons for the
8590 proposed action * * *. The decision revoking, suspending or
8591 denying the license or application shall be subject to judicial
8592 review in accordance with the Mississippi Administrative
8593 Procedure Law of 1999.

8594 The procedure governing adjudicative proceedings authorized

8595 by this section shall be in accordance with rules promulgated by
8596 the licensing agency in accordance with the Mississippi
8597 Administrative Procedure Law of 1999. A full and complete record
8598 shall be kept of all proceedings, and all testimony shall be
8599 recorded but need not be transcribed unless a proceeding for
8600 judicial review is initiated. Each party shall pay the expense
8601 of his own witnesses. The cost of the record shall be paid by
8602 the licensing agency provided any other party desiring a copy of
8603 the transcript shall pay therefor the reasonable cost of
8604 preparing the same.

8605 SECTION 201. Section 43-11-23, Mississippi Code of 1972, is
8606 amended as follows:

8607 43-11-23. Any applicant or licensee aggrieved by the
8608 decision of the licensing agency after an adjudicative
8609 proceeding, may of right secure judicial review thereof in
8610 accordance with the Mississippi Administrative Procedure Law of
8611 1999. The court may affirm, modify or reverse the decision of
8612 the licensing agency * * *. Pending final disposition of the
8613 matter on judicial review the status quo of the applicant or
8614 licensee shall be preserved, except as the court otherwise orders
8615 in the public interest. Rules with respect to court costs as in
8616 other cases in the Court of Appeals shall apply equally to cases
8617 hereunder.

8618 SECTION 202. Section 43-13-117, Mississippi Code of 1972,
8619 is amended as follows:

8620 43-13-117. Medical assistance as authorized by this article
8621 shall include payment of part or all of the costs, at the
8622 discretion of the division or its successor, with approval of the
8623 Governor, of the following types of care and services rendered to
8624 eligible applicants who shall have been determined to be eligible
8625 for such care and services, within the limits of state
8626 appropriations and federal matching funds:

8627 (1) Inpatient hospital services.

8628 (a) The division shall allow thirty (30) days of

8629 inpatient hospital care annually for all Medicaid recipients;
8630 however, before any recipient will be allowed more than fifteen
8631 (15) days of inpatient hospital care in any one (1) year, he must
8632 obtain prior approval therefor from the division. The division
8633 shall be authorized to allow unlimited days in disproportionate
8634 hospitals as defined by the division for eligible infants under
8635 the age of six (6) years.

8636 (b) From and after July 1, 1994, the Executive
8637 Director of the Division of Medicaid shall amend the Mississippi
8638 Title XIX Inpatient Hospital Reimbursement Plan to remove the
8639 occupancy rate penalty from the calculation of the Medicaid
8640 Capital Cost Component utilized to determine total hospital costs
8641 allocated to the Medicaid Program.

8642 (2) Outpatient hospital services. Provided that where the
8643 same services are reimbursed as clinic services, the division may
8644 revise the rate or methodology of outpatient reimbursement to
8645 maintain consistency, efficiency, economy and quality of care.

8646 (3) Laboratory and X-ray services.

8647 (4) Nursing facility services.

8648 (a) The division shall make full payment to nursing
8649 facilities for each day, not exceeding thirty-six (36) days per
8650 year, that a patient is absent from the facility on home leave.
8651 However, before payment may be made for more than eighteen (18)
8652 home leave days in a year for a patient, the patient must have
8653 written authorization from a physician stating that the patient
8654 is physically and mentally able to be away from the facility on
8655 home leave. Such authorization must be filed with the division
8656 before it will be effective and the authorization shall be
8657 effective for three (3) months from the date it is received by
8658 the division, unless it is revoked earlier by the physician
8659 because of a change in the condition of the patient.

8660 (b) Repealed.

8661 (c) From and after July 1, 1997, all state-owned
8662 nursing facilities shall be reimbursed on a full reasonable costs

8663 basis. From and after July 1, 1997, payments by the division to
8664 nursing facilities for return on equity capital shall be made at
8665 the rate paid under Medicare (Title XVIII of the Social Security
8666 Act), but shall be no less than seven and one-half percent (7.5%)
8667 nor greater than ten percent (10%).

8668 (d) A Review Board for nursing facilities is
8669 established to conduct reviews of the Division of Medicaid's
8670 decision in the areas set forth below:

8671 (i) Review shall be heard in the following areas:

8672 (A) Matters relating to cost reports
8673 including, but not limited to, allowable costs and cost
8674 adjustments resulting from desk reviews and audits.

8675 (B) Matters relating to the Minimum Data Set
8676 Plus (MDS +) or successor assessment formats including but not
8677 limited to audits, classifications and submissions.

8678 (ii) The Review Board shall be composed of six
8679 (6) members, three (3) having expertise in one (1) of the two (2)
8680 areas set forth above and three (3) having expertise in the other
8681 area set forth above. Each panel of three (3) shall only review
8682 appeals arising in its area of expertise. The members shall be
8683 appointed as follows:

8684 (A) In each of the areas of expertise
8685 defined under subparagraphs (i)(A) and (i)(B), the Executive
8686 Director of the Division of Medicaid shall appoint one (1) person
8687 chosen from the private sector nursing home industry in the
8688 state, which may include independent accountants and consultants
8689 serving the industry;

8690 (B) In each of the areas of expertise
8691 defined under subparagraphs (i)(A) and (i)(B), the Executive
8692 Director of the Division of Medicaid shall appoint one (1) person
8693 who is employed by the state who does not participate directly in
8694 desk reviews or audits of nursing facilities in the two (2) areas
8695 of review;

8696 (C) The two (2) members appointed by the

8697 Executive Director of the Division of Medicaid in each area of
8698 expertise shall appoint a third member in the same area of
8699 expertise.

8700 In the event of a conflict of interest on the part of any
8701 Review Board members, the Executive Director of the Division of
8702 Medicaid or the other two (2) panel members, as applicable, shall
8703 appoint a substitute member for conducting a specific review.

8704 (iii) The Review Board panels shall have the
8705 power to preserve and enforce order during adjudicative
8706 proceedings; to issue subpoenas; to administer oaths; to compel
8707 attendance and testimony of witnesses; or to compel the
8708 production of books, papers, documents and other evidence; or the
8709 taking of depositions before any designated individual competent
8710 to administer oaths; to examine witnesses; and to do all things
8711 conformable to law that may be necessary to enable it effectively
8712 to discharge its duties. The Review Board panels may appoint
8713 such person or persons as they shall deem proper to execute and
8714 return process in connection therewith.

8715 (iv) The Review Board shall promulgate, publish
8716 and disseminate to nursing facility providers rules of procedure
8717 for the efficient conduct of proceedings, subject to the approval
8718 of the Executive Director of the Division of Medicaid and in
8719 accordance with the Mississippi Administrative Procedure Law of
8720 1999.

8721 (v) Proceedings of the Review Board shall be in
8722 accordance with the Mississippi Administrative Procedure Law of
8723 1999.

8724 (vi) Appeals to the Review Board shall be in
8725 writing and shall set out the issues, a statement of alleged
8726 facts and reasons supporting the provider's position. Relevant
8727 documents may also be attached. The appeal shall be filed within
8728 thirty (30) days from the date the provider is notified of the
8729 action being appealed or, if informal review procedures are
8730 taken, as provided by administrative regulations of the Division

8731 of Medicaid, within thirty (30) days after a decision has been
8732 rendered through informal hearing procedures.

8733 * * *

8734 (vii) The Executive Director of the Division of
8735 Medicaid shall, upon review of the recommendation, the
8736 proceedings and the record, prepare a written decision which
8737 shall be mailed to the nursing facility provider no later than
8738 twenty (20) days after the submission of the recommendation by
8739 the panel. The decision of the executive director is final,
8740 subject only to judicial review.

8741 (viii) * * * A final decision shall be subject to
8742 judicial review in accordance with the Mississippi Administrative
8743 Procedure Law of 1999.

8744 (ix) The action of the Division of Medicaid under
8745 review shall be stayed until all administrative proceedings have
8746 been exhausted.

8747 (x) Appeals by nursing facility providers
8748 involving any issues other than those two (2) specified in
8749 subparagraphs (i)(A) and (ii)(B) shall be taken in accordance
8750 with the administrative hearing procedures established by the
8751 Division of Medicaid, not inconsistent with the Mississippi
8752 Administrative Procedure Law of 1999.

8753 (e) When a facility of a category that does not
8754 require a certificate of need for construction and that could not
8755 be eligible for Medicaid reimbursement is constructed to nursing
8756 facility specifications for licensure and certification, and the
8757 facility is subsequently converted to a nursing facility pursuant
8758 to a certificate of need that authorizes conversion only and the
8759 applicant for the certificate of need was assessed an application
8760 review fee based on capital expenditures incurred in constructing
8761 the facility, the division shall allow reimbursement for capital
8762 expenditures necessary for construction of the facility that were
8763 incurred within the twenty-four (24) consecutive calendar months
8764 immediately preceding the date that the certificate of need

8765 authorizing such conversion was issued, to the same extent that
8766 reimbursement would be allowed for construction of a new nursing
8767 facility pursuant to a certificate of need that authorizes such
8768 construction. The reimbursement authorized in this subparagraph
8769 (e) may be made only to facilities the construction of which was
8770 completed after June 30, 1989. Before the division shall be
8771 authorized to make the reimbursement authorized in this
8772 subparagraph (e), the division first must have received approval
8773 from the Health Care Financing Administration of the United
8774 States Department of Health and Human Services of the change in
8775 the state Medicaid plan providing for such reimbursement.

8776 (5) Periodic screening and diagnostic services for
8777 individuals under age twenty-one (21) years as are needed to
8778 identify physical and mental defects and to provide health care
8779 treatment and other measures designed to correct or ameliorate
8780 defects and physical and mental illness and conditions discovered
8781 by the screening services regardless of whether these services
8782 are included in the state plan. The division may include in its
8783 periodic screening and diagnostic program those discretionary
8784 services authorized under the federal regulations adopted to
8785 implement Title XIX of the federal Social Security Act, as
8786 amended. The division, in obtaining physical therapy services,
8787 occupational therapy services, and services for individuals with
8788 speech, hearing and language disorders, may enter into a
8789 cooperative agreement with the State Department of Education for
8790 the provision of such services to handicapped students by public
8791 school districts using state funds which are provided from the
8792 appropriation to the Department of Education to obtain federal
8793 matching funds through the division. The division, in obtaining
8794 medical and psychological evaluations for children in the custody
8795 of the State Department of Human Services may enter into a
8796 cooperative agreement with the State Department of Human Services
8797 for the provision of such services using state funds which are
8798 provided from the appropriation to the Department of Human

8799 Services to obtain federal matching funds through the division.

8800 On July 1, 1993, all fees for periodic screening and
8801 diagnostic services under this paragraph (5) shall be increased
8802 by twenty-five percent (25%) of the reimbursement rate in effect
8803 on June 30, 1993.

8804 (6) Physician's services. On January 1, 1996, all fees for
8805 physicians' services shall be reimbursed at seventy percent (70%)
8806 of the rate established on January 1, 1994, under Medicare (Title
8807 XVIII of the Social Security Act), as amended, and the division
8808 may adjust the physicians' reimbursement schedule to reflect the
8809 differences in relative value between Medicaid and Medicare.

8810 (7) (a) Home health services for eligible persons, not to
8811 exceed in cost the prevailing cost of nursing facility services,
8812 not to exceed sixty (60) visits per year.

8813 (b) Repealed.

8814 (8) Emergency medical transportation services. On January
8815 1, 1994, emergency medical transportation services shall be
8816 reimbursed at seventy percent (70%) of the rate established under
8817 Medicare (Title XVIII of the Social Security Act), as amended.
8818 "Emergency medical transportation services" shall mean, but shall
8819 not be limited to, the following services by a properly permitted
8820 ambulance operated by a properly licensed provider in accordance
8821 with the Emergency Medical Services Act of 1974 (Section 41-59-1
8822 et seq.): (i) basic life support, (ii) advanced life support,
8823 (iii) mileage, (iv) oxygen, (v) intravenous fluids, (vi)
8824 disposable supplies, (vii) similar services.

8825 (9) Legend and other drugs as may be determined by the
8826 division. The division may implement a program of prior approval
8827 for drugs to the extent permitted by law. Payment by the
8828 division for covered multiple source drugs shall be limited to
8829 the lower of the upper limits established and published by the
8830 Health Care Financing Administration (HCFA) plus a dispensing fee
8831 of Four Dollars and Ninety-one Cents (\$4.91), or the estimated
8832 acquisition cost (EAC) as determined by the division plus a

8833 dispensing fee of Four Dollars and Ninety-one Cents (\$4.91), or
8834 the providers' usual and customary charge to the general public.

8835 The division shall allow five (5) prescriptions per month for
8836 noninstitutionalized Medicaid recipients.

8837 Payment for other covered drugs, other than multiple source
8838 drugs with HCFA upper limits, shall not exceed the lower of the
8839 estimated acquisition cost as determined by the division plus a
8840 dispensing fee of Four Dollars and Ninety-one Cents (\$4.91) or
8841 the providers' usual and customary charge to the general public.

8842 Payment for nonlegend or over-the-counter drugs covered on
8843 the division's formulary shall be reimbursed at the lower of the
8844 division's estimated shelf price or the providers' usual and
8845 customary charge to the general public. No dispensing fee shall
8846 be paid.

8847 The division shall develop and implement a program of
8848 payment for additional pharmacist services, with payment to be
8849 based on demonstrated savings, but in no case shall the total
8850 payment exceed twice the amount of the dispensing fee.

8851 As used in this paragraph (9), "estimated acquisition cost"
8852 means the division's best estimate of what price providers
8853 generally are paying for a drug in the package size that
8854 providers buy most frequently. Product selection shall be made
8855 in compliance with existing state law; however, the division may
8856 reimburse as if the prescription had been filled under the
8857 generic name. The division may provide otherwise in the case of
8858 specified drugs when the consensus of competent medical advice is
8859 that trademarked drugs are substantially more effective.

8860 (10) Dental care that is an adjunct to treatment of an
8861 acute medical or surgical condition; services of oral surgeons
8862 and dentists in connection with surgery related to the jaw or any
8863 structure contiguous to the jaw or the reduction of any fracture
8864 of the jaw or any facial bone; and emergency dental extractions
8865 and treatment related thereto. On January 1, 1994, all fees for
8866 dental care and surgery under authority of this paragraph (10)

8867 shall be increased by twenty percent (20%) of the reimbursement
8868 rate as provided in the Dental Services Provider Manual in effect
8869 on December 31, 1993.

8870 (11) Eyeglasses necessitated by reason of eye surgery, and
8871 as prescribed by a physician skilled in diseases of the eye or an
8872 optometrist, whichever the patient may select.

8873 (12) Intermediate care facility services.

8874 (a) The division shall make full payment to all
8875 intermediate care facilities for the mentally retarded for each
8876 day, not exceeding thirty-six (36) days per year, that a patient
8877 is absent from the facility on home leave. However, before
8878 payment may be made for more than eighteen (18) home leave days
8879 in a year for a patient, the patient must have written
8880 authorization from a physician stating that the patient is
8881 physically and mentally able to be away from the facility on home
8882 leave. Such authorization must be filed with the division before
8883 it will be effective, and the authorization shall be effective
8884 for three (3) months from the date it is received by the
8885 division, unless it is revoked earlier by the physician because
8886 of a change in the condition of the patient.

8887 (b) All state-owned intermediate care facilities for
8888 the mentally retarded shall be reimbursed on a full reasonable
8889 cost basis.

8890 (13) Family planning services, including drugs, supplies
8891 and devices, when such services are under the supervision of a
8892 physician.

8893 (14) Clinic services. Such diagnostic, preventive,
8894 therapeutic, rehabilitative or palliative services furnished to
8895 an outpatient by or under the supervision of a physician or
8896 dentist in a facility which is not a part of a hospital but which
8897 is organized and operated to provide medical care to outpatients.

8898 Clinic services shall include any services reimbursed as
8899 outpatient hospital services which may be rendered in such a
8900 facility, including those that become so after July 1, 1991. On

8901 January 1, 1994, all fees for physicians' services reimbursed
8902 under authority of this paragraph (14) shall be reimbursed at
8903 seventy percent (70%) of the rate established on January 1, 1993,
8904 under Medicare (Title XVIII of the Social Security Act), as
8905 amended, or the amount that would have been paid under the
8906 division's fee schedule that was in effect on December 31, 1993,
8907 whichever is greater, and the division may adjust the physicians'
8908 reimbursement schedule to reflect the differences in relative
8909 value between Medicaid and Medicare. However, on January 1,
8910 1994, the division may increase any fee for physicians' services
8911 in the division's fee schedule on December 31, 1993, that was
8912 greater than seventy percent (70%) of the rate established under
8913 Medicare by no more than ten percent (10%). On January 1, 1994,
8914 all fees for dentists' services reimbursed under authority of
8915 this paragraph (14) shall be increased by twenty percent (20%) of
8916 the reimbursement rate as provided in the Dental Services
8917 Provider Manual in effect on December 31, 1993.

8918 (15) Home- and community-based services, as provided under
8919 Title XIX of the federal Social Security Act, as amended, under
8920 waivers, subject to the availability of funds specifically
8921 appropriated therefor by the Legislature. Payment for such
8922 services shall be limited to individuals who would be eligible
8923 for and would otherwise require the level of care provided in a
8924 nursing facility. The division shall certify case management
8925 agencies to provide case management services and provide for
8926 home- and community-based services for eligible individuals under
8927 this paragraph. The home- and community-based services under
8928 this paragraph and the activities performed by certified case
8929 management agencies under this paragraph shall be funded using
8930 state funds that are provided from the appropriation to the
8931 Division of Medicaid and used to match federal funds under a
8932 cooperative agreement between the division and the Department of
8933 Human Services.

8934 (16) Mental health services. Approved therapeutic and case

8935 management services provided by (a) an approved regional mental
8936 health/retardation center established under Sections 41-19-31
8937 through 41-19-39, or by another community mental health service
8938 provider meeting the requirements of the Department of Mental
8939 Health to be an approved mental health/retardation center if
8940 determined necessary by the Department of Mental Health, using
8941 state funds which are provided from the appropriation to the
8942 State Department of Mental Health and used to match federal funds
8943 under a cooperative agreement between the division and the
8944 department, or (b) a facility which is certified by the State
8945 Department of Mental Health to provide therapeutic and case
8946 management services, to be reimbursed on a fee for service basis.

8947 Any such services provided by a facility described in paragraph
8948 (b) must have the prior approval of the division to be
8949 reimbursable under this section. After June 30, 1997, mental
8950 health services provided by regional mental health/retardation
8951 centers established under Sections 41-19-31 through 41-19-39, or
8952 by hospitals as defined in Section 41-9-3(a) and/or their
8953 subsidiaries and divisions, or by psychiatric residential
8954 treatment facilities as defined in Section 43-11-1, or by another
8955 community mental health service provider meeting the requirements
8956 of the Department of Mental Health to be an approved mental
8957 health/retardation center if determined necessary by the
8958 Department of Mental Health, shall not be included in or provided
8959 under any capitated managed care pilot program provided for under
8960 paragraph (24) of this section.

8961 (17) Durable medical equipment services and medical
8962 supplies restricted to patients receiving home health services
8963 unless waived on an individual basis by the division. The
8964 division shall not expend more than Three Hundred Thousand
8965 Dollars (\$300,000.00) of state funds annually to pay for medical
8966 supplies authorized under this paragraph.

8967 (18) Notwithstanding any other provision of this section to
8968 the contrary, the division shall make additional reimbursement to

8969 hospitals which serve a disproportionate share of low-income
8970 patients and which meet the federal requirements for such
8971 payments as provided in Section 1923 of the Federal Social
8972 Security Act and any applicable regulations.

8973 (19) (a) Perinatal risk management services. The division
8974 shall promulgate regulations to be effective from and after
8975 October 1, 1988, to establish a comprehensive perinatal system
8976 for risk assessment of all pregnant and infant Medicaid
8977 recipients and for management, education and follow-up for those
8978 who are determined to be at risk. Services to be performed
8979 include case management, nutrition assessment/counseling,
8980 psychosocial assessment/counseling and health education. The
8981 division shall set reimbursement rates for providers in
8982 conjunction with the State Department of Health.

8983 (b) Early intervention system services. The division
8984 shall cooperate with the State Department of Health, acting as
8985 lead agency, in the development and implementation of a statewide
8986 system of delivery of early intervention services, pursuant to
8987 Part H of the Individuals with Disabilities Education Act (IDEA).
8988 The State Department of Health shall certify annually in writing
8989 to the director of the division the dollar amount of state early
8990 intervention funds available which shall be utilized as a
8991 certified match for Medicaid matching funds. Those funds then
8992 shall be used to provide expanded targeted case management
8993 services for Medicaid eligible children with special needs who
8994 are eligible for the state's early intervention system.
8995 Qualifications for persons providing service coordination shall
8996 be determined by the State Department of Health and the Division
8997 of Medicaid.

8998 (20) Home- and community-based services for physically
8999 disabled approved services as allowed by a waiver from the U.S.
9000 Department of Health and Human Services for home- and
9001 community-based services for physically disabled people using
9002 state funds which are provided from the appropriation to the

9003 State Department of Rehabilitation Services and used to match
9004 federal funds under a cooperative agreement between the division
9005 and the department, provided that funds for these services are
9006 specifically appropriated to the Department of Rehabilitation
9007 Services.

9008 (21) Nurse practitioner services. Services furnished by a
9009 registered nurse who is licensed and certified by the Mississippi
9010 Board of Nursing as a nurse practitioner including, but not
9011 limited to, nurse anesthetists, nurse midwives, family nurse
9012 practitioners, family planning nurse practitioners, pediatric
9013 nurse practitioners, obstetrics-gynecology nurse practitioners
9014 and neonatal nurse practitioners, under regulations adopted by
9015 the division. Reimbursement for such services shall not exceed
9016 ninety percent (90%) of the reimbursement rate for comparable
9017 services rendered by a physician.

9018 (22) Ambulatory services delivered in federally qualified
9019 health centers and in clinics of the local health departments of
9020 the State Department of Health for individuals eligible for
9021 medical assistance under this article based on reasonable costs
9022 as determined by the division.

9023 (23) Inpatient psychiatric services. Inpatient psychiatric
9024 services to be determined by the division for recipients under
9025 age twenty-one (21) which are provided under the direction of a
9026 physician in an inpatient program in a licensed acute care
9027 psychiatric facility or in a licensed psychiatric residential
9028 treatment facility, before the recipient reaches age twenty-one
9029 (21) or, if the recipient was receiving the services immediately
9030 before he reached age twenty-one (21), before the earlier of the
9031 date he no longer requires the services or the date he reaches
9032 age twenty-two (22), as provided by federal regulations.

9033 Recipients shall be allowed forty-five (45) days per year of
9034 psychiatric services provided in acute care psychiatric
9035 facilities, and shall be allowed unlimited days of psychiatric
9036 services provided in licensed psychiatric residential treatment

9037 facilities.

9038 (24) Managed care services in a program to be developed by
9039 the division by a public or private provider. Notwithstanding
9040 any other provision in this article to the contrary, the division
9041 shall establish rates of reimbursement to providers rendering
9042 care and services authorized under this section, and may revise
9043 such rates of reimbursement without amendment to this section by
9044 the Legislature for the purpose of achieving effective and
9045 accessible health services, and for responsible containment of
9046 costs. This shall include, but not be limited to, one (1) module
9047 of capitated managed care in a rural area, and one (1) module of
9048 capitated managed care in an urban area.

9049 (25) Birthing center services.

9050 (26) Hospice care. As used in this paragraph, the term
9051 "hospice care" means a coordinated program of active professional
9052 medical attention within the home and outpatient and inpatient
9053 care which treats the terminally ill patient and family as a
9054 unit, employing a medically directed interdisciplinary team. The
9055 program provides relief of severe pain or other physical symptoms
9056 and supportive care to meet the special needs arising out of
9057 physical, psychological, spiritual, social and economic stresses
9058 which are experienced during the final stages of illness and
9059 during dying and bereavement and meets the Medicare requirements
9060 for participation as a hospice as provided in 42 CFR Part 418.

9061 (27) Group health plan premiums and cost sharing if it is
9062 cost effective as defined by the Secretary of Health and Human
9063 Services.

9064 (28) Other health insurance premiums which are cost
9065 effective as defined by the Secretary of Health and Human
9066 Services. Medicare eligible must have Medicare Part B before
9067 other insurance premiums can be paid.

9068 (29) The Division of Medicaid may apply for a waiver from
9069 the Department of Health and Human Services for home- and
9070 community-based services for developmentally disabled people

9071 using state funds which are provided from the appropriation to
9072 the State Department of Mental Health and used to match federal
9073 funds under a cooperative agreement between the division and the
9074 department, provided that funds for these services are
9075 specifically appropriated to the Department of Mental Health.

9076 (30) Pediatric skilled nursing services for eligible
9077 persons under twenty-one (21) years of age.

9078 (31) Targeted case management services for children with
9079 special needs, under waivers from the U.S. Department of Health
9080 and Human Services, using state funds that are provided from the
9081 appropriation to the Mississippi Department of Human Services and
9082 used to match federal funds under a cooperative agreement between
9083 the division and the department.

9084 (32) Care and services provided in Christian Science
9085 Sanatoria operated by or listed and certified by The First Church
9086 of Christ Scientist, Boston, Massachusetts, rendered in
9087 connection with treatment by prayer or spiritual means to the
9088 extent that such services are subject to reimbursement under
9089 Section 1903 of the Social Security Act.

9090 (33) Podiatrist services.

9091 (34) Personal care services provided in a pilot program to
9092 not more than forty (40) residents at a location or locations to
9093 be determined by the division and delivered by individuals
9094 qualified to provide such services, as allowed by waivers under
9095 Title XIX of the Social Security Act, as amended. The division
9096 shall not expend more than Three Hundred Thousand Dollars
9097 (\$300,000.00) annually to provide such personal care services.
9098 The division shall develop recommendations for the effective
9099 regulation of any facilities that would provide personal care
9100 services which may become eligible for Medicaid reimbursement
9101 under this section, and shall present such recommendations with
9102 any proposed legislation to the 1996 Regular Session of the
9103 Legislature on or before January 1, 1996.

9104 (35) Services and activities authorized in Sections

9105 43-27-101 and 43-27-103, using state funds that are provided from
9106 the appropriation to the State Department of Human Services and
9107 used to match federal funds under a cooperative agreement between
9108 the division and the department.

9109 (36) Nonemergency transportation services for
9110 Medicaid-eligible persons, to be provided by the Department of
9111 Human Services. The division may contract with additional
9112 entities to administer non-emergency transportation services as
9113 it deems necessary. All providers shall have a valid driver's
9114 license, vehicle inspection sticker and a standard liability
9115 insurance policy covering the vehicle.

9116 (37) Targeted case management services for individuals with
9117 chronic diseases, with expanded eligibility to cover services to
9118 uninsured recipients, on a pilot program basis. This paragraph
9119 (37) shall be contingent upon continued receipt of special funds
9120 from the Health Care Financing Authority and private foundations
9121 who have granted funds for planning these services. No funding
9122 for these services shall be provided from State General Funds.

9123 (38) Chiropractic services: a chiropractor's manual
9124 manipulation of the spine to correct a subluxation, if x-ray
9125 demonstrates that a subluxation exists and if the subluxation has
9126 resulted in a neuromusculoskeletal condition for which
9127 manipulation is appropriate treatment. Reimbursement for
9128 chiropractic services shall not exceed Seven Hundred Dollars
9129 (\$700.00) per year per recipient.

9130 Notwithstanding any provision of this article, except as
9131 authorized in the following paragraph and in Section 43-13-139,
9132 neither (a) the limitations on quantity or frequency of use of or
9133 the fees or charges for any of the care or services available to
9134 recipients under this section, nor (b) the payments or rates of
9135 reimbursement to providers rendering care or services authorized
9136 under this section to recipients, may be increased, decreased or
9137 otherwise changed from the levels in effect on July 1, 1986,
9138 unless such is authorized by an amendment to this section by the

9139 Legislature. However, the restriction in this paragraph shall
9140 not prevent the division from changing the payments or rates of
9141 reimbursement to providers without an amendment to this section
9142 whenever such changes are required by federal law or regulation,
9143 or whenever such changes are necessary to correct administrative
9144 errors or omissions in calculating such payments or rates of
9145 reimbursement.

9146 Notwithstanding any provision of this article, no new groups
9147 or categories of recipients and new types of care and services
9148 may be added without enabling legislation from the Mississippi
9149 Legislature, except that the division may authorize such changes
9150 without enabling legislation when such addition of recipients or
9151 services is ordered by a court of proper authority. The director
9152 shall keep the Governor advised on a timely basis of the funds
9153 available for expenditure and the projected expenditures. In the
9154 event current or projected expenditures can be reasonably
9155 anticipated to exceed the amounts appropriated for any fiscal
9156 year, the Governor, after consultation with the director, shall
9157 discontinue any or all of the payment of the types of care and
9158 services as provided herein which are deemed to be optional
9159 services under Title XIX of the federal Social Security Act, as
9160 amended, for any period necessary to not exceed appropriated
9161 funds, and when necessary shall institute any other cost
9162 containment measures on any program or programs authorized under
9163 the article to the extent allowed under the federal law governing
9164 such program or programs, it being the intent of the Legislature
9165 that expenditures during any fiscal year shall not exceed the
9166 amounts appropriated for such fiscal year.

9167 SECTION 203. Section 43-13-121, Mississippi Code of 1972,
9168 is amended as follows:

9169 43-13-121. (1) The division is authorized and empowered to
9170 administer a program of medical assistance under the provisions
9171 of this article, and to do the following:

9172 (a) Adopt and promulgate reasonable rules, regulations

9173 and standards in accordance with the Mississippi Administrative
9174 Procedure Law of 1999, with approval of the Governor:

9175 (i) Establishing methods and procedures as may be
9176 necessary for the proper and efficient administration of this
9177 article;

9178 (ii) Providing medical assistance to all
9179 qualified recipients under the provisions of this article as the
9180 division may determine and within the limits of appropriated
9181 funds;

9182 (iii) Establishing reasonable fees, charges and
9183 rates for medical services and drugs; and in doing so shall fix
9184 all such fees, charges and rates at the minimum levels absolutely
9185 necessary to provide the medical assistance authorized by this
9186 article, and shall not change any such fees, charges or rates
9187 except as may be authorized in Section 43-13-117;

9188 (iv) Providing for fair and impartial hearings;

9189 (v) Providing safeguards for preserving the
9190 confidentiality of records; and

9191 (vi) For detecting and processing fraudulent
9192 practices and abuses of the program;

9193 (b) Receive and expend state, federal and other funds
9194 in accordance with court judgments or settlements and agreements
9195 between the State of Mississippi and the federal government, the
9196 rules and regulations promulgated by the division, with the
9197 approval of the Governor, and within the limitations and
9198 restrictions of this article and within the limits of funds
9199 available for such purpose;

9200 (c) Subject to the limits imposed by this article, to
9201 submit a plan for medical assistance to the federal Department of
9202 Health and Human Services for approval pursuant to the provisions
9203 of the Social Security Act, to act for the state in making
9204 negotiations relative to the submission and approval of such
9205 plan, to make such arrangements, not inconsistent with the law,
9206 as may be required by or pursuant to federal law to obtain and

9207 retain such approval and to secure for the state the benefits of
9208 the provisions of such law;

9209 No agreements, specifically including the general plan for
9210 the operation of the Medicaid program in this state, shall be
9211 made by and between the division and the Department of Health and
9212 Human Services unless the Attorney General of the State of
9213 Mississippi has reviewed said agreements, specifically including
9214 said operational plan, and has certified in writing to the
9215 Governor and to the director of the division that said
9216 agreements, including said plan of operation, have been drawn
9217 strictly in accordance with the terms and requirements of this
9218 article;

9219 (d) Pursuant to the purposes and intent of this
9220 article and in compliance with its provisions, provide for aged
9221 persons otherwise eligible the benefits provided under Title
9222 XVIII of the federal Social Security Act by expenditure of funds
9223 available for such purposes;

9224 (e) To make reports to the federal Department of
9225 Health and Human Services as from time to time may be required by
9226 such federal department and to the Mississippi Legislature as
9227 hereinafter provided;

9228 (f) Define and determine the scope, duration and
9229 amount of medical assistance which may be provided in accordance
9230 with this article and establish priorities therefor in conformity
9231 with this article;

9232 (g) Cooperate and contract with other state agencies
9233 for the purpose of coordinating medical assistance rendered under
9234 this article and eliminating duplication and inefficiency in the
9235 program;

9236 (h) Adopt and use an official seal of the division;

9237 (i) Sue in its own name on behalf of the State of
9238 Mississippi and employ legal counsel on a contingency basis with
9239 the approval of the Attorney General;

9240 (j) To recover any and all payments incorrectly made

9241 by the division or by the Medicaid Commission to a recipient or
9242 provider from the recipient or provider receiving said payments;

9243 (k) To recover any and all payments by the division or
9244 by the Medicaid Commission fraudulently obtained by a recipient
9245 or provider. Additionally, if recovery of any payments
9246 fraudulently obtained by a recipient or provider is made in any
9247 court, then, upon motion of the Governor, the judge of said court
9248 may award twice the payments recovered as damages;

9249 (l) To conduct adjudicative proceeding in accordance
9250 with the Mississippi Administrative Procedure Law of 1999;

9251 (m) Have full, complete and plenary power and
9252 authority to conduct such investigations as it may deem necessary
9253 and requisite of alleged or suspected violations or abuses of the
9254 provisions of this article or of the regulations adopted
9255 hereunder including, but not limited to, fraudulent or unlawful
9256 act or deed by applicants for medical assistance or other
9257 benefits, or payments made to any person, firm or corporation
9258 under the terms, conditions and authority of this article, to
9259 suspend or disqualify any provider of services, applicant or
9260 recipient for gross abuse, fraudulent or unlawful acts for such
9261 periods, including permanently, and under such conditions as the
9262 division may deem proper and just, including the imposition of a
9263 legal rate of interest on the amount improperly or incorrectly
9264 paid. Should an adjudicative proceeding or other administrative
9265 hearing become necessary, the division shall be authorized,
9266 should the provider not succeed in his defense, in taxing the
9267 costs of the administrative hearing, including the costs of the
9268 court reporter or stenographer and transcript, to the provider.
9269 The convictions of a recipient or a provider in a state or
9270 federal court for abuse, fraudulent or unlawful acts under this
9271 chapter shall constitute an automatic disqualification of the
9272 recipient or automatic disqualification of the provider from
9273 participation under the Medicaid program.

9274 A conviction, for the purposes of this chapter, shall

9275 include a judgment entered on a plea of nolo contendere or a
9276 nonadjudicated guilty plea and shall have the same force as a
9277 judgment entered pursuant to a guilty plea or a conviction
9278 following trial. A certified copy of the judgment of
9279 the court of competent jurisdiction of such conviction shall
9280 constitute prima facie evidence of such conviction for
9281 disqualification purposes;

9282 (n) Establish and provide such methods of
9283 administration as may be necessary for the proper and efficient
9284 operation of the program, fully utilizing computer equipment as
9285 may be necessary to oversee and control all current expenditures
9286 for purposes of this article, and to closely monitor and
9287 supervise all recipient payments and vendors rendering such
9288 services hereunder; and

9289 (o) To cooperate and contract with the federal
9290 government for the purpose of providing medical assistance to
9291 Vietnamese and Cambodian refugees, pursuant to the provisions of
9292 Public Law 94-23 and Public Law 94-24, including any amendments
9293 thereto, only to the extent that such assistance and the
9294 administrative cost related thereto are one hundred percent
9295 (100%) reimbursable by the federal government. For the purposes
9296 of Section 43-13-117, persons receiving medical assistance
9297 pursuant to Public Law 94-23 and Public Law 94-24, including any
9298 amendments thereto, shall not be considered a new group or
9299 category of recipient.

9300 (2) The division also shall exercise such additional powers
9301 and perform such other duties as may be conferred upon the
9302 division by act of the Legislature hereafter.

9303 (3) The division, and the State Department of Health as the
9304 agency for licensure of health care facilities and certification
9305 and inspection for the Medicaid and/or Medicare programs, shall
9306 contract for or otherwise provide for the consolidation of
9307 on-site inspections of health care facilities which are
9308 necessitated by the respective programs and functions of the

9309 division and the department.

9310 (4) The division and its hearing officers shall have power
9311 to conduct adjudicative proceedings in accordance with the
9312 Mississippi Administrative Procedure Law of 1999; to preserve and
9313 enforce order during hearings; to issue subpoenas for, to
9314 administer oaths to and to compel the attendance and testimony of
9315 witnesses, or the production of books, papers, documents and
9316 other evidence, or the taking of depositions before any
9317 designated individual competent to administer oaths; to examine
9318 witnesses; and to do all things conformable to law which may be
9319 necessary to enable them effectively to discharge the duties of
9320 their office. In compelling the attendance and testimony of
9321 witnesses, or the production of books, papers, documents and
9322 other evidence, or the taking of depositions, as authorized by
9323 this section, the division or its hearing officers may designate
9324 an individual employed by the division or some other suitable
9325 person to execute and return such process, whose action in
9326 executing and returning such process shall be as lawful as if
9327 done by the sheriff or some other proper officer authorized to
9328 execute and return process in the county where the witness may
9329 reside. In carrying out the investigatory powers under the
9330 provisions of this article, the director or other designated
9331 person or persons shall be authorized to examine, obtain, copy or
9332 reproduce the books, papers, documents, medical charts,
9333 prescriptions and other records relating to medical care and
9334 services furnished by said provider to a recipient or designated
9335 recipients of Medicaid services under investigation. In the
9336 absence of the voluntary submission of said books, papers,
9337 documents, medical charts, prescriptions and other records, the
9338 Governor, the director, or other designated person shall be
9339 authorized to issue and serve subpoenas instantly upon such
9340 provider, his agent, servant or employee for the production of
9341 said books, papers, documents, medical charts, prescriptions or
9342 other records during an audit or investigation of said provider.

9343 If any provider or his agent, servant or employee should refuse
9344 to produce said records after being duly subpoenaed, the director
9345 shall be authorized to certify such facts and institute contempt
9346 proceedings in the manner, time, and place as authorized by law
9347 for administrative proceedings. As an additional remedy, the
9348 division shall be authorized to recover all amounts paid to said
9349 provider covering the period of the audit or investigation,
9350 inclusive of a legal rate of interest and a reasonable attorney's
9351 fee and costs of court if suit becomes necessary.

9352 (5) If any person in proceedings before the division
9353 disobeys or resists any lawful order or process, or misbehaves
9354 during a hearing or so near the place thereof as to obstruct the
9355 same, or neglects to produce, after having been ordered to do so,
9356 any pertinent book, paper or document, or refuses to appear after
9357 having been subpoenaed, or upon appearing refuses to take the
9358 oath as a witness, or after having taken the oath refuses to be
9359 examined according to law, the director shall certify the facts
9360 to any court having jurisdiction in the place in which it is
9361 sitting, and the court shall thereupon, in a summary manner, hear
9362 the evidence as to the acts complained of, and if the evidence so
9363 warrants, punish such person in the same manner and to the same
9364 extent as for a contempt committed before the court, or commit
9365 such person upon the same condition as if the doing of the
9366 forbidden act had occurred with reference to the process of, or
9367 in the presence of, the court.

9368 (6) In suspending or terminating any provider from
9369 participation in the Medicaid Program, the division shall
9370 preclude such provider from submitting claims for payment, either
9371 personally or through any clinic, group, corporation or other
9372 association to the division or its fiscal agents for any services
9373 or supplies provided under the Medicaid Program except for those
9374 services or supplies provided prior to the suspension or
9375 termination. No clinic, group, corporation or other association
9376 which is a provider of services shall submit claims for payment

9377 to the division or its fiscal agents for any services or supplies
9378 provided by a person within such organization who has been
9379 suspended or terminated from participation in the Medicaid
9380 Program except for those services or supplies provided prior to
9381 the suspension or termination. When said provision is violated
9382 by a provider of services which is a clinic, group, corporation
9383 or other association, the division may suspend or terminate such
9384 organization from participation. Suspension may be applied by
9385 the division to all known affiliates of a provider, provided that
9386 each decision to include an affiliate is made on a case by case
9387 basis after giving due regard to all relevant facts and
9388 circumstances. The violation, failure, or inadequacy of
9389 performance may be imputed to a person with whom the provider is
9390 affiliated where such conduct was accomplished with the course of
9391 his official duty or was effectuated by him with the knowledge or
9392 approval of such person.

9393 SECTION 204. Section 43-17-5, Mississippi Code of 1972, is
9394 amended as follows:

9395 43-17-5. (1) The amount of Temporary Assistance for Needy
9396 Families (TANF) benefits which may be granted for any dependent
9397 child and a needy caretaker relative shall be determined by the
9398 county department with due regard to the resources and necessary
9399 expenditures of the family and the conditions existing in each
9400 case, and in accordance with the rules and regulations made by
9401 the Department of Human Services which shall not be less than the
9402 Standard of Need in effect for 1988, and shall be sufficient when
9403 added to all other income (except that any income specified in
9404 the federal Social Security Act, as amended, may be disregarded)
9405 and support available to the child to provide such child with a
9406 reasonable subsistence compatible with decency and health. The
9407 first family member in the dependent child's budget may receive
9408 an amount not to exceed Sixty Dollars (\$60.00) per month; the
9409 second family member in the dependent child's budget may receive
9410 an amount not to exceed Thirty-six Dollars (\$36.00) per month;

9411 and each additional family member in the dependent child's budget
9412 an amount not to exceed Twenty-four Dollars (\$24.00) per month.
9413 The maximum for any individual family member in the dependent
9414 child's budget may be exceeded for foster or medical care or in
9415 cases of mentally retarded or physically handicapped children.
9416 TANF benefits granted shall be specifically limited only (a) to
9417 children existing or conceived at the time the caretaker relative
9418 initially applies and qualifies for such assistance, unless this
9419 limitation is specifically waived by the department, or (b) to a
9420 child born following a twelve (12) consecutive month period of
9421 discontinued benefits by the caretaker relative.

9422 (2) TANF cash benefits in Mississippi shall be provided by
9423 monthly checks mailed to the recipient family until such time as
9424 an on-line electronic benefits transfer system for TANF benefit
9425 payments is implemented pursuant to Section 43-1-28.

9426 (3) The Department of Human Services shall deny TANF
9427 benefits to the following categories of individuals, except for
9428 individuals and families specifically exempt or excluded for good
9429 cause as allowed by federal statute or regulation:

9430 (a) Families without a minor child residing with the
9431 custodial parent or other adult caretaker relative of the child;

9432 (b) Families which include an adult who has received
9433 TANF assistance for sixty (60) months after the commencement of
9434 the Mississippi TANF program, whether or not such period of time
9435 is consecutive;

9436 (c) Families not assigning to the state any rights a
9437 family member may have, on behalf of the family member or of any
9438 other person for whom the family member has applied for or is
9439 receiving such assistance, to support from any other person, as
9440 required by law;

9441 (d) Families who fail to cooperate in establishing
9442 paternity or obtaining child support, as required by law;

9443 (e) Any individual who has not attained eighteen (18)
9444 years of age, is not married to the head of household, has a

9445 minor child at least twelve (12) weeks of age in his or her care,
9446 and has not successfully completed a high school education or its
9447 equivalent, if such individual does not participate in
9448 educational activities directed toward the attainment of a high
9449 school diploma or its equivalent, or an alternative educational
9450 or training program approved by the department;

9451 (f) Any individual who has not attained eighteen (18)
9452 years of age, is not married, has a minor child in his or her
9453 care, and does not reside in a place or residence maintained by a
9454 parent, legal guardian or other adult relative or the individual
9455 as such parent's, guardian's or adult relative's own home;

9456 (g) Any minor child who has been, or is expected by a
9457 parent or other caretaker relative of the child to be, absent
9458 from the home for a period of more than thirty (30) days;

9459 (h) Any individual who is a parent or other caretaker
9460 relative of a minor child who fails to notify the department of
9461 the absence of the minor child from the home for the thirty-day
9462 period specified in paragraph (g), by the end of the five-day
9463 period that begins with the date that it becomes clear to the
9464 individual that the minor child will be absent for the thirty-day
9465 period;

9466 (i) Any individual who fails to comply with the
9467 provisions of the Employability Development Plan signed by the
9468 individual which prescribe those activities designed to help the
9469 individual become and remain employed, or to participate
9470 satisfactorily in the assigned work activity, as authorized under
9471 subsection (6)(c);

9472 (j) A parent or caretaker relative who has not engaged
9473 in an allowable work activity once the department determines the
9474 parent or caretaker relative is ready to engage in work, or once
9475 the parent or caretaker relative has received TANF assistance
9476 under the program for twenty-four (24) months, whether or not
9477 consecutive, whichever is earlier;

9478 (k) Any individual who is fleeing to avoid

9479 prosecution, or custody or confinement after conviction, under
9480 the laws of the jurisdiction from which the individual flees, for
9481 a crime, or an attempt to commit a crime, which is a felony under
9482 the laws of the place from which the individual flees, or who is
9483 violating a condition of probation or parole imposed under
9484 federal or state law;

9485 (l) Aliens who are not qualified under federal law;

9486 (m) For a period of ten (10) years following
9487 conviction, individuals convicted in federal or state court of
9488 having made a fraudulent statement or representation with respect
9489 to the individual's place of residence in order to receive TANF,
9490 food stamps or Supplemental Security Income (SSI) assistance
9491 under Title XVI or Title XIX simultaneously from two (2) or more
9492 states; and

9493 (n) Individuals who are recipients of federal
9494 Supplemental Security Income (SSI) assistance.

9495 (4) (a) Any person who is otherwise eligible for TANF
9496 benefits, including custodial and noncustodial parents, shall be
9497 required to attend school and meet the monthly attendance
9498 requirement as provided in this subsection if all of the
9499 following apply:

9500 (i) The person is under age twenty (20);

9501 (ii) The person has not graduated from a public
9502 or private high school or obtained a GED equivalent;

9503 (iii) The person is physically able to attend
9504 school and is not excused from attending school; and

9505 (iv) If the person is a parent or caretaker
9506 relative with whom a dependent child is living, child care is
9507 available for the child.

9508 The monthly attendance requirement under this subsection
9509 shall be attendance at the school in which the person is enrolled
9510 for each day during a month that the school conducts classes in
9511 which the person is enrolled, with not more than two (2) absences
9512 during the month for reasons other than the reasons listed in

9513 paragraph (e)(iv) of this subsection. Persons who fail to meet
9514 participation requirements in this subsection shall be subject to
9515 sanctions as provided in paragraph (f) of this subsection.

9516 (b) As used in this subsection, "school" means any one
9517 (1) of the following:

9518 (i) A school as defined in Section 37-13-91(2);

9519 (ii) A vocational, technical and adult education
9520 program; or

9521 (iii) A course of study meeting the standards
9522 established by the State Department of Education for the granting
9523 of a declaration of equivalency of high school graduation.

9524 (c) If any compulsory-school-age child, as defined in
9525 Section 37-13-91(2), to which TANF eligibility requirements apply
9526 is not in compliance with the compulsory school attendance
9527 requirements of Section 37-13-91(6), the superintendent of
9528 schools of the school district in which the child is enrolled or
9529 eligible to attend shall notify the county department of human
9530 services of the child's noncompliance. The Department of Human
9531 Services shall review school attendance information as provided
9532 under this paragraph at all initial eligibility determinations
9533 and upon subsequent report of unsatisfactory attendance.

9534 (d) The signature of a person on an application for
9535 TANF benefits constitutes permission for the release of school
9536 attendance records for that person or for any child residing with
9537 that person. The department shall request information from the
9538 child's school district about the child's attendance in the
9539 school district's most recently completed semester of attendance.

9540 If information about the child's previous school attendance is
9541 not available or cannot be verified, the department shall require
9542 the child to meet the monthly attendance requirement for one (1)
9543 semester or until the information is obtained. The department
9544 shall use the attendance information provided by a school
9545 district to verify attendance for a child. The department shall
9546 review with the parent or caretaker relative a child's claim that

9547 he or she has a good cause for not attending school.

9548 A school district shall provide information to the
9549 department about the attendance of a child who is enrolled in a
9550 public school in the district within five (5) working days of the
9551 receipt of a written request for such information from the
9552 department. The school district shall define how many hours of
9553 attendance count as a full day and shall provide that
9554 information, upon request, to the department. In reporting
9555 attendance, the school district may add partial days' absence
9556 together to constitute a full day's absence.

9557 (e) A child who is required to attend school to meet
9558 the requirements under this subsection shall comply except when
9559 there is good cause, which shall be demonstrated by any of the
9560 following circumstances:

9561 (i) The minor parent is the caretaker of a child
9562 less than twelve (12) weeks old; or

9563 (ii) The department determines that child care
9564 services are necessary for the minor parent to attend school and
9565 there is no child care available; or

9566 (iii) The child is prohibited by the school
9567 district from attending school and an expulsion is pending. This
9568 exemption no longer applies once the teenager has been expelled;
9569 however, a teenager who has been expelled and is making
9570 satisfactory progress towards obtaining a GED equivalent shall be
9571 eligible for TANF benefits; or

9572 (iv) The child failed to attend school for one or
9573 more of the following reasons:

9574 1. Illness, injury or incapacity of the
9575 child or the minor parent's child;

9576 2. Court-required appearances or temporary
9577 incarceration;

9578 3. Medical or dental appointments for the
9579 child or minor parent's child;

9580 4. Death of a close relative;

- 9581 5. Observance of a religious holiday;
9582 6. Family emergency;
9583 7. Breakdown in transportation;
9584 8. Suspension; or
9585 9. Any other circumstance beyond the control
9586 of the child, as defined in regulations of the department.

9587 (f) Upon determination that a child has failed without
9588 good cause to attend school as required, the department shall
9589 provide written notice to the parent or caretaker relative
9590 (whoever is the primary recipient of the TANF benefits) that
9591 specifies:

9592 (i) That the family will be sanctioned in the
9593 next possible payment month because the child who is required to
9594 attend school has failed to meet the attendance requirement of
9595 this subsection;

9596 (ii) The beginning date of the sanction, and the
9597 child to whom the sanction applies;

9598 (iii) The right of the child's parents or
9599 caretaker relative (whoever is the primary recipient of the TANF
9600 benefits) to request under this subsection.

9601 The child's parent or caretaker relative (whoever is the
9602 primary recipient of the TANF benefits) may request an
9603 adjudicative proceeding in accordance with the Mississippi
9604 Administrative Procedure Law of 1999 on the department's
9605 determination that the child has not been attending school. If
9606 the child's parents or caretaker relative does not request an
9607 adjudicative proceeding under this subsection, or if, after an
9608 adjudicative proceeding has been conducted the hearing officer
9609 finds that the child without good cause has failed to meet the
9610 monthly attendance requirement, the department shall discontinue
9611 or deny TANF benefits to the child thirteen (13) years old, or
9612 older, in the next possible payment month. The department shall
9613 discontinue or deny twenty-five percent (25%) of the family grant
9614 when a child six (6) through twelve (12) years of age without

9615 good cause has failed to meet the monthly attendance requirement.

9616 Both the child and family sanction may apply when children in
9617 both age groups fail to meet the attendance requirement without
9618 good cause. A sanction applied under this subsection shall be
9619 effective for one (1) month for each month that the child failed
9620 to meet the monthly attendance requirement. In the case of a
9621 dropout, the sanction shall remain in force until the parent or
9622 caretaker relative provides written proof from the school
9623 district that the child has reenrolled and met the monthly
9624 attendance requirement for one (1) calendar month. Any month in
9625 which school is in session for at least ten (10) days during the
9626 month may be used to meet the attendance requirement under this
9627 subsection. This includes attendance at summer school. The
9628 sanction shall be removed the next possible payment month.

9629 (5) All parents or caretaker relatives shall have their
9630 dependent children receive vaccinations and booster vaccinations
9631 against those diseases specified by the State Health Officer
9632 pursuant to Section 41-23-37 in accordance with the vaccination
9633 and booster vaccination schedule prescribed by the State Health
9634 Officer for children of that age, in order for the parents or
9635 caretaker relatives to be eligible or remain eligible to receive
9636 TANF benefits. Proof of having received such vaccinations and
9637 booster vaccinations shall be given by presenting the
9638 certificates of vaccination issued by any health care provider
9639 licensed to administer vaccinations, and submitted on forms
9640 specified by the State Board of Health. If the parents without
9641 good cause do not have their dependent children receive the
9642 vaccinations and booster vaccinations as required by this
9643 subsection and they fail to comply after thirty (30) days'
9644 notice, the department shall sanction the family's TANF benefits
9645 by twenty-five percent (25%) for the next payment month and each
9646 subsequent payment month until the requirements of this
9647 subsection are met.

9648 (6) (a) If the parent or caretaker relative applying for

9649 TANF assistance is an employable person, as determined by the
9650 Department of Human Services, the person shall be required to
9651 engage in an allowable work activity once the department
9652 determines the parent or caretaker relative is ready to engage in
9653 work, or once the parent or caretaker relative has received TANF
9654 assistance under the program for twenty-four (24) months, whether
9655 or not consecutive, whichever is earlier. No TANF benefits shall
9656 be given to any person to whom this section applies who fails
9657 without good cause to comply with the Employability Development
9658 Plan prepared by the department for the person, or who has
9659 refused to accept a referral or offer of employment, training or
9660 education in which he or she is able to engage, subject to the
9661 penalties prescribed in subsection (6)(d). A person shall be
9662 deemed to have refused to accept a referral or offer of
9663 employment, training or education if he or she:

9664 (i) Willfully fails to report for an interview
9665 with respect to employment when requested to do so by the
9666 department; or

9667 (ii) Willfully fails to report to the department
9668 the result of a referral to employment; or

9669 (iii) Willfully fails to report for allowable
9670 work activities as prescribed in subsection (6)(c).

9671 (b) The Department of Human Services shall operate a
9672 statewide work program for TANF recipients to provide work
9673 activities and supportive services to enable families to become
9674 self-sufficient and improve their competitive position in the
9675 work force in accordance with the requirements of the federal
9676 Personal Responsibility and Work Opportunity Reconciliation Act
9677 of 1996 (Public Law 104-193), as amended, and the regulations
9678 promulgated thereunder. All adults who are not specifically
9679 exempt shall be referred by the department for allowable work
9680 activities. An adult may be exempt from the mandatory work
9681 activity requirement for the following reasons:

9682 (i) Incapacity;

9683 (ii) Temporary illness or injury, verified by
9684 physician's certificate;

9685 (iii) Is in the third trimester of pregnancy,
9686 verified by physician's certificate;

9687 (iv) Caretaker of a child under twelve (12)
9688 months, for not more than twelve (12) months of the sixty-month
9689 maximum benefit period;

9690 (v) Caretaker of an ill or incapacitated person,
9691 as verified by physician's certificate;

9692 (vi) Age, if over sixty (60) or under eighteen
9693 (18) years of age;

9694 (vii) Receiving treatment for substance abuse, if
9695 the person is in compliance with the substance abuse treatment
9696 plan;

9697 (viii) In a two-parent family, the caretaker of a
9698 severely disabled child, as verified by a physician's
9699 certificate; or

9700 (ix) History of having been a victim of domestic
9701 violence, which has been reported as required by state law and is
9702 substantiated by police reports or court records, and being at
9703 risk of further domestic violence, shall be exempt for a period
9704 as deemed necessary by the department but not to exceed a total
9705 of twelve (12) months, which need not be consecutive, in the
9706 sixty-month maximum benefit period. For the purposes of this
9707 paragraph (ix), "domestic violence" means that an individual has
9708 been subjected to:

9709 1. Physical acts that resulted in, or
9710 threatened to result in, physical injury to the individual;

9711 2. Sexual abuse;

9712 3. Sexual activity involving a dependent
9713 child;

9714 4. Being forced as the caretaker relative of
9715 a dependent child to engage in nonconsensual sexual acts or
9716 activities;

9717 5. Threats of, or attempts at, physical or
9718 sexual abuse;

9719 6. Mental abuse; or

9720 7. Neglect or deprivation of medical care.

9721 (c) For all families, all adults who are not
9722 specifically exempt shall be required to participate in work
9723 activities for at least the minimum average number of hours per
9724 week specified by federal law or regulation, not fewer than
9725 twenty (20) hours per week (thirty-five (35) hours per week for
9726 two-parent families) of which are attributable to the following
9727 allowable work activities:

9728 (i) Unsubsidized employment;

9729 (ii) Subsidized private employment;

9730 (iii) Subsidized public employment;

9731 (iv) Work experience (including work associated
9732 with the refurbishing of publicly assisted housing), if
9733 sufficient private employment is not available;

9734 (v) On-the-job training;

9735 (vi) Job search and job readiness assistance
9736 consistent with federal TANF regulations;

9737 (vii) Community service programs;

9738 (viii) Vocational educational training (not to
9739 exceed twelve (12) months with respect to any individual);

9740 (ix) The provision of child care services to an
9741 individual who is participating in a community service program;

9742 (x) Satisfactory attendance at high school or in
9743 a course of study leading to a high school equivalency
9744 certificate, for heads of household under age twenty (20) who
9745 have not completed high school or received such certificate;

9746 (xi) Education directly related to employment,
9747 for heads of household under age twenty (20) who have not
9748 completed high school or received such equivalency certificate.

9749 The following are allowable work activities which may be
9750 attributable to hours in excess of the minimum specified above:

9751 (i) Job skills training directly related to
9752 employment;

9753 (ii) Education directly related to employment for
9754 individuals who have not completed high school or received a high
9755 school equivalency certificate;

9756 (iii) Satisfactory attendance at high school or
9757 in a course of study leading to a high school equivalency, for
9758 individuals who have not completed high school or received such
9759 equivalency certificate;

9760 (iv) Job search and job readiness assistance
9761 consistent with federal TANF regulations.

9762 (d) If any adult or caretaker relative refuses to
9763 participate in allowable work activity as required under this
9764 subsection (6), the following full family TANF benefit penalty
9765 will apply, subject to due process to include notification,
9766 conciliation and a hearing if requested by the recipient:

9767 (i) For the first violation, the department shall
9768 terminate the TANF assistance otherwise payable to the family for
9769 a two-month period or until the person has complied with the
9770 required work activity, whichever is longer;

9771 (ii) For the second violation, the department
9772 shall terminate the TANF assistance otherwise payable to the
9773 family for a six-month period or until the person has complied
9774 with the required work activity, whichever is longer;

9775 (iii) For the third violation, the department
9776 shall terminate the TANF assistance otherwise payable to the
9777 family for a twelve-month period or until the person has complied
9778 with the required work activity, whichever is longer;

9779 (iv) For the fourth violation, the person shall
9780 be permanently disqualified.

9781 For a two-parent family, unless prohibited by state or
9782 federal law, Medicaid assistance shall be terminated only for the
9783 person whose failure to participate in allowable work activity
9784 caused the family's TANF assistance to be sanctioned under this

9785 subsection (6)(d), unless an individual is pregnant, but shall
9786 not be terminated for any other person in the family who is
9787 meeting that person's applicable work requirement or who is not
9788 required to work. Minor children shall continue to be eligible
9789 for Medicaid benefits regardless of the disqualification of their
9790 parent or caretaker relative for TANF assistance under this
9791 subsection (6), unless prohibited by state or federal law.

9792 (e) Any person enrolled in a two-year or four-year
9793 college program who meets the eligibility requirements to receive
9794 TANF benefits, and who is meeting the applicable work
9795 requirements and all other applicable requirements of the TANF
9796 program, shall continue to be eligible for TANF benefits while
9797 enrolled in the college program for as long as the person meets
9798 the requirements of the TANF program, unless prohibited by
9799 federal law.

9800 (f) No adult in a work activity required under this
9801 subsection (6) shall be employed or assigned (i) when any other
9802 individual is on layoff from the same or any substantially
9803 equivalent job within six (6) months before the date of the TANF
9804 recipient's employment or assignment; or (ii) if the employer has
9805 terminated the employment of any regular employee or otherwise
9806 caused an involuntary reduction of its work force in order to
9807 fill the vacancy so created with an adult receiving TANF
9808 assistance. The Mississippi Employment Security Commission,
9809 established under Section 71-5-101, shall appoint one or more
9810 impartial hearing officers to hear and decide claims by employees
9811 of violations of this paragraph (f). The hearing officer shall
9812 hear all the evidence with respect to any claim made hereunder
9813 and such additional evidence as he may require and shall make a
9814 determination and the reason therefor. The claimant shall be
9815 promptly notified of the decision of the hearing officer and the
9816 reason therefor. Within ten (10) days after the decision of the
9817 hearing officer has become final, any party aggrieved thereby may
9818 secure judicial review thereof by commencing an action, in the

9819 circuit court of the county in which the claimant resides,
9820 against the commission for the review of such decision, in which
9821 action any other party to the proceeding before the hearing
9822 officer shall be made a defendant. Any such appeal shall be on
9823 the record which shall be certified to the court by the
9824 commission in the manner provided in Section 71-5-531, and the
9825 jurisdiction of the court shall be confined to questions of law
9826 which shall render its decision as provided in that section.

9827 (7) The Department of Human Services may provide child care
9828 for eligible participants who require such care so that they may
9829 accept employment or remain employed. The department may also
9830 provide child care for those participating in the TANF program
9831 when it is determined that they are satisfactorily involved in
9832 education, training or other allowable work activities. The
9833 department may contract with Head Start agencies to provide child
9834 care services to TANF recipients. The department may also
9835 arrange for child care by use of contract or vouchers, provide
9836 vouchers in advance to a caretaker relative, reimburse a child
9837 care provider, or use any other arrangement deemed appropriate by
9838 the department, and may establish different reimbursement rates
9839 for child care services depending on the category of the facility
9840 or home. Any center-based or group home child care facility
9841 under this paragraph shall be licensed by the State Department of
9842 Health pursuant to law. When child care is being provided in the
9843 child's own home, in the home of a relative of the child, or in
9844 any other unlicensed setting, the provision of such child care
9845 may be monitored on a random basis by the Department of Human
9846 services or the State Department of Health. Transitional child
9847 care assistance may be continued if it is necessary for parents
9848 to maintain employment once support has ended, unless prohibited
9849 under state or federal law. Transitional child care assistance
9850 may be provided for up to twenty-four (24) months after the last
9851 month during which the family was eligible for TANF assistance,
9852 if federal funds are available for such child care assistance.

9853 (8) The Department of Human Services may provide
9854 transportation or provide reasonable reimbursement for
9855 transportation expenses that are necessary for individuals to be
9856 able to participate in allowable work activity under the TANF
9857 program.

9858 (9) Medicaid assistance shall be provided to a family of
9859 TANF program participants for up to twenty-four (24) consecutive
9860 calendar months following the month in which the participating
9861 family would be ineligible for TANF benefits because of increased
9862 income, expiration of earned income disregards, or increased
9863 hours of employment of the caretaker relative; however, Medicaid
9864 assistance for more than twelve (12) months may be provided only
9865 if a federal waiver is obtained to provide such assistance for
9866 more than twelve (12) months and federal and state funds are
9867 available to provide such assistance.

9868 (10) The department shall require applicants for and
9869 recipients of public assistance from the department to sign a
9870 personal responsibility contract that will require the applicant
9871 or recipient to acknowledge his or her responsibilities to the
9872 state.

9873 (11) The department shall enter into an agreement with the
9874 State Personnel Board and other state agencies that will allow
9875 those TANF participants who qualify for vacant jobs within state
9876 agencies to be placed in state jobs. State agencies
9877 participating in the TANF work program shall receive any and all
9878 benefits received by employers in the private sector for hiring
9879 TANF recipients. This subsection (11) shall be effective only if
9880 the state obtains any necessary federal waiver or approval and if
9881 federal funds are available therefor.

9882 (12) No new TANF program requirement or restriction
9883 affecting a person's eligibility for TANF assistance, or
9884 allowable work activity, which is not mandated by federal law or
9885 regulation may be implemented by the Department of Human Services
9886 after the effective date of this act, unless such is specifically

9887 authorized by an amendment to this section by the Legislature.

9888 SECTION 205. Section 43-19-57, Mississippi Code of 1972, is
9889 amended as follows:

9890 43-19-57. (1) Any administrative subpoena issued by the
9891 Department of Human Services pursuant to the provisions of Laws,
9892 1997, Chapter 588, shall be directed to the appropriate party or
9893 entity and signed by the Director of the Department of Human
9894 Services or his designee.

9895 (2) A person may have judicial review of the issuance of an
9896 administrative subpoena in accordance with the Mississippi
9897 Administrative Procedure Law of 1999.

9898 SECTION 206. Section 43-19-58, Mississippi Code of 1972, is
9899 amended as follows:

9900 43-19-58. (1) Persons wishing to contest the imposition of
9901 an administrative civil penalty under the provisions of Laws,
9902 1997, Chapter 588, shall be entitled to an adjudicative
9903 proceeding in accordance with the Mississippi Administrative
9904 Procedure Law of 1999 before the Director of the Department of
9905 Human Services or his designee by so requesting within twenty
9906 (20) days after receiving notice of the imposition of the
9907 administratively imposed civil penalty. The request shall
9908 identify the civil penalty contested and legibly state the
9909 contestant's name, mailing address and home and daytime phone
9910 numbers. The date, time and place for the hearing shall be made
9911 as convenient as possible for the contestant, who shall receive
9912 notice thereof not less than seven (7) days before the hearing.
9913 A hearing on whether to impose a civil penalty and to consider
9914 circumstances in mitigation shall be held on the time and the
9915 place specified in the notice. * * *

9916 (2) After the adjudicative proceeding, the director or his
9917 designee shall issue his order, which shall be subject to
9918 judicial review in accordance with the Mississippi Administrative
9919 Procedure Law of 1999.

9920 (3) The director or his designee may enforce the order

9921 assessing the penalty in accordance with the Mississippi
9922 Administrative Procedure Law of 1999.

9923 SECTION 207. Section 43-20-14, Mississippi Code of 1972, is
9924 amended as follows:

9925 43-20-14. (1) The licensing agency may deny a license or
9926 refuse to renew a license for any of the reasons set forth in
9927 subsection (3) of this section.

9928 (2) Before the licensing agency may deny or refuse to
9929 renew, any applicant affected by such decision of the licensing
9930 agency shall be entitled to an adjudicative proceeding in
9931 accordance with the Mississippi Administrative Procedure Law of
9932 1999 in which the applicant may show cause why the license should
9933 not be denied or should be renewed.

9934 (3) The licensing agency may suspend, revoke or restrict
9935 the license of any facility where the licensee or applicant for
9936 license has been guilty of conduct which has endangered or is
9937 likely to endanger the health or safety of the children entrusted
9938 to or cared for by such facility. Such conduct shall be defined
9939 as:

9940 (a) Obtaining a license by means of fraud,
9941 misrepresentation or concealment of material facts;

9942 (b) Being convicted of a crime in any court of the
9943 State of Mississippi or any federal court if the acts for which
9944 he is convicted are found by the licensing agency to have a
9945 direct and detrimental effect on the children entrusted to or
9946 cared for by such licensee;

9947 (c) Violating any of the regulations governing the
9948 licensing and regulation of child care facilities promulgated by
9949 the licensing agency; and

9950 (d) Any conduct, or failure to act, which threatens
9951 the health, safety or well-being of children at the facility.

9952 (4) Before the licensing agency may suspend, revoke or
9953 restrict the license of any facility, any licensee affected by
9954 such decision of the licensing agency shall be entitled to an

9955 adjudicative proceeding in accordance with the Mississippi
9956 Administrative Procedure Law of 1999 in which the licensee may
9957 show cause why the license should not be suspended, revoked or
9958 restricted.

9959 (5) Any licensee who disagrees with or is aggrieved by a
9960 decision of the Mississippi State Department of Health in regard
9961 to the suspension, revocation or restriction of such license, may
9962 of right have judicial review thereof in accordance with the
9963 Mississippi Administrative Procedure Law of 1999.

9964 SECTION 208. Section 45-1-21, Mississippi Code of 1972, is
9965 amended as follows:

9966 45-1-21. The Mississippi Department of Public Safety being
9967 required by law to keep various records and perform various
9968 services and being authorized to furnish certain records and
9969 services, said department, by direction of the Commissioner of
9970 Public Safety, shall establish and collect for such services a
9971 proper fee, commensurate with the service rendered and the cost
9972 of such service for the furnishing of any record or abstract
9973 thereof in the Department of Public Safety now or which may
9974 hereafter be required by law to be kept by said department, any
9975 photograph or photo copy or any report of any kind authorized by
9976 law, including services for polygraph tests and reports thereof.

9977 No records shall be furnished by the Mississippi Department
9978 of Public Safety which are classified as confidential by law.
9979 All fees collected under this section shall be paid into the
9980 General Fund of the State Treasury in accordance with the
9981 provisions of Section 45-1-23(2).

9982 Provided, however, that any amount of said fee set in excess
9983 of those fees set in the schedule of fees on file with the
9984 Secretary of State under the Mississippi Administrative Procedure
9985 Law of 1999 as of November 1, 1990, shall be deposited by the
9986 State Treasurer to the credit of a special fund hereby created in
9987 the State Treasury and designated the Department of Public Safety
9988 Administrative Fund. Monies deposited in such fund shall be

9989 expended by the Department of Public Safety, as authorized and
9990 appropriated by the Legislature, to defray the expenses of the
9991 department. Any revenue in the fund which is not encumbered at
9992 the end of the fiscal year shall lapse to the State General Fund.

9993 SECTION 209. Section 45-6-11, Mississippi Code of 1972, is
9994 amended as follows:

9995 45-6-11. (1) Law enforcement officers already serving
9996 under permanent appointment on July 1, 1981 and personnel of the
9997 division of community services under Section 47-7-9, Mississippi
9998 Code of 1972, serving on July 1, 1994, shall not be required to
9999 meet any requirement of subsections (3) and (4) of this section
10000 as a condition of continued employment; nor shall failure of any
10001 such law enforcement officer to fulfill such requirements make
10002 that person ineligible for any promotional examination for which
10003 that person is otherwise eligible. Provided, however, if any law
10004 enforcement officer certified under the provisions of this
10005 chapter leaves his employment as such and does not become
10006 employed as a law enforcement officer within two (2) years from
10007 the date of termination of his prior employment, he shall be
10008 required to comply with board policy as to rehiring standards in
10009 order to be employed as a law enforcement officer; except, that,
10010 if any law enforcement officer certified under this chapter
10011 leaves his employment as such to serve as a sheriff, he may be
10012 employed as a law enforcement officer after he has completed his
10013 service as a sheriff without being required to comply with board
10014 policy as to rehiring standards. Part-time law enforcement
10015 officers serving on or before July 1, 1998, shall have until July
10016 1, 2001, to obtain certification as a part-time officer.

10017 (2) Any person who has twenty (20) years of law enforcement
10018 experience and who is eligible to be certified under this section
10019 shall be eligible for recertification after leaving law
10020 enforcement on the same basis as someone who has taken the basic
10021 training course. Application to the board to qualify under this
10022 subsection shall be made no later than June 30, 1993.

10023 (3) (a) No person shall be appointed or employed as a law
10024 enforcement officer or a part-time law enforcement officer unless
10025 that person has been certified as being qualified under the
10026 provisions of subsection (4) of this section.

10027 (b) No person shall be appointed or employed as a law
10028 enforcement trainee by any law enforcement unit for a period to
10029 exceed two (2) years. The prohibition against the appointment or
10030 employment of a law enforcement trainee for a period not to
10031 exceed two (2) years may not be nullified by terminating the
10032 appointment or employment of such a person before the expiration
10033 of the time period and then rehiring the person for another
10034 period. Any person, who, due to illness or other events beyond
10035 his control, could not attend the required school or training as
10036 scheduled, may serve with full pay and benefits in such a
10037 capacity until he can attend the required school or training.

10038 (c) No person shall serve as a law enforcement officer
10039 in any full-time, part-time, reserve or auxiliary capacity during
10040 a period when that person's certification has been suspended,
10041 cancelled or recalled pursuant to the provisions of this chapter.

10042 (4) In addition to the requirements of subsections (3), (7)
10043 and (8) of this section, the board, by rules and regulations
10044 consistent with other provisions of law, shall fix other
10045 qualifications for the employment of law enforcement officers,
10046 including minimum age, education, physical and mental standards,
10047 citizenship, good moral character, experience and such other
10048 matters as relate to the competence and reliability of persons to
10049 assume and discharge the responsibilities of law enforcement
10050 officers, and the board shall prescribe the means for presenting
10051 evidence of fulfillment of these requirements. Additionally, the
10052 board shall fix qualifications for the appointment or employment
10053 of part-time law enforcement officers to essentially the same
10054 standards and requirements as law enforcement officers. The
10055 board shall develop and implement a part-time law enforcement
10056 officer training program that meets the same performance

10057 objectives and has essentially the same or similar content as the
10058 programs approved by the board for full-time law enforcement
10059 officers.

10060 (5) Any elected sheriff, constable, deputy or chief of
10061 police may apply for certification. Such certification shall be
10062 granted at the request of the elected official after providing
10063 evidence of satisfaction of the requirements of subsections (3)
10064 and (4) of this section. Certification granted to such elected
10065 officials shall be granted under the same standards and
10066 conditions as established by law enforcement officers and shall
10067 be subject to recall as in subsection (7) of this section.

10068 (6) The board shall issue a certificate evidencing
10069 satisfaction of the requirements of subsections (3) and (4) of
10070 this section to any applicant who presents such evidence as may
10071 be required by its rules and regulations of satisfactory
10072 completion of a program or course of instruction in another
10073 jurisdiction equivalent in content and quality to that required
10074 by the board for approved law enforcement officer education and
10075 training programs in this state, and has satisfactorily passed
10076 any and all diagnostic testing and evaluation as required by the
10077 board to ensure competency.

10078 (7) Professional certificates remain the property of the
10079 board, and the board reserves the right to either reprimand the
10080 holder of a certificate, suspend a certificate upon conditions
10081 imposed by the board, or cancel and recall any certificate when:

10082 (a) The certificate was issued by administrative
10083 error;

10084 (b) The certificate was obtained through
10085 misrepresentation or fraud;

10086 (c) The holder has been convicted of any crime
10087 involving moral turpitude;

10088 (d) The holder has been convicted of a felony; or

10089 (e) Other due cause as determined by the board.

10090 (8) When the board believes there is a reasonable basis for

10091 either the reprimand, suspension, cancellation of, or recalling
10092 the certification of a law enforcement officer or a part-time law
10093 enforcement officer, notice and opportunity for an adjudicative
10094 proceeding in accordance with the Mississippi Administrative
10095 Procedure Law of 1999 shall be provided * * * prior to such
10096 reprimand, suspension or revocation.

10097 (9) Any full- or part-time law enforcement officer
10098 aggrieved by the findings and order of the board may seek
10099 judicial review thereof in accordance with the Mississippi
10100 Administrative Procedure Law of 1999. * * *

10101 (10) Any full- or part-time law enforcement officer whose
10102 certification has been cancelled pursuant to this chapter may
10103 reapply for certification, but not sooner than two (2) years
10104 after the date on which the order of the board cancelling such
10105 certification becomes final.

10106 SECTION 210. Section 45-9-101, Mississippi Code of 1972, is
10107 amended as follows:

10108 45-9-101. (1) (a) The Department of Public Safety is
10109 authorized to issue licenses to carry concealed pistols or
10110 revolvers to persons qualified as provided in this section. Such
10111 licenses shall be valid throughout the state for a period of four
10112 (4) years from the date of issuance. Any person possessing a
10113 valid license issued pursuant to this section may carry a
10114 concealed pistol or concealed revolver.

10115 (b) The licensee must carry the license, together with
10116 valid identification, at all times in which the licensee is
10117 carrying a concealed pistol or revolver and must display both the
10118 license and proper identification upon demand by a law
10119 enforcement officer. A violation of the provisions of this
10120 paragraph (b) shall constitute a noncriminal violation with a
10121 penalty of Twenty-five Dollars (\$25.00) and shall be enforceable
10122 by summons.

10123 (2) The Department of Public Safety shall issue a license
10124 if the applicant:

10125 (a) Is a resident of the state and has been a resident
10126 for twelve (12) months or longer immediately preceding the filing
10127 of the application;

10128 (b) Is twenty-one (21) years of age or older;

10129 (c) Does not suffer from a physical infirmity which
10130 prevents the safe handling of a pistol or revolver;

10131 (d) Is not ineligible to possess a firearm by virtue
10132 of having been convicted of a felony in a court of this state, of
10133 any other state, or of the United States without having been
10134 pardoned for same;

10135 (e) Does not chronically or habitually abuse
10136 controlled substances to the extent that his normal faculties are
10137 impaired. It shall be presumed that an applicant chronically and
10138 habitually uses controlled substances to the extent that his
10139 faculties are impaired if the applicant has been voluntarily or
10140 involuntarily committed to a treatment facility for the abuse of
10141 a controlled substance or been found guilty of a crime under the
10142 provisions of the Uniform Controlled Substances Law or similar
10143 laws of any other state or the United States relating to
10144 controlled substances within a three-year period immediately
10145 preceding the date on which the application is submitted;

10146 (f) Does not chronically and habitually use alcoholic
10147 beverages to the extent that his normal faculties are impaired.
10148 It shall be presumed that an applicant chronically and habitually
10149 uses alcoholic beverages to the extent that his normal faculties
10150 are impaired if the applicant has been voluntarily or
10151 involuntarily committed as an alcoholic to a treatment facility
10152 or has been convicted of two (2) or more offenses related to the
10153 use of alcohol under the laws of this state or similar laws of
10154 any other state or the United States within the three-year period
10155 immediately preceding the date on which the application is
10156 submitted;

10157 (g) Desires a legal means to carry a concealed pistol
10158 or revolver to defend himself;

10159 (h) Has not been adjudicated mentally incompetent, or
10160 has waited five (5) years from the date of his restoration to
10161 capacity by court order;

10162 (i) Has not been voluntarily or involuntarily
10163 committed to a mental institution or mental health treatment
10164 facility unless he possesses a certificate from a psychiatrist
10165 licensed in this state that he has not suffered from disability
10166 for a period of five (5) years;

10167 (j) Has not had adjudication of guilt withheld or
10168 imposition of sentence suspended on any felony unless three (3)
10169 years have elapsed since probation or any other conditions set by
10170 the court have been fulfilled; and

10171 (k) Is not a fugitive from justice.

10172 (3) The Department of Public Safety may deny a license if
10173 the applicant has been found guilty of one or more crimes of
10174 violence constituting a misdemeanor unless three (3) years have
10175 elapsed since probation or any other conditions set by the court
10176 have been fulfilled or expunction has occurred prior to the date
10177 on which the application is submitted, or may revoke a license if
10178 the licensee has been found guilty of one or more crimes of
10179 violence within the preceding three (3) years. The department
10180 shall, upon notification by a law enforcement agency or a court
10181 and subsequent written verification, suspend a license or the
10182 processing of an application for a license if the licensee or
10183 applicant is arrested or formally charged with a crime which
10184 would disqualify such person from having a license under this
10185 section, until final disposition of the case. The provisions of
10186 subsection (7) of this section shall apply to any suspension or
10187 revocation of a license pursuant to the provisions of this
10188 section.

10189 (4) The application shall be completed, under oath, on a
10190 form promulgated by the Department of Public Safety and shall
10191 include only:

10192 (a) The name, address, place and date of birth, race,

10193 sex and occupation of the applicant;

10194 (b) The driver's license number or Social Security
10195 number of applicant;

10196 (c) Any previous address of the applicant for the two
10197 (2) years preceding the date of the application;

10198 (d) A statement that the applicant is in compliance
10199 with criteria contained within subsections (2) and (3) of this
10200 section;

10201 (e) A statement that the applicant has been furnished
10202 a copy of this section and is knowledgeable of its provisions;

10203 (f) A conspicuous warning that the application is
10204 executed under oath and that a knowingly false answer to any
10205 question, or the knowing submission of any false document by the
10206 applicant, subjects the applicant to criminal prosecution; and

10207 (g) A statement that the applicant desires a legal
10208 means to carry a concealed pistol or revolver to defend himself.

10209 (5) The applicant shall submit only the following to the
10210 Department of Public Safety:

10211 (a) A completed application as described in subsection
10212 (4) of this section;

10213 (b) A full-face photograph of the applicant;

10214 (c) A nonrefundable license fee of One Hundred Dollars
10215 (\$100.00). Costs for processing the set of fingerprints as
10216 required in paragraph (c) of this subsection shall be borne by
10217 the applicant. Honorably retired law enforcement officers shall
10218 be exempt from the payment of the license fee;

10219 (d) A full set of fingerprints of the applicant
10220 administered by the Department of Public Safety; and

10221 (e) A waiver authorizing the Department of Public
10222 Safety access to any records concerning commitments of the
10223 applicant to any of the treatment facilities or institutions
10224 referred to in subsection (2) and permitting access to all the
10225 applicant's criminal records.

10226 (6) (a) The Department of Public Safety, upon receipt of

10227 the items listed in subsection (5) of this section, shall forward
10228 the full set of fingerprints of the applicant to the appropriate
10229 agencies for state and federal processing.

10230 (b) The Department of Public Safety shall forward a
10231 copy of the applicant's application to the sheriff of the
10232 applicant's county of residence and, if applicable, the police
10233 chief of the applicant's municipality of residence. The sheriff
10234 of the applicant's county of residence and, if applicable, the
10235 police chief of the applicant's municipality of residence may, at
10236 his discretion, participate in the process by submitting a
10237 voluntary report to the Department of Public Safety containing
10238 any readily discoverable prior information that he feels may be
10239 pertinent to the licensing of any applicant. The reporting shall
10240 be made within thirty (30) days after the date he receives the
10241 copy of the application. Upon receipt of a response from a
10242 sheriff or police chief, such sheriff or police chief shall be
10243 reimbursed at a rate set by the department.

10244 (c) The Department of Public Safety shall, within one
10245 hundred twenty (120) days after the date of receipt of the items
10246 listed in subsection (5) of this section:

10247 (i) Issue the license; or
10248 (ii) Deny the application based solely on the
10249 ground that the applicant fails to qualify under the criteria
10250 listed in subsections (2) and (3) of this section. If the
10251 Department of Public Safety denies the application, it shall
10252 notify the applicant in writing, stating the ground for denial,
10253 and the denial shall be subject to the appeal process set forth
10254 in subsection (7).

10255 (d) In the event a legible set of fingerprints, as
10256 determined by the Department of Public Safety and the Federal
10257 Bureau of Investigation, cannot be obtained after a minimum of
10258 three (3) attempts, the Department of Public Safety shall
10259 determine eligibility based upon a name check by the Mississippi
10260 Highway Safety Patrol and a Federal Bureau of Investigation name

10261 check conducted by the Mississippi Highway Safety Patrol at the
10262 request of the Department of Public Safety.

10263 (7) (a) If the Department of Public Safety denies the
10264 issuance of a license, or suspends or revokes a license, the
10265 party aggrieved may appeal such denial, suspension or revocation
10266 to the Commissioner of Public Safety, or his authorized agent,
10267 within thirty (30) days after the aggrieved party receives
10268 written notice of such denial, suspension or revocation. * * *
10269 Such review shall be conducted pursuant to such reasonable rules
10270 and regulations as the Commissioner of Public Safety may adopt
10271 not inconsistent with the Mississippi Administrative Procedure
10272 Law of 1999.

10273 (b) Judicial review of the revocation, suspension or
10274 denial of issuance is sustained by the Commissioner of Public
10275 Safety * * *. * * * No such party shall be allowed to carry a
10276 concealed pistol or revolver pursuant to the provisions of this
10277 section while any such proceeding for judicial review is pending.

10278 (8) The Department of Public Safety shall maintain an
10279 automated listing of license holders and such information shall
10280 be available on-line, upon request, at all times, to all law
10281 enforcement agencies through the Mississippi Crime Information
10282 Center. However, the records of the department relating to
10283 applications for licenses to carry concealed pistols or revolvers
10284 and records relating to license holders shall be exempt from the
10285 provisions of the Mississippi Public Records Act of 1983 for a
10286 period of forty-five (45) days from the date of the issuance of
10287 the license or the final denial of an application.

10288 (9) Within thirty (30) days after the changing of a
10289 permanent address, or within thirty (30) days after having a
10290 license lost or destroyed, the licensee shall notify the
10291 Department of Public Safety in writing of such change or loss.
10292 Failure to notify the Department of Public Safety pursuant to the
10293 provisions of this subsection shall constitute a noncriminal
10294 violation with a penalty of Twenty-five Dollars (\$25.00) and

10295 shall be enforceable by a summons.

10296 (10) In the event that a concealed pistol or revolver
10297 license is lost or destroyed, the person to whom the license was
10298 issued shall comply with the provisions of subsection (9) of this
10299 section and may obtain a duplicate, or substitute thereof, upon
10300 payment of Fifteen Dollars (\$15.00) to the Department of Public
10301 Safety, and furnishing a notarized statement to the department
10302 that such license has been lost or destroyed.

10303 (11) A license issued under this section shall be revoked
10304 if the licensee becomes ineligible under the criteria set forth
10305 in subsection (2) of this section.

10306 (12) No less than ninety (90) days prior to the expiration
10307 date of the license, the Department of Public Safety shall mail
10308 to each licensee a written notice of the expiration and a renewal
10309 form prescribed by the department. The licensee must renew his
10310 license on or before the expiration date by filing with the
10311 department the renewal form, a notarized affidavit stating that
10312 the licensee remains qualified pursuant to the criteria specified
10313 in subsections (2) and (3) of this section, and a renewal fee of
10314 Fifty Dollars (\$50.00); provided, however, that honorably retired
10315 law enforcement officers shall be exempt from this renewal fee.
10316 The license shall be renewed upon receipt of the completed
10317 renewal application and appropriate payment of fees.
10318 Additionally, a licensee who fails to file a renewal application
10319 on or before its expiration date must renew his license by paying
10320 a late fee of Fifteen Dollars (\$15.00). No license shall be
10321 renewed six (6) months or more after its expiration date, and
10322 such license shall be deemed to be permanently expired. A person
10323 whose license has been permanently expired may reapply for
10324 licensure; however, an application for licensure and fees
10325 pursuant to subsection (5) of this section must be submitted, and
10326 a background investigation shall be conducted pursuant to the
10327 provisions of this section.

10328 (13) No license issued pursuant to this section shall

10329 authorize any person to carry a concealed pistol or revolver into
10330 any place of nuisance as defined in Section 95-3-1, Mississippi
10331 Code of 1972; any police, sheriff or highway patrol station; any
10332 detention facility, prison or jail; any courthouse; any
10333 courtroom, except that nothing in this section shall preclude a
10334 judge from carrying a concealed weapon or determining who will
10335 carry a concealed weapon in his courtroom; any polling place; any
10336 meeting place of the governing body of any governmental entity;
10337 any meeting of the Legislature or a committee thereof; any public
10338 park unless for the purpose of participating in any authorized
10339 firearms-related activity; any school, college or professional
10340 athletic event not related to firearms; any portion of an
10341 establishment, licensed to dispense alcoholic beverages for
10342 consumption on the premises, that is primarily devoted to
10343 dispensing alcoholic beverages; any portion of an establishment
10344 in which beer or light wine is consumed on the premises, that is
10345 primarily devoted to such purpose; any elementary or secondary
10346 school facility; any junior college, community college, college
10347 or university facility unless for the purpose of participating in
10348 any authorized firearms-related activity; inside the passenger
10349 terminal of any airport, except that no person shall be
10350 prohibited from carrying any legal firearm into the terminal if
10351 the firearm is encased for shipment, for purposes of checking
10352 such firearm as baggage to be lawfully transported on any
10353 aircraft; any church or other place of worship; or any place
10354 where the carrying of firearms is prohibited by federal law. In
10355 addition to the places enumerated in this subsection, the
10356 carrying of a concealed pistol or revolver may be disallowed in
10357 any place in the discretion of the person or entity exercising
10358 control over the physical location of such place by the placing
10359 of a written notice clearly readable at a distance of not less
10360 than ten (10) feet that the "carrying of a pistol or revolver is
10361 prohibited." No license issued pursuant to this section shall
10362 authorize the participants in a parade or demonstration for which

10363 a permit is required to carry a concealed pistol or revolver.

10364 (14) A law enforcement officer as defined in Section
10365 45-6-3, chiefs of police, sheriffs and persons licensed as
10366 professional bondsmen pursuant to Chapter 39, Title 83,
10367 Mississippi Code of 1972, shall be exempt from the licensing
10368 requirements of this section.

10369 (15) Any person who knowingly submits a false answer to any
10370 question on an application for a license issued pursuant to this
10371 section, or who knowingly submits a false document when applying
10372 for a license issued pursuant to this section, shall, upon
10373 conviction, be guilty of a misdemeanor and shall be punished as
10374 provided in Section 99-19-31, Mississippi Code of 1972.

10375 (16) All fees collected by the Department of Public Safety
10376 pursuant to this section shall be deposited into a special fund
10377 hereby created in the State Treasury and shall be used for
10378 implementation and administration of this section. After the
10379 close of each fiscal year the balance in this fund shall be
10380 certified to the Legislature and then may be used by the
10381 Department of Public Safety as directed by the Legislature.

10382 (17) All funds received by a sheriff or police chief
10383 pursuant to the provisions of this section shall be deposited
10384 into the general fund of the county or municipality, as
10385 appropriate, and shall be budgeted to the sheriff's office or
10386 police department as appropriate.

10387 (18) Nothing in this section shall be construed to require
10388 or allow the registration, documentation or providing of serial
10389 numbers with regard to any firearm. Further, nothing in this
10390 section shall be construed to allow the open and unconcealed
10391 carrying of any deadly weapon as described in Section 97-37-1,
10392 Mississippi Code of 1972.

10393 (19) Any person holding a valid unrevoked and unexpired
10394 license to carry concealed pistols or revolvers issued in another
10395 state having requirements substantially similar to those of this
10396 state shall have such license recognized by this state to carry

10397 concealed pistols or revolvers, provided that the issuing state
10398 authorizes license holders from this state to carry concealed
10399 pistols or revolvers in such issuing state and the appropriate
10400 authority has communicated that fact to the Department of Public
10401 Safety.

10402 SECTION 211. Section 45-11-2, Mississippi Code of 1972, is
10403 amended as follows:

10404 45-11-2. (1) The State Fire Marshall shall establish a
10405 registry of fire damage in all instances of fires causing Ten
10406 Thousand Dollars (\$10,000.00) or more in property damage or in
10407 which any person is injured or loses his life.

10408 (2) The registry so established shall be compiled and
10409 maintained in a manner whereby data may be retrieved by subject
10410 categories, including, but not limited to, the following:

- 10411 (a) Geographic location;
- 10412 (b) Damages in monetary terms;
- 10413 (c) Insurer;
- 10414 (d) Insured; and
- 10415 (e) Tenant or resident.

10416 (3) All insurance companies doing business in this state
10417 and all public agencies shall supply such information as may be
10418 demanded by the State Fire Marshall with respect to this section.

10419 (4) The State Fire Marshall shall promulgate all rules
10420 necessary for the implementation of this section in accordance
10421 with the Mississippi Administrative Procedure Law of 1999.

10422 SECTION 212. Section 45-14-21, Mississippi Code of 1972, is
10423 amended as follows:

10424 45-14-21. (1) The agency may refuse to grant a license or
10425 registration as provided in Sections 45-14-11 and 45-14-13 to any
10426 applicant or registrant who does not possess the requirements or
10427 qualifications which the agency may prescribe in rules and
10428 regulations, or who has been refused issuance or renewal of a
10429 license, registration, permit or certificate by a licensing or
10430 registering authority of another state or the United States

10431 Nuclear Regulatory Commission, or whose license, registration,
10432 permit or certificate has been revoked, suspended or restricted
10433 by such licensing or registering authority. The agency may
10434 suspend, revoke or amend any license or registration in the event
10435 that the person to whom such license or registration was granted
10436 violates any of the rules and regulations of the agency, or
10437 ceases, or fails to have the reasonable facilities prescribed by
10438 the agency, or has a license, registration, permit or certificate
10439 revoked, suspended or restricted by a licensing or registering
10440 authority of another state, or the United States Nuclear
10441 Regulatory Commission. Provided, that before any order is
10442 entered denying an application for a license or registration or
10443 suspending, revoking, modifying or amending a license or
10444 registration previously granted, the applicant or person to whom
10445 such license or registration was granted shall be given notice
10446 and granted a hearing by the State Health Officer.

10447 (2) Whenever the agency in its opinion finds that an
10448 emergency exists requiring immediate action to protect the public
10449 health and safety, the agency may, without notice or hearing,
10450 issue an order reciting the existence of such emergency and
10451 requiring that such action be taken as is necessary to meet the
10452 emergency. Notwithstanding any provision of this chapter, such
10453 order shall be effective immediately. Any person to whom such
10454 order is directed shall comply therewith immediately, and on
10455 application to the agency shall be afforded an adjudicative
10456 proceeding in accordance with the Mississippi Administrative
10457 Procedure Law of 1999.

10458 (3) Any applicant or person to whom a license or
10459 registration was granted who shall be aggrieved by any order of
10460 the agency or its duly authorized agent denying such application
10461 or suspending, revoking or amending such license or registration,
10462 may have judicial review there of in accordance with the
10463 Mississippi Administrative Procedure Law of 1999.

10464 SECTION 213. Section 45-23-9, Mississippi Code of 1972, is

10465 amended as follows:

10466 45-23-9. (1) In accordance with the Mississippi
10467 Administrative Procedure Law of 1999, the advisory committee
10468 shall recommend the adoption of definitions, rules and
10469 regulations for the safe construction, installation, inspection,
10470 care and good practice in the operation, maintenance an repair of
10471 boilers and pressure vessels by the State Board of Health
10472 (hereinafter board).

10473 (a) The definitions, rules and regulations so
10474 formulated for new construction shall be based upon and at all
10475 times follow the generally accepted nationwide engineering
10476 standards, formulae and practices established and pertaining to
10477 boiler and pressure vessel construction and safety, and the
10478 advisory committee shall at its first meeting recommend the
10479 adoption of an existing published codification thereof known as
10480 the Boiler and Pressure Vessel Code of the American Society of
10481 Mechanical Engineers (hereinafter ASME), with the amendments,
10482 code cases and interpretations thereto made and approved by ASME,
10483 and may likewise recommend the amendments and interpretations
10484 subsequently made and published by the same authority; and when
10485 so adopted, the same shall be deemed incorporated into and to
10486 constitute a part of the whole of the definitions, rules and
10487 regulations of the committee. Amendments, code cases and
10488 interpretations to the code so adopted shall be effective
10489 immediately upon being promulgated, to the end that the
10490 definitions, rules and regulations shall at all times follow the
10491 generally accepted nationwide engineering standards.

10492 (b) The advisory committee shall recommend the
10493 adoption of rules and regulations for the inspection, care and
10494 good practice in operation, maintenance and repair of boilers and
10495 pressure vessels which were in use in this state prior to the
10496 date upon which the first rules and regulations under this
10497 chapter pertaining to existing installations become effective, or
10498 during the twelve (12) month period immediately thereafter. The

10499 rules and regulations so formulated and recommended shall be
10500 based upon and at all times follow the generally accepted
10501 nationwide engineering standards.

10502 (2) The rules and regulations and any subsequent amendments
10503 thereto adopted by the board shall, immediately following a
10504 hearing upon not less than thirty (30) days notice as hereinafter
10505 provided, be approved and published and when so promulgated shall
10506 have the force and effect of law, except that the rules applying
10507 to the construction of new boilers and pressure vessels shall not
10508 become mandatory until twelve (12) months after their
10509 promulgation by the board. Subsequent amendments to the rules
10510 and regulations adopted by the board shall be permissive
10511 immediately and shall become mandatory twelve (12) months after
10512 their promulgation.

10513 (3) Notice of the hearing shall give the time and place of
10514 the hearing and shall state the matters to be considered. Such
10515 notice shall be given to all persons directly affected by such
10516 hearing. In the event all persons directly affected are unknown,
10517 notice shall be perfected by publication in a newspaper of
10518 general circulation in the northern, central and southern supreme
10519 court districts of this state at least thirty (30) days prior to
10520 such hearing.

10521 SECTION 214. Section 45-23-25, Mississippi Code of 1972, is
10522 amended as follows:

10523 45-23-25. (1) An inspector's license may be suspended by
10524 the chief inspector, after due investigation and approval by the
10525 board, for the incompetence or untrustworthiness of the holder
10526 thereof or for willful falsification of any matter or statement
10527 contained in his application or in a report of any inspection
10528 made by him. Such license suspension shall be in accordance with
10529 the Mississippi Administrative Procedure Law of 1999.

10530 SECTION 215. Section 45-23-57, Mississippi Code of 1972, is
10531 amended as follows:

10532 45-23-57. Any person aggrieved by an order or an act of the

10533 board or the chief inspector under this chapter may appeal said
10534 action in accordance with the Mississippi Administrative
10535 Procedure Law of 1999.

10536 SECTION 216. Section 45-23-59, Mississippi Code of 1972, is
10537 amended as follows:

10538 45-23-59. Within thirty (30) days after any order or act of
10539 the board, any person aggrieved thereby is entitled to judicial
10540 review thereof in accordance with the Mississippi Administrative
10541 Procedure Law of 1999. * * *

10542 SECTION 217. Section 47-5-192, Mississippi Code of 1972, is
10543 amended as follows:

10544 47-5-192. (1) The Commissioner of Corrections may prohibit
10545 the possession by employees or officers of the Department of
10546 Corrections or any person allowed upon the premises of a
10547 correctional facility under his jurisdiction of any item, the
10548 possession of which by offenders is prohibited or regulated.

10549 (2) The commissioner may distinguish between classes of
10550 employees and visitors and may establish zones or designate areas
10551 or facilities where such regulations apply in his discretion and
10552 as necessary for security and orderly operation of prison
10553 facilities.

10554 (3) The commissioner shall promulgate rules authorized by
10555 this section in accordance with the Mississippi Administrative
10556 Procedure Law of 1999.

10557 (4) Any person who violates a duly enacted rule authorized
10558 by this section shall be guilty of a misdemeanor and shall be
10559 punished by imprisonment for not more than one (1) year or by a
10560 fine of not more than One Thousand Dollars (\$1,000.00), or both.

10561 SECTION 218. Section 49-15-15, Mississippi Code of 1972, is
10562 amended as follows:

10563 49-15-15. (1) In addition to any other powers and duties
10564 authorized by law, the commission shall have the following powers
10565 and duties regarding the regulation of seafood:

10566 (a) To exercise full jurisdiction and authority over

10567 all marine aquatic life and to regulate any matters pertaining to
10568 seafood, including cultivated seafood;

10569 (b) To adopt, promulgate, amend or repeal, after due
10570 notice and public hearing, in accordance with the Mississippi
10571 Administrative Procedure Law of 1999 and subject to the
10572 limitations in subsection (2) of this section, rules and
10573 regulations authorized under this chapter, including, but not
10574 limited to, rules and regulations necessary for the protection,
10575 conservation or propagation of all shrimp, oysters, commercial
10576 fish and crabs in the waters under the territorial jurisdiction
10577 of the State of Mississippi and for the regulation of gill net
10578 and purse seine fishermen. All public hearings under this
10579 chapter concerning the regulation of marine resources shall be
10580 held in Hancock, Harrison or Jackson counties. Each rule or
10581 regulation promulgated under this chapter shall immediately be
10582 advertised one (1) time in a newspaper or newspapers having
10583 general circulation in counties affected by that regulation. A
10584 regulation shall become effective at 6:00 a.m. on the day after
10585 its publication;

10586 (c) To regulate all seafood sanitation and processing
10587 programs. In the three (3) coastal counties, the sanitation
10588 program regulating processing plants and seafood sold in retail
10589 stores operating in conjunction with a processing plant or
10590 seafood market that primarily deals with seafood is under the
10591 exclusive authority of the commission. The commission may also
10592 inspect and regulate those areas of any seafood processing plant
10593 which process freshwater species at any site where the department
10594 inspects seafood processing plants. To effectively and
10595 efficiently implement the state seafood sanitation program, the
10596 State Health Officer and the executive director of the department
10597 shall enter into a memorandum of understanding, which at a
10598 minimum, clearly specifies the responsibilities of each agency in
10599 implementing the seafood sanitation program, as well as the
10600 sharing of information and communication and coordination between

10601 the agencies;

10602 (d) To set standards of measure;

10603 (e) To set requirements for employment of

10604 nonenforcement commission employees whose compensation shall be

10605 governed by the rules and regulations of the State Personnel

10606 Board;

10607 (f) To acquire and dispose of commission equipment and

10608 facilities;

10609 (g) To keep proper records of the commission,

10610 including an official ordinance book which contains all rules and

10611 regulations promulgated by the commission under this chapter;

10612 (h) To enter into advantageous interstate and

10613 intrastate agreements with proper officials, which directly or

10614 indirectly result in the protection, propagation and conservation

10615 of the seafood of the State of Mississippi, or continue any such

10616 agreements now in existence;

10617 (i) To arrange, negotiate or contract for the use of

10618 available federal, state and local facilities which would aid in

10619 the propagation, protection and conservation of the seafood of

10620 the State of Mississippi;

10621 (j) To authorize the operation of double rigs in the

10622 waters lying between the mainland coast and the island chain, and

10623 those rigs shall not exceed a length of twenty-five (25) feet at

10624 the cork line, and to prescribe the length at the lead line for

10625 each rig, net or try-trawl;

10626 (k) To destroy or dispose of equipment or nets which

10627 have been lawfully seized by the commission and which are not

10628 sold under Section 49-15-65;

10629 (l) To open, close and regulate fishing seasons for

10630 the taking of shrimp, oysters, fish taken for commercial purposes

10631 and crabs and set size, catching and taking regulations for all

10632 types of seafood and culling regulations for oysters, except as

10633 otherwise specifically provided by law;

10634 (m) To utilize the resources of the Gulf Coast

10635 Research Laboratory to the fullest extent possible; and

10636 (n) To develop a resource management plan to preserve
10637 our seafood resources and to ensure a safe supply of these
10638 resources.

10639 (2) The commission shall not adopt rules, regulations or
10640 ordinances pertaining to marine resources which are more
10641 stringent than federal regulations. In any case where federal
10642 laws and regulations are silent on a matter pertaining to marine
10643 resources, the laws and regulations of the State of Mississippi
10644 shall control. The commission shall review all marine resource
10645 ordinances for compliance with the no more stringent standard and
10646 revise any ordinances more stringent than this standard no later
10647 than December 31, 1992. This subsection shall not apply to
10648 rules, regulations or ordinances pertaining to the wild stock of
10649 marine fin fish.

10650 SECTION 219. Section 49-15-67, Mississippi Code of 1972, is
10651 amended as follows:

10652 49-15-67. Any person aggrieved by an order of the
10653 commission may file a written petition with the commission,
10654 setting forth the grounds of complaint and the commission shall
10655 thereupon conduct an adjudicative proceeding in accordance with
10656 the Mississippi Administrative Procedure Law of 1999. The
10657 commission's order is subject to judicial review in accordance
10658 with the Mississippi Administrative Procedure Law of 1999.

10659 SECTION 220. Section 49-17-25, Mississippi Code of 1972, is
10660 amended as follows:

10661 49-17-25. (1) Prior to the adoption, amendment or repeal
10662 of rules and regulations necessary to implement this chapter,
10663 Sections 17-17-1 through 17-17-47, Sections 21-27-201 through
10664 21-27-221, Sections 37-138-1 through 37-138-31, and all other
10665 laws administered by the department, the commission shall conduct
10666 a public hearing or hearings thereon after public notice. Such
10667 notice shall be given by publication once a week for three (3)
10668 successive weeks in a newspaper having a general circulation

10669 throughout the state. The notice shall contain a description of
10670 the proposed regulation and the time, date and place of the
10671 hearing.

10672 (2) Additionally, the adoption, amendment or repeal of any
10673 rule or regulation under this chapter, Sections 17-17-1 through
10674 17-17-47, Sections 21-27-201 through 21-27-221, Sections 37-138-1
10675 through 37-138-31 and all other laws administered by the
10676 department shall be governed by the "Mississippi Administrative
10677 Procedure Law of 1999." Any rule or regulation heretofore or
10678 hereafter adopted, amended or repealed in substantial compliance
10679 with the procedural requirements under Section 25-43-7 shall be
10680 valid. A proceeding to contest any rule or regulation on the
10681 ground of noncompliance with the procedural requirements of this
10682 section must be commenced within one (1) year from the effective
10683 date of the rule or regulation.

10684 (3) Notice of rules and regulations adopted by the
10685 commission shall be published once in a newspaper having general
10686 circulation throughout the state.

10687 SECTION 221. Section 49-17-29, Mississippi Code of 1972, is
10688 amended as follows:

10689 49-17-29. (1) (a) Except as in compliance with paragraph
10690 (b) of this subsection, it is unlawful for any person to cause
10691 pollution of the air in the state or to place or cause to be
10692 placed any wastes or other products or substances in a location
10693 where they are likely to cause pollution of the air. It is also
10694 unlawful to discharge any wastes, products or substances into the
10695 air of the state which exceed standards of performance, hazardous
10696 air pollutant standards, other emission standards set by the
10697 commission, or which reduce the quality of the air below the air
10698 quality standards or increments established by the commission or
10699 prevent attainment or maintenance of those air quality standards.
10700 Any such action is hereby declared to be a public nuisance.

10701 (b) It is unlawful for any person to build, erect,
10702 alter, replace, use or operate any equipment which will cause the

10703 issuance of air contaminants unless that person holds a permit
10704 from the Permit Board (except repairs or maintenance of equipment
10705 for which a permit has been previously issued), or unless that
10706 person is exempted from holding a permit by a regulation
10707 promulgated by the commission. Concentrated animal feeding
10708 operations may be a source or a category of sources exempted
10709 under this paragraph. However, no new or existing applications
10710 relating to swine concentrated animal feeding operations within a
10711 county shall be exempted from regulations and ordinances which
10712 have been duly passed by the county's board of supervisors and
10713 which are in force on June 1, 1998.

10714 (2) (a) Except as in compliance with paragraph (b) of this
10715 subsection, it is unlawful for any person to cause pollution of
10716 any waters of the state or to place or cause to be placed any
10717 wastes in a location where they are likely to cause pollution of
10718 any waters of the state. It is also unlawful to discharge any
10719 wastes into any waters of the state which reduce the quality of
10720 those waters below the water quality standards established by the
10721 commission; or to violate any applicable pretreatment standards
10722 or limitations, technology-based effluent limitations, toxic
10723 standards or any other limitations established by the commission.
10724 Any such action is declared to be a public nuisance.

10725 (b) It is unlawful for any person to carry on any of
10726 the following activities, unless that person holds a current
10727 permit for that activity from the Permit Board as may be required
10728 for the disposal of all wastes which are or may be discharged
10729 into the waters of the state, or unless that person is exempted
10730 from holding a permit by a regulation promulgated by the
10731 commission: (i) the construction, installation, modification or
10732 operation of any disposal system or part thereof or any extension
10733 or addition thereto, including, but not limited to, systems
10734 serving agricultural operations; (ii) the increase in volume or
10735 strength of any wastes in excess of the permissive discharges
10736 specified under any existing permit; (iii) the construction,

10737 installation or operation of any industrial, commercial or other
10738 establishment, including irrigation projects or any extension or
10739 modification thereof or addition thereto, the operation of which
10740 would cause an increase in the discharge of wastes into the
10741 waters of the state or would otherwise alter the physical,
10742 chemical or biological properties of any waters of the state in
10743 any manner not already lawfully authorized; (iv) the construction
10744 or use of any new outlet for the discharge of any wastes into the
10745 waters of the state. However, no new or existing applications
10746 relating to swine concentrated animal feeding operations within a
10747 county shall be exempted from regulations and ordinances which
10748 have been duly passed by the county's board of supervisors and
10749 which are in force on June 1, 1998.

10750 (3) (a) Except as otherwise provided in this section, the
10751 Permit Board created by Section 49-17-28 shall be the exclusive
10752 administrative body to make decisions on permit issuance,
10753 reissuance, denial, modification or revocation of air pollution
10754 control and water pollution control permits and permits required
10755 under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter
10756 17), and all other permits within the jurisdiction of the Permit
10757 Board. After consideration of alternative waste treatment
10758 technologies available to control air and water pollution and
10759 odor, including appropriate siting criteria, the commission may
10760 promulgate regulations establishing conditions, limitations and
10761 exemptions under which the Permit Board shall make these
10762 decisions. Regulations promulgated by the commission which
10763 establish exemptions as authorized under Senate Bill No. 2895,
10764 1998 Regular Session [Laws, 1998, Ch. 537], shall apply to any
10765 applicable facility in operation on the effective date of that
10766 regulation and to any applicable facility constructed or operated
10767 after the effective date of that regulation. The Permit Board
10768 may issue multiple permits for the same facility or operation
10769 simultaneously or in the sequence that it deems appropriate
10770 consistent with the commission's regulations. Except as

10771 otherwise provided in this paragraph, the Permit Board, under any
10772 conditions that the board may prescribe, may authorize the
10773 Executive Director of the Department of Environmental Quality to
10774 make decisions on permit issuance, reissuance, denial,
10775 modification or revocation. The executive director shall not be
10776 authorized to make decisions on permit issuance, reissuance,
10777 denial, modification or revocation for a commercial hazardous
10778 waste management facility or a municipal solid waste landfill or
10779 incinerator. A decision by the executive director shall be a
10780 decision of the Permit Board and shall be subject to an
10781 adjudicative proceeding and judicial review as provided in the
10782 Mississippi Administrative Procedure Law of 1999. The executive
10783 director shall report all permit decisions to the Permit Board at
10784 its next regularly scheduled meeting and those decisions shall be
10785 recorded in the minutes of the Permit Board. The decisions of
10786 the Permit Board shall be recorded in minutes of the Permit Board
10787 and shall be kept separate and apart from the minutes of the
10788 commission. The decision of the Permit Board or the executive
10789 director to issue, reissue, deny, modify or revoke permits shall
10790 not be construed to be an order or other action of the
10791 commission.

10792 (b) The Executive Director of the Department of
10793 Environmental Quality shall also be the Executive Director of the
10794 Permit Board and shall have available to him, as Executive
10795 Director of the Permit Board, all resources and personnel
10796 otherwise available to him as executive director of the
10797 department.

10798 (c) All persons required to obtain an air pollution
10799 control or water pollution control permit, a permit under the
10800 Solid Wastes Disposal Law of 1974 (Title 17, Chapter 17) or any
10801 other permit within the jurisdiction of the Permit Board shall
10802 make application for that permit with the Permit Board. The
10803 Permit Board, under any regulations as the commission may
10804 prescribe, may require the submission of those plans,

10805 specifications and other information as it deems necessary to
10806 carry out Sections 49-17-1 through 49-17-43 and Title 17, Chapter
10807 17, or to carry out the commission's regulations adopted under
10808 those sections. The Permit Board, based upon any information as
10809 it deems relevant, shall issue, reissue, deny, modify or revoke
10810 air pollution control or water pollution control permit or
10811 permits required under the Solid Wastes Disposal Law of 1974
10812 (Title 17, Chapter 17) or any other permit within the
10813 jurisdiction of the Permit Board under any conditions as it deems
10814 necessary that are consistent with the commission's regulations.

10815 The Permit Board's action of issuance, reissuance, denial,
10816 modification or revocation of a permit as recorded in its minutes
10817 shall constitute a complete decision of the board. All permits
10818 issued by the Permit Board shall remain in full force and effect
10819 until the board makes a final determination regarding any
10820 reissuance, modification, or revocation thereof. The Permit
10821 Board shall take action upon an application within one hundred
10822 eighty (180) days following its receipt in the board's principal
10823 office. No action which affects revocation of an existing permit
10824 shall take effect until the thirty (30) days mentioned in
10825 paragraph (4)(b) of this section has expired or until an
10826 adjudicative proceeding in accordance with the Mississippi
10827 Administrative Procedure Law of 1999 has been conducted.

10828 (d) The Permit Board may adopt rules of practice and
10829 procedure governing its proceedings that are consistent with the
10830 commission's regulations and are not inconsistent with the
10831 Mississippi Administrative Procedure Law of 1999. All hearings
10832 in connection with permits issued, reissued, denied, modified or
10833 revoked and all appeals from decisions of the Permit Board shall
10834 be as provided in this section.

10835 (e) Upon any conditions that are consistent with the
10836 commission's regulations and subject to those procedures for
10837 public notice and hearings as provided by law, not inconsistent
10838 with federal law and regulations, the Permit Board may issue

10839 general permits and, where appropriate, may consolidate multiple
10840 permits for the same facility or operation into a single permit.

10841 (f) The Permit Board shall not issue any permit for a
10842 new swine concentrated animal feeding operation or the expansion
10843 of an existing swine concentrated animal feeding operation before
10844 January 1, 2000, unless the department received the application
10845 for that operation's new or modified permit before February 28,
10846 1998, or except as provided in this paragraph (f). In issuing or
10847 modifying any permit for which the department received an
10848 application before February 28, 1998, the Permit Board shall
10849 apply those siting criteria adopted or used by the commission
10850 before February 28, 1998, unless federal law or regulations
10851 require more stringent criteria. The moratorium established in
10852 this paragraph shall not apply to the issuance of any permit for
10853 a new swine concentrated animal feeding operation or the
10854 expansion of an existing swine concentrated animal feeding
10855 operation that uses an animal waste management system which the
10856 applicant demonstrates to the Permit Board is innovative in
10857 significantly reducing the effects of the operation on the public
10858 health, welfare or the environment and which is approved by the
10859 Permit Board. The Permit Board shall not issue or modify more
10860 than five (5) permits under this innovative animal waste
10861 management system technology exemption to the moratorium.

10862 (4) (a) Except as required by this section, before the
10863 issuance, reissuance, denial, modification or revocation of any
10864 air pollution control or water pollution control permit, permit
10865 required under the Solid Wastes Disposal Law of 1974 (Title 17,
10866 Chapter 17) or any other permit within its jurisdiction, the
10867 Permit Board, in its discretion, may hold a public hearing or
10868 meeting to obtain comments from the public on its proposed
10869 action. Before the issuance, reissuance, denial, modification
10870 pertaining to the expansion of a facility, transfer or revocation
10871 of a permit for a commercial hazardous waste management facility
10872 or a commercial municipal solid waste landfill or incinerator,

10873 the Permit Board shall conduct a public hearing or meeting to
10874 obtain comments from the public on the proposed action. That
10875 hearing or meeting shall be informal in nature and conducted
10876 under those procedures as the Permit Board may deem appropriate
10877 consistent with the commission's regulations.

10878 (b) Within thirty (30) days after the date the Permit
10879 Board takes action upon permit issuance, reissuance, denial,
10880 modification or revocation, as recorded in the minutes of the
10881 Permit Board, any interested party aggrieved by that action may
10882 file a written request for a formal hearing before the Permit
10883 Board and is there upon entitled to an adjudicative proceeding in
10884 accordance with the Mississippi Administrative Procedure Law of
10885 1999. * * *

10886 * * *

10887 (c) Upon conclusion of the adjudicative proceeding,
10888 the Permit Board shall enter in its minutes the board's decision
10889 affirming, modifying or reversing its prior decision to issue,
10890 reissue, deny, modify or revoke a permit. The Permit Board shall
10891 prepare and record in its minutes findings of fact and
10892 conclusions of law supporting its decision. That decision, as
10893 recorded in its minutes with its findings of fact and conclusions
10894 of law, shall be subject to judicial review in accordance with
10895 the Mississippi Administrative Procedure Law of 1999.

10896 * * *

10897 (d) Any person seeking judicial review * * * shall
10898 give a cost bond with sufficient sureties, payable to the state
10899 in the sum of not less than One Hundred Dollars (\$100.00) nor
10900 more than Five Hundred Dollars (\$500.00), to be fixed by the
10901 Permit Board and to be filed with and approved by the Executive
10902 Director of the Permit Board * * *. * * *

10903 SECTION 222. Section 49-17-34, Mississippi Code of 1972, is
10904 amended as follows:

10905 49-17-34. (1) Within fifteen (15) days after receipt by
10906 the Department of Environmental Quality an application for any

10907 initial or modified air or water permit required under the
10908 Mississippi Air and Water Pollution Control Law that is submitted
10909 after April 16, 1993 the Department of Environmental Quality
10910 shall acknowledge in writing receipt of such application. Except
10911 for good cause shown, within forty-five (45) days after receipt
10912 of a permit application, the Department of Environmental Quality
10913 shall notify the applicant that the application is complete or of
10914 the major components required to complete the application.

10915 (2) All rules, regulations and standards relating to air
10916 quality, water quality or air emissions or water discharge
10917 standards promulgated by the commission after April 16, 1993
10918 shall be consistent with and shall not exceed the requirements of
10919 federal statutes and federal regulations, standards, criteria and
10920 guidance relating to air quality, water quality or air emission
10921 or water discharge standards that have been duly promulgated
10922 pursuant to the federal Administrative Procedures Act, including
10923 but not limited to the identity and scope of air pollutants
10924 included as air toxics or air quality or emission standards, the
10925 identity and scope of water pollutants included as water quality
10926 or discharge standards and the numerical and narrative
10927 limitations of such standards.

10928 (3) If there are no federal statutes or federal
10929 regulations, standards, criteria or guidance that have been duly
10930 promulgated pursuant to the federal Administrative Procedures Act
10931 addressing matters relating to air quality or water quality, or
10932 air emission or water discharge standards, the commission may
10933 promulgate regulations to address these matters in accordance
10934 with the Mississippi Administrative Procedure Law of 1999, when
10935 the commission determines that such regulations are necessary to
10936 protect human health, welfare or the environment.

10937 (4) For any initial or modified air or water permit issued
10938 from and after January 1, 1994, except with the written consent
10939 of the permit applicant, no provision or condition imposing any
10940 duty, responsibility or liability on the permittee shall be

10941 included in such permit, the direct basis for which has not been
10942 first promulgated as a regulation by the commission in accordance
10943 with the requirements of the Mississippi Administrative Procedure
10944 Law of 1999. "Direct basis" shall mean that such permit
10945 provisions or conditions shall not exceed the scope, coverage and
10946 effect of the regulation upon which it is based including, but
10947 not limited to, frequency or time limit of action, technology,
10948 identity and scope of pollutants regulated, numerical or
10949 narrative standards or limitations.

10950 SECTION 223. Section 49-17-35, Mississippi Code of 1972, is
10951 amended as follows:

10952 49-17-35. Any interested person shall have the right to
10953 request the commission to conduct an adjudicative proceeding in
10954 accordance with the Mississippi Administrative Procedure Law of
10955 1999 for the purpose of taking action in respect to any matter
10956 within the jurisdiction of the commission by making a request
10957 therefor in writing. Upon receipt of any such request, the
10958 commission shall conduct such an adjudicative proceeding * * *.

10959 SECTION 224. Section 49-17-37, Mississippi Code of 1972, is
10960 amended as follows:

10961 49-17-37. All proceedings before the commission shall be
10962 recorded and preserved in accordance with the Mississippi
10963 Administrative Procedure Law of 1999 and shall be subject to
10964 transcription upon order of the commission or any interested
10965 party, but in the event that the request for transcription
10966 originates with an interested party, such party shall pay the
10967 cost thereof.

10968 SECTION 225. Section 49-17-41, Mississippi Code of 1972, is
10969 amended as follows:

10970 49-17-41. In addition to any other remedies that might now
10971 be available, any person or interested party aggrieved by any
10972 order of the commission or the executive director shall have a
10973 right to an adjudicative proceeding in accordance with the
10974 Mississippi Administrative Procedure Law of 1999. * * *

10975 The final order of the commission shall be subject to
10976 judicial review in accordance with the Mississippi Administrative
10977 Procedure Law of 1999. Any person seeking judicial review shall
10978 give a cost bond with sufficient sureties, payable to the state
10979 in the sum of not less than One Hundred Dollars (\$100.00) nor
10980 more than Five Hundred Dollars (\$500.00), to be fixed in the
10981 order appealed from, to be filed with and approved by the
10982 executive director of the commission * * *. * * *

10983 SECTION 226. Section 49-17-43, Mississippi Code of 1972, is
10984 amended as follows:

10985 49-17-43. (a) Any person found by the commission violating
10986 any of the provisions of Sections 49-17-1 through 49-17-43, or
10987 any rule or regulation or written order of the commission in
10988 pursuance thereof or any condition or limitation of a permit,
10989 except a permit required under the Solid Wastes Disposal Law of
10990 1974 (Sections 17-17-1 through 17-17-47), shall be subject to a
10991 civil penalty of not more than Twenty-five Thousand Dollars
10992 (\$25,000.00), for each violation, such penalty to be assessed and
10993 levied by the commission after a hearing as provided hereinabove.
10994 Judicial review of the imposition of the civil penalty shall be
10995 in accordance with the Mississippi Administrative Procedure Law
10996 of 1999. If the appellant desires to stay the execution of a
10997 civil penalty assessed by the commission, he shall give bond with
10998 sufficient resident sureties of one or more guaranty or surety
10999 companies authorized to do business in this state, payable to the
11000 State of Mississippi, in an amount equal to double the amount of
11001 any civil penalty assessed by the commission, as to which the
11002 stay of execution is desired, conditioned, if the judgment shall
11003 be affirmed, to pay all costs of the assessment entered against
11004 the person seeking judicial review. Each day upon which a
11005 violation occurs shall be deemed a separate and additional
11006 violation.

11007 Any person violating any provision of the Solid Wastes
11008 Disposal Law of 1974 (Sections 17-17-1 through 17-17-47), any

11009 rule or regulation made pursuant to that law, or any order issued
11010 by the commission under the authority of that law shall be
11011 subject to the penalties provided in Section 17-17-29.

11012 (b) In lieu of, or in addition to, the penalty provided in
11013 subsection (a) of this section, the commission shall have power
11014 to institute and maintain in the name of the state any and all
11015 proceedings necessary or appropriate to enforce the provisions of
11016 Sections 49-17-1 through 49-17-43, rules and regulations in force
11017 pursuant thereto, and orders and permits made and issued under
11018 those sections, in accordance with the Mississippi Administrative
11019 Procedure Law of 1999. The commission may obtain mandatory or
11020 prohibitory injunctive relief, either temporary or permanent, and
11021 in cases of imminent and substantial hazard or endangerment as
11022 set forth in Section 49-17-27, it shall not be necessary in such
11023 cases that the state plead or prove: (i) that irreparable damage
11024 would result if the injunction did not issue; (ii) that there is
11025 no adequate remedy at law; or (iii) that a written complaint or
11026 commission order has first been issued for the alleged violation.

11027 (c) Any person who violates any of the provisions of, or
11028 fails to perform any duty imposed by, Sections 49-17-1 through
11029 49-17-43 or any rule or regulation issued hereunder, or who
11030 violates any order or determination of the commission promulgated
11031 pursuant to such sections, and causes the death of fish or other
11032 wildlife shall be liable, in addition to the penalties provided
11033 in subsection (a) and/or (b) of this section, to pay to the state
11034 an additional amount equal to the sum of money reasonably
11035 necessary to restock such waters or replenish such wildlife as
11036 determined by the commission after consultation with the
11037 Mississippi Commission on Wildlife, Fisheries and Parks. Such
11038 amount may be recovered by the commission on behalf of the state
11039 in a civil action brought in the appropriate county or circuit
11040 court of the county in which venue may lie.

11041 (d) Any person who owns or operates facilities which,
11042 through misadventure, happenstance or otherwise, cause pollution

11043 necessitating immediate remedial or clean-up action shall be
11044 liable for the cost of such remedial or clean-up action and the
11045 commission may recover the cost of same by a civil action brought
11046 in the circuit court of the county in which venue may lie. This
11047 penalty may be recovered in lieu of or in addition to the
11048 penalties provided in subsection (a), (b) and/or (c) of this
11049 section.

11050 In the event of the necessity for immediate remedial or
11051 clean-up action, the commission may contract for same and advance
11052 funds from the Pollution Emergency Fund to pay the costs thereof,
11053 such advancements to be repaid to the Pollution Emergency Fund
11054 upon recovery by the commission as provided above.

11055 (e) It is unlawful for any person to: (1) discharge
11056 pollutants in violation of Section 49-17-29 or in violation of
11057 any condition or limitation included in a permit issued under
11058 Section 49-17-29 or (2) introduce pollutants into publicly owned
11059 treatment works in violation of pretreatment standards or in
11060 violation of toxic effluent standards; and, upon conviction
11061 thereof, such person shall be punished by a fine of not less than
11062 Two Thousand Five Hundred Dollars (\$2,500.00) nor more than
11063 Twenty-five Thousand Dollars (\$25,000.00) per day of violation.

11064 (f) All fines, penalties and other sums recovered or
11065 collected by the commission for and in behalf of the state under
11066 this section shall be deposited in the Pollution Emergency Fund
11067 established under this chapter, and the commission is authorized
11068 to receive and accept, from any funds and all available sources
11069 whatsoever, additional funds to be deposited in such fund and
11070 expended for the purpose of remedial, clean-up or abatement
11071 actions involving pollution of the land, air or waters of the
11072 state in violation of Sections 49-17-1 through 49-17-43, any rule
11073 or regulation or written order of the commission in pursuance
11074 thereof, or any condition or limitation of a permit.

11075 (g) In determining the amount of any penalty under this
11076 chapter, the commission shall consider at a minimum:

11077 (i) The willfulness of the violation;

11078 (ii) Any damage to air, water, land or other natural
11079 resources of the state or their uses;

11080 (iii) Costs of restoration and abatement;

11081 (iv) Economic benefit as a result of noncompliance;

11082 (v) The seriousness of the violation, including any
11083 harm to the environment and any hazard to the health, safety and
11084 welfare of the public;

11085 (vi) Past performance history; and

11086 (vii) Whether the noncompliance was discovered and
11087 reported as the result of a voluntary self-evaluation. If a
11088 person discovers as a result of a voluntary self-evaluation,
11089 information related to noncompliance with an environmental law
11090 and voluntarily discloses that information to the department,
11091 commission or any employee thereof, the commission shall, to the
11092 greatest extent possible, reduce a penalty, if any, determined by
11093 the commission, except for economic benefit as a result of
11094 noncompliance, to a de minimis amount if all of the following are
11095 true:

11096 1. The disclosure is made promptly after
11097 knowledge of the information disclosed is obtained by the person;

11098 2. The person making the disclosure initiates the
11099 appropriate corrective actions and pursues those corrective
11100 actions with due diligence;

11101 3. The person making the disclosure cooperates
11102 with the commission and the department regarding investigation of
11103 the issues identified in the disclosure;

11104 4. The person is not otherwise required by an
11105 environmental law to make the disclosure to the commission or the
11106 department;

11107 5. The information was not obtained through any
11108 source independent of the voluntary self-evaluation or by the
11109 department through observation, sampling or monitoring; and

11110 6. The noncompliance did not result in a

11111 substantial endangerment threatening the public health, safety or
11112 welfare or the environment.

11113 (h) Any provisions of this section and chapter regarding
11114 liability for the costs of clean-up, removal, remediation or
11115 abatement of any pollution, hazardous waste or solid waste shall
11116 be limited as provided in Section 49-17-42 and rules adopted
11117 thereto.

11118 SECTION 227. Section 49-27-39, Mississippi Code of 1972, is
11119 amended as follows:

11120 49-27-39. * * * Judicial review may be sought by the
11121 applicant, or any person or corporation, municipal corporation,
11122 county or interested community group who has been aggrieved by
11123 such order, from the denial, suspension or revocation of a permit
11124 or the issuance of a permit or conditional permit and who has
11125 filed written protest or objection as specified in Sections
11126 49-27-9 through 49-27-21 in accordance with the Mississippi
11127 Administrative Procedure Law of 1999.

11128 * * *

11129 SECTION 228. Section 49-27-41, Mississippi Code of 1972, is
11130 amended as follows:

11131 49-27-41. * * * A cost bond must be posted with sufficient
11132 sureties payable to the state in the sum of not less than One
11133 Hundred Dollars (\$100.00) nor more than Five Hundred Dollars
11134 (\$500.00), to be fixed in the order, judicial review of which is
11135 sought, and to be filed with and approved by the executive
11136 director of the commission * * *. * * *

11137 SECTION 229. Section 51-3-49, Mississippi Code of 1972, is
11138 amended as follows:

11139 51-3-49. In addition to any other remedies that might now
11140 be available, any person or interested party aggrieved by an
11141 order of the commission or of the permit board shall have the
11142 right to seek judicial review in accordance with the Mississippi
11143 Administrative Procedure Law of 1999.

11144 SECTION 230. Section 51-3-55, Mississippi Code of 1972, is

11145 amended as follows:

11146 51-3-55. (1) It shall be the duty of the Commission on
11147 Natural Resources to serve as the enforcement agency for the
11148 Permit Board when the board determines that the sanctions
11149 available to it are not sufficient to achieve compliance with the
11150 provisions of this chapter. In such cases the board shall notify
11151 the commission of such noncompliance or violation and request
11152 that the commission take appropriate action. A member of the
11153 commission or an employee of the commission may also make such a
11154 request.

11155 (2) Any person who knowingly submits false or inaccurate
11156 information in support of a permit application or a notice of
11157 claim or who wilfully fails to comply with the conditions of a
11158 permit issued by the board or who wilfully violates orders issued
11159 by the commission shall, upon conviction, be guilty of a
11160 misdemeanor and fined not less than One Hundred Dollars (\$100.00)
11161 within the discretion of the court. Each day in which such
11162 violation exists or continues shall constitute a separate
11163 offense.

11164 (3) In addition to or in lieu of filing a criminal
11165 complaint, the commission may impose a civil penalty not more
11166 than Twenty-five Thousand Dollars (\$25,000.00) for each such
11167 offense, such penalty to be assessed and levied by the commission
11168 after conducting an adjudicative proceeding in accordance with
11169 the Mississippi Administrative Procedure Law of 1999.

11170 (4) Judicial review of the imposition of the civil penalty
11171 may be in accordance with the Mississippi Administrative
11172 Procedure Law of 1999. If the appellant desires to stay the
11173 execution of a civil penalty assessed by the commission, he shall
11174 give bond with sufficient resident sureties of one or more
11175 guaranty or surety companies authorized to do business in this
11176 state, payable to the State of Mississippi, in an amount equal to
11177 double the amount of any civil penalty assessed by the
11178 commission, as to which the stay of execution is desired,

11179 conditioned, if the judgment shall be affirmed, to pay all costs
11180 of the assessment entered against the person seeking judicial
11181 review.

11182 (5) In lieu of, or in addition to, the penalty provided in
11183 subsection (3) of this section, the commission shall have power
11184 to institute and maintain in the name of the state any and all
11185 proceedings necessary or appropriate to enforce the provisions of
11186 Sections 51-3-1 through 51-3-55, rules and regulations in force
11187 pursuant thereto, and orders and permits issued under those
11188 sections, in accordance with the Mississippi Administrative
11189 Procedure Law of 1999. The commission may obtain mandatory or
11190 prohibitory injunctive relief, either temporary or permanent, and
11191 in cases of imminent and substantial hazard or endangerment to
11192 life or property, it shall not be necessary in such cases that
11193 the state plead or prove: (a) that irreparable damage would
11194 result if the injunction did not issue; (b) that there is no
11195 adequate remedy at law; or (c) that a written complaint or
11196 commission order has first been issued for the alleged violation.

11197 (6) Commission hearings on the imposition of the above
11198 prescribed civil penalty or other sanctions shall be conducted as
11199 adjudicative proceedings in accordance with the Mississippi
11200 Administrative Procedure Law of 1999.

11201 SECTION 231. Section 51-5-9, Mississippi Code of 1972, is
11202 amended as follows:

11203 51-5-9. (1) When the board determines that the holder of
11204 any license issued pursuant to this chapter has violated any
11205 provisions thereof or any rules and regulations pursuant thereto,
11206 the board shall authorize suspension or revocation of such
11207 license. Proceedings under the provisions of this section shall
11208 not be dependent upon having exhausted remedies through any other
11209 section of this chapter.

11210 (2) The board shall notify the suspected violator at least
11211 fifteen (15) days before the board hearing therefor, shall
11212 specify to him the grounds for which such license revocation is

11213 proposed with such sufficiency as to protect his constitutional
11214 rights therein as in other civil hearings pertaining to license
11215 revocations and shall give him the opportunity, upon his request,
11216 for an adjudicative proceeding in accordance with the Mississippi
11217 Administrative Procedure Law of 1999.

11218 (3) Any such order of revocation of license shall be
11219 subject to judicial review in accordance with the Mississippi
11220 Administrative Procedure Law of 1999.

11221 SECTION 232. Section 53-1-19, Mississippi Code of 1972, is
11222 amended as follows:

11223 53-1-19. The board shall prescribe its rules of order or
11224 procedure in hearings or other proceedings before it which shall
11225 not be inconsistent with the Mississippi Administrative Procedure
11226 Law of 1999. The board may provide for the recording and
11227 preservation of its proceedings by order entered on its
11228 minutes. * * *

11229 SECTION 233. Section 53-1-39, Mississippi Code of 1972, is
11230 amended as follows:

11231 53-1-39. (a) In addition to other remedies now available,
11232 the state, or any interested person aggrieved by any final rule,
11233 regulation or order of the board, shall have the right,
11234 regardless of the amount involved, of judicial review in
11235 accordance with the Mississippi Administrative Procedure Law of
11236 1999. * * *

11237 (b) * * * After perfection of judicial review, the party
11238 seeking judicial review shall file with the clerk of the court a
11239 bond in the sum of Five Hundred Dollars (\$500.00) with two (2)
11240 sureties or with a surety company qualified to do business in
11241 Mississippi as the surety, conditioned to pay the cost of such
11242 appeal; said bond to be approved by any member of the board or by
11243 the supervisor, or by the clerk of the court in which judicial
11244 review is sought. * * *

11245 * * *

11246 SECTION 234. Section 53-1-47, Mississippi Code of 1972, is

11247 amended as follows:

11248 53-1-47. (a) (i) Any person, who, for the purpose of
11249 evading the provisions of Sections 53-1-1 through 53-1-47,
11250 inclusive, or any rule, regulation or order made thereunder,
11251 shall make or cause to be made any false entry, statement of fact
11252 or omission in any report required by such sections or by any
11253 rule, regulation or order thereunder or in any account, record or
11254 memorandum kept in connection with the provisions thereof or who,
11255 for such purpose, shall mutilate, alter, conceal or falsify any
11256 such report, account, record or memorandum, shall be subject to a
11257 penalty of not more than Ten Thousand Dollars (\$10,000.00) per
11258 day for each day of such violation to be assessed by the board.

11259 In determining the amount of the penalty, the board shall
11260 consider the factors specified in subsection (d) of this section.
11261 Such penalties shall be assessed according to the procedures set
11262 forth in subsection (b) of this section.

11263 (ii) Any person, who, for the purpose of evading the
11264 provisions of Sections 53-1-1 through 53-1-47, inclusive, or any
11265 rule, regulation or order made thereunder, shall intentionally
11266 make or cause to be made any false entry, statement of fact or
11267 omission in any report required by said sections or by any rule,
11268 regulation or order thereunder or in any account, record or
11269 memorandum kept in connection with the provisions thereof or who,
11270 for such purpose, shall mutilate, alter, conceal or falsify any
11271 such report, account, record or memorandum shall be deemed guilty
11272 of a misdemeanor and shall be subject, upon conviction in any
11273 court of competent jurisdiction, to a fine of not less than Five
11274 Hundred Dollars (\$500.00) nor more than One Thousand Dollars
11275 (\$1,000.00), or imprisonment for a term of not less than ten (10)
11276 days nor more than six (6) months for each such violation, or
11277 both such fine and imprisonment.

11278 (b) Any person who violates any provision of Sections
11279 53-1-1 through 53-1-47, inclusive, or Sections 53-3-1 through
11280 53-3-33, and 53-3-39 through 53-3-165, or any lawful rule,

11281 regulation or order of the board made hereunder, shall, in
11282 addition to any penalty for such violation that is otherwise
11283 provided for herein, be subject to a penalty of not to exceed Ten
11284 Thousand Dollars (\$10,000.00) per day for each day of such
11285 violation to be assessed by the board. When any charge is filed
11286 with the board charging any person with any such violation, the
11287 board shall conduct an adjudicative proceeding in accordance with
11288 the Mississippi Administrative Procedure Law of 1999. Such
11289 proceedings shall be held by not less than three (3) members of
11290 the board and a unanimous verdict of all members hearing such
11291 charge shall be necessary for conviction and in the event of a
11292 conviction all members of the board hearing such cause must agree
11293 on the penalty assessed.

11294 The Attorney General, by his designated assistant, shall
11295 represent the board in all such proceedings * * *. The Attorney
11296 General shall also designate a member of his staff to present
11297 evidence and proof of such violation in the event such charge is
11298 contested.

11299 All penalties assessed by the board under the provisions of
11300 this section may be enforced in accordance with the Mississippi
11301 Administrative Procedure Law of 1999. All such penalties paid or
11302 collected shall be paid to the State Treasurer for credit to the
11303 Special Oil and Gas Board Fund.

11304 Any person adjudged guilty of any such violation shall have
11305 the right of judicial review in accordance with the Mississippi
11306 Administrative Procedure Law of 1999.

11307 The payment of any penalty as provided herein shall not have
11308 the effect of changing illegal oil into legal oil, illegal gas
11309 into legal gas or illegal product into legal product, nor shall
11310 such payment have the effect of authorizing the sale or purchase
11311 or acquisition or the transportation, refining, processing or
11312 handling in any other way of such illegal oil, illegal gas or
11313 illegal product.

11314 (c) Any person who aids or abets any other person in the

11315 violation of any provision of Sections 53-1-1 through 53-1-47,
11316 inclusive, or Sections 53-3-1 through 53-3-21, inclusive, or any
11317 rule, regulation or order made thereunder, shall be subject to
11318 the same penalties as are prescribed herein for the violation by
11319 such other person.

11320 (d) In determining the amount of the penalty under
11321 subsection (a), (b) or (c) of this section, the board shall
11322 consider at a minimum the following factors:

11323 (i) The willfulness of the violation;

11324 (ii) Any damage to water, land or other natural
11325 resources of the state or their users;

11326 (iii) Any cost of restoration and abatement;

11327 (iv) Any economic benefit to the violator as a result
11328 of noncompliance;

11329 (v) The seriousness of the violation, including any
11330 harm to the environment and any harm to the health and safety of
11331 the public; and

11332 (vi) Any prior violation by such violator.

11333 (e) The board is authorized to utilize the provisions of
11334 Section 85-7-132 to enforce penalties provided by this section.

11335 SECTION 235. Section 53-3-7, Mississippi Code of 1972, is
11336 amended as follows:

11337 53-3-7. (1) (a) When two (2) or more separately owned
11338 tracts of land are embraced within an established drilling unit
11339 or when there are separately owned interests in all or part of an
11340 established drilling unit the persons owning the drilling rights
11341 therein and the rights to share in the production therefrom may
11342 validly agree to integrate their interests and to develop their
11343 lands as a drilling unit. Where, however, such persons have not
11344 agreed to integrate their interests the board may, for the
11345 prevention of waste or to avoid the drilling of unnecessary
11346 wells, require such persons to integrate their interests and to
11347 develop their lands as a drilling unit. All orders requiring
11348 such pooling shall be made after notice and hearing, and shall be

11349 upon terms and conditions that are just and reasonable, and will
11350 afford to the owner of each tract the opportunity to recover or
11351 receive his just and equitable share of the oil and gas in the
11352 pool without unnecessary expense.

11353 The portion of the production allocated to the owner of each
11354 tract included in a drilling unit formed by a pooling order
11355 shall, when produced, be considered as if it had been produced
11356 from such tract by a well drilled thereon.

11357 (b) Except as otherwise provided for in this section,
11358 in the event such pooling is required, the cost of development
11359 and operation of the pooled unit chargeable by the operator to
11360 the other interested owner or owners shall be limited to the
11361 actual expenditures required for such purpose not in excess of
11362 what are reasonable including a reasonable charge for
11363 supervision. In the event that the operator elects to proceed
11364 under the provisions of this subsection (1)(b), and does not
11365 elect to seek alternate charges as provided for in this section,
11366 the notice procedure followed shall be in accordance with Section
11367 53-1-21, Mississippi Code of 1972.

11368 (c) For the purposes of this section, as to a drilling
11369 unit, the term "nonconsenting owner" shall mean an owner of
11370 drilling rights which the owner has not agreed, in writing, to
11371 integrate in the drilling unit. The owner may own other drilling
11372 rights in the unit which the owner has agreed, in writing, to
11373 integrate in the unit and thereby also be a "consenting owner" as
11374 to the interest which the owner has agreed to integrate in the
11375 unit.

11376 (2) (a) In the event that one or more owners owning not
11377 less than thirty-three percent (33%) of the drilling rights in a
11378 drilling unit voluntarily consent to the drilling of a unit well
11379 thereon, and the operator has made a good faith effort to (i)
11380 negotiate with each nonconsenting owner to have said owner's
11381 interest voluntarily integrated into the unit, (ii) notify each
11382 nonconsenting owner of the names of all owners of drilling rights

11383 who have agreed to integrate any interests in the unit, (iii)
11384 ascertain the address of each nonconsenting owner, (iv) give each
11385 nonconsenting owner written notice of the proposed operation,
11386 specifying the work to be performed, the location, proposed
11387 depth, objective formation and the estimated cost of the proposed
11388 operation, and (v) offer each nonconsenting owner the opportunity
11389 to lease or farm out on reasonable terms or to participate in the
11390 cost and risk of developing and operating the unit well involved
11391 on reasonable terms, by agreeing in writing, then the operator
11392 may petition the board to allow it to charge alternate charges
11393 (alternate to and in lieu of the charges provided for in
11394 subsection (1)(b) of this section).

11395 (b) Any such petition on which alternate charges may
11396 be ordered by the board shall include a statement which shall
11397 name all nonconsenting real parties in interest in said proposed
11398 drilling unit, as of a date not more than ninety (90) days prior
11399 to the filing of the petition, giving each such person's name,
11400 and address if known; and if any owner's address is not known,
11401 the operator shall state in its petition that such person's
11402 address is unknown after diligent search and inquiry. Only those
11403 parties served with actual or constructive notice as set forth
11404 hereinbelow will be subject to any alternate charges allowed by
11405 the board.

11406 (c) Upon the filing of a petition on which alternate
11407 charges may be ordered, the petitioner shall have prepared, and
11408 furnish to the board with said petition, a notice to each and all
11409 nonconsenting real parties in interest whose address is unknown,
11410 whether such person be a resident of the State of Mississippi or
11411 not, which the board shall have published, noticing each such
11412 person to appear before a regular meeting of the board
11413 sufficiently distant in time to allow thirty (30) days to elapse
11414 between the date of the last publication of said notice as
11415 hereinafter provided, and the date of the regular meeting of the
11416 board to which each such person is noticed. Said notice shall

11417 also notice all unknown heirs or devisees of deceased owners, if
11418 any there be, and all unknown persons owning drilling rights in
11419 said proposed drilling unit. The notice shall be substantially
11420 in the following form, to wit:

11421 NOTICE TO APPEAR BEFORE THE STATE OIL AND GAS BOARD

11422 You are noticed to appear before the State Oil and Gas Board
11423 at its regular ____ term, being on the ____ day of __, 19__ to
11424 show cause if you can why the petition of

11425 _____

11426 _____

11427 _

11428 (Operator)

11429 being Petition No. _____ in said board and seeking to
11430 force to integrate and pool all interests in (description of Unit
11431 by legal description)

11432 _____ should not be
11433 granted.

11434 To ____ (inserting the name of such person or persons, whose
11435 address is unknown), and all such unknown heirs or devisees and
11436 all such unknown owners, whose names and addresses remain unknown
11437 after diligent search and inquiry.

11438 Said meeting of said board shall be held at ____ (the then
11439 hearing room of said Oil and Gas Board) on the above date at
11440 _____.

11441 (the time)

11442 This ____ day of _____, A.D. ____.

11443

11444 _____

11445 Supervisor

11446 (d) The publication of notice to nonconsenting real
11447 parties in interest whose address is unknown after diligent
11448 search and inquiry shall be made once in each week during three
11449 (3) successive weeks in a public newspaper of the county or
11450 counties in which the proposed drilling unit is located, if there

11451 be such a newspaper. If there is not such a county newspaper,
11452 then the said publication of notice shall be published in a
11453 newspaper having general circulation in the State of Mississippi.

11454 The period of publication shall be deemed to be completed at the
11455 end of twenty-one (21) days from the date of the first
11456 publication, provided there have been three (3) publications made
11457 as hereinabove required.

11458 (e) Upon the filing of a petition on which alternate
11459 charges may be ordered, the petitioner shall also have prepared,
11460 and shall furnish to the board, a notice which shall be
11461 substantially in the form set out above, to each nonconsenting
11462 real party in interest whose address is known, together with
11463 addressed and stamped envelopes, and the board shall mail each
11464 notice by certified mail, return receipt requested, sufficiently
11465 distant in time to allow thirty (30) days to elapse between the
11466 date of the mailing of said notice and the date of the regular
11467 meeting of the board at which said petition will be first
11468 scheduled to be heard.

11469 (f) Petitioner shall also advance to the board at the
11470 time of the filing of said petition the cost of publication and
11471 mailing of notices as set out above which shall be established by
11472 the board. Said costs of publication and mailing of notices
11473 shall be considered as part of the costs of operation which are
11474 chargeable to the nonconsenting owner's nonconsenting share of
11475 production as set forth in paragraph (g) of this subsection (2).

11476 (g) In the event a pooling order is issued by the
11477 board, and any nonconsenting owner does not subsequently agree in
11478 writing as provided for herein, and if the operations on the
11479 existing or proposed well which are described in the pooling
11480 order are actually commenced within one hundred eighty (180) days
11481 after the pooling order is issued by the board, and thereafter
11482 with due diligence and without undue delay, the existing or
11483 proposed well is actually completed as a well capable of
11484 producing oil, gas and/or other minerals in quantities sufficient

11485 to yield a return in excess of monthly operating costs, then,
11486 subject to the limitations set out in this section, the operator
11487 and/or the appropriate consenting owners shall be entitled to
11488 receive as alternate charges (alternate to and in lieu of the
11489 charges provided for in subsection (1)(b) of this section;
11490 provided, however, that in no event shall the operator and/or the
11491 appropriate consenting owners be entitled to recover less than
11492 such charges provided in subsection (1)(b) of this section) the
11493 share of production from the well attributable to the
11494 nonconsenting owner's nonconsenting interests in the unit
11495 established or subsequently reformed for production therefrom,
11496 until the point in time when the proceeds from the sale of such
11497 share, calculated at the well, or the market value thereof if
11498 such share is not sold, after deducting production and excise
11499 taxes, which operator will pay or cause to be paid, and the
11500 payment required by this paragraph (g) shall equal the sum of:

11501 (i) One hundred percent (100%) of the
11502 nonconsenting owner's nonconsenting share of the cost of any
11503 newly acquired surface equipment beyond the wellhead connections
11504 including, but not limited to, stock tanks, separators, treaters,
11505 pumping equipment and piping; and

11506 (ii) Two hundred fifty percent (250%) of that
11507 portion of the costs and expenses of the operations provided for
11508 in the pooling order, and two hundred fifty percent (250%) of
11509 that portion of the cost of newly acquired equipment in the well,
11510 including wellhead connections, which would have been chargeable
11511 to the nonconsenting owner's nonconsenting share thereof;

11512 provided, however, when a mineral interest that is severed from
11513 the surface estate is owned by a nonconsenting owner or when a
11514 mineral interest is subject to an oil and gas lease that is owned
11515 by a nonconsenting owner, the payment under this subparagraph
11516 (ii) shall be three hundred percent (300%); and

11517 (iii) One hundred percent (100%) of the
11518 nonconsenting owner's nonconsenting share of the cost of

11519 operation of the well commencing with first production and
11520 continuing to such point in time.

11521 Whenever a drilling unit established by a pooling order
11522 issued by the board under subsection (2) of this section is to be
11523 reformed or altered by the board for good cause, after notice and
11524 hearing, then the interest of any nonconsenting owner listed in
11525 the pooling order who received notice of the application to
11526 reform or alter the unit and had not agreed in writing as
11527 provided for herein shall remain subject to the charges set forth
11528 in this subsection (2)(g) with respect to its interest in the
11529 reformed or altered unit. If there is any nonconsenting owner
11530 within a proposed reformed or altered unit who has not been
11531 previously provided the information and offers set forth in
11532 subparagraphs (ii) through (v) of subsection (2)(a) of this
11533 section which was sent to the owners, and if the applicant for an
11534 order of reformation or alteration of such unit provides to the
11535 nonconsenting owner the information and offers set forth in
11536 subparagraphs (ii) through (v) of subsection (2)(a) of this
11537 section at the same time and in the same manner as such
11538 nonconsenting owners receive notice of the application to reform
11539 or alter the drilling unit, then the interest of any
11540 nonconsenting owner listed in the pooling order for the reformed
11541 or altered unit who does not agree in writing as provided for
11542 herein shall be subject to the charges set forth in this
11543 subsection (2)(g) with respect to its interest in the reformed or
11544 altered unit.

11545 Whenever any one (1) operator has filed for alternate
11546 charges on two (2) drilling units, which units are direct,
11547 partially direct or diagonal offsets one to the other, such
11548 operator may not file a petition for alternate charges, as
11549 distinguished from the charges provided by subsection (1)(b), as
11550 to any additional units which are direct, partially direct or
11551 diagonal offsets to the said first two (2) units of that operator
11552 until said operator has drilled, tested and completed the first

11553 two (2) such wells, as wells capable of production or completed
11554 as dry holes or either, and has filed completion reports on said
11555 first two (2) wells with the board, or the permits for such well
11556 or wells have expired if one or both of them be not drilled.

11557 The pooling order if issued shall provide that each
11558 nonconsenting owner shall be afforded the opportunity to
11559 participate in the development and operation of the well in the
11560 pooled unit as to all or any part of said owner's interest on the
11561 same costs basis as the consenting owners by agreeing in writing
11562 to pay that part of the costs of such development and operation
11563 chargeable to said nonconsenting owner's interest, or to enter
11564 into such other written agreement with the operator as the
11565 parties may contract, provided such acceptance in writing is
11566 filed with the board within twenty (20) days after the pooling
11567 order is filed for record with the board.

11568 The pooling order shall provide that the well be drilled on
11569 a competitive contract, arms length, basis; provided, however,
11570 that the operator may employ its own tools or those of
11571 affiliates, but charges therefor shall not exceed the prevailing
11572 rates in the area.

11573 (h) Within sixty (60) days after the completion of any
11574 operation on which alternate charges have been ordered, the
11575 operator shall furnish any nonconsenting owner who may request
11576 same an inventory of the equipment in and connected to the well,
11577 and an itemized statement of the cost of drilling, deepening,
11578 plugging back, testing, completing and equipping the well for
11579 production; or, at its option, the operator, in lieu of an
11580 itemized statement of such costs of operation, may submit
11581 detailed monthly statements of said costs. Each month
11582 thereafter, during the time the operator and/or consenting
11583 parties are being reimbursed, the operator shall furnish any
11584 nonconsenting owner who may request same with an itemized
11585 statement of all costs and liabilities incurred in the operation
11586 of the well, together with a statement of the quantity of oil and

11587 gas produced from it and the amount of proceeds realized from the
11588 sale of the well's production during the preceding month. Any
11589 amount realized from the sale or other disposition of equipment
11590 acquired in connection with any such operation which would have
11591 been owned by a nonconsenting owner had it participated therein
11592 as to its nonconsenting interest shall be credited against the
11593 total unreturned costs of the work done and of the equipment
11594 purchased in determining when the interest of such nonconsenting
11595 owner shall be owned by said nonconsenting owner as above
11596 provided; and if there is a credit balance, it shall be paid to
11597 such nonconsenting owner. From the point in time provided for in
11598 paragraph (g) of this subsection (2), each nonconsenting owner
11599 shall own the same interest in such well, the material and
11600 equipment in or pertaining thereto, and the production therefrom
11601 as such nonconsenting owner would have been entitled to had it
11602 participated in the drilling, reworking, deepening and/or
11603 plugging back of said well. Thereafter, except as otherwise
11604 provided in this section, the operator shall be entitled to
11605 charge each nonconsenting owner such nonconsenting owner's
11606 proportionate part of all reasonable costs incurred by the
11607 operator in operating the unit well and the unit, including a
11608 reasonable charge for supervision, and in the event such
11609 nonconsenting owner fails to pay such proportionate share of such
11610 costs within thirty (30) days after receipt by the nonconsenting
11611 owner of a valid invoice, the operator shall be entitled to
11612 receive such nonconsenting owner's share of production until such
11613 time as such unpaid share of costs shall have been recovered by
11614 the operator.

11615 (i) In the event that a leased interest is subject to
11616 an order of pooling and integration, and the operator and/or the
11617 appropriate consenting owners are entitled to alternate charges
11618 as provided by paragraph (g) of this subsection (2), and if there
11619 be no reasonable question as to good and merchantable title to
11620 the royalty interest, the lessor of said lease shall be paid, by

11621 the operator or purchaser of production, the proceeds
11622 attributable to said lessor's contracted royalty, not to exceed
11623 an amount of three-sixteenths (3/16) of the proceeds attributable
11624 to the nonconsenting owner's proportionate share of production.
11625 Nothing herein contained shall affect or diminish in any way the
11626 responsibility of the nonconsenting owner to account for the
11627 payment of any royalty or other payment, not paid as herein
11628 provided, which may burden or be attributable to the interest
11629 owned by such nonconsenting owner.

11630 (3) When production of oil or gas is not secured in paying
11631 quantities as a result of such integration or pooling of
11632 interests, there shall be no charge payable by the nonconsenting
11633 owner or owners as to such owner's nonconsenting interest.

11634 (4) In the event of any dispute relative to costs, the
11635 board shall determine the proper costs, after due notice to all
11636 interested parties and a hearing thereon. Appeals may be taken
11637 from such determination as from any other order of the board.

11638 (5) The State Oil and Gas Board shall in all instances
11639 where a unit has been formed out of lands or areas of more than
11640 one (1) ownership, require the operator when so requested by an
11641 owner, to deliver to such owner or his assigns his proportionate
11642 share of the production from the well common to such drilling
11643 unit; but where necessary, such owner receiving same shall
11644 provide at his own expense proper receptacles for the receipt or
11645 storage of such oil, gas or distillate.

11646 (6) Should the persons owning the drilling or other rights
11647 in separate tracts embraced within a drilling unit fail to agree
11648 upon the integration of the tracts and the drilling of a well on
11649 the unit, and should it be established that the board is without
11650 authority to require integration as provided in this section,
11651 then, subject to all other applicable provisions of this chapter,
11652 and of Chapter 1 of this title, the owner of each tract embraced
11653 within the drilling unit may drill on his tract; but the
11654 allowable production from such tract shall be such proportion of

11655 the allowable production for the full drilling unit as the area
11656 of such separately owned tract bears to the full drilling unit.

11657 (7) The State Oil and Gas Board in order to prevent waste
11658 and avoid the drilling of unnecessary wells may permit (i) the
11659 cycling of gas in any pool or portion thereof or (ii) the
11660 introduction of gas or other substance into an oil or gas
11661 reservoir for the purpose of repressuring such reservoir,
11662 maintaining pressure or carrying on secondary recovery
11663 operations. The board shall permit the pooling or integration of
11664 separate tracts or separately owned interests when reasonably
11665 necessary in connection with such operations.

11666 (8) Agreements made in the interests of conservation of oil
11667 or gas, or both, or for the prevention of waste, between and
11668 among owners or operators, or both, owning separate holdings in
11669 the same field or pool or in any area that appears from geologic
11670 or other data to be underlaid by a common accumulation of oil or
11671 gas, or both, and agreements between and among such owners or
11672 operators, or both, and royalty owners therein, for the purpose
11673 of bringing about the development and operation of the field,
11674 pool or area, or any part thereof, as a unit, and for
11675 establishing and carrying out a plan for the cooperative
11676 development and operation thereof, when such agreements are
11677 approved by the board, are hereby authorized and shall not be
11678 held or construed to violate any of the statutes of this state
11679 relating to trusts, monopolies or contracts and combinations in
11680 restraint of trade.

11681 SECTION 236. Section 53-3-119, Mississippi Code of 1972, is
11682 amended as follows:

11683 53-3-119. Any interested person adversely affected by any
11684 provision of Sections 53-3-101 through 53-3-119 or by any rule,
11685 regulation or order made by the state oil and gas board
11686 thereunder, or by any act done or threatened thereunder, may
11687 secure judicial review in accordance with the Mississippi

11688 Administrative Procedure Law of 1999. * * *

11689 * * *

11690 SECTION 237. Section 53-7-45, Mississippi Code of 1972, is
11691 amended as follows:

11692 53-7-45. (1) All applicants for a Class I permit and
11693 operators of a Class I operation requesting an amendment shall
11694 publish notice that the application or request for amendment has
11695 been filed, describing by name the specific type of application
11696 or request and setting forth the ownership, location and
11697 boundaries of the permit area sufficient so that the proposed or
11698 existing area of operation may be easily located by local
11699 residents, and the location where the application is available
11700 for public inspection. Such notice shall be placed in a
11701 newspaper of general circulation in the county of the proposed or
11702 existing operation one (1) time within ten (10) days after filing
11703 the application or request for amendment.

11704 (2) Public hearings may be held at the office of the
11705 commission in Hinds County, Mississippi, or in the county in
11706 which the greater portion of the affected area is located, in the
11707 discretion of the commission. The commission shall give thirty
11708 (30) days' notice of the date, time and place of any such hearing
11709 to (a) the operator involved, (b) the local soil and water
11710 conservation districts, local governing bodies, the state soil
11711 and water conservation commission, the Mississippi Air and Water
11712 Pollution Control Commission, the Mississippi Park Commission,
11713 Mississippi Forestry Commission, board of trustees of the
11714 Mississippi Department of Archives and History, Mississippi
11715 Highway Commission, Mississippi Commission on Wildlife
11716 Conservation, Mississippi Agricultural and Forestry Experiment
11717 Station and to any other state agency whose jurisdiction the
11718 commission feels the mining operation may affect, (c) the owners
11719 of record of all surface areas in the permit area and within five
11720 hundred (500) feet thereof, notifying them of the subject matter
11721 of such hearing, and (d) other interested parties by publication
11722 once weekly for three (3) consecutive weeks in the newspaper of

11723 general circulation in the county where such operation may be
11724 conducted or is being conducted. The last publication of such
11725 notice shall be not less than ten (10) days prior to the date of
11726 the hearing.

11727 (3) The commission shall issue and furnish all of the
11728 parties to the administrative proceedings with its written
11729 findings based on the record, granting or denying the application
11730 in whole or in part and stating the reasons therefor, not later
11731 than thirty (30) days of said hearings.

11732 (4) * * * Any party to the administrative proceedings whose
11733 interest is or may be adversely affected by any ruling, order,
11734 decision or other act of the commission may secure judicial
11735 review in accordance with the Mississippi Administrative
11736 Procedure Law of 1999.

11737 * * *

11738 SECTION 238. Section 53-7-65, Mississippi Code of 1972, is
11739 amended as follows:

11740 53-7-65. (1) Upon the filing of a complaint by any person
11741 with the commission alleging that any person or operator is in
11742 violation of this chapter or regulations of the commission, the
11743 commission shall conduct an investigation of the complaint and
11744 upon finding a basis for such complaint shall cause written
11745 notice of such complaint, specifying the charges made, to be
11746 served upon such operator and requiring him to correct the
11747 alleged violation not less than ten (10) days after the service
11748 of notice. If the alleged violations are not corrected within
11749 the ten (10) days, the commission shall require the operator to
11750 appear * * * before the commission * * * thereafter. The
11751 commission shall conduct an adjudicative proceeding in accordance
11752 with the Mississippi Administrative Procedure Law of 1999. * * *

11753 The commission shall enter such order as it deems appropriate on
11754 the evidence presented, which order may include a civil penalty
11755 in an amount not to exceed One Thousand Dollars (\$1,000.00) for
11756 each violation. If such order is not complied with, the

11757 commission may commence proceedings under Sections 53-7-59
11758 through 53-7-63.

11759 (2) Any party may secure judicial review of any order of
11760 the commission in accordance with the Mississippi Administrative
11761 Procedure Law of 1999. * * *

11762 (3) The provisions of this section shall in no way be
11763 construed to limit any action at law to which any party might be
11764 otherwise legally entitled.

11765 SECTION 239. Section 53-9-7, Mississippi Code of 1972, is
11766 amended as follows:

11767 53-9-7. For the purposes of this chapter, the following
11768 terms shall have the meaning ascribed in this section unless the
11769 context requires otherwise:

11770 (a) "Appeal" means an appeal to an appropriate court
11771 of the state taken from a final decision of the permit board or
11772 commission made after a formal hearing before that body.

11773 (b) "Approximate original contour" means that surface
11774 configuration achieved by backfilling and grading of the mined
11775 area so that the reclaimed area, including any terracing or
11776 access roads, closely resembles the general surface configuration
11777 of the land before mining and blends into and complements the
11778 drainage pattern of the surrounding terrain, with all highwalls
11779 and spoil piles eliminated. Water impoundments may be allowed if
11780 the permit board determines that the impoundments are in
11781 compliance with Section 53-9-45(2)(g).

11782 (c) "As recorded in the minutes of the permit board"
11783 means the date of the permit board meeting at which the action
11784 concerned is taken by the permit board.

11785 (d) "Coal" means combustible carbonaceous rock,
11786 classified as anthracite, bituminous, subbituminous, or lignite
11787 by the American Society of Testing and Materials.

11788 (e) "Commission" means the Mississippi Commission on
11789 Environmental Quality.

11790 (f) "Department" means the Mississippi Department of

11791 Environmental Quality.

11792 (g) "Executive Director" means the executive director
11793 of the department.

11794 (h) "Exploration operations" means the disturbance of
11795 the surface or subsurface before surface coal mining and
11796 reclamation operations begin for the purpose of determining the
11797 location, quantity or quality of a coal deposit, and the
11798 gathering of environmental data to establish the conditions of
11799 the area before the beginning of surface coal mining and
11800 reclamation operations.

11801 (i) "Federal act" means the Surface Mining Control and
11802 Reclamation Act of 1977, as amended, which is codified as Section
11803 1201 et seq. of Title 30 of the United States Code.

11804 (j) "Formal hearing" means an adjudicative proceeding
11805 conducted in accordance with the Mississippi Administrative
11806 Procedure Law of 1999 and any other hearing on the record, as
11807 recorded and transcribed by a court reporter, before the
11808 commission or permit board where all parties to the hearing are
11809 allowed to present witnesses, cross-examine witnesses and present
11810 evidence for inclusion into the record, as appropriate under
11811 rules promulgated by the commission or permit board.

11812 (k) "Imminent danger to health and safety of the
11813 public" means the existence of any condition or practice, or any
11814 violation of a permit or other requirement of this chapter, in a
11815 surface coal mining and reclamation operation, which could
11816 reasonably be expected to cause substantial physical harm to
11817 persons outside the permit area before that condition, practice
11818 or violation can be abated. A reasonable expectation of death or
11819 serious injury before abatement exists if a rational person
11820 subjected to the same conditions or practices giving rise to the
11821 peril would not expose himself or herself to the danger during
11822 the time necessary for abatement.

11823 (l) "Interested party" means any person claiming an
11824 interest relating to the surface coal mining operation and who is

11825 so situated that the person may be affected by that operation, or
11826 in the matter of regulations promulgated by the commission, any
11827 person who is so situated that the person may be affected by the
11828 action.

11829 (m) "Lignite" means consolidated lignite coal having
11830 less than eight thousand three hundred (8,300) British thermal
11831 units per pound, moist and mineral matter free.

11832 (n) "Operator" means any person engaged in coal mining
11833 who removes or intends to remove more than two hundred fifty
11834 (250) tons of coal from the earth by coal mining within twelve
11835 (12) consecutive calendar months in any one (1) location.

11836 (o) "Permit" means a permit to conduct surface coal
11837 mining and reclamation operations issued under this chapter.

11838 (p) "Permit area" means the area of land indicated on
11839 the approved map submitted by the operator with the permit
11840 application which area of land shall be covered by the operator's
11841 performance bond.

11842 (q) "Permit board" means the permit board created
11843 under Section 49-17-28.

11844 (r) "Person" means an individual, partnership,
11845 association, society, joint venture, joint stock company, firm,
11846 company, corporation, cooperative or other business organization
11847 and any agency, unit or instrumentality of federal, state or
11848 local government, including any publicly owned utility or
11849 publicly owned corporation.

11850 (s) "Prime farmland" means that farmland as defined by
11851 the United States Secretary of Agriculture on the basis of
11852 factors such as moisture availability, temperature regime,
11853 chemical balance, permeability, surface layer composition,
11854 susceptibility to flooding and erosion characteristics, and which
11855 historically have been used for intensive agricultural purposes,
11856 and as published in the federal register.

11857 (t) "Public hearing," "informal hearing" or "public
11858 meeting" means a public forum organized by the commission,

11859 department or permit board for the purpose of providing
11860 information to the public regarding a surface coal mining and
11861 reclamation operation or regulations proposed by the commission
11862 and at which members of the public are allowed to make comments
11863 or ask questions or both of the commission, department or the
11864 permit board.

11865 (u) "Reclamation plan" means a plan submitted by an
11866 applicant for a permit which sets forth a plan for reclamation of
11867 the proposed surface coal mining operations under this chapter.

11868 (v) "Revision" means any change to the permit or
11869 reclamation plan that does not significantly change the effect of
11870 the mining operation on either those persons impacted by the
11871 permitted operations or on the environment, including, but not
11872 limited to, incidental boundary changes to the permit area or a
11873 departure from or change within the permit area, incidental
11874 changes in the mining method or incidental changes in the
11875 reclamation plan.

11876 (w) "State" means the State of Mississippi.

11877 (x) "State geologist" means the head of the office of
11878 geology and energy resources of the department or a successor
11879 office.

11880 (y) "Surface coal mining and reclamation operations"
11881 means surface coal mining operations and all activities necessary
11882 and incident to the reclamation of those operations.

11883 (z) "Surface coal mining operations" means:

11884 (i) Activities conducted on the surface and
11885 immediate subsurface of lands in connection with a surface coal
11886 mine, surface operations and surface impacts incident to an
11887 underground coal mine, the products of which enter commerce or
11888 the operations of which directly or indirectly affect commerce.
11889 These activities include, but are not limited to:

11890 (A) Excavation for the purpose of obtaining
11891 coal including common methods such as contour, strip, auger,
11892 mountaintop removal, boxcut, open pit and area mining;

11893 (B) The use of explosives and blasting, in
11894 situ distillation or retorting, leaching or other chemical or
11895 physical processing; and

11896 (C) The cleaning, concentrating or other
11897 processing or preparation, and the loading of coal for commerce
11898 at or near the mine site.

11899 These activities do not include exploration
11900 operations subject to Section 53-9-41.

11901 (ii) Areas upon which the activities occur or
11902 where the activities disturb the natural land surface. These
11903 areas shall also include, but are not limited to:

11904 (A) Any adjacent land the use of which is
11905 incidental to any activities;

11906 (B) All lands affected by the construction
11907 of new roads or the improvement or use of existing roads to gain
11908 access to the site of any activities and for haulage;

11909 (C) All lands affected by excavations,
11910 workings, impoundments, dams, ventilation shafts, entryways,
11911 refuse banks, dumps, stockpiles, overburden piles, spoil banks,
11912 culm banks, tailings, holes or depressions, repair areas, storage
11913 areas, processing areas, shipping areas and other areas upon
11914 which are sited structures, facilities or other property or
11915 materials on the surface resulting from or incident to the
11916 activities.

11917 (aa) "Unwarranted failure to comply" means the failure
11918 of a permittee to prevent or abate the occurrence of any
11919 violation of a permit, this chapter or any regulation promulgated
11920 under this chapter due to indifference, lack of diligence or lack
11921 of reasonable care.

11922 SECTION 240. Section 53-9-69, Mississippi Code of 1972, is
11923 amended as follows:

11924 53-9-69. (1) (a) When, on the basis of any information
11925 available, including receipt of information from any person, the
11926 executive director or state geologist as the executive director's

11927 designee has reason to believe that any person is in violation of
11928 this chapter, any regulation or written order of the commission
11929 issued or promulgated under this chapter or any condition of a
11930 permit, the executive director or state geologist as the
11931 executive director's designee shall immediately order inspection
11932 of the surface coal mining operation at which the alleged
11933 violation is occurring unless the information available is a
11934 result of a previous inspection of the surface coal mining
11935 operation. When the inspection results from information provided
11936 to the executive director or state geologist by any person who is
11937 not an employee of the department, the executive director or
11938 state geologist as the executive director's designee shall notify
11939 the person when the inspection is proposed to be carried out and
11940 the person shall be allowed to accompany the inspector during the
11941 inspection.

11942 (b) When, on the basis of any inspection, the
11943 executive director or the executive director's authorized
11944 representative determines that any condition or practices exist
11945 or that any permittee is in violation of this chapter or any
11946 regulation or written order of the commission promulgated or
11947 issued under this chapter or any condition of a permit and the
11948 condition, practice or violation also creates an imminent danger
11949 to the health and safety of the public, or is causing or can
11950 reasonably be expected to cause significant imminent
11951 environmental harm to land, air or water resources, the executive
11952 director or the executive director's authorized representative
11953 shall immediately order a cessation of surface coal mining and
11954 reclamation operations or the portion of those operations
11955 relevant to the condition, practice or violation. The cessation
11956 order shall remain in effect until the executive director or the
11957 executive director's authorized representative determines that
11958 the condition, practice or violation has been abated or until the
11959 order is modified, vacated or terminated by the executive
11960 director or the executive director's authorized representative.

11961 If the commission, executive director or the executive director's
11962 authorized representative finds that the ordered cessation of
11963 surface coal mining and reclamation operations, or any portion of
11964 those operations shall not completely abate the imminent danger
11965 to health or safety of the public or the significant imminent
11966 environmental harm to land, air or water resources, the
11967 commission, executive director or the executive director's
11968 authorized representative shall, in addition to the cessation
11969 order, impose obligations on the operator requiring the operator
11970 to take whatever steps the commission, executive director or the
11971 executive director's authorized representative deems necessary to
11972 abate the imminent danger or the significant environmental harm.

11973 (c) (i) When, on the basis of an inspection, the
11974 executive director or the executive director's authorized
11975 representative determines that any permittee is in violation of
11976 this chapter, any regulation or written order of the commission
11977 promulgated or issued under this chapter or any condition of a
11978 permit but that violation does not create an imminent danger to
11979 the health and safety of the public or cannot be reasonably
11980 expected to cause significant imminent environmental harm to
11981 land, air or water resources, the commission, executive director
11982 or the executive director's authorized representative shall issue
11983 an order to the permittee or agent of the permittee setting a
11984 reasonable time of not more than ninety (90) days for the
11985 abatement of the violation and if deemed necessary by the
11986 commission, executive director or the executive director's
11987 authorized representative ordering an immediate cessation of
11988 activities violating or resulting in the violation of this
11989 chapter, the regulations promulgated under this chapter or any
11990 condition or limitation of a permit.

11991 (ii) If, upon expiration of the period of time as
11992 originally fixed or subsequently extended, for good cause shown
11993 and upon the written finding of the commission, the executive
11994 director or the executive director's authorized representative

11995 finds that the violation has not been abated, the commission, the
11996 executive director or the executive director's authorized
11997 representative shall immediately order a cessation of surface
11998 coal mining and reclamation operations or the portion of those
11999 operations relevant to the violation. The cessation order shall
12000 remain in effect until the commission, the executive director or
12001 the executive director's authorized representative determines
12002 that the violation has been abated or until that order is
12003 modified, vacated or terminated by the commission, the executive
12004 director or the executive director's authorized representative.
12005 In the cessation order issued by the commission, the executive
12006 director or the executive director's authorized representative,
12007 the commission, the executive director or the executive
12008 director's authorized representative shall determine the steps
12009 necessary to abate the violation in the most expeditious manner
12010 possible, and shall include measures in the order necessary to
12011 achieve that abatement.

12012 (d) When, on the basis of an inspection, the executive
12013 director has reason to believe that a pattern of violations of
12014 this chapter, any regulation promulgated under this chapter or
12015 any condition of a permit exists or has existed, and if the
12016 executive director also finds that the violations are caused by
12017 the unwarranted failure of the permittee to comply with this
12018 chapter, any regulation promulgated under this chapter or any
12019 condition of a permit, or that the violations are willfully
12020 caused by the permittee, the executive director shall issue an
12021 order to the permittee to show cause as to why the permit should
12022 not be suspended or revoked by the permit board. Upon the
12023 permittee's failure to show cause to the satisfaction of the
12024 executive director or the executive director's authorized
12025 representative as to why the permit should not be suspended or
12026 revoked, the executive director or the executive director's
12027 authorized representative shall present this information to the
12028 permit board and request that the permit board suspend or revoke

12029 the permit. The permit board shall conduct an adjudicative
12030 proceeding under the Mississippi Administrative Procedure Law of
12031 1999 in order to decide the executive director's request * * *.
12032 Any request by an interested party for a formal hearing regarding
12033 the permit board's initial decision on suspension or revocation
12034 of the permit or any appeal of the final decision following the
12035 formal hearing by any person who participated as a party in the
12036 formal hearing may be taken as provided in the Mississippi
12037 Administrative Procedure Law of 1999.

12038 (e) The permittee or other interested party may, of
12039 right, request an adjudicative proceeding in accordance with the
12040 Mississippi Administrative Procedure Law of 1999 concerning an
12041 order of the commission issued under paragraph (b) or (c) of this
12042 subsection as provided under Section 49-17-41.

12043 (2) (a) The commission may institute a civil action for
12044 relief, including a permanent or temporary injunction or any
12045 other appropriate order, in the chancery court of the county or
12046 judicial district in which the surface coal mining and
12047 reclamation operation is located, in which the permittee has its
12048 principal office, or in the First Judicial District of Hinds
12049 County when the permittee or its agent:

12050 (i) Violates or fails or refuses to comply with
12051 any permit, order or decision issued by the permit board or
12052 commission under this chapter;

12053 (ii) Interferes with, hinders or delays the
12054 commission, permit board, department, executive director or any
12055 authorized representative of the executive director in carrying
12056 out this chapter;

12057 (iii) Refuses to admit any authorized
12058 representative of the executive director, commission, permit
12059 board or department to the mine;

12060 (iv) Refuses to permit inspection of the mine by
12061 that authorized representative;

12062 (v) Refuses to furnish any information or report

12063 requested by the commission, permit board or department in
12064 furtherance of this chapter; or

12065 (vi) Refuses to permit access to and copying of
12066 any records as the commission, permit board or department
12067 determines necessary in carrying out this chapter.

12068 (b) The court shall have jurisdiction to provide any
12069 relief as may be appropriate. Preliminary injunctions shall be
12070 issued in accordance with state law. The commission may obtain
12071 mandatory or prohibitory injunctive relief, either temporary or
12072 permanent, and in cases of imminent and substantial hazard or
12073 endangerment to the environment or public health, it is not
12074 necessary that the commission plead or prove: (i) that
12075 irreparable damage would result if the injunction did not issue;
12076 (ii) that there is no adequate remedy at law; or (iii) that a
12077 written complaint or commission order has first been issued for
12078 the alleged violation. Any relief granted by the court to
12079 enforce an order under subsection 2(a)(i) of this section shall
12080 continue in effect until the completion or final termination of
12081 all proceedings for review of that order under this chapter
12082 unless, before that time, the court granting the relief sets it
12083 aside or modifies it.

12084 (3) Nothing in this section shall be construed to eliminate
12085 any additional enforcement rights or procedures which are
12086 available under state law to a state agency but which are not
12087 specifically stated in this section.

12088 (4) When an order is issued under this section, or as a
12089 result of any administrative proceeding under this chapter, at
12090 the request of any person, a sum equal to the aggregate amount of
12091 all costs and expenses, including attorney's fees, as determined
12092 by the commission to have been reasonably incurred by that person
12093 for or in conjunction with that person's participation in the
12094 proceedings, including any judicial review of agency actions, may
12095 be assessed against either party as the court, resulting from
12096 judicial review, or the commission, resulting from administrative

12097 proceedings deems proper.

12098 SECTION 241. Section 53-9-77, Mississippi Code of 1972, is
12099 amended as follows:

12100 53-9-77. (1) Unless otherwise expressly provided in this
12101 chapter, any interested party aggrieved by any action of the
12102 permit board taken under this chapter may, of right, request an
12103 adjudicative proceeding before the permit board as provided in
12104 the Mississippi Administrative Procedure Law of 1999. Any
12105 interested party aggrieved by any action of the commission,
12106 executive director or the executive director's authorized
12107 representative taken under this chapter may, of right, request an
12108 adjudicative proceeding before the commission as provided in the
12109 Mississippi Administrative Procedure Law of 1999. Any person who
12110 participated as a party * * * before the permit board may secure
12111 judicial review of a final decision of the permit board made
12112 under this chapter as provided in the Mississippi Administrative
12113 Procedure Law of 1999. Any person who participated as a
12114 party * * * before the commission may secure judicial review of a
12115 final decision of the commission made under this chapter as
12116 provided in the Mississippi Administrative Procedure Law of 1999.

12117 (2) (a) Any public hearing of the permit board provided
12118 for under this chapter shall be deemed to be the same hearing as
12119 otherwise afforded to any interested party by the permit board
12120 under Section 49-17-29(4)(a). Any formal hearing of the permit
12121 board provided for under this chapter shall be deemed to be the
12122 same hearing as otherwise afforded to any interested party by the
12123 permit board under Section 49-17-29(4)(b).

12124 (b) Any public hearing of the commission provided for
12125 under this chapter shall be deemed to be the same hearing as
12126 afforded under Section 49-17-35. Any formal hearing of the
12127 commission provided for under this chapter shall be deemed to be
12128 the same hearing as afforded under Section 49-17-41.

12129 * * *

12130 (3) (a) The commission may appoint a hearing officer to

12131 conduct any formal hearing under this chapter. The hearing
12132 officer shall have the same authority to conduct the hearing as
12133 provided the commission under Section 49-17-41.

12134 (b) Upon written request by an alleged violator under
12135 Section 53-9-69, the commission or the hearing officer shall
12136 conduct an adjudicative proceeding in accordance with the
12137 Mississippi Administrative Procedure Law of 1999 and may, upon
12138 the basis of * * * the proceeding, stay any action taken by the
12139 executive director or the executive director's authorized
12140 representative under Section 53-9-69. The hearing officer may
12141 require a bond, if the hearing officer stays the action.

12142 (4) Except as provided in Section 53-9-67, the availability
12143 of judicial review under this section shall not limit any rights
12144 established under Section 53-9-67.

12145 SECTION 242. Section 61-1-45, Mississippi Code of 1972, is
12146 amended as follows:

12147 61-1-45. Every order of the commission requiring
12148 performance of certain acts or compliance with certain
12149 requirements, and every denial or revocation of an approval,
12150 certificate or license, shall set forth the reasons and shall
12151 state the acts to be done or requirements to be met before
12152 approval by the commission will be given or the approval, license
12153 or certificate granted or restored or the order modified or
12154 changed. Orders issued by the commission pursuant to the
12155 provisions of this chapter shall be served upon the persons
12156 affected either by registered mail or in person. In every case
12157 where notice and opportunity for hearing are required under the
12158 provisions of this chapter the order of the commission shall
12159 provide for an adjudicative proceeding in accordance with the
12160 Mississippi Administrative Procedure Law of 1999. Such order
12161 shall become effective upon the expiration of the time for
12162 exercising such opportunity for an adjudicative proceeding,
12163 unless an adjudicative proceeding is commenced within the time
12164 provided, in which case the order shall be suspended until the

12165 commission shall affirm, disaffirm or modify such order after
12166 hearing held or default by the person affected. To the extent
12167 practicable, hearings on such orders shall be held in the county
12168 where the affected person resides or does business. Judicial
12169 review of orders of the commission shall be had in accordance
12170 with the Mississippi Administrative Procedure Law of 1999.

12171 SECTION 243. Section 63-1-31, Mississippi Code of 1972, is
12172 amended as follows:

12173 63-1-31. When a person is denied a license or any temporary
12174 driving permit after filing the proper application, he shall have
12175 the right to an adjudicative proceeding in accordance with the
12176 Mississippi Administrative Procedure Law of 1999. * * *

12177 SECTION 244. Section 63-15-7, Mississippi Code of 1972, is
12178 amended as follows:

12179 63-15-7. (1) The department shall administer and enforce
12180 the provisions of this chapter and may make rules and regulations
12181 necessary for its administration, and shall provide for hearings
12182 upon request of persons aggrieved by orders or acts of the
12183 department under the provisions of this chapter consistent with
12184 the Mississippi Administrative Procedure Law of 1999.

12185 (2) Any order or act of the department, under the
12186 provisions of this chapter, may be subject to judicial review n
12187 accordance with the Mississippi Administrative Procedure Law of
12188 1999. * * *

12189 * * *

12190 SECTION 245. Section 63-17-95, Mississippi Code of 1972, is
12191 amended as follows:

12192 63-17-95. (1) The commission shall conduct adjudicative
12193 proceedings in accordance with the Mississippi Administrative
12194 Procedure Law of 1999 respecting matters within the jurisdiction
12195 of the commission.

12196 * * *

12197 (2) The commission shall prescribe its rules of order or
12198 procedure in hearings or other proceedings before it. However,

12199 such rules of order or procedure shall not be in conflict or
12200 contrary to the provisions of the Mississippi Administrative
12201 Procedure Law of 1999.

12202 (3) All decisions of the commission with respect to the
12203 hearings shall be incorporated into orders of the commission and
12204 spread upon its minutes.

12205 (4) The commission may apply for civil enforcement of its
12206 order in accordance with the Mississippi Administrative Procedure
12207 Law of 1999.

12208 SECTION 246. Section 63-17-99, Mississippi Code of 1972, is
12209 amended as follows:

12210 63-17-99.

12211 * * *

12212 (1) Judicial review of any decision of the commission shall
12213 be in accordance with the Mississippi Administrative Procedure
12214 Law of 1999. * * *

12215 (2) An action for judicial review shall be perfected as
12216 provided in the Mississippi Administrative Procedure Law of 1999.
12217 After perfection of the action for judicial review, the party
12218 having perfected the action shall file a bond in the penal sum of
12219 Five Hundred Dollars (\$500.00) with two sureties or with a surety
12220 company qualified to do business in Mississippi as surety,
12221 conditioned to pay the costs of such appeal, said bond to be
12222 approved by any member of the commission or by its executive
12223 secretary or by the clerk of the * * * court in which judicial
12224 review is sought.

12225 (3) No decision of the commission made as a result of a
12226 hearing shall become final with respect to any party affected and
12227 aggrieved by such decision until such party shall have exhausted
12228 or shall have had an opportunity to exhaust all of his remedies.

12229 However, any such decision may be made final if the commission
12230 finds that failure to do so would be detrimental to the public
12231 interest or public welfare; however, the finality of any such
12232 decision shall not prevent any party or parties affected and

12233 aggrieved thereby to appeal the same in accordance with the
12234 appellate procedure set forth in this section.

12235 SECTION 247. Section 63-19-52, Mississippi Code of 1972, is
12236 amended as follows:

12237 63-19-52. The commissioner shall have the power and
12238 authority to adopt, promulgate and issue such rules and
12239 regulations, not inconsistent with this article, or any other
12240 statute of the State of Mississippi, as he shall deem necessary
12241 for the purpose of the administration of this chapter. A copy of
12242 every rule and regulation promulgated by the commissioner shall
12243 be filed in accordance with the Mississippi Administrative
12244 Procedure Law of 1999, Section 25-43-1.02 et seq.

12245 SECTION 248. Section 65-1-2, Mississippi Code of 1972, is
12246 amended as follows:

12247 65-1-2. (1) There is hereby created the Mississippi
12248 Department of Transportation, which shall include the following
12249 offices:

- 12250 (a) Office of Administrative Services.
- 12251 (b) Office of Highways.
- 12252 (c) Office of State Aid Road Construction.
- 12253 (d) Office of Intermodal Planning.
- 12254 (e) Office of Enforcement.

12255 (2) Each office shall be composed of such bureaus as deemed
12256 necessary by the executive director of the department.

12257 (3) The department is designated as the single state agency
12258 to receive and expend any funds made available by the United
12259 States Department of Transportation or any agency of the federal
12260 government for transportation purposes and to cooperate with
12261 federal, state, interstate and local agencies, organizations and
12262 persons performing activities relating to transportation. This
12263 subsection shall not apply to motor carrier safety assistance
12264 program funds made available by the federal government to the
12265 Public Service Commission.

12266 (4) The powers, duties and responsibilities of the State

12267 Highway Department with respect to the construction and
12268 maintenance of the state highway system are transferred to the
12269 Mississippi Department of Transportation.

12270 (5) The powers, duties and responsibilities of the
12271 Department of Economic and Community Development with respect to
12272 aeronautics are transferred to the Mississippi Department of
12273 Transportation.

12274 (6) The powers, duties and responsibilities of the State
12275 Tax Commission with respect to the weighing of motor vehicles
12276 along the highways of this state at inspection stations and by
12277 means of portable scales are transferred to the Mississippi
12278 Department of Transportation.

12279 (7) The powers, duties and responsibilities of the
12280 Department of Economic and Community Development with respect to
12281 transportation matters, except with respect to ports, are
12282 transferred to the Mississippi Department of Transportation.

12283 (8) The powers, duties and responsibilities of the State
12284 Aid Engineer and the Office of State Aid Road Construction are
12285 transferred to the Mississippi Department of Transportation.

12286 (9) All powers, duties and responsibilities of the Public
12287 Service Commission with regard to railroads, except rate-making
12288 authority, are transferred to the Mississippi Department of
12289 Transportation. The Mississippi Transportation Commission may
12290 perform any act and issue any rule, regulation or order which the
12291 commission is permitted to do by the Federal Railroad Safety Act
12292 of 1970 (45 USCS et seq.). A copy of any new rule, regulation or
12293 order passed by the Mississippi Transportation Commission shall
12294 be furnished to members of the Transportation Committees of the
12295 Mississippi House of Representatives and the Mississippi Senate.

12296 Individuals, corporations or companies affected by the order,
12297 rule or regulation shall be notified in accordance with the
12298 Mississippi Administrative Procedure Law of 1999.

12299 (10) All records, personnel, property and unexpended
12300 balances of appropriations, allocation or other funds of all

12301 those agencies, boards, commissions, departments, offices,
12302 bureaus and divisions that are transferred by Laws, 1992, Chapter
12303 496 shall be transferred to the Mississippi Department of
12304 Transportation. The transfer of segregated or special funds
12305 shall be made in such a manner that the relation between program
12306 and revenue source as provided by law shall be retained.

12307 (11) From and after January 1, 1993, and until January 1,
12308 1994, the Mississippi Department of Transportation and the
12309 Mississippi Transportation Commission shall be exempt from State
12310 Personnel Board procedures for the purpose of the employment,
12311 promotion, realignment, demotion, reprimand, suspension,
12312 termination, reallocation, reassignment, transfer, moving or
12313 relocation of personnel of all those agencies, boards,
12314 commissions, departments, offices, bureaus and divisions whose
12315 duties and responsibilities are transferred by Laws, 1992,
12316 Chapter 496 to the Mississippi Department of Transportation.

12317 SECTION 249. Section 65-1-46, Mississippi Code of 1972, is
12318 amended as follows:

12319 65-1-46. (1) There is created an Appeals Board of the
12320 Mississippi Transportation Commission. If any person feels
12321 aggrieved by a penalty for excess weight assessed against him by
12322 an agent or employee of the Mississippi Department of
12323 Transportation pursuant to Section 27-19-89, he may apply to the
12324 appeals board.

12325 (2) The members serving on the appeals board on April 7,
12326 1995, shall continue to serve until July 1, 1995. On July 1,
12327 1995, the appeals board shall be reconstituted to be composed of
12328 five (5) qualified people. The initial appointments to the
12329 reconstituted board shall be made no later than June 30, 1995,
12330 for terms to begin July 1, 1995, as follows: One (1) member
12331 shall be appointed by the Governor for a term ending on June 30,
12332 1996, one (1) member shall be appointed by the Lieutenant
12333 Governor for a term ending on June 30, 1997, one (1) member shall
12334 be appointed by the Attorney General for a term ending on June

12335 30, 1998, one (1) member shall be appointed by the Chairman of
12336 the State Tax Commission for a term ending on June 30, 1999, and
12337 one (1) member shall be appointed by the Executive Director of
12338 the Mississippi Department of Transportation for a term ending on
12339 June 30, 2000. After the expiration of the initial terms of the
12340 members of the reconstituted board, all subsequent appointments
12341 shall be made for terms of four (4) years from the expiration
12342 date of the previous term. Any member serving on the appeals
12343 board before July 1, 1995, may be reappointed to the
12344 reconstituted appeals board. Appointments to the board shall be
12345 with the advice and consent of the Senate; however, the advice
12346 and consent of the Senate shall not be required for the
12347 appointment of a person to the reconstituted appeals board for a
12348 term beginning on July 1, 1995, if such person was serving as a
12349 member of the appeals board on June 30, 1995, and such person
12350 received the advice and consent of the Senate for that
12351 appointment.

12352 (3) There shall be a chairman and vice-chairman of the
12353 board who shall be elected by and from the membership of the
12354 board. Any member who fails to attend three (3) consecutive
12355 regular meetings of the board shall be subject to removal by a
12356 majority vote of the board. A majority of the members of the
12357 board shall constitute a quorum. The chairman, or a majority of
12358 the members of the board, may call meetings as may be required
12359 for the proper discharge of the board's duties. Members of the
12360 board, except a member who is an officer or employee of the
12361 Mississippi Department of Transportation, shall receive per diem
12362 in the amount authorized by Section 25-3-69, for each day spent
12363 in the actual discharge of their duties and shall be reimbursed
12364 for mileage and actual expenses incurred in the performance of
12365 their duties in accordance with the provisions of Section
12366 25-3-41.

12367 Application shall be made by petition in writing, within
12368 thirty (30) days after assessment of the penalty, for a hearing

12369 and a review of the amount of the assessment. * * * The appeals
12370 board shall thereupon conduct an adjudicative proceeding in
12371 accordance with the Mississippi Administrative Procedure Law of
12372 1999 and the rules of the commission not inconsistent therewith.

12373 Upon due consideration of all the facts relating to the
12374 assessment of the penalty, the appeals board, except as otherwise
12375 provided under this section or under Section 27-19-89, may
12376 require payment of the full amount of the assessment, may reduce
12377 the amount of the assessment or may dismiss imposition of the
12378 penalty entirely. The appeals board shall dismiss in its
12379 entirety the imposition of any penalty imposed against the holder
12380 of a harvest permit if the permittee proves to the appeals board,
12381 by clear and convincing evidence, that the average load
12382 transported by the permittee during the permittee's last five (5)
12383 haul days immediately preceding the day upon which the penalty
12384 appealed from was assessed did not exceed eighty thousand
12385 (80,000) pounds. The appeals board shall reduce the penalty
12386 assessed against the holder of a harvest permit to a maximum of
12387 Two Cents (2 per pound of overweight if the permittee proves to
12388 the appeals board, by clear and convincing evidence, that the
12389 average load transported by the permittee during the permittee's
12390 last five (5) haul days immediately preceding the day upon which
12391 the penalty appealed from was assessed exceeded seventy-nine
12392 thousand nine hundred ninety-nine (79,999) pounds but did not
12393 exceed eighty-four thousand (84,000) pounds. The board shall
12394 make such orders in the matter as appear to it just and lawful
12395 and shall furnish copies thereof to the petitioner. If the
12396 appeals board orders the payment of the penalty, the petitioner
12397 shall pay the penalty, damages and interest, if any, within ten
12398 (10) days after the order is issued unless there is an
12399 application for appeal from the decision of the board as provided
12400 in the succeeding paragraph. Interest shall accrue on the
12401 penalty at the rate of one percent (1%) per month, or part of a
12402 month, beginning immediately after the expiration of the ten-day

12403 period.

12404 If any person feels aggrieved by the decision of the appeals
12405 board, he may secure judicial review thereof in accordance with
12406 the Mississippi Administrative Procedure Law of 1999.

12407 SECTION 250. Section 65-2-15, Mississippi Code of 1972, is
12408 amended as follows:

12409 65-2-15. * * * Either party to the dispute may seek
12410 judicial review of such order in accordance with the Mississippi
12411 Administrative Procedure Law of 1999.

12412 * * *

12413 SECTION 251. Section 65-9-1, Mississippi Code of 1972, is
12414 amended as follows:

12415 65-9-1. The board of supervisors of each county, now having
12416 full jurisdiction over all roads, ferries, and bridges in its
12417 respective county not maintained as state highways, is hereby
12418 fully authorized and empowered to construct and maintain the same
12419 (including designated state highways not yet taken over by the
12420 highway department); and all such roads under the jurisdiction of
12421 the several boards of supervisors are hereby designated, defined,
12422 and declared to be either (a) "feeder" or "local farm roads" or
12423 (b) "state aid roads."

12424 State aid roads are hereby defined as that group or class of
12425 roads composing the main collector and distributor routes feeding
12426 into local trade areas or into the state highway network, which
12427 are not designated as state highways by the Legislature, and
12428 particularly those essential to the conservation and development
12429 of natural resources, of economic and social value, and
12430 encouraging desirable land utilization, having in addition the
12431 following characteristics, to wit: roads (including bridges and
12432 ferries) which

12433 (a) Connect communities within the individual counties
12434 and with those of adjoining counties and/or which also connect
12435 with the state highway system to form a complete network of
12436 secondary or collector routes.

12437 (b) Carry heavy volumes of traffic serving most of the
12438 following interests of the counties, to wit:

12439 (1) Agricultural

12440 (2) Business

12441 (3) Educational

12442 (4) Industrial

12443 The State Aid Engineer shall see that the criteria imposed
12444 herein are explicitly followed in the designation and in the
12445 construction of the state aid roads in each county. The State
12446 Aid Engineer shall promulgate regulations pursuant to the
12447 Mississippi Administrative Procedure Law of 1999 to require the
12448 development of a network of intercounty roads and to provide for
12449 a review process within the state aid division for the
12450 designation of said state aid roads. Such regulations shall also
12451 establish standards for state aid route designation. The State
12452 Aid Engineer is hereby authorized and directed to withhold funds
12453 from such counties until the state aid roads therein are
12454 designated and constructed according to the characteristics set
12455 forth herein.

12456 All other roads under the jurisdiction of the several boards
12457 of supervisors are hereby declared to be "local farm roads" and
12458 not affected in anywise by this chapter.

12459 State aid roads in the several counties shall be eligible
12460 for state aid in the manner and under the terms and conditions
12461 hereinafter set out. State aid, by way of funds to be expended
12462 on state aid roads, shall consist of any sum or sums provided by
12463 the Legislature to supplement funds furnished by the several
12464 counties for the purpose of constructing, improving, widening,
12465 straightening, surfacing, or reconstructing roads on the state
12466 aid system, and shall be available to the several counties in
12467 such proportion as may be fixed and determined by law.

12468 SECTION 252. Section 67-1-39, Mississippi Code of 1972, is
12469 amended as follows:

12470 67-1-39. Judicial review of an order of the commission

12471 shall be in accordance with the Mississippi Administrative
12472 Procedure Law of 1999. * * * Actions taken by the commission in
12473 suspending a permit when required by Section 93-11-157 or
12474 93-11-163 are not actions from which an appeal may be taken under
12475 this section. Any appeal of a permit suspension that is required
12476 by Section 93-11-157 shall be taken in accordance with the appeal
12477 procedure specified in Section 93-11-157 or 93-11-163, as the
12478 case may be, rather than the procedure specified in this section.

12479 SECTION 253. Section 69-1-18, Mississippi Code of 1972, is
12480 amended as follows:

12481 69-1-18. (1) The commissioner may conduct sanitation
12482 inspections in retail food stores. "Retail food store" means any
12483 establishment where food and food products are offered for sale
12484 to the ultimate consumer and intended for off-premise
12485 consumption. Such food or food products may be exposed to
12486 varying degrees of preparation and may often need further
12487 preparation or processing after it has been purchased. "Retail
12488 food store" shall not mean a food service establishment as
12489 defined by the Mississippi State Department of Health.

12490 (2) The commissioner is authorized to promulgate rules and
12491 regulations to establish inspection parameters and other matters
12492 as may be necessary to accomplish the purposes of this section in
12493 accordance with the Mississippi Administrative Procedure Law of
12494 1999.

12495 (3) Each retail food store, before engaging in business,
12496 shall obtain a license from the commissioner for each place of
12497 business or facility where such business is conducted.
12498 Application for license shall be made on forms prescribed and
12499 furnished by the commissioner. Licenses issued under this
12500 subsection by the commissioner shall expire on June 30 each year
12501 and application for renewals thereof shall be made annually
12502 before the expiration date. Such licenses shall not be
12503 transferrable and application must be made for a new license if
12504 there is any change in the location or ownership of the business.

12505 (4) The commissioner may publish the names and addresses of
12506 violators and such information pertaining to violation(s) of this
12507 section as he deems appropriate.

12508 (5) Any person found by the commissioner to be in violation
12509 of this section may be assessed a penalty in an amount of not
12510 more than Five Hundred Dollars (\$500.00) and subsequent
12511 violations within a six-month period at a penalty of not more
12512 than One Thousand Dollars (\$1,000.00). In addition to, or in
12513 lieu of, such penalties the commissioner may suspend or revoke
12514 the permit issued to such person under terms of this section.
12515 The commissioner shall notify such person of such action in
12516 writing delivered by United States mail. Such person shall have
12517 fifteen (15) days after the notice is mailed within which to
12518 request in writing an adjudicative proceeding. Upon request of
12519 such person, the commissioner shall conduct an adjudicative
12520 proceeding in accordance with the Mississippi Administrative
12521 Procedure Law of 1999.

12522 The commission's decision after an adjudicative proceeding
12523 shall be subject to judicial review in accordance with the
12524 Mississippi Administrative Procedure Law of 1999. * * * If any
12525 penalty imposed by the commissioner is not paid within thirty
12526 (30) days of becoming final, the commissioner may take
12527 appropriate * * * action in the chancery court to enforce the
12528 order and collect such penalty and the court shall award the
12529 commissioner reasonable attorney's fees and court costs to
12530 collect the penalty.

12531 The commissioner may invoke the remedy of injunction to
12532 enforce any of the provisions of this section.

12533 SECTION 254. Section 69-1-25, Mississippi Code of 1972, is
12534 amended as follows:

12535 69-1-25. (1) The State Commissioner of Agriculture and
12536 Commerce, the Governor and the Attorney General of the State of
12537 Mississippi, are hereby authorized and empowered, in their
12538 discretion, to protect the welfare of the people of the State of

12539 Mississippi by guaranteeing that seeds, feeds, fertilizers,
12540 bulbs, vegetables, or any and all other product of farm, grove,
12541 forest, garden and minerals, including, but not limited to, coal
12542 and lime, coming into the State of Mississippi meet the proper
12543 standards, in accordance with the laws of the State of
12544 Mississippi and rules and regulations drawn by the State
12545 Commissioner of Agriculture and Commerce, with the approval of
12546 the Attorney General, in accordance with the Mississippi
12547 Administrative Procedure Law of 1999, governing the labeling as
12548 to net weight, source of origin, purity, and grade thereof. In
12549 the case of coal or lime, the State Commissioner of Agriculture
12550 and Commerce, with the approval of the Attorney General, may
12551 promulgate rules and regulations setting up a form or forms to be
12552 used in guaranteeing the net weight at the point of delivery, to
12553 be weighed on approved scales in the presence of the purchaser.

12554 (2) Any person, firm or corporation violating the
12555 provisions of this section shall be guilty of a misdemeanor and,
12556 upon conviction, shall be punished by a fine of not exceeding
12557 Five Hundred Dollars (\$500.00) or imprisonment in the county jail
12558 not exceeding six months, or both, and each sale of any such
12559 goods or products without meeting the requirements of this
12560 section shall constitute a separate offense.

12561 SECTION 255. Section 69-3-115, Mississippi Code of 1972, is
12562 amended as follows:

12563 69-3-115. Any person desiring a change in the rules and
12564 regulations or to appeal from the action of the state seed
12565 certifying agency shall have the right to an adjudicative
12566 proceeding before a board of appeals. The board of appeals
12567 composed of the State Commissioner of Agriculture and Commerce,
12568 the Director of the Agricultural and Forestry Experiment Station
12569 of Mississippi State University of Agriculture and Applied
12570 Science, and the President of Mississippi State University of
12571 Agriculture and Applied Science, at such time and place as the
12572 board chairman shall designate. The Director of the Agricultural

12573 and Forestry Experiment Station of Mississippi State University
12574 of Agriculture and Applied Science shall serve as chairman of the
12575 board. The adjudicative proceeding shall be in accordance with
12576 the Mississippi Administrative Procedure Law of 1999. Any party
12577 shall have a right to judicial review of the order of the board
12578 in accordance with the Mississippi Administrative Procedure Law
12579 of 1999.

12580 SECTION 256. Section 69-7-267, Mississippi Code of 1972, is
12581 amended as follows:

12582 69-7-267. Every person owning over three thousand (3,000)
12583 hens, or who is engaged or who engages in the business of selling
12584 eggs to a retailer who retails eggs in the State of Mississippi
12585 shall prior to offering for sale or selling eggs to a retailer,
12586 secure a license for such business from the Commissioner of
12587 Agriculture and Commerce, which license shall first be approved
12588 by the board. Applications for licenses shall be on forms
12589 furnished by the Department of Agriculture and Commerce, and
12590 shall show the name and address of the applicant and such other
12591 information as to identity, kind and type of business engaged in
12592 as the commissioner shall deem pertinent. Each license
12593 application shall be accompanied by a fee of Fifty Dollars
12594 (\$50.00). All licenses issued shall expire on June 30 each year.

12595 The license may be revoked or suspended by the board for
12596 violation of any provision of this article or rules and
12597 regulations duly promulgated by the board for the enforcement of
12598 this article in accordance with the Mississippi Administrative
12599 Procedure Law of 1999, or for the violation of any laws of the
12600 State of Mississippi pertaining to producing, grading,
12601 classifying or marketing eggs in Mississippi or regulations of
12602 the State Department of Agriculture and Commerce duly promulgated
12603 for such purposes. For the first offense, the license may be
12604 suspended for a period of not more than thirty (30) days; for the
12605 second offense, the license may be suspended for not more than
12606 sixty (60) days; for the third offense, the license may be

12607 suspended for not more than one (1) year. For any subsequent
12608 offense, the license may be suspended for any period, or may be
12609 revoked. Such disciplinary action shall be the result of not
12610 less than board action. Any person against whom such
12611 disciplinary action has been taken may apply to the board for an
12612 adjudicative proceeding in accordance with the Mississippi
12613 Administrative Procedure Law of 1999 in order to show cause why
12614 the disciplinary action shall not be taken. Such petition for an
12615 adjudicative proceeding shall act as supersedeas of the
12616 disciplinary action until such time as the board shall conduct an
12617 adjudicative proceeding * * *, however, * * * if such
12618 adjudicative proceeding is granted and any continuation or delay
12619 is the result of the action of the applicant, the supersedeas
12620 shall not continue past the date set by the board for such
12621 adjudicative proceeding.

12622 Application for reinstatement of a revoked license may be
12623 made upon expiration of the period of revocation or if
12624 permanently revoked, then after twelve (12) months from date of
12625 said revocation. Each reinstatement application shall be
12626 accompanied by a reinstatement fee of Fifty Dollars (\$50.00).
12627 All licenses shall be valid until suspended or revoked as herein
12628 provided or until cancelled by the licensee. Licenses shall not
12629 be transferable. Proceeds from the license fees collected under
12630 this article shall be transmitted to the State Treasurer for
12631 credit to the special fund as provided for elsewhere in this
12632 article.

12633 SECTION 257. Section 69-7-613, Mississippi Code of 1972, is
12634 amended as follows:

12635 69-7-613. (1) Any person who violates any provision of
12636 this article for which no other civil penalty is provided by this
12637 article shall upon conviction be subject to a fine of not more
12638 than Five Hundred Dollars (\$500.00); provided, no person shall be
12639 subject to penalties under this section for receiving for
12640 transportation any article in violation of this article if such

12641 receipt was made in good faith, unless such person refuses to
12642 furnish, on request of a representative of the commissioner, the
12643 name and address of the person from whom he received such
12644 article, and copies of all documents, if any there be, pertaining
12645 to the delivery of the article to him.

12646 (2) Nothing in this article shall be construed as requiring
12647 the commissioner to report for prosecution or for the institution
12648 of libel or injunction proceedings minor violations of this
12649 article whenever he believes that the public interest will be
12650 adequately served by a suitable written notice of warning.

12651 (3) It shall be the duty of each prosecuting attorney to
12652 whom any violation is reported to cause appropriate proceedings
12653 to be instituted and prosecuted in a court of competent
12654 jurisdiction without delay. Before the commissioner reports a
12655 violation for such prosecution, an opportunity shall be given the
12656 distributor or other affected person to present his view to the
12657 commissioner.

12658 (4) The commissioner is hereby authorized to apply for and
12659 the court to grant a temporary or permanent injunction
12660 restraining any person from violating or continuing to violate
12661 any of the provisions of this article or any rule or regulation
12662 promulgated under this article, notwithstanding the existence of
12663 other remedies at law. Said injunction shall be issued without
12664 bond.

12665 (5) Any person adversely affected by an act, order or
12666 ruling made by the commissioner pursuant to the provisions of
12667 this article shall have a right of judicial review of such
12668 actions in accordance with the Mississippi Administrative
12669 Procedure Law of 1999.

12670 SECTION 258. Section 69-7-667, Mississippi Code of 1972, is
12671 amended as follows:

12672 69-7-667. (1) The commissioner is hereby authorized to
12673 apply for and the court to grant a temporary or permanent
12674 injunction restraining any person from violating or continuing to

12675 violate any of the provisions of this article or any rule or
12676 regulation promulgated under this article, notwithstanding the
12677 existence of other remedies at law. Said injunction shall be
12678 issued without bond.

12679 (2) Any person adversely affected by an act, order or
12680 ruling made by the commissioner pursuant to the provisions of
12681 this article shall have a right of judicial review of such action
12682 in accordance with the Mississippi Administrative Procedure Law
12683 of 1999.

12684 SECTION 259. Section 69-15-51, Mississippi Code of 1972, is
12685 amended as follows:

12686 69-15-51. It is the purpose of Sections 69-15-51 through
12687 69-15-69 to establish an adjudicative procedure in accordance
12688 with the Mississippi Administrative Procedure Law of 1999 under
12689 the Board of Animal Health to enforce the rules and regulations
12690 of the Board of Animal Health and the statutes and laws of the
12691 State of Mississippi pertaining to the control and eradication of
12692 tuberculosis, anthrax, hog cholera, Texas and splenic fever and
12693 the fever-carrying tick (*Margaropus annulatus*), cattle
12694 brucellosis, anaplasmosis, infectious bovine rhinotracheitis,
12695 muscosal disease, cattle viral diarrhea, cattle scabies, sheep
12696 scabies, swine erysipelas, swine brucellosis, equine
12697 encephalomyelitis, rabies, vesicular diseases, salmonella group,
12698 newcastle disease, infectious laryngotracheitis,
12699 ornithosis-psittacosis, mycoplasma group, equine infectious
12700 anemia and any suspected new and/or foreign diseases of livestock
12701 and poultry, and all other diseases of animals in this state,
12702 currently in effect or hereafter made and promulgated.

12703 SECTION 260. Section 69-15-53, Mississippi Code of 1972, is
12704 amended as follows:

12705 69-15-53. (1) When any allegation or charge has been made
12706 against a person for violating the rules and regulations of the
12707 Board of Animal Health or the law relating to the prevention and
12708 eradication of diseases in animals and livestock, the Board of

12709 Animal Health shall direct the State Veterinarian to act as the
12710 reviewing officer. The reviewing officer shall (a) cause the
12711 complaint to be in writing and signed by the person making the
12712 charge; (b) insure that the complaint is filed in the office of
12713 the Board of Animal Health; and (c) send a copy of the complaint
12714 and any supporting documents to the person accused along with a
12715 request for the accused to respond to the allegations within
12716 thirty (30) days. Such notification shall be accomplished by any
12717 of the methods provided for in Rule 4 of the Mississippi Rules of
12718 Civil Procedure. Upon receipt of the response and any supporting
12719 documents from the accused, the reviewing officer shall screen
12720 all information on file to determine the merit of the complaint
12721 or lack thereof.

12722 (2) If the reviewing officer determines that the complaint
12723 lacks merit, he may dismiss the complaint.

12724 (3) If the reviewing officer determines that there are
12725 reasonable grounds to indicate that a violation has occurred or
12726 the accused admits to the truth of the allegations upon which the
12727 complaint is based, the reviewing officer may levy a fine not to
12728 exceed One Thousand Dollars (\$1,000.00) for each violation.

12729 (4) If the accused requests an adjudicative proceeding in
12730 accordance with the Mississippi Administrative Procedure Law of
12731 1999, in writing, within thirty (30) days, the reviewing officer
12732 shall notify the Board of Animal Health and an adjudicative
12733 proceeding shall be conducted. The actions of the State
12734 Veterinarian with respect to subsections (2) and (3) above shall
12735 be reviewable at such proceeding, if so requested. The party
12736 requesting a proceeding shall file a fee of One Hundred Dollars
12737 (\$100.00) along with the request for a proceeding to cover the
12738 cost of recording the proceeding.

12739 SECTION 261. Section 69-15-55, Mississippi Code of 1972, is
12740 amended as follows:

12741 69-15-55. (1) The Board of Animal Health, upon notice from
12742 the reviewing officer that a hearing is requested, shall appoint

12743 a three-member hearing committee which shall consist of one (1)
12744 attorney from the Attorney General's office, and two (2)
12745 representatives from the Department of Agriculture or from the
12746 membership of the Board of Animal Health. The hearing committee
12747 shall, within thirty (30) days of notification from the reviewing
12748 officer commence an adjudicative proceeding in accordance with
12749 the Mississippi Administrative Procedure Law of 1999.

12750 (2) * * * The hearing shall be closed unless the accused
12751 shall request a public hearing. The hearing committee shall have
12752 the right and duty to impose reasonable restrictions as it may
12753 deem necessary or appropriate to insure an orderly, expeditious
12754 and impartial proceeding * * *.

12755 * * *

12756 (3) At the conclusion of the hearing, the hearing
12757 committee, upon the majority vote of the members of such
12758 committee, shall transmit to the Board of Animal Health a written
12759 opinion incorporating findings of fact and recommendations for
12760 penalties which shall not exceed One Thousand Dollars (\$1,000.00)
12761 for each violation.

12762 SECTION 262. Section 69-15-57, Mississippi Code of 1972, is
12763 amended as follows:

12764 69-15-57. The reviewing officer and/or the hearing
12765 committee shall certify findings and recommendations to the Board
12766 of Animal Health within five (5) days of the conclusion of the
12767 proceedings. The Board of Animal Health shall, at its next
12768 regular meeting, review such findings and recommendations and
12769 approve, modify or reverse the recommendations made as a result
12770 of the review and proceeding. The Board of Animal Health shall
12771 then notify the accused violator of its decision by certified
12772 mail at a mailing address provided during the proceedings, or at
12773 the accused violator's last-known address.

12774 SECTION 263. Section 69-15-59, Mississippi Code of 1972, is
12775 amended as follows:

12776 69-15-59. Failure of the accused to request an adjudicative

12777 proceeding or respond to the complaint within thirty (30) days
12778 shall constitute a waiver of the right to an adjudicative
12779 proceeding and any penalties assessed by the board shall be due
12780 and payable as provided in Section 69-15-67.

12781 SECTION 264. Section 69-15-63, Mississippi Code of 1972, is
12782 amended as follows:

12783 69-15-63. (1) Any individual aggrieved by a final decision
12784 of the Board of Animal Health after its review of the hearing
12785 officer's recommendation shall be entitled to judicial review in
12786 accordance with the Mississippi Administrative Procedure Law of
12787 1999.

12788 (2) * * * The person seeking judicial review shall prepay
12789 all costs, including the cost of preparation of the record of the
12790 proceedings by the Board of Animal Health, and file a bond in the
12791 sum of Five Hundred Dollars (\$500.00) conditioned that if the
12792 action of the board be affirmed * * *, the aggrieved party shall
12793 pay the costs of the judicial review * * *.

12794 * * *

12795 SECTION 265. Section 69-15-117, Mississippi Code of 1972,
12796 is amended as follows:

12797 69-15-117. (1) The owner or possessor of an equine, as
12798 defined in Section 95-11-3, shall not take the equine into any
12799 state or local government facility or multipurpose building where
12800 animals are housed or held for exhibits, shows or sales unless
12801 the owner or possessor displays to the operator of the facility a
12802 certificate issued by a licensed veterinarian showing that the
12803 equine is free of equine infectious anemia. A Coggins test must
12804 have been performed within the twelve (12) months immediately
12805 preceding the exhibit, show or sale. Shows on privately owned
12806 property are exempt from this act.

12807 (2) The Board of Animal Health shall promulgate rules and
12808 regulations in accordance with the Mississippi Administrative
12809 Procedure Law of 1999 to enforce this section.

12810 (3) Any person violating this section or the rules and

12811 regulations promulgated under this section by the Board of Animal
12812 Health is subject to the penalties provided in Section 69-15-65.

12813 SECTION 266. Section 69-19-1, Mississippi Code of 1972, is
12814 amended as follows:

12815 69-19-1. The Commissioner of Agriculture and Commerce shall
12816 have the power to make rules and regulations in accordance with
12817 the Mississippi Administrative Procedure Law of 1999 to govern
12818 the qualifications and the practicing of persons engaged in the
12819 professional services herein defined and to prevent fraudulent
12820 practices in the said professional services. No such rule or
12821 regulation shall be effective unless and until the same shall
12822 have been approved by the advisory board created under the
12823 provisions of Section 69-25-3, Mississippi Code of 1972.

12824 SECTION 267. Section 69-21-7, Mississippi Code of 1972, is
12825 amended as follows:

12826 69-21-7. (1) No person, firm or corporation shall engage
12827 in the application of hormone-type herbicides by aircraft within
12828 this state at any time without a license issued by the
12829 commissioner through his agent, the State Entomologist.
12830 Application for a license shall be made to the commissioner
12831 through his agent, the State Entomologist at Mississippi State
12832 University of Agriculture and Applied Science, State College,
12833 Mississippi. Each application for a license shall contain
12834 information regarding the applicant's qualifications and proposed
12835 operations and other relevant matters as required pursuant to
12836 regulations promulgated by the commissioner.

12837 (2) The commissioner may require the applicant to show,
12838 upon examination, that he possesses adequate knowledge concerning
12839 the proper use and application of herbicides and the dangers
12840 involved and precautions to be taken in connection with their
12841 application. If the applicant is other than an individual, the
12842 applicant shall designate an officer, member or technician of the
12843 organization to take the examination, such designee to be subject
12844 to the approval of the commissioner. If the extent of the

12845 applicant's operations warrant it, the commissioner may require
12846 more than one officer, member or technician to take the
12847 examination.

12848 (3) If the commissioner finds the applicant qualified, he
12849 shall issue a license, for such period as the commissioner may by
12850 regulation prescribe, to perform application of herbicides within
12851 this state. The license may restrict the applicant to the use of
12852 a certain type or types of equipment or materials if the
12853 commissioner finds that the applicant is qualified to use only
12854 such type or types. If a license is not issued as applied for,
12855 the commissioner shall inform the applicant in writing of the
12856 reasons therefor. If the applicant is dissatisfied with the
12857 decision of the applicant, upon his request, the commissioner
12858 shall conduct an adjudicative proceeding in regard thereto in
12859 accordance with the Mississippi Administrative Procedure Law of
12860 1999.

12861 SECTION 268. Section 69-21-109, Mississippi Code of 1972,
12862 is amended as follows:

12863 69-21-109. The board, after public hearing duly held, is
12864 hereby vested with the authority to adopt such rules and
12865 regulations in accordance with the Mississippi Administrative
12866 Procedure Law of 1999 as may be necessary to regulate the
12867 application of chemicals and pesticides according to the time of
12868 year, manner, form and area of application, wind velocity, and
12869 may restrict the use of certain chemicals and pesticides which
12870 create an unusual hazard to the health, safety and welfare of the
12871 public. The board shall set professional standards for
12872 applicators and pilots in the interest of the safety, welfare and
12873 general well-being of the public of Mississippi.

12874 The board shall have authority to procure samples of spray
12875 and dust materials before and after they are mixed in order to
12876 determine the concentration of the mixtures.

12877 The Agricultural Aviation Board shall have authority to
12878 maintain an office and employ necessary personnel within the

12879 framework of fees collected to carry out the purposes of this
12880 article.

12881 It shall be the duty of the board to enforce this article
12882 and all rules and regulations made and adopted in compliance with
12883 this article.

12884 The board or its representatives shall have access to any
12885 premises where there is reason to believe that a chemical or
12886 pesticide is being or has been applied by an applicator, or where
12887 any applicator is based, or preparing to apply any of the
12888 materials herein stated, for the purpose of enforcement of this
12889 article. The board shall have authority to inspect equipment
12890 used for application of chemicals and pesticides as stated in
12891 this article.

12892 The Board of Agricultural Aviation shall maintain a close
12893 liaison and spirit of cooperation with the Mississippi Department
12894 of Agriculture and Commerce, in the supervision of aeri-ally
12895 applied chemicals which are under their jurisdiction as provided
12896 by Sections 69-21-7 through 69-21-15. The board, further, shall
12897 closely assist the Mississippi Department of Transportation in
12898 carrying out its statutory functions to the end that aviation can
12899 continue its rapid advance.

12900 SECTION 269. Section 69-21-121, Mississippi Code of 1972,
12901 is amended as follows:

12902 69-21-121. (1) The Agricultural Aviation Board, in
12903 exercising its authority to enforce this article and its rules
12904 and regulations made and adopted in compliance with this article,
12905 shall have the power to discipline the holder of a license after
12906 a hearing and opportunity to be heard in an adjudicative
12907 proceeding conducted in accordance with the Mississippi
12908 Administrative Procedure Law of 1999 has been given to the holder
12909 of the license. Notice of the time and place of such hearing and
12910 the grounds therefor shall be given to the holder of the license
12911 by registered or certified mail at least ten (10) days prior to
12912 the date of the hearing, and said licensee shall be disciplined

12913 as follows, to wit:

12914 (a) By placing him upon probation, the terms of which
12915 may be set by the board;

12916 (b) By suspending his right to do business as an
12917 applicator or pilot for a time deemed proper by the board;

12918 (c) By revoking, cancelling or suspending his license;
12919 or

12920 (d) By taking any other action in relation to his
12921 license as the board may deem proper under the circumstances.

12922 (2) Such disciplinary action may be made by the board if it
12923 finds that such licensee:

12924 (a) Is guilty of misrepresentation for the purpose of
12925 defrauding;

12926 (b) Has made any false statements or representations
12927 in his application for issuance or renewal of a license;

12928 (c) Has violated any of the provisions of this article
12929 or the rules and regulations promulgated thereunder by the board;
12930 or

12931 (d) Has made any application in a faulty, careless or
12932 negligent manner.

12933 (3) Any person aggrieved by action of the Agricultural
12934 Aviation Board shall have a right to secure judicial review in
12935 accordance with the Mississippi Administrative Procedure Law of
12936 1999.

12937 SECTION 270. Section 69-21-125, Mississippi Code of 1972,
12938 is amended as follows:

12939 69-21-125. (1) Violation of this article or the rules and
12940 regulations promulgated thereunder shall be a misdemeanor
12941 punishable by a fine of not less than One Hundred Dollars
12942 (\$100.00) and not more than Five Hundred Dollars (\$500.00), or by
12943 imprisonment in the county jail for not more than six (6) months,
12944 or by both such fine and imprisonment. Each day's violation
12945 shall constitute a separate offense. All sums of money collected
12946 as a result of fines levied under this section shall be forwarded

12947 to the State Treasurer and disbursed upon requisitions signed by
12948 the Chairman of the Board of Agricultural Aviation to defray
12949 operating expenses of the board and for no other purpose;
12950 provided, however, all such funds shall be subject to audit by
12951 the State Auditor.

12952 (2) In addition to the penalties herein provided, the board
12953 is hereby granted the authority to file in the chancery
12954 court * * * injunctive proceedings against any person violating
12955 the provisions of this article or the rules and regulations
12956 promulgated hereunder.

12957 (3) The Attorney General, district attorneys, and county
12958 attorneys of the state shall assist the Board of Agricultural
12959 Aviation upon their request to carry out the penalty section of
12960 this article.

12961 SECTION 271. Section 69-21-151, Mississippi Code of 1972,
12962 is amended as follows:

12963 69-21-151. It is the purpose of this article to establish
12964 an administrative hearing procedure in accordance with the
12965 Mississippi Administrative Procedure Law of 1999 for the Board of
12966 Agricultural Aviation to enforce the rules and regulations of the
12967 Board of Agricultural Aviation and Sections 69-21-101 through
12968 69-21-127, Mississippi Code of 1972.

12969 SECTION 272. Section 69-21-153, Mississippi Code of 1972,
12970 is amended as follows:

12971 69-21-153. (1) When any allegation or charge has been made
12972 against a person for violating the rules and regulations of the
12973 Board of Agricultural Aviation or Sections 69-21-101 through
12974 69-21-127, the Board of Agricultural Aviation shall in accordance
12975 with the Mississippi Administrative Procedure Law of 1999:

12976 (a) Cause the complaint to be in writing and signed by
12977 the person making the charge;

12978 (b) Insure that the complaint is filed in the office
12979 of the Board of Agricultural Aviation;

12980 (c) Cause the complaint to be investigated by an

12981 inspector of the Agricultural Aviation Board or the Bureau of
12982 Plant Industry; and

12983 (d) Send a copy of the complaint and any supporting
12984 documents to the person accused along with a request for the
12985 accused to respond to the allegations within thirty (30) days.
12986 Such notification shall be accomplished by any of the methods
12987 provided for in Rule 4 of the Mississippi Rules of Civil
12988 Procedure. Upon receipt of the response and any supporting
12989 documents from the accused, the Board of Agricultural Aviation
12990 shall screen all information on file to determine the merit of
12991 the complaint or lack thereof.

12992 (2) If the Board of Agricultural Aviation determines that
12993 the complaint lacks merit, it may recommend that the complaint be
12994 dismissed.

12995 (3) If the Board of Agricultural Aviation determines that
12996 there are reasonable grounds to indicate that a violation has
12997 occurred or if the accused admits to the truth of the allegations
12998 upon which the complaint is based, the Board of Agricultural
12999 Aviation may recommend a fine not to exceed Twenty-five Thousand
13000 Dollars (\$25,000.00) for each violation.

13001 (4) (a) In determining the amount of the penalty, the
13002 Board of Agricultural Aviation may consider the appropriateness
13003 of such penalty to the size of the business of the person
13004 charged, the effect on the person's ability to continue in
13005 business and the gravity of the violation. Whenever the Board of
13006 Agricultural Aviation finds that the violation occurred, despite
13007 the exercise of due care, if the violation did not cause
13008 significant harm to the public health or the environment, the
13009 Board of Agricultural Aviation may issue a warning in lieu of
13010 proposing a penalty.

13011 (b) The accused shall have thirty (30) days from
13012 receipt of the recommendation of the Board of Agricultural
13013 Aviation within which to file with the Board of Agricultural
13014 Aviation a written request for an informal settlement conference.

13015 If the accused requests a conference as provided herein, the
13016 Board of Agricultural Aviation shall meet with the accused to
13017 discuss the proposed penalty and the possibility of an agreed
13018 settlement. If, in the judgment of the Board of Agricultural
13019 Aviation, a reasonable settlement is reached, the Board of
13020 Agricultural Aviation may revise its penalty recommendation
13021 accordingly.

13022 (c) The accused may, within thirty (30) days from the
13023 receipt of the decision of the Board of Agricultural
13024 Aviation, * * * request an adjudicative proceeding in accordance
13025 with the Mississippi Administrative Procedure Law of 1999.

13026 SECTION 273. Section 69-21-155, Mississippi Code of 1972,
13027 is amended as follows:

13028 69-21-155. (1) The Board of Agricultural Aviation shall,
13029 within thirty (30) days of notification from the accused,
13030 commence an adjudicative proceeding in accordance with the
13031 Mississippi Administrative Procedure Law of 1999.

13032 (2) * * * The hearing shall be closed unless the accused
13033 shall request a public hearing. The Board of Agricultural
13034 Aviation shall have the right and duty to impose reasonable
13035 restrictions as it may deem necessary or appropriate to insure an
13036 orderly, expeditious and impartial proceeding * * *.

13037 * * *

13038 (3) At the conclusion of the hearing, the Board of
13039 Agricultural Aviation upon the majority vote of the members shall
13040 issue a written opinion incorporating its findings of facts and
13041 conclusions of law and any penalty that it may assess not to
13042 exceed Twenty-five Thousand Dollars (\$25,000.00) per violation.
13043 The executive officer shall notify the accused violator of the
13044 Board of Agricultural Aviation's decision.

13045 SECTION 274. Section 69-21-157, Mississippi Code of 1972,
13046 is amended as follows:

13047 69-21-157. Failure of the accused to request an informal
13048 settlement conference or an adjudicative proceeding in accordance

13049 with the Mississippi Administrative Procedure Law of 1999 or to
13050 respond to the complaint within thirty (30) days shall constitute
13051 a waiver of the right to an adjudicative proceeding, and any
13052 penalties assessed by the Board of Agricultural Aviation shall be
13053 due and payable as provided in Section 69-21-165.

13054 SECTION 275. Section 69-21-159, Mississippi Code of 1972,
13055 is amended as follows:

13056 69-21-159. The Board of Agricultural Aviation shall have
13057 jurisdiction over all persons and property necessary to
13058 administer and enforce the provisions of this article, the rules
13059 and regulations of the board. The board may adopt rules and
13060 regulations to implement the provisions of this article in
13061 accordance with the Mississippi Administrative Procedure Law of
13062 1999.

13063 SECTION 276. Section 69-21-161, Mississippi Code of 1972,
13064 is amended as follows:

13065 69-21-161. (1) Any individual aggrieved by a final
13066 decision of the Board of Agricultural Aviation shall be entitled
13067 to judicial review in accordance with the Mississippi
13068 Administrative Procedure Law of 1999.

13069 (2) * * * The person seeking judicial review shall prepay
13070 all costs, including the cost of preparation of the record of the
13071 proceedings before the board, and file a bond in the sum of Five
13072 Hundred Dollars (\$500.00) conditioned that if the action of the
13073 board be affirmed by the circuit court, the aggrieved party shall
13074 pay the costs of the appeal to the circuit court.

13075 * * *

13076 SECTION 277. Section 69-23-9, Mississippi Code of 1972, is
13077 amended as follows:

13078 69-23-9. (1) The commissioner is authorized, after
13079 opportunity for a hearing:

13080 (a) To declare as a pest any form of plant or animal
13081 life or virus which is injurious to plants, man, domestic
13082 animals, articles or substances;

13083 (b) To determine whether pesticides registered under
13084 authority of Section 24 (c) of FIFRA are highly toxic to man in
13085 conformity with federal regulations;

13086 (c) To determine standards of coloring or discoloring
13087 for pesticides and to subject pesticides to the requirements of
13088 Section 69-23-5 (1).

13089 (2) The commissioner is authorized, after due public
13090 hearing in accordance with the Mississippi Administrative
13091 Procedure Law of 1999, to make appropriate rules and regulations
13092 for carrying out the provisions of this chapter, including but
13093 not limited to rules and regulations providing for the collection
13094 and examination of samples; the safe handling, transportation,
13095 storage, display, distribution and disposal of pesticides and
13096 their containers; protecting the environment; labeling and
13097 adopting state restricted pesticide uses.

13098 (3) In order to avoid confusion endangering the public
13099 health resulting from diverse requirements, particularly as to
13100 the labeling and coloring of pesticides, and to avoid increased
13101 costs to the people of this state due to the necessity of
13102 complying with such diverse requirements in the manufacture and
13103 sale of such pesticides, it is desirable that there should be
13104 uniformity between the requirements of the several states and the
13105 federal government relating to such pesticides. To this end the
13106 commissioner is authorized, after due public hearing in
13107 accordance with the Mississippi Administrative Procedure Law of
13108 1999, to adopt by regulation such regulations, applicable to and
13109 in conformity with the primary standards established by this
13110 chapter, as have been or may be prescribed by the United States
13111 Government with respect to pesticides.

13112 (4) No action taken by the commissioner under the
13113 provisions of this section shall be effective unless and until
13114 such action is approved by the advisory board created under the
13115 provisions of Section 69-25-3, Mississippi Code of 1972.

13116 SECTION 278. Section 69-23-11, Mississippi Code of 1972, is

13117 amended as follows:

13118 69-23-11. (1) The commissioner or his employees, with
13119 proper identification and during normal working hours, shall have
13120 free access to all places of business, factories, buildings,
13121 carriages, cars, stores, warehouses and other places where
13122 pesticides are offered for sale or kept for sale or distribution
13123 or use and application, and shall have authority to inspect or
13124 open any container of pesticide and to take therefrom a sample
13125 for the purpose of examination and analysis. It shall be the
13126 duty of the commissioner to take such samples and deliver them to
13127 the State Chemist for examination and analysis.

13128 (2) It shall be the duty of the State Chemist to cause as
13129 many analyses to be made of samples delivered to him by the
13130 commissioner as may be necessary to properly carry into effect
13131 the intent of this chapter. He shall make reports of such
13132 analysis to the commissioner and to the manufacturer, firm or
13133 person responsible for placing on the market the pesticide
13134 represented by the samples.

13135 (3) If it shall appear that any pesticide fails to comply
13136 with the provisions of this chapter, or if provisions of this
13137 chapter have been violated, the commissioner may proceed with
13138 appropriate action as provided in this chapter or under the
13139 administrative hearing procedures provided in Section 69-25-51 et
13140 seq. If, in the opinion of the commissioner, it shall appear
13141 that the provisions of the chapter have been violated, the
13142 commissioner may refer the facts to the county attorney, district
13143 attorney or Attorney General. However, nothing in this chapter
13144 shall be construed as requiring the commissioner to report for
13145 prosecution or for the institution of libel proceedings minor
13146 violations of this chapter whenever he believes that the public
13147 interest will be best served by a suitable notice of warning in
13148 writing.

13149 (4) It shall be the duty of each county attorney, district
13150 attorney or Attorney General to whom any such violation is

13151 reported to cause appropriate proceedings to be instituted and
13152 prosecuted in the appropriate court without delay.

13153 (5) The commissioner shall, by publication in accordance
13154 with the Mississippi Administrative Procedure Law of 1999, give
13155 notice of all judgments entered in actions instituted under the
13156 authority of this chapter.

13157 SECTION 279. Section 69-25-7, Mississippi Code of 1972, is
13158 amended as follows:

13159 69-25-7. (1) The Commissioner of Agriculture and Commerce
13160 is empowered to conduct such inspections and promulgate and
13161 enforce such quarantine regulations as may be necessary in
13162 carrying out the provisions of this article.

13163 (2) The Commissioner of Agriculture and Commerce shall from
13164 time to time make rules and regulations in accordance with the
13165 Mississippi Administrative Procedure Law of 1999 for carrying out
13166 the provisions and requirements of this article, including rules
13167 and regulations under which his inspectors and other employees
13168 shall (a) inspect places, plants and plant products, and things,
13169 and substances used or connected therewith, (b) investigate,
13170 control, eradicate and prevent the dissemination of insect pests
13171 and diseases, and (c) supervise or cause the treatment, cutting
13172 and destruction of plants and plant products and other things
13173 infested or infected therewith, but no such rule or regulation
13174 shall be effective unless first submitted to and approved by the
13175 advisory board established under the provisions of Section
13176 69-25-3. The inspectors and employees employed by the
13177 commissioner shall have authority to carry out and execute the
13178 regulations and orders of the said commissioner and shall have
13179 authority under direction of the commissioner to carry out the
13180 provisions of this article.

13181 SECTION 280. Section 69-25-51, Mississippi Code of 1972, is
13182 amended as follows:

13183 69-25-51. (1) When any allegation or charge has been made
13184 against a person for violating the rules and regulations of the

13185 Bureau of Plant Industry within the regulatory office of the
13186 Mississippi Department of Agriculture and Commerce or the laws
13187 set forth in Sections 69-19-1 through 69-19-11 and Sections
13188 69-21-1 through 69-21-27 and Sections 69-23-1 through 69-23-133,
13189 Mississippi Code of 1972, the State Entomologist or his
13190 designated employee shall act as a reviewing officer. The
13191 designated reviewing officer shall (a) cause the complaint to be
13192 in writing and signed by the person making the charge; (b) insure
13193 that the complaint is filed in the office of the Bureau of Plant
13194 Industry; and (c) send a copy of the complaint and any supporting
13195 documents to the person accused along with a request for the
13196 accused to respond to the allegations within thirty (30) days.
13197 Such notification shall be accomplished by any of the methods
13198 provided for in Rule 4 of the Mississippi Rules of Civil
13199 Procedure. Upon receipt of the response and any supporting
13200 documents from the accused, the reviewing officer shall screen
13201 all information on file to determine the merit of the complaint
13202 or lack thereof. The reviewing officer may meet with and discuss
13203 the alleged violation with the accused.

13204 (2) If the reviewing officer determines that the complaint
13205 lacks merit, he may recommend to the Commissioner of Agriculture
13206 and Commerce that the complaint be dismissed.

13207 (3) If the reviewing officer determines that there are
13208 reasonable grounds to indicate that a violation has occurred or
13209 if the accused admits to the truth of the allegations upon which
13210 the complaint is based, the reviewing officer may recommend to
13211 the Commissioner of Agriculture and Commerce an appropriate
13212 penalty which may be a written notice of warning, assessment of
13213 civil penalties or suspension or cancellation of license or
13214 permit as provided by the Rules and Regulations of the Bureau of
13215 Plant Industry and/or a fine not to exceed Five Thousand Dollars
13216 (\$5,000.00) for each violation.

13217 (4) If the accused requests a hearing, in writing, within
13218 thirty (30) days from receipt of the decision of the Commissioner

13219 of Agriculture and Commerce, the commissioner shall appoint three
13220 (3) members of the advisory board to the Bureau of Plant Industry
13221 to act as a hearing committee which shall conduct an adjudicative
13222 proceeding in accordance with the Mississippi Administrative
13223 Procedure Law of 1999.

13224 In determining the amount of the penalty, the reviewing
13225 officer shall consider the appropriateness of such penalty for
13226 the particular violation, the effect of the penalty on the
13227 person's ability to continue in business and the gravity of the
13228 violation.

13229 SECTION 281. Section 69-25-53, Mississippi Code of 1972, is
13230 amended as follows:

13231 69-25-53. (1) The hearing procedure shall be that provided
13232 for an adjudicative proceeding before the Mississippi
13233 Administrative Procedure Law of 1999.

13234 (2) * * * The hearing shall be closed unless the accused
13235 shall request a public hearing. The hearing committee shall have
13236 the right and duty to impose reasonable restrictions as it may
13237 deem necessary or appropriate to insure an orderly, expeditious
13238 and impartial proceeding * * *.

13239 * * *

13240 (3) At the conclusion of the hearing, the hearing committee
13241 upon the majority vote of the members of such committee shall
13242 transmit to the Commissioner of Agriculture and Commerce a
13243 written opinion incorporating its findings of facts and
13244 conclusions of law and recommended penalty. The commissioner
13245 shall enter an order accepting or rejecting the committee's
13246 written opinion. Should the commissioner reject the committee's
13247 opinion, he shall set forth in the order his reasons for doing
13248 so. The State Entomologist shall notify the accused violator of
13249 the commissioner's final decision.

13250 SECTION 282. Section 69-25-55, Mississippi Code of 1972, is
13251 amended as follows:

13252 69-25-55. Failure of the accused to request an adjudicative

13253 proceeding or respond to the complaint within thirty (30) days
13254 shall constitute a waiver of the right to a hearing and any
13255 penalties assessed by the commissioner shall be due and payable
13256 as provided in Section 69-25-63.

13257 SECTION 283. Section 69-25-57, Mississippi Code of 1972, is
13258 amended as follows:

13259 69-25-57. The Commissioner of Agriculture and Commerce
13260 shall have jurisdiction over all persons and property necessary
13261 to administer and enforce the provisions of Sections 69-25-51
13262 through 69-25-65. The commissioner may adopt rules and
13263 regulations to implement the provisions of Sections 69-25-51
13264 through 69-25-65 in accordance with the Mississippi
13265 Administrative Procedure Law of 1999. These rules shall include
13266 penalty assessment guidelines based on a schedule which takes
13267 into consideration the severity or gravity of the violation and
13268 the type of violation.

13269 SECTION 284. Section 69-25-59, Mississippi Code of 1972, is
13270 amended as follows:

13271 69-25-59. (1) Any individual aggrieved by a final decision
13272 of the Commissioner of Agriculture and Commerce shall be entitled
13273 to judicial review in accordance with the Mississippi
13274 Administrative Procedure Law of 1999.

13275 (2) An appeal from judicial review of the commissioner's
13276 decision shall be in accordance with the Mississippi
13277 Administrative Procedure Law of 1999. * * *

13278 * * *

13279 SECTION 285. Section 69-35-21, Mississippi Code of 1972, is
13280 amended as follows:

13281 69-35-21. The hours, voting places, rules and regulations
13282 of the milk and dairy products, said referendum date, hours,
13283 voting places, rules and regulations with respect to the holding
13284 of such referendum shall be published by the state ADA and
13285 extension service, in accordance with the Mississippi
13286 Administrative Procedure Law of 1999, through the medium of the

13287 public press in the state at least thirty (30) days before the
13288 holding of such referendum, and direct written notice thereof
13289 shall likewise be given to all dairy-related organizations within
13290 the state and to each county extension agent and shall likewise
13291 state the method by which such assessment shall be collected and
13292 how the proceeds thereof shall be administered and the purposes
13293 to which the same shall be applied, which purposes shall be in
13294 keeping with the provisions of this act.

13295 SECTION 286. Section 69-36-7, Mississippi Code of 1972, is
13296 amended as follows:

13297 69-36-7. The Commissioner of Agriculture and Commerce may
13298 adopt such rules and regulations, in accordance with the
13299 Mississippi Administrative Procedure Law of 1999, * * * as are
13300 necessary to carry out the purposes of this chapter and the
13301 Southern Dairy Compact.

13302 SECTION 287. Section 69-37-25, Mississippi Code of 1972, is
13303 amended as follows:

13304 69-37-25. The Bureau of Plant Industry is authorized to
13305 promulgate regulations quarantining this state, or any portion
13306 thereof, and governing the storage, treatment, or other handling
13307 in the quarantined areas of regulated articles and the movement
13308 of regulated articles into or from such areas. The bureau shall
13309 determine when such action is necessary, or appears reasonably
13310 necessary, to prevent or retard the spread of the boll weevil.
13311 The bureau is also authorized to promulgate regulations governing
13312 the movement of regulated articles from other states or portions
13313 thereof into this state when such state is known to be infested
13314 with the boll weevil. The promulgation of these regulations
13315 shall conform in all aspects to the Mississippi Administrative
13316 Procedure Law of 1999, * * * and sound principles of quarantines.

13317 SECTION 288. Section 69-37-31, Mississippi Code of 1972, is
13318 amended as follows:

13319 69-37-31. (1) The bureau is authorized to promulgate
13320 reasonable regulations restricting the pasturage of livestock,

13321 entry by persons, location of honeybee colonies or other
13322 activities affecting the boll weevil eradication program in
13323 affected areas, for limited periods of time, which have been or
13324 will be treated with pesticides or otherwise treated to cause the
13325 eradication of the boll weevil, or in any other areas that may be
13326 affected by such treatments.

13327 (2) The bureau shall also have authority to adopt such
13328 other rules and regulations in accordance with the Mississippi
13329 Administrative Procedure Law of 1999 as it deems necessary to
13330 further effectuate the purposes of this chapter, provided that
13331 such other rules and regulations are approved by the Board of
13332 Directors of the Certified Cotton Growers Organization. In no
13333 event, however, shall the rules and regulations promulgated by
13334 the bureau and the board of the Certified Cotton Growers
13335 Organization apply to any region which, through referenda
13336 provided for herein, has not approved participation in any
13337 eradication, pre-eradication, suppression, or
13338 information-gathering program.

13339 SECTION 289. Section 69-37-35, Mississippi Code of 1972, is
13340 amended as follows:

13341 69-37-35. The commissioner, with the consent of the
13342 Certified Cotton Growers Organization, is authorized to exempt
13343 from the assessment penalty requirements set forth in this
13344 article those cotton growers for whom paying the assessment
13345 penalties would impose an undue financial hardship, and the
13346 commissioner is authorized to establish, upon the recommendation
13347 of the Certified Cotton Growers Organization, a payment plan in
13348 such hardship cases. This exemption shall be implemented as
13349 follows:

13350 (a) The commissioner, with the consent of the
13351 Certified Cotton Growers Organization and in accordance with the
13352 Mississippi Administrative Procedure Law of 1999, shall adopt
13353 rules and regulations defining the criteria to be used in
13354 determining financial hardship. However, no exemption shall be

13355 granted to any cotton grower who, after the amount of assessments
13356 and penalties otherwise due has been subtracted from his taxable
13357 net income, has a net income exceeding Fifteen Thousand Dollars
13358 (\$15,000.00) for the year in which he seeks an exemption;

13359 (b) Any cotton grower who claims an exemption shall
13360 apply on a form prescribed by the commissioner. A separate
13361 application shall be filed for each calendar year in which a
13362 cotton grower claims an exemption. Each application shall
13363 contain an explanation of the conditions to be met for approval.
13364 An oath shall be included on the form which upon completion
13365 shall be returned to the commissioner;

13366 (c) The commissioner shall forward all completed
13367 exemption application forms to the Certified Cotton Growers
13368 Organization. The growers organization shall determine from the
13369 information contained in the application forms whether or not the
13370 applicants qualify for a hardship exemption (exemption from
13371 penalty) and may recommend a payment plan to the commissioner;
13372 and

13373 (d) The Certified Cotton Growers Organization shall
13374 notify the commissioner of its determination, which shall be
13375 binding upon the applicants. Upon receipt of the determination
13376 of the Certified Cotton Growers Organization, the commissioner
13377 shall promptly notify each affected cotton grower of that
13378 determination. If an exemption has been denied, assessments and
13379 penalties for the year in which the application was made shall
13380 become due at the time they would otherwise have become due had
13381 no application for exemption been filed or within thirty (30)
13382 days after the date of the commissioner's notice of an adverse
13383 determination, whichever is later.

13384 SECTION 290. Section 69-39-19, Mississippi Code of 1972, is
13385 amended as follows:

13386 69-39-19. The commissioner is authorized and empowered,
13387 with the approval of the Attorney General as provided in Section
13388 69-1-25, to promulgate such rules and regulations in accordance

13389 with the Mississippi Administrative Procedure Law of 1999 as may
13390 be necessary for the effective enforcement of this chapter.
13391 Regulations adopted as provided herein shall have the full force
13392 and effect of law.

13393 SECTION 291. Section 69-43-3, Mississippi Code of 1972, is
13394 amended as follows:

13395 69-43-3. (1) The Mississippi Ratite Council and Promotion
13396 Board is created to be composed of five (5) members as follows:
13397 Two (2) members elected by the Mississippi State Emu Association;
13398 two (2) members elected by the Mississippi Ostrich Association;
13399 and one (1) member appointed by the Commissioner of Agriculture
13400 and Commerce. Each member shall serve a term of one (1) year to
13401 coincide with the calendar year. Vacancies which occur shall be
13402 filled in the same manner as the original elections or
13403 appointments were made.

13404 (2) The members of the board shall meet and organize
13405 immediately after their election or appointment and shall elect a
13406 chairman, vice-chairman and secretary-treasurer from the
13407 membership of the board, whose duties shall be those customarily
13408 exercised by such officers or specifically designated by the
13409 board. The chairman, vice-chairman and secretary-treasurer shall
13410 be bonded in an amount not less than Twenty Thousand Dollars
13411 (\$20,000.00). The cost of the bonds shall be paid from the funds
13412 received under the provisions of Section 69-43-5. Such bond
13413 shall be a security for any illegal act of any member of the
13414 board and recovery thereon may be had by the state for any injury
13415 by such illegal act of such member. The board may establish
13416 rules and regulations in accordance with the Mississippi
13417 Administrative Procedure Law of 1999 for its own government and
13418 the administration of the affairs of the board.

13419 SECTION 292. Section 71-3-51, Mississippi Code of 1972, is
13420 amended as follows:

13421 71-3-51. The final award of the commission shall be subject
13422 to judicial review in accordance with the Mississippi

13423 Administrative Procedure Law of 1999. The final award of the
13424 commission shall be conclusive and binding unless either party to
13425 the controversy shall, within thirty (30) days from the date of
13426 its filing in the office of the commission and notification to
13427 the parties, apply for judicial review thereof appeal therefrom
13428 to the circuit court of the county in which the injury occurred.

13429 * * * In the event of the timely filing of a notice of
13430 judicial review, judicial review shall be in accordance with the
13431 Mississippi Administrative Procedure Law of 1999. Judicial
13432 review shall not act as a supersedeas unless the court to which
13433 such appeal is directed shall so direct, and then upon such terms
13434 as such court shall direct.

13435 No controversy shall be heard by the commission or an award
13436 of compensation made therein while the same matter is pending
13437 either before a federal court or in any court in this state.

13438 Any award of compensation made on judicial review shall bear
13439 the same interest and penalties as do other judgments awarded on
13440 appellate review.

13441 SECTION 293. Section 71-3-55, Mississippi Code of 1972, is
13442 amended as follows:

13443 71-3-55. (1) When necessary, the commission shall conduct
13444 an adjudicative proceeding in accordance with the Mississippi
13445 Administrative Procedure Law of 1999. Declarations of a deceased
13446 employee concerning the injury in respect of which the
13447 investigation or inquiry is being made or the hearing conducted
13448 shall be received in evidence and shall, if corroborated by other
13449 evidence, be sufficient to establish the injury.

13450 (2) Hearings before the commission shall be open to the
13451 public and shall be * * * recorded and preserved. The commission
13452 shall by regulations provide for the preparation of a record of
13453 the hearings and other proceedings in accordance with the
13454 Mississippi Administrative Procedure Law of 1999.

13455 (3) Unless otherwise ordered by the commission, hearings
13456 shall be conducted in the county where the injury occurred.

13457 SECTION 294. Section 71-3-66, Mississippi Code of 1972, is
13458 amended as follows:

13459 71-3-66. The noncontroverted case medical reports,
13460 rehabilitation counselor reports and psychological reports of the
13461 commission, insofar as they refer to accidents, injuries and
13462 settlements, shall not be open to the public under the
13463 Mississippi Public Records Act of 1983, but only to the parties
13464 satisfying the commission of their interest in such records and
13465 the right to inspect them. Under such reasonable rules and
13466 regulations as the commission may adopt in accordance with the
13467 Mississippi Administrative Procedure Law of 1999, the records of
13468 the commission as to any employee in any previous case in which
13469 such employee was a claimant shall be open to and made available
13470 to such claim to an employer or its insurance carrier which is
13471 called upon to pay compensation, medical expenses and/or funeral
13472 expenses, or to any party at interest, except that the commission
13473 may make such reasonable charge as it deems proper for furnishing
13474 information by mail and for copies of records.

13475 SECTION 295. Section 71-3-85, Mississippi Code of 1972, is
13476 amended as follows:

13477 71-3-85. (1) There is hereby created a commission to be
13478 known as the Workers' Compensation Commission, consisting of
13479 three (3) members, who shall devote their entire time to the
13480 duties of the office. The Governor shall appoint the members of
13481 the commission, by and with the consent of the Mississippi State
13482 Senate, one (1) for a term of two (2) years, one (1) for a term
13483 of four (4) years, and one (1) for a term of six (6) years. Upon
13484 the expiration of each term as above set forth, the Governor
13485 shall appoint a successor for a term of six (6) years, and
13486 thereafter the term of office of each commissioner shall be for
13487 six (6) years. One (1) member shall be a person who by reason of
13488 his previous vocation or affiliation can be classed as a
13489 representative of employers, and one (1) member shall be a person
13490 who by reason of his previous vocation or affiliation can be

13491 classed as a representative of employees. One (1) member shall
13492 be an attorney at law of recognized ability with at least five
13493 (5) years' active practice in Mississippi prior to his
13494 appointment. The Governor shall designate the chairman of the
13495 commission, whose term of chairman shall run concurrently with
13496 his appointment as a commissioner.

13497 The chairman shall be the administrative head of the
13498 commission and shall have the final authority in all matters
13499 relating to assignment of cases for hearing and trial and the
13500 administrative work of the commission and its employees, except
13501 in the promulgation of rules and regulations wherein the
13502 commission shall act as a body, and in the trial and
13503 determination of cases as otherwise provided in accordance with
13504 the Mississippi Administrative Procedure Law of 1999.

13505 Upon the expiration of the term of a commissioner, he shall
13506 continue to serve until his successor has been appointed.
13507 Because cumulative experience is conspicuously essential to the
13508 proper administration of a workers' compensation law, it is
13509 declared to be in the public interest to continue workers'
13510 compensation commissioners in office as long as efficiency is
13511 demonstrated. A commissioner may be removed for cause prior to
13512 the expiration of his term, but shall be furnished a written copy
13513 of the charges against him and shall be accorded a public hearing
13514 in accordance with the Mississippi Administrative Procedure Law
13515 of 1999.

13516 Each member of the commission and each administrative law
13517 judge shall receive an annual salary fixed by the Legislature.

13518 (2) A vacancy in the commission, if there remain two (2)
13519 members of it, shall not impair the authority of such two (2)
13520 members to act. In case of illness or continued absence for
13521 other reasons, the same authority of such two (2) members shall
13522 apply.

13523 (3) The commission shall have the powers and duties
13524 necessary for effecting the purposes of this chapter in

13525 accordance with the Mississippi Administrative Procedure Law of
13526 1999, including the powers of a court of record for compelling
13527 the attendance of witnesses, examining them under oath, and
13528 compelling the production of books, papers, documents and objects
13529 relevant to the determination of a claim for compensation, and
13530 the power to adopt rules and regulations and make or approve the
13531 forms relating to notices of injuries, payment of claims and
13532 other purposes. The authority of the commission and its duly
13533 authorized representatives to investigate and determine claims
13534 for compensation shall include the right to enter the premises
13535 where an injury occurred, to ascertain its causes and
13536 circumstances.

13537 (4) The office of the commission shall be situated in the
13538 City of Jackson, but hearings may be held at such places as it
13539 may deem most convenient for the proper and speedy performance of
13540 its duties. The commission is authorized, if it deems it
13541 necessary for the convenient and efficient dispatch of business,
13542 to lease office space and facilities in other than publicly owned
13543 buildings.

13544 (5) The commission shall adopt detailed rules and
13545 regulations for implementing the purposes of this chapter at
13546 hearings attended by the main parties interested in accordance
13547 with the Mississippi Administrative Procedure Law of 1999. Such
13548 rules, upon adoption, shall be published in accordance with the
13549 Mississippi Administrative Procedure Law of 1999 and be at all
13550 reasonable times made available to the public and, if not
13551 inconsistent with law, shall be binding upon those participating
13552 in the responsibilities and benefits of the workers' compensation
13553 law.

13554 (6) The commission shall adopt or approve the forms
13555 required for administering the chapter, such notices of injury,
13556 application for benefits, receipts for compensation and all other
13557 forms needed to assure the orderly and prompt operation of the
13558 law, and may require the exclusive use of any or all such

13559 approved forms.

13560 SECTION 296. Section 71-5-115, Mississippi Code of 1972, is
13561 amended as follows:

13562 71-5-115. It shall be the duty of the commission to
13563 administer this chapter; and it shall have the power and
13564 authority to adopt, amend, or rescind such rules and regulations
13565 in accordance with the Mississippi Administrative Procedure Law
13566 of 1999, to employ such persons, make such expenditures, require
13567 such reports, make such investigations, and take such other
13568 action as it deems necessary or suitable to that end. Such rules
13569 and regulations shall be effective upon publication in accordance
13570 with the Mississippi Administrative Procedure Law of 1999 in the
13571 manner, not inconsistent with the provisions of this chapter,
13572 which the commission shall prescribe. The commission shall
13573 determine its own organization and methods of procedure in
13574 accordance with the provisions of this chapter, and shall have an
13575 official seal which shall be judicially noticed. Not later than
13576 the first day of February in each year, the commission shall
13577 submit to the Governor a report covering the administration and
13578 operation of this chapter during the preceding fiscal year and
13579 shall make such recommendations for amendments to this chapter as
13580 the commission deems proper. Whenever the commission believes
13581 that a change in contribution or benefit rates will become
13582 necessary to protect the solvency of the fund, it shall promptly
13583 so inform the Governor and the Legislature, and make
13584 recommendations with respect thereto.

13585 SECTION 297. Section 71-5-117, Mississippi Code of 1972, is
13586 amended as follows:

13587 71-5-117. General rules may be adopted, amended, or
13588 rescinded by the commission only after public hearing or
13589 opportunity to be heard thereon, of which proper notice has been
13590 given and in accordance with the Mississippi Administrative
13591 Procedure Law of 1999. * * * Regulations may be adopted,
13592 amended, or rescinded by the commission and shall become

13593 effective in the manner and at the time prescribed by the
13594 commission not inconsistent with the Mississippi Administrative
13595 Procedure Law of 1999.

13596 SECTION 298. Section 71-5-119, Mississippi Code of 1972, is
13597 amended as follows:

13598 71-5-119. The commission shall cause to be printed for
13599 distribution to the public the text of this chapter, its
13600 regulations and general rules, its reports to the Governor, and
13601 any other material it deems relevant and suitable, and shall
13602 furnish the same to any person upon application therefor in
13603 accordance with the Mississippi Administrative Procedure Law of
13604 1999.

13605 SECTION 299. Section 71-5-519, Mississippi Code of 1972, is
13606 amended as follows:

13607 71-5-519. Unless such appeal is withdrawn, a judicial
13608 review in accordance with the Mississippi Administrative
13609 Procedure Law of 1999, after affording the parties reasonable
13610 opportunity for fair hearing, shall affirm, modify or reverse the
13611 findings of fact and initial determination or amended initial
13612 determination. The parties shall be duly notified of such
13613 tribunal's decision, together with its reasons therefor, which
13614 shall be deemed to be the final decision of the board of review
13615 unless, within fourteen (14) days after the date of notification
13616 or mailing of such decision, further appeal is initiated pursuant
13617 to Section 71-5-523.

13618 SECTION 300. Section 71-5-523, Mississippi Code of 1972, is
13619 amended as follows:

13620 71-5-523. The board of review, in accordance with the
13621 Mississippi Administrative Procedure Law of 1999, may on its own
13622 motion affirm, modify, or set aside any decision of an appeal
13623 tribunal on the basis of the evidence previously submitted in
13624 such case, or direct the taking of additional evidence, or may
13625 permit any of the parties to such decision to initiate further
13626 appeals before it. The board of review shall permit such further

13627 appeal by any of the parties to a decision of an appeal tribunal
13628 which is not unanimous, and by the examiner whose decision has
13629 been overruled or modified by an appeal tribunal. The board of
13630 review may remove to itself or transfer to another appeal
13631 tribunal the proceedings on any claim pending before an appeal
13632 tribunal. Any proceedings so removed to the board of review
13633 shall be heard by a quorum thereof in accordance with the
13634 requirements of Section 71-5-519 and within fifteen (15) days
13635 after notice of appeal has been received by the chairman of the
13636 board of review. No notice of appeal shall be deemed to be
13637 received by the said chairman, within the meaning of this
13638 section, until all prior appeals pending before the board of
13639 review have been heard. The board of review shall, within four
13640 (4) days after its decision, so notify the parties to any
13641 proceeding of its findings and decision. In the event of
13642 unavoidable absence of the chairman, then the other two (2)
13643 members may agree between themselves as to which of them shall
13644 act as temporary chairman and may thereupon proceed with the
13645 disposition of the case, or cases, before them.

13646 SECTION 301. Section 71-5-525, Mississippi Code of 1972, is
13647 amended as follows:

13648 71-5-525. The manner in which appealed claims shall be
13649 presented and the conduct of hearings and appeals shall be in
13650 accordance with regulations prescribed by the board of review for
13651 determining the rights of the parties in accordance with the
13652 Mississippi Administrative Procedure Law of 1999, whether or not
13653 such regulations conform to common law or statutory rules of
13654 evidence and other technical rules of procedure. A full and
13655 complete record shall be kept of all proceedings in connection
13656 with an appealed claim. The commission's entire file relative to
13657 the appealed claim shall be a part of such record and shall be
13658 considered as evidence. All testimony at any hearing upon an
13659 appealed claim shall be recorded, but need not be transcribed
13660 unless the claim is further appealed.

13661 SECTION 302. Section 73-1-13, Mississippi Code of 1972, is
13662 amended as follows:

13663 73-1-13. (1) The board shall adopt rules and regulations
13664 in accordance with the Mississippi Administrative Procedure Law
13665 of 1999 for the eligibility, examination and registration of
13666 applicants desiring to practice architecture in accordance with
13667 this chapter and may amend, modify or repeal such rules and
13668 regulations.

13669 The board shall receive applications for registration as an
13670 architect only on forms prescribed and furnished by the board and
13671 upon receipt of such application may approve such applicant,
13672 providing such applicant meets the following requirements:

13673 (a) The applicant must have a professional degree in
13674 architecture from a school or college of architecture on the list
13675 of accredited schools of architecture issued by the National
13676 Architectural Accrediting Board;

13677 (b) The applicant must have been enrolled for a
13678 minimum of one (1) year in, and have completed all requirements
13679 of, a practical work internship program patterned after the
13680 National Council of Architectural Registration Boards
13681 intern-architect development program that will be prepared,
13682 adopted and approved by the board and must have received from the
13683 board a certification by the board that the applicant has met or
13684 exceeded the work requirements of the board. The internship work
13685 program shall include but not be limited to the following
13686 subjects:

13687 (i) Design and construction documents;
13688 (ii) Construction administration;
13689 (iii) Office management; and
13690 (iv) Related special activities.

13691 (c) The applicant must have passed the applicable
13692 National Council of Architectural Registration Board's
13693 examination;

13694 (d) The applicant must have satisfied the board as to

13695 the applicant's good standing in the profession and his moral
13696 character. Any of the following acts shall preclude an
13697 applicant's eligibility as a candidate for registration:

13698 (i) Conviction by any court for commission of any
13699 felony or any crime involving moral turpitude;

13700 (ii) Conviction by any court of a misdemeanor
13701 involving fraud, deceit or misrepresentation;

13702 (iii) Misstatement or misrepresentation of fact
13703 by the applicant in connection with the applicant's application
13704 for registration in this state or another jurisdiction;

13705 (iv) Violation of any of the rules of conduct
13706 required of applicants or architects as adopted by board;

13707 (v) Practicing architecture, or holding himself
13708 out as capable of practicing architecture, in this state in
13709 violation of the chapter.

13710 The board may admit an applicant otherwise precluded from
13711 consideration because of the prohibitions imposed in this
13712 paragraph (d) if the board determines that the applicant has
13713 shown clear and convincing evidence of rehabilitation and reform.

13714 Such decision is in the sole discretion of the board and upon
13715 such terms, conditions and evidence as the board may require.

13716 Additionally, notwithstanding the provisions of paragraph
13717 (b) of this subsection, if the applicant can provide sufficient
13718 and satisfactory evidence that he is unable to obtain the
13719 intern-architect development program certification, the board may
13720 accept in lieu thereof certification by the applicant that he has
13721 completed not less than three (3) continuous years of actual
13722 engagement in architectural work in the office or offices of a
13723 licensed architect or architects. Such certification shall be on
13724 such terms, conditions and requirements as the board may
13725 establish.

13726 (2) The board may require that the applicant appear before
13727 the board for a personal interview.

13728 SECTION 303. Section 73-1-29, Mississippi Code of 1972, is

13729 amended as follows:

13730 73-1-29. (1) The board, upon satisfactory proof and in
13731 accordance with this chapter and the regulations of the board, is
13732 authorized to take the disciplinary actions provided for
13733 hereinafter against any person for any of the following reasons:

13734 (a) Violating any of the provisions of Sections 73-1-1
13735 through 73-1-43 or the bylaws, rules, regulations or standards of
13736 ethics or conduct duly adopted by the board pertaining to the
13737 practice of architecture;

13738 (b) Obtaining a certificate of registration by fraud,
13739 deceit or misrepresentation;

13740 (c) Gross negligence, malpractice, incompetency or
13741 misconduct in the practice of architecture;

13742 (d) Any professional misconduct, as defined by the
13743 board through bylaws, rules and regulations, and standards of
13744 conduct and ethics; (professional misconduct may not be defined
13745 to include bidding by architects for contracts based on price);

13746 (e) Practicing or offering to practice architecture on
13747 an expired certificate or while under suspension or revocation of
13748 certificate unless such suspension or revocation is abated
13749 through probation, as provided for hereinafter;

13750 (f) Practicing architecture under an assumed or
13751 fictitious name;

13752 (g) Being convicted by any court of a felony, except
13753 conviction of culpable negligent manslaughter, in which case the
13754 record of conviction shall be conclusive evidence;

13755 (h) Willfully misleading or defrauding any person
13756 employing him as an architect by any artifice or false statement;
13757 or

13758 (i) Having undisclosed financial or personal interests
13759 which compromise his obligation to his client.

13760 (2) Any person may prefer charges against any other person
13761 for committing any of the acts set forth in subsection (1). Such
13762 charges need not be sworn to, may be made upon actual knowledge

13763 or upon information and belief, and must be filed with the board.

13764 If any person licensed under Sections 73-1-1 through 73-1-43 is
13765 expelled from membership in any Mississippi or national
13766 professional architectural society or association, the board
13767 shall thereafter cite such person to appear at an adjudicative
13768 proceeding before the board to show cause why disciplinary action
13769 should not be taken against that person.

13770 The board shall investigate all charges filed with it and,
13771 upon finding reasonable cause to believe that the charges are not
13772 frivolous, unfounded or filed in bad faith, may commence an
13773 adjudicative proceeding in accordance with the Mississippi
13774 Administrative Procedure Law of 1999.

13775 No disciplinary action may be taken until the accused has
13776 been furnished both a statement of the charges against him and
13777 notice of his opportunity for an adjudicative proceeding in
13778 accordance with the Mississippi Administrative Procedure Law of
13779 1999.

13780 * * *

13781 If a majority of the board finds the accused guilty of the
13782 charges filed, the board may:

13783 (a) Issue a public or private reprimand;

13784 (b) Suspend or revoke the certificate of the accused,
13785 if the accused is a registrant; or

13786 (c) In lieu of or in addition to such reprimand,
13787 suspension or revocation, assess and levy upon the guilty party a
13788 monetary penalty of not less than One Hundred Dollars (\$100.00)
13789 nor more than Five Thousand Dollars (\$5,000.00) for each
13790 violation.

13791 (3) A monetary penalty assessed and levied under this
13792 section shall be paid to the board upon the expiration of the
13793 period allowed for appeal of such penalties under this section,
13794 or may be paid sooner if the guilty party elects. Money
13795 collected by the board under this section shall be deposited to
13796 the credit of the special fund created in Section 73-1-43,

13797 Mississippi Code of 1972.

13798 When payment of such monetary penalty assessed and levied by
13799 the board is delinquent, the board shall have the power to
13800 institute and maintain proceedings in its name for enforcement of
13801 payment in the chancery court of the county of residence of the
13802 guilty party. If the guilty party is a nonresident of the State
13803 of Mississippi, such proceedings shall be in the Chancery Court
13804 of the First Judicial District of Hinds County, Mississippi.

13805 (4) When the board has taken a disciplinary action under
13806 this section, the board may stay such action and place the guilty
13807 party on probation for a period not to exceed one (1) year upon
13808 condition that the guilty party shall not further violate either
13809 the laws of the State of Mississippi pertaining to the practice
13810 of architecture or the bylaws, rules and regulations, or
13811 standards of conduct and ethics promulgated by the board.

13812 (5) The board may assess and tax any part or all of the
13813 costs of any disciplinary proceedings conducted under this
13814 section against the accused if the accused is found guilty of the
13815 charges.

13816 (6) The power and authority of the board to assess and levy
13817 the monetary penalties provided for in this section shall not be
13818 affected or diminished by any other proceeding, civil or
13819 criminal, concerning the same violation or violations except as
13820 provided in this section.

13821 (7) The board, for sufficient cause, may reissue a revoked
13822 certificate of registration by a majority vote of the board
13823 members; but in no event shall a revoked certificate be issued
13824 within two (2) years of the revocation. A new certificate of
13825 registration required to replace a revoked, lost, mutilated or
13826 destroyed certificate may be issued, subject to the rules of the
13827 board, for a charge not to exceed Ten Dollars (\$10.00).

13828 (8) Any person aggrieved by an action of the board shall
13829 have a right of judicial review thereof in accordance with the
13830 Mississippi Administrative Procedure Law of 1999.

13831 (9) In addition to the reasons specified in subsection (1)
13832 of this section, the board shall be authorized to suspend the
13833 certificate of registration of any person for being out of
13834 compliance with an order for support, as defined in Section
13835 93-11-153. The procedure for suspension of a certificate for
13836 being out of compliance with an order for support, and the
13837 procedure for the reissuance or reinstatement of a certificate
13838 suspended for that purpose, and the payment of any fees for the
13839 reissuance or reinstatement of a certificate suspended for that
13840 purpose, shall be governed by Section 93-11-157 or 93-11-163, as
13841 the case may be. If there is any conflict between any provision
13842 of Section 93-11-157 or 93-11-163 and any provision of this
13843 chapter, the provisions of Section 93-11-157 or 93-11-163, as the
13844 case may be, shall control.

13845 SECTION 304. Section 73-2-16, Mississippi Code of 1972, is
13846 amended as follows:

13847 73-2-16. (1) The board shall also have the power to
13848 revoke, suspend or annul the certificate or registration of a
13849 landscape architect or reprimand, censure or otherwise discipline
13850 a landscape architect.

13851 (2) The board, upon satisfactory proof and in accordance
13852 with the provisions of this chapter, may take the disciplinary
13853 actions against any registered landscape architect for any of the
13854 following reasons:

13855 (a) Violating any of the provisions of Sections 73-2-1
13856 through 73-2-21 or the implementing bylaws, rules, regulations or
13857 standards of ethics or conduct duly adopted and promulgated by
13858 the board pertaining to the practice of landscape architecture;

13859 (b) Fraud, deceit or misrepresentation in obtaining a
13860 certificate of registration;

13861 (c) Gross negligence, malpractice, incompetency or
13862 misconduct in the practice of landscape architecture;

13863 (d) Any professional misconduct, as defined by the
13864 board through bylaws, rules and regulations and standards of

13865 conduct and ethics (professional misconduct shall not be defined
13866 to include bidding on contracts for a price);

13867 (e) Practicing or offering to practice landscape
13868 architecture on an expired license or while under suspension or
13869 revocation of a license unless said suspension or revocation be
13870 abated through probation;

13871 (f) Practicing landscape architecture under an assumed
13872 or fictitious name;

13873 (g) Being convicted by any court of a felony, except
13874 conviction of culpable negligent manslaughter, in which case the
13875 record of conviction shall be conclusive evidence;

13876 (h) Willfully misleading or defrauding any person
13877 employing him as a landscape architect by any artifice or false
13878 statement;

13879 (i) Having undisclosed financial or personal interest
13880 which compromises his obligation to his client;

13881 (j) Obtaining a certificate by fraud or deceit; or

13882 (k) Violating any of the provisions of this chapter.

13883 (3) Any person may prefer charges against any other person
13884 for committing any of the acts set forth in subsection (2). Such
13885 charges need not be sworn to, may be made upon actual knowledge,
13886 or upon information and belief, and shall be filed with the
13887 board. In the event any person licensed under Sections 73-2-1
13888 through 73-2-21 is expelled from membership in any Mississippi or
13889 national professional landscape architectural society or
13890 association, the board shall thereafter cite said person to
13891 appear at an adjudicative proceeding before the board and to show
13892 cause why disciplinary action should not be taken against that
13893 person.

13894 The board shall investigate all charges filed with it and,
13895 upon finding reasonable cause to believe that the charges are not
13896 frivolous, unfounded or filed in bad faith, may, in its
13897 discretion, commence an adjudicative proceeding in accordance
13898 with the Mississippi Administrative Procedure Law of 1999.

13899 No disciplinary action taken hereunder may be taken until
13900 the accused has been furnished both a statement of the charges
13901 against him and notice of his opportunity for an adjudicative
13902 proceeding in accordance with the Mississippi Administrative
13903 Procedure Law of 1999.

13904 * * *

13905 If a majority of the board finds the accused guilty of the
13906 charges filed, the board may: (a) issue a public or private
13907 reprimand; (b) suspend or revoke the license of the accused, if
13908 the accused is a registrant; or (c) in lieu of or in addition to
13909 such reprimand, suspension or revocation, assess and levy upon
13910 the guilty party a monetary penalty of not less than One Hundred
13911 Dollars (\$100.00) nor more than Five Thousand Dollars (\$5,000.00)
13912 for each violation.

13913 (4) A monetary penalty assessed and levied under this
13914 section shall be paid to the board upon the expiration of the
13915 period allowed for appeal of such penalties under this section,
13916 or may be paid sooner if the guilty party elects. Money
13917 collected by the board under this section shall be deposited to
13918 the credit of the board's general operating fund.

13919 When payment of a monetary penalty assessed and levied by
13920 the board in accordance with this section is not paid when due,
13921 the board shall have the power to institute and maintain
13922 proceedings in its name for enforcement of payment in the
13923 chancery court of the county and judicial district of the
13924 residence of the guilty party and if the guilty party be a
13925 nonresident of the State of Mississippi, such proceedings shall
13926 be in the Chancery Court of the First Judicial District of Hinds
13927 County, Mississippi.

13928 (5) When the board has taken a disciplinary action under
13929 this section, the board may, in its discretion, stay such action
13930 and place the guilty party on probation for a period not to
13931 exceed one (1) year upon the condition that the guilty party
13932 shall not further violate either the law of the State of

13933 Mississippi pertaining to the practice of landscape architecture
13934 or the bylaws, rules and regulations, or standards of conduct and
13935 ethics promulgated by the board.

13936 (6) The board, in its discretion, may assess and tax any
13937 part or all of the costs of any disciplinary proceedings
13938 conducted under this section against the accused, if the accused
13939 is found guilty of the charges.

13940 (7) The power and authority of the board to assess and levy
13941 the monetary penalties provided for in this section shall not be
13942 affected or diminished by any other proceeding, civil or
13943 criminal, concerning the same violation or violations except as
13944 provided in this section.

13945 (8) The board, for sufficient cause, may reissue a revoked
13946 license of registration whenever a majority of the board members
13947 vote to do so but in no event shall a revoked license be issued
13948 within two (2) years of the revocation. A new license of
13949 registration required to replace a revoked, lost, mutilated or
13950 destroyed license may be issued, subject to the rules of the
13951 board, for a charge not to exceed Twenty-five Dollars (\$25.00).

13952 (9) The board may direct the advisory committee to review
13953 and investigate any charges brought against any landscape
13954 architect under this chapter and to hold the hearings provided
13955 for in this section and to make findings of fact and
13956 recommendations to the board concerning the disposition of such
13957 charges.

13958 (10) Nothing herein contained shall preclude the board or
13959 advisory committee from initiating proceedings in any case. The
13960 advisory committee shall furnish legal advice and assistance to
13961 the board whenever such service is requested.

13962 (11) Any person aggrieved by an action of the board shall
13963 have a right of judicial review thereof in accordance with the
13964 Mississippi Administrative Procedure Law of 1999.

13965 (12) In addition to the reasons specified in subsection (2)
13966 of this section, the board shall be authorized to suspend the

13967 license of any licensee for being out of compliance with an order
13968 for support, as defined in Section 93-11-153 of this act. The
13969 procedure for suspension of a license for being out of compliance
13970 with an order for support, and the procedure for the reissuance
13971 or reinstatement of a license suspended for that purpose, and the
13972 payment of any fees for the reissuance or reinstatement of a
13973 license suspended for that purpose, shall be governed by Section
13974 93-11-157 or 93-11-163 of this act, as the case may be. If there
13975 is any conflict between any provision of Section 93-11-157 or
13976 93-11-163 of this act and any provision of this chapter, the
13977 provisions of Section 93-11-157 or 93-11-163 of this act, as the
13978 case may be, shall control.

13979 SECTION 305. Section 73-5-27, Mississippi Code of 1972, is
13980 amended as follows:

13981 73-5-27. The Board of Barber Examiners may neither refuse
13982 to suspend or revoke, nor revoke or suspend any certificate of
13983 registration as a registered barber or barber instructor, for any
13984 of the causes enumerated in this chapter, unless the holder of
13985 such certificate has been given the opportunity for an
13986 adjudicative proceeding in accordance with the Mississippi
13987 Administrative Procedure Law of 1999.

13988 * * *

13989 SECTION 306. Section 73-13-15, Mississippi Code of 1972, is
13990 amended as follows:

13991 73-13-15. The board shall have the power to adopt and amend
13992 all regulations and rules of procedure, not inconsistent with the
13993 Constitution and laws of this state, which may be reasonably
13994 necessary for the proper performance of its duties and the
13995 regulations of the proceedings before it. The board shall adopt
13996 and have an official seal. It shall not be required to post bond
13997 on appeals. The board shall have the further power and authority
13998 to:

13999 (a) Establish standards of conduct and ethics;

14000 (b) Institute proceedings in its own name;

14001 (c) Promulgate rules restricting competitive bidding;

14002 (d) Promulgate rules limiting or restricting
14003 advertising;

14004 (e) Authorize the preparation or a demonstration of
14005 continuing education programs with voluntary participation;

14006 (f) Adopt and promulgate reasonable bylaws and rules
14007 and regulations necessary or appropriate for the proper
14008 fulfillment of its duties under state laws pertaining thereto;

14009 (g) Provide for the enforcement of and to enforce the
14010 laws of the State of Mississippi and, in particular, the
14011 provisions of this chapter, and the bylaws, rules and regulations
14012 of the board;

14013 (h) Provide by appropriate rules and regulations,
14014 within the provisions of this chapter, a system for taking the
14015 disciplinary actions provided for in Section 73-13-37, including
14016 the imposition of fines as provided therein; and

14017 (i) Investigate, prosecute or initiate prosecution for
14018 violation of the laws of this state pertaining to the practices
14019 of engineering and land surveying, or matters affecting the
14020 rights and duties or otherwise related thereto.

14021 In carrying into effect the provisions of Sections 73-13-1
14022 through 73-13-97, the board * * * may subpoena witnesses and
14023 compel their attendance, and also may require the production of
14024 books, papers, documents, etc., as provided in the Mississippi
14025 Administrative Procedure Law of 1999, in any case involving the
14026 disciplinary actions provided for in Section 73-13-37 or 73-13-89
14027 or practicing or offering to practice without registration. Any
14028 member of the board may administer oaths or affirmations to
14029 witnesses appearing before the board. If any person shall refuse
14030 to obey any subpoena so issued, or shall refuse to testify or
14031 produce any books, papers, or documents, the board may present
14032 its complaint for civil enforcement in accordance with the
14033 Mississippi Administrative Procedure Law of 1999. * * *

14034 SECTION 307. Section 73-13-37, Mississippi Code of 1972, is

14035 amended as follows:

14036 73-13-37. (1) The board, upon satisfactory proof and in
14037 accordance with the provisions of this chapter and the
14038 implementing regulations of the board pertaining thereto, is
14039 authorized to take the disciplinary actions provided for
14040 hereinafter against any person for any of the following reasons:

14041 (a) Violating any of the provisions of Sections
14042 73-13-1 through 73-13-45 or the implementing bylaws, rules,
14043 regulations, or standards of ethics or conduct duly adopted and
14044 promulgated by the board pertaining to the practice of
14045 engineering;

14046 (b) Fraud, deceit or misrepresentation in obtaining a
14047 certificate of registration;

14048 (c) Gross negligence, malpractice or incompetency;

14049 (d) Any professional misconduct, as defined by the
14050 board through bylaws, rules and regulations, and standards of
14051 conduct and ethics;

14052 (e) Practicing or offering to practice engineering on
14053 an expired certificate or while under suspension or revocation of
14054 certificate unless said suspension or revocation be abated
14055 through probation, as provided for hereinafter.

14056 (2) Any person may prefer charges against any other person
14057 for committing any of the acts set forth in subsection (1). Such
14058 charges shall be sworn to, either upon actual knowledge or upon
14059 information and belief, and shall be filed with the board. In
14060 the event any person certified under Sections 73-13-1 through
14061 73-13-45 is expelled from membership in any Mississippi
14062 professional engineering society or association, the board shall
14063 thereafter cite said person to appear at an adjudicative
14064 proceeding before the board and to show cause why disciplinary
14065 action should not be taken against him.

14066 The board shall investigate all charges filed with it and,
14067 upon finding reasonable cause to believe that the charges are not
14068 frivolous, unfounded or filed in bad faith, may, in its

14069 discretion, commence an adjudicative proceeding thereon in
14070 accordance with the Mississippi Administrative Procedure Law of
14071 1999 regarding the charges and may compel the accused by subpoena
14072 to appear before the board to respond to said charges.

14073 No disciplinary action taken hereunder may be taken until
14074 the accused has been furnished both a statement of the charges
14075 against him and notice of his opportunity for an adjudicative
14076 proceeding thereon in accordance with the Mississippi
14077 Administrative Procedure Law of 1999.

14078 * * *

14079 (3) If a majority of the board finds the accused guilty of
14080 the charges filed, the board may: (a) issue a public or private
14081 reprimand; (b) require the guilty party to complete a course,
14082 approved by the board, in ethics; (c) suspend or revoke the
14083 certificate of the accused, if the accused is a registrant; or
14084 (d) in lieu of or in addition to such reprimand, course
14085 completion, suspension or revocation, assess and levy upon the
14086 guilty party a monetary penalty of not less than One Hundred
14087 Dollars (\$100.00) nor more than Five Thousand Dollars (\$5,000.00)
14088 for each violation.

14089 (4) A monetary penalty assessed and levied under this
14090 section shall be paid to the board upon the expiration of the
14091 period allowed for appeal of such penalties under this section,
14092 or may be paid sooner if the guilty party elects. Money
14093 collected by the board under this section shall be deposited to
14094 the credit of the board's special fund in the State Treasury.

14095 When payment of a monetary penalty assessed and levied by
14096 the board in accordance with this section is not paid when due,
14097 the board shall have the power to institute and maintain
14098 proceedings in its name for enforcement of payment in the
14099 chancery court of the county and judicial district of residence
14100 of the guilty party and if the guilty party be a nonresident of
14101 the State of Mississippi, such proceedings shall be in the
14102 Chancery Court of the First Judicial District of Hinds County,

14103 Mississippi.

14104 (5) When the board has taken a disciplinary action under
14105 this section, the board may, in its discretion, stay such action
14106 and place the guilty party on probation for a period not to
14107 exceed one (1) year upon the condition that the guilty party
14108 shall not further violate either the laws of the State of
14109 Mississippi pertaining to the practice of engineering or the
14110 bylaws, rules and regulations, or standards of conduct and ethics
14111 promulgated by the board.

14112 (6) The board, in its discretion, may assess and tax any
14113 part or all of the costs of any disciplinary proceedings
14114 conducted under this section against either the accused, the
14115 charging party, or both, as it may elect.

14116 (7) The power and authority of the board to assess and levy
14117 the monetary penalties provided for in this section shall not be
14118 affected or diminished by any other proceeding, civil or
14119 criminal, concerning the same violation or violations except as
14120 provided in this section.

14121 (8) The board, for sufficient cause, may reissue a revoked
14122 certificate of registration whenever a majority of the board
14123 members vote to do so.

14124 (9) Any person aggrieved by an action of the board denying
14125 or revoking his certificate of registration or re-registration as
14126 a professional engineer or his certificate of enrollment as an
14127 engineer intern, or who is aggrieved by the action of the board
14128 as a result of disciplinary proceedings conducted under this
14129 section may seek judicial review as provided in the Mississippi
14130 Administrative Procedure Law of 1999. * * *

14131 All proceedings for judicial review perfected hereunder
14132 shall act as a supersedeas * * *.

14133 (10) In addition to the reasons specified in subsection (1)
14134 of this section, the board shall be authorized to suspend the
14135 certificate of registration of any person for being out of
14136 compliance with an order for support, as defined in Section

14137 93-11-153. The procedure for suspension of a certificate for
14138 being out of compliance with an order for support, and the
14139 procedure for the reissuance or reinstatement of a certificate
14140 suspended for that purpose, and the payment of any fees for the
14141 reissuance or reinstatement of a certificate suspended for that
14142 purpose, shall be governed by Section 93-11-157 or 93-11-163, as
14143 the case may be. Actions taken by the board in suspending a
14144 certificate when required by Section 93-11-157 or 93-11-163 are
14145 not actions from which an appeal may be taken under this section.

14146 Any appeal of a suspension of a certificate that is required by
14147 Section 93-11-157 or 93-11-163 shall be taken in accordance with
14148 the appeal procedure specified in Section 93-11-157 or 93-11-163,
14149 as the case may be, rather than the procedure specified in this
14150 section. If there is any conflict between any provision of
14151 Section 93-11-157 or 93-11-163 and any provision of this chapter,
14152 the provisions of Section 93-11-157 or 93-11-163, as the case may
14153 be, shall control.

14154 SECTION 308. Section 73-13-89, Mississippi Code of 1972, is
14155 amended as follows:

14156 73-13-89. The powers and duties of the board regarding
14157 disciplinary actions against any person accused of violating any
14158 of the laws of the State of Mississippi regarding the practice of
14159 land surveying or the rules, regulations, bylaws, or standards of
14160 conduct and ethics pertaining thereto as duly promulgated by the
14161 board, * * * shall be the same as those set forth in Section
14162 73-13-37 regarding actions against persons charged with similar
14163 violations related to the practice of engineering. Disciplinary
14164 actions shall be adjudicative proceedings in accordance with the
14165 Mississippi Administrative Procedure Law of 1999.

14166 SECTION 309. Section 73-13-93, Mississippi Code of 1972, is
14167 amended as follows:

14168 73-13-93. Any person who may feel aggrieved by an action of
14169 the board denying or revoking his certificate of registration or
14170 re-registration as a professional land surveyor or enrollment as

14171 land surveyor intern shall have a right to judicial review
14172 thereof in accordance with the Mississippi Administrative
14173 Procedure Law of 1999. * * *

14174 Actions taken by the board in suspending a certificate of
14175 registration when required by Section 93-11-157 or 93-11-163 are
14176 not actions from which an appeal may be taken under this section.

14177 Any appeal of a suspension of a certificate that is required by
14178 Section 93-11-157 or 93-11-163 shall be taken in accordance with
14179 the appeal procedure specified in Section 93-11-157 or 93-11-163,
14180 as the case may be, rather than the procedure specified in this
14181 section.

14182 SECTION 310. Section 73-14-37, Mississippi Code of 1972, is
14183 amended as follows:

14184 73-14-37. (1) Any person, whose license is sought to be
14185 revoked under the provisions of this chapter, shall be given
14186 thirty (30) days' notice, in writing, enumerating the charges and
14187 specifying a date for public hearing thereon. The hearing shall
14188 be held in accordance with the Mississippi Administrative
14189 Procedure Law of 1999. * * *

14190 * * *

14191 SECTION 311. Section 73-14-39, Mississippi Code of 1972, is
14192 amended as follows:

14193 73-14-39. * * * From any revocation following an
14194 adjudicative proceeding, the person whose license has been
14195 ordered revoked shall have a right of judicial review in
14196 accordance with the Mississippi Administrative Procedure Law of
14197 1999.

14198 * * *

14199 SECTION 312. Section 73-19-41, Mississippi Code of 1972, is
14200 amended as follows:

14201 73-19-41. * * * The board shall * * * cause a written
14202 notice specifying the offense or offenses for which the licensee
14203 is charged and shall conduct an adjudicative proceeding in
14204 accordance with the Mississippi Administrative Procedure Law of

14205 1999. * * *

14206 * * *

14207 SECTION 313. Section 73-24-13, Mississippi Code of 1972, is
14208 amended as follows:

14209 73-24-13. (1) The board shall administer, coordinate and
14210 enforce the provisions of this chapter, evaluate the
14211 qualifications, and approve the examinations for licensure under
14212 this chapter, and may issue subpoenas, examine witnesses and
14213 administer oaths, and may investigate allegations of practices
14214 violating the provisions of this chapter.

14215 (2) The board shall adopt such rules and regulations, not
14216 inconsistent with the laws of this state, as may be necessary to
14217 effectuate the provisions of this chapter, the practice of
14218 occupational therapy in this state, and may amend or repeal the
14219 same as may be necessary for such purposes, with the advice of
14220 the council. Such rules and regulations shall be adopted in
14221 accordance with the provisions of the Mississippi Administrative
14222 Procedure Law of 1999.

14223 (3) The board shall conduct hearings and keep such records
14224 and minutes as are necessary to carry out its functions including
14225 adjudicative proceedings in accordance with the Mississippi
14226 Administrative Procedure Law of 1999. It shall provide
14227 reasonable public notice to the appropriate persons as to the
14228 time and place of all hearings authorized under this chapter in
14229 such a manner and at such times as it may determine by the
14230 board's rules and regulations.

14231 (4) The conferral or enumeration of specific powers
14232 elsewhere in this chapter shall be construed as a limitation of
14233 the general functions by this section.

14234 SECTION 314. Section 73-25-27, Mississippi Code of 1972, is
14235 amended as follows:

14236 73-25-27. The Mississippi State Board of Medical Licensure
14237 after notice and opportunity * * * to the licentiate for an
14238 adjudicative proceeding in accordance with the Mississippi

14239 Administrative Procedure Law of 1999, is authorized to suspend or
14240 revoke for any cause named herein any license it has issued, or
14241 the renewal thereof, that authorizes any person to practice
14242 medicine, osteopathy, or any other method of preventing,
14243 diagnosing, relieving, caring for, or treating, or curing
14244 disease, injury or other bodily condition. The procedure for
14245 suspension of a license for being out of compliance with an order
14246 for support, and the procedure for the reissuance or
14247 reinstatement of a license suspended for that purpose, and the
14248 payment of any fees for the reissuance or reinstatement of a
14249 license suspended for that purpose, shall be governed by Section
14250 93-11-157 or 93-11-163, as the case may be. If there is any
14251 conflict between any provision of Section 93-11-157 or 93-11-163
14252 and any provision of this chapter, the provisions of Section
14253 93-11-157 or 93-11-163, as the case may be, shall control.

14254 Such notice shall be effected by registered mail or personal
14255 service setting forth the particular reasons for the proposed
14256 action and fixing a date not less than thirty (30) days or more
14257 than sixty (60) days from the date of such mailing or such
14258 service, at which time the licentiate shall be given an
14259 opportunity for a prompt and fair hearing. For the purpose of
14260 such hearing the board, acting by and through its executive
14261 office, may subpoena persons and papers on its own behalf and on
14262 behalf of licentiate, including records obtained pursuant to
14263 Section 73-25-28, may administer oaths and such testimony when
14264 properly transcribed, together with such papers and exhibits,
14265 shall be admissible in evidence for or against the licentiate.
14266 At such hearing licentiate may appear by counsel and personally
14267 in his own behalf. Any person sworn and examined as a witness in
14268 such hearing shall not be held to answer criminally, nor shall
14269 any papers or documents produced by such witness be competent
14270 evidence in any criminal proceedings against such witness other
14271 than for perjury in delivering his evidence. On the basis of any
14272 such hearing, or upon default of the licentiate, the Board of

14273 Medical Licensure shall make a determination specifying its
14274 findings of fact and conclusions of law.

14275 A copy of such determination shall be sent by registered
14276 mail or served personally upon the licentiate. The decision of
14277 the Board of Medical Licensure revoking or suspending the license
14278 shall become final thirty (30) days after so mailed or served
14279 unless within said period the licentiate appeals the decision to
14280 the chancery court, pursuant to the provisions hereof, and the
14281 proceedings in chancery shall be conducted as other matters
14282 coming before the court. All proceedings and evidence, together
14283 with exhibits, presented at such hearing before the Board of
14284 Medical Licensure in the event of appeal shall be admissible in
14285 evidence in said court.

14286 The Board of Medical Licensure may subpoena persons and
14287 papers on its own behalf and on behalf of the respondent,
14288 including records obtained pursuant to Section 73-25-28, may
14289 administer oaths, and may compel the testimony of witnesses. It
14290 may issue commissions to take testimony, and testimony so taken
14291 and sworn to shall be admissible in evidence for and against the
14292 respondent. The Board of Medical Licensure shall be entitled to
14293 the assistance of the chancery court or the chancellor in
14294 vacation, which, on petition by the board, shall issue ancillary
14295 subpoenas and petitions and may punish as for contempt of court
14296 in the event of noncompliance therewith.

14297 Unless the court otherwise decrees, a license that has been
14298 suspended by the Board of Medical Licensure for a stated period
14299 of time shall automatically become valid on the expiration of
14300 that period and a license that has been suspended for an
14301 indefinite period shall become again valid if and when the Board
14302 of Medical Licensure so orders, which it may do on its own motion
14303 or on the petition of the respondent. A license that has been
14304 revoked shall not be restored to validity except: (1) after a
14305 rehearing by the Board of Medical Licensure, on petition of the
14306 respondent, for good cause shown, filed within ten (10) days,

14307 immediately following the service on him of the order or judgment
14308 of the Board of Medical Licensure revoking his license or (2) by
14309 order of the court, on petition as aforesaid. Any licentiate
14310 whose license becomes again valid after a period of suspension or
14311 after it has been restored to validity after a rehearing or by an
14312 order of the court, shall record it again in the office of the
14313 clerk of the circuit court of the county in which he resides in
14314 conformity with the requirements of Section 73-25-13. Nothing in
14315 this chapter shall be construed as limiting or revoking the
14316 authority of any court or of any licensing or registering officer
14317 or board, other than the State Board of Medical Licensure, to
14318 suspend, revoke and reinstate licenses and to cancel
14319 registrations under the provisions of Section 41-29-311.

14320 SECTION 315. Section 73-25-63, Mississippi Code of 1972, is
14321 amended as follows:

14322 73-25-63. (1) The board may proceed against a physician
14323 under Sections 73-25-51 through 73-25-67 by serving upon such
14324 physician at least fifteen (15) days' notice of a time and place
14325 fixed for a hearing, together with copies of the examining
14326 committee's report and diagnosis. Such notice and reports shall
14327 be served upon the physician either personally or by registered
14328 or certified mail with return receipt requested. The hearing
14329 shall be an adjudicative proceeding in accordance with the
14330 Mississippi Administrative Procedure Law of 1999.

14331 * * *

14332 (2) At the conclusion of the hearing, the board shall make
14333 a determination of the merits and may issue an order imposing one
14334 or more of the following:

14335 (a) Make a recommendation that the physician submit to
14336 the care, counseling or treatment by physicians acceptable to the
14337 board.

14338 (b) Suspend or restrict the license of the physician
14339 to practice medicine for the duration of his impairment.

14340 (c) Revoke the license of the physician to practice

14341 medicine.

14342 (3) The board may temporarily suspend the license of any
14343 physician without a hearing, simultaneously with the institution
14344 of proceedings for a hearing under this section, if it finds that
14345 the evidence in support of the examining committee's
14346 determination is clear, competent and unequivocal and that his
14347 continuation in practice would constitute an imminent danger to
14348 public health and safety.

14349 (4) Neither the record of the proceedings nor any order
14350 entered against a physician may be used against him in any other
14351 legal proceedings except upon judicial review as provided herein.

14352 SECTION 316. Section 73-25-65, Mississippi Code of 1972, is
14353 amended as follows:

14354 73-25-65. (1) A physician whose licensure has been
14355 restricted, suspended or revoked under Sections 73-25-51 through
14356 73-25-67, voluntarily or by action of the board, shall have a
14357 right, at reasonable intervals, to petition for reinstatement of
14358 his license and to demonstrate that he can resume the competent
14359 practice of medicine with reasonable skill and safety to
14360 patients. Such petition shall be made in writing and on a form
14361 prescribed by the board. Action of the board on such petition
14362 shall be initiated by referral to and examination by the
14363 examining committee pursuant to the provisions of Sections
14364 73-25-55 and 73-25-57. The board may, upon written
14365 recommendation of the examining committee, restore the licensure
14366 of the physician on a general or limited basis or institute a
14367 proceeding pursuant to Section 73-25-63 for the determination of
14368 the fitness of the physician to resume his practice.

14369 (2) All orders of the board entered under Section
14370 73-25-63(3)(4) shall be subject to judicial review in accordance
14371 with the Mississippi Administrative Procedure Law of 1999.

14372 SECTION 317. Section 73-25-95, Mississippi Code of 1972, is
14373 amended as follows:

14374 73-25-95. Any person against whom disciplinary action is

14375 taken pursuant to Sections 73-25-81 through 73-25-95 shall have
14376 the right of judicial review in accordance with the Mississippi
14377 Administrative Procedure Law of 1999. Provided, further, that no
14378 such person shall be allowed to practice medicine or deliver
14379 health care services in violation of any disciplinary order or
14380 action of the board while any such judicial review is pending.

14381 SECTION 318. Section 73-29-39, Mississippi Code of 1972, is
14382 amended as follows:

14383 73-29-39. Any person dissatisfied with the action of the
14384 board in refusing his application or suspending or revoking his
14385 license, or any other action of the board, shall have a right to
14386 judicial review in accordance with the Mississippi Administrative
14387 Procedure Law of 1999. * * *

14388 Actions taken by the board in suspending a license when
14389 required by Section 93-11-157 or 93-11-163 are not actions from
14390 which an appeal may be taken under this section. Any appeal of a
14391 license suspension that is required by Section 93-11-157 or
14392 93-11-163 shall be taken in accordance with the appeal procedure
14393 specified in Section 93-11-157 or 93-11-163, as the case may be,
14394 rather than the procedure specified in this section.

14395 SECTION 319. Section 73-30-7, Mississippi Code of 1972, is
14396 amended as follows:

14397 73-30-7. (1) The members of the board shall take an oath
14398 to perform faithfully the duties of their office. The oath shall
14399 be administered by a person qualified by law to administer oaths.

14400 Upon taking the oath as board members, the initial members shall
14401 be deemed licensed counselors for all purposes under this
14402 chapter. Within thirty (30) days after taking the oath of
14403 office, the first board appointed under this chapter shall meet
14404 for an organizational meeting on call by the Governor. At such
14405 meeting and at an organizational meeting in January every
14406 odd-numbered year thereafter, the board shall elect from its
14407 members a chairman, vice-chairman and secretary-treasurer to
14408 serve for terms of two (2) years.

14409 (2) The board shall adopt rules and regulations in
14410 compliance with the Mississippi Administrative Procedure Law of
14411 1999, using the standards of the American Association for
14412 Counseling and Development as a guide, not inconsistent with this
14413 chapter, for the conduct of its business and the carrying out of
14414 its duties.

14415 (3) After a person has applied for licensure, no member of
14416 the board may supervise such applicant for a fee, nor shall any
14417 member vote on any applicant previously supervised by that
14418 member.

14419 (4) The board shall hold at least two (2) regular meetings
14420 each year, and additional meetings may be held upon the call of
14421 the chairman of the board or at the written request of any four
14422 (4) members of the board.

14423 (5) The board-approved examination for licensure shall be
14424 administered at least once a year. Examinations may be written,
14425 oral, situational, or any combination thereof, and shall deal
14426 with theoretical and applied fields in counseling. In written
14427 examinations, the examinee's name shall not be disclosed to any
14428 person grading the examination until that grading is complete.

14429 (6) The board shall be empowered to make reasonable rules
14430 and regulations regarding its operation and to receive and
14431 disburse revenues derived from application, licensing,
14432 examination and renewal fees. All monies received by the board
14433 shall be deposited in a special account in the State Treasury to
14434 be designated "Board of Examiners for Licensed Professional
14435 Counselors Account." This account shall fund all activities of
14436 the board.

14437 (7) The members of the board are hereby individually exempt
14438 from any civil liability as a result of any action taken by the
14439 board.

14440 SECTION 320. Section 73-30-11, Mississippi Code of 1972, is
14441 amended as follows:

14442 73-30-11. Following a decision by the board not to license,

14443 the applicant may request a hearing at the next regularly
14444 scheduled meeting of the board. Upon such request the board
14445 shall conduct an adjudicative proceeding in accordance with the
14446 Mississippi Administrative Procedure Law of 1999. Upon a final
14447 decision by the board not to license, the applicant may (after
14448 waiting a period of at least one (1) year) resubmit the
14449 application accompanied by new evidence and a nonrefundable
14450 application fee of One Hundred Dollars (\$100.00) for
14451 reconsideration for licensure.

14452 The applicant may seek judicial review of the decision of
14453 the board in accordance with the Mississippi Administrative
14454 Procedure Law of 1999. * * *

14455 SECTION 321. Section 73-33-5, Mississippi Code of 1972, is
14456 amended as follows:

14457 73-33-5. The Mississippi State Board of Public Accountancy
14458 is hereby authorized with the following powers and duties:

14459 (a) To adopt a seal;

14460 (b) To govern its proceedings;

14461 (c) To set the fees and to regulate the time, manner

14462 and place of conducting examinations to be held under this

14463 chapter. Beginning February 1, 1995, a total of one hundred

14464 fifty (150) collegiate-level semester hours of education

14465 including a baccalaureate degree or its equivalent at a college

14466 or university acceptable to the board shall be required in order

14467 to sit for the examination by candidates who have not previously

14468 sat for the examination. The total education program shall

14469 include an accounting concentration or the equivalent as

14470 determined by the board to be appropriate by rules and

14471 regulations. The examination shall cover a knowledge of the

14472 "theory of accounts," "accounting practice," "auditing,"

14473 "business law as affecting accountancy," and such other branches

14474 of knowledge pertaining to accountancy as the board may deem

14475 proper;

14476 (d) To initiate investigations of certified public

14477 accountant practices;

14478 (e) To notify applicants who have failed an
14479 examination within one hundred twenty (120) days of such failure
14480 and in what branch or branches deficiency was found;

14481 (f) To adopt and enforce such rules and regulations
14482 concerning certified public accountant examinee and licensee
14483 qualifications and practices as the board considers necessary to
14484 maintain the highest standard of proficiency in the profession of
14485 certified public accounting and for the protection of the public
14486 interest. The standards of practice by certified public
14487 accountants shall include generally accepted auditing and
14488 accounting standards as promulgated by the Mississippi State
14489 Board of Public Accountancy;

14490 (g) To issue certificates under the signature and the
14491 official seal of the board as provided in this chapter;

14492 (h) To issue licenses to practice public accounting to
14493 any certified public accountant who has obtained a certificate or
14494 reciprocal certificate issued by the board pursuant to such rules
14495 and regulations as may be promulgated by the board;

14496 (i) To employ personnel;

14497 (j) To contract for services and rent; and

14498 (k) To adopt and enforce all such rules and
14499 regulations in accordance with the Mississippi Administrative
14500 Procedure Law of 1999 as shall be necessary for the
14501 administration of this chapter; provided, however, no adoption or
14502 modification of any rules or regulations of the board shall
14503 become effective unless any final action of the board approving
14504 such adoption or modification shall occur at a time and place
14505 which is open to the public and for which notice by mail of such
14506 time and place and the rules and/or regulations proposed to be
14507 adopted or modified has been given at least thirty (30) days
14508 prior thereto to every person who is licensed and registered with
14509 the board.

14510 Each application or filing made under this section shall

14511 include the Social Security number(s) of the applicant in
14512 accordance with Section 93-11-64, Mississippi Code of 1972.

14513 SECTION 322. Section 73-33-11, Mississippi Code of 1972, is
14514 amended as follows:

14515 73-33-11. The Mississippi State Board of Public Accountancy
14516 may revoke any certificate or license issued by virtue of any
14517 provision of this chapter and/or may cancel the registration of
14518 any certificate or license registered by virtue of any provision
14519 of this chapter for any unprofessional conduct of the holder of
14520 such certificate or license, or for other sufficient cause,
14521 provided written notice shall have been sent to the holder of any
14522 certificate or license, twenty (20) days before any hearing
14523 thereon, stating the cause for such contemplated action and
14524 appointing a day and a place for a full hearing thereon by said
14525 board, provided, further, no certificate or license be cancelled
14526 or revoked until a hearing shall have been given to the holder
14527 thereof according to law. But, after such hearing, said board
14528 may, in its discretion, suspend such a certified public
14529 accountant from practice as a certified public accountant in this
14530 state not exceeding twelve (12) months.

14531 The members of said board are hereby empowered to sit as a
14532 trial board; to administer oaths (or affirmations); to summon any
14533 witness and to compel his attendance and/or his testimony, under
14534 oath (or affirmation) before such board; to compel the production
14535 before it, of any book, paper or document by the owner or
14536 custodian thereof; and/or to compel any officer to produce, at
14537 such hearing a copy of any public record (not privileged from
14538 public inspection by law) in his official custody, certified to,
14539 by him. Such board shall elect one of its members to serve as
14540 clerk, to issue summons and other processes, and to certify
14541 copies of its records; and another, to serve as president of the
14542 board.

14543 Its minutes shall be recorded in book form. Testimony of
14544 witnesses shall be taken by a stenographic reporter, and may be

14545 enforced in the same manner and with like powers as would be in a
14546 justice court. Its records, when not in session, shall be filed
14547 with the Secretary of State.

14548 The accused certified public accountant may appear in person
14549 and/or by counsel to defend himself. But if he does not appear
14550 or answer, judgment may be entered by default, provided if he
14551 does not appear he shall have been notified twenty (20) days
14552 before such hearing, by summons issued by the clerk and served by
14553 the sheriff, or by publication by the clerk in a newspaper, under
14554 the same circumstances, for the same time and in the same manner,
14555 as in cases in the chancery court.

14556 Three (3) or more persons, qualified to practice as
14557 certified public accountants, may prefer charges against any
14558 person, practicing as a certified public accountant, for
14559 misconduct and/or unprofessional conduct, by filing a sworn bill
14560 of complaint with any member of said board with bond for double
14561 the cost. Thereupon, said board shall proceed with its hearing
14562 of such charges. In case of a decision adverse to the charges,
14563 the cost shall be borne by those who made the charges.

14564 In case of a decision adverse to the certified public
14565 accountant, he shall have thirty (30) days from the day on which
14566 decision is made, within which to appeal to the circuit court of
14567 the county in which the misconduct and/or unprofessional conduct
14568 was alleged to have been committed, and the cancellation,
14569 revocation or suspension of his certificate or license shall not
14570 take effect until the expiration of said thirty (30) days.

14571 In case of an appeal, the trial in the circuit court shall
14572 be de novo; the Mississippi State Board of Public Accountancy and
14573 those preferring the charges shall be made parties to the suit,
14574 bond for costs in the circuit court shall be given as in other
14575 cases; and such suspension, revocation or cancellation shall not
14576 take effect until such appeal shall have been finally disposed of
14577 by the court or courts.

14578 The board may, at any time, reinstate the certificate or

14579 license, if satisfied that such reinstatement is justified.

14580 In addition to the reasons specified in the first paragraph
14581 of this section, the board shall be authorized to suspend the
14582 license of any licensee for being out of compliance with an order
14583 for support, as defined in Section 93-11-153. The procedure for
14584 suspension of a license for being out of compliance with an order
14585 for support, and the procedure for the reissuance or
14586 reinstatement of a license suspended for that purpose, and the
14587 payment of any fees for the reissuance or reinstatement of a
14588 license suspended for that purpose, shall be governed by Section
14589 93-11-157 or 93-11-163, as the case may be. Actions taken by the
14590 board in suspending a license when required by Section 93-11-157
14591 or 93-11-163 are not actions from which an appeal may be taken
14592 under this section. Any appeal of a license suspension that is
14593 required by Section 93-11-157 or 93-11-163 shall be taken in
14594 accordance with the appeal procedure specified in Section
14595 93-11-157 or 93-11-163, as the case may be, rather than the
14596 procedure specified in this section. If there is any conflict
14597 between any provision of Section 93-11-157 or 93-11-163 and any
14598 provision of this chapter, the provisions of Section 93-11-157 or
14599 93-11-163, as the case may be, shall control.

14600 SECTION 323. Section 73-34-29, Mississippi Code of 1972, is
14601 amended as follows:

14602 73-34-29. The board may, upon conducting an adjudicative
14603 proceeding in accordance with the Mississippi Administrative
14604 Procedure Law of 1999, deny the issuance of a license to an
14605 applicant on any of the grounds provided in this chapter.

14606 SECTION 324. Section 73-34-43, Mississippi Code of 1972, is
14607 amended as follows:

14608 73-34-43. If, at the conclusion of the adjudicative
14609 proceeding, the board determines that a licensed appraiser or
14610 licensed certified real estate appraiser is guilty of a violation
14611 of any of the provisions of this chapter, it shall prepare a
14612 formal decision that shall contain findings of fact concerning

14613 the appropriate disciplinary action to be taken.

14614 The decision and order of the board shall be final. Any
14615 applicant or licensee or person aggrieved by a decision or order
14616 of the board shall have the right of judicial review in
14617 accordance with the Mississippi Administrative Procedure Law of
14618 1999. * * *

14619 * * *

14620 Actions taken by the board in suspending a license when
14621 required by Section 93-11-157 or 93-11-163 are not actions from
14622 which an appeal may be taken under this section. Any appeal of a
14623 license suspension that is required by Section 93-11-157 or
14624 93-11-163 shall be taken in accordance with the appeal procedure
14625 specified in Section 93-11-157 or 93-11-163, as the case may be,
14626 rather than the procedure specified in this section.

14627 SECTION 325. Section 73-35-18, Mississippi Code of 1972, is
14628 amended as follows:

14629 73-35-18. (1) Each individual applicant for renewal of a
14630 license issued by the Mississippi Real Estate Commission shall,
14631 on or before the expiration date of his license, or at a time
14632 directed by the commission, submit proof of completion of not
14633 less than eight (8) clock hours of approved course work to the
14634 commission, in addition to any other requirements for renewal.
14635 The eight (8) clock hours' course work requirement shall apply to
14636 each two-year license renewal, and hours in excess thereof shall
14637 not be cumulated or credited for the purposes of subsequent
14638 license renewals. The commission shall develop standards for
14639 approval of courses and shall require certification of such
14640 course work of the applicant. At least two (2) of the required
14641 eight (8) hours shall be on the subject of license law.

14642 (2) This section shall apply to renewals of licenses which
14643 expire on and after July 1, 1994; however, an applicant for first
14644 renewal who has been licensed for not more than one (1) year
14645 shall not be required to comply with this section for the first
14646 renewal of the applicant's license. The provisions of this

14647 section shall not apply to persons who have held a broker's
14648 license in this state for at least twenty-five (25) years and who
14649 are older than seventy (70) years of age. Inactive licensees are
14650 not required to meet the real estate continuing education
14651 requirements specified in this section; however, such inactive
14652 licensees, before activating their license to active status, must
14653 cumulatively meet requirements missed during the period their
14654 license was inactive.

14655 (3) The commission shall promulgate rules and regulations
14656 as necessary to accomplish the purposes of this section in
14657 accordance with the Mississippi Administrative Procedure Law of
14658 1999.

14659 (4) Any person who has been licensed as a real estate
14660 broker and allowed his license to expire for a period of less
14661 than five (5) years shall be eligible for reinstatement upon
14662 completion of the education requirements and payment of all
14663 penalties and reinstatement fees as prescribed by the commission.
14664 This subsection (4) of this section shall stand repealed from
14665 and after December 31, 1994.

14666 SECTION 326. Section 73-43-14, Mississippi Code of 1972, is
14667 amended as follows:

14668 73-43-14. The State Board of Medical Licensure may appoint
14669 an executive committee, to be composed of three (3) of its
14670 members, with a chairman to be designated by the board from the
14671 members appointed to said committee. The executive committee
14672 shall have authority to execute all the powers vested in the
14673 board, in the interim of the meetings of the board. The
14674 executive committee shall have the authority to conduct licensure
14675 hearings as adjudicative proceedings in accordance with the
14676 Mississippi Administrative Procedure Law of 1999, provided that
14677 the power to revoke shall be subject to approval of the board.
14678 Any person aggrieved by a decision of the executive committee
14679 regarding licensure may appeal to the board. Any person
14680 aggrieved by an action of the board regarding licensure has a

14681 right to judicial review thereof in accordance with the
14682 Mississippi Administrative Procedure Law of 1999. Any action of
14683 the executive committee shall be legal and binding until modified
14684 or annulled by the board, and all pains and penalties prescribed
14685 for violating the rules of the board shall apply to any violation
14686 of rules and regulations that may be prescribed by the executive
14687 committee. Any two (2) members of the executive committee shall
14688 be a quorum for the transaction of business.

14689 All official meetings of the executive committee, as to time
14690 and place, shall be held pursuant to a call of the president of
14691 the board.

14692 Actions taken by the board in suspending a license when
14693 required by Section 93-11-157 or 93-11-163 are not actions from
14694 which an appeal may be taken under this section. Any appeal of a
14695 license suspension that is required by Section 93-11-157 or
14696 93-11-163 shall be taken in accordance with the appeal procedure
14697 specified in Section 93-11-157 or 93-11-163, as the case may be,
14698 rather than the procedure specified in this section.

14699 SECTION 327. Section 73-59-13, Mississippi Code of 1972, is
14700 amended as follows:

14701 73-59-13. (1) The board, upon satisfactory proof and in
14702 accordance with the provisions of this chapter and the
14703 regulations of the board pertaining thereto, is authorized to
14704 take the disciplinary actions provided for in this section
14705 against any person for any of the following reasons:

14706 (a) Violating any of the provisions of this chapter or
14707 the rules or regulations of the board pertaining to the work of
14708 residential building or residential improvement;

14709 (b) Fraud, deceit or misrepresentation in obtaining a
14710 license;

14711 (c) Gross negligence or misconduct;

14712 (d) Engaging in work of residential building or
14713 residential improvement on an expired license or while under
14714 suspension or revocation of license unless the suspension or

14715 revocation be abated in accordance with this chapter;

14716 (e) Loaning a license to an unlicensed person;

14717 (f) Failing to maintain workers' compensation

14718 insurance, if applicable; or

14719 (g) Failing to pay for goods or services for which the
14720 builder is contractually bound.

14721 (2) Any person, including members of the board, may prefer
14722 charges against any other person for committing any of the acts
14723 set forth in subsection (1) of this section. Such charges shall
14724 be sworn to, either upon actual knowledge or upon information and
14725 belief, and shall be filed with the board.

14726 The board shall investigate all charges filed with it and,
14727 upon finding reasonable cause to believe that the charges are not
14728 frivolous, unfounded or filed in bad faith, may, in its
14729 discretion, conduct an adjudicative proceeding in accordance with
14730 the Mississippi Administrative Procedure Law of 1999 regarding
14731 the charges * * *.

14732 No disciplinary action may be taken until the accused has
14733 been furnished both a statement of the charges against him and
14734 notice of his opportunity for a proceeding thereon.

14735 * * *

14736 (3) If a majority of the board finds the accused guilty of
14737 the charges filed, the board may:

14738 (a) Issue a public or private reprimand;

14739 (b) Suspend or revoke the license of the accused; or

14740 (c) In lieu of or in addition to any reprimand,
14741 suspension or revocation, assess and levy upon the guilty party a
14742 monetary penalty of not less than One Hundred Dollars (\$100.00)
14743 nor more than Five Thousand Dollars (\$5,000.00) for each
14744 violation.

14745 (4) A monetary penalty assessed and levied under this
14746 section shall be paid to the board upon the expiration of the
14747 period allowed for appeal of such penalties under this section or
14748 may be paid sooner if the guilty party elects. Money collected

14749 by the board under this section shall be deposited to the credit
14750 of the State Board of Contractors' Fund.

14751 When payment of a monetary penalty assessed and levied by
14752 the board in accordance with this section is not paid when due,
14753 the board shall have the power to institute and maintain
14754 proceedings in its name for enforcement of payment in the
14755 chancery court of the county of residence of the delinquent
14756 party; however, if the delinquent party is a nonresident of the
14757 State of Mississippi, such proceedings shall be in the Chancery
14758 Court of the First Judicial District of Hinds County,
14759 Mississippi.

14760 (5) When the board has taken a disciplinary action under
14761 this section, the board may, in its discretion, stay such action
14762 and place the guilty party on probation for a period not to
14763 exceed one (1) year upon the condition that such party shall not
14764 further violate either the laws of the State of Mississippi
14765 pertaining to the practice of residential construction or
14766 residential remodeling or the bylaws, rules or regulations
14767 promulgated by the board.

14768 (6) The board shall not assess any of the costs of
14769 disciplinary proceedings conducted pursuant to this section
14770 against the prevailing party.

14771 (7) The power and authority of the board to assess and levy
14772 the monetary penalties provided for in this section shall not be
14773 affected or diminished by any other proceedings, civil or
14774 criminal, concerning the same violation or violations except as
14775 provided in this section.

14776 (8) The board, for sufficient cause, may reissue a revoked
14777 license whenever a majority of the board members vote to do so.

14778 (9) Any person aggrieved by any order or decision of the
14779 board has a right to judicial review thereof in accordance with
14780 the Mississippi Administrative Procedure Law of 1999. * * * If
14781 the judgment be reversed, the * * * court * * * shall render such
14782 order or judgment as the board ought to have rendered, and

14783 certify the same to the board; and costs shall be awarded as in
14784 other cases. The board may employ counsel to defend such
14785 proceedings for judicial review, to be paid out of the funds in
14786 the State Board of Contractors' Fund.

14787 The remedies provided under this chapter for any aggrieved
14788 applicant shall not be exclusive, but shall be cumulative of and
14789 supplemental to any other remedies which he may otherwise have in
14790 law or in equity, whether by injunction or otherwise.

14791 (10) Any political subdivision or agency of this state
14792 which receives a complaint against a residential builder or
14793 remodeler shall, in addition to exercising whatever authority
14794 such political subdivision or agency has been given over such
14795 complaint, forward the complaint to the board.

14796 (11) In addition to the reasons specified in subsection (1)
14797 of this section, the board shall be authorized to suspend the
14798 license of any licensee for being out of compliance with an order
14799 for support, as defined in Section 93-11-153. The procedure for
14800 suspension of a license for being out of compliance with an order
14801 for support, and the procedure for the reissuance or
14802 reinstatement of a license suspended for that purpose, and the
14803 payment of any fees for the reissuance or reinstatement of a
14804 license suspended for that purpose, shall be governed by Section
14805 93-11-157 or 93-11-163, as the case may be. Actions taken by the
14806 board in suspending a license when required by Section 93-11-157
14807 or 93-11-163 are not actions from which an appeal may be taken
14808 under this section. Any appeal of a license suspension that is
14809 required by Section 93-11-157 or 93-11-163 shall be taken in
14810 accordance with the appeal procedure specified in Section
14811 93-11-157 or 93-11-163, as the case may be, rather than the
14812 procedure specified in this section. If there is any conflict
14813 between any provision of Section 93-11-157 or 93-11-163 and any
14814 provision of this chapter, the provisions of Section 93-11-157 or
14815 93-11-163, as the case may be, shall control.

14816 SECTION 328. Section 73-63-17, Mississippi Code of 1972, is

14817 amended as follows:

14818 73-63-17. The board shall have the following powers and
14819 duties:

14820 (a) To adopt, modify, repeal and promulgate, after due
14821 notice and hearing and in accordance with the Mississippi
14822 Administrative Procedure Law of 1999, and where not otherwise
14823 prohibited by federal or state law to make exceptions to and
14824 grant exemptions and variances from, and to enforce rules and
14825 regulations implementing the powers and duties of the board under
14826 this chapter, including rules governing the conduct of its
14827 business and meetings;

14828 (b) To adopt an official seal and alter that seal at
14829 the pleasure of the board;

14830 (c) To apply for, receive and expend any federal or
14831 state funds or contributions, gifts, devises, bequests or funds
14832 from any other source;

14833 (d) To enter into, and to authorize the executive
14834 director to execute contracts, grants and cooperative agreements
14835 with any federal or state agency, any public or private
14836 institution, or any other person to carry out this chapter. The
14837 board shall not provide any funds for special interest groups to
14838 lobby or otherwise promote the group's special interests;

14839 (e) To employ, in its discretion, an executive
14840 director and other qualified technical, professional and clerical
14841 personnel, including investigators and expert witnesses, as may
14842 be required for the operation of the board;

14843 (f) To establish, charge, collect and revise
14844 reasonable and necessary fees to applicants and registrants to
14845 support the administration and enforcement of this chapter;

14846 (g) To identify specialties and to establish
14847 qualifications, conduct examinations and issue certificates in
14848 those specialties to qualified applicants and to recognize and
14849 authorize the use of certain geologic designations;

14850 (h) To prepare, administer and grade oral and written

14851 examinations authorized under this chapter;

14852 (i) To issue, reissue, renew, suspend, revoke or deny
14853 the issuance, reissuance or renewal of certificates of
14854 registration or certificates of enrollment;

14855 (j) To authorize the preparation and conduct of
14856 continuing education programs with voluntary participation;

14857 (k) To establish standards of professional conduct;

14858 (l) To investigate complaints of violations of this
14859 chapter, any rule, regulation or written order of the board, any
14860 condition of registration, or standard of professional conduct by
14861 registrants or nonregistrants, as provided in this chapter and to
14862 impose sanctions and penalties for violations, including, but not
14863 limited to, restrictions on the practice of any registrant or any
14864 other person engaged in the practice of geology;

14865 (m) Conduct adjudicative proceedings in accordance
14866 with the Mississippi Administrative Procedure Law of 1999;

14867 (n) To administer oaths and affirmations, and to issue
14868 subpoenas to compel the attendance of witnesses and the
14869 production of evidence;

14870 (o) To begin and maintain legal actions to enforce
14871 this chapter and to seek injunctions;

14872 (p) To delegate powers, duties or responsibilities to
14873 the executive director as deemed necessary to efficiently
14874 administer this chapter; and

14875 (q) To discharge other powers, duties and
14876 responsibilities provided under this chapter or as necessary to
14877 implement this chapter.

14878 SECTION 329. Section 73-63-49, Mississippi Code of 1972, is
14879 amended as follows:

14880 73-63-49. Except as provided in Section 73-63-43(10), any
14881 person aggrieved by an action of the board revoking that person's
14882 certificate of registration or certificate of enrollment as a
14883 geologist-in-training or denying the renewal of registration as a
14884 professional geologist, or who is aggrieved by the action of the

14885 board as a result of an adjudicative proceeding, shall have a
14886 right to judicial review in accordance with the Mississippi
14887 Administrative Procedure Law of 1999. * * *

14888 * * *

14889 SECTION 330. Section 75-35-15, Mississippi Code of 1972, is
14890 amended as follows:

14891 75-35-15. (1) When any meat or meat food product has been
14892 inspected as hereinbefore provided and marked "Mississippi
14893 inspected and passed" or appropriate marking shall be placed or
14894 packed in any can, pot, tin, canvas, or other receptacle or
14895 covering in any establishment where inspection under the
14896 provisions of this chapter is maintained, the person, firm, or
14897 corporation preparing said product shall cause a label to be
14898 attached to said can, pot, tin, canvas, or other receptacle or
14899 covering, under supervision of an inspector, which label shall
14900 state that the contents thereof have been "Mississippi inspected
14901 and passed" or appropriate marking under the provisions of this
14902 chapter, and no inspection and examination of meat or meat food
14903 products deposited or enclosed in cans, tins, pots, canvas, or
14904 other receptacle or covering in any establishment where
14905 inspection under the provisions of this chapter is maintained
14906 shall be deemed to be complete until such meat or meat food
14907 products have been sealed or enclosed in said can, tin, pot,
14908 canvas, or other receptacle or covering under the supervision of
14909 an inspector.

14910 (2) All carcasses, parts of carcasses, meat and meat food
14911 products inspected at any establishment under the authority of
14912 this chapter and found to be not adulterated, shall at the time
14913 they leave the establishment bear, in distinctly legible form,
14914 directly thereon or on their containers, as the commissioner may
14915 require, the information required under paragraph (k) of section
14916 75-35-3 of this chapter.

14917 (3) The commissioner, whenever he determines such action is
14918 necessary for the protection of the public, may prescribe: (1)

14919 the styles and sizes of type to be used with respect to material
14920 required to be incorporated in labeling to avoid false or
14921 misleading labeling of any products or animals subject to this
14922 article or Article 3 of this chapter; (2) definitions and
14923 standards of identity or composition for items subject to this
14924 article and standards of fill of container for such products not
14925 inconsistent with any such standards established under the
14926 Federal Food, Drug, and Cosmetic Act, or under the Federal Meat
14927 Inspection Act, and there shall be consultation between the
14928 commissioner and the secretary of agriculture of the United
14929 States prior to the issuance of such standards to avoid
14930 inconsistency between such standards and the federal standards.

14931 (4) No item or product subject to this article shall be
14932 sold or offered for sale by any person, firm, or corporation,
14933 under any name or other marking or labeling which is false or
14934 misleading, or in any container of a misleading form or size, but
14935 established trade names and other marking and labeling and
14936 containers which are not false or misleading and which are
14937 approved by the commissioner, are permitted.

14938 (5) If the commissioner has reason to believe that any
14939 marking or labeling or the size or form of any container in use
14940 or proposed for use with respect to any item subject to this
14941 article is false or misleading in any particular, he may direct
14942 that such use be withheld unless the marking, labeling, or
14943 container is modified in such manner as he may prescribe so that
14944 it will not be false or misleading. If the person, firm, or
14945 corporation using or proposing to use the marking, labeling or
14946 container does not accept the determination of the commissioner,
14947 such person, firm, or corporation may request an adjudicative
14948 proceeding which shall be conducted in accordance with the
14949 Mississippi Administrative Procedure Law of 1999, but the use of
14950 the marking, labeling, or container shall, if the commissioner so
14951 directs, be withheld pending hearing and final determination by
14952 the commissioner. Any party aggrieved by such final

14953 determination may secure judicial review in accordance with the
14954 Mississippi Administrative Procedure Law of 1999.

14955 SECTION 331. Section 75-43-23, Mississippi Code of 1972, is
14956 amended as follows:

14957 75-43-23. If, after proper application, the commissioner
14958 denies any person, partnership, association or corporation a
14959 license to operate a farm warehouse, the commissioner shall
14960 issue * * * an order so providing, which shall state the reasons
14961 for the denial. In the event the applicant is dissatisfied at
14962 the decision of the commissioner, the applicant may request an
14963 adjudicative proceeding in accordance with the Mississippi
14964 Administrative Procedure Law of 1999 with the commissioner, to
14965 appear and defend its compliance with all appropriate regulations
14966 and/or give evidence that all deficiencies have been
14967 corrected. * * * In the event the applicant is dissatisfied at
14968 the decision of the commissioner after the adjudicative
14969 proceeding, the applicant may secure judicial review in
14970 accordance with the Mississippi Administrative Procedure Law of
14971 1999.

14972 SECTION 332. Section 75-49-13, Mississippi Code of 1972, is
14973 amended as follows:

14974 75-49-13. (1) The commissioner shall not:

14975 (a) Deny an application for a license without first
14976 giving the applicant an adjudicative proceeding on the question
14977 of whether he is qualified under the provisions of this chapter
14978 to receive the license applied for.

14979 (b) Revoke or suspend a license without first giving
14980 the licensee an adjudicative proceeding in accordance with the
14981 Mississippi Administrative Procedure Law of 1999 on the question
14982 of whether there are sufficient grounds under the provisions of
14983 this chapter upon which to base such revocation or suspension.

14984 (2) Any interested party shall have the right to have the
14985 commissioner conduct an adjudicative proceeding in accordance
14986 with the Mississippi Administrative Procedure Law of 1999 for the

14987 purpose of taking action in respect to any matter within the
14988 commissioner's jurisdiction * * *.

14989 (3) The commissioner may on his own motion conduct an
14990 adjudicative proceeding in accordance with the Mississippi
14991 Administrative Procedure Law of 1999 for the purpose of taking
14992 action in respect to any matter within his jurisdiction.

14993 (4) Any adjudicative proceeding held before the
14994 commissioner shall be conducted in accordance with the
14995 Mississippi Administrative Procedure Law of 1999. * * *

14996 * * *

14997 (5) All decisions of the commissioner with respect to the
14998 hearings provided for in this section shall be incorporated into
14999 orders of the commissioner. All such orders shall be made
15000 available during normal office hours for inspection by interested
15001 persons.

15002 * * *

15003 (6) Any order of the commissioner shall be subject to
15004 judicial review in accordance with the Mississippi Administrative
15005 Procedure Law of 1999.

15006 * * *

15007 SECTION 333. Section 75-55-6, Mississippi Code of 1972, is
15008 amended as follows:

15009 75-55-6. (1) Products regulated under terms of the
15010 Petroleum Products Inspection Law or regulations sold in this
15011 state shall have a name and/or brand name and such name shall be
15012 registered with the Mississippi Department of Agriculture and
15013 Commerce. The octane rating or antiknock index (R + M)/2 of
15014 applicable motor fuels, covered by the Federal Trade Commission
15015 Octane Posting and Certification Rule, shall be included in the
15016 registration. The name of the establishment, address, city,
15017 state, zip code, county and telephone number shall also be
15018 included in the registration. Registration forms shall be
15019 provided by the Mississippi Department of Agriculture and
15020 Commerce.

15021 (2) The commissioner or his agent shall refuse the
15022 registration of any product under a name that is misleading to
15023 the purchaser of such a product.

15024 The commissioner or his agent, in his discretion, may refuse
15025 to permit any name or brand of gasoline where a similar name or
15026 brand has already been permitted. The sale of any product under
15027 any brand name that is not registered with the department or does
15028 not meet the standards of the registration form shall not be
15029 permitted. Pumps shall be locked down until the product or
15030 products have been duly registered or brought up to
15031 specifications.

15032 (3) Every pump dispensing motor fuel at retail shall
15033 conspicuously display the name and/or brand name being sold
15034 therefrom exactly as such name and/or brand name that is
15035 registered with the department. Each pump shall conspicuously
15036 display the octane number of the product. The octane number
15037 designation shall be changed whenever the product is changed.
15038 Each diesel pump dispensing those products at retail shall
15039 display the words "No. 1 Diesel" or "No. 2 Diesel." Each
15040 kerosene pump or fuel oil pump dispensing those products at
15041 retail shall display the words "No. 1-K Kerosene" or "No. 2-K
15042 Kerosene" or indicate the proper grade of fuel oil depending on
15043 the product dispensed.

15044 (4) The labeling of all petroleum products on pumps shall
15045 be on both sides of the dispensing device which faces the vehicle
15046 and shall be in a clear and conspicuous place in type of at least
15047 one-half (1/2) inch in height, and one-sixteenth (1/16) inch
15048 stroke (width of type).

15049 (5) Any application for registration that is denied may be
15050 appealed to the commissioner within thirty (30) days from the
15051 date of denial of such application.

15052 (6) Any person who registered a brand name for a motor fuel
15053 and fails or discontinues to sell or deliver a registered product
15054 shall notify the commissioner within sixty (60) days after date

15055 of registration or date of last invoice or delivery ticket.
15056 Failure to notify the commissioner shall automatically terminate
15057 and cancel the registration of the brand name and the quality
15058 specification.

15059 The commissioner is further authorized and empowered
15060 following the terms of the Mississippi Administrative Procedure
15061 Law of 1999 to make such reasonable rules and regulations,
15062 particularly in emergency situations, which, in his judgment,
15063 will contribute to a more efficient administration of this
15064 article. Such rules and regulations, when made, shall have the
15065 same binding force and effect as if incorporated in this article;
15066 provided further, that such rules and regulations made during the
15067 said emergency periods shall be withdrawn following cessation of
15068 any such emergencies.

15069 The commissioner is hereby authorized to prohibit the sale
15070 of any taxable petroleum product which is not in compliance with
15071 the provisions of this chapter.

15072 SECTION 334. Section 75-57-9, Mississippi Code of 1972, is
15073 amended as follows:

15074 75-57-9. The codes of the American Society of Mechanical
15075 Engineers – Boiler and Pressure Vessel Code – Section II Material
15076 Specifications; Section VIII Pressure Vessels; and Section IX
15077 Welding and Brazing Qualifications; American Petroleum Institute
15078 Standard 620 (American Petroleum Institute Recommended Rules for
15079 the Design and Construction of Large Welded Low-pressure Storage
15080 Tanks); Standards of the National Fuel Gas Code as published by
15081 the National Fire Protection Association, NFPA-54; the Standards
15082 for the Storage and Handling of Liquefied Petroleum Gas as
15083 published by the National Fire Protection Association, NFPA-58;
15084 and other National Fire Protection Association standards
15085 applicable to liquefied petroleum gas and compressed gas; and the
15086 safety requirements for the storage and handling of anhydrous
15087 ammonia as published by the American National Standards
15088 Institute, Inc.; as the codes and standards referred to herein

15089 exist on April 5, 1982, and standards referred to above are
15090 hereby adopted by reference as specifications for the purpose of
15091 material standards, construction, handling, transportation and
15092 installation of all liquefied compressed gas systems and
15093 inspection and operation of pressure vessels. Copies of all
15094 codes and standards referred to in the foregoing are available
15095 for public use and inspection at the office of the Commissioner
15096 of Insurance. The State Liquefied Compressed Gas Board is fully
15097 authorized and empowered in the exercise of its authority granted
15098 under this section to change, delete from or amend from time to
15099 time the national code and standards adopted by reference in this
15100 section. Any changes, deletions or amendments made to the
15101 national codes and codes adopted by reference in this section
15102 shall be made in strict compliance with the Mississippi
15103 Administrative Procedure Law of 1999, * * * and with the approval
15104 of the Commissioner of Insurance. The State Liquefied Compressed
15105 Gas Board is fully authorized and empowered in the exercise of
15106 the authority granted under this section to exempt or grant
15107 deviations from the national code and standards adopted by
15108 reference in this section with respect to reconditioned or
15109 remanufactured railroad tank car pressure vessels designed for
15110 and used as stationary storage tanks for agricultural
15111 fertilizers.

15112 SECTION 335. Section 75-57-105, Mississippi Code of 1972,
15113 is amended as follows:

15114 75-57-105. (1) The board shall promulgate and enforce
15115 regulations setting forth the minimum general safety standards
15116 for the design, construction, location, installation and
15117 operation of equipment for storing, handling, transporting by
15118 tank truck or tank trailer and utilizing liquefied compressed gas
15119 for fuel purposes and for the odorization of liquefied compressed
15120 gas.

15121 (2) The board's regulations shall be in substantial
15122 conformity with the published Standards of the National Fire

15123 Protection Association for the Storage and Handling of Liquefied
15124 Petroleum Gases (NFPA 58) and with the National Fuel Gas Code
15125 (NFPA 54) as recommended by the National Fire Protection
15126 Association, adopted in accordance with the Mississippi
15127 Administrative Procedure Law of 1999. The board shall consider
15128 the adoption of revised versions of these standards as they are
15129 adopted by the National Fire Protection Association; the board
15130 may consider the adoption of other standards for matters not
15131 addressed by the above standards or amend the above standards if
15132 deemed to be in the best interest of the State of Mississippi and
15133 with the approval of the Commissioner of Insurance.

15134 (3) The board is authorized to hold hearings, call
15135 witnesses, administer oaths, take testimony and obtain evidence
15136 in the conduct of its business.

15137 SECTION 336. Section 75-57-109, Mississippi Code of 1972,
15138 is amended as follows:

15139 75-57-109. (1) The board may establish by regulation a
15140 system of permits for those engaged in the liquefied compressed
15141 gas business in the state. If adopted, and approved by the
15142 Commissioner of Insurance, no one may engage in the liquefied
15143 compressed gas business without first having obtained a permit
15144 from the board. No person shall be denied a permit if he or she
15145 meets the requirements of state law.

15146 (2) The board may revoke a liquefied compressed gas permit
15147 for willful violation of this chapter or the regulations or for
15148 failure to comply with the chapter or regulations. The
15149 revocation may be made only after written notice to the affected
15150 party, an opportunity to respond in writing to the charges and a
15151 hearing before the board under the provisions of the Mississippi
15152 Administrative Procedure Law of 1999. The revocation shall be
15153 subject to the approval of the Commissioner of Insurance.

15154 (3) The board may establish reasonable bonding, insurance
15155 limits and personnel training qualifications for permit holders.

15156 These requirements are subject to approval of the Commissioner

15157 of Insurance.

15158 SECTION 337. Section 75-57-117, Mississippi Code of 1972,
15159 is amended as follows:

15160 75-57-117. * * * Any individual aggrieved by a final
15161 decision of the board shall be entitled to judicial review in
15162 accordance with the Mississippi Administrative Procedure Law of
15163 1999.

15164 * * *

15165 SECTION 338. Section 75-59-5, Mississippi Code of 1972, is
15166 amended as follows:

15167 75-59-5. (a) For a violation of a contract with a student,
15168 for soliciting or enrolling students through fraud or
15169 misrepresentation, or for noncompliance with this chapter or the
15170 reasonable rules and regulations promulgated by the Secretary of
15171 State pursuant to this chapter, the Secretary of State shall
15172 revoke the permit issued under this chapter after * * * notice
15173 and an adjudicative proceeding conducted in accordance with the
15174 Mississippi Administrative Procedure Law of 1999. * * *

15175 (b) Any person aggrieved by a decision of the Secretary of
15176 State shall have a right to a judicial review of the decision in
15177 accordance with the Mississippi Administrative Procedure Law of
15178 1999. * * *

15179 No person, firm or corporation failing to comply with the
15180 provisions of this chapter shall have access to any of the courts
15181 of this state for the purpose of enforcing any claim or demand
15182 against any resident of this state arising out of any contract
15183 entered into in violation of the provisions of this chapter.

15184 SECTION 339. Section 75-60-4, Mississippi Code of 1972, is
15185 amended as follows:

15186 75-60-4. (1) The State Board for Community and Junior
15187 Colleges shall appoint a "Commission on Proprietary School and
15188 College Registration" to be composed of five (5) qualified
15189 members, one (1) appointed from each of the five (5) Mississippi
15190 congressional districts existing on January 1, 1992. The

15191 membership of said commission shall be composed of persons who
15192 have held a teaching, managerial or other similar position with
15193 any public, private, trade, technical or other school; provided,
15194 however, that one (1) member of the commission shall be actively
15195 engaged in teaching, managerial or other similar position with a
15196 privately owned trade, technical or other school. The membership
15197 of said commission shall be appointed by the board within ninety
15198 (90) days of the passage of this chapter. In making the first
15199 appointments, two (2) members shall be appointed for three (3)
15200 years, two (2) members for four (4) years, and one (1) member for
15201 five (5) years. Thereafter, all members shall be appointed for a
15202 term of five (5) years. If one (1) of the members appointed by
15203 the board resigns or is otherwise unable to serve, a new member
15204 shall be appointed by the commission to fill the unexpired term.
15205 All five (5) members of the commission have full voting rights.
15206 The members shall not be paid for their services, but may be
15207 compensated for the expenses necessarily incurred in the
15208 attendance at meetings or in performing other services for the
15209 commission at a rate prescribed under Section 25-3-69,
15210 Mississippi Code of 1972, plus actual expenses and mileage as
15211 provided by Section 25-3-41, Mississippi Code of 1972. Members
15212 of the commission shall annually elect a chairman from among its
15213 members.

15214 (2) The State Board for Community and Junior Colleges shall
15215 appoint such staff as may be required for the performance of the
15216 commission's duties and provide necessary facilities.

15217 (3) It shall be the purpose of the Commission on
15218 Proprietary School and College Registration to establish and
15219 implement the registration program as provided in this chapter.
15220 All controversies involving the registration of such schools
15221 shall be initially heard by a duly authorized hearing officer of
15222 the commission at an adjudicative proceeding conducted in
15223 accordance with the Mississippi Administrative Procedure Law of
15224 1999. * * *

15225 SECTION 340. Section 75-60-19, Mississippi Code of 1972, is
15226 amended as follows:

15227 75-60-19. (1) The Commission on Proprietary School and
15228 College Registration may suspend, revoke or cancel a certificate
15229 of registration for any one (1) or any combination of the
15230 following causes:

15231 (a) Violation of any provision of the sections of this
15232 chapter or any regulation made by the commission;

15233 (b) The furnishing of false, misleading or incomplete
15234 information requested by the commission;

15235 (c) The signing of an application or the holding of a
15236 certificate of registration by a person who has pleaded guilty or
15237 has been found guilty of a felony or has pleaded guilty or been
15238 found guilty of any other indictable offense;

15239 (d) The signing of an application or the holding of a
15240 certificate of registration by a person who is addicted to the
15241 use of any narcotic drug, or who is found to be mentally
15242 incompetent;

15243 (e) Violation of any commitment made in an application
15244 for a certificate of registration;

15245 (f) Presentation to prospective students of
15246 misleading, false or fraudulent information relating to the
15247 course of instruction, employment opportunity, or opportunities
15248 for enrollment in accredited institutions of higher education
15249 after entering or completing courses offered by the holder of a
15250 certificate of registration;

15251 (g) Failure to provide or maintain premises or
15252 equipment for offering courses of instruction in a safe and
15253 sanitary condition;

15254 (h) Refusal by an agent to display his agent's
15255 certificate of registration upon demand of a prospective student
15256 or other interested person;

15257 (i) Failure to maintain financial resources adequate
15258 for the satisfactory conduct of courses of study as presented in

15259 the plan of operation or to retain a sufficient number and
15260 qualified staff of instruction; however nothing in this chapter
15261 shall require an instructor to be certificated by the Commission
15262 on Proprietary School and College Registration or to hold any
15263 type of post-high school degree;

15264 (j) Offering training or courses of instruction other
15265 than those presented in the application; however, schools may
15266 offer special courses adapted to the needs of individual students
15267 where the special courses are in the subject field specified in
15268 the application;

15269 (k) Accepting the services of an agent not licensed in
15270 accordance with Sections 75-60-23 through 75-60-37, inclusive;

15271 (l) Conviction or a plea of nolo contendere on the
15272 part of any owner, operator or director of a registered school of
15273 any felony under Mississippi law or the law of another
15274 jurisdiction;

15275 (m) Continued employment of a teacher or instructor
15276 who has been convicted of or entered a plea of nolo contendere to
15277 any felony under Mississippi law or the law of another
15278 jurisdiction;

15279 (n) Incompetence of any owner or operator to operate a
15280 school.

15281 (2) (a) Any person who believes he has been aggrieved by a
15282 violation of this section shall have the right to file a written
15283 complaint within two (2) years of the alleged violation. The
15284 commission shall maintain a written record of each complaint that
15285 is made. The commission shall also send to the complainant a
15286 form acknowledging the complaint and requesting further
15287 information if necessary and shall advise the director of the
15288 school that a complaint has been made and, where appropriate, the
15289 nature of the complaint.

15290 (b) The commission shall within twenty (20) days of
15291 receipt of such written complaint commence an investigation of
15292 the alleged violation and shall, within ninety (90) days of the

15293 receipt of such written complaint, issue a written finding. The
15294 commission shall furnish such findings to the person who filed
15295 the complaint and to the chief operating officer of the school
15296 cited in the complaint. If the commission finds that there has
15297 been a violation of this section, the commission shall take
15298 appropriate action.

15299 (c) The commission may initiate an investigation
15300 without a complaint.

15301 (3) Hearing procedures. * * * Upon a finding that there is
15302 good cause to believe that a school, or an officer, agent,
15303 employee, partner or teacher, has committed a violation of
15304 subsection (1) of this section, the commission shall initiate
15305 adjudicative proceedings in accordance with the Mississippi
15306 Administrative Procedure Law of 1999. * * *

15307 * * *

15308 (4) * * * The commission, in accordance with the
15309 Mississippi Administrative Procedure Law of 1999, shall issue a
15310 final order and shall impose penalties as may be appropriate and
15311 authorized by law. * * *

15312 (5) Civil penalties and administrative sanctions.

15313 (a) A hearing officer may recommend, and the
15314 commission may impose, a civil penalty not to exceed Two Thousand
15315 Five Hundred Dollars (\$2,500.00) for any violation of this
15316 section. In the case of a second or further violation committed
15317 within the previous five (5) years, the liability shall be a
15318 civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for
15319 each such violation.

15320 (b) Notwithstanding the provisions of paragraph (a) of
15321 this subsection, a hearing officer may recommend and the
15322 commission may impose a civil penalty not to exceed Twenty-five
15323 Thousand Dollars (\$25,000.00) for any of the following
15324 violations: (i) operation of a school without a registration in
15325 violation of this chapter; (ii) operation of a school knowing
15326 that the school's registration has been suspended or revoked;

15327 (iii) use of false, misleading, deceptive or fraudulent
15328 advertising; (iv) employment of recruiters on the basis of a
15329 commission, bonus or quota, except as authorized by the
15330 commission; (v) directing or authorizing recruiters to offer
15331 guarantees of jobs upon completion of a course; (vi) failure to
15332 make a tuition refund when such failure is part of a pattern of
15333 misconduct; or (vii) violation of any other provision of this
15334 chapter, or any rule or regulation promulgated pursuant thereto,
15335 when such violation constitutes part of a pattern of misconduct
15336 which significantly impairs the educational quality of the
15337 program or programs being offered by the school. For each
15338 enumerated offense, a second or further violation committed
15339 within the previous five (5) years shall be subject to a civil
15340 penalty not to exceed Fifty Thousand Dollars (\$50,000.00) for
15341 each such violation.

15342 (c) In addition to the penalties authorized in
15343 paragraphs (a) and (b) of this subsection, a hearing officer may
15344 recommend and the commission may impose any of the following
15345 administrative sanctions: (i) a cease and desist order; (ii) a
15346 mandatory direction; (iii) a suspension or revocation of a
15347 certificate of registration; (iv) a probation order; or (v) an
15348 order of restitution.

15349 (d) The commission may suspend a registration upon the
15350 failure of a school to pay any fee, fine or penalty as required
15351 by this chapter unless such failure is determined by the
15352 commission to be for good cause.

15353 (e) All civil penalties, fines and settlements
15354 received shall accrue to the credit of the State General Fund.

15355 (6) Any penalty or administrative sanction imposed by the
15356 commission under this section shall be subject to judicial review
15357 as provided in the Mississippi Administrative Procedure Law of
15358 1999. * * *

15359 SECTION 341. Section 75-67-129, Mississippi Code of 1972,
15360 is amended as follows:

15361 75-67-129. The commissioner shall have the power and
15362 authority to adopt, promulgate and issue such rules and
15363 regulations, not inconsistent with the provisions of this article
15364 or some other statute, as he shall deem necessary for the purpose
15365 of the administration of this article. A copy of every rule and
15366 regulation promulgated by the commissioner shall be filed in
15367 accordance with the Mississippi Administrative Procedure Law of
15368 1999 * * *.

15369 SECTION 342. Section 75-67-243, Mississippi Code of 1972,
15370 is amended as follows:

15371 75-67-243. The commissioner shall have the power and
15372 authority to adopt, promulgate and issue such rules and
15373 regulations, not inconsistent with this article, or any other
15374 statute of the State of Mississippi, as he shall deem necessary
15375 for the purpose of the administration of this article. A copy of
15376 every rule and regulation promulgated by the commissioner shall
15377 be filed in accordance with the Mississippi Administrative
15378 Procedure Law of 1999 * * *.

15379 SECTION 343. Section 75-67-325, Mississippi Code of 1972,
15380 is amended as follows:

15381 75-67-325. (1) The commissioner may, after notice and an
15382 adjudicative proceeding in accordance with the Mississippi
15383 Administrative Procedure Law of 1999, suspend or revoke any
15384 license if it finds that:

15385 (a) The licensee, either knowingly, or without the
15386 exercise of due care to prevent the same, has violated any
15387 provision of this article;

15388 (b) Any fact or condition exists which, if it had
15389 existed or had been known to exist at the time of the original
15390 application for such license, clearly would have justified the
15391 commissioner in refusing such license;

15392 (c) The licensee has aided, abetted or conspired with
15393 an individual or person to circumvent or violate the requirement
15394 of the article;

15395 (d) The licensee, or a legal or beneficial owner of
15396 the license, has been convicted of a crime that the commissioner
15397 finds directly relates to the duties and responsibilities of the
15398 occupation of pawnbroker.

15399 (2) The commissioner may conditionally license or place on
15400 probation a person whose license has been suspended or may
15401 reprimand a licensee for a violation of this article.

15402 (3) The manner of giving notice and conducting an
15403 adjudicative proceeding as required by subsection (1) of this
15404 section shall be performed in accordance with the Mississippi
15405 Administrative Procedure Law of 1999 * * *.

15406 (4) Any licensee may surrender any license by delivering it
15407 to the commissioner with written notice of its surrender, but
15408 such surrender shall not affect the licensee's civil or criminal
15409 liability for acts committed prior thereto.

15410 (5) No revocation, suspension or surrender of any license
15411 shall impair or affect the obligation of any pre-existing lawful
15412 contract between the licensee and any pledgor. Any pawn
15413 transaction made without benefit of license is void.

15414 (6) The commissioner may reinstate suspended licenses or
15415 issue new licenses to a person whose license or licenses have
15416 been revoked if no fact or condition then exists which clearly
15417 would have justified the commissioner in refusing originally to
15418 issue a license under this article.

15419 (7) The appropriate local law enforcement agency shall be
15420 notified of any licensee who has his license suspended or revoked
15421 as provided by this article.

15422 (8) The Commissioner of Banking shall enforce the
15423 provisions of this section.

15424 SECTION 344. Section 75-67-423, Mississippi Code of 1972,
15425 is amended as follows:

15426 75-67-423. (1) The commissioner may, after notice and an
15427 adjudicative proceeding, suspend or revoke any license if it
15428 finds that:

15429 (a) The licensee, either knowingly, or without the
15430 exercise of due care to prevent the same, has violated any
15431 provision of this article;

15432 (b) Any fact or condition exists which, if it had
15433 existed or had been known to exist at the time of the original
15434 application for the license, clearly would have justified the
15435 commissioner in refusing the license;

15436 (c) The licensee has aided, abetted or conspired with
15437 an individual or person to circumvent or violate the requirements
15438 of this article;

15439 (d) The licensee, or a legal or beneficial owner of
15440 the license, has been convicted of a crime that the commissioner
15441 finds directly relates to the duties and responsibilities of the
15442 occupation of title pledge lender.

15443 (2) The commissioner may conditionally license or place on
15444 probation a person whose license has been suspended or may
15445 reprimand a licensee for a violation of this article.

15446 (3) The manner of giving notice and conducting an
15447 adjudicative proceeding as required by subsection (1) of this
15448 section shall be performed in accordance with the Mississippi
15449 Administrative Procedure Law of 1999 * * *.

15450 (4) Any licensee may surrender any license by delivering it
15451 to the commissioner with written notice of its surrender, but
15452 such surrender shall not affect the licensee's civil or criminal
15453 liability for acts committed prior thereto.

15454 (5) No revocation, suspension or surrender of any license
15455 shall impair or affect the obligation of any pre-existing lawful
15456 contract between the licensee and any pledgor. Any title pledge
15457 transaction made without benefit of license is void.

15458 (6) The commissioner may reinstate suspended licenses or
15459 issue new licenses to a person whose license or licenses have
15460 been revoked if no fact or condition then exists that clearly
15461 would have justified the commissioner in refusing originally to
15462 issue a license under this article.

15463 (7) The appropriate local law enforcement agency shall be
15464 notified of any licensee who has his license suspended or revoked
15465 as provided by this article.

15466 (8) The Commissioner of Banking and Consumer Finance shall
15467 enforce the provisions of this section.

15468 SECTION 345. Section 75-76-83, Mississippi Code of 1972, is
15469 amended as follows:

15470 75-76-83. Any person aggrieved by the final order of the
15471 State Tax Commission regarding any action taken by the Chairman
15472 of the State Tax Commission and/or the State Tax Commission under
15473 the provisions of this chapter, including any person charged with
15474 any tax, fee, interest, penalties and damages imposed by this
15475 chapter and required to pay same, has a right to judicial review
15476 of such order in accordance with the Mississippi Administrative
15477 Procedure Law of 1999. * * *

15478 SECTION 346. Section 75-76-121, Mississippi Code of 1972,
15479 is amended as follows:

15480 75-76-121. * * * Any person aggrieved by a final decision
15481 or order of the commission has a right to judicial review thereof
15482 in accordance with the Mississippi Administrative Procedure Law
15483 of 1999.

15484 * * *

15485 SECTION 347. Section 75-76-127, Mississippi Code of 1972,
15486 is amended as follows:

15487 75-76-127.

15488 * * *

15489 * * * The judicial review * * * afforded under the
15490 Mississippi Administrative Procedure Law of 1999 is the exclusive
15491 method of review of the commission's actions, decisions and
15492 orders in disciplinary hearings. Judicial review is not
15493 available for actions, decisions and orders of the commission
15494 relating to the denial of a license or to limited or conditional
15495 licenses. Extraordinary common law writs or equitable
15496 proceedings are available except where statutory judicial review

15497 is made exclusive or is precluded or where the use of those writs
15498 or proceedings is precluded by specific statute.

15499 SECTION 348. Section 75-76-167, Mississippi Code of 1972,
15500 is amended as follows:

15501 75-76-167. * * * Any person aggrieved by a final decision
15502 or order of the commission made after hearing by the commission
15503 pursuant to Sections 75-76-159 through 75-76-165, inclusive, may
15504 obtain a judicial review thereof in accordance with the
15505 Mississippi Administrative Procedure Law of 1999.

15506 * * *

15507 SECTION 349. Section 75-76-173, Mississippi Code of 1972,
15508 is amended as follows:

15509 75-76-173.

15510 * * *

15511 (1) The judicial review * * * afforded by the Mississippi
15512 Administrative Procedure Law of 1999 is the exclusive method of
15513 review of the commission's actions, decisions and orders in
15514 hearings held pursuant to Sections 75-76-159 through 75-76-165,
15515 inclusive.

15516 (2) The party requesting judicial review shall bear all of
15517 the costs of transcribing and of transmitting the record on
15518 review.

15519 SECTION 350. Section 75-79-21, Mississippi Code of 1972, is
15520 amended as follows:

15521 75-79-21. (1) The commissioner may deny an application for
15522 a license, or revoke or suspend a license after it has been
15523 granted, for any of the following reasons:

15524 (a) Any material misstatement in the application for a
15525 license.

15526 (b) Defrauding any pulpwood cutter-hauler in the
15527 measurement of pulpwood to the cutter-hauler's damage.

15528 (c) Failure to maintain accurate weighing and
15529 measuring devices used in the measurement of pulpwood.

15530 (d) Requiring a pulpwood cutter-hauler to deliver or

15531 transfer any quantity of pulpwood to the facility operator's
15532 control as a condition of the purchase or receipt thereof before
15533 the facility operator has notified the cutter-hauler of the total
15534 number of cords or the volume for which payment will be made.
15535 This does not include out-of-specification wood culled when
15536 discovered during unloading.

15537 (e) Willful failure to apply standards established by
15538 law or by the commissioner in the measurement of pulpwood.

15539 (f) Discriminating against a pulpwood cutter-hauler
15540 because the cutter-hauler has filed a complaint, given testimony
15541 or otherwise sought relief under this chapter.

15542 (g) Any violation of the rules and regulations of the
15543 Mississippi Department of Agriculture and Commerce or violation
15544 of any other of the laws governing pulpwood scaling and
15545 practices.

15546 (2) If a pulpwood receiving facility operator is convicted
15547 of any crime involving fraud under the provisions of this
15548 chapter, the commissioner, may, in his discretion, suspend,
15549 cancel or revoke the license of such operator.

15550 (3) All proceedings for the suspension, cancellation or
15551 revocation of licenses shall be conducted in accordance with the
15552 Mississippi Administrative Procedure Law of 1999. * * * Whenever
15553 the commissioner suspends, cancels or revokes a license, he shall
15554 prepare an order so providing which shall state the reason or
15555 reasons for such suspension, cancellation or revocation. * * *
15556 The licensee, if dissatisfied with the order of the commissioner,
15557 has a right to judicial review of the order in accordance with
15558 the Mississippi Administrative Procedure Law of 1999. At the
15559 time of the filing of the notice of judicial review, the
15560 appellant shall give a bond for costs conditioned upon his
15561 prosecution of the judicial review without delay and payment of
15562 all costs assessed against him. * * *

15563 (4) In case a license issued to a pulpwood receiving
15564 facility operator expires or is suspended, cancelled or revoked

15565 by the commissioner or his designated representative, such
15566 license shall be immediately returned to the commissioner.

15567 SECTION 351. Section 77-1-39, Mississippi Code of 1972, is
15568 amended as follows:

15569 77-1-39. In all cases where the testimony of witnesses is
15570 given orally before the commission any interested party or the
15571 commission shall have the right to have said testimony taken down
15572 and transcribed by a stenographer or court reporter, who is not
15573 an employee of the commission, to be agreed upon by the parties
15574 or appointed by the commission. The stenographer or court
15575 reporter so employed shall be duly sworn and his or her
15576 certificate that the transcript of such evidence is correct
15577 together with the official certificate of any one (1) of the
15578 commissioners that he has read the same and that it is in his
15579 opinion correct shall entitle such transcript or a certified copy
15580 thereof to be received in evidence on any appeal or in any court
15581 in this state subject only to any objection that the same is not
15582 relevant or material. The stenographer or court reporter shall
15583 be paid in accordance with the provisions of Section 9-13-33. In
15584 the alternative, the proceedings may also be recorded and
15585 preserved in accordance with the Mississippi Administrative
15586 Procedure Law of 1999. The commission shall have the right to
15587 require any party demanding an official stenographer to guarantee
15588 or prepay the costs thereof in all proper cases.

15589 SECTION 352. Section 77-3-45, Mississippi Code of 1972, is
15590 amended as follows:

15591 77-3-45. The commission shall prescribe, issue, amend and
15592 rescind such reasonable rules and regulations as may be
15593 reasonably necessary or appropriate to carry out the provisions
15594 of this chapter. No rule or regulation shall be effective until
15595 thirty (30) days after a notice setting forth either the terms or
15596 substance thereof or a description of the subjects and issues
15597 involved and the time and place of a hearing thereon shall have
15598 been published in a newspaper of general circulation in the

15599 state. The commission shall file the notice with the Secretary
15600 of State pursuant to the Mississippi Administrative Procedure Law
15601 of 1999 and mail a copy of it to all affected public utilities.
15602 The commission shall mail a copy of the proposed rule or
15603 regulation to any public utility that requests a copy. The
15604 hearing may be held at any time twenty (20) days after date of
15605 publication of the notice, but the rules or regulations shall not
15606 become effective until a hearing thereon. A proceeding to
15607 contest any rule or regulation due to noncompliance with the
15608 procedural requirements of this section must be commenced within
15609 one (1) year from the effective date of the rule or regulation.
15610 All rules and regulations of the commission shall be filed with
15611 its executive secretary and shall be readily available for public
15612 inspection and examination during reasonable business hours. Any
15613 interested person shall have the right to petition the commission
15614 for issuance, amendment or repeal of a rule or regulation.

15615 The commission shall, in the exercise of its power to
15616 promulgate rules and regulations in accordance with the
15617 Mississippi Administrative Procedure Law of 1999, adopt standard
15618 practices and procedures:

15619 (a) To specify what costs may be used for determining
15620 a public utility's rate base, which balance the interests of
15621 consumers and investors;

15622 (b) To prescribe the time period for measuring a
15623 public utility's rate base;

15624 (c) To specify allowable operating expenses, provided,
15625 however, that the commission shall exclude from a public
15626 utility's allowable operating expenses any interest such utility
15627 paid, or credited, to its consumers in connection with refunds in
15628 a rate proceeding in which its rates were finally determined to
15629 be excessive;

15630 (d) To determine accurately the capital costs of a
15631 public utility;

15632 (e) To define specific costs which may be included by

15633 a public utility in its monthly fuel adjustment clause retail
15634 billings;

15635 (f) To define specific costs which may be included by
15636 a public utility distributing gas in its monthly purchased gas
15637 adjustments retail billings;

15638 (g) To prescribe minimal uniform standards of service
15639 for various classes of public utilities; and

15640 (h) To provide for any other rules and regulations
15641 deemed by the commission to be appropriate for carrying out the
15642 provisions of this chapter.

15643 SECTION 353. Section 77-3-47, Mississippi Code of 1972, is
15644 amended as follows:

15645 77-3-47. The commission may, in addition to the hearings
15646 specifically provided for by this chapter, conduct such other
15647 hearings as may be deemed necessary in the administration of the
15648 powers and duties conferred upon it by this title, including
15649 adjudicative proceedings in accordance with the Mississippi
15650 Administrative Procedure Law of 1999.

15651 The commission shall fix the time and place of hearings and
15652 shall serve notice thereof, not less than twenty (20) days before
15653 the time set for such hearings, unless the commission shall find
15654 that public convenience or necessity requires that such hearings
15655 be held at an earlier date. The commission may dismiss any
15656 complaint without a hearing if in its opinion a hearing is not
15657 necessary in the public interest or for the protection of
15658 substantial rights. Notice of all such hearings shall be given
15659 the persons interested therein by mailing such notice to each
15660 public utility which may be affected by any order resulting
15661 therefrom and by publication in a newspaper of general
15662 circulation published in Jackson, Mississippi, and, in a
15663 proceeding for a facility certificate or an area certificate, by
15664 publication in a newspaper of general circulation in the county
15665 or counties where the facility or area is located. In addition
15666 to any other notice requirements prescribed in this section,

15667 notice of a hearing regarding a major change in rates and
15668 schedules, as defined in Section 77-3-37(8), by a public utility
15669 of the type defined in Section 77-3-3(d)(iv) shall be published
15670 in a newspaper having general circulation in an area where
15671 service is being provided by the public utility.

15672 At the time fixed for any hearing before the commission, or
15673 the time to which the same may have been continued, the
15674 complainant and the person complained of shall be entitled in
15675 person or by attorney to be heard and to introduce evidence in
15676 accordance with the Mississippi Administrative Procedure Law of
15677 1999.

15678 SECTION 354. Section 77-3-57, Mississippi Code of 1972, is
15679 amended as follows:

15680 77-3-57. Service in all hearings, investigations and
15681 proceedings pending before the commission shall be made
15682 personally in accordance with the Mississippi Administrative
15683 Procedure Law of 1999.

15684 SECTION 355. Section 77-7-15, Mississippi Code of 1972, is
15685 amended as follows:

15686 77-7-15. The commission shall prescribe, issue, amend and
15687 rescind such reasonable rules and regulations as may be
15688 reasonably necessary or appropriate to carry out the provisions
15689 of this chapter. No rule or regulation shall be effective until
15690 thirty (30) days after copies of the proposed rule or regulation
15691 have been mailed to intrastate motor carriers affected thereby
15692 and until a notice, setting forth the terms or substance thereof
15693 and the time and place of a hearing thereon, has been published
15694 in a newspaper or newspapers of general circulation in the state
15695 and filed with the Secretary of State pursuant to the Mississippi
15696 Administrative Procedure Law of 1999. Such hearing may be held
15697 at any time after twenty (20) days following the date of
15698 publication of such notice, but such rules or regulations shall
15699 not become effective until a hearing thereon. The commission may
15700 make its initial set of rules and regulations effective at the

15701 end of such thirty-day period, subject to review thereof. All
15702 rules and regulations of the commission shall be filed with its
15703 secretary and shall be readily available for public inspection
15704 and examination during reasonable business hours. Any interested
15705 person shall have the right to petition the commission for
15706 issuance, amendment or repeal of a rule or regulation.

15707 SECTION 356. Section 77-7-295, Mississippi Code of 1972, is
15708 amended as follows:

15709 77-7-295. In addition to other remedies now available, the
15710 state, or any party aggrieved by any final finding, order or
15711 judgment of the commission, shall have the right, regardless of
15712 the amount involved, of judicial review in accordance with the
15713 Mississippi Administrative Procedure Law of 1999. * * *

15714 SECTION 357. Section 79-11-389, Mississippi Code of 1972,
15715 is amended as follows:

15716 79-11-389. * * * A foreign corporation may secure judicial
15717 review of the Secretary of State's revocation of its certificate
15718 of authority in accordance with the Mississippi Administrative
15719 Procedure Law of 1999. * * *

15720 * * *

15721 SECTION 358. Section 79-11-504, Mississippi Code of 1972,
15722 is amended as follows:

15723 79-11-504. The Secretary of State shall have the authority
15724 to:

15725 (a) Promulgate rules of procedure and regulations
15726 necessary for the administration of Sections 79-11-501 through
15727 79-11-529, Mississippi Code of 1972, subject to the provisions of
15728 the Mississippi Administrative Procedure Law of 1999.

15729 (b) Honor written requests from interested person for
15730 interpretative opinions regarding registration and exemptions
15731 from registration.

15732 (c) Publish and disseminate information to the public
15733 concerning persons subject to Sections 79-11-501 through
15734 79-11-529, Mississippi Code of 1972.

15735 (d) Perform any other functions and duties which may
15736 be necessary to carry out the provisions of Sections 79-11-501
15737 through 79-11-529, Mississippi Code of 1972.

15738 SECTION 359. Section 79-22-13, Mississippi Code of 1972, is
15739 amended as follows:

15740 79-22-13. Failure by an aquaculturist to provide any
15741 information required by the department to verify that cultured
15742 aquatic products are produced under controlled aquacultural
15743 conditions and are not harvested from native wild stock shall
15744 result in nonrenewal, suspension or cancellation of the permit.
15745 The department is authorized, subject to the requirements set
15746 forth in the Mississippi Administrative Procedure Law of 1999, to
15747 promulgate reasonable rules and regulations to carry out the
15748 provisions of this chapter. Other state agencies, at the request
15749 of the department, shall assist in the promulgation of such
15750 regulations by providing technical expertise or such other
15751 assistance as, in the department's discretion, may be required.

15752 SECTION 360. Section 79-22-27, Mississippi Code of 1972, is
15753 amended as follows:

15754 79-22-27. The Commissioner of Agriculture and Commerce is
15755 authorized, in his discretion, to issue an order to stop the sale
15756 or distribution of any product found to be in violation of this
15757 chapter. Upon application of any person to whom such an order is
15758 issued, the commissioner shall conduct an adjudicative proceeding
15759 in accordance with the Mississippi Administrative Procedure Law
15760 of 1999. Any order to stop the sale of any product regulated
15761 under the provisions of this chapter may be judicially reviewed
15762 in accordance with the Mississippi Administrative Procedure Law
15763 of 1999.

15764 SECTION 361. Section 81-1-87, Mississippi Code of 1972, is
15765 amended as follows:

15766 81-1-87. The commissioner or an examiner, in all cases
15767 where the testimony of witnesses is to be preserved, shall have
15768 the right to have the case taken down and transcribed by a

15769 stenographer, and the stenographer so employed shall be duly
15770 sworn. The stenographer's certificate that the transcript of
15771 such evidence is correct, together with the official certificate
15772 of the commissioner or examiner that he has read the same and
15773 that it is, in his opinion, correct, shall entitle such
15774 transcript, or a certified copy thereof, to be received in
15775 evidence as relevant, material and competent. Such stenographer
15776 shall be paid at the same rates as that then currently in effect
15777 for similar duties performed by the chancery court reporter for
15778 the county in which the testimony of the witnesses is to be taken
15779 and preserved. The stenographer shall be paid out of the
15780 department maintenance fund on voucher approved by the
15781 commissioner or examiner employing such stenographer, accompanied
15782 with an itemized statement of services rendered. In the
15783 alternative, the proceedings may also be recorded and preserved
15784 in accordance with the Mississippi Administrative Procedure Law
15785 of 1999.

15786 SECTION 362. Section 81-3-13, Mississippi Code of 1972, is
15787 amended as follows:

15788 81-3-13. (1) Before any bank may be organized and formed,
15789 the prospective incorporators shall give notice to the
15790 Commissioner of Banking and Consumer Finance of their desire to
15791 engage in banking and apply for a certificate of authority to
15792 incorporate, and shall at the time file with the commissioner a
15793 copy of the proposed articles of incorporation, duly sworn to by
15794 one (1) of the prospective incorporators. The commissioner shall
15795 promptly give consideration to the application and make an
15796 examination of the proposed articles of incorporation to
15797 determine if they meet all requirements of law. The commissioner
15798 shall then make an investigation of the number of parent banks,
15799 branch banks, branch offices and branch facilities, and location
15800 thereof then serving the area in which the proposed new bank is
15801 to be located, the ratio of capital funds to total deposits
15802 therein, the record of earnings and condition of existing banks

15803 and what effect, if any, a new unit bank would have on them, the
15804 number of previous bank failures in the area and their
15805 liquidation record and banking history generally in the area, the
15806 population of the area wherein the proposed bank will be located
15807 and relation to number of banks operating therein, reasonable
15808 prospects of growth of the area and its financial resources and
15809 whether the same are static, progressive or retrogressive,
15810 expectation of profitable operation of the proposed new bank, and
15811 the morals and business character of the prospective
15812 incorporators and such further investigation to determine whether
15813 the public necessity requires that the proposed new bank should
15814 be chartered and permitted to operate.

15815 When the commissioner has completed the examination and made
15816 his investigation, he shall record his findings in writing and
15817 shall draw up his recommendations to the State Board of Banking
15818 Review, established in Section 81-3-12. At the request of the
15819 chairman, he shall thereupon, in writing, call a meeting of the
15820 board to give consideration to his findings and recommendations,
15821 such call to be issued at least ten (10) days in advance of the
15822 meeting. Such meetings shall be held within one hundred twenty
15823 (120) days from the date on which the prospective incorporators
15824 gave notice to the commissioner of their desire to engage in
15825 banking, applied for a certificate of authority to incorporate,
15826 and filed with the commissioner a copy of the proposed articles
15827 of incorporation. The commissioner shall at the same time give
15828 notice of the meeting of the board to the prospective
15829 incorporators of the proposed new bank and to any and all other
15830 interested persons and shall extend to them an invitation to be
15831 heard in writing or in person by the board.

15832 The board * * * shall consider the findings and
15833 recommendations of the commissioner and shall hear such oral
15834 testimony as he may wish to give, and shall conduct an
15835 adjudicative proceeding in accordance with the Mississippi
15836 Administrative Procedure Law of 1999 and shall hear from any and

15837 all other interested persons bearing upon the public necessity
15838 for the organization and operation of the new bank.

15839 After considering the record submitted to it by the
15840 commissioner and his oral testimony and considering such other
15841 information and evidence, either written or oral, which has come
15842 before it, the board shall decide if it has before it sufficient
15843 information and evidence upon which it can dispose of the
15844 application to form the new bank. If it is determined that
15845 evidence and information is not sufficient, then the board shall
15846 order the commissioner to secure such additional information and
15847 evidence as it may prescribe or shall request from the
15848 prospective incorporators and from other interested persons. The
15849 board shall thereupon set a date for a future meeting to be held
15850 before the expiration of the aforementioned one hundred twenty
15851 (120) day time limit and shall give to the prospective
15852 incorporators and other interested persons notice of such
15853 meeting, and shall recess the meeting then being held until such
15854 future date. The board shall have and is hereby vested with the
15855 power to compel attendance of witnesses just as is the
15856 commissioner or examiner as provided for in Section 81-1-85, and
15857 all testimony given before said board shall be recorded and
15858 preserved in accordance with the Mississippi Administrative
15859 Procedure Law of 1999.

15860 If the board, or a majority thereof, shall determine that it
15861 has before it sufficient evidence and information upon which to
15862 base a decision, then it shall render a written opinion and
15863 decision in the matter within sixty (60) days after the
15864 conclusion of the final board hearing. If its decision is
15865 favorable, then the board shall order the commissioner to give to
15866 such prospective incorporators a certificate under his hand and
15867 official seal of the Department of Banking and Consumer Finance
15868 authorizing the prospective incorporators to proceed to
15869 incorporate and organize as is provided in Section 81-3-7.

15870 When a certificate of incorporation is sought in order to

15871 effect the acquisition of an insolvent bank sold pursuant to the
15872 provisions of Chapter 9, Title 81, Mississippi Code of 1972, any
15873 constraints of time imposed by this subsection shall not apply if
15874 the commissioner determines that an emergency exists which
15875 requires expedition of the procedure for granting a certificate
15876 in order to protect the interests of the public and the interests
15877 of depositors and creditors of the insolvent bank.

15878 (2) Judicial review of unfavorable decision of State Board
15879 of Banking review. If the decision of the board, or a majority
15880 thereof, is unfavorable to the organization of the proposed new
15881 bank, it shall render a written opinion and decision giving its
15882 reason for rejection within sixty (60) days after the conclusion
15883 of the final board hearing in the matter, and the commissioner
15884 shall so advise the prospective incorporators, giving them a copy
15885 of the written decision and opinion of the board. If the
15886 prospective incorporators be aggrieved at the unfavorable
15887 decision of the board in denying a certificate authorizing them
15888 to proceed with the incorporation of the proposed new bank and
15889 the organization thereof, they shall have the right of judicial
15890 review in accordance with the Mississippi Administrative
15891 Procedure Law of 1999. * * * If the prospective incorporators of
15892 the proposed new bank shall prevail, a decree shall be entered
15893 requiring the issuance by the commissioner of the certificate
15894 authorizing applicants to incorporate and organize in the same
15895 manner as if the application therefor had been approved by the
15896 board, and the costs therein incurred shall be paid by the
15897 commissioner out of the maintenance fund of the Department of
15898 Banking and Consumer Finance. If, however, the action of the
15899 board is affirmed on judicial review, a decree shall be entered
15900 to that effect taxing costs of the proceedings to the
15901 applicants. * * * During the time the cause is pending in the
15902 office of the commissioner or before the board or on judicial
15903 review, the commissioner shall not issue a certificate to a
15904 subsequent applicant to incorporate and organize a new bank or

15905 authorize any bank then existing to establish a branch bank, or
15906 branch office within the area wherein the proposed new bank is to
15907 be domiciled, and neither shall he consent to the removal of the
15908 domicile of an existing bank from another place into the area
15909 where the proposed new bank will be domiciled. A cause shall not
15910 be considered as pending in the office of the commissioner or
15911 before the board if the prospective incorporators or their
15912 representative have only given notice to the commissioner of
15913 their desire to engage in banking and apply for a certificate of
15914 authority to incorporate, but have not filed with the
15915 commissioner a copy of the proposed articles of incorporation and
15916 other documents required by statute or administrative regulation.

15917 If the decision of the board, or a majority thereof, is
15918 favorable to the organization of the proposed bank, it shall in
15919 like manner as above render a written opinion and decision within
15920 sixty (60) days after the conclusion of the final board hearing
15921 on the matter, and judicial review in accordance with the
15922 Mississippi Administrative Procedure Law of 1999 shall be
15923 available to any interested organizations, person or persons who
15924 have participated in the proceedings and feel aggrieved by the
15925 decision of the board.

15926 (3) Certificate to begin business. When a bank has been
15927 incorporated and the capital stock thereof has been paid in full,
15928 the incorporators shall notify the commissioner of such fact,
15929 whereupon the commissioner himself or through an examiner shall
15930 make a special examination of the proposed new bank and, finding
15931 the capital stock to have been paid in full, he shall under his
15932 hand and seal of the Department of Banking and Consumer Finance
15933 issue to the bank a certificate authorizing it to commence
15934 business, and when such business has been commenced the bank
15935 shall notify the commissioner to that effect. Upon completion of
15936 such special examination, the bank shall pay to the Department of
15937 Banking and Consumer Finance as an assessment an amount
15938 sufficient to reimburse for the actual costs and expenses

15939 incurred during such special examination. The commissioner or
15940 examiner shall give a receipt therefor in duplicate, and the
15941 assessment shall be turned over by the Department of Banking and
15942 Consumer Finance to the State Treasurer for credit to the
15943 maintenance fund of the Department of Banking and Consumer
15944 Finance. The proposed new bank shall not transact any business
15945 except as is necessarily preliminary to its incorporation and
15946 organization until it has been authorized by the commissioner to
15947 begin business. However, in the event the board shall reject any
15948 application for a certificate of convenience and necessity, all
15949 costs incurred by this board in making a survey or holding a
15950 hearing on such application shall be borne by the petitioners.

15951 (4) Expiration of certificate to incorporate and organize a
15952 bank. Notwithstanding the foregoing and any other provision of
15953 law to the contrary, if a bank has not been established and is
15954 not in operation within two (2) years from the date of the
15955 certificate to incorporate and organize such bank or within two
15956 (2) years from the date upon which any appellate litigation with
15957 respect to such certificate has been concluded, the certificate
15958 shall expire. Provided, however, the State Board of Banking
15959 Review may extend for good cause shown said two-year period a
15960 maximum number of two (2) times for periods not exceeding six (6)
15961 months each. This provision shall in no way affect certificates
15962 issued prior to the effective date of this section.

15963 SECTION 363. Section 81-7-1, Mississippi Code of 1972, is
15964 amended as follows:

15965 81-7-1. (1) Banks may establish branch banks under the
15966 restrictions prescribed in this chapter, but no branch bank may
15967 be established unless the parent bank shall have first obtained
15968 from the commissioner a certificate that the public convenience
15969 and necessity will be promoted by the establishment of such
15970 branch bank. Applications seeking permission for the
15971 establishment of branch banks shall be filed with the
15972 commissioner and shall be in such form and contain such

15973 information as the commissioner by regulation may require. A
15974 separate application shall be filed for each branch bank proposed
15975 to be established, and each application shall be accompanied by
15976 the fee required by statute, which shall be transferred by the
15977 commissioner into the maintenance fund of the Department of
15978 Banking and Consumer Finance.

15979 (2) Upon receipt of such application, the commissioner
15980 shall immediately give written notice of the filing of said
15981 application to all banks having their domicile or a branch bank
15982 or branch office in the county in which the applicant bank
15983 maintains its principal office, together with all banks, branch
15984 banks or branch offices located in the county in which the
15985 proposed branch bank is to be located, and to such other banks
15986 and interested parties that, in the opinion of the commissioner,
15987 may have an interest in the application; and the commissioner
15988 shall also at the same time publish such notice once in a
15989 newspaper having a general circulation in the county in which the
15990 proposed branch bank is to be located. Any interested party may
15991 file a written protest to said application with the commissioner
15992 within thirty (30) days from the date of the mailing and
15993 publishing of said notice. Any protest shall specify the
15994 interest of the protestant in the application and state the
15995 grounds for the protest.

15996 (3) If no protest is filed within the time prescribed, the
15997 commissioner shall investigate the facts and render a final
15998 decision within sixty (60) days after receipt of the application
15999 as to whether the public convenience and necessity requires the
16000 establishment of the proposed branch bank, said decision to be
16001 based upon the results of the commissioner's investigation, the
16002 contents of the application and any additional evidence which the
16003 commissioner may request the applicant to furnish. If his
16004 decision is favorable to the applicant, he shall immediately
16005 grant the applicant a certificate to establish and operate the
16006 branch bank. If the commissioner's decision shall be unfavorable

16007 to the applicant, he shall immediately furnish the applicant bank
16008 a copy of his final decision.

16009 Appeals from an unfavorable final decision may be taken by
16010 the applicant bank to the State Board of Banking Review by filing
16011 a notice of appeal with the commissioner within ten (10) days
16012 after the commissioner has rendered his final decision. The
16013 commissioner shall inform the board of such appeal, and the board
16014 shall hold a hearing on the matter within sixty (60) days after
16015 such notice is filed and such hearing shall be conducted as an
16016 adjudicative proceeding in accordance with the Mississippi
16017 Administrative Procedure Law of 1999. * * * The board shall
16018 render a decision within sixty (60) days after the conclusion of
16019 the final hearing on the matter. If the board's decision is
16020 favorable to the applicant, the commissioner shall immediately
16021 grant to the applicant a certificate to establish and operate the
16022 branch bank. If the board's decision is unfavorable to the
16023 applicant, the commissioner shall immediately furnish the
16024 applicant a copy of the board's final decision.

16025 The applicant bank has a right of judicial review of an
16026 unfavorable board decision in accordance with the Mississippi
16027 Administrative Procedure Law of 1999. Judicial review may be
16028 sought by an applicant bank from the State Board of Banking
16029 Review * * * shall be taken in accordance with the Mississippi
16030 Administrative Procedure Law of 1999.

16031 (4) If a protest to an application to establish a branch
16032 bank is received by the commissioner within the prescribed time,
16033 he shall investigate the facts and submit said application, the
16034 results of his investigation, and his recommendations as to the
16035 disposition of said application to the State Board of Banking
16036 Review within sixty (60) days after receipt of the application.
16037 The board shall hold a hearing on the matter within one hundred
16038 twenty (120) days after the application is received and render a
16039 final decision thereon within sixty (60) days after the
16040 conclusion of the final board hearing. * * * The board shall

16041 conduct an adjudication in accordance with the Mississippi
16042 Administrative Procedure Law of 1999.

16043 Judicial review of any final decision of the State Board of
16044 Banking Review acting upon a contested application may be taken
16045 in accordance with the Mississippi Administrative Procedure Law
16046 of 1999. * * * Appeals from the State Board of Banking
16047 Review * * * shall be taken in accordance with the Mississippi
16048 Administrative Procedure Law of 1999.

16049 (5) Notwithstanding the foregoing and any other provision
16050 of law to the contrary, if a branch bank has not been established
16051 and is not in operation within two (2) years from the date of the
16052 certificate approving such branch bank or within two (2) years
16053 from the date upon which any appellate litigation with respect to
16054 such certificate has been concluded, the certificate shall
16055 expire. Provided, however, the State Board of Banking Review may
16056 extend for good cause shown said two-year period a maximum number
16057 of two (2) times for periods not exceeding six (6) months each.
16058 This provision shall in no way affect certificates issued prior
16059 to March 21, 1980.

16060 (6) Notwithstanding the foregoing and any other provision
16061 of law to the contrary, the commissioner may grant by regulation
16062 eligible banks, as defined in Section 81-3-1, certain preferences
16063 with respect to new branch activity which may include but are not
16064 limited to an expedited approval process.

16065 SECTION 364. Section 81-12-205, Mississippi Code of 1972,
16066 is amended as follows:

16067 81-12-205. Any interested person aggrieved by any final
16068 rule, regulation or order of the commissioner or the board, shall
16069 have the right, regardless of the amount involved to judicial
16070 review in accordance with the Mississippi Administrative
16071 Procedure Law of 1999. * * *

16072 SECTION 365. Section 81-14-175, Mississippi Code of 1972,
16073 is amended as follows:

16074 81-14-175. Unless otherwise provided in this chapter, any

16075 interested person aggrieved by any rule, regulation or order of
16076 the commissioner and/or the board, as applicable, shall have the
16077 right, regardless of the amount involved, to judicial review in
16078 accordance with the Mississippi Administrative Procedure Law of
16079 1999. * * *

16080 SECTION 366. Section 81-19-17, Mississippi Code of 1972, is
16081 amended as follows:

16082 81-19-17. (1) Each licensee shall be subject to the
16083 supervision of the commissioner.

16084 (2) The commissioner is authorized to make and enforce such
16085 reasonable regulations as are necessary and proper for the
16086 administration, enforcement and interpretation of the provisions
16087 of this chapter. In adopting such regulations, the commissioner
16088 shall follow the procedures set forth in the Mississippi
16089 Administrative Procedure Law of 1999 * * *.

16090 (3) In order to discover violations of this chapter and to
16091 identify persons subject to the provisions of this chapter, the
16092 commissioner is authorized to examine licensees, including all
16093 books, records, accounts and papers employed by such licensees in
16094 the transaction of their business, to summon witnesses and
16095 examine them under oath concerning matters relating to the
16096 business of such persons, and to investigate such other matters
16097 as may be relevant in the opinion of the commissioner. For this
16098 purpose and for the general purposes of administration of this
16099 chapter, the commissioner may employ such deputies and assistants
16100 as may be necessary, and such deputies and assistants, in the
16101 discretion of the commissioner, may be vested with the same
16102 authority conferred upon the commissioner by this chapter.

16103 (4) For the purpose of defraying a portion of the
16104 examination and administrative expenses incurred by the
16105 commissioner, each licensee shall pay at the time of examination
16106 the actual expenses of the examination, not to exceed Two Hundred
16107 Dollars (\$200.00) per day for the time actually devoted to
16108 examining the business of the licensee. However, for any

16109 examination other than one conducted because of suspected blatant
16110 violation of this chapter, the amount charged to any single
16111 licensee in any one (1) year shall not exceed Two Thousand
16112 Dollars (\$2,000.00).

16113 (5) Upon request, the licensee may have an adjudicative
16114 proceeding on the matter in accordance with the Mississippi
16115 Administrative Procedure Law of 1999. After such proceeding, the
16116 commissioner may impose and collect an administrative fine
16117 against any person found to have charged or collected a service
16118 charge or advance fee from a borrower before a loan is actually
16119 found, obtained and closed for such borrower. Such fine shall
16120 not exceed Five Thousand Dollars (\$5,000.00) for each violation.

16121 (6) Whenever the commissioner has reasonable cause to
16122 believe that any person is violating any of the provisions of
16123 this chapter, in addition to all other remedies provided herein,
16124 the commissioner may, by, through and on the relation of the
16125 Attorney General, district attorney or county attorney, apply to
16126 a court of competent jurisdiction for an injunction, both
16127 temporary and permanent, to restrain such person from engaging in
16128 or continuing such violation of the provisions of this chapter or
16129 from doing any act or acts in furtherance thereof.

16130 SECTION 367. Section 81-21-3, Mississippi Code of 1972, is
16131 amended as follows:

16132 81-21-3. (1) No person shall engage in the business of a
16133 premium finance company in this state without first having
16134 obtained a license as a premium finance company from the
16135 commissioner.

16136 (2) The annual license fee shall be Three Hundred Dollars
16137 (\$300.00) payable as of the first day of July of each year to the
16138 commissioner for deposit into the special fund in the State
16139 Treasury designated as the "Consumer Finance Fund." The
16140 commissioner may employ persons as necessary to administer this
16141 chapter and to examine or investigate and make reports on
16142 violations of this chapter.

16143 (3) For the purpose of defraying the inspection and
16144 examination expenses and any other expenses incurred by the
16145 commissioner in the administration of this chapter, each licensee
16146 shall pay to the commissioner, at the time of examination, the
16147 sum of Two Hundred Dollars (\$200.00) per diem for each day of
16148 examination, and, in addition, shall pay the actual expenses of
16149 such examination. Such fees shall be payable in addition to
16150 other fees and taxes now required by law and shall be expendable
16151 receipts for the use of the commissioner in defraying the cost of
16152 the administration of this chapter.

16153 All fees, license tax and penalties provided for in this
16154 chapter which are payable to the commissioner shall, when
16155 collected by him or his designated representative, be deposited
16156 in the special fund in the State Treasury known as the "Consumer
16157 Finance Fund" and shall be expended by the commissioner solely
16158 and exclusively for the purpose of administering and enforcing
16159 the provisions of this chapter.

16160 (4) Application for licensing shall be made on forms
16161 prepared by the commissioner and shall contain the following
16162 information:

16163 (a) Name, business address and telephone number of the
16164 premium finance company;

16165 (b) Name and business address of corporate officers
16166 and directors or principals or partners; and

16167 (c) A sworn statement by an appropriate officer,
16168 principal or partner of the premium finance company that:

16169 (i) The premium finance company is financially
16170 capable to engage in the business of insurance premium financing;

16171 (ii) If a corporation, that the corporation is
16172 authorized to transact business in this state; and

16173 (iii) If any material change occurs in the
16174 information contained in the registration form, a revised
16175 statement shall be submitted to the commissioner.

16176 (5) The commissioner is authorized to promulgate rules and

16177 regulations to effectuate the purposes of this chapter. All such
16178 rules and regulations shall be promulgated in accordance with the
16179 provisions of the Mississippi Administrative Procedure Law of
16180 1999.

16181 SECTION 368. Section 81-21-5, Mississippi Code of 1972, is
16182 amended as follows:

16183 81-21-5. (1) Upon the filing of an application and the
16184 payment of the license fee, the commissioner shall make an
16185 investigation of each applicant and shall issue a license if the
16186 application is qualified in accordance with this chapter. If the
16187 commissioner does not so find, he or she, at the request of the
16188 applicant, shall give the application a full hearing in an
16189 adjudicative proceeding in accordance with the Mississippi
16190 Administrative Procedure Law of 1999.

16191 (2) The commissioner shall issue or renew a license when he
16192 or she is satisfied that the person to be licensed:

16193 (a) Is competent and trustworthy and intends to act in
16194 good faith;

16195 (b) Has a good business reputation and has had the
16196 experience or training or possesses the abilities so as to be
16197 qualified to act as a premium finance company;

16198 (c) If a corporation, is incorporated under the laws
16199 of this state or, if a foreign corporation, is authorized to
16200 transact business in this state.

16201 SECTION 369. Section 81-21-7, Mississippi Code of 1972, is
16202 amended as follows:

16203 81-21-7. (1) The commissioner may revoke or suspend the
16204 license of any premium finance company when after investigation
16205 the commissioner finds that:

16206 (a) The license was obtained by material
16207 misrepresentation or fraud;

16208 (b) The holder of the license has shown himself
16209 untrustworthy or incompetent to act as a premium finance company;

16210 or

16211 (c) The licensee has violated any of the provisions of
16212 this chapter.

16213 (2) Before the commissioner shall revoke, suspend or refuse
16214 to renew the license of any premium finance company, the person
16215 aggrieved shall be entitled to a hearing in an adjudicative
16216 proceeding in accordance with the Mississippi Administrative
16217 Procedure Law of 1999.

16218 SECTION 370. Section 83-5-39, Mississippi Code of 1972, is
16219 amended as follows:

16220 83-5-39. * * * Whenever the commissioner shall have reason
16221 to believe that any such person has been engaged or is engaging
16222 in this state in any unfair method of competition or any unfair
16223 or deceptive act or practice defined in Section 83-5-35, and that
16224 a proceeding by him in respect thereto would be to the interest
16225 of the public, he shall issue and serve upon such person a
16226 statement of the charges in that respect and shall conduct an
16227 adjudicative proceeding thereon in accordance with the
16228 Mississippi Administrative Procedure Law of 1999.

16229 * * *

16230 SECTION 371. Section 83-5-41, Mississippi Code of 1972, is
16231 amended as follows:

16232 83-5-41. * * * If, after such adjudicative proceeding, the
16233 commissioner shall determine that the method of competition or
16234 the act or practice in question is defined in Section 83-5-35,
16235 and that the person complained of has engaged in such method of
16236 competition, act or practice in violation of Sections 83-5-29
16237 through 83-5-51, he shall * * * issue, in accordance with the
16238 Mississippi Administrative Procedure Law of 1999, an order
16239 requiring such person to cease and desist from engaging in such
16240 method of competition, act or practice. In addition to, or in
16241 lieu of, the cease and desist order, the commissioner may, after
16242 such a hearing in accordance with the Mississippi Administrative
16243 Procedure Law of 1999. impose an administrative fine not to
16244 exceed Five Thousand Dollars (\$5,000.00) per violation, which

16245 shall be deposited into the special fund in the State Treasury
16246 designated as the "Insurance Department Fund."

16247 * * *

16248 SECTION 372. Section 83-5-43, Mississippi Code of 1972, is
16249 amended as follows:

16250 83-5-43. (1) Any person required by an order of the
16251 commissioner under Section 83-5-41 to cease and desist from
16252 engaging in any unfair method of competition or any unfair or
16253 deceptive act or practice defined in Section 83-5-35 has a right
16254 to judicial review of such order in accordance with the
16255 Mississippi Administrative Procedure Law of 1999. * * *

16256 * * *

16257 (2) No order of the commissioner under Sections 83-5-29
16258 through 83-5-51 or order of a court to enforce the same shall in
16259 any way relieve or absolve any person affected by such order from
16260 any liability under any other laws of this state.

16261 SECTION 373. Section 83-5-47, Mississippi Code of 1972, is
16262 amended as follows:

16263 83-5-47. If the report of the commissioner does not charge
16264 a violation of Sections 83-5-29 to 83-5-51, then any intervenor
16265 in the proceedings may obtain judicial review in accordance with
16266 the Mississippi Administrative Procedure Law of 1999. * * *

16267 SECTION 374. Section 83-5-209, Mississippi Code of 1972, is
16268 amended as follows:

16269 83-5-209. (1) All examination reports shall be comprised
16270 of only facts appearing upon the books, records or other
16271 documents of the company, its agents or other persons examined,
16272 or as ascertained from the testimony of its officers or agents or
16273 other persons examined concerning its affairs and such
16274 conclusions and recommendations as the examiners find reasonably
16275 warranted from the facts.

16276 (2) No later than sixty (60) days following completion of
16277 the examination, the examiner in charge shall file with the
16278 department a verified written report of examination under oath.

16279 Upon receipt of the verified report, the department shall
16280 transmit the report to the company examined, together with a
16281 notice which shall afford the company examined a reasonable
16282 opportunity of not more than thirty (30) days to make a written
16283 submission or rebuttal with respect to any matters contained in
16284 the examination report.

16285 (3) Within thirty (30) days of the end of the period
16286 allowed for the receipt of written submissions or rebuttals, the
16287 commissioner shall fully consider and review the report, together
16288 with any written submissions or rebuttals and any relevant
16289 portions of examiner work papers and enter an order:

16290 (a) Adopting the examination report as filed, or with
16291 modification or corrections. If the examination report reveals
16292 that the company is operating in violation of any law, regulation
16293 or prior order of the commissioner, the commissioner may order
16294 the company to take any action the commissioner considers
16295 necessary and appropriate to cure such violation; or

16296 (b) Rejecting the examination report with directions
16297 to the examiners to reopen the examination for purposes of
16298 obtaining additional data, documentation or information and
16299 refiling in accordance with subsections (1) and (2) of this
16300 section; or

16301 (c) Calling for an investigatory hearing with no less
16302 than twenty (20) days' notice to the company for purposes of
16303 obtaining additional documentation, data, information and
16304 testimony.

16305 (4) All orders entered in accordance with subsection (3)(a)
16306 of this section shall be accompanied by findings and conclusions
16307 resulting from the commissioner's consideration and review of the
16308 examination report, relevant examiner work papers, and any
16309 written submissions or rebuttals. Any such order shall be
16310 considered a final administrative decision and subject to
16311 judicial review in accordance with the Mississippi Administrative
16312 Procedure Law of 1999 and shall be served upon the company by

16313 certified mail, together with a copy of the adopted examination
16314 report. Within thirty (30) days of the issuance of the adopted
16315 report, the company shall file affidavits executed by each of its
16316 directors stating under oath that they have received a copy of
16317 the adopted report and related orders.

16318 (5) Any hearing conducted under subsection (3)(c) of this
16319 section by the commissioner or authorized representative shall be
16320 conducted as a nonadversarial confidential investigatory
16321 proceeding as necessary for the resolution of any
16322 inconsistencies, discrepancies or disputed issues apparent upon
16323 the face of the filed examination report or raised by or as a
16324 result of the commissioner's review of relevant work papers or by
16325 the written submission or rebuttal of the company. Within twenty
16326 (20) days of the conclusion of any such hearing, the commissioner
16327 shall enter an order in accordance with subsection (3)(a) of this
16328 section.

16329 (a) The commissioner shall not appoint an examiner as
16330 an authorized representative to conduct the hearing. The hearing
16331 shall proceed expeditiously with discovery by the company limited
16332 to examiner work papers which tend to substantiate any assertions
16333 set forth in any written submission or rebuttal. The
16334 commissioner or his representative may issue subpoenas for the
16335 attendance of any witnesses or the production of any documents
16336 deemed relevant to the investigation whether under the control of
16337 the department, the company or other persons. The documents
16338 produced shall be included in the record, and testimony taken by
16339 the commissioner or his representative shall be under oath and
16340 preserved for the record.

16341 Nothing contained in this section shall require the
16342 department to disclose any information or records which would
16343 indicate or show the existence or content of any investigation or
16344 activity of a criminal justice agency.

16345 (b) The hearing shall proceed with the commissioner or
16346 his representative posing questions to the persons subpoenaed.

16347 Thereafter, the company and the department may present testimony
16348 relevant to the investigation. Cross-examination shall be
16349 conducted only by the commissioner or his representative. The
16350 company and the department shall be permitted to make closing
16351 statements and may be represented by counsel of their choice.

16352 (6) (a) Upon the adoption of the examination report under
16353 subsection (3)(a) of this section, the commissioner shall
16354 continue to hold the content of the examination report as private
16355 and confidential information for a period of ten (10) days except
16356 to the extent provided in subsection (2) of this section.

16357 Thereafter, the commissioner may open the report for public
16358 inspection so long as no court of competent jurisdiction has
16359 stayed its publication.

16360 (b) Nothing contained in Sections 83-5-201 through
16361 83-5-217 shall prevent or be construed as prohibiting the
16362 commissioner from disclosing the content of an examination
16363 report, preliminary examination report or results, or any matter
16364 relating thereto, to the insurance department of this or any
16365 other state or country, or to law enforcement officials of this
16366 or any other state or agency of the federal government at any
16367 time, so long as such agency or office receiving the report or
16368 matters relating thereto agrees in writing to hold it
16369 confidential and in a manner consistent with this act.

16370 (c) If the commissioner determines that regulatory
16371 action is appropriate as a result of any examination, he may
16372 initiate any proceedings or actions as provided by law.

16373 (7) All working papers, recorded information, documents and
16374 copies thereof produced by, obtained by or disclosed to the
16375 commissioner or any other person in the course of an examination
16376 made under Sections 83-5-201 through 83-5-217 may be held by the
16377 commissioner as a record not required to be made public under the
16378 Mississippi Public Records Act.

16379 SECTION 375. Section 83-9-23, Mississippi Code of 1972, is
16380 amended as follows:

16381 83-9-23. (1) Any insurance company authorized to do
16382 business of health insurance in this state may join with one or
16383 more other such insurance companies to offer to any resident of
16384 this state who is sixty-five (65) years of age or older, and to
16385 the spouse of such resident, insurance against major financial
16386 loss from accident or disease. Such insurance may be offered by
16387 such companies in their own names or in the name of a voluntary
16388 unincorporated association or other organization formed by such
16389 companies solely for the purpose of this section. The forms of
16390 applications, certificates, and policies of such insurance and
16391 the applicable premium rates shall be filed with the insurance
16392 commissioner, who may require additional pertinent information.

16393 (2) A financial summary concerning any insurance written
16394 under the authority of this section shall be furnished annually
16395 to the Insurance Commissioner in such form as he may prescribe.
16396 If the Insurance Commissioner finds that any forms for such
16397 insurance are not in the public interest or that the premium
16398 rates charged are, by reasonable assumptions, excessive in
16399 relation to the benefits provided, he may disapprove such forms
16400 or premium rates after notice * * * and hearing in accordance
16401 with the Mississippi Administrative Procedure Law of 1999.

16402 (3) Any person aggrieved by the decision of the
16403 commissioner under the provisions of this section may obtain
16404 judicial review thereof in accordance with the Mississippi
16405 Administrative Procedure Law of 1999. * * *

16406 SECTION 376. Section 83-11-21, Mississippi Code of 1972, is
16407 amended as follows:

16408 83-11-21. The following procedure shall govern in taking
16409 and perfecting appeals from the decision of the
16410 commissioner: * * * Any person who is a party to any hearing
16411 before the commissioner, and who is aggrieved by any decision of
16412 the commissioner with respect to any hearing before him, shall
16413 have the right of judicial review in accordance with the
16414 Mississippi Administrative Procedure Law of 1999. * * *

16415 * * *

16416 SECTION 377. Section 83-17-125, Mississippi Code of 1972,
16417 is amended as follows:

16418 83-17-125. Any person aggrieved by an act of the
16419 commissioner under the provisions of this article, except the
16420 filing of a petition under the provisions of Section
16421 83-17-123(3), shall have the right of judicial review in
16422 accordance with the Mississippi Administrative Procedure Law of
16423 1999. * * *

16424 SECTION 378. Section 83-17-223, Mississippi Code of 1972,
16425 is amended as follows:

16426 83-17-223. Any person aggrieved by any action or decision
16427 of the Commissioner of Insurance under the provisions of this
16428 article shall have the right of judicial review in accordance
16429 with the Mississippi Administrative Procedure Law of 1999. * * *

16430 SECTION 379. Section 83-17-423, Mississippi Code of 1972,
16431 is amended as follows:

16432 83-17-423. Any person aggrieved by any action or decision
16433 of the Commissioner of Insurance under the provisions of this
16434 article shall have the right of judicial review in accordance
16435 with the Mississippi Administrative Procedure Law of 1999. * * *

16436 SECTION 380. Section 83-19-109, Mississippi Code of 1972,
16437 is amended as follows:

16438 83-19-109. Any person becoming a party as hereinbefore
16439 provided and feeling aggrieved by the decision of the
16440 Commissioner of Insurance under the provisions of Sections
16441 83-19-99 to 83-19-123 has a right to judicial review in
16442 accordance with the Mississippi Administrative Procedure Law of
16443 1999. The person seeking judicial review shall give bond with
16444 surety or sureties in such penalty as shall be approved by
16445 the * * * court * * *, conditioned that such person will pay all
16446 costs of the judicial review in the event such review is
16447 unsuccessful. * * *

16448 SECTION 381. Section 83-21-17, Mississippi Code of 1972, is

16449 amended as follows:

16450 83-21-17. The Commissioner of Insurance shall annually
16451 promulgate a list of nonadmitted insurers and each such insurer
16452 shall meet the same requirements as to capital and surplus as is
16453 required of a company licensed to do business in the State of
16454 Mississippi and annually pay a filing fee of Five Hundred Dollars
16455 (\$500.00) in order to be eligible for certification as a
16456 nonadmitted insurer. An alien insurer shall be listed with the
16457 nonadmitted Insurers Information Office of the National
16458 Association of Insurance Commissioners. In the case of an alien
16459 insurer authorized to transact insurance of the kind involved in
16460 at least one (1) state of the United States, the insurer must
16461 have unimpaired capital and/or surplus or an effective trust fund
16462 amounting to at least One Million Five Hundred Thousand Dollars
16463 (\$1,500,000.00) and, in the case of a group including
16464 incorporated and individual unincorporated insurers, the trust
16465 fund must be in the amount of not less than Fifty Million Dollars
16466 (\$50,000,000.00). The incorporated members of the group shall
16467 not be engaged in any business other than underwriting as a
16468 member of the group and shall be subject to the same level of
16469 solvency regulation and control by the group's domiciliary
16470 regulator as are the unincorporated members. In the case of an
16471 alien insurer not authorized to transact business in at least one
16472 (1) state of the United States, the insurer must have an
16473 established trust fund of at least One Million Five Hundred
16474 Thousand Dollars (\$1,500,000.00) within the United States
16475 administered by a recognized financial institution and held for
16476 the benefit of all its policyholders in the United States. The
16477 Commissioner of Insurance is specifically vested with authority
16478 to promulgate such rules and regulations in accordance with the
16479 Mississippi Administrative Procedure Law of 1999 as deemed
16480 necessary to carry out the provisions hereof and to publish a
16481 list of nonadmitted insurers found eligible for writing business
16482 in the State of Mississippi on a nonadmitted basis. The

16483 commissioner may, by giving seven (7) days' notice, at any time
16484 remove a nonadmitted insurer from such eligible list when it
16485 appears that such insurer no longer meets the requirements of the
16486 statute or regulations of the commissioner. When a nonadmitted
16487 insurer is placed upon or removed from the eligible list, all
16488 agents holding licenses under Sections 83-21-17 through 83-21-31
16489 shall be notified of such eligibility or removal. Any agent of
16490 this state who places insurance with a nonadmitted insurer not on
16491 the list of eligible insurers shall be deemed in violation of the
16492 cited sections and shall be subject to revocation of license in
16493 the manner provided by statute for revocation of license of fire
16494 and casualty insurance agents.

16495 SECTION 382. Section 83-34-19, Mississippi Code of 1972, is
16496 amended as follows:

16497 83-34-19. Any person insured pursuant to this chapter, or
16498 his representative, or any affected insurer who may be aggrieved
16499 by an act, ruling or decision of the association may, within
16500 thirty (30) days after such ruling, appeal to the commissioner.
16501 Any hearings held by the commissioner pursuant to such an appeal
16502 shall be in accordance with adjudicative proceedings held in
16503 accordance with the Mississippi Administrative Procedure Law of
16504 1999. * * * Any person or insured aggrieved by any order * * *
16505 of the commissioner is entitled to judicial review thereof in
16506 accordance with the Mississippi Administrative Procedure Law of
16507 1999.

16508 SECTION 383. Section 83-38-19, Mississippi Code of 1972, is
16509 amended as follows:

16510 83-38-19. Any person insured pursuant to this chapter, or
16511 his representative, or any affected insurer who may be aggrieved
16512 by an act, ruling, or decision of the association, within thirty
16513 (30) days after such ruling, is entitled to appeal to the
16514 commissioner. A hearing before the commissioner upon such appeal
16515 shall be an adjudicative proceeding held in accordance with the
16516 Mississippi Administrative Procedure Law of 1999. The

16517 commissioner is authorized to appoint a member of the Insurance
16518 Department staff for the purpose of hearing such appeals, and a
16519 ruling based upon such hearing shall have the same effect as if
16520 heard by the commissioner. All persons or insureds aggrieved by
16521 any order or decision of the commissioner have the right to
16522 judicial review in accordance with the Mississippi Administrative
16523 Procedure Law of 1999.

16524 SECTION 384. Section 83-39-19, Mississippi Code of 1972, is
16525 amended as follows:

16526 83-39-19. Any person aggrieved by an act of the
16527 commissioner under the provisions of this chapter shall have the
16528 right of judicial review in accordance with the Mississippi
16529 Administrative Procedure Law of 1999. * * *

16530 Actions taken by the commissioner or department in
16531 suspending a license, registration or permit when required by
16532 Section 93-11-157 or 93-11-163 are not actions from which an
16533 appeal may be taken under this section. Any appeal of a
16534 suspension of a license, registration or permit that is required
16535 by Section 93-11-157 or 93-11-163 shall be taken in accordance
16536 with the appeal procedure specified in Section 93-11-157 or
16537 93-11-163, as the case may be, rather than the procedure
16538 specified in this section.

16539 SECTION 385. Section 83-41-339, Mississippi Code of 1972,
16540 is amended as follows:

16541 83-41-339. (1) Any certificate of authority issued under
16542 this article may be suspended or revoked, and any application for
16543 a certificate of authority may be denied, if the commissioner
16544 after an adjudicative proceeding finds that any of the conditions
16545 listed below exist:

16546 (a) The health maintenance organization is operating
16547 significantly in contravention of its basic organizational
16548 document or in a manner contrary to that described in any other
16549 information submitted under Section 83-41-305, unless amendments
16550 to the submissions have been filed with and approved by the

16551 commissioner;

16552 (b) The health maintenance organization issues an
16553 evidence of coverage or uses a schedule of charges for health
16554 care services which do not comply with the requirements of
16555 Sections 83-41-315 and 83-41-331;

16556 (c) The health maintenance organization does not
16557 provide or arrange for basic health care services;

16558 (d) The State Health Officer certifies to the
16559 commissioner that:

16560 (i) The health maintenance organization does not
16561 meet the requirements of Section 83-41-307(1)(b); or

16562 (ii) The health maintenance organization is
16563 unable to fulfill its obligations to furnish health care
16564 services;

16565 (e) The health maintenance organization operating in a
16566 "hazardous condition", and is no longer financially responsible
16567 and may reasonably be expected to be unable to meet its
16568 obligations to enrollees or prospective enrollees;

16569 (f) The health maintenance organization has failed to
16570 correct, within the time prescribed by subsection (3), any
16571 deficiency occurring due to such health maintenance
16572 organization's prescribed minimum net worth being impaired;

16573 (g) The health maintenance organization has failed to
16574 implement the grievance procedures required by Section 83-41-321
16575 in a reasonable manner to resolve valid complaints;

16576 (h) The health maintenance organization, or any person
16577 on its behalf, has advertised or merchandised its services in an
16578 untrue, misrepresentative, misleading, deceptive or unfair
16579 manner;

16580 (i) The continued operation of the health maintenance
16581 organization would be hazardous to its enrollees; or

16582 (j) The health maintenance organization has otherwise
16583 failed substantially to comply with this article.

16584 (2) In addition to or in lieu of suspension or revocation

16585 of a certificate of authority pursuant to this section, the
16586 applicant or health maintenance organization may be subjected to
16587 an administrative penalty of up to One Thousand Dollars
16588 (\$1,000.00) for each violation.

16589 (3) The following shall pertain when insufficient net worth
16590 is maintained:

16591 (a) Whenever the commissioner finds that the net worth
16592 maintained by any health maintenance organization subject to the
16593 provisions of this article is less than the minimum net worth
16594 required to be maintained by Section 83-41-325, he shall give
16595 written notice to the health maintenance organization of the
16596 amount of the deficiency and require: (i) filing with the
16597 commissioner a plan for correction of the deficiency acceptable
16598 to the commissioner and (ii) correction of the deficiency within
16599 a reasonable time, not to exceed sixty (60) days, unless an
16600 extension of time, not to exceed sixty (60) additional days, is
16601 granted by the commissioner. The deficiency shall be deemed an
16602 impairment, and failure to correct the impairment in the
16603 prescribed time shall be grounds for suspension or revocation of
16604 the certificate of authority or for placing the health
16605 maintenance organization in administrative supervision,
16606 rehabilitation or liquidation as per the insurance laws of this
16607 State.

16608 (b) Unless allowed by the commissioner no health
16609 maintenance organization or person acting on its behalf may,
16610 directly or indirectly, renew, issue or deliver any certificate,
16611 agreement or contract of coverage in this state, for which a
16612 premium is charged or collected, when the health maintenance
16613 organization writing such coverage is impaired, and the fact of
16614 such impairment is known to the health maintenance organization
16615 or to such person.

16616 However, the existence of an impairment shall not prevent
16617 the issuance or renewal of a certificate, agreement or contract
16618 when the enrollee exercises an option granted under the plan to

16619 obtain a new, renewed or converted coverage.

16620 (4) A certificate of authority shall be suspended or
16621 revoked or an application or a certificate of authority denied or
16622 an administrative penalty imposed only after compliance with the
16623 requirements of this section.

16624 (a) Suspension or revocation of a certificate of
16625 authority or the denial of an application or the imposition of an
16626 administrative penalty pursuant to this section shall be by
16627 written order and shall be sent to the health maintenance
16628 organization or applicant by certified or registered mail and to
16629 the State Health Officer. The written order shall state the
16630 grounds, charges or conduct on which suspension, revocation or
16631 denial or administrative penalty is based. The health
16632 maintenance organization or applicant may in writing request a
16633 hearing within twenty (20) days from the date of mailing of the
16634 order. The said request must be filed with the commissioner
16635 within the twenty (20) day period. If no written request is
16636 made, such order shall be final upon the expiration of said
16637 twenty (20) days.

16638 (b) * * * The health maintenance organization or
16639 applicant may, upon request, have an adjudicative proceeding in
16640 accordance with the Mississippi Administrative Procedure Law of
16641 1999.

16642 * * *

16643 * * * If an adjudicative proceeding is requested, the
16644 State Health Officer or his designated representative shall be in
16645 attendance and shall participate in the proceedings. The
16646 recommendations and findings of the State Health Officer with
16647 respect to matters relating to the quality of health care
16648 services provided in connection with any decision regarding
16649 denial, suspension or revocation of a certificate of authority,
16650 shall be conclusive and binding upon the commissioner.

16651 * * * The action of the commissioner and the
16652 recommendation and findings of the State Health Officer shall be

16653 subject to judicial review in accordance with the Mississippi
16654 Administrative Procedure Law of 1999.

16655 (5) When the certificate of authority of a health
16656 maintenance organization is suspended, the health maintenance
16657 organization shall not, during the period of such suspension,
16658 enroll any additional enrollees except newborn children or other
16659 newly acquired dependents of existing enrollees, and shall not
16660 engage in any advertising or solicitation whatsoever.

16661 (6) When the certificate of authority of a health
16662 maintenance organization is revoked, such organization shall
16663 proceed, immediately following the effective date of the order of
16664 revocation, to wind up its affairs, and shall conduct no further
16665 business except as may be essential to the orderly conclusion of
16666 the affairs of such organization under supervision of the
16667 commissioner. It shall engage in no further advertising or
16668 solicitation whatsoever. The commissioner may, by written order,
16669 permit such further operation of the organization as he may find
16670 to be in the best interest of enrollees, to the end that
16671 enrollees will be afforded the greatest practical opportunity to
16672 obtain continuing health care coverage.

16673 (7) * * * The decision of the commissioner under this
16674 section shall be subject to judicial review in accordance with
16675 the Mississippi Administrative Procedure Law of 1999.

16676 SECTION 386. Section 83-53-29, Mississippi Code of 1972, is
16677 amended as follows:

16678 83-53-29. The commissioner may, after notice and hearing,
16679 issue any rules and regulations that he deems necessary to
16680 effectuate the purposes of this chapter or to eliminate devices
16681 or plans designed to avoid or render ineffective the provisions
16682 of this chapter. The commissioner may require such information
16683 as is reasonably necessary for the enforcement of this chapter.
16684 All rules and regulations adopted and promulgated pursuant to
16685 this chapter shall be subject to the Mississippi Administrative
16686 Procedure Law of 1999.

16687 SECTION 387. Section 83-53-33, Mississippi Code of 1972, is
16688 amended as follows:

16689 83-53-33. Any person affected by a cease and desist order
16690 issued under Section 83-53-31 may, within thirty (30) days after
16691 being served with such cease and desist order, petition the
16692 commissioner for a hearing to consider the alleged violation of
16693 this chapter or any rule or regulation issued pursuant thereto.
16694 The commissioner shall thereupon conduct an adjudicative
16695 proceeding in accordance with the Mississippi Administrative
16696 Procedure Law of 1999.

16697 * * *

16698 SECTION 388. Section 83-53-37, Mississippi Code of 1972, is
16699 amended as follows:

16700 83-53-37. Any person aggrieved by an order of the
16701 commissioner under Section 83-53-35 may obtain judicial review of
16702 such order in accordance with the Mississippi Administrative
16703 Procedure Law of 1999. * * *

16704 SECTION 389. Section 83-53-39, Mississippi Code of 1972, is
16705 amended as follows:

16706 83-53-39. A cease and desist order issued by the
16707 commissioner under Section 83-53-31 shall become final upon the
16708 completion of the time allowed for filing a petition for an
16709 adjudicative hearing with the commissioner for a hearing if no
16710 such petition has been duly filed within such time. If a
16711 petition for a hearing is filed within such time pursuant to
16712 Section 83-53-33, the commissioner shall conduct an adjudicative
16713 proceeding in accordance with the Mississippi Administrative
16714 Procedure Law of 1999, and the order of the commissioner shall
16715 not take effect and be in force until the issuance of an order
16716 pursuant to Section 83-53-35. An order issued pursuant to
16717 Section 83-53-35 shall take effect and be in force upon issuance
16718 or at such time as may be stated in such order. The
16719 commissioner, in his discretion, * * * may stay the execution or
16720 enforcement of any such order.

16721 SECTION 390. Section 83-53-41, Mississippi Code of 1972, is
16722 amended as follows:

16723 83-53-41. If the order of the commissioner under Section
16724 83-53-35 does not charge a violation of this chapter or any rule
16725 or regulation pursuant thereto, then any petitioner or intervenor
16726 in the proceedings may, within thirty (30) days after the service
16727 of such report, file a notice of judicial review in accordance
16728 with the Mississippi Administrative Procedure Law of 1999. Upon
16729 such review, the court shall have the authority to issue
16730 appropriate orders and decrees in connection therewith, including
16731 orders enjoining and restraining the continuance of any act which
16732 it finds, notwithstanding such order of the commissioner,
16733 constitutes a violation of this chapter or any rule or regulation
16734 issued pursuant thereto.

16735 SECTION 391. Section 83-53-45, Mississippi Code of 1972, is
16736 amended as follows:

16737 83-53-45. Whenever any insurer, agent or other interested
16738 party petitions the commissioner for a hearing to consider any
16739 alleged violation of this chapter or any rule or regulation
16740 issued pursuant thereto, the commissioner shall conduct an
16741 adjudicative proceeding in accordance with the Mississippi
16742 Administrative Procedure Law of 1999.

16743 SECTION 392. Section 83-57-65, Mississippi Code of 1972, is
16744 amended as follows:

16745 83-57-65. Any person subject to an order of the department
16746 under Section 83-57-63 may obtain judicial review thereof in
16747 accordance with the Mississippi Administrative Procedure Law of
16748 1999.

16749 SECTION 393. Section 93-21-307, Mississippi Code of 1972,
16750 is amended as follows:

16751 93-21-307. The administration of the Mississippi Children's
16752 Trust Fund shall be vested in the Division of Family and
16753 Children's Services of the State Department of Public Welfare.
16754 In carrying out the provisions of Sections 93-21-301 through

16755 93-21-311, the Division of Family and Children's Services shall
16756 have the following powers and duties:

16757 (a) To assist in developing programs aimed at
16758 discovering and preventing the many factors causing child abuse
16759 and neglect;

16760 (b) To prepare and disseminate, including the
16761 presentation of, educational programs and materials on child
16762 abuse and neglect;

16763 (c) To provide educational programs for professionals
16764 required by law to make reports of child abuse and neglect;

16765 (d) To help coordinate child protective services at
16766 the state, regional and local levels with the efforts of other
16767 state and voluntary social, medical and legal agencies;

16768 (e) To provide advocacy for children in public and
16769 private state and local agencies affecting children;

16770 (f) To encourage citizen and community awareness as to
16771 the needs and problems of children;

16772 (g) To facilitate the exchange of information between
16773 groups concerned with families and children;

16774 (h) To consult with state departments, agencies,
16775 commissions and boards to help determine the probable
16776 effectiveness, fiscal soundness and need for proposed educational
16777 and service programs for the prevention of child abuse and
16778 neglect;

16779 (i) To adopt rules and regulations, subject to
16780 approval of the State Board of Public Welfare, in accordance with
16781 the Mississippi Administrative Procedure Law of 1999 to discharge
16782 its responsibilities;

16783 (j) To report annually, through the annual report of
16784 the State Department of Public Welfare, to the Governor and the
16785 Legislature concerning the division's activities under Sections
16786 93-21-301 through 93-21-311 and the effectiveness of those
16787 activities in fostering the prevention of child abuse and
16788 neglect;

16789 (k) To recommend to the Governor and the Legislature
16790 changes in state programs, statutes, policies and standards which
16791 will reduce child abuse and neglect, improve coordination among
16792 state agencies which provide services to prevent abuse and
16793 neglect, improve the condition of children and assist parents and
16794 guardians;

16795 (l) To evaluate and strengthen all local, regional and
16796 state programs dealing with child abuse and neglect;

16797 (m) To prepare and submit annually to the Governor and
16798 the Legislature reports evaluating the level and quality of all
16799 programs, services and facilities provided to children by state
16800 agencies;

16801 (n) To contract with public or private nonprofit
16802 institutions, organizations, agencies or schools or with
16803 qualified individuals for the establishment of community-based
16804 educational and service programs designed to reduce the
16805 occurrence of child abuse and neglect;

16806 (o) To determine the eligibility of programs applying
16807 for financial assistance and to make grants and loans from the
16808 fund for the purposes set forth in Sections 93-21-301 through
16809 93-21-311;

16810 (p) To develop, within one (1) year after July 1,
16811 1989, a state plan for the distribution of funds from the trust
16812 fund which shall assure that an equal opportunity exists for
16813 establishment of prevention programs and for receipt of trust
16814 fund money among all geographic areas in this state, and to
16815 submit the plan to the Governor and the Legislature and annually
16816 thereafter submit revisions thereto as needed;

16817 (q) To provide for the coordination and exchange of
16818 information on the establishment and maintenance of local
16819 prevention programs;

16820 (r) To develop and publicize criteria for the receipt
16821 of trust fund money by eligible local prevention programs;

16822 (s) To enter into contracts with public or private

16823 agencies to fulfill the requirements of Sections 93-21-301
16824 through 93-21-311; and

16825 (t) Review, monitor and approve the expenditure of
16826 trust fund money by eligible local programs.

16827 SECTION 394. Section 99-41-13, Mississippi Code of 1972, is
16828 amended as follows:

16829 99-41-13. If a claimant disagrees with an order of the
16830 deputy director entered under Section 99-41-11, he may, within
16831 thirty (30) days after being notified of the order, file notice
16832 of judicial review of the decision of the deputy director in
16833 accordance with the Mississippi Administrative Procedure Law of
16834 1999. * * *

16835 SECTION 395. Sections 25-43-1, 25-43-3, 25-43-5, 25-43-6,
16836 25-43-7, 25-43-9, 25-43-11, 25-43-13, 25-43-15, 25-43-17 and
16837 25-43-19, Mississippi Code of 1972, which create the Mississippi
16838 Administrative Procedures Law, provide definitions for terms used
16839 in such law, prescribe procedures that must be followed by
16840 agencies in the adoption, amendment and repeal of agency rules,
16841 require the filing of an economic impact statement for the
16842 adoption of a rule, require filing and notice before such rules
16843 may become effective, require agencies to index all effective
16844 rules adopted, provide that revocation or suspension of any
16845 license shall not be effective unless notice of such intended
16846 action is given to the licensee, and require agencies to adopt
16847 procedures to assure that opponents of proposed rules have the
16848 opportunity to present their views and review adverse rulings,
16849 are repealed.

16850 SECTION 396. Sections 37-45-39, 37-45-59 and 37-45-61,
16851 Mississippi Code of 1972, which provide for the preservation of
16852 the reporter's notes, transcription and preparation of the record
16853 for appeal, and further appeal to the Supreme Court in certain
16854 hearings held before the State Department of Education, are
16855 repealed.

16856 SECTION 397. Section 41-51-27, Mississippi Code of 1972,

16857 which deals with the record in hearings held under the Animal and
16858 Poultry By-Products Disposal Law of 1964, is repealed.

16859 SECTION 398. Sections 49-27-43, 49-27-45 and 49-27-47,
16860 Mississippi Code of 1972, which deal with appeal to the chancery
16861 court under the provisions of the Coastal Protection Wetlands
16862 Act, are repealed.

16863 SECTION 399. Section 53-1-45, Mississippi Code of 1972,
16864 which deals with appeals to the Supreme Court in the matter of a
16865 hearing held before the State Oil and Gas Board, is repealed.

16866 SECTION 400. Sections 63-17-91 and 63-17-93, Mississippi
16867 Code of 1972, which deal with hearings held under the Mississippi
16868 Motor Vehicle Commission Law, are repealed.

16869 SECTION 401. Section 65-2-17, Mississippi Code of 1972,
16870 which deals with the appeal to the Supreme Court from a decision
16871 of the circuit court in an appeal from a hearing held by the
16872 State Highway Arbitration Board, is repealed.

16873 SECTION 402. Section 83-53-35, Mississippi Code of 1972,
16874 which prescribes the issuance of an order following a hearing
16875 before the Commissioner of Insurance concerning credit life and
16876 credit disability insurance, is repealed.

16877 SECTION 403. This act shall take effect and be in force
16878 from and after July 1, 1999.