

By: Senator(s) Robertson, Bryan, Turner,  
Gordon, Ross

To: Judiciary; Fees,  
Salaries and  
Administration

## SENATE BILL NO. 2551

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,  
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63 41-7-201, 41-7-202, 41-9-31, 41-26-5, 41-26-7, 41-26-19, 41-26-21,  
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65 41-35-7, 41-51-25, 41-51-29, 41-58-3, 41-59-49, 41-61-59,  
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76 53-9-69, 53-9-77, 61-1-45, 63-1-31, 63-15-7, 63-17-95, 63-17-99,  
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82 69-23-11, 69-25-7, 69-25-51, 69-25-53, 69-25-55, 69-25-57,  
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84 69-39-19, 69-43-3, 71-3-51, 71-3-55, 71-3-66, 71-3-85, 71-5-115,  
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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 PROCEDURE LAW OF  
105 1999, 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

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

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

## ARTICLE I

### GENERAL PROVISIONS

SECTION 1. The following shall be codified as Section 25-43-1.101, Mississippi Code of 1972:

#### 25-43-1.101. Title; Statement of Purpose.

(1) This chapter may be cited as the "Mississippi Administrative Procedure Law of 1999."

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

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

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

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

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

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

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

(a) "Adjudicative Proceeding" means an agency 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.

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

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

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

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

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

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

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

(q) "Party to judicial review or civil enforcement

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

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

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

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

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

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

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

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

(i) Law or policy, or

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

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

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



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

a. Enable law violators to avoid detection;

b. Facilitate disregard of requirements imposed by law; or

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

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

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

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

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

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

8. An agency budget;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Filing by mail is complete upon receipt by the agency.

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

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

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

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

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

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

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

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

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

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

## ARTICLE II

### PUBLIC ACCESS TO AGENCY LAW AND POLICY

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

#### 25-43-2.101. Publication, Compilation, Indexing and Public Inspection of Rules.

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

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

The administrative bulletin must contain:

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

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

(c) An index to its contents by subject.

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

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

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

(c) An index to its contents by subject.

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

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

State shall prescribe by rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ARTICLE III**

**RULE MAKING**

**ADOPTION AND EFFECTIVENESS OF RULES**

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

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

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

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

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

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

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

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

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

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

- (a) The subject matter of the proposed rule;
- (b) A citation to all published notices relating to the proceeding;
- (c) Where written submissions or written requests for a 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,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) An estimate of the cost to the agency, and to any other state or local government entities, of implementing and 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.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The date the agency adopted the rule;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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)

year after the effective date of the rule.

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

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

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

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

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

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

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

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

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

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

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

(iii) The rule only delays the effective date of

another rule that is not yet effective; or

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

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

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

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

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

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

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

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

**ARTICLE IV**

**ADJUDICATIVE PROCEEDINGS**

**PART I**

**AVAILABILITY OF ADJUDICATIVE PROCEEDINGS;**

**APPLICATIONS; LICENSES**

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

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

(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

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

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

(5) An adjudicative proceeding commences when the agency:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**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,

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

(c) The notice must include:

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

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

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

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

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

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

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

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

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

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

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

**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

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

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

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

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

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

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

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

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

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

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

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

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

(c) A statement of the legal authority and jurisdiction

under which the hearing is to be held;

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

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

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

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

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

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

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

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

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

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

proposed initial or final orders.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) The presiding officer may grant a motion to intervene at  
any time, upon determining that the intervention sought is in the  
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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

At a hearing:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) Findings of fact,
- (b) Conclusions of law,
- (c) Reasoned application of law to facts, and
- (d) Policy reasons for the decision if it is an exercise of the agency's discretion, for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a motion for stay of effectiveness. Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, must be accompanied by a concise and explicit statement of the underlying facts of record to support the findings. The order must also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief. An initial order must include a statement of any circumstances under which the initial order, without further notice, may become a final order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Unless otherwise provided by statute or rule:

(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



will not be exercised; and

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

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

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

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

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

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

(a) Applications for adjudicative proceedings and amendments thereto;

(b) Notices of all proceedings;

(c) Any prehearing order;

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

(e) Evidence received or considered;

(f) A statement of matters officially noticed;

(g) Any public comment received by the agency;

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

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

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

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



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:

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

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

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

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

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

(iii) The parties may comment on the issues.

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

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

(1) If the presiding officer has reason to believe that there are genuine issues of material fact, the presiding officer may require any party to state the identity of the witnesses or other sources through whom the party would propose to present proof if the proceeding were converted to a formal adjudicative hearing, but the presiding officer shall respect and enforce any provision of law providing privileges, including the deliberative process privilege, imposing confidentiality requirements or protecting privacy rights, trade secrets, and other similar interests, and may enter protective orders to those ends, except that the person for whose benefit any such provision of law has 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);

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

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

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

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

(h) A matter that, or tests;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**25-43-4.504. Administrative Review of Basic Adjudicative 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**

**Proceedings and Administrative Review.**

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

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

**PART VI**

**EMERGENCY ADJUDICATIVE PROCEEDINGS**

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE V**

### **JUDICIAL REVIEW AND CIVIL ENFORCEMENT**

#### **PART I**

#### **JUDICIAL REVIEW**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Except as provided in Sections 25-43-5.101(3), (4), (5) and (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,

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

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

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

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

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

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

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

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

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

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

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

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

(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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The court, in its discretion assisted by the agency or by a master as provided in Section 25-43-5.104(2), may receive evidence, in addition to that contained in the agency record for

judicial review, only if it relates to the validity of the agency action at the time it was taken and is needed to decide disputed issues regarding:

(a) Improper constitution as a decision-making body, or improper motive or behavior on grounds for disqualification, of those taking the agency action;

(b) The apparent reliance by the agency taking the agency action on facts or evidence not included in the record;

(c) Unlawfulness of procedure or of decision-making process;

(d) A failure by the agency to explain its action where such failure may frustrate judicial review;

(e) The explanation of technical terms or complex subjects;

(f) The apparent failure of the agency to consider adequately some reasonable alternative to the agency action; or

(g) Any material fact that was not required by any provision of law to be determined exclusively on an agency record of a type reasonably suitable for judicial review.

(2) The court may remand a matter to the agency or a master, before final disposition of a proceeding for judicial review, with directions that the agency conduct fact-finding and other proceedings the court considers necessary, within such time limits as the court may prescribe, and that the agency or a master take such further action on the basis thereof as the court directs, if:

(a) The agency was required by this chapter or any other provision of law to base its action on a record of a type reasonably suitable for judicial review, but the agency failed to prepare or preserve an adequate record;

(b) The court finds that (i) new evidence has become available that relates to the validity of the agency action at the time it was taken, that one or more of the parties did not know and was under no duty to discover, or did not know and was



under a duty to discover but could not reasonably have discovered, until after the agency action, and (ii) the interests of justice would be served by remand to the agency;

(c) The agency improperly excluded or omitted evidence from the record; or

(d) A relevant provision of law changed after the agency action and the court determines that the new provision may control the outcome.

(3) The court may take judicial notice of adjudicative facts consistent with the Mississippi Rules of Evidence and Section 25-43-4.213(g).

SECTION 79. The following shall be codified as Section 25-43-5.115, Mississippi Code of 1972:

**25-43-5.115. Agency Record for Judicial Review - Contents, Preparation, Transmittal, Cost.**

(1) In the event of judicial review of agency action, the agency shall have full and exclusive authority and responsibility of preparing the agency record and certifying the agency record to the court. Subject only to the limitations of this part, an agency may by rule provide the formal process for its preparation and certification of the agency record.

(2) Within thirty (30) days after service of notice of judicial review, or within further time allowed by the court or by other provision of law, the agency shall transmit to the clerk of the Court of Appeals the agency record certified by the agency for judicial review of the agency action, consisting of any agency documents expressing the agency action, other documents identified by the agency as having been considered by it before its action and used as a basis for its action, and any other material described in this chapter as the agency record for the type of agency action at issue, subject to the provisions of this section.

(3) If part of the record has been preserved without a transcript, the agency shall prepare a transcript for inclusion

in the record transmitted to the court, except for portions that the parties stipulate to omit in accordance with subsection (5) of this section. The word "transcript" includes a written transcript, a printed transcript, and an audible audiotape or videotape that is indexed and annotated so that it is readily accessible.

(4) The agency may charge the person filing the notice of judicial review with the reasonable cost of preparing the record and any necessary copies and transcripts for transmittal to the court. A failure by the person seeking judicial review to pay any of this cost to the agency does not relieve the agency from the responsibility for timely preparation of the record, including any transcript and transmittal to the court. The agency may set criteria and terms for payment of costs of the record. The agency may by rule implement and elaborate this subsection.

(5) By stipulation of all parties to the review proceedings, the record may be shortened, summarized, supplemented or organized.

(6) The court may tax the cost of preparing transcripts and copies for the record:

(a) Against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record;

(b) As provided by Section 25-43-5.117; or

(c) In accordance with any other provision of law.

(7) Additions to the record pursuant to Section 25-43-5.114 must be made as ordered by the court.

(8) The court may require or permit subsequent corrections or additions to the record.

SECTION 80. The following shall be codified as Section 25-43-5.116, Mississippi Code of 1972:

**25-43-5.116. Scope of Review; Grounds for Invalidity.**

(1) Except to the extent that this chapter provides 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

preserve or protect the interests of the parties and the public pending further proceedings or agency action.

SECTION 82. The following shall be codified as Section 25-43-5.118, Mississippi Code of 1972:

**25-43-5.118. Decisions of Court of Appeals Reviewable by Writ of Certiorari.**

Decisions on proceedings for judicial review of agency action made in the Court of Appeals are subject to review in the Supreme Court as provided by the Mississippi Rules of Appellate Procedure.

SECTION 83. The following shall be codified as Section 25-43-5.119, Mississippi Code of 1972:

**25-43-5.119. Filed Rate Doctrine.**

(1) If a person offering a service to the public:

(a) Is required by law to file with an agency to whose regulatory jurisdiction the person is subject a rate or tariff or the terms or conditions for the provision of that service, and

(b) Has filed with the agency a rate or tariff or the terms or conditions relating in any way to the provision of the service, and the agency has accepted the filing and has not disapproved the filing within the time allowed by law, and the time for judicial review of the agency action in approving or in failing to disapprove the filing has expired, the filing is final and in full force and effect for the period of time provided by law.

(2) A rate or tariff or terms or conditions that have become final, either in the manner described in subsection (1) of this section or as a result of being lawfully ordered into effect by the agency, may be subject to review and reconsideration by the agency prospectively only and as provided by another provision of law.

(3) In the case of a rate or tariff or the terms or conditions for the provision of a service that have become final, in the manner described in subsection (1) or (2) of this section,

a claim by the agency or by any other person that the rate or tariff or terms or conditions are invalid or unenforceable for any of the grounds set forth in Section 25-43-5.116(3)(b), (c), (d), (e), (f), (g) or (h) may be made only in the form of a request that the agency, acting prospectively only, review and reconsider the filing as provided by another provision of law.

(4) The acts or omissions of a person in the provision of a service pursuant to a filed rate or tariff, or terms or conditions that have become final in the manner described in subsection (1) or (2) of this section shall be subject to judicial review, civil enforcement or collateral attack only on grounds:

(a) (i) The rate or tariff or terms or conditions, or (ii) the agency action in approving or in failing to disapprove the rate or tariff or terms, conditions or provisions, or (iii) the law on which the agency action is based, is unconstitutional on its face or as applied; or

(b) The person has deviated from the filed rate tariff or terms or conditions in the provision of the service.

## PART II

### CIVIL ENFORCEMENT

SECTION 84. The following shall be codified as Section 25-43-5.201, Mississippi Code of 1972:

25-43-5.201. **Complaint by Agency for Civil Enforcement of Rule or Order.**

(1) In addition to other remedies provided by law:

(a) An agency may seek enforcement of its rule or order, including a subpoena or other order compelling the testimony of persons, the production of documents or other discovery, by filing a complaint for civil enforcement in the chancery court.

(b) The complaint must name, as defendants, each person against whom the agency seeks to obtain civil enforcement.

(c) Venue is determined as in other civil cases.

(d) A complaint for civil enforcement filed by an agency may request, and the court may grant, declaratory relief, temporary or permanent injunctive relief, any penalty, sanction or other civil remedy provided by law or any combination of the foregoing.

(2) In the case of an order, and in addition to other remedies provided by law:

(a) A copy of a written order certified by the agency may be filed in the office of the circuit clerk of any county in this state. The circuit clerk shall enroll the order in the judgment roll and shall otherwise treat the order in the same manner as a judgment of the circuit court of any county in this state. An order so filed and enrolled has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a judgment of a circuit court of any county in this state and may be enforced or satisfied in like manner.

(b) At the time of the filing of the order with the circuit clerk, the agency, party or person filing same shall serve notice of the filing upon each party or person against whom enforcement is sought in the manner provided for service of papers in a civil action by the Mississippi Rules of Civil Procedure.

SECTION 85. The following shall be codified as Section 25-43-5.202, Mississippi Code of 1972:

**25-43-5.202. Complaint by Qualified Person for Civil Enforcement of Agency's Order.**

(1) Any person who would qualify under this chapter as having standing to seek judicial review of an agency's failure to enforce its order may file a complaint for civil enforcement of that order in the chancery court, but the action may not be commenced:

(a) Until at least thirty (30) days after the person has given notice of the alleged violation or failure and of the

person's intent to seek civil enforcement to the agency head of the agency that issued the order, to the Attorney General, and to each person against whom the person filing the complaint seeks civil enforcement;

(b) If the agency has filed and is diligently prosecuting a complaint for civil enforcement of the same order against the same defendant or defendants; provided, however, that the person may move to intervene in the pending civil enforcement proceeding as provided by the Mississippi Rules of Civil Procedure; or

(c) If a notice of judicial review of the same order has been filed and is pending in court; provided, however, that the person may move to intervene in the pending judicial review proceeding if the person has standing under Section 25-43-5.106 or as provided by the Mississippi Rules of Appellate Procedure;

(2) The complaint must name, as defendants, the agency whose order is sought to be enforced and each person against whom the person filing the complaint seeks civil enforcement. The court may realign the parties as may be appropriate.

(3) The agency whose order is sought to be enforced may move to dismiss on the grounds that the complaint fails to qualify under this section or that enforcement would be contrary to the lawful policy of the agency. The court shall grant the motion to dismiss unless the person filing the complaint demonstrates that (i) the complaint qualifies under this section and (ii) the agency's failure to enforce its order is based on an exercise of discretion that is improper on one or more of the grounds provided in Section 25-43-5.116(3)(h).

(4) Except to the extent authorized by law, a complaint for civil enforcement filed under this part may not request, and the court may not grant, any monetary relief or require any monetary payment apart from taxable costs.

SECTION 86. The following shall be codified as Section 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:

(a) The Mississippi Rules of Civil Procedure;  
(b) The Mississippi Rules of Evidence;  
(c) Any other valid and applicable rule of practice or procedure; and  
(d) Unless inconsistent with a rule or rules by its terms applicable to such proceedings, the provisions of this chapter.

SECTION 88. The following shall be codified as Section 25-43-5.205, Mississippi Code of 1972:

25-43-5.205. **Review by Supreme Court.**

Judgments and orders on complaints for civil enforcement are reviewable by the Supreme Court, and/or by the Court of Appeals, as in other civil cases.

SECTION 89. Section 5-8-17, Mississippi Code of 1972, is amended as follows:

5-8-17. (1) In addition to any other penalty permitted by law, the Secretary of State shall require any person who fails to file a report as required under Sections 5-8-1 through 5-8-19 of this chapter, or who shall file a report which fails to comply with the material particulars of Sections 5-8-1 through 5-8-19 of this chapter or any rules, regulations or procedures implemented pursuant to Sections 5-8-1 through 5-8-19 of this chapter, to be assessed a civil penalty as follows:

(a) Within five (5) calendar days after any deadline for filing a report pursuant to Sections 5-8-1 through 5-8-19 of this chapter, the Secretary of State shall compile a list of those lobbyists and lobbyists' clients who have failed to file a required report. The Secretary of State shall provide each lobbyist or lobbyist's client who has failed to file such a report notice of such failure by certified mail.

(b) Beginning with the tenth calendar day after which any report shall be due, the Secretary of State shall assess the delinquent lobbyist and delinquent lobbyist's client a civil penalty of Fifty Dollars (\$50.00) per day and part of any day

until a valid report is delivered to the Secretary of State, up to a maximum of ten (10) days. However, in the discretion of the Secretary of State, the assessing of such fine may be waived if the Secretary of State shall determine that unforeseeable mitigating circumstances, such as the health of the lobbyist, shall interfere with timely filing of a required report.

(c) Filing of the required report and payment of the fine within ten (10) calendar days of notice by the Secretary of State that a required statement has not been filed constitutes compliance with Sections 5-8-1 through 5-8-19 of this chapter.

(d) Payment of the fine without filing the required report does not in any way excuse or exempt any person required to file from the filing requirements of Sections 5-8-1 through 5-8-19 of this chapter.

(2) (a) Upon the sworn application of a lobbyist or lobbyist's client against whom a civil penalty has been assessed pursuant to subsection (1), the Secretary of State shall forward the application to the Mississippi Ethics Commission. The commission shall conduct an adjudicative proceeding in accordance with the Mississippi Administrative Procedure Law of 1999 and shall cause a written notice specifying the civil penalties that have been assessed against the lobbyist or lobbyist's client and notice of the time and place of the hearing to be served upon the lobbyist or lobbyist's client at least twenty (20) calendar days prior to the hearing date. \* \* \*

\* \* \*

(3) \* \* \* The right to judicial review of the decision of the commission in an adjudicative proceeding concerning the assessment of civil penalties authorized pursuant to this section is hereby granted. Such judicial review shall be in accordance with the Mississippi Administrative Procedure Law of 1999. The person perfecting judicial review shall file a bond in the sum of Two Hundred Dollars (\$200.00), conditioned that if the decision of the commission be affirmed by the court, the lobbyist or

lobbyist's client will pay the costs of the appeal and the action in court. If the decision is reversed by the court, the Secretary of State will pay the costs of the appeal and the action in court. In the event of judicial review, the order of the commission should be stayed pending review.

\* \* \*

(4) If, after forty-five (45) calendar days of the date of the commencement of the adjudicative proceeding, the lobbyist or lobbyist's client shall not file a valid report as required by law, the commission shall notify the Attorney General of the delinquency. The Attorney General shall investigate said offense in accordance with the provisions of this chapter.

SECTION 90. Section 7-17-5, Mississippi Code of 1972, is amended as follows:

7-17-5. (1) Effective July 1, 1989, all employees of any agency abolished or affected by the Mississippi Executive Reorganization Act of 1989 [Laws, 1989, Chapter 544] shall be transferred according to the merger of their duties by the Mississippi Executive Reorganization Act of 1989 [Laws, 1989, Chapter 544]. All personnel actions initiated as a result of the Mississippi Executive Reorganization Act of 1989 [Laws, 1989, Chapter 544] shall be subject to State Personnel Board procedures.

(2) The executive director of any agency of State Government as defined in Section 25-9-107(d) shall have the authority to employ staff and to expend funds authorized to the agency for the performance of the duties and responsibilities accorded to the agency by the laws of the State of Mississippi.

(3) All records, personnel, property and unexpended balances of appropriations, allocations or other funds of any agency or department abolished or affected by the Mississippi Executive Reorganization Act of 1989 [Laws, 1989, Chapter 544] shall be transferred to the appropriate agency according to the 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

required by the Legislature or Governor, a full report of the work of the agency and the offices thereof, including a detailed statement of expenditures of the agency and any recommendations;

(h) Make provisions for adoption of rules, regulations and policy and provide for public inspection and filing of same; and other requirements set forth in the Mississippi Administrative Procedure Law of 1999, except as otherwise provided by law.

(i) Conduct adjudicative proceedings in accordance with the Mississippi Administrative Procedure Law of 1999, or any part of such proceedings.

SECTION 91. Section 9-1-19, Mississippi Code of 1972, is amended as follows:

9-1-19. (1) Except as provided in subsection (2) of this section, the judges of the Supreme and circuit courts and chancellors and judges of the Court of Appeals, in termtime and in vacation, may severally order the issuance of writs of habeas corpus, mandamus, certiorari, supersedeas and attachments, and grant injunctions and all other remedial writs, in all cases where the same may properly be granted according to right and justice, returnable to any court, whether the suit or proceedings be pending in the district of the judge or chancellor granting the same or not. The fiat of such judge or chancellor shall authorize the issuance of the process for a writ returnable to the proper court or before the proper officer; and all such process or writs may be granted, issued and executed on Sunday.

(2) In the event that the respondent is an agency or an agency head within the Mississippi Administrative Procedure Law of 1999, or an officer or employee of an agency or agency head, original jurisdiction to consider and issue writs of mandamus and of prohibition is vested in the Supreme Court and in the Court of Appeals of the State of Mississippi.

SECTION 92. Section 9-13-107, Mississippi Code of 1972, is amended as follows:

9-13-107. No person shall be qualified or authorized to report testimony or proceedings relevant to matters under the jurisdiction of the courts of the State of Mississippi, all state agencies or the Legislature or any committee or subcommittee thereof, or where appeal to or judicial review of any court of the State of Mississippi is allowable by law, unless such person satisfies the provisions of Sections 9-13-101 through 9-13-121 with respect to certification. Sections 9-13-101 through 9-13-121 shall not be construed to apply to any proceedings that take place outside the borders of the State of Mississippi.

Every applicant for examination for certification as a Certified Shorthand Reporter shall file with the person designated by the board a written application in the form prescribed by the board. At the time the application is filed, the applicant shall pay to the board an application fee established by regulation, which fee shall not be subject to withdrawal by the applicant in the event he should decide not to take the examination or is denied the right to take the examination. Upon request, the board shall forward to any interested person application forms together with the text of this chapter and copies of regulations promulgated by the board under the provisions of this chapter.

SECTION 93. Section 9-13-117, Mississippi Code of 1972, is amended as follows:

9-13-117. The board, for good cause shown and in keeping with its regulations and after an adjudicative proceeding conducted in accordance with the Mississippi Administrative Procedure law of 1999 conducted in a manner consistent with due process, may revoke or suspend any certificate issued or may disqualify any applicant from certification.

SECTION 94. Section 11-41-1, Mississippi Code of 1972, is amended as follows:

11-41-1. (1) Except as provided in subsection (2) of this section, on the complaint of the state, by its Attorney General

or a district attorney, in any matter affecting the public interest, or on the complaint of any private person who is interested, the judgment shall be issued by the circuit court, commanding any inferior tribunal, corporation, board, officer, or person to do or not to do an act the performance or omission of which the law specially enjoins as a duty resulting from an office, trust, or station, where there is not a plain, adequate, and speedy remedy in the ordinary course of law. All procedural aspects of this action shall be governed by the Mississippi Rules of Civil Procedure.

(2) In the event that the respondent is an agency or an agency head within the Mississippi Administrative Procedure Law of 1999, or an officer or employee of an agency or agency head, jurisdiction to issue and consider writs of mandamus and of prohibition is vested in the Supreme Court and in the Court of Appeals of the State of Mississippi. All procedural aspects of this action shall be governed by the Mississippi Rules of Appellate Procedure and other applicable law.

SECTION 95. Section 11-41-3, Mississippi Code of 1972, is amended as follows:

11-41-3. (1) Except as provided in subsection (2) of this section, the complaint shall be filed in the circuit court of the county in which the tribunal, corporation, board, officer, or person made defendant, or some one or more of them, shall reside or be found; but if the judge of that court be interested, the complaint may be filed in an adjoining circuit court district.

(2) In the event that the respondent is an agency or agency head within the Mississippi Administrative Procedure Law of 1999, or an officer or employee of an agency or agency head, the complaint may be filed in the Supreme court or in the Court of Appeals of the State of Mississippi.

SECTION 96. Section 17-17-29, Mississippi Code of 1972, is amended as follows:

17-17-29. (1) Any person found by the commission violating



any of the provisions of Sections 17-17-1 through 17-17-47, or any rule or regulation or written order of the commission in pursuance thereof, or any condition or limitation of a permit, shall be subject to a civil penalty of not more than Twenty-five Thousand Dollars (\$25,000.00) for each violation, such penalty to be assessed and levied by the commission after an adjudicative proceeding conducted in accordance with the Mississippi Administrative Procedure Law of 1999. Any person assessed with such a penalty shall have the right to judicial review in accordance with the Mississippi Administrative Procedure Law of 1999. If the person seeking judicial review desires to stay the execution of a civil penalty assessed by the commission, he shall give bond with sufficient resident sureties of one or more guaranty or surety companies authorized to do business in this state, payable to the State of Mississippi, in an amount equal to double the amount of any civil penalty assessed by the commission, as to which the stay of execution is desired, conditioned, if the judgment shall be affirmed, to pay all costs of the assessment entered against the person seeking judicial review. Each day upon which such violation occurs shall be deemed a separate and additional violation.

(2) In lieu of, or in addition to, the penalty provided in subsection (1) of this section, the commission shall have the power to institute and maintain in the name of the state any and all proceedings necessary or appropriate to enforce the provisions of Sections 17-17-1 through 17-17-47, rules and regulations in force pursuant thereto, and orders and permits made and issued under those sections, in the \* \* \* chancery \* \* \* court of the county in which venue may lie. The commission may obtain mandatory or prohibitory injunctive relief, either temporary or permanent, and in cases of imminent and substantial hazard as set forth in Section 17-17-27, subsection (4), it shall not be necessary in such cases that the state plead or prove (a) that irreparable damage would result if the injunction did not

issue; (b) that there is no adequate remedy at law; or (c) that a written complaint or commission order has first been issued for the alleged violation.

(3) Any person who violates any of the provisions of, or fails to perform any duty imposed by, Sections 17-17-1 through 17-17-47, or any rule or regulation issued hereunder, or who violates any order or determination of the commission promulgated pursuant to such sections, and causes the death of wildlife shall be liable, in addition to the penalties provided in subsection (1) and/or (2) of this section, to pay to the state an additional amount equal to the sum of money reasonably necessary to replenish such wildlife as determined by the commission after consultation with the Mississippi Commission on Wildlife, Fisheries and Parks. Such amount may be recovered by the commission on behalf of the state in a civil action brought in the chancery court of the county in which venue may lie.

(4) Any person creating, or responsible for creating, through misadventure, happenstance, or otherwise, an immediate necessity for remedial or clean-up action involving solid waste shall be liable for the cost of such remedial or clean-up action and the commission may recover the cost of same by a civil action brought in the chancery court of the county in which venue may lie. This penalty may be recovered in lieu of or in addition to the penalties provided in subsection (1), (2) and/or (3) of this section.

In the event of the necessity for immediate remedial or clean-up action, the commission may contract for same and advance funds from the Pollution Emergency Fund to pay the costs thereof, such advancements to be repaid to the Pollution Emergency Fund upon recovery by the commission as provided herein.

(5) Any person who knowingly violates any provision of this chapter or violates any order issued by the commission under the authority of this chapter shall, upon conviction, be guilty of a 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:

17-17-231. (1) The Commission on Environmental Quality may adopt rules and regulations governing municipal solid waste landfills that accept household wastes, but any rules and regulations for such landfills shall, except for the adoption of criteria and standards to be considered in the location of such facilities, be no more stringent or extensive in scope, coverage and effect than Subtitle D regulations promulgated by the United States Environmental Protection Agency.

(2) If Subtitle D regulations do not provide a standard, criteria or guidance addressing matters relating to landfills, the commission may promulgate rules and regulations to address these matters in accordance with the Mississippi Administrative Procedure Law of 1999 when the commission determines that such rules and regulation are necessary to protect human health, welfare or the environment.

(3) Nothing in this section shall prohibit the commission by order or the Permit Board in the issuance or modification of a permit from placing additional requirements on a landfill on a case by case basis in order to prevent, abate, control or correct groundwater contamination, public endangerment or as otherwise determined necessary to protect human health, welfare or the environment.

SECTION 99. Section 19-5-353, Mississippi Code of 1972, is amended as follows:

19-5-353. (1) The initial minimum standard of training for local public safety and 911 telecommunicators shall be determined by the Board of Emergency Telecommunications Standards and Training. All courses approved for minimum standards shall be taught by instructors certified by the course originator as instructors for such courses.

(2) The minimum standards may be changed at any time by the Board of Emergency Telecommunications Standards and Training.

(3) Changes in the minimum standards may be made upon 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

certificate has been suspended or revoked under provisions of this act [Laws, 1993, Ch. 536], is prohibited from paying the salary of such person, and any person violating this subsection shall be personally liable for making such payment.

(10) These minimum standards and time limitations shall in no way conflict with other state and federal training as may be required to comply with established laws or regulations.

SECTION 100. Section 21-27-221, Mississippi Code of 1972, is amended as follows:

21-27-221. (1) Any person aggrieved by the final decision of any duly designated hearing officer appointed by the board or commission as a result of any hearing held under the provisions of Sections 21-27-201 through 21-27-221, which shall have been an adjudicative proceeding in accordance with the Mississippi Administrative Procedure Law of 1999, may, within thirty (30) days of receipt of written notice of the action of the hearing officer, appeal such final decision to the full board or commission, as the case may be, by filing therewith a written notice of appeal. No cost bond or other security shall be required to perfect such appeal. The hearing officer shall forthwith prepare and submit to the board or commission the record made at the hearing, which shall thereupon become the record of the cause. Appeals to the board or commission shall be considered only upon the record made before the hearing officer.

The board or commission shall review all findings of fact and conclusions of law of the hearing officer, together with any penalties levied, and may affirm, modify or reverse and remand the decision of the hearing officer, as may be determined to be necessary or appropriate. Judicial review of the final decision of the board or commission shall be perfected as hereinafter provided.

(2) Any person aggrieved by the final decision of the board or commission as a result of any hearing held under the 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

its members, or by any other authority competent to administer oaths. Said appeal board may meet for all purposes at any time in the State of Mississippi when all are present, or upon the call of two (2) members thereof. Said appeal board shall certify its decision to the board of trustees, and such decision or order shall be final and binding and said fund shall be disbursed according thereto, subject to judicial review in accordance with the Mississippi Administrative Procedure Law of 1999.

SECTION 102. Section 23-15-69, Mississippi Code of 1972, is amended as follows:

23-15-69. All cases on appeal shall be heard by the boards of election commissioners de novo, and oral and documentary evidence may be heard by them; and they are authorized to administer oaths to witnesses before them; and they have power to subpoena witnesses, and to compel their attendance; to send for persons and papers; to require the sheriff and constables to attend them and to execute their process. The decisions of the commissioners in all cases shall be final as to questions of fact, but as to matters of law they may be revised by circuit courts and the Supreme Court. The registrar shall obey the orders of the commissioners in directing a person to be registered, or a name to be stricken from the registration books.

SECTION 103. Section 25-9-115, Mississippi Code of 1972, is amended as follows:

25-9-115. It shall be the specific duty and function of the State Personnel Board to:

(a) Represent the public interest in the improvement of personnel administration in the state departments, agencies and institutions covered by the State Personnel System;

(b) Determine appropriate goals and objectives for the State Personnel System and prescribe policies for their accomplishment, with the assistance of the Mississippi Personnel Advisory Council;

(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

of any state department, agency, institution, board or commission under the jurisdiction of the State Personnel Board as provided in Section 25-9-101 et seq., in conformity with the State Personnel Board's compensation plan. Salaries of incumbents required by law to serve in their professional capacity as a physician, dentist, veterinarian or attorney shall be set in accordance with Section 25-9-107(c)(xiii);

(p) Authorize the director to enter into formal agreements with department executive directors and agency directors in which employment positions within their agencies may be reallocated and organization charts amended without prior State Personnel Board approval; provided, however, that such agreements shall be revocable by the State Personnel Board and continuation shall be contingent upon the reallocations and reorganizations being conducted in accordance with rules and regulations promulgated by the State Personnel Board. In the event the State Personnel Board has delegated reallocation authority to an agency, this delegation does not remove the requirement that agencies submit personal services budget requests each fiscal year for the purpose of preparing personal services continuation budget projections. Such budget requests shall be prepared in accordance with the policies, rules and regulations promulgated by the Department of Finance and Administration, the Legislative Budget Office and the State Personnel Board. Prior to making any reallocation or reorganization effective, each appointing authority who has entered into an agreement as provided in this paragraph (p) shall certify to the State Personnel Board that the total annualized cost of any reallocation or reorganization shall be equal to or less than the cost savings generated through downward reallocation or position abolishment of vacant positions.

The personnel board shall maintain a record of every personnel transaction executed under authority delegated pursuant to this paragraph (p) and shall annually report the total cost of

these transactions, by agency, to the Legislative Budget Office and the Department of Finance and Administration.

The State Personnel Board shall prescribe rules requiring the State Personnel Director to perform a compliance audit and evaluation of personnel transactions executed under authority delegated pursuant to this paragraph (p) and to publish a report of the audit listing exceptions taken by the State Personnel Director not later than the first of October each year. In the event the State Personnel Board determines that an agency has misclassified an employee or position as a result of this delegated authority, the State Personnel Board shall be authorized to correct such misclassification regardless of the state service status of the employee holding such position. Authority to correct such misclassifications of filled positions shall be limited to one (1) year from the date which the State Personnel Board receives written notice of the reallocation;

(q) Require that if an employment position has been determined to be in need of reallocation from one occupational class to another, the employee occupying the position shall meet the minimum qualifications for the occupational class to which the position is being reallocated in order for the position to be eligible for the reallocation. However, when a reallocation is based upon an agency reorganization due to documented funds constraints, documented change in agency function, or legislative mandate, a position may be reallocated with prior approval of the State Personnel Board;

(r) Implement a reduction-in-force policy which shall apply uniformly to all state agencies and which shall require that the appointing authority develop an equitable and systematic plan for implementation of an agency-wide reduction-in-force. If a proposed reduction-in-force is the result of a curtailment of general funds, the State Personnel Board shall review the proposed reduction-in-force plan only upon written certification of a general funds shortage from the Department of Finance and

Administration. If a proposed reduction-in-force is the result of a curtailment of special funds, the State Personnel Board shall review the proposed reduction-in-force plan only upon written certification of a special funds shortage from the agency. Further, the State Personnel Board shall ensure that any reduction-in-force plan complies with all applicable policies, rules and regulations of the State Personnel Board;

(s) Implement a furlough (involuntary leave without pay) policy which shall apply uniformly to all executive and subordinate employees within an agency, regardless of job class.

The State Personnel Board shall review furlough plans only upon written certification of a general funds shortage from the Department of Finance and Administration or written certification of a special funds shortage from the agency. The State Personnel Board shall ensure that any furlough plan complies with all applicable policies, rules and regulations of the State Personnel Board;

(t) Establish policies which preclude any employee under the salary setting authority of the State Personnel Board from receiving an annual salary greater than the Governor, and any employee within an agency from receiving an annual salary greater than the agency head. Employees currently receiving an annual salary exceeding the Governor or their agency head may retain their present salary but shall not receive an increase until such time as the provisions of this paragraph are met;

(u) In the adoption of rules, to act in accordance with the Mississippi Administrative Procedure Law of 1999.

(v) This section shall stand repealed from and after June 30, 2000.

SECTION 104. Section 25-9-119, Mississippi Code of 1972, is amended as follows:

25-9-119. (1) There is hereby created the position of the State Personnel Director who shall be selected by the State Personnel Board, with the advice and consent of the Senate. The

director shall have at least a master's degree in business administration, personnel management or the equivalent and shall have not less than five (5) years' experience therein. His salary shall be in accordance with the Mississippi Compensation Plan. The State Personnel Director shall serve at the will and pleasure of the State Personnel Board.

(2) The duties and responsibilities of the director shall be:

(a) To serve as executive secretary to the board, to attend meetings as directed by the board and to provide such professional, technical and other supportive assistance as may be required by the board in the performance of its duties;

(b) Consistent with board policy, to administer the operations of the State Personnel System and to otherwise act in the capacity of chief executive officer to the State Personnel Board;

(c) To submit for board approval proposed rules and regulations which shall require a uniform system of personnel administration within all agencies included in this chapter. Such rules and regulations, when approved by the board, shall be binding upon the state departments, agencies and institutions covered by this chapter and shall include provisions for the establishment and maintenance of classification and compensation plans, the conduct of examinations, employee recruiting, employee selection, the certification of eligible persons, appointments, promotions, transfers, demotions, separations, reinstatement, appeals, reports of performance, payroll certification, employee training, vacation and sick leave, compensatory leave, administrative leave, standardized record keeping forms and procedures for leave earned, accrued and used, and all other phases of personnel administration. Such rules and regulations shall not be applicable to the emergency hiring of employees by the Public Employees' Retirement System pursuant to Section 25-11-15(7). Such rules and regulations, or modifications



thereto, as are approved by the State Personnel Board shall be filed with the Secretary of the Senate in accordance with the Mississippi Administrative Procedure Law of 1999, and with the Clerk of the House of Representatives at least sixty (60) days prior to their effective date. The secretary and the clerk shall immediately forward copies of the rule or rules to the members of the Senate Fees, Salaries and Administration Committee, the members of the House Fees and Salaries of Public Officers Committee, the Lieutenant Governor, the Speaker of the House of Representatives and the Governor. The respective committees may submit comments to the board regarding such rules and regulations prior to their effective date;

(i) Compensation plans and modifications thereto promulgated under rules and regulations shall become effective as adopted, upon appropriation therefor by the State Legislature;

(ii) The director and the board shall provide for:

(A) Cost-of-living adjustments;

(B) Salary increases for outstanding performance based upon documented employee productivity and exceptional performance in assigned duties; and

(C) Plans to compensate employees for suggestions which result in improved management in technical or administrative procedures and result in documented cost savings for the state. In certifying promotions, the director shall ensure that an employee's anniversary date remains the same regardless of the date of his promotion;

(d) To submit to the board any proposed legislation as may be necessary to bring existing statutes relating to the administration of public employees into uniformity;

(e) To administer the rules and regulations and all other operational aspects of the State Personnel System and to assure compliance therewith in all the departments, agencies and institutions covered by the State Personnel System;

(f) To appoint and prescribe the duties of the State Personnel System staff, all positions of which shall be included in the state service;

(g) To prepare an annual budget for the board covering all the costs of operating the State Personnel System, including the State Personnel Board, and the costs of administering such federal laws relating to personnel administration as the board may direct, including the Intergovernmental Personnel Act of 1970;

(h) To assist state agencies, departments and institutions in complying with all applicable state and federal statutes and regulations concerning discrimination in employment, personnel administration and related matters;

(i) To recommend procedures for the establishment and abolishment of employment positions within those departments, agencies and institutions not excluded from this chapter;

(j) To cooperate with appointing authorities in the administration of this chapter in order to promote public service and establish conditions of service which will attract and retain employees of character and capacity and to increase efficiency and economy in governmental departments by the improvement of methods of personnel administration with full recognition of the requirements and needs of management.

SECTION 105. Section 25-9-131, Mississippi Code of 1972, is amended as follows:

25-9-131. (1) Any employee in the state service may appeal his dismissal or other action adversely affecting his employment status to the employee appeals board created herein. The \* \* \* employee appeals board shall conduct an adjudicative proceeding conducted in accordance with the Mississippi Administrative Procedure Law of 1999. \* \* \*

(2) Any employee aggrieved by a final decision of the employee appeals board shall be entitled to judicial review 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

employment as defined in Section 25-11-5 and are performed in the employ of the political subdivision or instrumentality, by any employees thereof, shall be covered by the plan; except that it may exclude services performed by individuals to whom Section 218(C)(3)(c) of the Social Security Act is applicable;

(c) It specifies the source or sources from which the funds necessary to make the payments required by paragraph (a) of subsection (3) and by subsection (4) are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose;

(d) It provides for such methods of administration of the plan by the political subdivision or instrumentality as are found by the board to be necessary for the proper and efficient administration thereof;

(e) It provides that the political subdivision or instrumentality will make such reports, in such form and containing such information, as the board may from time to time require, and comply with such provisions as the board or the secretary of health and human services may from time to time find necessary to assure the correctness and verification of such reports; and

(f) It authorizes the board to terminate the plan in its entirety in the discretion of the board if it finds that there has been a failure to comply substantially with any provision contained in such plan, such determination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the board and as may be consistent with applicable federal law.

(2) The board shall not finally refuse to approve a plan submitted under subsection (1) and shall not terminate an approved plan, without reasonable notice and opportunity for hearing to each political subdivision or instrumentality affected thereby. The board's decision in any such case shall be final, 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

rate determined by the board of trustees. Members reentering after withdrawal from service shall qualify for prior service under the provisions of Section 25-11-117. From and after July 1, 1998, upon eligibility as noted above, the member may receive credit for such retroactive service provided:

(1) The member shall furnish proof satisfactory to the board of trustees of certification of such service from the covered employer where the services were performed; and

(2) The member shall pay to the retirement system on the date he or she is eligible for such credit or at any time thereafter prior to the date of retirement the actuarial cost for each year of such creditable service. The provisions of this subparagraph (2) shall be subject to the limitations of Section 415 of the Internal Revenue Code and regulations promulgated thereunder.

Nothing contained in this paragraph (b) shall be construed to limit the authority of the board to allow the correction of reporting errors or omissions based on the payment of the employee and employer contributions plus applicable interest.

(c) All persons who shall become employees in the state service after January 31, 1953, and who are eligible for membership in any other retirement system shall become members of this retirement system as a condition of their employment unless they elect at the time of their employment to become a member of such other system.

(d) All persons who are employees in the state service on January 31, 1953, and who are members of any nonfunded retirement system operated by the State of Mississippi, or any of its departments or agencies, shall become members of this system with prior service credit unless, before February 1, 1953, they shall file a written notice with the board of trustees that they do not elect to become members.

(e) All persons who are employees in the state service on January 31, 1953, and who under existing laws are members of



any fund operated for the retirement of employees by the State of Mississippi, or any of its departments or agencies, shall not be entitled to membership in this retirement system unless, before February 1, 1953, any such person shall indicate by a notice filed with the board, on a form prescribed by the board, his individual election and choice to participate in this system, but no such person shall receive prior service credit unless he becomes a member on or before February 1, 1953.

(f) Each political subdivision of the state and each instrumentality of the state or a political subdivision, or both, is hereby authorized to submit, for approval by the board of trustees, a plan for extending the benefits of this article to employees of any such political subdivision or instrumentality. Each such plan or any amendment to the plan for extending benefits thereof shall be approved by the board of trustees if it finds that such plan, or such plan as amended, is in conformity with such requirements as are provided in Articles 1 and 3; however, upon approval of such plan or any such plan heretofore approved by the board of trustees, the approved plan shall not be subject to cancellation or termination by the political subdivision or instrumentality. No such plan shall be approved unless:

(1) It provides that all services which constitute employment as defined in Section 25-11-5 and are performed in the employ of the political subdivision or instrumentality, by any employees thereof, shall be covered by the plan; with the exception of municipal employees who are already covered by existing retirement plans; provided, however, those employees in this class may elect to come under the provisions of this article;

(2) It specifies the source or sources from which the funds necessary to make the payments required by subsection (d) of Section 25-11-123 and of subsections (f)(5)b and c of this 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

board may, in its discretion, make optional with employees in any such classes their individual entrance into this system.

(h) An employee whose membership in this system is contingent on his own election, and who elects not to become a member, may thereafter apply for and be admitted to membership; but no such employee shall receive prior service credit unless he becomes a member prior to July 1, 1953, except as provided in subsection (b).

(i) In the event any member of this system should change his employment to any agency of the state having an actuarially funded retirement system, the board of trustees may authorize the transfer of the member's creditable service and of the present value of the member's employer's accumulation account and of the present value of the member's accumulated membership contributions to such other system, provided the employee agrees to the transfer of his accumulated membership contributions and provided such other system is authorized to receive and agrees to make such transfer.

In the event any member of any other actuarially funded system maintained by an agency of the state changes his employment to an agency covered by this system, the board of trustees may authorize the receipt of the transfer of the member's creditable service and of the present value of the member's employer's accumulation account and of the present value of the member's accumulated membership contributions from such other system, provided the employee agrees to the transfer of his accumulated membership contributions to this system and provided the other system is authorized and agrees to make such transfer.

(j) Wherever herein state employment is referred to, it shall include joint employment by state and federal agencies of all kinds.

(k) Employees of a political subdivision or instrumentality who were employed by such political subdivision or instrumentality prior to an agreement between such entity and

the Public Employees' Retirement System to extend the benefits of this article to its employees, and which agreement provides for the establishment of retroactive service credit, and who have been members of the retirement system and have remained contributors to the retirement system for four (4) years, may receive credit for such retroactive service with such political subdivision or instrumentality, provided the employee and/or employer, as provided under the terms of the modification of the joinder agreement in allowing such coverage, pay into the retirement system the employer's and employee's contributions on wages paid the member during such previous employment, together with interest or actuarial cost as determined by the board covering the period from the date the service was rendered until the payment for the credit for such service was made. Such wages shall be verified by the Social Security Administration or employer payroll records. Effective July 1, 1998, upon eligibility as noted above, a member may receive credit for such retroactive service with such political subdivision or instrumentality provided;

(1) The member shall furnish proof satisfactory to the board of trustees of certification of such services from the political subdivision or instrumentality where the services were rendered or verification by the Social Security Administration; and

(2) The member shall pay to the retirement system on the date he or she is eligible for such credit or at any time thereafter prior to the date of retirement the actuarial cost for each year of such creditable service. The provisions of this subparagraph (2) shall be subject to the limitations of Section 415 of the Internal Revenue Code and regulations promulgated thereunder.

Nothing contained in this paragraph (k) shall be construed to limit the authority of the board to allow the correction of 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

withdrawing from active service with a retirement allowance, or  
by a member's death.

SECTION 109. Section 25-11-120, Mississippi Code of 1972,  
is amended as follows:

25-11-120. (1) Any individual aggrieved by an  
administrative determination, including a determination of the  
medical board, relating to the eligibility for or payment of  
benefits, or the calculation of creditable service or other  
similar matters relating to the Public Employees' Retirement  
System or any other retirement system or program administered by  
the board, may request a hearing before a hearing officer  
designated by the board. Such hearings shall be conducted as  
adjudicative proceedings in accordance with the Mississippi  
Administrative Procedure Law of 1999 and the rules and  
regulations adopted by the board and normal rules of evidence  
shall not apply. \* \* \*

(2) Any individual aggrieved by the determination of the  
board shall have a right to judicial review in accordance with  
the Mississippi Administrative Procedure Law of 1999 \* \* \* and  
this procedure shall be the exclusive method of appealing  
determinations of the board.

(3) The board is authorized to appoint a committee of the  
board to serve as hearing officer or to employ or contract with  
qualified personnel to perform the duties of hearing officer and  
court reporter as may be necessary for conducting, recording and  
transcribing such proceedings and shall record and preserve all  
proceedings in accordance with the Mississippi Administrative  
Procedure Law of 1999. The board may assess and collect fees to  
offset costs related to such hearings. Said fees shall be  
deposited to the credit of the Public Employees' Retirement  
System.

SECTION 110. Section 25-53-111, Mississippi Code of 1972,  
is amended as follows:

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



or contract for lease of telecommunications systems or services including telecommunication proposals, studies and consultation contracts and intra-LATA and inter-LATA transmission channels.

(h) To establish and define telecommunications systems and services specifications and designs so as to assure compatibility of telecommunications systems and services within State Government and governing authorities.

(i) To provide a continuous, comprehensive analysis and inventory of telecommunications costs, facilities and systems within State Government.

(j) To promote, coordinate or assist in the design and engineering of emergency telecommunications systems, including but not limited to "911" service, emergency medical services and other emergency telecommunications services.

(k) To advise and provide consultation to agencies and governing authorities with respect to telecommunications management planning and related matters and to provide training to users within State Government in telecommunications technology and system use.

(l) To develop policies, procedures and long-range plans, consistent with the protection of citizens' rights to privacy and access to information, for the acquisition and use of telecommunications systems, and to base such policies on current information about state telecommunications activities in relation to the full range of emerging technologies.

A state agency requesting an increase in expenditure of funds for new telecommunications equipment systems or services shall submit to the Legislative Budget Office with its budget request preceding the fiscal year for which funding is requested detailed justification for such request. The justification shall be provided on forms developed by the bureau in accordance with the Mississippi Administrative Procedure Law of 1999. In addition, all state agencies shall submit to the bureau, when 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

determine are necessary, expedient or incidental to the performance of its duties or the execution of its powers under this chapter.

(b) The department shall adopt such rules and regulations deemed necessary to carry out its duties and responsibilities under this chapter, which rules shall be binding on all agencies and the persons affected thereby. The department shall publish said rules and regulations in accordance with the provisions of the Mississippi Administrative Procedure Law of 1999.

(c) Conduct a records management program including a records center and subject to the availability of staff and funds, conduct a centralized microfilming program for the benefit of all state agencies; and provide advice, assistance and training to all state agencies in matters pertaining to the economical and efficient management of public records.

(d) Cooperate with and assist, insofar as possible, state institutions, departments, agencies, counties, municipalities and individuals engaged in the field of state archives, manuscripts and history.

(e) Establish safeguards against unauthorized or unlawful removal or loss of records.

(f) Initiate appropriate action to recover records removed unlawfully or without authorization.

(g) Establish and maintain a program in cooperation with each agency for the selection and preservation of vital records considered essential to the operation of government and to the protection of the rights and privileges of citizens; make or have made preservation duplicates, or designate existing copies as preservation duplicates to be preserved in a place of safekeeping as prescribed by the department.

(h) Promulgate rules and regulations permitting the storage, use and dissemination of records which are transferred 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,

for a hearing and correction of the decision of the said board, in which petition he shall set forth the reasons such hearing should be granted and the relief which he is seeking. The commission shall conduct an adjudicative proceeding in accordance with the Mississippi Administrative Procedure Law of 1999. After the hearing, the State Tax Commission may make such order in the matter as may appear to it just and lawful and shall furnish a copy of the order to the petitioner.

\* \* \*

Any person aggrieved by the final order of the commission may of right have judicial review in accordance with the Mississippi Administrative Procedure Law of 1999.

SECTION 115. Section 27-7-73, Mississippi Code of 1972, is amended as follows:

27-7-73. The findings of the State Tax Commission shall be final subject to judicial review in accordance with the Mississippi Administrative Procedure Law of 1999. The party perfecting judicial review shall file a bond, to be approved by the clerk of said court, in a sum double the amount in controversy, conditioned to pay the judgment of the court. \* \* \*

SECTION 116. Section 27-7-315, Mississippi Code of 1972, is amended as follows:

27-7-315. If any overpayment of any tax, interest or penalty levied or provided for by Article 1 of this chapter, or in this article, is not refunded to the taxpayer as provided in Section 27-7-313 within six (6) months after the final date for filing returns as prescribed by law, the taxpayer may file a petition with the commissioner for a hearing on the claim for refund. Within ten (10) days after the receipt of such petition, the commissioner shall either (1) make refund as requested in the return filed by the taxpayer of the amount claimed by the taxpayer; or (2) set a time and place for such hearing and give notice thereof to the petitioner by registered or certified mail with return receipt requested. The date set for such hearing

shall be not less than ten (10) days, nor more than thirty (30) days after notice thereof is given to the petitioner. If, after such hearing, the commissioner shall determine that the petitioner is entitled to a refund as claimed in the return, he shall refund to the petitioner the amount determined to be due. If, after such hearing, the commissioner determines that the petitioner is not entitled to a refund for overpayment, he shall so notify the petitioner by registered mail or by certified mail with return receipt requested.

If the petitioner is aggrieved by the decision of the commissioner, he may appeal from the commissioner's decision for a rehearing before the State Tax Commission. Such appeal for a rehearing shall be made within thirty (30) days from the date of notice by the commissioner, and the commission shall conduct an adjudicative proceeding in accordance with the Mississippi Administrative Procedure Law of 1999. If the petitioner feels further aggrieved by the decision of the commission, he may secure judicial review thereof in accordance with the Mississippi Administrative Procedure Law of 1999.

If any overpayment of tax as reflected on a return or amended return filed, and verified by the commissioner or determined to be due by the commissioner or commission when no overpayment is shown on a return or amended return, is not refunded within ninety (90) days after the prescribed due date of the return, the date the return is filed, or the date the commissioner or commission determines a refund as being due when no overpayment is shown on a return or amended return, whichever is later, interest at the rate of one percent (1%) per month shall be allowed on such overpayment computed for the period after expiration of the ninety-day period provided herein to the date of payment.

SECTION 117. Section 27-7-515, Mississippi Code of 1972, is amended as follows:

27-7-515. (1) The commission is authorized to prescribe

forms and adopt rules and regulations which it deems necessary to effectuate the intent and provisions of this article. All such rules and regulations shall be adopted in accordance with the Mississippi Administrative Procedure Law of 1999.

(2) The commission may enter into reciprocal agreements with the departments of revenue of other states that have enacted legislation that is substantially equivalent to the setoff procedure in this article. The agreement shall authorize the commission to provide by rule for the setoff of state income tax refunds or rebates of defaulters from states with which Mississippi has a reciprocal agreement and to provide for sending lists of names of Mississippi defaulters to the states with which Mississippi has a reciprocal agreement for setoff of that state's income tax refunds.

SECTION 118. Section 27-9-47, Mississippi Code of 1972, is amended as follows:

27-9-47. The executor may in writing apply to the commissioner for revision of the tax assessed against the estate at any time within one year from the date of the filing of the return or from the date of notice of the assessment of an additional tax. The commissioner shall grant a hearing thereon and if, upon such hearing, he shall determine that the tax is excessive or incorrect, he shall resettle the same according to the law and the facts and adjust the computation of the tax accordingly. The commissioner shall notify the executor in writing of his determination and shall refund to the executor the amount, if any, paid in excess of the tax found by him to be due.

If the executor has failed without good cause to file a return within the time prescribed by law or has filed a fraudulent return or having filed an incorrect return has failed after notice to file a proper return, the commissioner shall not reduce the tax below the amount for which the executor has been found to be properly assessed.

If the executor is dissatisfied with the decision of the



commissioner he may apply in writing to the entire commission for a hearing, and the commission shall conduct an adjudicative proceeding in accordance with the Mississippi Administrative Procedure Law of 1999.

If the executor be dissatisfied with the decision of the commission he shall have the right of judicial review in accordance with the Mississippi Administrative Procedure Law of 1999. After perfecting judicial review, the executor shall file a bond with the clerk of the court in the amount of the tax assessed, including additional tax, interest and penalties, if any, and the estimated court costs, said bond to be made by a bonding company qualified to write bonds within the State of Mississippi, conditioned that any tax found due by the \* \* \* court will be promptly paid. \* \* \*

\* \* \*

SECTION 119. Section 27-13-45, Mississippi Code of 1972, is amended as follows:

27-13-45. The findings of the State Tax Commission shall be final subject to judicial review in accordance with the Mississippi Administrative Procedure Law of 1999. The party perfecting judicial review shall file a bond, to be approved by the clerk of said court, in a sum double the amount in controversy, conditioned to pay the judgment of the court. \* \* \*

SECTION 120. Section 27-19-337, Mississippi Code of 1972, is amended as follows:

27-19-337. Any person aggrieved by an assessment for license taxes, license tag or permit fees made upon him by the commission, or by any other order or act of the commission in the administration of this chapter may, where no specific remedy is prescribed, apply to the board of review by petition in writing for a hearing and a correction of the assessment or other order or act appealed from. For any assessment of license taxes, tag or permit fee and/or penalty and interest for which payment is 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,

in addition to its general duties of administration of the article, do the specific things set out in this section:

(a) It shall adopt and issue to tax assessors, clerks, boards of supervisors, and all other officers or offices to which this article applies, rules and regulations in accordance with the Mississippi Administrative Procedure Law of 1999, not inconsistent with the provisions of the article, affecting the applications and all proceedings, records, hearings and other pertinent subjects, relating to property for which a homestead exemption is claimed; and such rules and regulations shall be observed by such officers, boards and offices, in all respects, and in the performance of any and all duties imposed and powers granted by this article.

(b) It shall prescribe the form of and furnish suitable application forms, or blanks, for the purpose of carrying out the provisions of this article, and shall deliver to each assessor a sufficient number of such blanks for the use of homeowners.

(c) It shall have authority and it shall be its duty to examine all applications for homestead exemption allowed under this article, to determine if the provisions of the article have been complied with by the applicant, the tax assessor, the board of supervisors, the clerk, and all others, and if the exemptions have been lawfully allowed; and it shall reject for reimbursement of tax loss any exemption allowed by the board which does not conform to the requirements of law in every substantial particular or for which no application has been sent to the commission as required in Section 27-33-35(a), and shall correct or have corrected any errors; and the tax loss to be reimbursed shall be adjusted to accord with the findings of the commission.

When an application is rejected, notice thereof shall be given as provided by this section, and the acceptance or objection by the board shall be determined as provided by Section 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 at 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           (1) 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

year, pay the second installment, or a part thereof, to any school taxing unit upon submission to the commission of proof, in the form of a certificate of necessity, executed by the county superintendent of education for the county general school fund, or for a county school district fund, and by the city superintendent of schools for a municipal separate school district, that there is not sufficient money in the maintenance fund of the taxing unit to pay the salaries of teachers and school bus drivers for the current school term. Such payment shall be made as provided in subsection (h) of this section.

(n) The county tax collectors shall enter, or cause to be entered, all transactions regarding the titling or registration of vehicles into the statewide telecommunications system in compliance with the provisions of Section 63-21-18. Failure of any tax collector to comply with the provisions of this paragraph shall subject the county to the withholding of reimbursements of homestead exemption tax loss as provided under Section 63-21-18.

SECTION 122. Section 27-35-163, Mississippi Code of 1972, is amended as follows:

27-35-163. After an adjudicative proceeding conducted in accordance with the Mississippi Administrative procedure Law of 1999, any person, firm or corporation aggrieved by an order of the State Tax Commission assessing property for the purpose of ad valorem taxation may, within twenty (20) days after the adjournment of the meeting at which such assessment is made final, of right secure judicial review in accordance with the Mississippi Administrative Procedure law of 1999. Any person may have judicial review with supersedeas as to the amount of taxes in controversy \* \* \* upon giving bond with sufficient sureties, to be approved by the clerk of such court, in a sum equal to the amount of taxes due on the contested value of such property as assessed by the tax commission, but never less than One Hundred Dollars (\$100.00), payable to the state and conditioned to

perform the judgment of the circuit court. The ad valorem taxes due on the uncontested portion of the value as set by the State Tax Commission shall be due and payable at the same time as all other ad valorem taxes are for real and personal property. \* \* \*

If the order of the State Tax Commission assessing said property be affirmed, then the person, firm or corporation who sought judicial review, and the sureties on the \* \* \* bond, shall be liable to the state for damages at the rate of ten percent (10%) on the amount of taxes in controversy, and all cost of such judicial review.

If the state shall be aggrieved by an order of the State Tax Commission as to the assessment of such property for ad valorem taxes, the Attorney General or the district attorney, if all the property sought to be taxed is located within the judicial district for which such district attorney is elected, may, within twenty (20) days after the adjournment of the meeting at which such assessment is made final, of right, secure judicial review thereof in accordance with the Mississippi Administrative Procedure Law of 1999, except no bonds shall be required of the Attorney General or district attorney who may appeal. \* \* \*

\* \* \*

In the event the proceeding for judicial review by the taxpayer delays the collection of the tax due by him, then such taxpayer shall be liable for and shall pay, at the time the taxes are paid to the tax collector whose duty it is to collect the taxes, interest at the rate of twelve percent (12%) per annum from the date the taxes were due until paid.

SECTION 123. Section 27-55-41, Mississippi Code of 1972, is amended as follows:

27-55-41. Any person aggrieved by an assessment for taxes made upon him by the commission, or by any other order or act of the commission in the administration of this article may, where no specific remedy is specified, apply to the board of review by petition in writing within thirty (30) days after notice is



mailed to him for a hearing and a correction of the amount of tax assessed against him or other order or act appealed from. At said hearing, the board of review shall try the issues presented, according to the law, the facts and within the guidelines established by the commissioner, and shall notify the person so appealing of its determination, and if the board of review orders the payment of any taxes, the taxpayer shall pay the taxes, damages and interest, if any, within thirty (30) days after the order is issued, provided there is no application for appeal to the State Tax Commission.

If any person feels aggrieved by the decision of the board of review, he may apply to the commission by petition, in writing, within thirty (30) days after notice is mailed to him, for a hearing and correction of the decision of the said board, in which petition he shall set forth the reasons such hearing should be granted and the relief which he is seeking. The commission shall conduct an adjudicative proceeding in accordance with the Mississippi Administrative procedure Law of 1999. If the commission orders the payment of any taxes, the taxpayer shall pay the tax, damages and interest, if any, within thirty (30) days after the order is issued. Interest shall accrue on the delinquent tax at the rate of one percent (1%) per month or part of a month from and after the expiration of the thirty-day period if not paid by that time.

Any person aggrieved by the final order of the commission, including any person charged with any tax imposed by this article and required to pay same, may of right secure judicial review thereof in accordance with the Mississippi Administrative Procedure Law of 1999.

SECTION 124. Section 27-55-339, Mississippi Code of 1972, is amended as follows:

27-55-339. Any person aggrieved by any order or act of the commission in the administration of this article may have 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

certify to the clerk of the board of supervisors, the secretary of the drainage district board, or the secretary of the levee board, as the case may be, the amount, if any, found to be due to the claimant by the county, drainage district or levee district.

Upon receipt of such certificate, the board of supervisors, or the commissioners of the drainage district or of the levee district, shall cause a warrant to be issued on the treasurer of the county or drainage or levee district, as the case may be, in favor of the claimant for the amount erroneously paid into their respective treasuries.

If the Attorney General shall disapprove the claim, he shall return it to the Auditor of Public Accounts accompanied by his opinion which shall show the reason for his disapproval, whereupon the auditor shall promptly notify the claimant of such disapproval. A claimant taxpayer being aggrieved at such disapproval may of right secure judicial review thereof in accordance with the Mississippi Administrative Procedure Law of 1999. The claimant taxpayer perfecting judicial review shall file a bond in the sum of Five Hundred Dollars (\$500.00) conditioned to pay all costs which may accrue in such case, which bond shall be approved by the clerk of the said court. Upon the approval of the bond, the \* \* \* clerk of the court shall give the Attorney General and the Auditor of Public Accounts notice, as required by law, of the filing of the petition. It shall be the duty of the said auditor to promptly transmit to the court in which said appeal is pending a certified copy of the entire record of the claim as shown by the files in his office, which record shall be docketed by the clerk in the cause \* \* \*. It shall be the duty of the Attorney General to defend on behalf of the state, and he may request the district attorney, county attorney or attorney for the drainage or levee district, as the case may be, to defend on behalf of the county, drainage or levee district. If the claimant taxpayer shall prevail, judgment shall 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

levied by the commission after it has conducted an adjudicative proceeding in accordance with the Mississippi Administrative Procedure Law of 1999. Each day upon which a violation occurs shall be deemed a separate and additional violation. Any person against whom a penalty may be assessed may, of right, secure judicial review thereof in accordance with the Mississippi Administrative Procedure Law of 1999. If the person perfecting judicial review desires to stay the execution of a civil penalty assessed by the commission, he shall give bond with sufficient resident sureties of one or more guaranty or surety companies authorized to do business in this state, payable to the State of Mississippi, in an amount equal to double the amount of any civil penalty assessed by the commission, as to which the stay of execution is desired, on the condition that if the judgment shall be affirmed the appellant shall pay all costs of the assessment entered against him.

(2) In lieu of, or in addition to, the penalty provided in subsection (1) of this section, the commission shall have power to institute and maintain in the name of the state any and all proceedings necessary or appropriate to enforce the provisions of Section 29-7-3, rules and regulations promulgated, and orders and permits made and issued thereunder, in the \* \* \* chancery \* \* \* court of the county in which venue may lie. The commission may obtain mandatory or prohibitory injunctive relief, either temporary or permanent, and it shall not be necessary in such cases that the state plead or prove: (i) that irreparable damage would result if the injunction did not issue; (ii) that there is no adequate remedy at law; or (iii) that a written complaint or commission order has first been issued for the alleged violation.

(3) Any person who violates any of the provisions of, or fails to perform any duty imposed by, Section 29-7-3 or any rule or regulation issued hereunder, or who violates any order or determination of the commission promulgated pursuant to such 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

prescribed hereinabove shall be conducted in the manner provided  
for adjudicative proceeding in the Mississippi Administrative  
Procedure Law of 1999. Judicial review thereof shall be in  
accordance with the Mississippi Administrative Procedure Law of  
1999.

SECTION 135. Section 31-3-13, Mississippi Code of 1972, is  
amended as follows:

31-3-13. The board shall have the following powers and  
responsibilities:

(a) To receive applications for certificates of  
responsibility, to investigate and examine applicants for same by  
holding hearings and securing information, to conduct  
examinations, and to issue certificates of responsibility to such  
contractors as the board finds to be responsible. One-fourth  
(1/4) of the certificates scheduled for renewal on the last day  
of December 1980, shall be reviewed by the board on the first  
Tuesday in January 1981. The remaining certificates shall be  
subject to renewal in the following manner: One-fourth (1/4) on  
the first Tuesday in April 1981; one-fourth (1/4) on the first  
Tuesday in July 1981; and one-fourth (1/4) on the first Tuesday  
in October 1981. The board is authorized to extend the dates of  
expiration of certificates to coincide with the scheduled date of  
review of individual contractors. Except for the certificates  
extended from December 31, 1980, to the first Tuesday in January  
1981, the board shall charge fees for the extension of  
certificates as follows:

(i) Twenty-five Dollars (\$25.00) if the date of  
renewal of the extended certificate is the first Tuesday in April  
1981;

(ii) Fifty Dollars (\$50.00) if the date of  
renewal of the extended certificate is the first Tuesday in July  
1981; and

(iii) Seventy-five Dollars (\$75.00) if the date  
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



law of the state, and (11) the results of objective, standardized examinations. Upon denial by the board of an original certificate of responsibility or any renewal thereof, the applicant shall upon his request have a right to an adjudicative proceeding thereon in accordance with the Mississippi Administrative Procedure Law of 1999. A record shall be made and preserved by the board of each examination of an applicant and the findings of the board thereon, and a certified copy of the record and findings shall be furnished to any applicant desiring to appeal from any order or decision of the board.

(h) The board shall enter upon its minutes an order or decision upon each application filed with it, and it may state in such order or decision the reason or reasons for its order or decision.

(i) The applicant shall have the right to judicial review thereof in accordance with the Mississippi Administrative Procedure Law of 1999.

The holder of any valid certificate of responsibility issued by the Board of Public Contractors prior to January 1, 1986, shall be automatically issued a certificate of responsibility by the State Board of Contractors for the same classification or classifications of work which the holder was entitled to perform under the State Board of Public Contractors Act.

SECTION 136. Section 31-3-23, Mississippi Code of 1972, is amended as follows:

31-3-23. Any person aggrieved by any order or decision of the board may of right secure judicial review thereof in accordance with the Mississippi Administrative Procedure Law of 1999. If the judgment be reversed, the \* \* \* court \* \* \* shall render such order or judgment as the board ought to have rendered, and certify the same to the board; and costs shall be awarded as in other cases. The board may employ counsel to defend such judicial review, to be paid out of the funds in the 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

officer instituting this injury. The accused may also employ civilian counsel of his own choosing at his own expense. He has the right of appeal to the next higher commander.

SECTION 138. Section 33-15-31, Mississippi Code of 1972, is amended as follows:

33-15-31. (a) The governing bodies of the political subdivisions of the state and other agencies designated or appointed by the Governor are authorized and empowered to make, amend, and rescind such orders, rules, and regulations as may be necessary for emergency management purposes and to supplement the carrying out of the provisions of this article, but not inconsistent with any orders, rules and regulations promulgated by the Governor or by any state agency exercising a power delegated to it by him.

(b) All orders, rules, and regulations promulgated by the Governor, the Mississippi Emergency Management Agency or by any political subdivision or other agency authorized by this article to make orders, rules and regulations, shall have the full force and effect of law, when, in the event of issuance by the Governor, or any state agency, a copy thereof is filed in the office of the Secretary of State, or, if promulgated by a political subdivision of the state or agency thereof, when filed in the office of the clerk of the political subdivision or agency promulgating the same. All such rules and regulations may be made in accordance with the Mississippi Administrative Procedure Law of 1999. All existing laws, ordinances, rules and regulations inconsistent with the provisions of this article, or of any order, rule, or regulation issued under the authority of this article, shall be suspended during the period of time and to the extent that such conflict, disaster or emergency exists.

(c) In order to attain uniformity so far as practicable throughout the country in measures taken to aid emergency management, all action taken under this article and all orders, 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



appointed for a term of two (2) years; and five (5) members shall be appointed for a term of three (3) years. Thereafter, all members shall be appointed for a term of four (4) years.

(3) The State Board of Education when making appointments shall designate a chairman. The commission shall meet at least once every two (2) months or more often if needed. Members of the commission shall be compensated at a rate of per diem as authorized by Section 25-3-69 and be reimbursed for actual and necessary expenses as authorized by Section 25-3-41.

(4) An appropriate staff member of the State Department of Education shall be designated and assigned by the State Superintendent of Public Education to serve as executive secretary and coordinator for the commission. No less than two (2) other appropriate staff members of the State Department of Education shall be designated and assigned by the State Superintendent of Public Education to serve on the staff of the commission.

(5) It shall be the duty of the commission to:

(a) Set standards and criteria, subject to the approval of the State Board of Education, for all educator preparation programs in the state;

(b) Recommend to the State Board of Education each year approval or disapproval of each educator preparation program in the state;

(c) Establish, subject to the approval of the State Board of Education, standards for initial teacher certification and licensure in all fields;

(d) Establish, subject to the approval of the State Board of Education, standards for the renewal of teacher licenses in all fields;

(e) Review and evaluate objective measures of teacher performance, such as test scores, which may form part of the licensure process, and to make recommendations for their use;

(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;

4. Include other such formats as may best describe the profile of the student examination results; and

(iv) Any other document required by the State Board of Education.

(b) **Standard License—Alternate Teaching Route.**

Applicants for a standard license-alternate teaching route shall submit to the department:

(i) An application on a department form;

(ii) An official transcript evidencing a bachelors degree from an accredited institution of higher learning;

(iii) A copy of test scores evidencing satisfactory completion of an examination of achievement specified by the commission and approved by the State Board of Education;

(iv) An official transcript evidencing appropriate credit hours or a copy of test scores evidencing successful completion of tests as required by the State Board of Education; and

(v) Any other document required by the State Board of Education.

A Standard License-Approved Program Route and a Standard License-Alternate Teaching Route shall be issued for a five-year period, and may be renewed. Recognizing teaching as a profession, a hiring preference shall be granted to persons holding a Standard License-Approved Program Route or Standard License-Alternate Teaching Route over persons holding any other license.

(c) **Special License—Expert Citizen.** In order to allow a school district to offer specialized or technical courses, the State Department of Education, in accordance with rules and regulations established by the State Board of Education, may grant a one-year expert citizen-teacher license to local business 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.

(b) Any offense committed or attempted in any other state shall result in the same penalty as if committed or attempted in this state.

(c) A person may voluntarily surrender a license. The surrender of such license may result in the commission recommending any of the above penalties without the necessity of a hearing. However, any such license which has voluntarily been surrendered by a licensed employee may be reinstated by a unanimous vote of all members of the commission.

(14) A person whose license has been suspended on any grounds except criminal grounds may petition for reinstatement of the license after one (1) year from the date of suspension, or after one-half (1/2) of the suspended time has lapsed, whichever is greater. A license suspended on the criminal grounds may be reinstated upon petition to the commission filed after expiration of the sentence and parole or probationary period imposed upon conviction. A revoked license may be reinstated upon satisfactory showing of evidence of rehabilitation. The commission shall require all who petition for reinstatement to furnish evidence satisfactory to the commission of good character, good mental, emotional and physical health and such other evidence as the commission may deem necessary to establish the petitioner's rehabilitation and fitness to perform the duties authorized by the license.

(15) Reporting procedures and hearing procedures for dealing with infractions under this section shall be promulgated by the commission, subject to the approval of the State Board of Education. The revocation or suspension of a license shall be effected at the time indicated on the notice of suspension or revocation. The commission shall immediately notify the superintendent of the school district or school board where the teacher or administrator is employed of any disciplinary action and also notify the teacher or administrator of such revocation or suspension and shall maintain records of action taken. The

State Board of Education may reverse or remand with instructions any decision of the commission regarding a petition for reinstatement of a license, and any such decision of the State Board of Education shall be final.

(16) Any action of the State Board of Education in denying an application, revoking or suspending a license or otherwise disciplining any person under the provisions of this section, shall be subject to judicial review as provided in the Mississippi Administrative Procedure Law of 1999. The party perfecting judicial review shall prepay all costs, including the cost of preparation of the record of the proceedings by the State Board of Education, and file a bond in the sum of Two Hundred Dollars (\$200.00) conditioned that if the action of the board be affirmed by the \* \* \* court, the applicant or license holder shall pay the costs of the judicial review.

(17) All such programs, rules, regulations, standards and criteria recommended or authorized by the commission shall become effective upon approval by the State Board of Education as designated by appropriate orders entered upon the minutes thereof and upon compliance with the Mississippi Administrative Procedure Law of 1999.

(18) The granting of a license shall not be deemed a property right nor a guarantee of employment in any public school district. A license is a privilege indicating minimal eligibility for teaching in the public schools of Mississippi. This section shall in no way alter or abridge the authority of local school districts to require greater qualifications or standards of performance as a prerequisite of initial or continued employment in such districts.

(19) In addition to the reasons specified in subsection (8) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order

for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. Actions taken by the board in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SECTION 142. Section 37-17-5, Mississippi Code of 1972, is amended as follows:

37-17-5. It shall be the purpose of the Commission on School Accreditation to continually review the standards on accreditation and the enforcement thereof and to make recommendations thereon to the State Board of Education. All controversies involving the accreditation of schools shall be initially heard by a duly authorized representative of the commission as an adjudicative hearing in accordance with the Mississippi Administrative Procedure Law of 1999. After the conclusion of the proceeding, the duly authorized representative of the commission shall make a recommendation to the commission as to the resolution of the controversies, and the commission, after considering the \* \* \* record and the recommendation of its representative, shall make its decision which becomes final unless the local school board of the school district involved shall appeal to the State Board of Education, which appeal shall be on the record previously made before the commission's 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

guardian of, or the person standing in loco parentis to, the applicant or to the public school district secure judicial review in accordance with the Mississippi Administrative Procedure Law of 1999.

SECTION 144. Section 37-33-263, Mississippi Code of 1972, is amended as follows:

37-33-263. (1) The State Board of Health shall establish in the State Department of Health a program to:

(a) Identify and investigate spinal cord and traumatic brain injuries; and

(b) Maintain a central registry for cases of spinal cord and traumatic brain injuries.

(2) The State Department of Health shall design the registry program so that it will:

(a) Provide information in a central data bank of accurate, precise and current information on spinal cord and traumatic brain injuries;

(b) Provide for the collection of such data to identify risk factors and causes of spinal cord and traumatic brain injuries;

(c) Provide information for early identification of spinal cord and traumatic brain injuries:

(d) Provide for the dissemination of such data for the purposes of care and support for persons with spinal cord and traumatic brain injuries;

(e) Provide for the analysis of such data for the purpose of prevention.

(3) The State Board of Health shall adopt rules, regulations and procedures to govern the operation of the registry program and to carry out the intent of this section.

(4) The State Board of Health in its rules and regulations shall specify the types of information to be provided to the spinal cord and traumatic brain injuries registry and the persons 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



chairman made at any time, is hereby empowered to issue under the seal of the commission and in its name, subpoenas in accordance with the Mississippi Administrative Procedure Law of 1999.

SECTION 147. Section 37-45-33, Mississippi Code of 1972, is amended as follows:

37-45-33. In case of the failure or refusal on the part of any person to comply with any subpoena issued as authorized in Section 37-45-31, or in case of the refusal of any witness to testify or answer to any matter regarding which he may be lawfully interrogated, the compliance of that person may be secured in accordance with the Mississippi Administrative Procedure Law of 1999.

SECTION 148. Section 37-45-37, Mississippi Code of 1972, is amended as follows:

37-45-37. At any hearing held by the commission under the provisions of Chapter 47 of this title, or under any other statute, the proceedings shall be recorded and preserved in accordance with the Mississippi Administrative Procedure Law of 1999, at the expense of any county board of education or board of trustees of any municipal separate school district involved, jointly or severally \* \* \*. The proceedings shall be recorded and preserved under the supervision of said commission, or the secretary thereof \* \* \*.

\* \* \*

SECTION 149. Section 37-45-41, Mississippi Code of 1972, is amended as follows:

37-45-41. In the event of judicial review, the transcript and record of proceeding before the commission shall be prepared in accordance with the Mississippi Administrative Procedure Law of 1999.

SECTION 150. Section 37-45-47, Mississippi Code of 1972, is amended as follows:

37-45-47. All costs taxed by the commission in any hearing 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

adopted under the provisions of this chapter shall have the right of judicial review in accordance with the Mississippi Administrative Procedure Law of 1999.

SECTION 156. Section 37-151-61, Mississippi Code of 1972, is amended as follows:

37-151-61. Any school board of any school district which may be aggrieved by any final rule, regulation or order of the State Board of Education adopted under the provisions of this chapter shall have the right to judicial review in accordance with the Mississippi Administrative Procedure Law of 1999.

SECTION 157. Section 41-4-7, Mississippi Code of 1972, is amended as follows:

41-4-7. The State Board of Mental Health shall have the following powers and duties:

(a) To appoint a full-time executive director of the Department of Mental Health, who shall be employed by the board and shall serve as executive secretary to the board. The first director shall be a duly licensed physician with special interest and competence in psychiatry, and shall possess a minimum of three (3) years' experience in clinical and administrative psychiatry. Subsequent directors shall possess at least a master's degree or its equivalent, and shall possess at least ten (10) years' administrative experience in the field of mental health. The salary of the executive director shall be determined by the board;

(b) To set up state plans for the purpose of controlling and treating any and all forms of mental and emotional illness, alcoholism, drug misuse and developmental disabilities;

(c) To supervise, coordinate and establish standards for all operations and activities of the state related to mental health and providing mental health services, including but not limited to: The requirement that no person be approved for treatment which is paid for by funds made available through the

department who has not had a treatment plan established as a result of having been seen by a licensed physician or licensed clinical psychologist and that physician or clinical psychologist signing these plans stating that he/she has personally evaluated the client and that the treatment plan is medically necessary. A physician or clinical psychologist shall recertify each client's record at least semiannually (except for persons with a diagnosis of mental retardation/developmental disability which shall be completed annually), and more often if medically indicated by physically visiting the client and certifying same in the record.

The board shall have the authority to develop and implement all standards and plans and shall have the authority to establish appropriate actions, including financially punitive actions, to insure enforcement of these established standards, in accordance with the Mississippi Administrative Procedure Law of 1999.

(Section 25-43-1.101 et seq.);

(d) To enter into contracts with any other state or federal agency, or with any private person, organization or group capable of contracting, if it finds such action to be in the public interest;

(e) To collect reasonable fees for its services; provided, however, if it is determined that a person receiving services is unable to pay the total fee, the department shall collect any amount such person is able to pay;

(f) To certify, coordinate and establish minimum standards and establish minimum required services for regional mental health and mental retardation commissions and other community service providers for community or regional programs and services in mental health, mental retardation, alcoholism, drug misuse, developmental disabilities, compulsive gambling, addictive disorders and related programs throughout the state.

Such regional mental health and mental retardation commissions and other community service providers shall submit an annual 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



for such use, and may participate in any plan or agreement with any public or private entity under which the entity will provide all or part of the costs of establishing and operating a holding center in any district;

(n) To certify/license case managers, mental health therapists, mental retardation therapists, mental health/retardation program administrators, addiction counselors and others as deemed appropriate by the board. Persons already professionally licensed by another state board or agency are not required to be certified/licensed under this section by the Department of Mental Health. The department shall not use professional titles in its certification/licensure process for which there is an independent licensing procedure. Such certification/licensure shall be valid only in the state mental health system, in programs funded and/or certified by the Department of Mental Health, and/or in programs certified/licensed by the State Department of Health that are operated by the state mental health system serving the mentally ill, mentally retarded, developmental disabled or persons with addictions, and shall not be transferrable;

(o) To develop formal mental health worker qualifications for regional mental health and mental retardation commissions and other community service providers. The State Personnel Board shall develop and promulgate a recommended salary scale and career ladder for all regional mental health/retardation center therapists and case managers who work directly with clients. The State Personnel Board shall also develop and promulgate a career ladder for all direct care workers employed by the State Department of Mental Health;

(p) The employees of the department shall be governed by personnel merit system rules and regulations, the same as other employees in state services;

(q) To establish such rules and regulations as may be 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

Administrative Procedure Law of 1999 and Section 41-26-6, and where not otherwise prohibited by federal or state law, to make exceptions to and grant exemptions and variances from, and to enforce rules and regulations implementing the powers and duties of the board under this chapter;

(c) To enter into, and to authorize the director to execute contracts, grants and cooperative agreements with, any federal or state agency or subdivision thereof, interstate agency, or any other person in connection with carrying out this chapter; and

(d) To discharge other powers, duties and responsibilities which may be necessary to implement this chapter.

(2) (a) Except as provided in Section 41-26-5(2)(b), regulations adopted under this section shall apply to each public water system in the state.

(b) Regulations shall not apply to a public water system:

(i) Which consists only of distribution and storage facilities, and which does not have any collection and treatment facilities;

(ii) Which obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

(iii) Which does not sell water to any person; and

(iv) Which is not a carrier which conveys passengers in interstate commerce.

(3) The board shall develop and implement a technical assistance program to help existing potentially non-viable community public water systems to become viable and to improve the technical, managerial or financial capabilities of small community public water systems. In developing this program, the 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.

(2) In addition to or in lieu of the penalty provided in subsection (1) of this section, the director may institute and maintain in the name of the state any administrative proceedings in accordance with the Mississippi Administrative Procedure Law of 1999 necessary or appropriate to enforce this chapter, any rule or regulation or written order of the director or any condition or limitation of an approval. The proceedings may be filed and heard in the appropriate circuit, chancery, county or justice court of the county in which venue may lie, or in the Circuit, Chancery or County Court of the First Judicial District of Hinds County, as the case may be. The director may obtain mandatory or prohibitory injunctive relief, either temporary or permanent. In cases of imminent and substantial hazard or endangerment, it shall not be necessary that the state plead or prove: (a) that irreparable damage would result if the injunction did not issue; (b) that there is no adequate remedy at law; or (c) that a written order has first been issued for the alleged violation.

(3) In determining the amount of any penalty under this section, the director shall consider at a minimum:

- (a) The willfulness of the violation;
- (b) Costs of restoration and abatement;
- (c) Economic benefit as a result of noncompliance;
- (d) The seriousness of the violation, including any harm or hazard to the public health and welfare; and
- (e) Past performance history.

(4) (a) The owner of any public water system found in violation of this chapter may submit to the director a plan for:

- (i) The physical consolidation of the system with one or more other viable public water systems;
- (ii) The consolidation of significant management and administrative functions of the system with one or more other viable public water systems or contract or satellite management 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.

SECTION 167. Section 41-29-129, Mississippi Code of 1972,  
is amended as follows:

41-29-129. (1) A registration to manufacture, distribute,  
or dispense a controlled substance may be suspended or revoked by  
the State Board of Pharmacy upon a finding that the registrant:

(a) Has willfully furnished false or fraudulent  
material information in any application filed under this article;

(b) Has been convicted of a felony within the past  
five (5) years and has not been pardoned and his citizenship  
restored under any state or federal law relating to any  
controlled substance;

(c) Has had his federal registration suspended or  
revoked to manufacture, distribute, or dispense controlled  
substances;

(d) Has violated or failed to comply with any duly  
promulgated regulation of the State Board of Pharmacy which  
reflects adversely on the registrant's reliability and integrity  
with respect to controlled substances;

(e) Has violated the Uniform Controlled Substances Law  
of the State of Mississippi;

(f) Has violated any duly promulgated rule or  
regulation of the State Board of Pharmacy pertaining to the  
manufacture, distribution, storage, possession, control or  
dispensing of controlled substances;

(g) Has been convicted of a violation relating to any  
substance defined in this article as a controlled substance.

(2) The State Board of Pharmacy may limit revocation or  
suspension of a registration to the particular controlled  
substance with respect to which grounds for revocation or  
suspension exist.

(3) If the board or the State Board of Pharmacy suspends or  
revokes a registration, all controlled substances owned or  
possessed by the registrant at the time of suspension or the  
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:

41-29-165. Any person being aggrieved by any conviction or order of any board or commission authorized under this article shall have a right to judicial review of said order or conviction in accordance with the Mississippi Administrative Procedure Law of 1999.

SECTION 171. Section 41-35-7, Mississippi Code of 1972, is amended as follows:

41-35-7. It shall be the duty of the State Board of Health: (1) to enforce the provisions of this chapter; (2) to promulgate such rules and regulations as shall, under this chapter, be necessary for the purpose under this chapter, and such as the state board of health may deem necessary for the further and proper guidance of local health officers, etc., in accordance with the Mississippi Administrative Procedure Law of 1999; (3) to provide for the gratuitous distribution of a scientific prophylactic for inflammation of the eyes of the new born, together with proper directions for the use and administration thereof, to all physicians and midwives as may be engaged in the practice of obstetrics or assisting at childbirth; (4) to provide, if necessary, daily inspection and prompt and gratuitous treatment to any infant whose eyes are infected with inflammation of the eyes; the state board of health, if necessary, shall defray the expenses of such treatment from such sums as may be appropriated for its use; (5) to publish and promulgate such further advice and information concerning the dangers of inflammation of the eyes of the new born and the necessity for prompt and effective treatment; (6) to furnish copies of this chapter to all physicians and midwives as may be engaged in the practice of obstetrics or assisting at childbirth; (7) to keep a proper record of any and all such cases of inflammation of the eyes of the new born, as shall be filed in the office of the state board of health, in pursuance with this chapter, and as may come to its attention in any way, and to constitute such record a part of the annual report to the governor and legislature; (8) to

report any and all violations of this chapter as may come to its attention, to the local police, county prosecutor, or district attorney in the county wherein such violation may have been committed, and to assist such official in every way possible, such as securing necessary evidence, etc.

SECTION 172. Section 41-51-25, Mississippi Code of 1972, is amended as follows:

41-51-25. The commissioner shall have power to suspend for any fixed period, or to revoke, the license held by any licensee under this chapter in the event that such licensee shall violate and fail or refuse to obey any of the provisions of this chapter, or of the rules and regulations promulgated by the commissioner, or in the event the State Board of Health shall certify in writing to the commissioner that any particular disposal plant or rendering plant is a menace to the public health, stating the charges specifically and definitely, in which case the hearing hereinafter provided for shall be held within thirty (30) days after such charges of said board are so filed.

Before any license shall be suspended or revoked, the licensee shall be furnished with a written copy of the charges made against him and an adjudicative proceeding shall be had before the commissioner, or his authorized representative, at such time and place as he may fix, in accordance with the Mississippi Administrative Procedure Law of 1999, to determine whether such license shall be suspended or revoked. Such notice may be served upon \* \* \* such licensee in accordance with the Mississippi Administrative Procedure Law of 1999. \* \* \* When an adjudicative proceeding under this section is conducted before a representative of the commissioner, a written report and summary of the evidence at such hearing shall be made by him to the commissioner, with recommendation for action thereon. The commissioner, after such adjudicative proceeding before him, or after considering such report and summary of the evidence by his representative, shall render such decision and make such order as

he may deem just, either dismissing the proceedings, or suspending the license for any fixed period, or revoking the license. Such order shall be entered on his records and written notice thereof shall be forthwith served upon such license in accordance with the Mississippi Administrative Procedure Law of 1999.

SECTION 173. Section 41-51-29, Mississippi Code of 1972, is amended as follows:

41-51-29. Any licensee or other person, aggrieved by any final decision or order of the commissioner made or entered in or on such decision or order may of right have judicial review thereof in accordance with the Mississippi Administrative Procedure Law of 1999. Any party perfecting a proceeding for judicial review shall file with the clerk of the court a bond with such surety or sureties and in such penalty as shall be approved by the commissioner or the clerk \* \* \* of said court, conditioned that such appellant will pay all costs of the judicial review in event such review is unsuccessful. The state may seek judicial review of such decision or order in like time and manner without giving bond. \* \* \* All appeal and supersedeas bonds shall be payable to the state and may from time to time and upon cause shown be ordered increased or ordered replaced by other bonds with approved sureties, and may be enforced in the manner provided by law for the enforcement of other similar bonds. \* \* \* On judicial review, the court may affirm or set aside the decision or order from which the appeal was taken and shall thereupon certify its judgment to the commissioner. In case the decision or order of the commissioner be set aside on judicial review, the court shall enter and render such judgment, decision or order as the commissioner should have rendered, unless it be necessary, in consequence of its decision, that some decision or ruling entirely administrative or legislative in nature be made, or that some fact or question of fact not appearing in or not settled by the record be ascertained or

determined, in which cases the matter shall be remanded to the commissioner for further proceedings and action or decision in accord with the judgment and direction of the court from which further proceedings, action, or decision of the commissioner further judicial review in accordance with the Mississippi Administrative Procedure Law of 1999.

SECTION 174. Section 41-58-3, Mississippi Code of 1972, is amended as follows:

41-58-3. (1) The department shall have full authority to adopt such rules and regulations not inconsistent with the laws of this state as may be necessary to effectuate the provisions of this chapter, and may amend or repeal the same as may be necessary for such purposes, all in accordance with the Mississippi Administrative Procedure Law of 1999.

(2) There shall be established a Medical Radiation Advisory Council to be appointed as provided in this section. The council shall consist of ten (10) members as follows:

(a) One (1) radiologist who is an active practitioner and member of the Mississippi Radiological Society;

(b) One (1) licensed family physician;

(c) One (1) licensed practitioner;

(d) Two (2) registered radiologic technologists;

(e) One (1) nuclear medicine technologist;

(f) One (1) radiation therapist;

(g) One (1) limited radiologic technician;

(h) One (1) radiation physicist;

(i) One (1) hospital administrator; and

(j) The State Health Officer, or his designee, who shall serve as ex officio chairman with no voting authority.

(3) The department shall, following the recommendations from the appropriate professional state societies and organizations, including the Mississippi Radiological Society, the Mississippi Society of Radiologic Technologists, and the Mississippi State Nuclear Medicine Society, and other nominations

that may be received from whatever source, appoint the members of the council as soon as possible after the effective date of subsections (2) and (3) of this section. Any person serving on the council who is a practitioner of a profession or occupation required to be licensed, credentialed or certified in the state shall be a holder of an appropriate license, credential or certificate issued by the state. All members of the council shall be residents of the State of Mississippi. The council shall promulgate such rules and regulations by which it shall conduct its business. Members of the council shall receive no salary for services performed on the council but may be reimbursed for their reasonable and necessary actual expenses incurred in the performance of the same, from funds provided for such purpose. The council shall assist and advise the department in the development of regulations and standards to effectuate the provisions of this chapter.

(4) A radiologic technologist, nuclear medicine technologist or radiation therapist shall not apply ionizing or x-radiation or administer radiopharmaceuticals to a human being or otherwise engage in the practice of medical radiation technology unless the person possesses a valid registration issued under the provisions of this chapter.

(5) The department may issue a temporary registration to practice a specialty of medical radiation technology to any applicant who has completed an approved program, who has complied with the provisions of this chapter, and is awaiting examination for that specialty. This registration shall convey the same rights as the registration for which the applicant is awaiting examination and shall be valid for one (1) six-month period.

(6) The department may charge a registration fee of not more than Twenty-five Dollars (\$25.00) annually to each person to whom it issues a registration under the provisions of this chapter.

(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

agency specifically recognizes that the procedures covered by this chapter are within the scope of practice of the licensee or registrant.

(9) (a) If any radiologic technologist, nuclear medicine technologist or radiation therapist violates any provision of this chapter, the department shall suspend or revoke the registration and practice privileges of the person, in accordance with statutory procedures and rules and regulations of the department.

(b) If any person violates any provision of this chapter, the department shall issue a written warning to the licensed practitioner or medical institution that employs the person; and if that person violates any provision of this chapter again within three (3) years after the first violation, the department may suspend or revoke the permit or registration for the x-radiation and ionizing radiation equipment of the licensed practitioner or medical institution that employs the person, in accordance with statutory procedures and rules and regulations of the department regarding suspension and revocation of such permits or registrations.

(10) This section shall stand repealed on July 1, 2001.

SECTION 175. Section 41-59-49, Mississippi Code of 1972, is amended as follows:

41-59-49. Any person, firm, corporation, association, county, municipality or metropolitan government or agency whose application for a permit or license has been rejected or whose permit or license is suspended or revoked by the board shall have the right of judicial review in accordance with the Mississippi Administrative Procedure Law of 1999.

SECTION 176. Section 41-61-59, Mississippi Code of 1972, is amended as follows:

41-61-59. (1) A person's death which affects the public interest as specified in subsection (2) of this section shall be 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

the issuance of subpoenas, in accordance with the Mississippi Administrative Procedure Law of 1999, for the attendance of persons and for the production of documents as may be required by their investigation.

(b) Complete the medical examiner's portion of the certificate of death within seventy-two (72) hours of assuming jurisdiction over a death, and forward the certificate to the funeral director or to the family. The medical examiner's portion of the certificate of death shall include the decedent's name, the date and time of death, the cause of death and the certifier's signature. If determination of the cause and/or manner of death are pending an autopsy or toxicological or other studies, these sections on the certificate may be marked "pending," with amendment and completion to follow the completion of the postmortem studies. The State Medical Examiner shall be authorized to amend a death certificate; however, the State Medical Examiner is not authorized to change or amend any death certificate after he has resigned or been removed from his office as the State Medical Examiner. Where an attending physician refuses to sign a certificate of death, or in case of any death, the State Medical Examiner or properly qualified designee may sign the death certificate.

(c) Cooperate with other agencies as provided for the State Medical Examiner in subsection (1)(d) of this section.

(d) In all investigations of deaths affecting the public interest where an autopsy will not be performed, obtain or attempt to obtain postmortem blood, urine and/or vitreous fluids.

Medical examiners may also obtain rectal temperature measurements, known hair samples, radiographs, gunshot residue/wiping studies, fingerprints, palm prints and other noninvasive studies as the case warrants and/or as directed by the State Medical Examiner. Decisions may be made in consultation with investigating law enforcement officials and/or the State Medical Examiner. The cost of all studies not

performed by the Mississippi Crime Laboratory shall be borne by the county. County medical examiner investigators shall be authorized to obtain these postmortem specimens themselves following successful completion of the death investigation training school.

(3) The medical examiner shall not use his position or authority to favor any particular funeral home or funeral homes.

(4) The State Medical Examiner shall obtain such liability insurance as deemed appropriate to the needs of the office, and may be sued by anyone affected to the extent of such insurance carried; however, immunity from suit is only waived to the extent of such liability insurance carried, and a judgment creditor shall have recourse only to the proceeds or right to proceeds of such liability insurance. No attempt shall be made in the trial of any case to suggest the existence of any insurance which covers in whole or in part any judgment or award rendered in favor of a claimant, but if the verdict rendered by the jury exceeds the limit of applicable insurance, the court on motion shall reduce the amount of the judgment to a sum equal to the applicable limit stated in the insurance policy. This subsection (4) shall stand repealed from and after July 1, 1993, by operation of law.

SECTION 178. Section 41-61-65, Mississippi Code of 1972, is amended as follows:

41-61-65. (1) If, in the opinion of the medical examiner investigating the case, it is advisable and in the public interest that an autopsy or other study be made for the purpose of determining the primary and/or contributing cause of death, an autopsy or other study shall be made by the State Medical Examiner or by a competent pathologist designated by the State Medical Examiner. The State Medical Examiner or designated pathologist may retain any tissues as needed for further postmortem studies or documentation. A complete autopsy report 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.

(4) In addition, the board shall adopt rules establishing performance standards for individual on-site wastewater disposal systems for single family residential generators and rules concerning the operation and maintenance of individual on-site wastewater disposal systems designed to meet those standards. The performance standards shall be consistent with the federal Clean Water Act, maintaining the wastes on the property of the generator except as authorized under Section 41-67-8, and protection of the public health. Rules for the operation and maintenance of individual on-site wastewater disposal systems designed to meet performance standards shall include rules concerning the following:

(a) A standard application form and requirements for supporting documentation;

(b) Application review;

(c) Approval or denial of authorization for proposed systems;

(d) Requirements, as deemed appropriate by the board, for annual renewal of authorization;

(e) Enforcement of the requirements and conditions of authorization; and

(f) Inspection, monitoring, sampling and reporting on the performance of the system.

Any system proposed for authorization in accordance with performance standards must be designed and certified by a professional engineer and must be authorized by the board before installation. Judicial review of a final decision of the board regarding the authorization of an individual on-site wastewater disposal system based upon performance standards shall be in accordance with the Mississippi Administrative Procedure Law of 1999.

(5) To the extent practicable, all rules and regulations adopted under this chapter shall give maximum flexibility to persons installing individual on-site wastewater disposal systems

and a maximum number of options consistent with the federal Clean Water Act, consistent with maintaining the wastes on the property of the generator except as authorized under Section 41-67-8, and consistent with protection of the public health. In addition, all rules and regulations, to the extent practicable, shall encourage the use of economically feasible systems, including alternative techniques and technologies for individual on-site wastewater disposal.

(6) All regulations shall be applied uniformly in all areas of the state and shall take into consideration and make provision for different types of soil in the state when performing soil and site evaluations.

(7) In the adoption of rules, to act in accordance with the Mississippi Administrative Procedure Law of 1999.

SECTION 180. Section 41-67-4, Mississippi Code of 1972, is amended as follows:

41-67-4. (1) The Commission on Environmental Quality shall determine the feasibility of establishing community sewerage systems upon the submission by the developer of a preliminary design and feasibility study prepared by a professional engineer.

The developer may request and obtain an adjudicative proceeding before the commission if the developer is dissatisfied with the commission's determination of feasibility. Upon request of a developer, the commission shall conduct an adjudicative proceeding in accordance with the Mississippi Administrative Procedure Law of 1999. The determination that a sewerage system

must be established shall be made without regard to whether the establishment of a sewerage system is authorized by law or is subject to approval by one or more state or local government or public bodies.

(2) Where residential subdivisions are proposed which are composed of fewer than thirty-five (35) building sites, and no system of sanitary sewers is available to which collection sewers may be feasibly connected, the board may waive the requirement

for a feasibility study. If the feasibility study is waived, all sites within the subdivision shall be approved, if a certified installer attests that each site can be adequately served by an individual on-site wastewater disposal system.

(3) No feasibility study or community sewerage system shall be required for subdivisions designed, laid out, platted or partially constructed before July 1, 1988, or for any subdivision that was platted and recorded during the period from July 1, 1995 through June 30, 1996.

SECTION 181. Section 41-67-21, Mississippi Code of 1972, is amended as follows:

41-67-21. (1) The board or the department may require a property owner or lessee to repair a malfunctioning individual on-site wastewater disposal system on the owner's or lessee's property before the thirtieth day after the date on which the owner or lessee is notified by the department of the malfunctioning system.

(2) The property owner or lessee shall take adequate measures as soon as practicable to abate an immediate health hazard.

(3) The property owner or lessee may be assessed a civil penalty not to exceed Five Dollars (\$5.00) for each day the individual on-site wastewater disposal system remains unrepaired after the thirty-day period specified in subsection (1) of this section.

(4) The board may assess the property owner or lessee of an individual on-site wastewater disposal system authorized pursuant to Section 41-67-3(4) a civil penalty not to exceed Fifty Dollars (\$50.00) for each day the system fails to meet the performance standards of that system after the thirty-day period specified in subsection (1) of this section.

(5) All penalties collected by the board under this section shall be deposited in the State General Fund.

(6) Judicial review of appeals from the imposition of civil

penalty under this section may be had in accordance with the  
Mississippi Administrative Procedure Law of 1999.

SECTION 182. Section 41-67-25, Mississippi Code of 1972, is  
amended as follows:

41-67-25. (1) A person may not operate as an installer in  
this state unless that person is certified by the board except  
any individual who installs an individual on-site wastewater  
disposal system on his own property or a professional engineer.

(2) An installer of aerobic treatment plants or subsurface  
drip disposal systems must be a factory-trained and authorized  
representative. The manufacturer must furnish documentation to  
the department certifying the satisfactory completion of factory  
training and the establishment of the installer as an authorized  
manufacturer's representative.

(3) The board shall issue a certification to an installer  
if the installer:

(a) Completes an application form that complies with  
this chapter and rules adopted under this chapter;

(b) Satisfactorily completes the training program  
provided by the department; and

(c) Pays the annual certification fee.

(4) Each installer shall furnish proof of certification to  
a property owner, lessee, the owner's representative or occupant  
of the property on which an individual on-site wastewater  
disposal system is to be designed, constructed, repaired or  
installed by that installer and to the department or its  
authorized representative, if requested.

(5) The department shall provide for annual renewal of  
certifications.

(6) (a) An installer's certification may be suspended or  
revoked by the board after notice and hearing if the installer  
violates this chapter or any rule or regulation adopted under  
this chapter.

(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

of the transcript shall pay therefor the reasonable cost of preparing the same.

SECTION 185. Section 41-71-11, Mississippi Code of 1972, is amended as follows:

41-71-11. Any applicant or licensee aggrieved by the decision of the licensing agency after a hearing may, within thirty (30) days after the mailing or serving of notice of the decision, file a notice of judicial review in accordance with the Mississippi Administrative Procedure Law of 1999. Pending final disposition of the matter on judicial review, the status quo of the applicant or licensee shall be preserved, except as the court otherwise orders in the public interest. Rules with respect to court costs as in other cases in chancery shall apply equally to cases under this section.

SECTION 186. Section 41-71-13, Mississippi Code of 1972, is amended as follows:

41-71-13. The licensing agency shall adopt, amend, promulgate and enforce rules, regulations and standards, including classifications, with respect to home health agencies licensed, or which may be licensed, to further the accomplishment of the purpose of this chapter in protecting and promoting the health, safety and welfare of the public by insuring adequate care of individuals receiving such services. Such rules, regulations and standards shall be adopted and promulgated by the licensing agency in accordance with the provisions of the Mississippi Administrative Procedure Law of 1999, Section 25-43-1.101 et seq., and shall be recorded and indexed in a book to be maintained by the licensing agency in its office in the city of Jackson, Mississippi, entitled "Records of Rules, Regulations and Standards." The book shall be open and available to all home health agencies and the public generally at all reasonable times.

SECTION 187. Section 41-75-11, Mississippi Code of 1972, is amended as follows:

41-75-11. The licensing agency after notice and opportunity for an adjudicative proceeding in accordance with the Mississippi Administrative Procedure Law of 1999 to the applicant or licensee is authorized to deny, suspend or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under this chapter. \* \* \* The applicant or licensee shall be given an opportunity for an adjudicative proceeding. On the basis of any such adjudicative proceeding, or upon default of the applicant or licensee, the licensing agency shall make a determination specifying its findings of fact and conclusions of law. A copy of such determination shall be sent by registered mail or served personally upon the applicant or licensee. The decision revoking, suspending or denying the license or application shall become final thirty (30) days after it is so mailed or served, unless the applicant or licensee seeks judicial review in accordance with the Mississippi Administrative Procedure Law of 1999. The procedure governing adjudicative proceeding authorized by this section shall be in accordance with rules promulgated by the licensing agency in accordance with the Mississippi Administrative Procedure Law of 1999. A full and complete record shall be kept of all proceedings, and all testimony shall be recorded but need not be transcribed unless the decision is appealed \* \* \*. Witnesses may be subpoenaed by either party. Compensation shall be allowed to witnesses as in cases in the chancery court. Each party shall pay the expense of his own witnesses. The cost of the record shall be paid by the licensing agency provided any other party desiring a copy of the transcript shall pay therefor the reasonable cost of preparing the same.

SECTION 188. Section 41-75-13, Mississippi Code of 1972, is amended as follows:

41-75-13. The licensing agency shall adopt, amend, promulgate and enforce rules, regulations and standards, 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

of notice of the decision as provided in Section 43-11-11, Mississippi Code of 1972, file a notice of judicial review in accordance with the Mississippi Administrative Procedure Law of 1999. Pending final disposition of the matter on judicial review, the status quo of the applicant or licensee shall be preserved, except as the court otherwise orders in the public interest. Rules with respect to court costs in other cases in the reviewing court shall apply equally to cases hereunder. \* \* \*

SECTION 191. Section 41-77-11, Mississippi Code of 1972, is amended as follows:

41-77-11. The licensing agency shall adopt, amend, promulgate and enforce rules, regulations and standards, including classifications, with respect to "birthing centers," licensed or which may be licensed, to further the accomplishment of the purpose of this chapter in protecting and promoting the health, safety and welfare of the public by ensuring adequate care of individuals receiving such services. Such rules, regulations and standards shall be adopted and promulgated by the licensing agency in accordance with the provisions of the Mississippi Administrative Procedure Law of 1999 Section 25-43-1.101 et seq., Mississippi Code of 1972, and shall be recorded and indexed in a book to be maintained by the licensing agency in its office in the City of Jackson, Mississippi, entitled "Record of Rules, Regulations and Standards." The book shall be open and available to all "birthing centers" and the public during regular business hours.

SECTION 192. Section 41-77-19, Mississippi Code of 1972, is amended as follows:

41-77-19. The licensing agency, after notice and opportunity for an adjudicative proceeding in accordance with the Mississippi Administrative Procedure Law of 1999, to the applicant or licensee, is authorized to deny, suspend or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established

under this chapter. Such notice shall be effected by registered mail or by personal service setting forth the particular reasons for the proposed action and fixing a date not less than thirty (30) days from the date of such mailing or such service, at which time the applicant or licensee shall be given an opportunity for an adjudicative proceeding in accordance with the Mississippi Administrative Procedure Law of 1999. A copy of such determination shall be sent by registered mail or served personally upon the applicant or licensee. The decision revoking, suspending or denying the license or application shall become final thirty (30) days after it is so mailed or served, unless the applicant or licensee, within such thirty-day period, seeks judicial review in accordance with the Mississippi Administrative Procedure Law of 1999. The procedure governing adjudicative proceedings authorized by this section shall be in accordance with rules promulgated by the licensing agency in accordance with the Mississippi Administrative Procedure Law of 1999. Testimony shall be recorded but not be transcribed unless the decision is appealed. \* \* \* Each party shall pay the expense of his own witnesses. The cost of the record shall be paid by the licensing agency, provided any other party desiring a copy of the transcript shall pay therefor the reasonable cost of preparing the same.

SECTION 193. Section 41-77-21, Mississippi Code of 1972, is amended as follows:

41-77-21. Any applicant or licensee aggrieved by the decision of the licensing agency after a hearing may, of right, have judicial review thereof in accordance with the Mississippi Administrative Procedure Law of 1999.

SECTION 194. Section 41-83-13, Mississippi Code of 1972, is amended as follows:

41-83-13. (1) The department shall deny a certificate to any applicant if, upon review of the application, the department 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 \* \* \*

SECTION 196. Section 41-86-11, Mississippi Code of 1972, is amended as follows:

41-86-11. (1) The administering agency shall adopt, in accordance with the Mississippi Administrative Procedure Law of 1999, Section 25-43-1.101 et seq., rules and regulations for the implementation of the program, and for the coordination of the program with the state's other medical assistance programs.

(2) If the Division of Medicaid is designated as the administering agency for the program, the division shall have all of the authority set forth in Section 43-13-101 et seq.

(3) The administering agency shall make reports to the federal government and to the Legislature on the providing of benefits to those children under the program.

(4) (a) If the commission provides that the administering agency will have such authority, the administering agency shall execute a contract or contracts to provide the health care coverage and services under the program, after first receiving bids. The contract or contracts may be executed with one or more corporations or associations authorized to do business in Mississippi. All of the coverage and services to be provided under the program may be included in one or more similar contracts, or the coverage and services may be classified into different types with each type included under one or more similar contracts issued by the same or different corporations or associations.

(b) The administering agency shall execute a contract or contracts with one or more corporations or associations that have submitted the best and most cost-effective bids, or shall reject all bids. If the administering agency rejects all bids, it shall notify all bidders of the rejection and shall actively solicit new bids.

SECTION 197. Section 41-91-15, Mississippi Code of 1972, is amended as follows:

41-91-15. Any person or entity who fails to provide the

information required to be provided to the cancer registry or who misuses the information provided to the cancer registry shall be subject to a civil penalty of Fifty Dollars (\$50.00) for each such failure or misuse. Such penalty shall be assessed and levied by the board after an adjudicative proceeding in accordance with the Mississippi Administrative Procedure Law of 1999, and all such penalties collected shall be deposited into the State General Fund.

SECTION 198. Section 41-95-5, Mississippi Code of 1972, is amended as follows:

41-95-5. (1) The Mississippi Health Finance Authority is created. The authority shall be supervised and directed by the Mississippi Health Finance Authority Board.

(2) The Mississippi Health Finance Authority Board is created. The Mississippi Health Finance Authority Board shall consist of seven (7) members, one (1) from each of the five (5) congressional districts of Mississippi and two (2) from the state at large, who shall be appointed by the Governor with the advice and consent of the Senate. All members shall be qualified electors of the State of Mississippi who have no financial or other interest in any health care provider or insurer. It is the intent of the Legislature that the appointments to the board reflect the racial and sexual demographics of the entire state. The initial appointments to the Health Finance Authority Board shall be for staggered terms, to be designated by the Governor at the time of appointment as follows: Two (2) members to serve for terms ending June 30, 1997; three (3) members to serve for terms ending June 30, 1996; and two (2) members to serve for terms ending June 30, 1995. Thereafter, Mississippi Health Finance Authority Board members shall be appointed for a term of four (4) years from the expiration date of the previous term. All vacancies occurring on the board shall be filled by the Governor in the same manner as original appointments are made within sixty (60) days after the vacancy occurs.

(3) The members of the Mississippi Health Finance Authority Board shall be paid a per diem as authorized by Section 25-3-69 and shall be reimbursed for necessary and ordinary expenses and mileage incurred while performing their duties as members of the board, at the rate authorized by Section 25-3-41.

(4) The members of the Mississippi Health Finance Authority Board shall take an oath to perform faithfully the duties of their office. The oath shall be administered by a person qualified by law to administer oaths. Within thirty (30) days after taking the oath of office, the first board appointed under this section shall meet for an organizational meeting on call by the Governor. At such meeting and at an organizational meeting in January every odd-numbered year thereafter, the board shall elect from its members a chairman, vice-chairman and secretary-treasurer to serve for terms of two (2) years.

(5) The Mississippi Health Finance Authority Board shall adopt rules and regulations not inconsistent with Sections 41-95-1 through 41-95-9, in compliance with the Mississippi Administrative Procedure Law of 1999, for the conduct of its business and the carrying out of its duties.

(6) The Mississippi Health Finance Authority Board shall hold at least two (2) regular meetings each year, and additional meetings may be held upon the call of the chairman or at the written request of any three (3) members.

(7) The members of the Mississippi Health Finance Authority Board are individually exempt from any civil liability as a result of any action taken by the board.

(8) There shall be a Joint Oversight Committee of the Mississippi Health Finance Authority composed of three (3) members of the Senate appointed by the Lieutenant Governor to serve at the will and pleasure of the Lieutenant Governor, and three (3) members of the House of Representatives appointed by the Speaker of the House to serve at the will and pleasure of the 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

Mississippi Health Finance Authority Board, shall be the agent of the board for the purpose of receiving all services of process, summonses and notices directed to the board, shall direct the daily operations of the board, and shall perform such other duties as the board may delegate to him. The position of attorney for the Mississippi Health Finance Authority is authorized, who shall be a duly licensed attorney and whose salary and qualifications shall be fixed by the board. Such attorney shall be employed by the Mississippi Health Finance Authority Board. The Director of the Mississippi Health Finance Authority shall appoint heads of offices, who shall serve at the pleasure of the director, and shall appoint any necessary supervisors, assistants and employees. The salary and compensation of such employees shall be subject to the rules and regulations adopted and promulgated by the State Personnel Board created under Section 25-9-101 et seq. The director shall have the authority to organize offices as deemed appropriate to carry out the responsibilities of the Mississippi Health Finance Authority. All new positions, before staff is to be hired to fill them, must be authorized and approved by the board itself in accordance with the laws and regulations set forth by the State Personnel Board. The organizational structure of the staff shall provide for the performance of assigned functions and shall be subject to the approval of the board.

(11) The Director of the Mississippi Health Finance Authority is authorized:

(a) To enforce rules and regulations adopted and promulgated by the board implementing or effectuating the powers and duties of the Mississippi Health Finance Authority under any and all statutes within the Mississippi Health Finance Authority's jurisdiction;

(b) To apply for, receive and expend any federal or state funds or contributions, gifts, devises, bequests or funds from any other source;

(c) To enter into and execute contracts, grants and cooperative agreements with any federal or state agency or subdivision thereof, or any public or private institution located inside or outside the State of Mississippi, or any person, corporation or association in connection with carrying out the programs of the Mississippi Health Finance Authority; and

(d) To discharge such other duties, responsibilities and powers as are necessary to implement the programs of the Mississippi Health Finance Authority.

SECTION 199. Section 43-3-7, Mississippi Code of 1972, is amended as follows:

43-3-7. The governing authorities shall promulgate such reasonable rules and regulations in accordance with the Mississippi Administrative Procedure Law of 1999 as are necessary to carry out the intent of sections 43-3-1 to 43-3-15. Any such rules and regulations shall be published and kept on file in the office of the director and shall be available to the general public on demand.

SECTION 200. Section 43-11-11, Mississippi Code of 1972, is amended as follows:

43-11-11. The licensing agency after notice and opportunity for an adjudicative proceeding in accordance with the Mississippi Administrative Procedure Law of 1999, to the applicant or licensee is authorized to deny, suspend or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under this chapter.

Such notice shall be effected by registered mail, or by personal service setting forth the particular reasons for the proposed action \* \* \*. The decision revoking, suspending or denying the license or application shall be subject to judicial review in accordance with the Mississippi Administrative Procedure Law of 1999.

The procedure governing adjudicative proceedings authorized

by this section shall be in accordance with rules promulgated by the licensing agency in accordance with the Mississippi Administrative Procedure Law of 1999. A full and complete record shall be kept of all proceedings, and all testimony shall be recorded but need not be transcribed unless a proceeding for judicial review is initiated. Each party shall pay the expense of his own witnesses. The cost of the record shall be paid by the licensing agency provided any other party desiring a copy of the transcript shall pay therefor the reasonable cost of preparing the same.

SECTION 201. Section 43-11-23, Mississippi Code of 1972, is amended as follows:

43-11-23. Any applicant or licensee aggrieved by the decision of the licensing agency after an adjudicative proceeding, may of right secure judicial review thereof in accordance with the Mississippi Administrative Procedure Law of 1999. The court may affirm, modify or reverse the decision of the licensing agency \* \* \*. Pending final disposition of the matter on judicial review the status quo of the applicant or licensee shall be preserved, except as the court otherwise orders in the public interest. Rules with respect to court costs as in other cases in the Court of Appeals shall apply equally to cases hereunder.

SECTION 202. Section 43-13-117, Mississippi Code of 1972, is amended as follows:

43-13-117. Medical assistance as authorized by this article shall include payment of part or all of the costs, at the discretion of the division or its successor, with approval of the Governor, of the following types of care and services rendered to eligible applicants who shall have been determined to be eligible for such care and services, within the limits of state appropriations and federal matching funds:

(1) Inpatient hospital services.

(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

of Medicaid, within thirty (30) days after a decision has been rendered through informal hearing procedures.

\* \* \*

(vii) The Executive Director of the Division of Medicaid shall, upon review of the recommendation, the proceedings and the record, prepare a written decision which shall be mailed to the nursing facility provider no later than twenty (20) days after the submission of the recommendation by the panel. The decision of the executive director is final, subject only to judicial review.

(viii) \* \* \* A final decision shall be subject to judicial review in accordance with the Mississippi Administrative Procedure Law of 1999.

(ix) The action of the Division of Medicaid under review shall be stayed until all administrative proceedings have been exhausted.

(x) Appeals by nursing facility providers involving any issues other than those two (2) specified in subparagraphs (i)(A) and (ii)(B) shall be taken in accordance with the administrative hearing procedures established by the Division of Medicaid, not inconsistent with the Mississippi Administrative Procedure Law of 1999.

(e) When a facility of a category that does not require a certificate of need for construction and that could not be eligible for Medicaid reimbursement is constructed to nursing facility specifications for licensure and certification, and the facility is subsequently converted to a nursing facility pursuant to a certificate of need that authorizes conversion only and the applicant for the certificate of need was assessed an application review fee based on capital expenditures incurred in constructing the facility, the division shall allow reimbursement for capital expenditures necessary for construction of the facility that were incurred within the twenty-four (24) consecutive calendar months immediately preceding the date that the certificate of need



authorizing such conversion was issued, to the same extent that reimbursement would be allowed for construction of a new nursing facility pursuant to a certificate of need that authorizes such construction. The reimbursement authorized in this subparagraph (e) may be made only to facilities the construction of which was completed after June 30, 1989. Before the division shall be authorized to make the reimbursement authorized in this subparagraph (e), the division first must have received approval from the Health Care Financing Administration of the United States Department of Health and Human Services of the change in the state Medicaid plan providing for such reimbursement.

(5) Periodic screening and diagnostic services for individuals under age twenty-one (21) years as are needed to identify physical and mental defects and to provide health care treatment and other measures designed to correct or ameliorate defects and physical and mental illness and conditions discovered by the screening services regardless of whether these services are included in the state plan. The division may include in its periodic screening and diagnostic program those discretionary services authorized under the federal regulations adopted to implement Title XIX of the federal Social Security Act, as amended. The division, in obtaining physical therapy services, occupational therapy services, and services for individuals with speech, hearing and language disorders, may enter into a cooperative agreement with the State Department of Education for the provision of such services to handicapped students by public school districts using state funds which are provided from the appropriation to the Department of Education to obtain federal matching funds through the division. The division, in obtaining medical and psychological evaluations for children in the custody of the State Department of Human Services may enter into a cooperative agreement with the State Department of Human Services for the provision of such services using state funds which are 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

dispensing fee of Four Dollars and Ninety-one Cents (\$4.91), or the providers' usual and customary charge to the general public.

The division shall allow five (5) prescriptions per month for noninstitutionalized Medicaid recipients.

Payment for other covered drugs, other than multiple source drugs with HCFA upper limits, shall not exceed the lower of the estimated acquisition cost as determined by the division plus a dispensing fee of Four Dollars and Ninety-one Cents (\$4.91) or the providers' usual and customary charge to the general public.

Payment for nonlegend or over-the-counter drugs covered on the division's formulary shall be reimbursed at the lower of the division's estimated shelf price or the providers' usual and customary charge to the general public. No dispensing fee shall be paid.

The division shall develop and implement a program of payment for additional pharmacist services, with payment to be based on demonstrated savings, but in no case shall the total payment exceed twice the amount of the dispensing fee.

As used in this paragraph (9), "estimated acquisition cost" means the division's best estimate of what price providers generally are paying for a drug in the package size that providers buy most frequently. Product selection shall be made in compliance with existing state law; however, the division may reimburse as if the prescription had been filled under the generic name. The division may provide otherwise in the case of specified drugs when the consensus of competent medical advice is that trademarked drugs are substantially more effective.

(10) Dental care that is an adjunct to treatment of an acute medical or surgical condition; services of oral surgeons and dentists in connection with surgery related to the jaw or any structure contiguous to the jaw or the reduction of any fracture of the jaw or any facial bone; and emergency dental extractions and treatment related thereto. On January 1, 1994, all fees for 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

management services provided by (a) an approved regional mental health/retardation center established under Sections 41-19-31 through 41-19-39, or by another community mental health service provider meeting the requirements of the Department of Mental Health to be an approved mental health/retardation center if determined necessary by the Department of Mental Health, using state funds which are provided from the appropriation to the State Department of Mental Health and used to match federal funds under a cooperative agreement between the division and the department, or (b) a facility which is certified by the State Department of Mental Health to provide therapeutic and case management services, to be reimbursed on a fee for service basis.

Any such services provided by a facility described in paragraph (b) must have the prior approval of the division to be reimbursable under this section. After June 30, 1997, mental health services provided by regional mental health/retardation centers established under Sections 41-19-31 through 41-19-39, or by hospitals as defined in Section 41-9-3(a) and/or their subsidiaries and divisions, or by psychiatric residential treatment facilities as defined in Section 43-11-1, or by another community mental health service provider meeting the requirements of the Department of Mental Health to be an approved mental health/retardation center if determined necessary by the Department of Mental Health, shall not be included in or provided under any capitated managed care pilot program provided for under paragraph (24) of this section.

(17) Durable medical equipment services and medical supplies restricted to patients receiving home health services unless waived on an individual basis by the division. The division shall not expend more than Three Hundred Thousand Dollars (\$300,000.00) of state funds annually to pay for medical supplies authorized under this paragraph.

(18) Notwithstanding any other provision of this section to 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

and standards in accordance with the Mississippi Administrative Procedure Law of 1999, with approval of the Governor:

(i) Establishing methods and procedures as may be necessary for the proper and efficient administration of this article;

(ii) Providing medical assistance to all qualified recipients under the provisions of this article as the division may determine and within the limits of appropriated funds;

(iii) Establishing reasonable fees, charges and rates for medical services and drugs; and in doing so shall fix all such fees, charges and rates at the minimum levels absolutely necessary to provide the medical assistance authorized by this article, and shall not change any such fees, charges or rates except as may be authorized in Section 43-13-117;

(iv) Providing for fair and impartial hearings;

(v) Providing safeguards for preserving the confidentiality of records; and

(vi) For detecting and processing fraudulent practices and abuses of the program;

(b) Receive and expend state, federal and other funds in accordance with court judgments or settlements and agreements between the State of Mississippi and the federal government, the rules and regulations promulgated by the division, with the approval of the Governor, and within the limitations and restrictions of this article and within the limits of funds available for such purpose;

(c) Subject to the limits imposed by this article, to submit a plan for medical assistance to the federal Department of Health and Human Services for approval pursuant to the provisions of the Social Security Act, to act for the state in making negotiations relative to the submission and approval of such plan, to make such arrangements, not inconsistent with the law, 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

include a judgment entered on a plea of nolo contendere or a nonadjudicated guilty plea and shall have the same force as a judgment entered pursuant to a guilty plea or a conviction following trial. A certified copy of the judgment of the court of competent jurisdiction of such conviction shall constitute prima facie evidence of such conviction for disqualification purposes;

(n) Establish and provide such methods of administration as may be necessary for the proper and efficient operation of the program, fully utilizing computer equipment as may be necessary to oversee and control all current expenditures for purposes of this article, and to closely monitor and supervise all recipient payments and vendors rendering such services hereunder; and

(o) To cooperate and contract with the federal government for the purpose of providing medical assistance to Vietnamese and Cambodian refugees, pursuant to the provisions of Public Law 94-23 and Public Law 94-24, including any amendments thereto, only to the extent that such assistance and the administrative cost related thereto are one hundred percent (100%) reimbursable by the federal government. For the purposes of Section 43-13-117, persons receiving medical assistance pursuant to Public Law 94-23 and Public Law 94-24, including any amendments thereto, shall not be considered a new group or category of recipient.

(2) The division also shall exercise such additional powers and perform such other duties as may be conferred upon the division by act of the Legislature hereafter.

(3) The division, and the State Department of Health as the agency for licensure of health care facilities and certification and inspection for the Medicaid and/or Medicare programs, shall contract for or otherwise provide for the consolidation of on-site inspections of health care facilities which are 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           (1) 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

paragraph (e)(iv) of this subsection. Persons who fail to meet participation requirements in this subsection shall be subject to sanctions as provided in paragraph (f) of this subsection.

(b) As used in this subsection, "school" means any one (1) of the following:

(i) A school as defined in Section 37-13-91(2);

(ii) A vocational, technical and adult education program; or

(iii) A course of study meeting the standards established by the State Department of Education for the granting of a declaration of equivalency of high school graduation.

(c) If any compulsory-school-age child, as defined in Section 37-13-91(2), to which TANF eligibility requirements apply is not in compliance with the compulsory school attendance requirements of Section 37-13-91(6), the superintendent of schools of the school district in which the child is enrolled or eligible to attend shall notify the county department of human services of the child's noncompliance. The Department of Human Services shall review school attendance information as provided under this paragraph at all initial eligibility determinations and upon subsequent report of unsatisfactory attendance.

(d) The signature of a person on an application for TANF benefits constitutes permission for the release of school attendance records for that person or for any child residing with that person. The department shall request information from the child's school district about the child's attendance in the school district's most recently completed semester of attendance.

If information about the child's previous school attendance is not available or cannot be verified, the department shall require the child to meet the monthly attendance requirement for one (1) semester or until the information is obtained. The department shall use the attendance information provided by a school district to verify attendance for a child. The department shall 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

subsection (6)(d), unless an individual is pregnant, but shall not be terminated for any other person in the family who is meeting that person's applicable work requirement or who is not required to work. Minor children shall continue to be eligible for Medicaid benefits regardless of the disqualification of their parent or caretaker relative for TANF assistance under this subsection (6), unless prohibited by state or federal law.

(e) Any person enrolled in a two-year or four-year college program who meets the eligibility requirements to receive TANF benefits, and who is meeting the applicable work requirements and all other applicable requirements of the TANF program, shall continue to be eligible for TANF benefits while enrolled in the college program for as long as the person meets the requirements of the TANF program, unless prohibited by federal law.

(f) No adult in a work activity required under this subsection (6) shall be employed or assigned (i) when any other individual is on layoff from the same or any substantially equivalent job within six (6) months before the date of the TANF recipient's employment or assignment; or (ii) if the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction of its work force in order to fill the vacancy so created with an adult receiving TANF assistance. The Mississippi Employment Security Commission, established under Section 71-5-101, shall appoint one or more impartial hearing officers to hear and decide claims by employees of violations of this paragraph (f). The hearing officer shall hear all the evidence with respect to any claim made hereunder and such additional evidence as he may require and shall make a determination and the reason therefor. The claimant shall be promptly notified of the decision of the hearing officer and the reason therefor. Within ten (10) days after the decision of the hearing officer has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action, in the

circuit court of the county in which the claimant resides,  
against the commission for the review of such decision, in which  
action any other party to the proceeding before the hearing  
officer shall be made a defendant. Any such appeal shall be on  
the record which shall be certified to the court by the  
commission in the manner provided in Section 71-5-531, and the  
jurisdiction of the court shall be confined to questions of law  
which shall render its decision as provided in that section.

(7) The Department of Human Services may provide child care  
for eligible participants who require such care so that they may  
accept employment or remain employed. The department may also  
provide child care for those participating in the TANF program  
when it is determined that they are satisfactorily involved in  
education, training or other allowable work activities. The  
department may contract with Head Start agencies to provide child  
care services to TANF recipients. The department may also  
arrange for child care by use of contract or vouchers, provide  
vouchers in advance to a caretaker relative, reimburse a child  
care provider, or use any other arrangement deemed appropriate by  
the department, and may establish different reimbursement rates  
for child care services depending on the category of the facility  
or home. Any center-based or group home child care facility  
under this paragraph shall be licensed by the State Department of  
Health pursuant to law. When child care is being provided in the  
child's own home, in the home of a relative of the child, or in  
any other unlicensed setting, the provision of such child care  
may be monitored on a random basis by the Department of Human  
services or the State Department of Health. Transitional child  
care assistance may be continued if it is necessary for parents  
to maintain employment once support has ended, unless prohibited  
under state or federal law. Transitional child care assistance  
may be provided for up to twenty-four (24) months after the last  
month during which the family was eligible for TANF assistance,  
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

assessing the penalty in accordance with the Mississippi  
Administrative Procedure Law of 1999.

SECTION 207. Section 43-20-14, Mississippi Code of 1972, is amended as follows:

43-20-14. (1) The licensing agency may deny a license or refuse to renew a license for any of the reasons set forth in subsection (3) of this section.

(2) Before the licensing agency may deny or refuse to renew, any applicant affected by such decision of the licensing agency shall be entitled to an adjudicative proceeding in accordance with the Mississippi Administrative Procedure Law of 1999 in which the applicant may show cause why the license should not be denied or should be renewed.

(3) The licensing agency may suspend, revoke or restrict the license of any facility where the licensee or applicant for license has been guilty of conduct which has endangered or is likely to endanger the health or safety of the children entrusted to or cared for by such facility. Such conduct shall be defined as:

(a) Obtaining a license by means of fraud, misrepresentation or concealment of material facts;

(b) Being convicted of a crime in any court of the State of Mississippi or any federal court if the acts for which he is convicted are found by the licensing agency to have a direct and detrimental effect on the children entrusted to or cared for by such licensee;

(c) Violating any of the regulations governing the licensing and regulation of child care facilities promulgated by the licensing agency; and

(d) Any conduct, or failure to act, which threatens the health, safety or well-being of children at the facility.

(4) Before the licensing agency may suspend, revoke or restrict the license of any facility, any licensee affected by 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

expended by the Department of Public Safety, as authorized and appropriated by the Legislature, to defray the expenses of the department. Any revenue in the fund which is not encumbered at the end of the fiscal year shall lapse to the State General Fund.

SECTION 209. Section 45-6-11, Mississippi Code of 1972, is amended as follows:

45-6-11. (1) Law enforcement officers already serving under permanent appointment on July 1, 1981 and personnel of the division of community services under Section 47-7-9, Mississippi Code of 1972, serving on July 1, 1994, shall not be required to meet any requirement of subsections (3) and (4) of this section as a condition of continued employment; nor shall failure of any such law enforcement officer to fulfill such requirements make that person ineligible for any promotional examination for which that person is otherwise eligible. Provided, however, if any law enforcement officer certified under the provisions of this chapter leaves his employment as such and does not become employed as a law enforcement officer within two (2) years from the date of termination of his prior employment, he shall be required to comply with board policy as to rehiring standards in order to be employed as a law enforcement officer; except, that, if any law enforcement officer certified under this chapter leaves his employment as such to serve as a sheriff, he may be employed as a law enforcement officer after he has completed his service as a sheriff without being required to comply with board policy as to rehiring standards. Part-time law enforcement officers serving on or before July 1, 1998, shall have until July 1, 2001, to obtain certification as a part-time officer.

(2) Any person who has twenty (20) years of law enforcement experience and who is eligible to be certified under this section shall be eligible for recertification after leaving law enforcement on the same basis as someone who has taken the basic training course. Application to the board to qualify under this 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

the items listed in subsection (5) of this section, shall forward the full set of fingerprints of the applicant to the appropriate agencies for state and federal processing.

(b) The Department of Public Safety shall forward a copy of the applicant's application to the sheriff of the applicant's county of residence and, if applicable, the police chief of the applicant's municipality of residence. The sheriff of the applicant's county of residence and, if applicable, the police chief of the applicant's municipality of residence may, at his discretion, participate in the process by submitting a voluntary report to the Department of Public Safety containing any readily discoverable prior information that he feels may be pertinent to the licensing of any applicant. The reporting shall be made within thirty (30) days after the date he receives the copy of the application. Upon receipt of a response from a sheriff or police chief, such sheriff or police chief shall be reimbursed at a rate set by the department.

(c) The Department of Public Safety shall, within one hundred twenty (120) days after the date of receipt of the items listed in subsection (5) of this section:

(i) Issue the license; or  
(ii) Deny the application based solely on the ground that the applicant fails to qualify under the criteria listed in subsections (2) and (3) of this section. If the Department of Public Safety denies the application, it shall notify the applicant in writing, stating the ground for denial, and the denial shall be subject to the appeal process set forth in subsection (7).

(d) In the event a legible set of fingerprints, as determined by the Department of Public Safety and the Federal Bureau of Investigation, cannot be obtained after a minimum of three (3) attempts, the Department of Public Safety shall determine eligibility based upon a name check by the Mississippi Highway Safety Patrol and a Federal Bureau of Investigation name

check conducted by the Mississippi Highway Safety Patrol at the request of the Department of Public Safety.

(7) (a) If the Department of Public Safety denies the issuance of a license, or suspends or revokes a license, the party aggrieved may appeal such denial, suspension or revocation to the Commissioner of Public Safety, or his authorized agent, within thirty (30) days after the aggrieved party receives written notice of such denial, suspension or revocation. \* \* \* Such review shall be conducted pursuant to such reasonable rules and regulations as the Commissioner of Public Safety may adopt not inconsistent with the Mississippi Administrative Procedure Law of 1999.

(b) Judicial review of the revocation, suspension or denial of issuance is sustained by the Commissioner of Public Safety \* \* \*. \* \* \* No such party shall be allowed to carry a concealed pistol or revolver pursuant to the provisions of this section while any such proceeding for judicial review is pending.

(8) The Department of Public Safety shall maintain an automated listing of license holders and such information shall be available on-line, upon request, at all times, to all law enforcement agencies through the Mississippi Crime Information Center. However, the records of the department relating to applications for licenses to carry concealed pistols or revolvers and records relating to license holders shall be exempt from the provisions of the Mississippi Public Records Act of 1983 for a period of forty-five (45) days from the date of the issuance of the license or the final denial of an application.

(9) Within thirty (30) days after the changing of a permanent address, or within thirty (30) days after having a license lost or destroyed, the licensee shall notify the Department of Public Safety in writing of such change or loss. Failure to notify the Department of Public Safety pursuant to the provisions of this subsection shall constitute a noncriminal 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  
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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,

specifications and other information as it deems necessary to carry out Sections 49-17-1 through 49-17-43 and Title 17, Chapter 17, or to carry out the commission's regulations adopted under those sections. The Permit Board, based upon any information as it deems relevant, shall issue, reissue, deny, modify or revoke air pollution control or water pollution control permit or permits required under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter 17) or any other permit within the jurisdiction of the Permit Board under any conditions as it deems necessary that are consistent with the commission's regulations.

The Permit Board's action of issuance, reissuance, denial, modification or revocation of a permit as recorded in its minutes shall constitute a complete decision of the board. All permits issued by the Permit Board shall remain in full force and effect until the board makes a final determination regarding any reissuance, modification, or revocation thereof. The Permit Board shall take action upon an application within one hundred eighty (180) days following its receipt in the board's principal office. No action which affects revocation of an existing permit shall take effect until the thirty (30) days mentioned in paragraph (4)(b) of this section has expired or until an adjudicative proceeding in accordance with the Mississippi Administrative Procedure Law of 1999 has been conducted.

(d) The Permit Board may adopt rules of practice and procedure governing its proceedings that are consistent with the commission's regulations and are not inconsistent with the Mississippi Administrative Procedure Law of 1999. All hearings in connection with permits issued, reissued, denied, modified or revoked and all appeals from decisions of the Permit Board shall be as provided in this section.

(e) Upon any conditions that are consistent with the commission's regulations and subject to those procedures for public notice and hearings as provided by law, not inconsistent 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,

conditioned, if the judgment shall be affirmed, to pay all costs of the assessment entered against the person seeking judicial review.

(5) In lieu of, or in addition to, the penalty provided in subsection (3) of this section, the commission shall have power to institute and maintain in the name of the state any and all proceedings necessary or appropriate to enforce the provisions of Sections 51-3-1 through 51-3-55, rules and regulations in force pursuant thereto, and orders and permits issued under those sections, in accordance with the Mississippi Administrative Procedure Law of 1999. The commission may obtain mandatory or prohibitory injunctive relief, either temporary or permanent, and in cases of imminent and substantial hazard or endangerment to life or property, it shall not be necessary in such cases that the state plead or prove: (a) that irreparable damage would result if the injunction did not issue; (b) that there is no adequate remedy at law; or (c) that a written complaint or commission order has first been issued for the alleged violation.

(6) Commission hearings on the imposition of the above prescribed civil penalty or other sanctions shall be conducted as adjudicative proceedings in accordance with the Mississippi Administrative Procedure Law of 1999.

SECTION 231. Section 51-5-9, Mississippi Code of 1972, is amended as follows:

51-5-9. (1) When the board determines that the holder of any license issued pursuant to this chapter has violated any provisions thereof or any rules and regulations pursuant thereto, the board shall authorize suspension or revocation of such license. Proceedings under the provisions of this section shall not be dependent upon having exhausted remedies through any other section of this chapter.

(2) The board shall notify the suspected violator at least fifteen (15) days before the board hearing therefor, shall 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



to yield a return in excess of monthly operating costs, then, subject to the limitations set out in this section, the operator and/or the appropriate consenting owners shall be entitled to receive as alternate charges (alternate to and in lieu of the charges provided for in subsection (1)(b) of this section; provided, however, that in no event shall the operator and/or the appropriate consenting owners be entitled to recover less than such charges provided in subsection (1)(b) of this section) the share of production from the well attributable to the nonconsenting owner's nonconsenting interests in the unit established or subsequently reformed for production therefrom, until the point in time when the proceeds from the sale of such share, calculated at the well, or the market value thereof if such share is not sold, after deducting production and excise taxes, which operator will pay or cause to be paid, and the payment required by this paragraph (g) shall equal the sum of:

(i) One hundred percent (100%) of the nonconsenting owner's nonconsenting share of the cost of any newly acquired surface equipment beyond the wellhead connections including, but not limited to, stock tanks, separators, treaters, pumping equipment and piping; and

(ii) Two hundred fifty percent (250%) of that portion of the costs and expenses of the operations provided for in the pooling order, and two hundred fifty percent (250%) of that portion of the cost of newly acquired equipment in the well, including wellhead connections, which would have been chargeable to the nonconsenting owner's nonconsenting share thereof; provided, however, when a mineral interest that is severed from the surface estate is owned by a nonconsenting owner or when a mineral interest is subject to an oil and gas lease that is owned by a nonconsenting owner, the payment under this subparagraph (ii) shall be three hundred percent (300%); and

(iii) One hundred percent (100%) of the 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

conduct any formal hearing under this chapter. The hearing officer shall have the same authority to conduct the hearing as provided the commission under Section 49-17-41.

(b) Upon written request by an alleged violator under Section 53-9-69, the commission or the hearing officer shall conduct an adjudicative proceeding in accordance with the Mississippi Administrative Procedure Law of 1999 and may, upon the basis of \* \* \* the proceeding, stay any action taken by the executive director or the executive director's authorized representative under Section 53-9-69. The hearing officer may require a bond, if the hearing officer stays the action.

(4) Except as provided in Section 53-9-67, the availability of judicial review under this section shall not limit any rights established under Section 53-9-67.

SECTION 242. Section 61-1-45, Mississippi Code of 1972, is amended as follows:

61-1-45. Every order of the commission requiring performance of certain acts or compliance with certain requirements, and every denial or revocation of an approval, certificate or license, shall set forth the reasons and shall state the acts to be done or requirements to be met before approval by the commission will be given or the approval, license or certificate granted or restored or the order modified or changed. Orders issued by the commission pursuant to the provisions of this chapter shall be served upon the persons affected either by registered mail or in person. In every case where notice and opportunity for hearing are required under the provisions of this chapter the order of the commission shall provide for an adjudicative proceeding in accordance with the Mississippi Administrative Procedure Law of 1999. Such order shall become effective upon the expiration of the time for exercising such opportunity for an adjudicative proceeding, unless an adjudicative proceeding is commenced within the time provided, in which case the order shall be suspended until the

commission shall affirm, disaffirm or modify such order after hearing held or default by the person affected. To the extent practicable, hearings on such orders shall be held in the county where the affected person resides or does business. Judicial review of orders of the commission shall be had in accordance with the Mississippi Administrative Procedure Law of 1999.

SECTION 243. Section 63-1-31, Mississippi Code of 1972, is amended as follows:

63-1-31. When a person is denied a license or any temporary driving permit after filing the proper application, he shall have the right to an adjudicative proceeding in accordance with the Mississippi Administrative Procedure Law of 1999. \* \* \*

SECTION 244. Section 63-15-7, Mississippi Code of 1972, is amended as follows:

63-15-7. (1) The department shall administer and enforce the provisions of this chapter and may make rules and regulations necessary for its administration, and shall provide for hearings upon request of persons aggrieved by orders or acts of the department under the provisions of this chapter consistent with the Mississippi Administrative Procedure Law of 1999.

(2) Any order or act of the department, under the provisions of this chapter, may be subject to judicial review in accordance with the Mississippi Administrative Procedure Law of 1999. \* \* \*

\* \* \*

SECTION 245. Section 63-17-95, Mississippi Code of 1972, is amended as follows:

63-17-95. (1) The commission shall conduct adjudicative proceedings in accordance with the Mississippi Administrative Procedure Law of 1999 respecting matters within the jurisdiction of the commission.

\* \* \*

(2) The commission shall prescribe its rules of order or 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

and a review of the amount of the assessment. \* \* \* The appeals board shall thereupon conduct an adjudicative proceeding in accordance with the Mississippi Administrative Procedure Law of 1999 and the rules of the commission not inconsistent therewith.

Upon due consideration of all the facts relating to the assessment of the penalty, the appeals board, except as otherwise provided under this section or under Section 27-19-89, may require payment of the full amount of the assessment, may reduce the amount of the assessment or may dismiss imposition of the penalty entirely. The appeals board shall dismiss in its entirety the imposition of any penalty imposed against the holder of a harvest permit if the permittee proves to the appeals board, by clear and convincing evidence, that the average load transported by the permittee during the permittee's last five (5) haul days immediately preceding the day upon which the penalty appealed from was assessed did not exceed eighty thousand (80,000) pounds. The appeals board shall reduce the penalty assessed against the holder of a harvest permit to a maximum of Two Cents (2 per pound of overweight if the permittee proves to the appeals board, by clear and convincing evidence, that the average load transported by the permittee during the permittee's last five (5) haul days immediately preceding the day upon which the penalty appealed from was assessed exceeded seventy-nine thousand nine hundred ninety-nine (79,999) pounds but did not exceed eighty-four thousand (84,000) pounds. The board shall make such orders in the matter as appear to it just and lawful and shall furnish copies thereof to the petitioner. If the appeals board orders the payment of the penalty, the petitioner shall pay the penalty, damages and interest, if any, within ten (10) days after the order is issued unless there is an application for appeal from the decision of the board as provided in the succeeding paragraph. Interest shall accrue on the penalty at the rate of one percent (1%) per month, or part of a 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



and Forestry Experiment Station of Mississippi State University of Agriculture and Applied Science shall serve as chairman of the board. The adjudicative proceeding shall be in accordance with the Mississippi Administrative Procedure Law of 1999. Any party shall have a right to judicial review of the order of the board in accordance with the Mississippi Administrative Procedure Law of 1999.

SECTION 256. Section 69-7-267, Mississippi Code of 1972, is amended as follows:

69-7-267. Every person owning over three thousand (3,000) hens, or who is engaged or who engages in the business of selling eggs to a retailer who retails eggs in the State of Mississippi shall prior to offering for sale or selling eggs to a retailer, secure a license for such business from the Commissioner of Agriculture and Commerce, which license shall first be approved by the board. Applications for licenses shall be on forms furnished by the Department of Agriculture and Commerce, and shall show the name and address of the applicant and such other information as to identity, kind and type of business engaged in as the commissioner shall deem pertinent. Each license application shall be accompanied by a fee of Fifty Dollars (\$50.00). All licenses issued shall expire on June 30 each year.

The license may be revoked or suspended by the board for violation of any provision of this article or rules and regulations duly promulgated by the board for the enforcement of this article in accordance with the Mississippi Administrative Procedure Law of 1999, or for the violation of any laws of the State of Mississippi pertaining to producing, grading, classifying or marketing eggs in Mississippi or regulations of the State Department of Agriculture and Commerce duly promulgated for such purposes. For the first offense, the license may be suspended for a period of not more than thirty (30) days; for the second offense, the license may be suspended for not more than 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 aurally  
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  
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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)

the styles and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling of any products or animals subject to this article or Article 3 of this chapter; (2) definitions and standards of identity or composition for items subject to this article and standards of fill of container for such products not inconsistent with any such standards established under the Federal Food, Drug, and Cosmetic Act, or under the Federal Meat Inspection Act, and there shall be consultation between the commissioner and the secretary of agriculture of the United States prior to the issuance of such standards to avoid inconsistency between such standards and the federal standards.

(4) No item or product subject to this article shall be sold or offered for sale by any person, firm, or corporation, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading and which are approved by the commissioner, are permitted.

(5) If the commissioner has reason to believe that any marking or labeling or the size or form of any container in use or proposed for use with respect to any item subject to this article is false or misleading in any particular, he may direct that such use be withheld unless the marking, labeling, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person, firm, or corporation using or proposing to use the marking, labeling or container does not accept the determination of the commissioner, such person, firm, or corporation may request an adjudicative proceeding which shall be conducted in accordance with the Mississippi Administrative Procedure Law of 1999, but the use of the marking, labeling, or container shall, if the commissioner so directs, be withheld pending hearing and final determination by the commissioner. Any party aggrieved by such final

determination may secure judicial review in accordance with the Mississippi Administrative Procedure Law of 1999.

SECTION 331. Section 75-43-23, Mississippi Code of 1972, is amended as follows:

75-43-23. If, after proper application, the commissioner denies any person, partnership, association or corporation a license to operate a farm warehouse, the commissioner shall issue \* \* \* an order so providing, which shall state the reasons for the denial. In the event the applicant is dissatisfied at the decision of the commissioner, the applicant may request an adjudicative proceeding in accordance with the Mississippi Administrative Procedure Law of 1999 with the commissioner, to appear and defend its compliance with all appropriate regulations and/or give evidence that all deficiencies have been corrected. \* \* \* In the event the applicant is dissatisfied at the decision of the commissioner after the adjudicative proceeding, the applicant may secure judicial review in accordance with the Mississippi Administrative Procedure Law of 1999.

SECTION 332. Section 75-49-13, Mississippi Code of 1972, is amended as follows:

75-49-13. (1) The commissioner shall not:

(a) Deny an application for a license without first giving the applicant an adjudicative proceeding on the question of whether he is qualified under the provisions of this chapter to receive the license applied for.

(b) Revoke or suspend a license without first giving the licensee an adjudicative proceeding in accordance with the Mississippi Administrative Procedure Law of 1999 on the question of whether there are sufficient grounds under the provisions of this chapter upon which to base such revocation or suspension.

(2) Any interested party shall have the right to have the commissioner conduct an adjudicative proceeding in accordance 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. \* \* \*

SECTION 340. Section 75-60-19, Mississippi Code of 1972, is amended as follows:

75-60-19. (1) The Commission on Proprietary School and College Registration may suspend, revoke or cancel a certificate of registration for any one (1) or any combination of the following causes:

(a) Violation of any provision of the sections of this chapter or any regulation made by the commission;

(b) The furnishing of false, misleading or incomplete information requested by the commission;

(c) The signing of an application or the holding of a certificate of registration by a person who has pleaded guilty or has been found guilty of a felony or has pleaded guilty or been found guilty of any other indictable offense;

(d) The signing of an application or the holding of a certificate of registration by a person who is addicted to the use of any narcotic drug, or who is found to be mentally incompetent;

(e) Violation of any commitment made in an application for a certificate of registration;

(f) Presentation to prospective students of misleading, false or fraudulent information relating to the course of instruction, employment opportunity, or opportunities for enrollment in accredited institutions of higher education after entering or completing courses offered by the holder of a certificate of registration;

(g) Failure to provide or maintain premises or equipment for offering courses of instruction in a safe and sanitary condition;

(h) Refusal by an agent to display his agent's certificate of registration upon demand of a prospective student or other interested person;

(i) Failure to maintain financial resources adequate 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,

notice of a hearing regarding a major change in rates and schedules, as defined in Section 77-3-37(8), by a public utility of the type defined in Section 77-3-3(d)(iv) shall be published in a newspaper having general circulation in an area where service is being provided by the public utility.

At the time fixed for any hearing before the commission, or the time to which the same may have been continued, the complainant and the person complained of shall be entitled in person or by attorney to be heard and to introduce evidence in accordance with the Mississippi Administrative Procedure Law of 1999.

SECTION 354. Section 77-3-57, Mississippi Code of 1972, is amended as follows:

77-3-57. Service in all hearings, investigations and proceedings pending before the commission shall be made personally in accordance with the Mississippi Administrative Procedure Law of 1999.

SECTION 355. Section 77-7-15, Mississippi Code of 1972, is amended as follows:

77-7-15. The commission shall prescribe, issue, amend and rescind such reasonable rules and regulations as may be reasonably necessary or appropriate to carry out the provisions of this chapter. No rule or regulation shall be effective until thirty (30) days after copies of the proposed rule or regulation have been mailed to intrastate motor carriers affected thereby and until a notice, setting forth the terms or substance thereof and the time and place of a hearing thereon, has been published in a newspaper or newspapers of general circulation in the state and filed with the Secretary of State pursuant to the Mississippi Administrative Procedure Law of 1999. Such hearing may be held at any time after twenty (20) days following the date of publication of such notice, but such rules or regulations shall not become effective until a hearing thereon. The commission may 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

stenographer, and the stenographer so employed shall be duly sworn. The stenographer's certificate that the transcript of such evidence is correct, together with the official certificate of the commissioner or examiner that he has read the same and that it is, in his opinion, correct, shall entitle such transcript, or a certified copy thereof, to be received in evidence as relevant, material and competent. Such stenographer shall be paid at the same rates as that then currently in effect for similar duties performed by the chancery court reporter for the county in which the testimony of the witnesses is to be taken and preserved. The stenographer shall be paid out of the department maintenance fund on voucher approved by the commissioner or examiner employing such stenographer, accompanied with an itemized statement of services rendered. In the alternative, the proceedings may also be recorded and preserved in accordance with the Mississippi Administrative Procedure Law of 1999.

SECTION 362. Section 81-3-13, Mississippi Code of 1972, is amended as follows:

81-3-13. (1) Before any bank may be organized and formed, the prospective incorporators shall give notice to the Commissioner of Banking and Consumer Finance of their desire to engage in banking and apply for a certificate of authority to incorporate, and shall at the time file with the commissioner a copy of the proposed articles of incorporation, duly sworn to by one (1) of the prospective incorporators. The commissioner shall promptly give consideration to the application and make an examination of the proposed articles of incorporation to determine if they meet all requirements of law. The commissioner shall then make an investigation of the number of parent banks, branch banks, branch offices and branch facilities, and location thereof then serving the area in which the proposed new bank is to be located, the ratio of capital funds to total deposits 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

effect the acquisition of an insolvent bank sold pursuant to the provisions of Chapter 9, Title 81, Mississippi Code of 1972, any constraints of time imposed by this subsection shall not apply if the commissioner determines that an emergency exists which requires expedition of the procedure for granting a certificate in order to protect the interests of the public and the interests of depositors and creditors of the insolvent bank.

(2) Judicial review of unfavorable decision of State Board of Banking review. If the decision of the board, or a majority thereof, is unfavorable to the organization of the proposed new bank, it shall render a written opinion and decision giving its reason for rejection within sixty (60) days after the conclusion of the final board hearing in the matter, and the commissioner shall so advise the prospective incorporators, giving them a copy of the written decision and opinion of the board. If the prospective incorporators be aggrieved at the unfavorable decision of the board in denying a certificate authorizing them to proceed with the incorporation of the proposed new bank and the organization thereof, they shall have the right of judicial review in accordance with the Mississippi Administrative Procedure Law of 1999. \* \* \* If the prospective incorporators of the proposed new bank shall prevail, a decree shall be entered requiring the issuance by the commissioner of the certificate authorizing applicants to incorporate and organize in the same manner as if the application therefor had been approved by the board, and the costs therein incurred shall be paid by the commissioner out of the maintenance fund of the Department of Banking and Consumer Finance. If, however, the action of the board is affirmed on judicial review, a decree shall be entered to that effect taxing costs of the proceedings to the applicants. \* \* \* During the time the cause is pending in the office of the commissioner or before the board or on judicial review, the commissioner shall not issue a certificate to a 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

interested person aggrieved by any rule, regulation or order of the commissioner and/or the board, as applicable, shall have the right, regardless of the amount involved, to judicial review in accordance with the Mississippi Administrative Procedure Law of 1999. \* \* \*

SECTION 366. Section 81-19-17, Mississippi Code of 1972, is amended as follows:

81-19-17. (1) Each licensee shall be subject to the supervision of the commissioner.

(2) The commissioner is authorized to make and enforce such reasonable regulations as are necessary and proper for the administration, enforcement and interpretation of the provisions of this chapter. In adopting such regulations, the commissioner shall follow the procedures set forth in the Mississippi Administrative Procedure Law of 1999 \* \* \*.

(3) In order to discover violations of this chapter and to identify persons subject to the provisions of this chapter, the commissioner is authorized to examine licensees, including all books, records, accounts and papers employed by such licensees in the transaction of their business, to summon witnesses and examine them under oath concerning matters relating to the business of such persons, and to investigate such other matters as may be relevant in the opinion of the commissioner. For this purpose and for the general purposes of administration of this chapter, the commissioner may employ such deputies and assistants as may be necessary, and such deputies and assistants, in the discretion of the commissioner, may be vested with the same authority conferred upon the commissioner by this chapter.

(4) For the purpose of defraying a portion of the examination and administrative expenses incurred by the commissioner, each licensee shall pay at the time of examination the actual expenses of the examination, not to exceed Two Hundred Dollars (\$200.00) per day for the time actually devoted to 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

regulations to effectuate the purposes of this chapter. All such rules and regulations shall be promulgated in accordance with the provisions of the Mississippi Administrative Procedure Law of 1999.

SECTION 368. Section 81-21-5, Mississippi Code of 1972, is amended as follows:

81-21-5. (1) Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and shall issue a license if the application is qualified in accordance with this chapter. If the commissioner does not so find, he or she, at the request of the applicant, shall give the application a full hearing in an adjudicative proceeding in accordance with the Mississippi Administrative Procedure Law of 1999.

(2) The commissioner shall issue or renew a license when he or she is satisfied that the person to be licensed:

(a) Is competent and trustworthy and intends to act in good faith;

(b) Has a good business reputation and has had the experience or training or possesses the abilities so as to be qualified to act as a premium finance company;

(c) If a corporation, is incorporated under the laws of this state or, if a foreign corporation, is authorized to transact business in this state.

SECTION 369. Section 81-21-7, Mississippi Code of 1972, is amended as follows:

81-21-7. (1) The commissioner may revoke or suspend the license of any premium finance company when after investigation the commissioner finds that:

(a) The license was obtained by material misrepresentation or fraud;

(b) The holder of the license has shown himself untrustworthy or incompetent to act as a premium finance company; 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  
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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

commissioner is authorized to appoint a member of the Insurance Department staff for the purpose of hearing such appeals, and a ruling based upon such hearing shall have the same effect as if heard by the commissioner. All persons or insureds aggrieved by any order or decision of the commissioner have the right to judicial review in accordance with the Mississippi Administrative Procedure Law of 1999.

SECTION 384. Section 83-39-19, Mississippi Code of 1972, is amended as follows:

83-39-19. Any person aggrieved by an act of the commissioner under the provisions of this chapter shall have the right of judicial review in accordance with the Mississippi Administrative Procedure Law of 1999. \* \* \*

Actions taken by the commissioner or department in suspending a license, registration or permit when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a suspension of a license, registration or permit that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section.

SECTION 385. Section 83-41-339, Mississippi Code of 1972, is amended as follows:

83-41-339. (1) Any certificate of authority issued under this article may be suspended or revoked, and any application for a certificate of authority may be denied, if the commissioner after an adjudicative proceeding finds that any of the conditions listed below exist:

(a) The health maintenance organization is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in any other information submitted under Section 83-41-305, unless amendments 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 Procedure Law of 1999, provide definitions for  
16839 terms used in such law, prescribe procedures that must be  
16840 followed by agencies in the adoption, amendment and repeal of  
16841 agency rules, require the filing of an economic impact statement  
16842 for the adoption of a rule require filing and notice before such  
16843 rules may become effective, require agencies to index all  
16844 effective rules adopted, provide that revocation or suspension of  
16845 any 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.