

By: Taylor

To: Insurance

## HOUSE BILL NO. 196

1 AN ACT TO AMEND SECTIONS 75-63-3, 75-63-11, 75-63-15,  
2 75-63-17, 75-63-18 AND 75-63-23, MISSISSIPPI CODE OF 1972, TO  
3 REQUIRE ANY BUSINESS THAT SELLS CEMETERY MERCHANDISE ON A PRE-NEED  
4 BASIS TO DEPOSIT ONE HUNDRED PERCENT OF THE CONTRACT VALUE OF THE  
5 MONEY IT RECEIVES FROM SUCH SALES INTO A TRUST FUND OR, IN LIEU  
6 THEREOF, TO DEPOSIT FIFTY PERCENT OF SUCH MONEY INTO A TRUST FUND  
7 AND EXECUTE A SURETY BOND TO SECURE THE PERFORMANCE OF SUCH  
8 CONTRACTS; TO AUTHORIZE THE COMMENCEMENT OF COURT PROCEEDINGS TO  
9 ENFORCE THE OBLIGATIONS OF SUCH BONDS; TO PROVIDE THAT ALL  
10 CONTRACTS FOR THE PRE-NEED SALE OF CEMETERY MERCHANDISE SHALL  
11 CONTAIN A PROMISE BY THE SELLER TO DELIVER AT THE TIME OF DEATH  
12 ALL SUCH MERCHANDISE FOR WHICH THE PURCHASER CONTRACTED THAT IS  
13 USED IN ACTUAL BURIAL; TO REQUIRE THE TRUSTEE OF A CEMETERY  
14 MERCHANDISE TRUST FUND AND THE SELLER OF CEMETERY MERCHANDISE TO  
15 KEEP BOOKS AND RECORDS AND ACCOUNT ANNUALLY FOR SURETY BONDS  
16 EXECUTED TO SECURE THE PERFORMANCE OF CONTRACTS FOR THE PRE-NEED  
17 SALE OF CEMETERY MERCHANDISE; TO PROVIDE THAT THE CHANCERY COURT  
18 SHALL HAVE JURISDICTION FOR THE ENFORCEMENT OF SUCH SURETY BONDS;  
19 TO PROVIDE THAT THE ATTORNEY GENERAL MAY INVESTIGATE COMPLAINTS  
20 AND ASSIST PROSECUTORS IN PROSECUTIONS FOR VIOLATIONS OF THE LAWS  
21 RELATING TO THE PRE-NEED SALE OF CEMETERY MERCHANDISE; TO AMEND  
22 SECTION 73-11-55, MISSISSIPPI CODE OF 1972, TO REQUIRE APPLICANTS  
23 FOR FUNERAL ESTABLISHMENT LICENSES TO PROVIDE THE STATE BOARD OF  
24 FUNERAL SERVICE WITH CERTAIN INFORMATION RELATING TO THE PRE-NEED  
25 SALE OF CEMETERY MERCHANDISE AT THE TIME OF MAKING APPLICATION FOR  
26 OR RENEWING A LICENSE; TO AMEND SECTION 73-11-57, MISSISSIPPI CODE  
27 OF 1972, TO PROVIDE THAT FAILURE OF SUCH APPLICANT TO FURNISH SUCH  
28 INFORMATION, TO ESTABLISH AND MAINTAIN A TRUST ACCOUNT OR TO  
29 OBTAIN AND MAINTAIN A BOND TO SECURE THE PERFORMANCE OF PRE-NEED  
30 CEMETERY MERCHANDISE SALES SHALL CONSTITUTE GROUNDS FOR THE BOARD  
31 TO REFUSE TO ISSUE OR RENEW A LICENSE AND TO TAKE DISCIPLINARY  
32 ACTION AGAINST THE FUNERAL ESTABLISHMENT; AND FOR RELATED  
33 PURPOSES.

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

35 SECTION 1. Section 75-63-3, Mississippi Code of 1972, is  
36 amended as follows:

37 75-63-3. (1) Any person, firm, corporation, association or  
38 partnership entering into any such contract as the seller or the  
39 party responsible for providing such services shall deposit an  
40 amount of money equal to one hundred percent (100%) of the value  
41 of such property or services as stated in the contract, into a

42 trust fund established for that purpose. Such deposit shall be  
43 made not later than forty-five (45) days after the end of the  
44 month in which such contract is executed; except if that payment  
45 for the property and/or service is made by the consumer in  
46 installments, one hundred percent (100%) of each installment  
47 payment shall be deposited to the trust within forty-five (45)  
48 days of the last day of the month within which such payment was  
49 made.

50 (2) Each initial deposit as to each contract into the trust  
51 fund shall be identified by the seller by furnishing the trustee  
52 with the name of the purchaser, a copy of the contract containing  
53 a statement of the value of such property or services and a  
54 description of the personal property and/or services to be  
55 furnished or provided by the seller thereunder. Nothing therein  
56 contained shall prohibit the trustee from commingling the deposits  
57 in any such trust fund for purposes of the management thereof and  
58 the investment of funds therein.

59 (3) In lieu of depositing into the trust fund one hundred  
60 percent (100%) of the contract value of the property or services  
61 or one hundred percent (100%) of the contract installment payments  
62 as provided in subsection (1) of this section, the seller or party  
63 responsible for providing such property or services, at the time  
64 as provided in subsection (1) of this section, shall deposit into  
65 the trust fund an amount of money equal to not less than fifty  
66 percent (50%) of the contract value of the property or services  
67 or, in the case of installment payments, fifty percent (50%) of  
68 each contract installment payment, and shall execute and enter  
69 into a surety bond with some insurance company or surety company  
70 licensed and doing business in the State of Mississippi. The bond  
71 shall be in an amount not less than the total amount of the  
72 contract value of all cemetery merchandise property and services  
73 sold on a pre-need basis during the one-year period immediately  
74 preceding the calendar year in which the bond is executed. The  
75 bond shall be made payable to the trustee for the benefit of all  
76 persons with whom the seller has contracted for the pre-need sale  
77 of cemetery merchandise and shall be conditioned upon delivery of  
78 such merchandise at the time and in accordance with the terms as

79 prescribed in such contracts. The term of such bonds shall be not  
80 less than two (2) years. The original bond or a certified copy  
81 thereof shall be deposited with the trustee and shall be kept by  
82 the trustee until expiration or until replaced by a subsequent  
83 bond that meets the requirements of this subsection unless before  
84 such time the chancery court orders the insurance company or  
85 surety company to forfeit the bond.

86 SECTION 2. Section 75-63-11, Mississippi Code of 1972, is  
87 amended as follows:

88 75-63-11. If for any reason the seller, who has entered into  
89 a contract for the sale of such personal property and/or the  
90 performing of such services and has made the deposit herein  
91 required to be made, cannot or does not perform all provisions of  
92 said contract promptly as to delivery of the property covered by  
93 said contract after request to do so, the family, legal  
94 representative or next of kin of the purchaser shall be entitled  
95 to receive from the trustee the amount of money on deposit to the  
96 credit of that particular contract, including interest, and, if  
97 necessary, shall be entitled to have the trustee to commence  
98 proceedings in the chancery court to require payment on any bond  
99 that the seller has deposited with the trustee. An affidavit of  
100 the family, legal representative or next of kin to that effect,  
101 delivered to the trustee, shall be sufficient authority to the  
102 trustee to make \* \* \* payment of money deposited by the seller in  
103 the trust fund without any liability to the person making the  
104 deposit of such money into the trust fund or to any other person;  
105 however, any bond of the seller may not be forfeited unless  
106 ordered by the chancery court. Nothing herein contained shall  
107 relieve the seller under any such contract of his liability for  
108 nonperformance. Each contract covered by this chapter shall  
109 provide that in the event that the retail consumer, his family,  
110 legal representative or next of kin requests the seller to deliver  
111 the property or provide the service described in the contract to

112 or at a location which is more than fifty (50) miles from the  
113 location where the contract was executed by the purchaser and  
114 which is deemed by the seller to be impractical for the seller to  
115 deliver the property or provide the services, then the seller  
116 shall return to the retail consumer, his family, legal  
117 representative or next of kin all sums, including interest, paid  
118 by the consumer for such property and/or services. Each contract  
119 also shall contain an unconditional promise of the seller to  
120 deliver at the time of death, and upon demand of the family, legal  
121 representative or next of kin of the purchaser, the casket, vault,  
122 liner and all other merchandise for which the purchaser contracted  
123 that are used in actual burial.

124 SECTION 3. Section 75-63-15, Mississippi Code of 1972, is  
125 amended as follows:

126 75-63-15. (1) Every trustee of a cemetery merchandise trust  
127 fund shall annually prepare and file with the cemetery merchandise  
128 business a detailed accounting and report of such fund on or  
129 before March 31 of each year for the calendar year ending the  
130 preceding December 31 or within ninety (90) days after the end of  
131 the fiscal year of the trust agreement, which report shall  
132 include, among other things, properly itemized, the securities in  
133 which monies in the fund are invested and the amount of any bond  
134 that the seller has in effect to secure performance of pre-need  
135 sale contracts.

136 (2) Every seller shall keep accurate books of account and  
137 records of all transactions concerning merchandise funds and  
138 sellers' bonds to secure pre-need sales, and a copy of all  
139 agreements made in connection with merchandise funds and sellers'  
140 bonds to secure pre-need sales. Such records shall be kept and be  
141 available for inspection and copy by any purchaser, or the  
142 purchaser's family, legal representative or next of kin, at the  
143 usual place of the seller's business, for at least one (1) year  
144 after the termination of the agreement which they evidence.

145 SECTION 4. Section 75-63-17, Mississippi Code of 1972, is  
146 amended as follows:

147 75-63-17. All trusts created pursuant to this chapter shall  
148 have corporate entities as trustees. The trust fund established  
149 under the provisions of this chapter and bonds executed by sellers  
150 to secure performance of pre-need sale contracts shall be  
151 administered under the jurisdiction of the chancery court of the  
152 chancery court district wherein the seller is located or if the  
153 seller be located outside of the State of Mississippi then in the  
154 chancery court of the chancery court district wherein the  
155 purchaser resides. The chancery courts so having jurisdiction  
156 shall have full jurisdiction over the reports and accounting of  
157 trustees, amount of surety bond required by trustees, the amount  
158 and sufficiency of bonds executed by sellers to secure performance  
159 of pre-need sale contracts, and investment of trust funds. The  
160 courts may waive the trustee's surety bond and control over  
161 investments in the case of trusts placed with an established bank  
162 or corporate trustee.

163 SECTION 5. Section 75-63-18, Mississippi Code of 1972, is  
164 amended as follows:

165 75-63-18. (1) Within thirty (30) days after the end of the  
166 calendar or the business' fiscal year, each cemetery merchandise  
167 business shall file with the clerk of the chancery court having  
168 jurisdiction over the administration of its merchandise trust fund  
169 and with the State Board of Funeral Service an annual account,  
170 which account shall contain the following information:

171 (a) The name of the business, the date of  
172 incorporation, if incorporated, and the location of such business  
173 or businesses;

174 (b) The amounts of sales of all property and services  
175 for which payment has been made in full during the preceding  
176 calendar or fiscal year;

177 (c) The amount of sales of all property and services

178 during the preceding calendar or fiscal year for which payment is  
179 to be made on an installment basis;

180 (d) The amounts paid into the merchandise trust fund,  
181 and the income earned therefrom during the preceding fiscal  
182 year; \* \* \*

183 (e) The face amount of any bond in effect and obtained  
184 by the seller to secure performance of the pre-need sale of  
185 cemetery merchandise; and

186 (f) The names and addresses of the owners of the  
187 business and, if incorporated, its officers and directors, and any  
188 change of control which has occurred during the past fiscal or  
189 calendar year.

190 (2) Within forty-five (45) days after the time by which the  
191 trustee's accounting and report is required to be filed with the  
192 cemetery merchandise business, as provided by Section 75-63-15,  
193 the business shall file a copy of such accounting and report with  
194 the clerk of the chancery court having jurisdiction thereof.

195 (3) As a condition to the transfer of any merchandise trust  
196 fund monies from one trust institution to another, the business  
197 for which such fund is maintained shall, not less than thirty (30)  
198 days prior to the time when such transfer is to occur, file with  
199 the chancery clerk a written notice of intent to transfer  
200 accompanied with a letter of intent to receive such trust fund  
201 monies from the trust institution to which such trust fund monies  
202 are to be transferred. Such fund monies shall be transferred  
203 directly from the existing trust institution to the receiving  
204 trust institution.

205 (4) Prior to any sale or transfer of any cemetery  
206 merchandise business or a controlling interest therein, an  
207 independent audit of the merchandise trust fund shall be performed  
208 at the expense of the seller and/or buyer or transferor and  
209 transferee and filed with the chancery clerk. Such audit shall be  
210 current within thirty (30) days of the proposed sale or transfer.

211 (5) Each chancery clerk shall maintain a properly indexed  
212 book in which there shall be kept, preserved and open for public  
213 inspection a copy of each record, report and notice required to be  
214 filed with the chancery clerk under the provisions of this  
215 chapter. For filing and indexing the records, reports and notices  
216 under this chapter, the chancery clerk shall be authorized to  
217 charge such fees as are provided in Section 25-7-9 for the  
218 recording and indexing of deeds.

219 (6) The clerk of the chancery court having jurisdiction  
220 shall, upon the failure to timely receive any of the records,  
221 reports or notices provided for under this chapter, immediately  
222 give notice by registered letter to the owner or owners of such  
223 business, or, if incorporated, its officers and directors at its  
224 or their last-known address, that such records, reports or notices  
225 have not been received. Failure of such persons to file such  
226 records, reports or notices within fifteen (15) days after such  
227 registered letter is mailed shall, in the absence of clear  
228 justification or excuse, constitute a misdemeanor and each owner  
229 and, if incorporated, its officers and directors, shall be subject  
230 to the penalties provided for in Section 75-63-23.

231 (7) Whenever it reasonably appears to the court upon  
232 complaint filed with the chancery court having jurisdiction  
233 thereof by any purchaser, or the family, legal representative or  
234 next of kin of any such purchaser, of any property or services  
235 contracted for under the provisions of this chapter that (a) such  
236 business is insolvent or about to become insolvent; or (b) \* \* \*  
237 no merchandise trust fund has been established for such business  
238 or, if established, the trust fund does not contain such funds as  
239 are required to be contained therein; or (c) such business has not  
240 obtained and have in effect a sufficient bond as required under  
241 subsection (3) of Section 75-63-3 to secure performance of  
242 pre-need sale contract, the court shall order a private audit and  
243 examination of any merchandise trust fund of such business and of

244 all the books, records and papers employed in the transaction of  
245 such business.

246 In the event that such audit and examination shows that the  
247 business is insolvent or is about to become insolvent or that a  
248 sufficient trust fund or bond has not been established or is not  
249 being maintained for such business, the court shall exercise such  
250 jurisdiction and make and issue such orders and decrees as may be  
251 necessary to correct and enforce compliance with the provisions of  
252 this chapter and all such other orders and decrees as shall be  
253 just, equitable and in the public interest, including the  
254 appointment of receivers to continue or terminate the operation of  
255 such business.

256 (8) All the necessary expenses of any examination or audit  
257 performed or court proceedings conducted under the provisions of  
258 subsection (7) of this section shall be paid by the owner or  
259 owners of such business or, if incorporated, its officers and  
260 directors, and in the event that a sale of any such business is  
261 ordered by the court, the proceeds of such sale shall first be  
262 applied to the costs expended under the provisions of subsection  
263 (7) of this section.

264 SECTION 6. Section 75-63-23, Mississippi Code of 1972, is  
265 amended as follows:

266 75-63-23. (1) Any person, partnership, corporation or  
267 organization violating the provisions of this chapter shall be  
268 punished by a fine of not less than One Hundred Dollars (\$100.00)  
269 nor more than One Thousand Dollars (\$1,000.00) or confined in the  
270 county jail for a period not exceeding one (1) year, or both. If  
271 the person violating the provisions of this chapter is a  
272 corporation or association, any prison term imposed shall be upon  
273 the officer responsible for the violation.

274 (2) The Office of the Attorney General may investigate  
275 complaints and assist county prosecuting attorneys and district  
276 attorneys in prosecutions for violations of this chapter.



277 SECTION 7. Section 73-11-55, Mississippi Code of 1972, is  
278 amended as follows:[%CN%1]

279 73-11-55. (1) No person or party shall conduct, maintain,  
280 manage or operate a funeral establishment or branch thereof unless  
281 a license for each such establishment has been issued by the board  
282 and is conspicuously displayed in such funeral establishment. In  
283 case of funeral services held in any private residence, church,  
284 cemetery, cemetery chapel, cemetery facility, or lodge hall, no  
285 license shall be required.

286 (2) To be licensed as a funeral establishment, a place or  
287 premise must be at a fixed and specified address or location and  
288 must be used for immediate post-death activities, whether used for  
289 the custody, shelter, care, preparation and/or embalming of the  
290 human dead. Every funeral establishment shall be under the charge  
291 and personal supervision of a Mississippi funeral director  
292 licensee or a Mississippi funeral service licensee. The licensee  
293 in charge and the licensee with personal supervisory  
294 responsibilities need not be the same licensee. Each licensed  
295 funeral establishment shall be inspected at least once during each  
296 licensing period. Such inspections may be unannounced.

297 (3) For the purposes of this section:

298 (a) A funeral establishment must contain a preparation  
299 and/or embalming room, adequate casket vault selection room, and  
300 holding facilities or proper room or rooms in which rites and  
301 ceremonies may be held.

302 (b) A branch is a funeral establishment that is part of  
303 a multiunit enterprise within this state. A branch establishment  
304 need not meet all requirements specified in paragraph (a) of this  
305 subsection and need not be under the personal supervision of a  
306 Mississippi funeral director licensee or a Mississippi funeral  
307 service licensee if the branch is within seventy (70) miles of the  
308 headquarters' location.

309 If the branch meets all requirements of a funeral

310 establishment as specified in paragraph (a) of this subsection,  
311 such establishment must be under the charge and personal  
312 supervision of a Mississippi funeral director licensee or a  
313 Mississippi funeral service licensee.

314 (c) A commercial mortuary service is a funeral  
315 establishment that embalms and transports for licensed funeral  
316 establishments and does not sell any services or merchandise  
317 directly or at retail to the public.

318 (4) Applications for funeral establishment licenses, branch  
319 establishment licenses or commercial mortuary service licenses  
320 shall be made on blanks furnished by the board and shall be  
321 accompanied by a fee in an amount fixed by the board pursuant to  
322 Section 73-11-56. All establishment licenses shall be issued for  
323 a period of two (2) years, except initial licenses may be prorated  
324 from the date of issuance to the next renewal date.

325 Renewal funeral establishment applications and license fees  
326 shall be due and payable to the board on or before the expiration  
327 date of the license. The board shall mail a notice of the due  
328 date for payment of the renewal fee at least thirty (30) days  
329 prior to the license expiration date.

330 (5) If the renewal fee is not paid on or before the date  
331 that it is due, a late fee, as prescribed by Section 73-11-56,  
332 shall be added to the renewal fee. A period of thirty (30) days  
333 shall be allowed after the expiration of a license, during which  
334 time the funeral establishment, branch establishment or commercial  
335 mortuary service license may be renewed on the payment of the  
336 renewal fee plus the applicable late fee. If the license is not  
337 renewed during the aforesaid thirty-day period, such license shall  
338 by operation of law automatically expire and become void without  
339 further action of the board. All establishments whose licenses  
340 have expired under this section may be reinstated by filing with  
341 the board an application for reinstatement, submitting to an  
342 inspection during which time the licensee in charge of such

343 establishment shall be interviewed by the board or its designee  
344 and by paying all renewal fees in arrears, late fees, a  
345 reinstatement fee and an inspection fee.

346 (6) A license for each new establishment, change of  
347 location, change of ownership, or reinstatement of an  
348 establishment shall not be issued until an inspection has been  
349 made, license and inspection fees have been paid, and the licensee  
350 in charge of such establishment has been interviewed by the board  
351 or its designee.

352 (7) No operator of a funeral establishment shall allow any  
353 person licensed for the practice of funeral service or funeral  
354 directing, as the case may be, to operate out of such funeral  
355 establishment unless such licensee is the operator of or an  
356 employee of the operator of a funeral establishment which has been  
357 issued a license by the board.

358 (8) The board is authorized to establish rules and  
359 regulations for the issuance of a special funeral establishment  
360 work permit.

361 (9) Each applicant for a funeral establishment license or  
362 for renewal of a funeral establishment license shall provide with  
363 its application, in addition to such other information as the  
364 board may require, the following information:

365 (a) The total contract value of cemetery merchandise  
366 sold by the applicant during each of the last two (2) twelve-month  
367 periods immediately preceding the date of its current application  
368 for a funeral establishment license;

369 (b) The total amount of money collected from the  
370 pre-need sale of cemetery merchandise, including money actually  
371 collected pursuant to installment contracts, during each of the  
372 last two (2) twelve-month periods immediately preceding the date  
373 of its current application for a funeral establishment license;

374 (c) The total amount of money deposited into the trust  
375 fund required to be established under Chapter 63 of Title 75,

376 Mississippi Code of 1972, during each of the last two (2)  
377 twelve-month periods immediately preceding the date of its current  
378 application for a funeral establishment license; and

379 (d) The face amount of any bond that it has in effect  
380 to secure the performance of pre-need cemetery merchandise sales  
381 as required under subsection (3) of Section 75-63-3. The  
382 applicant shall also provide the board with a certified copy of  
383 such bond.

384 SECTION 8. Section 73-11-57, Mississippi Code of 1972, is  
385 amended as follows:[%CN%2]

386 73-11-57. (1) The board may refuse to examine or to issue  
387 or renew, or may suspend or revoke, any license, or may reprimand  
388 or place the holder thereof on a term of probation, after proper  
389 hearing, upon finding the holder of such license to be guilty of  
390 acts of commission or omission including the following: (a) the  
391 employment of fraud or deception in applying for a license or in  
392 passing the examination provided for in this chapter; (b) the  
393 erroneous issuance of a license to any person; (c) the conviction  
394 of a felony by any court in this state or any federal court or by  
395 the court of any other state or territory of the United States;  
396 (d) the practice of embalming under a false name or without a  
397 license for the practice of funeral service; (e) the impersonation  
398 of another funeral service or funeral directing licensee; (f) the  
399 permitting of a person other than a funeral service or funeral  
400 directing licensee to make arrangements for a funeral and/or form  
401 of disposition; (g) violation of any provision of this chapter or  
402 any rule or regulation of the board; (h) having had a license for  
403 the practice of funeral service or funeral directing suspended or  
404 revoked in any jurisdiction, having voluntarily surrendered his  
405 license in any jurisdiction, having been placed on probation in  
406 any jurisdiction, having been placed under disciplinary order(s)  
407 or other restriction in any manner for funeral directing and/or  
408 funeral service, or operating a funeral establishment (a certified

409 copy of the order of suspension, revocation, probation or  
410 disciplinary action shall be prima facie evidence of such action);  
411 (i) solicitation of dead human bodies by the licensee, his agents,  
412 assistants or employees, whether such solicitation occurs after  
413 death or when death is imminent; however, this shall not be deemed  
414 to prohibit general advertising; (j) employment directly or  
415 indirectly of any apprentice, agent, assistant, employee, or other  
416 person, on a part-time or full-time basis or on commission, for  
417 the purpose of calling upon individuals or institutions by whose  
418 influence dead human bodies may be turned over to a particular  
419 funeral establishment; (k) unprofessional conduct which includes  
420 but is not limited to: (i) retaining a dead human body for the  
421 payment of a fee for the performance of services not authorized in  
422 writing; (ii) knowingly performing any act which in any way  
423 assists an unlicensed person to practice funeral service or  
424 funeral directing; (iii) being guilty of any dishonorable conduct  
425 likely to deceive, defraud or harm the public; (iv) any act or  
426 omission in the practice of funeral service or directing which  
427 constitutes dishonesty, fraud or misrepresentation with the intent  
428 to benefit the licensee, another person or funeral establishment,  
429 or with the intent to substantially injure another person,  
430 licensee or funeral establishment; or (v) any act or conduct,  
431 whether the same or of a different character than specified above,  
432 which constitutes or demonstrates bad faith, incompetency or  
433 untrustworthiness; or dishonest, fraudulent or improper dealing;  
434 or any other violation of the provisions of this chapter, the  
435 rules and regulations established by the board or any rule or  
436 regulation promulgated by the Federal Trade Commission relative to  
437 the practice of funeral service or directing; or (l) the failure  
438 of a funeral establishment that sells cemetery merchandise on a  
439 pre-need basis (i) to establish and maintain a trust account and  
440 to obtain and maintain a bond to secure the performance of  
441 pre-need cemetery merchandise sales as required under Chapter 63

442 of Title 75, Mississippi Code of 1972; or (ii) to furnish with his  
443 application for license issuance or renewal the information  
444 required under subsection (9) of Section 73-11-55.

445 (2) The board may, upon satisfactory proof that the  
446 applicant or licensee has been guilty of any of the offenses above  
447 enumerated, refuse to examine or issue a license to the applicant,  
448 or may refuse to renew or revoke or suspend the license of the  
449 licensee, or place on probation or reprimand him, upon a majority  
450 vote of the board members, after a hearing thereon. The board is  
451 hereby vested with full power and authority to hold and conduct  
452 such hearings, compel the attendance of witnesses and the  
453 production of books, records and documents, issue subpoenas  
454 therefor, administer oaths, examine witnesses, and do all things  
455 necessary to properly conduct such hearings. The board may waive  
456 the necessity of a hearing if the person accused of a violation  
457 admits that he has been guilty of such offense. Any person who  
458 has been refused a license or whose license has been revoked or  
459 suspended may, within thirty (30) days after the decision of the  
460 board, file with the board a written notice stating that he feels  
461 himself aggrieved by such decision and appeals therefrom to the  
462 circuit court. Upon the filing of such notice, the secretary of  
463 the board shall transmit to the clerk of the circuit court the  
464 records and findings of such proceedings. The circuit court shall  
465 hear and determine as to whether the action of the board was in  
466 accord or consistent with law, or was arbitrary, unwarranted or in  
467 abuse of discretion. An appeal from the circuit court judgment or  
468 decree may be reviewed by the Supreme Court as is provided by law  
469 for other appeals.

470 (3) In a proceeding conducted under this section by the  
471 board for the revocation or suspension of a license, the board  
472 shall have the power and authority for the grounds stated for such  
473 revocation or suspension, and in addition thereto or in lieu of  
474 such revocation or suspension may assess and levy upon any person

475 licensed under this chapter, a monetary penalty, as follows:

476           (a) For the first violation of any of the subparagraphs  
477 of subsection (1) of this section, a monetary penalty of not less  
478 than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars  
479 (\$500.00).

480           (b) For the second violation of any of the  
481 subparagraphs of subsection (1) of this section, a monetary  
482 penalty of not less than One Hundred Dollars (\$100.00) nor more  
483 than One Thousand Dollars (\$1,000.00).

484           (c) For the third and any subsequent violation of any  
485 of the subparagraphs of subsection (1) of this section, a monetary  
486 penalty of not less than Five Hundred Dollars (\$500.00) and not  
487 more than Five Thousand Dollars (\$5,000.00).

488           (d) For any violation of any of the subparagraphs of  
489 subsection (1) of this section, those reasonable costs that are  
490 expended by the board in the investigation and conduct of a  
491 proceeding for licensure revocation or suspension, including but  
492 not limited to the cost of process service, court reporters,  
493 expert witnesses and investigators.

494           (4) The power and authority of the board to assess and levy  
495 such monetary penalties hereunder shall not be affected or  
496 diminished by any other proceeding, civil or criminal, concerning  
497 the same violation or violations except as provided in this  
498 section.

499           (5) A licensee shall have the right of appeal from the  
500 assessment and levy of a monetary penalty as provided in this  
501 section under the same conditions as a right of appeal is provided  
502 elsewhere for appeals from an adverse ruling, order or decision of  
503 the board.

504           (6) Any monetary penalty assessed and levied under this  
505 section shall not take effect until after the time for appeal  
506 shall have expired. In the event of an appeal, such appeal shall  
507 act as a supersedeas.

508           (7) A monetary penalty assessed and levied under this  
509 section shall be paid to the board by the licensee upon the  
510 expiration of the period allowed for appeal of such penalties  
511 under this section or may be paid sooner if the licensee elects.  
512 With the exception of subsection (3)(d) of this section, monetary  
513 penalties collected by the board under this section shall be  
514 deposited to the credit of the General Fund of the State Treasury.

515 Any monies collected by the board under subsection (3)(d) of this  
516 section shall be deposited into the special fund operating account  
517 of the board.

518           (8) When payment of a monetary penalty assessed and levied  
519 by the board against a licensee in accordance with this section is  
520 not paid by the licensee when due under this section, the board  
521 shall have power to institute and maintain proceedings in its name  
522 for enforcement of payment in the chancery court of the county and  
523 judicial district of residence of the licensee, and if the  
524 licensee be a nonresident of the State of Mississippi, such  
525 proceedings shall be in the Chancery Court of the First Judicial  
526 District of Hinds County, Mississippi.

527           (9) In addition to the reasons specified in subsection (1)  
528 of this section, the board shall be authorized to suspend the  
529 license of any licensee for being out of compliance with an order  
530 for support, as defined in Section 93-11-153. The procedure for  
531 suspension of a license for being out of compliance with an order  
532 for support, and the procedure for the reissuance or reinstatement  
533 of a license suspended for that purpose, and the payment of any  
534 fees for the reissuance or reinstatement of a license suspended  
535 for that purpose, shall be governed by Section 93-11-157 or  
536 93-11-163, as the case may be. Actions taken by the board in  
537 suspending a license when required by Section 93-11-157 or  
538 93-11-163 are not actions from which an appeal may be taken under  
539 this section. Any appeal of a license suspension that is required  
540 by Section 93-11-157 or 93-11-163 shall be taken in accordance



541 with the appeal procedure specified in Section 93-11-157 or  
542 93-11-163, as the case may be, rather than the procedure specified  
543 in this section. If there is any conflict between any provision  
544 of Section 93-11-157 or 93-11-163 and any provision of this  
545 chapter, the provisions of Section 93-11-157 or 93-11-163, as the  
546 case may be, shall control.

547 SECTION 9. This act shall take effect and be in force from  
548 and after July 1, 2000.