

By: Holland, Stevens, Moody

To: Public Health and
WelfareHOUSE BILL NO. 1160
(As Passed the House)

1 AN ACT TO PROVIDE FOR THE REVIEW OF PROPOSED RULES OF THE
2 STATE BOARD OF HEALTH BY THE PUBLIC HEALTH AND WELFARE COMMITTEES
3 OF THE HOUSE AND THE SENATE BEFORE THE RULES MAY BECOME EFFECTIVE;
4 TO REQUIRE THE BOARD TO GIVE NOTICE AND COPIES OF THE PROPOSED
5 RULES TO THE COMMITTEES AT LEAST 15 DAYS BEFORE THE BOARD INTENDS
6 TO ADOPT, AMEND OR REPEAL ANY RULES; TO AUTHORIZE THE COMMITTEES
7 TO HOLD MEETINGS AND PUBLIC HEARINGS TO REVIEW THE PROPOSED RULES;
8 TO PROVIDE THAT THE COMMITTEES OR ANY COMMITTEE MEMBER MAY OBJECT
9 TO A PROPOSED RULE OR ANY PART THEREOF AND SHALL GIVE THE BOARD
10 THE REASONS FOR THE OBJECTION; TO PROVIDE THAT THE COMMITTEES OR
11 ANY COMMITTEE MEMBER MAY MAKE RECOMMENDATIONS TO THE BOARD FOR
12 SUGGESTED CHANGES TO A PROPOSED RULE; TO PROVIDE THAT IF THE
13 COMMITTEES DO NOT HOLD MEETINGS TO REVIEW A PROPOSED RULE, THE
14 RULE WILL TAKE EFFECT AT THE REGULAR TIME; TO PROVIDE THAT IF
15 THERE ARE OBJECTIONS TO A PROPOSED RULE AND THE BOARD DOES NOT
16 MAKE ANY OF THE SUGGESTED CHANGES TO THE RULE, THE RULE WILL TAKE
17 EFFECT 15 DAYS AFTER THE COMMITTEES HAVE CONCLUDED THEIR MEETINGS
18 TO REVIEW THE RULE; TO PROVIDE THAT IF THE BOARD MAKES ANY OF THE
19 SUGGESTED CHANGES TO THE PROPOSED RULE, THE RULE WILL TAKE EFFECT
20 15 DAYS AFTER THE BOARD HAS FILED A COPY OF THE REVISED RULE WITH
21 THE SECRETARY OF STATE; TO SPECIFY CERTAIN CRITERIA THAT THE
22 COMMITTEES ARE TO CONSIDER IN DETERMINING WHETHER TO OBJECT TO ANY
23 PROPOSED RULE; TO PROVIDE THAT NOTHING IN THIS ACT SHALL BE
24 CONSTRUED AS GIVING THE COMMITTEES ANY AUTHORITY TO VETO, NULLIFY
25 OR AMEND ANY RULE OR PROPOSED RULE OF THE BOARD; TO AMEND SECTIONS
26 25-43-7, 25-43-9 AND 41-3-17, MISSISSIPPI CODE OF 1972, IN
27 CONFORMITY WITH THE PRECEDING PROVISIONS; AND FOR RELATED
28 PURPOSES.

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

30 SECTION 1. (1) As used in this section, the term "rule"
31 shall be defined as provided in Section 25-43-3. For the purposes
32 of this section, any reference to a proposed rule or the proposed
33 adoption of a rule includes a proposed amendment or repeal of a
34 rule.

35 (2) (a) Whenever the State Board of Health proposes the
36 adoption, amendment or repeal of any rule after June 30, 2000, the
37 board shall give notice to the chairmen and other members of the
38 Public Health and Welfare Committees of the House of
39 Representatives and the Senate (referred to in this section as

40 "the committees") at least fifteen (15) days before the board's
41 intended action.

42 (b) The board shall furnish each member of the
43 committees with a copy of each proposed rule along with the notice
44 provided under paragraph (a) of this subsection. If the board has
45 prepared an economic impact statement regarding any proposed rule
46 as provided by Section 25-43-6, the board shall furnish each
47 member of the committees with a copy of the economic impact
48 statement along with the copy of the proposed rule. The board
49 also shall provide a copy of any proposed rule or any economic
50 impact statement to any other member of the Legislature upon
51 request.

52 (c) The language of a proposed rule in the copies
53 provided to the members of the committees and other members of the
54 Legislature shall be as follows: New language added to an
55 existing rule shall be underlined, and language to be deleted from
56 an existing rule shall be typed and lined through.

57 (3) (a) The committees may hold meetings to review any
58 proposed rule. If the committees decide to hold meetings to
59 review a proposed rule, they shall notify the board of their
60 intentions in writing within fifteen (15) days after receipt of
61 the notice from the board under subsection (2)(a) of this section,
62 and shall set the dates and times for the meetings in the notice
63 to the board. The committees may hold public hearings on any
64 proposed rule as part of their meetings.

65 (b) After any meetings have been held, the committees
66 may object to the proposed rule or any part thereof. The
67 committees shall consider the criteria specified in subsection (5)
68 of this section in determining whether to object to any proposed
69 rule. The committees shall notify the board of any objection and
70 shall provide the board with the reasons for their objection in
71 writing. The committees may make written recommendations to the
72 board for suggested changes to be made to any proposed rule.

73 (c) Regardless of whether the committees object, any
74 individual member of either committee may object to the proposed
75 rule or any part thereof after the meetings have been held. Any
76 such member shall notify the board of any objection and shall

77 provide the board with the reasons for his or her objection in
78 writing. Any such member may make written recommendations to the
79 board for suggested changes to be made to any proposed rule.

80 (d) If the committees do not hold meetings to review a
81 proposed rule, the proposed rule will take effect at the time
82 specified in Section 25-43-9(2).

83 (e) Any reference in this subsection (3) to "the
84 committees" means either committee or both committees jointly.

85 (4) (a) If there are any objections to a proposed rule or
86 any part thereof from the committees or any member of the
87 committees, the board may withdraw the proposed rule, make any of
88 the suggested changes to the proposed rule that have been
89 recommended by the committees or any member of the committees, or
90 leave the proposed rule unchanged. As used in this paragraph (a),
91 the term "the committees" means either committee or both
92 committees jointly.

93 (b) If the board does not make any of the suggested
94 changes to the proposed rule, it shall notify the members of the
95 committees of that fact, and the proposed rule shall take effect
96 fifteen (15) days after the committees have concluded their
97 meetings to review the proposed rule, or on such later date as
98 required by statute or specified in the proposed rule.

99 (c) If the board makes any of the suggested changes to
100 the proposed rule, the proposed rule shall take effect fifteen
101 (15) days after the board has filed a copy of the revised proposed
102 rule with the Office of the Secretary of State, or on such later
103 date as required by statute or specified in the proposed rule.

104 (d) No proposed rule, except an emergency rule adopted
105 under Section 25-43-7(2), shall be effective any earlier than
106 fifteen (15) days after the committees have concluded their
107 meetings to review the proposed rule.

108 (5) In determining whether to object to any proposed rule,
109 the committees shall consider, at a minimum, the following

110 criteria:

111 (a) Would the absence of the rule significantly harm or
112 endanger the public health, safety, or welfare?

113 (b) Is there a reasonable relationship between the
114 state's police power and the protection of the public health,
115 safety, or welfare?

116 (c) Is there another, less restrictive method of
117 regulation available that could adequately protect the public?

118 (d) Does the rule have the effect of directly or
119 indirectly increasing the costs of any goods or services involved
120 and, if so, to what degree?

121 (e) Is the increase in cost, if any, more harmful to
122 the public than the harm that might result from the absence of the
123 rule?

124 (f) Are all facets of the rulemaking process designed
125 solely for the purpose of, and do they have as their primary
126 effect, the protection of the public?

127 (g) Any other criteria the committees may deem
128 appropriate.

129 (6) Nothing in this section shall be construed as giving the
130 committees any authority to veto, nullify or amend any rule or
131 proposed rule of the board. The authority of the committees under
132 this section shall be limited to reviewing, making objections to
133 and making recommendations for suggested changes to proposed
134 rules.

135 SECTION 2. Section 25-43-7, Mississippi Code of 1972, is
136 amended as follows:[RF1]

137 25-43-7. (1) Prior to the adoption, amendment or repeal of
138 any rule, the agency shall give at least thirty (30) days' notice
139 of its intended action. The notice shall include a statement of
140 either the terms or substance of the intended action or a
141 description of the subjects and issues involved, and the manner in
142 which interested persons may present their views thereon. The

143 notice shall be filed with the Office of the Secretary of State
144 and mailed by the agency to all persons who have made timely
145 request of the agency for advance notice of its rule-making
146 proceedings. In addition to the notice required by this section,
147 the State Board of Health shall give the notice as required by
148 Section 1 of this act whenever the board proposes the adoption,
149 amendment or repeal of any rule. The Secretary of State shall
150 furnish copies at the request of any person and shall be
151 reimbursed by the requesting person for the expense of providing
152 such service.

153 (2) If an agency finds that an imminent peril to the public
154 health, safety or welfare requires adoption of a rule upon fewer
155 than thirty (30) days' notice and states in writing its reasons
156 for that finding, it may proceed without prior notice of hearing
157 or upon any abbreviated notice and hearing that it finds
158 practicable to adopt an emergency rule. The rule may be effective
159 for a period of not longer than one hundred twenty (120) days,
160 renewable once for a period not exceeding ninety (90) days, but
161 the adoption of an identical rule under subsection (1) of this
162 section is not precluded.

163 (3) No rule hereafter adopted is valid unless adopted in
164 substantial compliance with this section. A proceeding to contest
165 any rule on the ground of noncompliance with the procedural
166 requirements of this section must be commenced within one (1) year
167 from the effective date of the rule.

168 SECTION 3. Section 25-43-9, Mississippi Code of 1972, is
169 amended as follows:[RF2]

170 25-43-9. (1) Each agency shall file in the Office of the
171 Secretary of State a certified copy of each rule adopted by it,
172 including all rules existing on January 1, 1977. The Secretary of
173 State shall keep a permanent register of the rules open to public
174 inspection.

175 (2) Each rule hereafter adopted is effective thirty (30)

176 days after filing, except that:

177 (a) If a later date is required by statute or specified
178 in the rule, the later date is the effective date.

179 (b) Subject to applicable constitutional or statutory
180 provisions, an emergency rule becomes effective immediately upon
181 filing with the Secretary of State, or at a stated date less than
182 thirty (30) days thereafter if the agency finds that this
183 effective date is necessary because of imminent peril to the
184 public health, safety or welfare. The agency's finding and a
185 brief statement of the reasons therefor shall be filed with the
186 rule. The agency shall take appropriate measures to make
187 emergency rules known to the persons who may be affected by them.

188 (c) Any adoption, amendment or repeal of a rule by the
189 State Board of Health shall be effective at the time specified in
190 Section 1 of this act.

191 SECTION 4. Section 41-3-17, Mississippi Code of 1972, is
192 amended as follows:[RF3]

193 41-3-17. The State Board of Health is authorized to make and
194 publish all reasonable rules and regulations necessary to enable
195 it to discharge its duties and powers and to carry out the
196 purposes and objectives of its creation. It is further authorized
197 to make reasonable sanitary rules and regulations, to be enforced
198 in the several counties by the county health officer under the
199 supervision and control of the State Board of Health. In making
200 its rules and regulations, the State Board of Health shall be
201 subject to the provisions of Section 1 of this act.

202 The State Board of Health shall not make or enforce any rule
203 or regulation that prohibits consumers from providing their own
204 containers for the purpose of purchasing or accepting water from
205 any vending machine or device which filters or treats water that
206 has already been tested and determined to meet or exceed the
207 minimum health protection standards prescribed for drinking water
208 under the Mississippi Safe Drinking Water Law, if that vending

209 machine or device meets or exceeds United States Environmental
210 Protection Agency or national automatic merchandising standards.

211 SECTION 5. This act shall take effect and be in force from
212 and after July 1, 2000.