

By: Browning

To: Judiciary

SENATE BILL NO. 2237

1 AN ACT TO REQUIRE A CERTAIN DEPTH FOR ALL GRAVES WHEN BURYING  
2 DEAD HUMAN BODIES; TO AMEND SECTION 73-11-57, MISSISSIPPI CODE OF  
3 1972, IN CONFORMITY; AND FOR RELATED PURPOSES.

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

5 SECTION 1. When burying dead human bodies, all graves shall  
6 be at least six (6) feet in depth. Any person or licensed funeral  
7 establishment violating the provisions of this section may be  
8 subject to disciplinary proceedings by the State Board of Funeral  
9 Service as provided in Section 73-11-57, Mississippi Code of 1972.

10 SECTION 2. Section 73-11-57, Mississippi Code of 1972, is  
11 amended as follows:[%CN%1]

12 73-11-57. (1) The board may refuse to examine or to issue  
13 or renew, or may suspend or revoke, any license, or may reprimand  
14 or place the holder thereof on a term of probation, after proper  
15 hearing, upon finding the holder of such license to be guilty of  
16 acts of commission or omission including the following: (a) the  
17 employment of fraud or deception in applying for a license or in  
18 passing the examination provided for in this chapter; (b) the  
19 erroneous issuance of a license to any person; (c) the conviction  
20 of a felony by any court in this state or any federal court or by  
21 the court of any other state or territory of the United States;

22 (d) the practice of embalming under a false name or without a  
23 license for the practice of funeral service; (e) the impersonation  
24 of another funeral service or funeral directing licensee; (f) the  
25 permitting of a person other than a funeral service or funeral  
26 directing licensee to make arrangements for a funeral and/or form  
27 of disposition; (g) violation of any provision of this chapter or  
28 any rule or regulation of the board; (h) having had a license for  
29 the practice of funeral service or funeral directing suspended or  
30 revoked in any jurisdiction, having voluntarily surrendered his  
31 license in any jurisdiction, having been placed on probation in  
32 any jurisdiction, having been placed under disciplinary order(s)  
33 or other restriction in any manner for funeral directing and/or  
34 funeral service, or operating a funeral establishment (a certified  
35 copy of the order of suspension, revocation, probation or  
36 disciplinary action shall be prima facie evidence of such action);  
37 (i) solicitation of dead human bodies by the licensee, his agents,  
38 assistants or employees, whether such solicitation occurs after  
39 death or when death is imminent; however, this shall not be deemed  
40 to prohibit general advertising; (j) employment directly or  
41 indirectly of any apprentice, agent, assistant, employee, or other  
42 person, on a part-time or full-time basis or on commission, for  
43 the purpose of calling upon individuals or institutions by whose  
44 influence dead human bodies may be turned over to a particular  
45 funeral establishment; (k) unprofessional conduct which includes  
46 but is not limited to: (i) retaining a dead human body for the  
47 payment of a fee for the performance of services not authorized in  
48 writing; (ii) knowingly performing any act which in any way  
49 assists an unlicensed person to practice funeral service or  
50 funeral directing; (iii) being guilty of any dishonorable conduct  
51 likely to deceive, defraud or harm the public; (iv) any act or  
52 omission in the practice of funeral service or directing which

53 constitutes dishonesty, fraud or misrepresentation with the intent  
54 to benefit the licensee, another person or funeral establishment,  
55 or with the intent to substantially injure another person,  
56 licensee or funeral establishment; (v) any violation of state or  
57 local law concerning the burial of dead human bodies; or (vi) any  
58 act or conduct, whether the same or of a different character than  
59 specified above, which constitutes or demonstrates bad faith,  
60 incompetency or untrustworthiness; or dishonest, fraudulent or  
61 improper dealing; or any other violation of the provisions of this  
62 chapter, the rules and regulations established by the board or any  
63 rule or regulation promulgated by the Federal Trade Commission  
64 relative to the practice of funeral service or directing.

65 (2) The board may, upon satisfactory proof that the  
66 applicant or licensee has been guilty of any of the offenses above  
67 enumerated, refuse to examine or issue a license to the applicant,  
68 or may refuse to renew or revoke or suspend the license of the  
69 licensee, or place on probation or reprimand him, upon a majority  
70 vote of the board members, after a hearing thereon. The board is  
71 hereby vested with full power and authority to hold and conduct  
72 such hearings, compel the attendance of witnesses and the  
73 production of books, records and documents, issue subpoenas  
74 therefor, administer oaths, examine witnesses, and do all things  
75 necessary to properly conduct such hearings. The board may waive  
76 the necessity of a hearing if the person accused of a violation  
77 admits that he has been guilty of such offense. Any person who  
78 has been refused a license or whose license has been revoked or  
79 suspended may, within thirty (30) days after the decision of the  
80 board, file with the board a written notice stating that he feels  
81 himself aggrieved by such decision and appeals therefrom to the  
82 circuit court. Upon the filing of such notice, the secretary of  
83 the board shall transmit to the clerk of the circuit court the

84 records and findings of such proceedings. The circuit court shall  
85 hear and determine as to whether the action of the board was in  
86 accord or consistent with law, or was arbitrary, unwarranted or in  
87 abuse of discretion. An appeal from the circuit court judgment or  
88 decree may be reviewed by the Supreme Court as is provided by law  
89 for other appeals.

90 (3) In a proceeding conducted under this section by the  
91 board for the revocation or suspension of a license, the board  
92 shall have the power and authority for the grounds stated for such  
93 revocation or suspension, and in addition thereto or in lieu of  
94 such revocation or suspension may assess and levy upon any person  
95 licensed under this chapter, a monetary penalty, as follows:

96 (a) For the first violation of any of the subparagraphs  
97 of subsection (1) of this section, a monetary penalty of not less  
98 than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars  
99 (\$500.00).

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

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

108 (d) For any violation of any of the subparagraphs of  
109 subsection (1) of this section, those reasonable costs that are  
110 expended by the board in the investigation and conduct of a  
111 proceeding for licensure revocation or suspension, including but

112 not limited to the cost of process service, court reporters,  
113 expert witnesses and investigators.

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

119 (5) A licensee shall have the right of appeal from the  
120 assessment and levy of a monetary penalty as provided in this  
121 section under the same conditions as a right of appeal is provided  
122 elsewhere for appeals from an adverse ruling, order or decision of  
123 the board.

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

128 (7) A monetary penalty assessed and levied under this  
129 section shall be paid to the board by the licensee upon the  
130 expiration of the period allowed for appeal of such penalties  
131 under this section or may be paid sooner if the licensee elects.  
132 With the exception of subsection (3)(d) of this section, monetary  
133 penalties collected by the board under this section shall be  
134 deposited to the credit of the General Fund of the State Treasury.

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

138 (8) When payment of a monetary penalty assessed and levied  
139 by the board against a licensee in accordance with this section is

140 not paid by the licensee when due under this section, the board  
141 shall have power to institute and maintain proceedings in its name  
142 for enforcement of payment in the chancery court of the county and  
143 judicial district of residence of the licensee, and if the  
144 licensee be a nonresident of the State of Mississippi, such  
145 proceedings shall be in the Chancery Court of the First Judicial  
146 District of Hinds County, Mississippi.

147 (9) In addition to the reasons specified in subsection (1)  
148 of this section, the board shall be authorized to suspend the  
149 license of any licensee for being out of compliance with an order  
150 for support, as defined in Section 93-11-153. The procedure for  
151 suspension of a license for being out of compliance with an order  
152 for support, and the procedure for the reissuance or reinstatement  
153 of a license suspended for that purpose, and the payment of any  
154 fees for the reissuance or reinstatement of a license suspended  
155 for that purpose, shall be governed by Section 93-11-157 or  
156 93-11-163, as the case may be. Actions taken by the board in  
157 suspending a license when required by Section 93-11-157 or  
158 93-11-163 are not actions from which an appeal may be taken under  
159 this section. Any appeal of a license suspension that is required  
160 by Section 93-11-157 or 93-11-163 shall be taken in accordance  
161 with the appeal procedure specified in Section 93-11-157 or  
162 93-11-163, as the case may be, rather than the procedure specified  
163 in this section. If there is any conflict between any provision  
164 of Section 93-11-157 or 93-11-163 and any provision of this  
165 chapter, the provisions of Section 93-11-157 or 93-11-163, as the  
166 case may be, shall control.

167 SECTION 3. This act shall take effect and be in force from

168 and after July 1, 2000.