

By: Representative Ford

To: Public Health and Welfare

HOUSE BILL NO. 520

1 AN ACT TO REENACT SECTIONS 73-19-1 THROUGH 73-19-29 AND
2 73-19-33 THROUGH 73-19-45, MISSISSIPPI CODE OF 1972, WHICH CREATE
3 THE OPTOMETRY BOARD AND DESCRIBE ITS POWERS AND DUTIES; TO AMEND
4 SECTION 73-19-31, MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF
5 REPEAL FROM JULY 1, 2001, TO JULY 1, 2002; AND FOR RELATED
6 PURPOSES.

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

8 SECTION 1. Section 73-19-1, Mississippi Code of 1972, is
9 reenacted as follows:

10 73-19-1. The practice of optometry is defined to be the
11 application of optical principles, through technical methods and
12 devices in the examination of human eyes for the purpose of
13 ascertaining departures from the normal, measuring their
14 functional powers and adapting optical accessories for the aid
15 thereof. The practice of optometry shall include the prescribing
16 and use of therapeutic pharmaceutical agents by optometrists
17 certified under Sections 73-19-153 through 73-19-165. The
18 practice of optometry shall not include the performing of any
19 invasive surgery including laser surgery, but shall not preclude
20 the removal of superficial foreign bodies from the eye or other
21 noninvasive procedures. Nothing in this section or any other
22 provision of law shall be construed to prohibit optometrists who
23 have been certified under Sections 73-19-153 through 73-19-165
24 from providing postophthalmic surgical or clinical care and
25 management with the advice and consultation of the operating or
26 treating physician.

27 SECTION 2. Section 73-19-3, Mississippi Code of 1972, is
28 reenacted as follows:

29 73-19-3. It shall not be lawful for any person in this state
30 to engage in the practice of optometry or to hold himself out as a
31 practitioner of optometry, or attempt to determine by an
32 examination of the eyes the kind of glasses needed by any person,
33 or to hold himself out as able to examine the eyes of any person
34 for the purpose of fitting the same with glasses, excepting those
35 hereinafter exempted, unless he has first fulfilled the
36 requirements of this chapter and has received a certificate of
37 licensure from the State Board of Optometry created by this
38 chapter, nor shall it be lawful for any person in this state to
39 represent that he is the lawful holder of a certificate of
40 licensure such as provided for in this chapter, when in fact he is
41 not such lawful holder or to impersonate any licensed practitioner
42 of optometry, or to fail to register the certificate as provided
43 by law.

44 SECTION 3. Section 73-19-5, Mississippi Code of 1972, is
45 reenacted as follows:

46 73-19-5. (1) Any person violating the provisions of this
47 chapter shall be guilty of a misdemeanor and, upon conviction for
48 his first offense shall be fined not more than Five Hundred
49 Dollars (\$500.00) at the discretion of the court, and upon
50 conviction for a second or later offense shall be fined not less
51 than Five Hundred Dollars (\$500.00) nor more than One Thousand
52 Dollars (\$1,000.00) or imprisoned not less than six (6) months nor
53 more than one (1) year, at the discretion of the court.

54 (2) Any entity, organization or person, including the board,
55 any member of the board and its agents or employees, acting in
56 good faith and without malice, who makes any report or information
57 available to the board regarding violation of any of the
58 provisions of Sections 73-19-1 through 73-19-111, or who assists
59 in the organization, investigation or preparation of any such
60 report or information or assists the board in carrying out any of

61 its duties or functions provided by law, shall be immune from
62 civil or criminal liability for such acts.

63 SECTION 4. Section 73-19-7, Mississippi Code of 1972, is
64 reenacted as follows:

65 73-19-7. The Governor, with the advice and consent of the
66 Senate, shall appoint a State Board of Optometry, consisting of
67 five (5) persons, citizens of Mississippi, each of whom shall be a
68 nonmedical man or woman actually engaged in the practice of
69 optometry for five (5) years next preceding his appointment.
70 Within ninety (90) days after March 25, 1974, the Governor shall
71 appoint: one (1) member for a term of one (1) year, one (1)
72 member for a term of two (2) years, one (1) member for a term of
73 three (3) years, one (1) member for a term of four (4) years, and
74 one (1) member for a term of five (5) years; and upon the
75 expiration of all such terms their successors shall be appointed
76 by the Governor for a term of five (5) years. From and after July
77 1, 1983, the appointments to the board shall be made with one (1)
78 member to be appointed from each of the congressional districts as
79 existing on January 1, 1980; provided that the present members of
80 the State Board of Optometry whose terms have not expired by July
81 1, 1983, shall continue to serve until their terms of office have
82 expired. Each member shall remain in office after the expiration
83 of his term until his successor shall be duly appointed and
84 qualified.

85 No person so appointed shall be a stockholder in or a member
86 of the faculty or of the board of trustees of any school of
87 optometry, or serve to exceed two (2) five-year terms.

88 Vacancies on said board shall be filled by appointment by the
89 Governor, with the advice and consent of the Senate, from a list
90 of names submitted by the Mississippi Optometric Association
91 consisting of three (3) of its members, or by appointment of any
92 qualified member of the association.

93 SECTION 5. Section 73-19-9, Mississippi Code of 1972, is
94 reenacted as follows:

95 73-19-9. The State Board of Optometry shall organize by the
96 election from its members of a president and a secretary, who
97 shall hold their respective offices for one (1) year.

98 It shall hold regular meetings for examination, beginning on
99 the second week of January and July of each year, and additional
100 meetings at such times and places as the board shall determine,
101 said additional meetings not to exceed ten (10) meeting days
102 annually, but the July meeting shall be held in the City of
103 Jackson.

104 A majority of the board shall constitute a quorum, but a less
105 number may adjourn from time to time.

106 The board shall make such rules and regulations as may be
107 necessary to carry out the provisions of this chapter; provided,
108 however, that it shall require the concurrence of a majority of
109 the members of the board to grant or revoke a license.

110 SECTION 6. Section 73-19-11, Mississippi Code of 1972, is
111 reenacted as follows:

112 73-19-11. Before entering upon the discharge of the duties
113 of his office the Secretary of the State Board of Optometry shall
114 give a bond to the state, to be approved by the board, in the sum
115 of Two Thousand Dollars (\$2,000.00) conditioned for the faithful
116 discharge of the duties of his office. The premium for such bond
117 to be paid from the funds paid into the State Treasury by the
118 secretary of the board.

119 Such bond, with the approval of the board and oath of office
120 indorsed thereon, shall be deposited with the Secretary of State
121 and kept in his office. Each month all monies received by the
122 secretary shall be paid by him into the State Treasury to the
123 credit of a fund for the use of the State Board of Optometry.

124 SECTION 7. Section 73-19-13, Mississippi Code of 1972, is
125 reenacted as follows:

126 73-19-13. Each member of the State Board of Optometry shall
127 be entitled to receive per diem as authorized under Section
128 25-3-69 in addition to all actual, necessary expenses incurred in
129 the discharge of official duties, including mileage as authorized
130 by law for state officials and employees.

131 The secretary shall receive an annual salary, to be fixed by
132 the board, and his necessary expenses incurred in the discharge of
133 his official duties. The State Board of Optometry may engage the
134 services of an attorney to assist it in the discharge of its
135 duties on terms to be fixed by the board.

136 The compensation and expenses of the secretary, attorney and
137 members of the board, and the expenses of the board necessary in
138 carrying out the provisions of this chapter, shall be paid from
139 the fund in the State Treasury for use of the board on the
140 requisition signed by the president and secretary of the board and
141 the warrant of the auditor of the state; provided, however, that
142 said compensation and expenses shall not exceed the amount paid
143 into the State Treasury under the provisions of this chapter; and
144 provided further, that all expenditures from such special fund
145 shall be authorized by the Legislature and shall be subject to all
146 applicable provisions of the state budget law.

147 SECTION 8. Section 73-19-15, Mississippi Code of 1972, is
148 reenacted as follows:

149 73-19-15. The State Board of Optometry shall have an
150 official seal and shall keep a record of its proceedings, a
151 register of persons registered as optometrists and register
152 licenses by it revoked.

153 Its records shall be open to public inspection, and it shall
154 keep on file all examination papers for a period of ninety (90)
155 days after each examination. A transcript of an entry in such
156 records certified by the secretary under the seal of the board,
157 shall be evidence of the facts therein stated. The board shall
158 annually on or before January 1 make a report to the Governor of

159 all its official acts during the preceding year, and of its
160 receipts and disbursements, and a full and complete report of the
161 conditions of optometry in this state.

162 SECTION 9. Section 73-19-17, Mississippi Code of 1972, is
163 reenacted as follows:

164 73-19-17. Any person over the age of twenty-one (21) years,
165 of good moral character, and who has graduated from a high school
166 or preparatory school affiliated with and recognized by a state
167 university, and who has graduated from a reputable school or
168 college of optometry, shall be entitled to stand the examination
169 for license to practice optometry in Mississippi. The examining
170 Board of Optometry shall keep on file a list of schools or
171 colleges of optometry which are recognized by said board. The
172 examination to practice optometry shall consist of tests in
173 practical, theoretical and physiological optics, in theoretical
174 and practical optometry and in anatomy and physiology of the eye
175 and in pathology as applied to optometry. The State Board of
176 Optometry shall not examine or certify any optometrist in any
177 therapeutic procedures unless the optometrist has successfully
178 completed the proper didactic education and supervised clinical
179 training taught by an institution accredited by a regional or
180 professional accreditation organization that is recognized or
181 approved by the Council on Postsecondary Accreditation of the
182 United States Department of Education, or its successor, and
183 approved by the State Board of Optometry with the advice and
184 consultation of the designated members of the State Board of
185 Medical Licensure and the State Board of Pharmacy.

186 SECTION 10. Section 73-19-19, Mississippi Code of 1972, is
187 reenacted as follows:

188 73-19-19. Every person desiring to be licensed as in this
189 chapter provided, shall file with the secretary an application,
190 verified by oath, setting forth the facts which entitle the
191 applicant to examination and licensure under the provisions of

192 this chapter. The said board shall hold at least two (2)
193 examinations each year. In case of failure at any examination the
194 applicant, after the expiration of six (6) months and within two
195 (2) years, shall have the privilege of a second examination by the
196 board without the payment of an additional fee. In the case of
197 any applicant who shall fail the examination twice, said applicant
198 shall not be permitted to again take the examination until he has
199 completed a further course of study outlined by the board and paid
200 the examination fee therefor. Every applicant who shall pass the
201 examination, and who shall otherwise comply with the provisions of
202 this chapter, shall receive from the said board under its seal a
203 certificate of licensure entitling him to practice optometry in
204 this state, which certificate shall be duly registered in a record
205 book to be properly kept by the secretary of the board for that
206 purpose, which shall be open to public inspection, and a duly
207 certified copy of said record shall be received as evidence in all
208 courts of this state in the trial of any case.

209 Each application or filing made under this section shall
210 include the social security number(s) of the applicant in
211 accordance with Section 93-11-64, Mississippi Code of 1972.

212 SECTION 11. Section 73-19-21, Mississippi Code of 1972, is
213 reenacted as follows:

214 73-19-21. Said board shall charge the following fees for
215 examination, registrations and renewals of certificates: The sum
216 of not more than Two Hundred Dollars (\$200.00) for an examination
217 of an applicant who is a resident of Mississippi and not more than
218 Three Hundred Dollars (\$300.00) for a nonresident of Mississippi
219 to cover the additional expenses of checking references, character
220 and other statements contained in the application. Every
221 registered optometrist who desires to continue the practice of
222 optometry shall, biennially, on or before January 1, pay to the
223 secretary of the board a renewal registration fee of not more than
224 Four Hundred Dollars (\$400.00) for which he shall receive a

225 renewal of his certificate. The board, in its discretion, may set
226 the renewal registration fee at different amounts for registered
227 optometrists, for registered optometrists certified to use
228 diagnostic pharmaceutical agents, and for registered optometrists
229 certified to use diagnostic and therapeutic pharmaceutical agents,
230 not to exceed the maximum amount prescribed in this section.

231 In case of neglect to pay the renewal registration fee herein
232 specified, the board may revoke such certificate and the holder
233 thereof may be reinstated by complying with the conditions
234 specified in this chapter. But no certificate or permit shall be
235 revoked without giving sixty (60) days' notice to the delinquent,
236 who, within such period shall have the right of renewal of such
237 certificate on payment of the renewal fee with a penalty of not
238 more than Fifteen Dollars (\$15.00), provided, that retirement from
239 practice for a period not exceeding five (5) years shall not
240 deprive the holder of said certificate of the right to renew his
241 certificate on the payment of all lapsed fees. The board shall
242 adopt a seal and certificate of suitable design and shall conduct
243 its examination at Jackson, in this state. Its permanent records
244 shall be kept in the office of the secretary, which records shall
245 be open to public inspection.

246 SECTION 12. Section 73-19-23, Mississippi Code of 1972, is
247 reenacted as follows:

248 73-19-23. (1) The board shall refuse to grant a certificate
249 of licensure to any applicant and may cancel, revoke or suspend
250 the operation of any certificate by it granted for any or all of
251 the following reasons, to-wit: unprofessional and unethical
252 conduct or the conviction of a crime involving moral turpitude,
253 habitual intemperance in the use of ardent spirits, or stimulants,
254 narcotics, or any other substance which impairs the intellect and
255 judgment to such an extent as to incapacitate one for the
256 performance of the duties of an optometrist. The certificate of

257 licensure of any person can be revoked for violating any section
258 of this chapter.

259 (2) The board shall further be authorized to take
260 disciplinary action against a licensee for any unlawful acts which
261 shall include violations of regulations promulgated by the board,
262 as well as the following acts:

263 (a) Fraud or misrepresentation in applying for or
264 procuring an optometric license or in connection with applying for
265 or procuring periodic renewal of an optometric license.

266 (b) Cheating on or attempting to subvert the optometric
267 licensing examination(s).

268 (c) The conviction of a felony in this state or any
269 other jurisdiction, or the entry of guilty or nolo contendere plea
270 to a felony charge.

271 (d) The conviction of a felony as defined by federal
272 law, or the entry of a guilty or nolo contendere plea to a felony
273 charge.

274 (e) Conduct likely to deceive, defraud or harm the
275 public.

276 (f) Making a false or misleading statement regarding
277 his or her skill or the efficacy or value of the medicine, device,
278 treatment or remedy prescribed by him or her or used at his or her
279 direction in the treatment of any disease or other condition.

280 (g) Willfully or negligently violating the
281 confidentiality between doctor and patient, except as required by
282 law.

283 (h) Negligence or gross incompetence in the practice of
284 optometry as determined by the board.

285 (i) Being found mentally incompetent or insane by any
286 court of competent jurisdiction.

287 (j) The use of any false, fraudulent, deceptive or
288 misleading statement in any document connected with the practice
289 of optometry.

290 (k) Aiding or abetting the practice of optometry by an
291 unlicensed, incompetent or impaired person.

292 (l) Commission of any act of sexual abuse, misconduct
293 or exploitation related to the licensee's practice of optometry.

294 (m) Being addicted or habituated to a drug or
295 intoxicant.

296 (n) Violating any state or federal law or regulation
297 relating to a drug legally classified as a controlled substance.

298 (o) Obtaining any fee by fraud, deceit or
299 misrepresentation.

300 (p) Disciplinary action of another state or
301 jurisdiction against a licensee or other authorization to practice
302 optometry based upon acts or conduct by the licensee similar to
303 acts or conduct which would constitute grounds for action as
304 defined in this chapter, a certified copy of the record of the
305 action taken by the other state or jurisdiction being conclusive
306 evidence thereof.

307 (q) Failure to report to the board the relocation of
308 his or her office in or out of the jurisdiction, or to furnish
309 floor plans as required by regulation.

310 (r) Violation of any provision(s) of the Optometry
311 Practice Act or the rules and regulations of the board or of an
312 action, stipulation or agreement of the board.

313 (s) To advertise in a manner that tends to deceive,
314 mislead or defraud the public.

315 (t) The designation of any person licensed under this
316 chapter, other than by the terms "optometrist," "Doctor of
317 Optometry" or "O.D."

318 (u) To knowingly submit or cause to be submitted any
319 misleading, deceptive or fraudulent representation on a claim
320 form, bill or statement.

321 (v) To practice or attempt to practice optometry while
322 his or her license is suspended.

323 (3) Any person who is holder of a certificate of licensure
324 or who is an applicant for examination for a certificate of
325 licensure, against whom is preferred any charges, shall be
326 furnished by the board with a copy of the complaint and shall have
327 a hearing in Jackson, Mississippi, before the board, at which
328 hearing he may be represented by counsel. At such hearing
329 witnesses may be examined for and against the accused respecting
330 the said charges, and said hearing orders or appeals will be
331 conducted according to the procedure now provided in Section
332 73-25-27. The suspension of a certificate of licensure, by reason
333 of the use of stimulants or narcotics may be removed when the
334 holder thereof shall have been adjudged by the said board to be
335 cured and capable of practicing optometry.

336 (4) In addition to the reasons specified in subsections (1)
337 and (2) of this section, the board shall be authorized to suspend
338 the license of any licensee for being out of compliance with an
339 order for support, as defined in Section 93-11-153. The procedure
340 for suspension of a license for being out of compliance with an
341 order for support, and the procedure for the reissuance or
342 reinstatement of a license suspended for that purpose, and the
343 payment of any fees for the reissuance or reinstatement of a
344 license suspended for that purpose, shall be governed by Section
345 93-11-157 or 93-11-163, as the case may be. If there is any
346 conflict between any provision of Section 93-11-157 or 93-11-163
347 and any provision of this chapter, the provisions of Section
348 93-11-157 or 93-11-163, as the case may be, shall control.

349 SECTION 13. Section 73-19-25, Mississippi Code of 1972, is
350 reenacted as follows:

351 73-19-25. An applicant for a certificate of licensure who
352 has been examined by the state board of another state which,
353 through reciprocity, similarly accredits the holder of a
354 certificate issued by the board of this state to the full
355 privileges of practice within such state, on the payment of a fee

356 of not more than Fifty Dollars (\$50.00) to the said board and on
357 filing in the office of the board a true and attested copy of the
358 said license, certified by the president or secretary of the state
359 board issuing the same, and showing also that the standard
360 requirements adopted and enforced by said board are equal to that
361 provided by this state, may, without further examination, receive
362 a certificate of licensure, provided that such applicant has not
363 previously failed at an examination held by the board of this
364 state.

365 SECTION 14. Section 73-19-27, Mississippi Code of 1972, is
366 reenacted as follows:

367 73-19-27. Nothing in this chapter shall be construed as
368 conferring on the holder of any certificate of licensure issued by
369 said board the title of oculist, ophthalmologist, or any other
370 word or abbreviation indicating that he is engaged in the practice
371 of medicine or surgery, or the treatment or the diagnosis of
372 diseases of, or injuries to, the human eye, or the right to use
373 drugs or medicines in any forms for the treatment or examination
374 of the human eye. However, optometrists who have been certified
375 by the board under the provisions of Sections 73-19-101 through
376 73-19-109 may use diagnostic pharmaceutical agents in the practice
377 of optometry in accordance with the requirements of Sections
378 73-19-101 through 73-19-109, and optometrists who have been
379 certified by the board under the provisions of Sections 73-19-153
380 through 73-19-165 may use therapeutic pharmaceutical agents in the
381 practice of optometry in accordance with the requirements of
382 Sections 73-19-153 through 73-19-165. Nothing contained in
383 Chapter 303, Laws of 1991, shall be construed as expanding the
384 scope of practice of a licensed optometrist beyond that authorized
385 prior to July 1, 1991.

386 SECTION 15. Section 73-19-29, Mississippi Code of 1972, is
387 reenacted as follows:

388 73-19-29. The provisions of this chapter shall not apply to
389 physicians or surgeons practicing under authority of licenses
390 issued under the laws of this state for the practice of medicine
391 or surgery. And provided that this chapter shall not prohibit
392 merchants and druggists who are actually engaged in business in
393 this state from selling and assisting purchasers in fitting
394 spectacles and eye glasses in their place of business at time of
395 sale.

396 SECTION 16. Section 73-19-31, Mississippi Code of 1972, is
397 amended as follows:

398 73-19-31. Sections 73-19-1 through 73-19-29 and 73-19-33
399 through 73-19-45, which create the Mississippi Board of Optometry
400 and prescribe its duties and powers, shall stand repealed as of
401 July 1, 2002.

402 SECTION 17. Section 73-19-33, Mississippi Code of 1972, is
403 reenacted as follows:

404 73-19-33. Complaints, irrespective of source, touching upon
405 the professional conduct or conduct evincing unfitness for the
406 practice of optometry made against optometrists licensed in this
407 state, that may be received by or that may come to the attention
408 of any member of the board, shall be referred by the president of
409 the board to an impartial member of the board for preliminary
410 investigation and further action as may be appropriate. The
411 complaint must be in writing and signed by the person making the
412 complaint or charge and shall contain the street address of the
413 complaining party and each witness.

414 SECTION 18. Section 73-19-35, Mississippi Code of 1972, is
415 reenacted as follows:

416 73-19-35. When any complaint or charge touching upon the
417 professional conduct or conduct evincing unfitness for the
418 practice of optometry against any optometrist subject to
419 discipline hereunder is referred to a member of the board for
420 investigation, the board member shall take the following action:

421 (a) Cause the complaint or charge to be filed and
422 docketed with the secretary of the board; and

423 (b) Refer the complaint to the board investigator for
424 further investigation and report.

425 SECTION 19. Section 73-19-37, Mississippi Code of 1972, is
426 reenacted as follows:

427 73-19-37. The board investigator shall immediately
428 investigate the complaint; and upon completion of his
429 investigation he shall inform the accused optometrist that a
430 complaint has been filed against him and that he is under
431 investigation, advise the accused optometrist of the general
432 nature of the charges, furnish him a copy of the complaint and any
433 evidence supporting it, and afford the accused optometrist an
434 opportunity to respond. Communications and notices to the accused
435 optometrist shall be transmitted by registered or certified mail,
436 postage prepaid, to the last known residence or business address
437 of the licensee.

438 SECTION 20. Section 73-19-39, Mississippi Code of 1972, is
439 reenacted as follows:

440 73-19-39. After completion of his investigation, the board
441 investigator shall make a report of his findings and
442 recommendations to the member of the board designated to
443 investigate the matter. After receipt of the investigator's
444 report, the board member shall take the following action:

445 (a) If upon review of the complaint, board
446 investigator's report and any written response by the accused
447 optometrist, the board member determines that there is not
448 reasonable ground to believe that the accused optometrist has been
449 guilty of unprofessional conduct or conduct evincing unfitness for
450 the practice of optometry, the board member shall present his
451 findings and recommendations to the board at the next regular
452 board meeting. The board may dismiss the complaint or may prepare
453 a formal complaint against the licensee as provided in Section

454 73-19-41, Mississippi Code of 1972. In the event of dismissal,
455 the person filing the complaint and the accused optometrist shall
456 be given written notice of the board's determination.

457 (b) If the board member determines there is reasonable
458 cause to believe the accused optometrist is guilty of such
459 conduct, which, if proven, would warrant suspension for a definite
460 or an indefinite period or license revocation, the board member
461 shall request the board to prepare and file a formal complaint
462 against the accused optometrist. The board may dismiss the
463 complaint or may prepare a formal complaint against the licensee
464 as provided in Section 73-19-41, Mississippi Code of 1972. In the
465 event of a dismissal, the person filing the complaint and the
466 accused optometrist shall be given written notice of the board's
467 determination.

468 SECTION 21. Section 73-19-41, Mississippi Code of 1972, is
469 reenacted as follows:

470 73-19-41. (1) The board shall fix a time and place for any
471 formal complaint hearing and shall cause a written notice
472 specifying the offense or offenses for which the licensee is
473 charged and notice of the time and place of the hearing to be
474 served upon the licensee at least twenty (20) days prior to the
475 hearing date. Such notice may be served by mailing a copy thereof
476 by certified mail, postage prepaid, to the last known residence or
477 business address of the licensee.

478 (2) The board is hereby authorized and empowered to issue
479 subpoenas for the attendance of witnesses and the production of
480 books and papers at such hearing. Process issued by the board
481 shall extend to all parts of the state and shall be served by any
482 person designated by the board for such service.

483 (3) The accused shall have the right to appear either
484 personally or by counsel or both to produce witnesses or evidence
485 in his behalf, to cross-examine witnesses and to have subpoenas
486 issued by the board.

487 (4) At the hearing, the board shall administer oaths as may
488 be necessary for the proper conduct of the hearing. All hearings
489 shall be conducted by the board, with the exception of the
490 investigating board member who shall not participate in the
491 hearing. The board shall not be bound by strict rules of
492 procedure or by the laws of evidence in the conduct of its
493 proceedings, but the determination shall be based upon sufficient
494 evidence to sustain it. All proceedings shall be transcribed by a
495 court reporter.

496 (5) Where, in any proceeding before the board, any witness
497 fails or refuses to attend upon a subpoena issued by the board,
498 refuses to testify, or refuses to produce any books and papers the
499 production of which is called for by a subpoena, the attendance of
500 such witness, the giving of his testimony or the production of the
501 books and papers shall be enforced by any court of competent
502 jurisdiction of this state in the manner provided for the
503 enforcement of attendance and testimony of witnesses in civil
504 cases in the courts of this state.

505 (6) The board shall, within sixty (60) days after conclusion
506 of the hearing, reduce its decision to writing and forward an
507 attested true copy thereof to the last known residence or business
508 address of such licensee by way of United States first class,
509 certified mail, postage prepaid.

510 SECTION 22. Section 73-19-43, Mississippi Code of 1972, is
511 reenacted as follows:

512 73-19-43. (1) Upon finding of the existence of grounds for
513 discipline of any person holding a license, seeking a license, or
514 seeking to renew a license under the provisions of this chapter,
515 the board may impose one or more of the following penalties:

516 (a) Suspension of the offender's license for a term to
517 be determined by the board;

518 (b) Revocation of the offender's license;

519 (c) Restriction of the offender's license to prohibit
520 the offender from performing certain acts or from engaging in the
521 practice of optometry in a particular manner for a term to be
522 determined by the board;

523 (d) Imposition of a monetary penalty as follows:

524 (i) For the first violation, a monetary penalty of
525 not less than Fifty Dollars (\$50.00) nor more than Five Hundred
526 Dollars (\$500.00) for each violation;

527 (ii) For the second violation and subsequent
528 violations, a monetary penalty of not less than One Hundred
529 Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00)
530 for each violation;

531 (e) Refusal to renew offender's license;

532 (f) Placement of the offender on probation and
533 supervision by the board for a period to be determined by the
534 board;

535 (g) Public or private reprimand.

536 (2) Any person whose license has been suspended, revoked or
537 restricted pursuant to this chapter, whether voluntarily or by
538 action of the board, shall have the right to petition the board at
539 reasonable intervals for reinstatement of such license. Such
540 petition shall be made in writing and in the form prescribed by
541 the board. Upon investigation and hearing, the board may, in its
542 discretion, grant or deny such petition, or it may modify its
543 original finding to reflect any circumstances which have changed
544 sufficiently to warrant such modifications. The procedure for the
545 reinstatement of a license that is suspended for being out of
546 compliance with an order for support, as defined in Section
547 93-11-153, shall be governed by Section 93-11-157 or 93-11-163, as
548 the case may be.

549 (3) Nothing herein shall be construed as barring criminal
550 prosecutions for violation of this chapter where such violations

551 are deemed as criminal offenses in other statutes of this state or
552 of the United States.

553 (4) A monetary penalty assessed and levied under this
554 section shall be paid to the board by the licensee upon the
555 expiration of the period allowed for appeal of such penalties
556 under Section 73-19-45, Mississippi Code of 1972, or may be paid
557 sooner if the licensee elects. Money collected by the board under
558 this section shall be deposited to the credit of the General Fund
559 of the State Treasury.

560 (5) When payment of a monetary penalty assessed and levied
561 by the board against a licensee in accordance with this section is
562 not paid by the licensee when due under this section, the board
563 shall have the power to institute and maintain proceedings in its
564 name for enforcement of payment in the Chancery Court of the First
565 Judicial District of Hinds County, Mississippi. When such
566 proceedings are instituted, the board shall certify its order to
567 the chancery court and the matter shall thereupon be heard in due
568 course by the court, which shall review the order and make its
569 determination thereon. The hearing on the matter may, in the
570 discretion of the chancellor, be tried in vacation. If the
571 chancellor finds no errors on the face of the board's order, the
572 board shall have a judgment for the amount due which shall be
573 enforceable as all other judgments.

574 SECTION 23. Section 73-19-45, Mississippi Code of 1972, is
575 reenacted as follows:

576 73-19-45. (1) The right to appeal from a final action of
577 the board is hereby granted. Such appeal shall be to the chancery
578 court of the county of residence of the licensee and shall be on
579 the record made, including a verbatim transcript of the testimony
580 at the hearing. The appeal shall be taken within thirty (30) days
581 after notice of the action of the board. The appeal shall be
582 perfected upon filing notice of the appeal with the chancery court
583 and by the prepayment of all costs, including the cost of the

584 preparation of the record of the proceedings by the board, and the
585 filing of a bond in the sum of Two Hundred Dollars (\$200.00),
586 conditioned that if the action of the board be affirmed by the
587 chancery court, the licensee will pay the costs of the appeal and
588 the action in the chancery court. A copy of the Notice of Appeal
589 shall be served upon board counsel.

590 (2) If there is an appeal, such appeal may, in the
591 discretion of and on motion to the chancery court, act as a
592 supersedeas. The chancery court shall dispose of the appeal and
593 enter its decision promptly. The hearing on the appeal may, in
594 the discretion of the chancellor, be tried in vacation. The scope
595 of review of the chancery court shall be limited to a review of
596 the record made before the board to determine if the action of the
597 board is unlawful for the reason that it was (a) not supported by
598 substantial evidence, (b) arbitrary or capricious, (c) beyond the
599 power of the board to make, or (d) in violation of some statutory
600 or constitutional right of the appellant. The decision of the
601 chancery court may be appealed to the Supreme Court in the manner
602 provided by the rules of the Supreme Court.

603 (3) Actions taken by the board in suspending a license when
604 required by Section 93-11-157 or 93-11-163 are not actions from
605 which an appeal may be taken under this section. Any appeal of a
606 license suspension that is required by Section 93-11-157 or
607 93-11-163 shall be taken in accordance with the appeal procedure
608 specified in Section 93-11-157 or 93-11-163, as the case may be,
609 rather than the procedure specified in this section.

610 SECTION 24. This act shall take effect and be in force from
611 and after July 1, 2001.