

By: Representative Ford

To: Public Health and  
Welfare

HOUSE BILL NO. 520  
(As Passed the House)

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, 2005; 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, 2005.

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.