

By: Representative Brown

To: Judiciary A

HOUSE BILL NO. 235

1 AN ACT TO CREATE THE "MISSISSIPPI ADMINISTRATIVE PROCEDURES
2 LAW"; TO DEFINE CERTAIN TERMS AS USED IN THE ACT; TO PRESCRIBE THE
3 ACT'S APPLICABILITY AND RELATION TO OTHER LAWS; TO PROVIDE FOR THE
4 SUSPENSION OF THE ACT'S PROVISIONS WHEN NECESSARY TO AVOID LOSS OF
5 FEDERAL FUNDS OR SERVICES; TO PRESCRIBE HOW RIGHTS UNDER THE ACT
6 MAY BE WAIVED, HOW MATTERS MAY BE SETTLED INFORMALLY UNDER THE ACT
7 AND HOW PROCEEDINGS UNDER THE ACT MAY BE CONVERTED TO ANOTHER TYPE
8 OF AGENCY PROCEEDING; TO PRESCRIBE THE MANNER OF SERVICE AND
9 COMPUTATION OF TIME UNDER THE ACT; TO PROVIDE FOR THE PUBLICATION,
10 COMPILATION, INDEXING AND PUBLIC INSPECTION OF AGENCY RULES AND
11 ORDERS; TO ESTABLISH A RIGHT AND PRESCRIBE THE PROCEDURE FOR
12 REQUESTING DECLARATORY OPINIONS FROM STATE AGENCIES WITH REGARD TO
13 THE APPLICABILITY AND EFFECT OF AGENCY RULES; TO REQUIRE EVERY
14 AGENCY TO ADOPT CERTAIN RULES RELATING TO THE AGENCY'S
15 ORGANIZATIONAL STRUCTURE; TO REQUIRE THE SECRETARY OF STATE TO
16 ADOPT MODEL RULES OF PROCEDURE FOR USE BY STATE AGENCIES; TO
17 PROVIDE FOR NOTICE OF PROPOSED RULES BEFORE THEIR ADOPTION; TO
18 ALLOW PUBLIC PARTICIPATION IN THE RULE-MAKING PROCESS; TO PROVIDE
19 FOR A PUBLIC RULE-MAKING DOCKET; TO REQUIRE SUBMISSION OF A
20 REGULATORY ANALYSIS OF PROPOSED RULES IN CERTAIN SITUATIONS; TO
21 PROVIDE FOR THE TIME AND MANNER OF RULE ADOPTION; TO PROHIBIT ANY
22 VARIANCE BETWEEN AN ADOPTED RULE AND PUBLISHED NOTICE OF THE
23 RULE'S ADOPTION; TO EXEMPT CERTAIN RULES FROM PROCEDURES PROVIDED
24 IN THE ACT; TO PRESCRIBE THE CONTENTS, STYLE AND FORM OF RULES; TO
25 REQUIRE AGENCIES TO MAINTAIN A RULE-MAKING RECORD AND TO FILE
26 RULES IN THE OFFICE OF THE SECRETARY OF STATE; TO PRESCRIBE THE
27 METHOD FOR CONTESTING THE VALIDITY OF RULES; TO PROVIDE FOR THE
28 EFFECTIVE DATE OF RULES; TO PROVIDE THAT THE ACT SHALL BE
29 INAPPLICABLE TO CERTAIN CLASSES OF RULES; TO AUTHORIZE PETITIONS
30 FOR THE ADOPTION, AMENDMENT, REPEAL OR WAIVER OF A RULE; TO
31 REQUIRE EACH AGENCY TO PERIODICALLY REVIEW ITS RULES; TO REPEAL
32 SECTIONS 25-43-1, 25-43-3, 25-43-5, 25-43-6, 25-43-7, 25-43-9,
33 25-43-11, 25-43-13, 25-43-15, 25-43-17 AND 25-43-19, MISSISSIPPI
34 CODE OF 1972, WHICH CREATE THE MISSISSIPPI ADMINISTRATIVE
35 PROCEDURES LAW, PROVIDE DEFINITIONS FOR TERMS USED IN SUCH LAW,
36 PRESCRIBE PROCEDURES THAT MUST BE FOLLOWED BY AGENCIES IN THE
37 ADOPTION, AMENDMENT AND REPEAL OF AGENCY RULES, REQUIRE THE FILING
38 OF AN ECONOMIC IMPACT STATEMENT FOR THE ADOPTION OF A RULE,
39 REQUIRE FILING AND NOTICE BEFORE SUCH RULES MAY BECOME EFFECTIVE,
40 REQUIRE AGENCIES TO INDEX ALL EFFECTIVE RULES ADOPTED, PROVIDE
41 THAT REVOCATION OR SUSPENSION OF ANY LICENSE SHALL NOT BE
42 EFFECTIVE UNLESS NOTICE OF SUCH INTENDED ACTION IS GIVEN TO THE
43 LICENSEE, AND REQUIRE AGENCIES TO ADOPT PROCEDURES TO ASSURE THAT
44 OPPONENTS OF PROPOSED RULES HAVE THE OPPORTUNITY TO PRESENT THEIR
45 VIEWS AND REVIEW ADVERSE RULINGS; AND FOR RELATED PURPOSES.

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

47 **ARTICLE I**

48 **GENERAL PROVISIONS**



49 **SECTION 1.** The following shall be codified as Section
50 25-43-1.101, Mississippi Code of 1972:

51 25-43-1.101. **Title; Statement of Purpose.**

52 (1) This chapter may be cited as the "Mississippi
53 Administrative Procedures Law."

54 (2) This chapter is intended to provide a minimum procedural
55 code for the operation of all state agencies when they take action
56 affecting the rights and duties of the public. Nothing in this
57 chapter shall be construed as invalidating any rule or regulation
58 adopted before July 1, 2003, if such rule or regulation was
59 properly adopted in accordance with the law as it existed at the
60 time of adoption. Nothing in this chapter is meant to discourage
61 agencies from adopting procedures providing greater protections to
62 the public or conferring additional rights upon the public; and
63 save for express provisions of this chapter to the contrary,
64 nothing in this chapter is meant to abrogate in whole or in part
65 any statute prescribing procedural duties for an agency which are
66 greater than or in addition to those provided here. This chapter
67 is meant to apply to all rule-making and adjudicative proceedings
68 and all suits for the judicial review of agency action that are
69 not specifically excluded from this chapter or some portion
70 thereof by its express terms or by the express terms of another
71 chapter.

72 The purposes of the Mississippi Administrative Procedures Law
73 are: To provide legislative oversight of powers and duties
74 delegated to administrative agencies; to increase public
75 accountability of administrative agencies; to simplify government
76 by assuring a uniform minimum procedure to which all agencies will
77 be held in the conduct of their most important functions; to
78 increase public access to governmental information; to increase
79 public participation in the formulation of administrative rules;
80 to increase the fairness of agencies in their conduct of contested
81 case proceedings; and to simplify the process of judicial review



82 of agency action as well as increase its ease and availability.
83 In accomplishing its objectives, the intention of this chapter is
84 to strike a fair balance between these purposes and the need for
85 efficient, economical and effective government administration.
86 The chapter is not meant to alter the substantive rights of any
87 person or agency. Its impact is limited to procedural rights with
88 the expectation that better substantive results will be achieved
89 in the everyday conduct of state government by improving the
90 process by which those results are attained.

91 (3) From and after July 1, 2003, any reference to the
92 Mississippi Administrative Procedure Act, the Mississippi
93 Administrative Procedures Act, the Mississippi Administrative
94 Procedure Law, or the Mississippi Administrative Procedures Law,
95 being Sections 25-43-1, et seq., Mississippi Code of 1972, shall
96 be deemed to mean and refer to this chapter.

97 **SECTION 2.** The following shall be codified as Section
98 25-43-1.102, Mississippi Code of 1972:

99 25-43-1.102. **Definitions.**

100 As used in this chapter the following terms shall have the
101 meanings ascribed to them in this section unless the context
102 otherwise requires:

103 (a) "Adjudicative Proceeding" means an agency
104 proceeding conducted for the purpose of formulating and issuing an
105 order which determines the rights of one or more persons. A
106 "basic adjudicative proceeding" is an adjudicative proceeding
107 conducted in accordance with the provisions of Sections
108 25-43-4.501 through 25-43-4.505. An "emergency adjudicative
109 proceeding" is an adjudicative proceeding conducted in accordance
110 with the provisions of Section 25-43-4.601. A "formal
111 adjudicative hearing" is an adjudicative proceeding conducted in
112 accordance with the provisions of Section 25-43-4.201 through
113 25-43-4.222. An "informal adjudicative hearing" is an



114 adjudicative proceeding conducted in accordance with the
115 provisions of Section 25-43-4.401 through 25-43-4.403.

116 (b) "Agency" means a board, commission, department,
117 officer or other administrative unit of this state, including the
118 agency head, and one or more members of the agency head or agency
119 employees directly or indirectly purporting to act on behalf or
120 under the authority of the agency head. The term does not include
121 the Legislature or any of its component units, the judiciary or
122 any of its component units or the Governor. The term does not
123 include a political subdivision of the state or any of the
124 administrative units of a political subdivision. To the extent it
125 purports to exercise authority subject to any provision of this
126 chapter, an administrative unit otherwise qualifying as an
127 "agency" must be treated as a separate agency even if the unit is
128 located within or subordinate to another agency.

129 (c) "Agency action" means: (i) the whole or a part of
130 a rule, an order or a declaratory opinion; or (ii) the failure to
131 issue a rule, an order, or a declaratory opinion. "Nonfinal agency
132 action" means the whole or a part of any agency determination,
133 investigation, proceeding, hearing, conference, or other process
134 that is preliminary, preparatory, procedural, or intermediate with
135 regard to subsequent agency action of that agency or another
136 agency. "Final agency action" means the whole or a part of any
137 agency action other than nonfinal agency action. Final agency
138 action occurs when the action is reduced to writing and approved
139 by the agency head.

140 (d) "Agency head" or "head of the agency" means an
141 individual or body of individuals in whom the ultimate legal
142 authority of the agency is vested by any provision of law.

143 (e) "Agency proceeding" or "proceeding" means the
144 process by which an agency considers:

145 (i) A declaratory opinion pursuant to Section
146 25-43-2.103,



147 (ii) A rule pursuant to Article III of this
148 chapter, or

149 (iii) Any form of adjudicative proceeding pursuant
150 to Article IV of this chapter.

151 (f) "Agency record" means the official record of an
152 agency adjudicative proceeding pursuant to Section 25-43-4.222 and
153 the official rule-making record of an agency pursuant to Section
154 25-43-3.112.

155 (g) "Basic adjudicative proceeding" is an adjudicative
156 proceeding conducted in accordance with the provisions of Sections
157 25-43-4.501 through 25-43-4.505.

158 (h) "Declaratory opinion" means an agency opinion
159 rendered in accordance with the provisions of Section 25-43-2.103.

160 (i) "Emergency adjudicative proceeding" is an
161 adjudicative proceeding conducted in accordance with the
162 provisions of Section 25-43-4.601.

163 (j) "Final agency action" means the whole or a part of
164 any agency action other than nonfinal agency action. Final agency
165 action occurs when the action is reduced to writing and approved
166 by the agency head.

167 (k) "Formal adjudicative hearing" is an adjudicative
168 proceeding conducted in accordance with the provisions of Section
169 25-43-4.201 through 25-43-4.222.

170 (l) "Informal adjudicative hearing" is an adjudicative
171 proceeding conducted in accordance with the provisions of Section
172 25-43-4.401 through 25-43-4.403.

173 (m) "License" means a franchise, permit, certification,
174 approval, registration, charter or similar form of authorization
175 required by law. The holder of a "license" may be referred to as
176 a "licensee," "permittee" or "franchisee."

177 (n) "Nonfinal agency action" means the whole or a part
178 of any agency determination, investigation, proceeding, hearing,
179 conference, or other process that is preliminary, preparatory,



180 procedural, or intermediate with regard to subsequent agency
181 action of that agency or another agency.

182 (o) "Order" means an agency action of particular
183 applicability that determines the legal rights, duties,
184 privileges, immunities or other legal interests of one or more
185 specific persons. An order shall be in writing signed by a person
186 with authority to render the order, or if more than one (1) person
187 has such authority by at least that number of such persons as
188 jointly have the authority to render the order, or by a person
189 authorized to render the order on behalf of all such persons. The
190 term does not include an executive order issued by the Governor
191 pursuant to Section 25-43-1.104, an opinion issued by the Attorney
192 General pursuant to Section 7-5-25, an opinion issued by the
193 Ethics Commission pursuant to Section 25-4-17, or a declaratory
194 opinion rendered in accordance with Section 25-43-2.103.

195 (p) "Party to agency proceedings," or "party" in a
196 context so indicating, means:

197 (i) A person to whom the agency action is
198 specifically directed;

199 (ii) A person named as a party to an agency
200 proceeding or allowed to intervene or participate as a party in
201 the proceeding; or

202 (iii) The agency, except where the agency is
203 essentially neutral regarding the outcome of the proceedings and
204 the agency's primary interest is that the proceeding be fair,
205 speedy and cost effective.

206 (q) "Party to judicial review or civil enforcement
207 proceedings," or "party" in a context so indicating, means:

208 (i) A person who files a notice for judicial
209 review or a complaint for civil enforcement;

210 (ii) A person named as a party in a proceeding for
211 judicial review or civil enforcement or allowed to participate as
212 a party in the proceeding; or



213 (iii) The agency in a proceeding for judicial
214 review or civil enforcement.

215 (r) "Person" means an individual, partnership,
216 corporation, association, governmental subdivision or unit
217 thereof, or public or private organization or entity of any
218 character, and includes another agency.

219 (s) "Presiding officer" means a person designated as
220 the principal hearing officer in an adjudicative proceeding.

221 (t) "Provision of law" or "law" means the whole or a
222 part of the federal or state Constitution, or of any federal or
223 state (i) statute, (ii) case law or common law, (iii) rule of
224 court, (iv) executive order, or (v) rule or order of an
225 administrative agency.

226 (u) "Public employee" means any person engaged in
227 "state service" within the meaning and contemplation of Section
228 25-9-107(b) as it now reads or may hereafter be amended and
229 excludes any person engaged in "nonstate service" within the
230 meaning and contemplation of Section 25-9-107(c) as it now reads
231 or may thereafter be amended.

232 (v) "Rule" means the whole or a part of an agency
233 regulation or other statement of general applicability that
234 implements, interprets, or prescribes:

235 (i) Law or policy, or

236 (ii) The organization, procedure or practice
237 requirements of an agency. The term includes the amendment,
238 repeal or suspension of an existing rule. "Rule" does not
239 include:

240 1. A regulation or statement concerning only
241 the internal management of an agency which does not directly and
242 substantially affect the procedural or substantive rights or
243 duties of any segment of the public;

244 2. A regulation or statement that establishes
245 criteria or guidelines to be used by the staff of an agency in



246 performing audits, investigations or inspections, settling
247 commercial disputes, negotiating commercial arrangements or in the
248 defense, prosecution or settlement of cases, if disclosure of the
249 criteria or guidelines would:

250 a. Enable law violators to avoid
251 detection;

252 b. Facilitate disregard of requirements
253 imposed by law; or

254 c. Give a clearly improper advantage to
255 persons who are in an adverse position to the state;

256 3. A regulation or statement that only
257 establishes specific prices to be charged for particular goods or
258 services sold by an agency;

259 4. A regulation or statement concerning only
260 the physical servicing, maintenance or care of agency owned or
261 operated facilities or property;

262 5. A regulation or statement relating only to
263 the use of a particular facility or property owned, operated or
264 maintained by the state or any of its subdivisions, if the
265 substance of the regulation or statement is adequately indicated
266 by means of signs or signals to persons who use the facility or
267 property;

268 6. A regulation or statement concerning only
269 inmates of a correctional or detention facility, students enrolled
270 in an educational institution or patients admitted to a hospital,
271 if adopted by that facility, institution or hospital;

272 7. A form whose contents or substantive
273 requirements are prescribed by rule or statute, and instructions
274 for the execution or use of the form;

275 8. An agency budget;

276 9. A compact or agreement between an agency
277 of this state and one or more agencies of another state or states;
278 or



279 10. An opinion of the Attorney General
280 pursuant to Section 7-5-25, an opinion of the Ethics Commission
281 pursuant to Section 25-4-17, or an executive order of the
282 Governor.

283 (w) "Rule making" means the process for formulation and
284 adoption of a rule.

285 **SECTION 3.** The following shall be codified as Section
286 25-43-1.103, Mississippi Code of 1972:

287 25-43-1.103. **Applicability and Relation to Other Law.**

288 (1) This chapter applies to all agencies and all proceedings
289 not expressly exempted under this chapter.

290 (2) This chapter creates only procedural rights and imposes
291 only procedural duties. They are in addition to those created and
292 imposed by other statutes.

293 (3) Specific statutory provisions which govern agency
294 proceedings and which are in conflict with any of the provisions
295 of this chapter shall continue to be applied to all proceedings of
296 any such agency to the extent of such conflict only.

297 (4) The provisions of this chapter shall not be construed to
298 amend, repeal or supersede the provisions of any other law; and,
299 to the extent that the provisions of any other law conflict or are
300 inconsistent with the provisions of this act, the provisions of
301 such other law shall govern and control.

302 (5) An agency may grant procedural rights to persons in
303 addition to those conferred by this chapter so long as rights
304 conferred upon other persons by any provision of law are not
305 substantially prejudiced.

306 **SECTION 4.** The following shall be codified as Section
307 25-43-1.104, Mississippi Code of 1972:

308 25-43-1.104. **Suspension of Chapter's Provisions When**
309 **Necessary to Avoid Loss of Federal Funds or Services.**

310 (1) To the extent necessary to avoid a denial of funds or
311 services from the United States which would otherwise be available



312 to the state, the Governor, by executive order, may suspend, in
313 whole or in part, one or more provisions of this chapter. The
314 Governor, by executive order, shall declare the termination of a
315 suspension as soon as it is no longer necessary to prevent the
316 loss of funds or services from the United States.

317 (2) If any provision of this chapter is suspended pursuant
318 to this section, the Governor shall promptly report the suspension
319 to the Legislature. The report may include recommendations
320 concerning desirable legislation that may be necessary to conform
321 this chapter to federal law, including the exemption, if
322 appropriate, of a particular program from the provisions of this
323 chapter.

324 **SECTION 5.** The following shall be codified as Section
325 25-43-1.105, Mississippi Code of 1972:

326 25-43-1.105. **Waiver of Rights.**

327 Except to the extent precluded by another provision of law, a
328 person may waive any right conferred upon that person by this
329 chapter, or by any rule made pursuant to this chapter.

330 **SECTION 6.** The following shall be codified as Section
331 25-43-1.106, Mississippi Code of 1972:

332 25-43-1.106. **Filings with Agency; Service; Computation of**
333 **Time.**

334 (1) (a) Whenever a presiding officer, a party or any person
335 is permitted or required to file with an agency any application,
336 pleading, motion or other document, filing must be made by
337 delivery of the document to the agency, by mailing it to the
338 agency, or by transmitting it to the agency by electronic means,
339 including, but not limited to, facsimile transfer or e-mail.
340 Filing by electronic means is complete when the electronic
341 equipment being used by the agency acknowledges receipt of the
342 material. If the equipment used by the agency does not
343 automatically acknowledge transmission, service is not complete



344 until the filing party obtains an acknowledgment from the agency.
345 Filing by mail is complete upon receipt by the agency.

346 (b) The agency may implement this section by agency
347 rule.

348 (2) (a) Whenever service is required by this article, and
349 whether the service is made by a party, an agency, or a presiding
350 officer, service of orders, notices, pleadings, motions, and other
351 documents upon a party shall be made by delivering a copy to the
352 party, by transmitting it to the party by electronic means,
353 including but not limited to facsimile transfer or e-mail, or by
354 mailing it to the party at the party's last known address.
355 Delivery of a copy means handing it to a party, leaving it at the
356 office of a party with a person in charge thereof, or leaving it
357 at the dwelling house or usual place of abode of the party with
358 some person of suitable age and discretion then residing therein.
359 Service by electronic means is complete when the electronic
360 equipment being used by the party being served acknowledges
361 receipt of the material. If the equipment used by the party being
362 served does not automatically acknowledge the transmission,
363 service is not complete until the sending party obtains an
364 acknowledgment from the recipient. Service by mail is complete
365 upon mailing.

366 (b) Whenever service is required or permitted to be
367 made upon a party who is represented by an attorney of record in
368 the proceedings, the service shall be made upon such attorney.

369 (c) Whenever an agency or presiding officer issues an
370 order or serves a notice or other document, the order or notice or
371 other document shall be dated and shall be deemed to have been
372 issued on the day it is served on the parties to the matter. If
373 the order or notice or other document is to be served by mail, it
374 shall be dated and shall be deemed to have been issued on the day
375 it is mailed.



376 (3) (a) In computing any period of time prescribed or
377 allowed by this article, by order of an agency, or by any
378 applicable statute or agency rule, the day of the act, event or
379 default from which the designated period of time begins to run
380 shall not be included. The last day of the period so computed
381 shall be included, unless it is a Saturday, a Sunday, or a legal
382 holiday, as defined by statute, or any other day when the agency's
383 office is in fact closed, whether with or without legal authority,
384 in which event the period runs until the end of the next day which
385 is not a Saturday, a Sunday, a legal holiday, or any other day
386 when the agency's office is closed. When the period of time
387 prescribed or allowed is less than seven (7) days, intermediate
388 Saturdays, Sundays, and legal holidays shall be excluded in the
389 computation. In the event any legal holiday falls on a Sunday,
390 the next following day shall be a legal holiday.

391 (b) Whenever a party has the right or is required to do
392 some act or take some proceedings within a prescribed period after
393 the service of a notice, order, pleading, motion or other paper
394 upon him and the notice or paper is served upon him by mail, three
395 (3) days shall be added to the prescribed period.

396 ARTICLE II

397 PUBLIC ACCESS TO AGENCY LAW AND POLICY

398 SECTION 7. The following shall be codified as Section
399 25-43-2.101, Mississippi Code of 1972:

400 25-43-2.101. Publication, Compilation, Indexing and Public
401 **Inspection of Rules.**

402 (1) Subject to the provisions of this chapter, the Secretary
403 of State shall prescribe a uniform numbering system, form, style
404 and transmitting format for all proposed and adopted rules caused
405 to be published by him and, with prior approval of each respective
406 agency involved, may edit rules for publication and codification
407 without changing the meaning or effect of any rule.



408 (2) The Secretary of State shall cause an administrative
409 bulletin to be published in a format and at such regular intervals
410 as the Secretary of State shall prescribe by rule. Upon proper
411 filing of proposed rules, the Secretary of State shall publish
412 them in the administrative bulletin as expeditiously as possible.
413 The administrative bulletin must contain:

414 (a) Notices of proposed rule adoption prepared so that
415 the text of the proposed rule shows the text of any existing rule
416 proposed to be changed and the change proposed;

417 (b) Any other notices and materials designated by law
418 for publication therein; and

419 (c) An index to its contents by subject.

420 (3) The Secretary of State shall cause an administrative
421 bulletin to be published in a format and at such regular intervals
422 as the Secretary of State shall prescribe by rule. Upon proper
423 filing of newly adopted rules, the Secretary of State shall
424 publish them as expeditiously as possible. The administrative
425 bulletin must contain:

426 (a) Newly filed adopted rules prepared so that the text
427 of the newly filed adopted rule shows the text of any existing
428 rule being changed and the change being made;

429 (b) Any other notices and materials designated by law
430 for publication therein; and

431 (c) An index to its contents by subject.

432 (4) The Secretary of State retains the authority to reject
433 proposed and newly adopted rules not properly filed in accordance
434 with the Secretary of State's rules prescribing the numbering
435 system, form, style or transmitting format for such filings. In
436 addition, a filing with the Secretary of State may be rejected if
437 it fails to comply with any of the provisions of Articles II and
438 III of this chapter. The Secretary of State shall notify the
439 agency of its rejection of a proposed or newly adopted rule as
440 expeditiously as possible and accompany such notification with a



441 stated reason for the rejection. A rejected filing of a proposed
442 or newly adopted rule does not constitute filing pursuant to
443 Section 25-43-3.101 et seq. of this chapter.

444 (5) (a) The Secretary of State shall cause an
445 administrative code to be compiled, indexed by subject and
446 published in a format prescribed by the Secretary of State by
447 rule. All of the effective rules of each agency must be published
448 and indexed in that publication. The Secretary of State shall
449 also cause supplements to the administrative code to be published
450 in a format and at such regular intervals as the Secretary of
451 State shall prescribe by rule.

452 (b) The Secretary of State is hereby authorized to
453 contract with a reputable and competent publishing company on such
454 terms and conditions and at such prices as he may deem proper to
455 digest, compile, annotate, index and publish the state agency
456 rules and regulations.

457 (6) (a) Copyrights of the Mississippi Administrative Code,
458 including, but not limited to, cross references, tables of cases,
459 notes of decisions, tables of contents, indices, source notes,
460 authority notes, numerical lists and codification guides, other
461 than the actual text of rules or regulations, shall be taken by
462 and in the name of the publishers of said compilation. Such
463 publishers shall thereafter promptly assign the same to the State
464 of Mississippi and said copyright shall be owned by the state.

465 (b) Any information appearing on the same leaf with the
466 text of any rule or regulation may be incidentally reproduced in
467 connection with the reproduction of such rule or regulation, if
468 such reproduction is for private use and not for resale.

469 (7) The Secretary of State may omit from the administrative
470 bulletin or code any proposed or filed adopted rule the
471 publication in hard copy of which would be unduly cumbersome,
472 expensive or otherwise inexpedient, if:



473 (a) Knowledge of the rule is likely to be important to
474 only a small class of persons;

475 (b) On application to the issuing agency, the proposed
476 or adopted rule in printed or processed form is made available at
477 no more than its cost of reproduction; and

478 (c) The administrative bulletin or code contains a
479 notice stating in detail the specific subject matter of the
480 omitted proposed or adopted rule and how a copy of the omitted
481 material may be obtained.

482 (8) The administrative bulletin and administrative code with
483 supplements must be furnished to designated officials without
484 charge and to all subscribers at a reasonable cost to be
485 determined by the Secretary of State. Each agency shall also make
486 available for public inspection and copying those portions of the
487 administrative bulletin and administrative code containing all
488 rules adopted or used by the agency in the discharge of its
489 functions, and the index to those rules.

490 **SECTION 8.** The following shall be codified as Section
491 25-43-2.102, Mississippi Code of 1972:

492 25-43-2.102. **Public Inspection and Indexing of Agency**
493 **Orders.**

494 (1) In addition to other requirements imposed by any
495 provision of law, and subject to any confidentiality provisions
496 established by law, each agency shall make all written final
497 orders available for public inspection and copying and index them
498 by name and subject.

499 (2) A written final order may not be relied on as precedent
500 by an agency to the detriment of any person until it has been made
501 available for public inspection and indexed in the manner
502 described in subsection (1) of this section. This provision is
503 inapplicable to any person who has actual, timely knowledge of the
504 order. The burden of proving that knowledge is on the agency.



505 **SECTION 9.** The following shall be codified as Section
506 25-43-2.103, Mississippi Code of 1972:

507 25-43-2.103. **Declaratory Opinions.**

508 (1) Any person with a substantial interest in the subject
509 matter may make a written request of an agency for a declaratory
510 opinion as to the applicability to specified circumstances of a
511 statute, rule or order within the primary jurisdiction of the
512 agency. An agency, through the agency head or its designee(s) by
513 rule, shall issue a declaratory opinion in response to a written
514 request for that opinion unless the agency determines that
515 issuance of the opinion under the circumstances would be contrary
516 to a rule adopted in accordance with subsection (2) of this
517 section.

518 (2) Each agency shall issue rules that provide for: (a) the
519 form, contents and filing of written requests for declaratory
520 opinions; (b) the procedural rights of persons in relation to the
521 written requests and (c) the disposition of the written requests.
522 Those rules must describe the classes of circumstances in which
523 the agency will not issue a declaratory opinion.

524 (3) Within forty-five (45) days after receipt of a written
525 request for a declaratory opinion an agency, in writing, shall:

526 (a) Issue an opinion declaring the applicability of the
527 statute, rule or order in question to the specified circumstances;

528 (b) Agree to issue a declaratory opinion by a specified
529 time but no later than ninety (90) days after receipt of the
530 written request; or

531 (c) Decline to issue a declaratory opinion, stating the
532 reasons for its action.

533 (4) A copy of all opinions issued in response to a written
534 request for a declaratory opinion must be mailed promptly to the
535 requesting party.

536 (5) (a) When any person receives a declaratory opinion from
537 an agency and shall have stated all the facts to govern such



538 opinion, there shall be no liability, civil or criminal, accruing
539 to or against any such person who, in good faith, follows the
540 direction of such opinion and acts in accordance therewith unless
541 a court of competent jurisdiction, after a full hearing, shall
542 judicially declare that such opinion is manifestly wrong and
543 without any substantial support. No declaratory opinion shall be
544 given or considered if the opinion is requested after suit is
545 filed or prosecution begun.

546 (b) The authority of persons to request and receive
547 agency declaratory opinions in no way affects the ability of any
548 person authorized by Section 7-5-25 to request a legal opinion
549 from the Attorney General.

550 (c) Each agency shall make all declaratory opinions
551 available for public inspection and copying and shall index them
552 by name and subject, unless information contained within such
553 opinions is confidential by statute or exempt from public
554 disclosure pursuant to another provision of law.

555 **SECTION 10.** The following shall be codified as Section
556 25-43-2.104, Mississippi Code of 1972:

557 25-43-2.104. **Required Rule Making.**

558 In addition to other rule-making requirements imposed by law,
559 each agency shall:

560 (a) Adopt as a rule a description of the organization
561 of the agency which states the general course and method of its
562 operations and where and how the public may obtain information or
563 make submissions or requests;

564 (b) Adopt rules of practice setting forth the nature
565 and requirements of all formal and informal proceedings available
566 to the public.

567 **SECTION 11.** The following shall be codified as Section
568 25-43-2.105, Mississippi Code of 1972:

569 25-43-2.105. **Model Rules of Procedure.**



570 In accordance with the rule-making requirements of this
571 chapter, the Secretary of State shall adopt model rules of
572 procedure appropriate for use by as many agencies as possible.
573 The model rules must deal with all general functions and duties
574 performed in common by several agencies. Each agency may adopt as
575 much of the model rules as is practicable under its circumstances.
576 To the extent an agency adopts the model rules, it shall do so in
577 accordance with the rule-making requirements of this chapter.

578 **ARTICLE III**

579 **RULE MAKING**

580 **ADOPTION AND EFFECTIVENESS OF RULES**

581 **SECTION 12.** The following shall be codified as Section
582 25-43-3.101, Mississippi Code of 1972:

583 25-43-3.101. **Advice on Possible Rules before Notice of**
584 **Proposed Rule Adoption.**

585 (1) In addition to seeking information by other methods, an
586 agency, before filing of a notice of proposed rule adoption under
587 Section 25-43-3.103, may solicit comments from the public on a
588 subject matter of possible rule making under active consideration
589 within the agency by causing notice to be filed with the Secretary
590 of State for publication in the administrative bulletin of the
591 subject matter and indicating where, when and how persons may
592 comment.

593 (2) Each agency may also appoint committees to comment,
594 before filing of a notice of proposed rule adoption under Section
595 25-43-3.103, on the subject matter of a possible rule making under
596 active consideration within the agency. The membership of those
597 committees must be filed with the Secretary of State for
598 publication in the administrative bulletin.

599 **SECTION 13.** The following shall be codified as Section
600 25-43-3.102, Mississippi Code of 1972:

601 25-43-3.102. **Public Rule-making Docket.**



602 (1) Each agency shall maintain a current, public rule-making
603 docket.

604 (2) The rule-making docket may, but need not, contain a
605 listing of the subject matter of possible rules currently under
606 active consideration within the agency for proposal under Section
607 25-43-3.103 and the name and address of agency personnel with whom
608 persons may communicate with respect to the matter.

609 (3) The rule-making docket must list each pending
610 rule-making proceeding. A rule-making proceeding is pending from
611 the time it is commenced, by proper filing with the Secretary of
612 State of a notice of proposed rule adoption, to the time it is
613 terminated by the filing with the Secretary of State of a notice
614 of termination or the rule becoming effective. For each pending
615 rule-making proceeding, the docket must indicate:

616 (a) The subject matter of the proposed rule;

617 (b) A citation to all published notices relating to the
618 proceeding;

619 (c) Where written submissions or written requests for
620 an opportunity to make oral presentations on the proposed rule may
621 be inspected;

622 (d) The time during which written submissions may be
623 made;

624 (e) If applicable, where and when oral presentations
625 may be made;

626 (f) Where any economic impact statement and written
627 requests for the issuance of and other information concerning an
628 economic impact statement of the proposed rule may be inspected;

629 (g) The current status of the proposed rule;

630 (h) The date of the rule's adoption; and

631 (i) When the rule will become effective.

632 **SECTION 14.** The following shall be codified as Section
633 25-43-3.103, Mississippi Code of 1972:

634 25-43-3.103. **Notice of Proposed Rule Adoption.**



635 (1) At least twenty-five (25) days before the adoption of a
636 rule an agency shall cause notice of its contemplated action to be
637 properly filed with the Secretary of State for publication in the
638 administrative bulletin. The notice of proposed rule adoption
639 must include:

640 (a) A short explanation of the purpose of the proposed
641 rule and the agency's reasons for proposing the rule;

642 (b) The specific legal authority authorizing the
643 proposed rule;

644 (c) A reference to all rules repealed, amended or
645 suspended by the proposed rule;

646 (d) Subject to Section 25-43-2.101(5), the text of the
647 proposed rule;

648 (e) Where, when and how persons may present their views
649 on the proposed rule; and

650 (f) Where, when and how persons may demand an oral
651 proceeding on the proposed rule if the notice does not already
652 provide for one.

653 (2) Within three (3) days after its proper filing with the
654 Secretary of State for publication in the administrative bulletin,
655 the agency shall cause a copy of the notice of proposed rule
656 adoption to be mailed to each person who has made a timely request
657 to the agency to be placed on the mailing list maintained by the
658 agency of persons who have requested notices of proposed rule
659 adoptions. An agency may charge persons a reasonable fee for such
660 service, which fee may be in excess of the actual cost of
661 providing persons with mailed copies.

662 **SECTION 15.** The following shall be codified as Section
663 25-43-3.104, Mississippi Code of 1972:

664 25-43-3.104. **Public Participation.**

665 (1) For at least twenty-five (25) days after proper filing
666 with the Secretary of State of the notice of proposed rule



667 adoption, an agency shall afford persons the opportunity to
668 submit, in writing, argument, data and views on the proposed rule.

669 (2) (a) An agency in its discretion may schedule an oral
670 proceeding on any proposed rule. However, an agency shall
671 schedule an oral proceeding on a proposed rule if, within twenty
672 (20) days after the proper filing of the notice of proposed rule
673 adoption, a written request for an oral proceeding is submitted by
674 a political subdivision, an agency, or twenty-five (25) persons.
675 At that proceeding, persons may present oral or written argument,
676 data, and views on the proposed rule.

677 (b) An oral proceeding on a proposed rule, if required,
678 may not be held earlier than twenty (20) days after notice of its
679 location and time is properly filed with the Secretary of State
680 for publication in the administrative bulletin. Within three (3)
681 days after its proper filing with the Secretary of State for
682 publication in the administrative bulletin, the agency shall cause
683 a copy of the notice of the location and time of the oral
684 proceeding to be mailed to each person who has made a timely
685 request to the agency to be placed on the mailing list maintained
686 by the agency of persons who have requested notices of proposed
687 rule adoptions.

688 (c) The agency, a member of the agency, or another
689 presiding officer designated by the agency shall preside at a
690 required oral proceeding on a proposed rule. Oral proceedings
691 must be open to the public and may be recorded by stenographic or
692 other means.

693 (d) An agency may issue rules for the conduct of oral
694 rule-making proceedings or prepare reasonable guidelines or
695 procedures for the conduct of any such proceedings. Those rules
696 may include, but not be limited to, provisions calculated to
697 prevent undue repetition in the oral proceedings.

698 **SECTION 16.** The following shall be codified as Section
699 25-43-3.105, Mississippi Code of 1972:



700 25-43-3.105. **Economic Impact Statement, Requirement and**

701 **Conditions.**

702 (1) Prior to giving the notice required in Section
703 25-43-3.103, each agency proposing the adoption of a rule or
704 significant amendment of an existing rule imposing a duty,
705 responsibility or requirement on any person shall consider the
706 economic impact the rule will have on the citizens of our state
707 and the benefits the rule will cause to accrue to those citizens.
708 For purposes of this section, a "significant amendment" means any
709 amendment to a rule for which the total aggregate cost to all
710 persons required to comply with that rule exceeds One Hundred
711 Thousand Dollars (\$100,000.00).

712 (2) Each agency shall prepare a written report providing an
713 economic impact statement for the adoption of a rule or
714 significant amendment to an existing rule imposing a duty,
715 responsibility or requirement on any person, except as provided in
716 subsection (7) of this section. The economic impact statement
717 shall include the following:

718 (a) A description of the need for and the benefits
719 which will likely accrue as the result of the proposed action;

720 (b) An estimate of the cost to the agency, and to any
721 other state or local government entities, of implementing and
722 enforcing the proposed action, including the estimated amount of
723 paperwork, and any anticipated effect on state or local revenues;

724 (c) An estimate of the cost or economic benefit to all
725 persons directly affected by the proposed action;

726 (d) An analysis of the impact of the proposed rule on
727 small business;

728 (e) A comparison of the costs and benefits of the
729 proposed rule to the probable costs and benefits of not adopting
730 the proposed rule or significantly amending an existing rule;

731 (f) A determination of whether less costly methods or
732 less intrusive methods exist for achieving the purpose of the



733 proposed rule where reasonable alternative methods exist which are
734 not precluded by law;

735 (g) A description of reasonable alternative methods,
736 where applicable, for achieving the purpose of the proposed action
737 which were considered by the agency and a statement of reasons for
738 rejecting those alternatives in favor of the proposed rule; and

739 (h) A detailed statement of the data and methodology
740 used in making estimates required by this subsection.

741 (3) No rule or regulation shall be declared invalid based on
742 a challenge to the economic impact statement for the rule unless
743 the issue is raised in the agency proceeding. No person shall
744 have standing to challenge a rule, based upon the economic impact
745 statement or lack thereof, unless that person provided the agency
746 with information sufficient to make the agency aware of specific
747 concerns regarding the statement in an oral proceeding or in
748 written comments regarding the rule. The grounds for invalidation
749 of an agency action, based upon the economic impact statement, are
750 limited to the agency's failure to adhere to the procedure for
751 preparation of the economic impact statement as provided in this
752 section, or the agency's failure to consider information submitted
753 to the agency regarding specific concerns about the statement, if
754 that failure substantially impairs the fairness of the rule-making
755 proceeding.

756 (4) A concise summary of the economic impact statement must
757 be properly filed with the Secretary of State for publication in
758 the administrative bulletin and the period during which persons
759 may make written submissions on the proposed rule shall not expire
760 until at least twenty (20) days after the date of such proper
761 filing.

762 (5) The properly filed summary of the economic impact
763 statement must also indicate where persons may obtain copies of
764 the full text of the economic impact statement and where, when,
765 and how persons may present their views on the proposed rule and



766 demand an oral proceeding on the proposed rule if one is not
767 already provided.

768 (6) If the agency has made a good faith effort to comply
769 with the requirements of subsections (1) and (2) of this section,
770 the rule may not be invalidated on the ground that the contents of
771 the economic impact statement are insufficient or inaccurate.

772 (7) This section does not apply to the adoption of:

773 (a) Any rule which is required by the federal
774 government pursuant to a state/federal program delegation
775 agreement or contract;

776 (b) Any rule which is expressly required by state law;
777 and

778 (c) A temporary rule adopted pursuant to Section
779 25-43-3.108.

780 **SECTION 17.** The following shall be codified as Section
781 25-43-3.106, Mississippi Code of 1972:

782 25-43-3.106. **Time and Manner of Rule Adoption.**

783 (1) An agency may not adopt a rule until the period for
784 making written submissions and oral presentations has expired.

785 (2) Following the proper filing with the Secretary of State
786 of the notice of proposed rule adoption, an agency shall adopt a
787 rule pursuant to the rule-making proceeding or terminate the
788 proceeding by proper filing with the Secretary of State of a
789 notice to that effect for publication in the administrative
790 bulletin.

791 (3) Before the adoption of a rule, an agency shall consider
792 the written submissions, oral submissions or any memorandum
793 summarizing oral submissions, and any economic impact statement,
794 provided for by this article.

795 (4) Within the scope of its delegated authority, an agency
796 may use its own experience, technical competence, specialized
797 knowledge and judgment in the adoption of a rule.



798 **SECTION 18.** The following shall be codified as Section
799 25-43-3.107, Mississippi Code of 1972:

800 25-43-3.107. **Variance between Adopted Rule and Published**
801 **Notice of Proposed Rule Adoption.**

802 (1) An agency shall not adopt a rule that differs from the
803 rule proposed in the notice of proposed rule adoption on which the
804 rule is based unless all of the following apply:

805 (a) The differences are within the scope of the matter
806 announced in the notice of proposed rule adoption and are in
807 character with the issues raised in that notice;

808 (b) The differences are a logical outgrowth of the
809 contents of that notice of proposed rule adoption and the comments
810 submitted in response thereto; and

811 (c) The notice of proposed rule adoption provided fair
812 warning that the outcome of that rule-making proceeding could be
813 the rule in question.

814 (2) In determining whether the notice of proposed rule
815 adoption provided fair warning that the outcome of that
816 rule-making proceeding could be the rule in question an agency
817 shall consider all of the following factors:

818 (a) The extent to which persons who will be affected by
819 the rule should have understood that the rule-making proceeding on
820 which it is based could affect their interests;

821 (b) The extent to which the subject matter of the rule
822 or issues determined by the rule are different from the subject
823 matter or issues contained in the notice of proposed rule
824 adoption; and

825 (c) The extent to which the effects of the rule differ
826 from the effects of the proposed rule contained in the notice of
827 proposed rule adoption.

828 **SECTION 19.** The following shall be codified as Section
829 25-43-3.108, Mississippi Code of 1972:



830 25-43-3.108. **Exemption from Public Rule-making Procedures**
831 **for Temporary Rules.**

832 (1) To the extent an agency for good cause finds that any
833 requirements of Sections 25-43-3.103 through 25-43-3.107 are
834 unnecessary, impracticable or contrary to the public interest in
835 the process of adopting a temporary rule, those requirements do
836 not apply. The agency shall incorporate the required finding and
837 a brief statement of its supporting reasons in each temporary rule
838 adopted in reliance on this subsection. The supporting reasons
839 for the issuance of a temporary rule in accordance with this
840 provision may include, but are not limited to, a serious and
841 unforeseen threat to the public health, safety or welfare; an
842 impending effective date of a recent act of the Legislature of the
843 State of Mississippi or the United States Congress that requires
844 the issuance of implementing or conforming rules or regulations;
845 an impending effective date of a regulation recently issued by an
846 agency or authority of the federal government of the United States
847 that requires the issuance of implementing or conforming rules or
848 regulations; or a court order or other controlling judicial
849 decision that requires the issuance of implementing or conforming
850 rules or regulations. Unless a shorter period of time is stated
851 in the temporary rule, a temporary rule shall expire no later than
852 one hundred eighty (180) days after adoption. A temporary rule
853 may not be renewed after its expiration or early termination by
854 the agency. However, an agency may adopt a rule which is
855 identical or similar to a temporary rule to become effective
856 following the expiration or early termination of the temporary
857 rule, provided that the rule is adopted in accordance with the
858 requirements of Sections 25-43-3.103 through 25-43-3.107.

859 (2) In an action contesting a temporary rule adopted under
860 subsection (1) of this section, the burden is upon the agency to
861 demonstrate that any omitted requirements of Sections 25-43-3.103



862 through 25-43-3.107 were impracticable, unnecessary or contrary to
863 the public interest in the particular circumstances involved.

864 **SECTION 20.** The following shall be codified as Section
865 25-43-3.109, Mississippi Code of 1972:

866 25-43-3.109. **Contents, Style, and Form of Rule.**

867 (1) Each rule adopted by an agency must contain the text of
868 the rule and:

869 (a) The date the agency adopted the rule;

870 (b) An indication of any change between the text of the
871 proposed rule contained in the published notice of proposed rule
872 adoption and the text of the rule as finally adopted, with the
873 reasons for any substantive change;

874 (c) Any changes to the information contained in the
875 notice of proposed rule adoption as required by subsections (a),
876 (b) or (c) of Section 25-43-3.103;

877 (d) Any findings required by any provision of law as a
878 prerequisite to adoption or effectiveness of the rule; and

879 (e) The effective date of the rule if other than that
880 specified in Section 25-43-3.113(1).

881 (2) To the extent feasible, each rule should be written in
882 clear and concise language understandable to persons who may be
883 affected by it.

884 (3) An agency may incorporate, by reference in its rules and
885 without publishing the incorporated matter in full, all or any
886 part of a code, standard, rule or regulation that has been adopted
887 by an agency of the United States or of this state, another state
888 or by a nationally recognized organization or association, if
889 incorporation of its text in agency rules would be unduly
890 cumbersome, expensive or otherwise inexpedient. The reference in
891 the agency rules must fully identify the incorporated matter with
892 an appropriate citation. An agency may incorporate by reference
893 such matter in its rules only if the agency, organization or
894 association originally issuing that matter makes copies of it



895 readily available to the public. The rules must state if copies
896 of the incorporated matter are available from the agency issuing
897 the rule or where copies of the incorporated matter are available
898 from the agency of the United States, this state, another state or
899 the organization or association originally issuing that matter.

900 (4) In preparing its rules pursuant to this article, each
901 agency shall follow the uniform numbering system, form and style
902 prescribed by the Secretary of State.

903 **SECTION 21.** The following shall be codified as Section
904 25-43-3.110, Mississippi Code of 1972:

905 25-43-3.110. **Agency Rule-making Record.**

906 (1) An agency shall maintain an official rule-making record
907 for each rule it (a) proposes, or (b) adopts. The agency has the
908 exclusive authority to prepare and exclusive authority to certify
909 the record or any part thereof, including, but not limited to, any
910 transcript of the proceedings, and the agency's certificate shall
911 be accepted by the court and by any other agency. The record must
912 be available for public inspection.

913 (2) The agency rule-making record must contain:

914 (a) Copies of all notices of proposed rule making or
915 oral proceedings or other publications in the administrative
916 bulletin with respect to the rule or the proceeding upon which the
917 rule is based;

918 (b) Copies of any portions of the agency's public
919 rule-making docket containing entries relating to the rule or the
920 proceeding upon which the rule is based;

921 (c) All written petitions, requests, submissions and
922 comments received by the agency and all other written materials
923 considered by the agency in connection with the formulation,
924 proposal or adoption of the rule or the proceeding upon which the
925 rule is based;

926 (d) Any official transcript of oral presentations made
927 in the proceeding upon which the rule is based or, if not



928 transcribed, any tape recording or stenographic record of those
929 presentations, and any memorandum prepared by a presiding official
930 summarizing the contents of those presentations. The word
931 "transcript" includes a written transcript, a printed transcript,
932 an audible audiotape or videotape that is indexed and annotated so
933 that it is readily accessible and any other means that the agency
934 may have by rule provided for the reliable and accessible
935 preservation of the proceeding;

936 (e) A copy of any economic impact statement prepared
937 for the proceeding upon which the rule is based;

938 (f) A copy of the rule and related information set out
939 in Section 25-43-3.109 as filed in the Office of the Secretary of
940 State; and

941 (g) All petitions for exceptions to, amendments of, or
942 repeal or suspension of, the rule.

943 (3) The agency shall have authority to engage such persons
944 and acquire such equipment as may be reasonably necessary to
945 record and preserve in any technically and practicably feasible
946 manner all matters and all proceedings had at any rule-making
947 proceeding.

948 (4) Upon judicial review, the record required by this
949 section constitutes the official agency rule-making record with
950 respect to a rule. Except as otherwise required by a provision of
951 law, the agency rule-making record need not constitute the
952 exclusive basis for agency action on that rule or for judicial
953 review thereof.

954 **SECTION 22.** The following shall be codified as Section
955 25-43-3.111, Mississippi Code of 1972:

956 25-43-3.111. **Invalidity of Rules Not Adopted According to**
957 **Article; Time Limitation.**

958 (1) A rule adopted after July 1, 2001, is invalid unless
959 adopted in substantial compliance with the provisions of Sections
960 25-43-3.102 through 25-43-3.110. Inadvertent failure to mail a



961 notice of proposed rule adoption to any person as required by
962 Section 25-43-3.103(2) does not invalidate a rule.

963 (2) An action to contest the validity of a rule on the
964 grounds of its noncompliance with any provision of Sections
965 25-43-3.102 through 25-43-3.110 must be commenced within one (1)
966 year after the effective date of the rule.

967 **SECTION 23.** The following shall be codified as Section
968 25-43-3.112, Mississippi Code of 1972:

969 25-43-3.112. **Filing of Rules.**

970 An agency shall file in the Office of the Secretary of State
971 each rule it adopts and all rules existing on July 1, 2001, that
972 have not previously been filed. The filing must be done as soon
973 after adoption of the rule as is practicable. At the time of
974 filing, each rule adopted after July 1, 2001, must have included
975 in or attached to it the material set out in Section 25-43-3.109.
976 The Secretary of State shall affix to each rule and statement a
977 certification of the date of filing and keep a permanent register
978 open to public inspection of all filed rules and attached
979 material. In filing a rule, each agency shall use a standard
980 format prescribed by the Secretary of State.

981 **SECTION 24.** The following shall be codified as Section
982 25-43-3.113, Mississippi Code of 1972:

983 25-43-3.113. **Effective Date of Rules.**

984 (1) Except to the extent subsection (2) or (3) of this
985 section provides otherwise, each rule adopted after July 1, 2001,
986 becomes effective thirty (30) days after its proper filing in the
987 Office of the Secretary of State.

988 (2) (a) A rule becomes effective on a date later than that
989 established by subsection (1) of this section if a later date is
990 required by another statute or specified in the rule.

991 (b) A rule may become effective immediately upon its
992 filing or on any subsequent date earlier than that established by



993 subsection (1) of this section if the agency establishes such an
994 effective date and finds that:

995 (i) It is required by constitution, statute or
996 court order;

997 (ii) The rule only confers a benefit or removes a
998 restriction on the public or some segment thereof;

999 (iii) The rule only delays the effective date of
1000 another rule that is not yet effective; or

1001 (iv) The earlier effective date is necessary
1002 because of imminent peril to the public health, safety or welfare.

1003 (c) The finding and a brief statement of the reasons
1004 therefor required by paragraph (b) of this subsection must be made
1005 a part of the rule. In any action contesting the effective date
1006 of a rule made effective under paragraph (b) of this subsection,
1007 the burden is on the agency to justify its finding.

1008 (d) A temporary rule may become effective immediately
1009 upon its filing or on any subsequent date earlier than that
1010 established by subsection (1) of this section.

1011 (e) Each agency shall make a reasonable effort to make
1012 known to persons who may be affected by it a rule made effective
1013 before any date established by subsection (1) of this section.

1014 (3) This section does not relieve an agency from compliance
1015 with any provision of law requiring that some or all of its rules
1016 be approved by other designated officials or bodies before they
1017 become effective.

1018 **SECTION 25.** The following shall be codified as Section
1019 25-43-3.114, Mississippi Code of 1972:

1020 25-43-3.114. **Review by Agency.**

1021 At least every five (5) years, each agency shall review all
1022 of its rules to determine whether any rule should be repealed,
1023 amended or a new rule adopted.

1024 **SECTION 26.** Sections 25-43-1, 25-43-3, 25-43-5, 25-43-6,
1025 25-43-7, 25-43-9, 25-43-11, 25-43-13, 25-43-15, 25-43-17 and



1026 25-43-19, Mississippi Code of 1972, which create the Mississippi
1027 Administrative Procedures Law, provide definitions for terms used
1028 in such law, prescribe procedures that must be followed by
1029 agencies in the adoption, amendment and repeal of agency rules,
1030 require the filing of an economic impact statement for the
1031 adoption of a rule, require filing and notice before such rules
1032 may become effective, require agencies to index all effective
1033 rules adopted, provide that revocation or suspension of any
1034 license shall not be effective unless notice of such intended
1035 action is given to the licensee, and require agencies to adopt
1036 procedures to assure that opponents of proposed rules have the
1037 opportunity to present their views and review adverse rulings, are
1038 repealed.

1039 **SECTION 27.** This act shall take effect and be in force from
1040 and after July 1, 2003.

