

By: Senator(s) Bryan, Dawkins

To: Judiciary

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2762

1 AN ACT TO AMEND SECTION 49-17-29, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE FOR APPELLATE REVIEW BY THE COURT OF APPEALS OF CERTAIN  
3 ADMINISTRATIVE ACTIONS OF THE PERMIT BOARD OF THE DEPARTMENT OF  
4 ENVIRONMENTAL QUALITY; TO AMEND SECTION 49-17-41, MISSISSIPPI CODE  
5 OF 1972, TO PROVIDE FOR APPELLATE REVIEW BY THE COURT OF APPEALS  
6 OF CERTAIN ADMINISTRATIVE ACTIONS OF THE COMMISSION ON  
7 ENVIRONMENTAL QUALITY; TO AMEND SECTIONS 77-1-47, 77-1-53,  
8 77-3-67, 77-3-69, 77-3-71 AND 77-3-75, MISSISSIPPI CODE OF 1972,  
9 TO PROVIDE FOR APPEAL OF CERTAIN DECISIONS OF THE PUBLIC SERVICE  
10 COMMISSION TO THE COURT OF APPEALS; TO AMEND SECTIONS 73-14-39,  
11 73-23-63, 73-24-25, 73-38-27 AND 73-57-33, MISSISSIPPI CODE OF  
12 1972, TO PROVIDE FOR APPEAL OF CERTAIN DECISIONS OF THE STATE  
13 BOARD OF HEALTH TO THE COURT OF APPEALS CONCERNING HEARING AID  
14 DEALER LICENSES, PHYSICAL THERAPIST LICENSES, OCCUPATIONAL THERAPY  
15 LICENSES, SPEECH PATHOLOGIST AND AUDIOLOGIST LICENSES AND  
16 RESPIRATORY CARE THERAPIST LICENSES; TO AMEND SECTIONS 41-7-197  
17 AND 41-7-201, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR APPEAL TO  
18 THE COURT OF APPEALS OF CERTAIN DECISIONS CONCERNING HEALTH CARE  
19 CERTIFICATES OF NEED; TO AMEND SECTION 41-9-31, MISSISSIPPI CODE  
20 OF 1972, TO PROVIDE FOR APPEAL TO THE COURT OF APPEALS OF CERTAIN  
21 DECISIONS OF THE STATE BOARD OF HEALTH AFFECTING HOSPITALS; TO  
22 AMEND SECTION 41-26-21, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR  
23 APPEAL TO THE COURT OF APPEALS FOR DECISIONS UNDER THE SAFE  
24 DRINKING WATER ACT; TO AMEND SECTION 41-83-23, MISSISSIPPI CODE OF  
25 1972, TO PROVIDE FOR APPEAL TO THE COURT OF APPEALS OF CERTAIN  
26 DECISIONS CONCERNING HEALTH CARE UTILIZATION REVIEW; TO AMEND  
27 SECTION 45-23-59, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A  
28 PERSON AGGRIEVED AT A DECISION OF THE STATE BOARD OF HEALTH  
29 CONCERNING BOILER AND PRESSURE VESSEL SAFETY MAY APPEAL TO THE  
30 COURT OF APPEALS; TO AMEND SECTION 9-4-3, MISSISSIPPI CODE OF  
31 1972, TO CONFORM; AND FOR RELATED PURPOSES.

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

33 **SECTION 1.** Section 49-17-29, Mississippi Code of 1972, is  
34 amended as follows:

35 49-17-29. (1) (a) Except as in compliance with paragraph  
36 (b) of this subsection, it is unlawful for any person to cause  
37 pollution of the air in the state or to place or cause to be  
38 placed any wastes or other products or substances in a location  
39 where they are likely to cause pollution of the air. It is also  
40 unlawful to discharge any wastes, products or substances into the  
41 air of the state which exceed standards of performance, hazardous



42 air pollutant standards, other emission standards set by the  
43 commission, or which reduce the quality of the air below the air  
44 quality standards or increments established by the commission or  
45 prevent attainment or maintenance of those air quality standards.  
46 Any such action is hereby declared to be a public nuisance.

47 (b) It is unlawful for any person to build, erect,  
48 alter, replace, use or operate any equipment which will cause the  
49 issuance of air contaminants unless that person holds a permit  
50 from the Permit Board (except repairs or maintenance of equipment  
51 for which a permit has been previously issued), or unless that  
52 person is exempted from holding a permit by a regulation  
53 promulgated by the commission. Concentrated animal feeding  
54 operations may be a source or a category of sources exempted under  
55 this paragraph. However, no new or existing applications relating  
56 to swine concentrated animal feeding operations within a county  
57 shall be exempted from regulations and ordinances which have been  
58 duly passed by the county's board of supervisors and which are in  
59 force on June 1, 1998.

60 (2) (a) Except as in compliance with paragraph (b) of this  
61 subsection, it is unlawful for any person to cause pollution of  
62 any waters of the state or to place or cause to be placed any  
63 wastes in a location where they are likely to cause pollution of  
64 any waters of the state. It is also unlawful to discharge any  
65 wastes into any waters of the state which reduce the quality of  
66 those waters below the water quality standards established by the  
67 commission; or to violate any applicable pretreatment standards or  
68 limitations, technology-based effluent limitations, toxic  
69 standards or any other limitations established by the commission.  
70 Any such action is declared to be a public nuisance.

71 (b) It is unlawful for any person to carry on any of  
72 the following activities, unless that person holds a current  
73 permit for that activity from the Permit Board as may be required  
74 for the disposal of all wastes which are or may be discharged into



75 the waters of the state, or unless that person is exempted from  
76 holding a permit by a regulation promulgated by the commission:  
77 (i) the construction, installation, modification or operation of  
78 any disposal system or part thereof or any extension or addition  
79 thereto, including, but not limited to, systems serving  
80 agricultural operations; (ii) the increase in volume or strength  
81 of any wastes in excess of the permissive discharges specified  
82 under any existing permit; (iii) the construction, installation or  
83 operation of any industrial, commercial or other establishment,  
84 including irrigation projects or any extension or modification  
85 thereof or addition thereto, the operation of which would cause an  
86 increase in the discharge of wastes into the waters of the state  
87 or would otherwise alter the physical, chemical or biological  
88 properties of any waters of the state in any manner not already  
89 lawfully authorized; (iv) the construction or use of any new  
90 outlet for the discharge of any wastes into the waters of the  
91 state. However, no new or existing applications relating to swine  
92 concentrated animal feeding operations within a county shall be  
93 exempted from regulations and ordinances which have been duly  
94 passed by the county's board of supervisors and which are in force  
95 on June 1, 1998.

96 (3) (a) Except as otherwise provided in this section, the  
97 Permit Board created by Section 49-17-28 shall be the exclusive  
98 administrative body to make decisions on permit issuance,  
99 reissuance, denial, modification or revocation of air pollution  
100 control and water pollution control permits and permits required  
101 under the Solid Wastes Disposal Law of 1974 (Title 17, Chapter  
102 17), and all other permits within the jurisdiction of the Permit  
103 Board. After consideration of alternative waste treatment  
104 technologies available to control air and water pollution and  
105 odor, including appropriate siting criteria, the commission may  
106 promulgate regulations establishing conditions, limitations and  
107 exemptions under which the Permit Board shall make these



108 decisions. Regulations promulgated by the commission which  
109 establish exemptions as authorized under Senate Bill No. 2895,  
110 1998 Regular Session [Laws, 1998, Ch. 537], shall apply to any  
111 applicable facility in operation on the effective date of that  
112 regulation and to any applicable facility constructed or operated  
113 after the effective date of that regulation. The Permit Board may  
114 issue multiple permits for the same facility or operation  
115 simultaneously or in the sequence that it deems appropriate  
116 consistent with the commission's regulations. Except as otherwise  
117 provided in this paragraph, the Permit Board, under any conditions  
118 that the board may prescribe, may authorize the Executive Director  
119 of the Department of Environmental Quality to make decisions on  
120 permit issuance, reissuance, denial, modification or revocation.  
121 The executive director shall not be authorized to make decisions  
122 on permit issuance, reissuance, denial, modification or revocation  
123 for a commercial hazardous waste management facility or a  
124 municipal solid waste landfill or incinerator. A decision by the  
125 executive director shall be a decision of the Permit Board and  
126 shall be subject to formal hearing and appeal as provided in this  
127 section. The executive director shall report all permit decisions  
128 to the Permit Board at its next regularly scheduled meeting and  
129 those decisions shall be recorded in the minutes of the Permit  
130 Board. The decisions of the Permit Board shall be recorded in  
131 minutes of the Permit Board and shall be kept separate and apart  
132 from the minutes of the commission. The decision of the Permit  
133 Board or the executive director to issue, reissue, deny, modify or  
134 revoke permits shall not be construed to be an order or other  
135 action of the commission.

136 (b) The Executive Director of the Department of  
137 Environmental Quality shall also be the Executive Director of the  
138 Permit Board and shall have available to him, as Executive  
139 Director of the Permit Board, all resources and personnel



140 otherwise available to him as executive director of the  
141 department.

142 (c) All persons required to obtain an air pollution  
143 control or water pollution control permit, a permit under the  
144 Solid Wastes Disposal Law of 1974 (Title 17, Chapter 17) or any  
145 other permit within the jurisdiction of the Permit Board shall  
146 make application for that permit with the Permit Board. The  
147 Permit Board, under any regulations as the commission may  
148 prescribe, may require the submission of those plans,  
149 specifications and other information as it deems necessary to  
150 carry out Sections 49-17-1 through 49-17-43 and Title 17, Chapter  
151 17, or to carry out the commission's regulations adopted under  
152 those sections. The Permit Board, based upon any information as  
153 it deems relevant, shall issue, reissue, deny, modify or revoke  
154 air pollution control or water pollution control permit or permits  
155 required under the Solid Wastes Disposal Law of 1974 (Title 17,  
156 Chapter 17) or any other permit within the jurisdiction of the  
157 Permit Board under any conditions as it deems necessary that are  
158 consistent with the commission's regulations. The Permit Board's  
159 action of issuance, reissuance, denial, modification or revocation  
160 of a permit as recorded in its minutes shall constitute a complete  
161 decision of the board. All permits issued by the Permit Board  
162 shall remain in full force and effect until the board makes a  
163 final determination regarding any reissuance, modification, or  
164 revocation thereof. The Permit Board shall take action upon an  
165 application within one hundred eighty (180) days following its  
166 receipt in the board's principal office. No action which affects  
167 revocation of an existing permit shall take effect until the  
168 thirty (30) days mentioned in paragraph (4)(b) of this section has  
169 expired or until a formal hearing as prescribed in that paragraph  
170 is held, whichever is later.

171 (d) The Permit Board may adopt rules of practice and  
172 procedure governing its proceedings that are consistent with the



173 commission's regulations. All hearings in connection with permits  
174 issued, reissued, denied, modified or revoked and all appeals from  
175 decisions of the Permit Board shall be as provided in this  
176 section.

177 (e) Upon any conditions that are consistent with the  
178 commission's regulations and subject to those procedures for  
179 public notice and hearings as provided by law, not inconsistent  
180 with federal law and regulations, the Permit Board may issue  
181 general permits and, where appropriate, may consolidate multiple  
182 permits for the same facility or operation into a single permit.

183 (f) The Permit Board shall not issue any permit for a  
184 new swine concentrated animal feeding operation or the expansion  
185 of an existing swine concentrated animal feeding operation before  
186 January 1, 2000, unless the department received the application  
187 for that operation's new or modified permit before February 28,  
188 1998, or except as provided in this paragraph (f). In issuing or  
189 modifying any permit for which the department received an  
190 application before February 28, 1998, the Permit Board shall apply  
191 those siting criteria adopted or used by the commission before  
192 February 28, 1998, unless federal law or regulations require more  
193 stringent criteria. The moratorium established in this paragraph  
194 shall not apply to the issuance of any permit for a new swine  
195 concentrated animal feeding operation or the expansion of an  
196 existing swine concentrated animal feeding operation that uses an  
197 animal waste management system which the applicant demonstrates to  
198 the Permit Board is innovative in significantly reducing the  
199 effects of the operation on the public health, welfare or the  
200 environment and which is approved by the Permit Board. The Permit  
201 Board shall not issue or modify more than five (5) permits under  
202 this innovative animal waste management system technology  
203 exemption to the moratorium.

204 (4) (a) Except as required by this section, before the  
205 issuance, reissuance, denial, modification or revocation of any



206 air pollution control or water pollution control permit, permit  
207 required under the Solid Wastes Disposal Law of 1974 (Title 17,  
208 Chapter 17) or any other permit within its jurisdiction, the  
209 Permit Board, in its discretion, may hold a public hearing or  
210 meeting to obtain comments from the public on its proposed action.  
211 Before the issuance, reissuance, denial, modification pertaining  
212 to the expansion of a facility, transfer or revocation of a permit  
213 for a commercial hazardous waste management facility or a  
214 commercial municipal solid waste landfill or incinerator, the  
215 Permit Board shall conduct a public hearing or meeting to obtain  
216 comments from the public on the proposed action. That hearing or  
217 meeting shall be informal in nature and conducted under those  
218 procedures as the Permit Board may deem appropriate consistent  
219 with the commission's regulations.

220 (b) Within thirty (30) days after the date the Permit  
221 Board takes action upon permit issuance, reissuance, denial,  
222 modification or revocation, as recorded in the minutes of the  
223 Permit Board, any interested party aggrieved by that action may  
224 file a written request for a formal hearing before the Permit  
225 Board. An interested party is any person claiming an interest  
226 relating to the property or project which is the subject of the  
227 permit action, and who is so situated that the person may be  
228 affected by the disposition of that action.

229 The Permit Board shall fix the time and place of the formal  
230 hearing and shall notify the permittee of that time and place.

231 In conducting the formal hearing, the Permit Board shall have  
232 the same full powers as to subpoenaing witnesses, administering  
233 oaths, examining witnesses under oath and conducting the hearing,  
234 as is now vested by law in the Mississippi Public Service  
235 Commission, as to the hearings before it, with the additional  
236 power that the Executive Director of the Permit Board may issue  
237 all subpoenas at the instance of the Permit Board or at the  
238 instance of any interested party. Any subpoenas shall be served



239 by any lawful officer in any county to whom the subpoena is  
240 directed and return made thereon as provided by law, with the cost  
241 of service being paid by the party on whose behalf the subpoena  
242 was issued. Witnesses summoned to appear at the hearing shall be  
243 entitled to the same per diem and mileage as witnesses attending  
244 the circuit court and shall be paid by the person on whose behalf  
245 the witness was called. Sufficient sureties for the cost of  
246 service of the subpoena and witness fees shall be filed with the  
247 Executive Director of the Permit Board at the time that issuance  
248 of the subpoena is requested. At a hearing, any interested party  
249 may present witnesses and submit evidence and cross-examine  
250 witnesses.

251 The Permit Board may designate a hearing officer to conduct  
252 the formal hearing on all or any part of the issues on behalf of  
253 the Permit Board. The hearing officer shall prepare the record of  
254 the formal hearing conducted by that officer for the Permit Board  
255 and shall submit the record to the Permit Board.

256 Upon conclusion of the formal hearing, the Permit Board shall  
257 enter in its minutes the board's decision affirming, modifying or  
258 reversing its prior decision to issue, reissue, deny, modify or  
259 revoke a permit. The Permit Board shall prepare and record in its  
260 minutes findings of fact and conclusions of law supporting its  
261 decision. That decision, as recorded in its minutes with its  
262 findings of fact and conclusions of law, shall be final unless an  
263 appeal, as provided in this section, is taken \* \* \* within twenty  
264 (20) days following the date the decision is entered in the  
265 board's minutes.

266 (c) Within twenty (20) days after the date the Permit  
267 Board takes action upon permit issuance, reissuance, denial,  
268 modification or revocation after a formal hearing under this  
269 subsection as recorded in the minutes of the Permit Board, any  
270 person aggrieved of that action may appeal the action as provided  
271 in subsection (5) of this section.





272 (5) (a) Appeals from any decision or action of the Permit  
273 Board shall be \* \* \* to the Court of Appeals as provided in this  
274 subsection.

275 (b) Any person who is aggrieved by any decision of the  
276 Permit Board issuing, reissuing, denying, revoking or modifying a  
277 permit after a formal hearing may appeal that decision within the  
278 period specified in subsection (4)(c) of this section to the Court  
279 of Appeals. The appellant shall give a cost bond with sufficient  
280 sureties, payable to the state in the sum of not less than One  
281 Hundred Dollars (\$100.00) nor more than Five Hundred Dollars  
282 (\$500.00), to be fixed by the Permit Board and to be filed with  
283 and approved by the Executive Director of the Permit Board, who  
284 shall forthwith certify the filing of the bond together with a  
285 certified copy of the record of the Permit Board in the matter to  
286 the \* \* \* court \* \* \*, which shall thereupon become the record of  
287 the cause. An appeal \* \* \* as provided in this section shall not  
288 stay the decision of the Permit Board. The aggrieved party may,  
289 within twenty (20) days following the date the board's decision  
290 after a formal hearing is entered on the board's minutes, petition  
291 the \* \* \* court for an appeal with supersedeas and the court shall  
292 grant a hearing on that petition. Upon good cause shown, the  
293 court may grant that appeal with supersedeas. If granted, the  
294 appellant shall be required to post a bond with sufficient  
295 sureties according to law in an amount to be determined by the  
296 chancellor. Appeals shall be considered only upon the record as  
297 made before the Permit Board. The \* \* \* court shall always be  
298 deemed open for hearing of an appeal \* \* \*, and the appeal shall  
299 have precedence over all civil cases, except election contests.  
300 The \* \* \* court shall review all questions of law and of fact. If  
301 no prejudicial error is found, the matter shall be affirmed. If  
302 prejudicial error is found the decision of the board shall be  
303 reversed and the \* \* \* court shall remand the matter to the Permit  
304 Board for appropriate action as may be indicated or necessary



305 under the circumstances. Appeals may be taken from the Court of  
306 Appeals to the Supreme Court in the manner as now required by law,  
307 except that if a supersedeas is desired by the party  
308 appealing \* \* \*, that party may apply for a supersedeas \* \* \*,  
309 without additional bond, if in the court's judgment material  
310 damage is not likely to result thereby; but otherwise, the court  
311 shall require a supersedeas bond as the court deems proper, which  
312 shall be liable to the state for any damage.

313 **SECTION 2.** Section 49-17-41, Mississippi Code of 1972, is  
314 amended as follows:

315 49-17-41. In addition to any other remedies that might now  
316 be available, any person or interested party aggrieved by any  
317 order of the commission or the executive director shall have a  
318 right to file a sworn petition with the commission within thirty  
319 (30) days after the order was issued setting forth the grounds and  
320 reasons for his complaint and asking for a hearing of the matter  
321 involved, provided that no hearing on the same subject matter  
322 shall have been previously held before the commission or its  
323 designated hearing officer. The commission shall thereupon fix  
324 the time and place of such hearing and shall notify the  
325 petitioners thereof. In such pending matters, the commission  
326 shall have the same full powers as to subpoenaing witnesses,  
327 administering oaths, examining witnesses under oath and conducting  
328 the hearing, as is now vested by law in the Mississippi Public  
329 Service Commission, as to hearings before it, with the additional  
330 power that the executive director may issue all subpoenas, both at  
331 the instance of the petitioner and of the commission. At such  
332 hearings the petitioner, and any other interested party, may  
333 offer, present witnesses and submit evidence.

334 Following such hearing, the final order of determination of  
335 the commission upon such matters shall be conclusive, unless the  
336 petitioner, or such other interested party appearing at the  
337 hearing, shall, within fifteen (15) days after the adjournment of



338 the meeting at which said final order was made, appeal to the  
339 Court of Appeals by giving a cost bond with sufficient sureties,  
340 payable to the state in the sum of not less than One Hundred  
341 Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), to  
342 be fixed in the order appealed from, to be filed with and approved  
343 by the executive director of the commission, who shall forthwith  
344 certify the same together with a certified copy of the record of  
345 the commission in the matter to the Court of Appeals, which shall  
346 thereupon become the record of the cause. An appeal to the Court  
347 of Appeals as provided herein shall not stay the execution of an  
348 order of the commission. Any party aggrieved by an order of the  
349 commission may, within said fifteen (15) days after the  
350 adjournment of the commission meeting at which said final order  
351 was entered, petition the Court of Appeals for an appeal with  
352 supersedeas, and the court shall grant a hearing on said petition  
353 and upon good cause shown may grant said appeal with supersedeas;  
354 the appellant shall be required to post a bond with sufficient  
355 sureties according to law in an amount to be determined by the  
356 court. Appeals shall be considered only upon the record as made  
357 before the commission. The Court of Appeals shall always be  
358 deemed open for hearing of such appeals \* \* \*, and the same shall  
359 have precedence over all civil cases, except election contests.  
360 The \* \* \* court shall review all questions of law and of fact. If  
361 no prejudicial error be found, the matter shall be affirmed and  
362 remanded to the commission for enforcement. If prejudicial error  
363 be found, the same shall be reversed and the \* \* \* court shall  
364 remand the matter to the commission for appropriate action as may  
365 be indicated or necessary under the circumstances. Appeals may be  
366 taken from the Court of Appeals to the Supreme Court in the manner  
367 as now required by law, except that if a supersedeas is desired by  
368 the party appealing, \* \* \* he may apply therefor to the Court of  
369 Appeals, who shall award a writ of supersedeas, without additional  
370 bond, if \* \* \* material damage is not likely to result thereby,



371 but otherwise \* \* \* such supersedeas bond shall be required as  
372 deemed proper, which shall be liable to the state for such damage.

373 **SECTION 3.** Section 77-1-47, Mississippi Code of 1972, is  
374 amended as follows:

375 77-1-47. Appeals from any final finding, order or judgment  
376 of the commission shall be taken and perfected by the filing of a  
377 bond in the sum of Five Hundred Dollars (\$500.00) with two (2)  
378 sureties, or with a surety company qualified to do business in  
379 Mississippi as the surety, conditioned to pay the cost of such  
380 appeal. Said bond shall be approved by the chairman or secretary  
381 of the commission, or by the judge of the court \* \* \* in case the  
382 chairman or secretary of the commission refuses to approve a  
383 proper bond tendered to them within the time limited for taking  
384 appeals. The commission may grant a supersedeas bond on any  
385 appeal, in such penalty and with such surety thereon as it may  
386 deem sufficient, and may, during the pendency of any appeal, at  
387 any time, require the increase of any such supersedeas bond or  
388 additional securities thereon. The Court of Appeals may on  
389 petition therefor by any party entitled to an appeal,  
390 presented \* \* \* within six (6) months of the date of the final  
391 finding, order, or judgment of the commission appealed from, award  
392 a writ of supersedeas to any such final finding, order, or  
393 judgment of the commission, upon the filing of a supersedeas bond  
394 in an amount to be fixed by said judge. All appeal bonds for the  
395 payment of costs, and all supersedeas bonds, shall be made payable  
396 to the state and may be enforced in the name of the state by  
397 motion or other legal proceedings or remedy in any circuit court  
398 of this state having jurisdiction of a motion or action on such  
399 bond, and the process and proceedings thereon shall be as provided  
400 by law upon bonds of like character required and taken by any  
401 court of this state. Such circuit court may render and enter like  
402 judgments upon such bonds as may, by law, be rendered and entered  
403 upon bonds of like character, and process of execution shall issue



404 upon such judgments, and may be levied and executed as provided by  
405 law in other cases.

406         **SECTION 4.** Section 77-1-53, Mississippi Code of 1972, is  
407 amended as follows:

408         77-1-53. (1) Whenever the commission, an employee of the  
409 commission or any employee of the Public Utilities Staff has  
410 reason to believe that a willful and knowing violation of any  
411 statute administered by the commission or any regulation or any  
412 order of the commission has occurred, the commission may cause a  
413 written complaint to be served upon the alleged violator or  
414 violators. The complaint shall specify the provisions of such  
415 statute, regulation or order alleged to be violated and the facts  
416 alleged to constitute a violation thereof and shall require that  
417 the alleged violator appear before the commission at a time and  
418 place specified in the notice and answer the charges complained  
419 of. The time of appearance before the commission shall not be  
420 less than twenty (20) days from the date of the service of the  
421 complaint, unless the commission finds that the public convenience  
422 or necessity requires that such hearing be held at an earlier  
423 date.

424         (2) The commission shall afford an opportunity for a fair  
425 hearing to the alleged violator or violators at the time and place  
426 specified in the complaint. On the basis of the evidence produced  
427 at the hearing, the commission shall make findings of fact and  
428 conclusions of law and enter its order, which in its opinion will  
429 be in the best interests of the consuming public. Failure to  
430 appear at any such hearing, without prior authorization to do so  
431 from the commission, may result in the commission finding the  
432 alleged violator guilty of the charges complained of by default,  
433 and at such time an order may be entered, including the assessment  
434 of a penalty. The commission shall give written notice of such  
435 order to the alleged violator and to such other persons as shall  
436 have appeared at the hearing or made written request for notice of



437 the order. The commission may assess such penalties as provided  
438 in subsection (3) of this section.

439 (3) Any person found by the commission, pursuant to a  
440 hearing or by default as provided in this section, violating any  
441 statute administered by the commission, or any regulation or order  
442 of the commission in pursuance thereof, shall be subject to a  
443 civil penalty of not more than Five Thousand Dollars (\$5,000.00)  
444 for each violation, to be assessed and collected by the  
445 commission. Each day that a violation continues shall constitute  
446 a separate violation. In lieu of, or in addition to, the monetary  
447 penalty, the commission, for any violation by a certificate  
448 holder, may impose a penalty in accordance with Section 77-3-21,  
449 Mississippi Code of 1972, if it finds that the violator is not  
450 rendering reasonably adequate service. Appeals from the  
451 imposition of the civil penalty may be taken to the Court of  
452 Appeals in the same manner as appeals from orders of the  
453 commission constituting judicial findings.

454 (4) All penalties collected by the commission under this  
455 section shall be deposited in the Public Service Commission  
456 Regulation Fund.

457 (5) No portion of any penalty or costs associated with an  
458 administrative or court proceeding which results in the assessment  
459 of a penalty against a public utility for violation of any statute  
460 administered by the commission, or any regulation or order of the  
461 commission shall be considered by the commission in fixing any  
462 rates or charges of such public utility.

463 (6) This section shall be in addition to any other law which  
464 provides for the imposition of penalties for the violation of any  
465 statute administered by the commission or any regulation or order  
466 of the commission.

467 **SECTION 5.** Section 77-3-67, Mississippi Code of 1972, is  
468 amended as follows:



469           77-3-67. (1) In addition to other remedies now available at  
470 law or in equity, any party aggrieved by any final finding, order  
471 or judgment of the commission, except those final findings, orders  
472 or judgments specified in Section 77-3-72, shall have the right,  
473 regardless of the amount involved, of appeal to the Court of  
474 Appeals. \* \* \* If an application for rehearing has been filed, an  
475 appeal must be filed within thirty (30) days after the application  
476 for rehearing has been refused or deemed refused because of the  
477 commission's failure to act thereon within the time specified in  
478 Section 77-3-65 or, if the application is granted, within thirty  
479 (30) days after the rendition of the decision on rehearing. If an  
480 application for rehearing has not been filed, an appeal must be  
481 filed within thirty (30) days after the entry of the commission's  
482 order. Every appeal shall state briefly the nature of the  
483 proceedings before the commission, and shall specify the order  
484 complained of. Any person whose rights may be directly affected  
485 by said appeal may appear and become a party, or the court may  
486 upon proper notice order any person to be joined as a party.

487           (2) Upon the filing of an appeal the clerk of the \* \* \*  
488 court shall serve notice thereof upon the commission, whereupon  
489 the commission shall, within sixty (60) days (or within such  
490 additional time as the court may for cause allow) from the service  
491 of such notice, certify to the \* \* \* court the record in the case,  
492 which record shall include a transcript of all testimony, together  
493 with all exhibits or copies thereof, all pleadings, proceedings,  
494 orders, findings and opinions entered in the case. However, the  
495 parties and the commission may stipulate that a specified portion  
496 only of the record shall be certified to the court as the record  
497 on appeal.

498           (3) No new or additional evidence shall be introduced in  
499 the \* \* \* court but the case shall be determined upon the record  
500 and evidence transferred.



501           (4) The court may hear and dispose of the appeal in termtime  
502 or vacation and the court may sustain or dismiss the appeal,  
503 modify or vacate the order complained of in whole or in part, as  
504 the case may be. In case the order is wholly or partly vacated  
505 the court may also, in its discretion, remand the matter to the  
506 commission for such further proceedings, not inconsistent with the  
507 court's order as, in the opinion of the court, justice may  
508 require. The order shall not be vacated or set aside either in  
509 whole or in part, except for errors of law, unless the court finds  
510 that the order of the commission is not supported by substantial  
511 evidence, is contrary to the manifest weight of the evidence, is  
512 in excess of the statutory authority or jurisdiction of the  
513 commission, or violates constitutional rights.

514           **SECTION 6.** Section 77-3-69, Mississippi Code of 1972, is  
515 amended as follows:

516           77-3-69. (1) The pendency of proceedings to review shall  
517 not of itself stay or suspend the operation of the order of the  
518 commission. However, any party may, as a matter of right, secure  
519 from the court in which a review of or an appeal from the order of  
520 the commission not related to changing rates or rate design is  
521 sought, an order suspending or staying the operation of the order  
522 of the commission pending a review of such order, by adequately  
523 securing the other parties against loss due to the delay in the  
524 enforcement of the order in case the order under review is  
525 affirmed, the security to be in such form and amount as shall be  
526 directed by the court granting the stay or suspension.

527           (2) If an appeal to the Court of Appeals be taken from an  
528 order of the commission reducing existing rates or refusing to  
529 approve rates proposed by a utility, the utility, if it is not  
530 then collecting under refunding bond rates in excess of rates  
531 which have been ordered by the commission, may request upon motion  
532 filed in the Court of Appeals an order allowing the utility to  
533 place into effect forthwith interim rates which may be charged and





534 collected, subject to refund as hereinafter provided, pending  
535 final determination of the rate proceeding. The court may, in its  
536 discretion, upon a finding that undue hardship or irreparable  
537 injury to the utility or the public interest would probably result  
538 otherwise, allow the utility to place into effect such interim  
539 rates at a revenue level up to, but not exceeding, the proposed  
540 rates. The court may allow the utility to collect all or part of  
541 a proposed rate increase. However, before such increased rates  
542 can take effect, the utility shall file with the court a bond in a  
543 reasonable amount approved by the court, with sureties approved by  
544 the court, conditioned upon the refund, with interest at the same  
545 rate prescribed in Section 77-3-39, Section 77-3-69 and Section  
546 77-3-71, to the parties entitled thereto, of the amount of the  
547 excess if the existing rate or rates or the rate or rates so put  
548 into effect are finally determined to be excessive. In lieu of  
549 payment, the utility may credit the service account with the  
550 amount due under this subsection if the consumer entitled to the  
551 refund is, at that time, a consumer of the utility. If the court  
552 does not dispose of the motion for interim rates as contemplated  
553 herein within thirty (30) days of the filing of such motion, then  
554 the public utility, as a matter of right, may place into effect  
555 forthwith fifty percent (50%) of that portion of the proposed rate  
556 schedule not allowed by the commission's order, pending final  
557 determination of the appeal, upon filing with the court a surety  
558 bond in the same manner as previously provided for herein.

559 (3) If the court does not make a final determination and  
560 adjudication of the rate proceeding within one hundred eighty  
561 (180) days after the record has been certified and filed, or if  
562 the court remands the matter to the commission for further  
563 proceedings and the commission has not entered its order allowing  
564 rates within forty-five (45) days from the time of receipt of the  
565 mandate of the court, or if the commission has at any time entered  
566 its order after remand and an appeal therefrom has been taken,



567 then, in any such case, the public utility may, as a matter of  
568 right, place into effect the entire proposed rate schedule, under  
569 refunding bond, as provided for in this section or in Section  
570 77-3-39, whichever is applicable. Interim rates under refunding  
571 bond charged by the utility under this subsection shall terminate  
572 upon final disposition of the rate proceeding without timely  
573 appeal.

574 **SECTION 7.** Section 77-3-71, Mississippi Code of 1972, is  
575 amended as follows:

576 77-3-71. Appeals in accordance with law may be had to the  
577 Supreme Court of the State of Mississippi from any final judgment  
578 of the Court of Appeals.

579 (a) If the party taking the appeal has theretofore  
580 furnished security as provided in Sections 77-3-39 and 77-3-69,  
581 and has filed a bond conditioned as provided in Sections 77-3-39  
582 and 77-3-69, the taking of an appeal to the Supreme Court shall  
583 operate as a supersedeas without the furnishing of further  
584 security or bond. In such cases the Supreme Court may, upon  
585 application to it, require such additional security, or such  
586 additional bond conditioned as provided in Sections 77-3-39 and  
587 77-3-69, as in its opinion will adequately secure the other party  
588 to the appeal, or parties who may become entitled to refunds,  
589 against loss in the event the judgment under review is affirmed.

590 (b) If an appeal to the Supreme Court be taken from a  
591 final judgment of the Court of Appeals which alters an order of  
592 the commission by approving a level of revenue in excess of that  
593 allowed by the commission's order, the public utility may, as a  
594 matter of right, place such level of revenue which has been so  
595 approved by the Court of Appeals in such final judgment into  
596 effect, pending final determination of the appeal to the Supreme  
597 Court, upon filing with the Supreme Court a bond in a reasonable  
598 amount approved by such court, with sureties approved by such  
599 court, conditioned upon the refund with interest at the lawful



600 rate to the parties entitled thereto, of the amount of the excess  
601 if the rates so put into effect are finally determined to be  
602 excessive. In lieu of payment, the utility may credit the service  
603 account with the amount due under this section if the consumer  
604 entitled to the refund, is at that time, a consumer of the  
605 utility.

606 (c) In addition to the foregoing, if an appeal to the  
607 Supreme Court be taken from a final judgment of the Court of  
608 Appeals with respect to a proceeding for determination of rates,  
609 and the public utility is not then collecting under refunding bond  
610 rates in excess of rates which have been ordered by the  
611 commission, such utility may request upon motion filed in the  
612 Supreme Court an order allowing the utility to place into effect  
613 forthwith interim rates which may be charged and collected,  
614 subject to refund as hereinafter provided, pending final  
615 determination of the rate proceeding. The court may, in its  
616 discretion, upon a hearing by not fewer than three (3) justices  
617 and upon a finding that undue hardship or irreparable injury to  
618 the utility or the public interest would probably result  
619 otherwise, allow the utility to place into effect such interim  
620 rates at a revenue level up to, but not exceeding, the proposed  
621 rates. The court may allow the utility to collect all or part of  
622 a proposed rate increase. However, before such increased rates  
623 can take effect, the utility shall file with the court a bond in a  
624 reasonable amount approved by the court, with sureties approved by  
625 the court, conditioned upon the refund, with interest at the  
626 lawful rate, to the parties entitled thereto, of the amount of the  
627 excess after the existing rate or rates or the rate or rates so  
628 put into effect are finally determined to be excessive. In lieu  
629 of payment, the utility may credit the service account with the  
630 amount due under this section if the consumer entitled to the  
631 refund is, at that time, a consumer of the utility.



632           If the court does not dispose of the motion for interim rates  
633 as contemplated herein within thirty (30) days of the filing of  
634 such motion, then the public utility, as a matter of right, may  
635 place into effect forthwith fifty percent (50%) of that portion of  
636 the proposed rate schedule not allowed by the commission's order,  
637 pending final determination of the appeal, upon filing with the  
638 court a surety bond in the same manner as previously provided for  
639 herein. If the court does not make a final determination and  
640 adjudication of the rate proceeding within one hundred eighty  
641 (180) days after the record has been certified and filed, or if  
642 the court remands the matter to the commission for further  
643 proceedings and the commission has not entered its order allowing  
644 rates within forty-five (45) days from the time of receipt of the  
645 mandate of the court, or if the commission has at any time entered  
646 its order after remand and an appeal therefrom has been taken,  
647 then, in any such case, the public utility may, as a matter of  
648 right, place into effect the entire proposed rate schedule, under  
649 refunding bond, as provided for in this section or in Section  
650 77-3-39, whichever is applicable. Interim rates under refunding  
651 bond charged by the utility under this subsection shall terminate  
652 upon final disposition of the rate proceeding without timely  
653 appeal.

654           **SECTION 8.** Section 77-3-75, Mississippi Code of 1972, is  
655 amended as follows:

656           77-3-75. The commission may apply to the Court of Appeals  
657 for enforcement, by mandamus, injunction or other appropriate  
658 remedy, of any order of the commission.

659           **SECTION 9.** Section 73-14-39, Mississippi Code of 1972, is  
660 amended as follows:

661           73-14-39. (1) From any revocation, the person charged may,  
662 within thirty (30) days thereof, appeal to the Court of Appeals.

663           (2) Notice of appeals shall be filed in the office of the  
664 clerk of the court, who shall issue a writ of certiorari directed



665 to the board, commanding it within ten (10) days after service  
666 thereof to certify to such court its entire record in the matter  
667 in which the appeal has been taken. The appeal shall thereupon be  
668 heard in the due course by the court \* \* \* and the court shall  
669 review the record and make its determination of the cause between  
670 the parties.

671 (3) Any order, rule or decision of the board shall not take  
672 effect until after the time of appeal in the \* \* \* court shall  
673 have expired. If there is an appeal, such appeal may, in the  
674 discretion of and on motion to the Court of Appeals, act as a  
675 supersedeas. The Court of Appeals shall dispose of the appeal and  
676 enter its decision promptly. \* \* \*

677 (4) Any person taking an appeal shall post a satisfactory  
678 bond in the amount of Two Hundred Dollars (\$200.00) for payment of  
679 any costs which may be adjudged against him.

680 (5) Actions taken by the board in suspending a certificate  
681 of registration when required by Section 93-11-157 or 93-11-163  
682 are not actions from which an appeal may be taken under this  
683 section. Any appeal of a suspension of a certificate that is  
684 required by Section 93-11-157 or 93-11-163 shall be taken in  
685 accordance with the appeal procedure specified in Section  
686 93-11-157 or 93-11-163, as the case may be, rather than the  
687 procedure specified in this section.

688 **SECTION 10.** Section 73-23-63, Mississippi Code of 1972, is  
689 amended as follows:

690 73-23-63. (1) Any person whose application for a license is  
691 denied shall be entitled to a hearing before the board if he  
692 submits a written request to the board. Such hearing shall be  
693 conducted at the earliest possible date. A subcommittee of the  
694 council shall attend and may offer relevant evidence at any such  
695 hearing. The board shall fix a time and place for the hearing and  
696 shall cause a written copy of the reason for denial of the  
697 license, together with a notice of the time and place fixed for



698 the hearing to be served on the applicant requesting the hearing  
699 and shall serve notice of such hearing on the council. Service of  
700 and notice of the hearing may be given by certified mail to the  
701 last known address of the licensee or applicant. For purposes of  
702 the hearing, the board, acting by and through the Executive  
703 Director of the State Board of Health shall have the power to  
704 subpoena persons and compel the production of records, papers and  
705 other documents.

706 (2) (a) All complaints concerning a licensee's business or  
707 professional practice shall be received by the board. Each  
708 complaint received shall be logged, recording at a minimum the  
709 following information: (i) licensee's name; (ii) name of the  
710 complaining party, if known; (iii) date of complaint; (iv) brief  
711 statement of complaint; and (v) disposition.

712 (b) Following the investigative process, the board may  
713 file formal charges against the licensee. Such formal complaint  
714 shall, at a minimum, inform the licensee of the facts which are  
715 the basis of the charge and which are specific enough to enable  
716 the licensee to defend against the charges.

717 (c) Each licensee whose conduct is the subject of a  
718 formal charge which seeks to impose disciplinary action against  
719 the licensee shall be served notice of the formal charge at least  
720 thirty (30) days before the date of the hearing, which hearing  
721 shall be presided over by the board or the board's designee.  
722 Service shall be considered to have been given if the notice was  
723 personally received by the licensee or if the notice was mailed  
724 certified, return receipt requested, to the licensee at the  
725 licensee's last known address as listed with the state agency.

726 (d) The notice of the formal charge shall consist at a  
727 minimum of the following information:

728 (i) The time, place and date of the hearing;

729 (ii) That the licensee shall appear personally at  
730 the hearing and may be represented by counsel;



731 (iii) That the licensee shall have the right to  
732 produce witnesses and evidence in the licensee's behalf and shall  
733 have the right to cross-examine adverse witnesses and evidence;

734 (iv) That the hearing could result in disciplinary  
735 action being taken against the licensee's license;

736 (v) That rules for the conduct of these hearings  
737 exist and it may be in the licensee's best interest to obtain a  
738 copy;

739 (vi) That the board or its designee shall preside  
740 at the hearing and following the conclusion of the hearing shall  
741 make findings of facts, conclusions of law and recommendations,  
742 separately stated, to the board as to what disciplinary action, if  
743 any, should be imposed on the licensee;

744 (vii) The board or its designee shall hear  
745 evidence produced in support of the formal charges and contrary  
746 evidence produced by the licensee. At the conclusion of the  
747 hearing, the board shall issue an order; and

748 (viii) All proceedings pursuant to this section  
749 are matters of public record and shall be preserved pursuant to  
750 state law.

751 (3) In addition to other remedies provided by law or in  
752 equity, any applicant or licensee aggrieved by any action of the  
753 board may appeal the action of the board to the Court of Appeals,  
754 and the court after a hearing may modify, affirm or reverse the  
755 judgment of the board or may remand the case to the board for  
756 further proceedings. An appeal shall be filed within thirty (30)  
757 days immediately following the mailing or delivery to the  
758 applicant or licensee of a copy of the order of judgment of the  
759 board, unless the court, for good cause shown, extends the time.  
760 Appeals may be had to the Supreme Court of the State of  
761 Mississippi as provided by law \* \* \*. If the board appeals from  
762 any judgment of the Court of Appeals, no bond shall be required of  
763 it in order to perfect its appeal. Any appeal of a license



764 suspension that is required by Section 93-11-157 or 93-11-163  
765 shall be taken in accordance with the appeal procedure specified  
766 in Section 93-11-157 or 93-11-163, as the case may be, rather than  
767 the procedure specified in this section.

768         **SECTION 11.** Section 73-24-25, Mississippi Code of 1972, is  
769 amended as follows:

770         73-24-25. (1) Any person whose application for a license is  
771 denied shall be entitled to a hearing before the board if he  
772 submits a written request to the board. Such hearing shall be  
773 conducted at the earliest possible date. A subcommittee of the  
774 council shall attend and may offer relevant evidence at any such  
775 hearing. The board shall fix a time and place for the hearing and  
776 shall cause a written copy of the reason for denial of the  
777 license, together with a notice of the time and place fixed for  
778 the hearing, to be served on the applicant requesting the hearing  
779 and shall serve notice of such hearing on the council. Service of  
780 and notice of the hearing may be given by United States certified  
781 mail, return receipt requested, to the last known address of the  
782 licensee or applicant. For purposes of the hearing, the board,  
783 acting by and through the Executive Director of the State Board of  
784 Health, shall have the power to subpoena persons and compel the  
785 production of records, papers and other documents.

786         (2) (a) All complaints concerning a licensee's business or  
787 professional practice shall be received by the board. Each  
788 complaint received shall be registered, recording at a minimum the  
789 following information: (i) licensee's name; (ii) name of the  
790 complaining party, if known; (iii) date of complaint; (iv) brief  
791 statement of complaint; and (v) disposition.

792         (b) Following the investigative process, the board may  
793 file formal charges against the licensee. Such formal complaint,  
794 at a minimum, shall inform the licensee of the facts which are the  
795 basis of the charge and which are specific enough to enable the  
796 licensee to defend against the charges.





797           (c) Each licensee whose conduct is the subject of a  
798 formal charge which seeks to impose disciplinary action against  
799 the licensee shall be served notice of the formal charge at least  
800 thirty (30) days before the date of the hearing, which hearing  
801 shall be presided over by the board or the board's designee.  
802 Service shall be considered to have been given if the notice was  
803 personally received by the licensee or if the notice was sent by  
804 United States certified mail, return receipt requested, to the  
805 licensee at the licensee's last known address as listed with the  
806 state agency.

807           (d) The notice of the formal charge shall consist, at a  
808 minimum, of the following information:

809                   (i) The time, place and date of the hearing;

810                   (ii) Notification that the licensee shall appear  
811 personally at the hearing and may be represented by counsel;

812                   (iii) Notification that the licensee shall have  
813 the right to produce witnesses and evidence in his behalf and  
814 shall have the right to cross-examine adverse witnesses and  
815 evidence;

816                   (iv) Notification that the hearing could result in  
817 disciplinary action being taken against the licensee;

818                   (v) Notification that rules for the conduct of the  
819 hearing exist, and it may be in the licensee's best interest to  
820 obtain a copy;

821                   (vi) Notification that the board or its designee  
822 shall preside at the hearing, and following the conclusion of the  
823 hearing, shall make findings of facts, conclusions of law and  
824 recommendations, separately stated, to the board as to what  
825 disciplinary action, if any, should be imposed on the licensee;

826                   (vii) The board or its designee shall hear  
827 evidence produced in support of the formal charges and contrary  
828 evidence produced by the licensee. At the conclusion of the  
829 hearing, the board shall issue an order; and



830 (viii) All proceedings under this section are  
831 matters of public record and shall be preserved in accordance with  
832 state law.

833 (3) In addition to other remedies provided by law or in  
834 equity, any applicant or licensee aggrieved by any action of the  
835 board may appeal the action of the board to the Court of Appeals.  
836 An appeal shall be filed within thirty (30) days immediately  
837 following the mailing or delivery to the applicant or licensee of  
838 a copy of the order of judgment of the board, unless the court,  
839 for good cause shown, extends the time. The court after a hearing  
840 may modify, affirm or reverse the judgment of the board or may  
841 remand the case to the board for further proceedings. An appeal  
842 from the Court of Appeals may be had to the Supreme Court of the  
843 State of Mississippi as provided by law \* \* \*. If the board  
844 appeals a judgment of the Court of Appeals, no bond shall be  
845 required of it in order to perfect its appeal.

846 (4) The board may impose any of the following sanctions,  
847 singly or in combination, when it finds that a licensee is guilty  
848 of any such offense:

849 (a) Revoke the license;

850 (b) Suspend the license, for any period of time;

851 (c) Censure the licensee;

852 (d) Impose a monetary penalty of not more than Two  
853 Hundred Dollars (\$200.00);

854 (e) Place a licensee on probationary status and  
855 requiring the licensee to submit to any of the following: (i)  
856 report regularly to the board, or its designee, upon matters which  
857 are the basis of probation; (ii) continue to renew professional  
858 education until a satisfactory degree of skill has been attained  
859 in those areas which are the basis of probation; or (iii) such  
860 other reasonable requirement or restrictions as the board deems  
861 proper;

862 (f) Refuse to renew a license; or



863           (g) Revoke probation which has been granted and impose  
864 any other disciplinary action under this subsection when the  
865 requirements of probation have not been fulfilled or have been  
866 violated.

867           (5) The board summarily may suspend a license under this  
868 chapter without the filing of a formal complaint, notice or a  
869 hearing, if the board finds that the continued practice in the  
870 profession by the licensee would constitute an immediate danger to  
871 the public. If the board summarily suspends a license under the  
872 provisions of this subsection a hearing must be held within twenty  
873 (20) days after suspension begins, unless the hearing date is  
874 continued at the request of the licensee.

875           (6) Disposition of any formal complaint may be made by  
876 consent order or stipulation between the board and the licensee.

877           (7) The board may reinstate any licensee to good standing  
878 under this chapter if, after hearing, the board is satisfied that  
879 the applicant's renewed practice is in the public interest.

880           (8) The board may seek the counsel of the Occupational  
881 Therapy Advisory Council regarding disciplinary actions.

882           (9) The board shall seek to achieve consistency in the  
883 application of the foregoing sanctions, and significant departure  
884 from prior decisions involving similar conduct shall be explained  
885 by the board.

886           (10) In addition, the board shall be authorized to suspend  
887 the license of any licensee for being out of compliance with an  
888 order for support, as defined in Section 93-11-153. The procedure  
889 for suspension of a license for being out of compliance with an  
890 order for support, and the procedure for reissuance or  
891 reinstatement of a license suspended for that purpose, and the  
892 payment of any fees for the reissuance or reinstatement of a  
893 license suspended for that purpose, shall be governed by Section  
894 93-11-157 or 93-11-163, as the case may be. If there is any  
895 conflict between any provision of Section 93-11-157 or 93-11-163



896 and any provision of this chapter, the provisions of Section  
897 93-11-157 or 93-11-163, as the case may be, shall control.

898 **SECTION 12.** Section 73-38-27, Mississippi Code of 1972, is  
899 amended as follows:

900 73-38-27. (1) The board may refuse to issue or renew a  
901 license, or may suspend or revoke a license where the licensee or  
902 applicant for license has been guilty of unprofessional conduct  
903 which has endangered or is likely to endanger the health, welfare  
904 or safety of the public. Such unprofessional conduct may result  
905 from:

906 (a) Obtaining a license by means of fraud,  
907 misrepresentation or concealment of material facts;

908 (b) Being guilty of unprofessional conduct as defined  
909 by the rules established by the board;

910 (c) Being convicted of a felony in any court of the  
911 United States if the acts for which he is convicted are found by  
912 the board to have a direct bearing on whether he should be  
913 entrusted to serve the public in the capacity of a speech-language  
914 pathologist or audiologist;

915 (d) Violating any lawful order, rule or regulation  
916 rendered or adopted by the board;

917 (e) Violating any provisions of this chapter.

918 (2) The board may deny an application for, or suspend,  
919 revoke or impose probationary conditions upon a license upon  
920 recommendations of the council made after a hearing as provided in  
921 this chapter. One (1) year from the date of revocation of a  
922 license under this section, application may be made to the board  
923 for reinstatement. The board shall have discretion to accept or  
924 reject an application for reinstatement and may require an  
925 examination for such reinstatement.

926 (3) A plea or verdict of guilty, or a conviction following a  
927 plea of nolo contendere, made to a charge of a felony or of any  
928 offense involving moral turpitude is a conviction within the



929 meaning of this section. After due notice and administrative  
930 hearing, the license of the person so convicted shall be suspended  
931 or revoked or the board shall decline to issue a license when:

932 (a) The time for appeal has elapsed;

933 (b) The judgment of conviction has been affirmed on  
934 appeal; or

935 (c) An order granting probation has been made  
936 suspending the imposition of sentence, without regard to a  
937 subsequent order allowing the withdrawal of a guilty plea and the  
938 substitution therefor of a not guilty plea, or the setting aside  
939 of a guilty verdict, or the dismissal of the acquisition,  
940 information or indictment.

941 (4) Within thirty (30) days after any order or act of the  
942 board, any person aggrieved thereby may appeal to the Court of  
943 Appeals.

944 (5) Notice of appeals shall be filed in the office of the  
945 clerk of the court, who shall issue a writ of certiorari directed  
946 to the board, commanding it within ten (10) days after service  
947 thereof to certify to such court its entire record in the matter  
948 in which the appeal has been taken. The appeal shall thereupon be  
949 heard in the due course by said court, and the court shall review  
950 the record and make its determination of the cause between the  
951 parties.

952 (6) Any order, rule or decision of the board shall not take  
953 effect until after the time of appeal in the said court shall have  
954 expired. In the event an appeal is taken by a defendant, such  
955 appeal shall not act as a supersedeas, and the court shall enter  
956 its decision promptly.

957 (7) Any person taking an appeal shall post a satisfactory  
958 bond in the amount of Two Hundred Dollars (\$200.00) for payment of  
959 any cost which may be adjudged against him.

960 (8) In addition to the reasons specified in subsection (1)  
961 of this section, the board shall be authorized to suspend the



962 license of any licensee for being out of compliance with an order  
963 for support, as defined in Section 93-11-153. The procedure for  
964 suspension of a license for being out of compliance with an order  
965 for support, and the procedure for the reissuance or reinstatement  
966 of a license suspended for that purpose, and the payment of any  
967 fees for the reissuance or reinstatement of a license suspended  
968 for that purpose, shall be governed by Section 93-11-157 or  
969 93-11-163, as the case may be. Actions taken by the board in  
970 suspending a license when required by Section 93-11-157 or  
971 93-11-163 are not actions from which an appeal may be taken under  
972 this section. Any appeal of a license suspension that is required  
973 by Section 93-11-157 or 93-11-163 shall be taken in accordance  
974 with the appeal procedure specified in Section 93-11-157 or  
975 93-11-163, as the case may be, rather than the procedure specified  
976 in this section. If there is any conflict between any provision  
977 of Section 93-11-157 or 93-11-163 and any provision of this  
978 chapter, the provisions of Section 93-11-157 or 93-11-163, as the  
979 case may be, shall control.

980       **SECTION 13.** Section 73-57-33, Mississippi Code of 1972, is  
981 amended as follows:

982       73-57-33. (1) Upon the filing of a written complaint with  
983 the board, charging a person with having committed any of the acts  
984 described in Section 73-59-31, the administrative secretary, or  
985 other authorized employee of the board, shall make an  
986 investigation. If the board finds reasonable grounds for the  
987 complaint, a time and place for a hearing will be set, notice of  
988 which shall be served on the licensee, permit holder or applicant  
989 at least fifteen (15) calendar days prior thereto. The notice  
990 shall be by personal service or by certified or registered mail  
991 sent to the last known address of the person.

992       (2) The board may petition the \* \* \* court \* \* \* to issue  
993 subpoenas for the attendance of witnesses and the production of  
994 necessary evidence in any hearing before it. Upon request of the



995 respondent or his counsel, the board shall petition the court to  
996 issue subpoenas in behalf of the respondent. The \* \* \* court upon  
997 petition may issue such subpoenas as it deems necessary.

998 (3) At the hearing the board shall administer oaths as may  
999 be necessary for the proper conduct of the hearing. The accused  
1000 shall have the right to appear either personally or by counsel, or  
1001 both, to produce witnesses or evidence in his or her behalf and to  
1002 cross-examine witnesses. All hearings before the board shall be  
1003 conducted by the board, which shall not be bound by strict rules  
1004 of procedure or by the laws of evidence in the conduct of its  
1005 proceedings, but the determination shall be based upon sufficient  
1006 legal evidence to sustain it. A final decision by the board shall  
1007 include findings of fact and conclusions of law, separately  
1008 stated, of which the accused shall receive a copy.

1009 (4) If the board determined that probable cause and  
1010 sufficient legal evidence exist to believe that an applicant does  
1011 not possess the qualifications required by this chapter or that an  
1012 accused has violated any of the provisions of Section 73-57-31 of  
1013 this chapter, the board may refuse to issue a license to the  
1014 applicant, or revoke, suspend or refuse to renew a license.

1015 (5) The right to appeal from the action of the board in  
1016 denying, revoking, suspending or refusing to renew any license  
1017 issued by the board is hereby granted. Such appeal shall be to  
1018 the Court of Appeals on the record made, including a verbatim  
1019 transcript of the testimony at the hearing. The appeal must be  
1020 taken within thirty (30) days after notice of the action of the  
1021 board in denying, revoking, suspending or refusing to renew the  
1022 license. The appeal is perfected upon filing notice of the  
1023 appeal, together with a bond in the sum of One Hundred Dollars  
1024 (\$100.00), with two (2) sureties, conditioned that if the action  
1025 of the board in denying, revoking, suspending or refusing to renew  
1026 the license be affirmed by the Court of Appeals, the licensee will  
1027 pay the costs of the appeal and the action in the Court of



1028 Appeals. Such bond shall be approved by the president of the  
1029 board. Appeals may be had to the Supreme Court of the State of  
1030 Mississippi as provided by law \* \* \*. Actions taken by the board  
1031 in suspending a license or permit when required by Section  
1032 93-11-157 or 93-11-163 are not actions from which an appeal may be  
1033 taken under this section. Any appeal of a license or permit  
1034 suspension that is required by Section 93-11-157 or 93-11-163  
1035 shall be taken in accordance with the appeal procedure specified  
1036 in Section 93-11-157 or 93-11-163, as the case may be, rather than  
1037 the procedure specified in this section.

1038 **SECTION 14.** Section 41-7-197, Mississippi Code of 1972, is  
1039 amended as follows:

1040 41-7-197. (1) The State Department of Health shall adopt  
1041 and utilize procedures for conducting certificate of need reviews.  
1042 Such procedures shall include, inter alia, the following: (a)  
1043 written notification to the applicant; (b) written notification to  
1044 health care facilities in the same health service area as the  
1045 proposed service; (c) written notification to other persons who  
1046 prior to the receipt of the application have filed a formal notice  
1047 of intent to provide the proposed services in the same service  
1048 area; and (d) notification to members of the public who reside in  
1049 the service area where the service is proposed, which may be  
1050 provided through newspapers or public information channels.

1051 (2) All notices provided shall include, inter alia, the  
1052 following: (a) the proposed schedule for the review; (b) written  
1053 notification of the period within which a public hearing during  
1054 the course of the review may be requested in writing by one or  
1055 more affected persons, such request to be made within twenty (20)  
1056 days of said notification; and (c) the manner in which  
1057 notification will be provided of the time and place of any hearing  
1058 so requested. Any such hearing shall be conducted by a hearing  
1059 officer designated by the State Department of Health. At such  
1060 hearing, the hearing officer and any person affected by the





1061 proposal being reviewed may conduct reasonable questioning of  
1062 persons who make relevant factual allegations concerning the  
1063 proposal. The hearing officer shall require that all persons be  
1064 sworn before they may offer any testimony at the hearing, and the  
1065 hearing officer is authorized to administer oaths. Any person so  
1066 choosing may be represented by counsel at the hearing. A record  
1067 of the hearing shall be made, which shall consist of a transcript  
1068 of all testimony received, all documents and other material  
1069 introduced by any interested person, the staff report and  
1070 recommendation and such other material as the hearing officer  
1071 considers relevant, including his own recommendation, which he  
1072 shall make within a reasonable period of time after the hearing is  
1073 closed and after he has had an opportunity to review, study and  
1074 analyze the evidence presented during the hearing. The completed  
1075 record shall be certified to the State Health Officer, who shall  
1076 consider only the record in making his decision, and shall not  
1077 consider any evidence or material which is not included therein.  
1078 All final decisions regarding the issuance of a certificate of  
1079 need shall be made by the State Health Officer. The State Health  
1080 Officer shall make his written findings and issue his order after  
1081 reviewing said record. The findings and decision of the State  
1082 Health Officer shall not be deferred to any later date, and any  
1083 deferral shall result in an automatic order of disapproval.

1084 (3) If review by the State Department of Health concerning  
1085 the issuance of a certificate of need is not complete within the  
1086 time specified by rule or regulation, which shall not, to the  
1087 extent practicable, exceed ninety (90) days, the certificate of  
1088 need shall not be granted. The proponent of the proposal may,  
1089 within thirty (30) days, after the expiration of the specified  
1090 time for review, commence such legal action as is necessary, in  
1091 the Court of Appeals, to compel the State Health Officer to issue  
1092 written findings and written order approving or disapproving the  
1093 proposal in question.



1094           **SECTION 15.** Section 41-7-201, Mississippi Code of 1972, is  
1095 amended as follows:

1096           41-7-201. (1) The provisions of this subsection (1) shall  
1097 apply to any party appealing any final order of the State  
1098 Department of Health pertaining to a certificate of need for a  
1099 home health agency, as defined in Section 41-7-173(h) (ix):

1100           (a) In addition to other remedies now available at law  
1101 or in equity, any party aggrieved by any such final order of the  
1102 State Department of Health shall have the right of appeal to the  
1103 Court of Appeals, which appeal must be filed within thirty (30)  
1104 days after the date of the final order. \* \* \* Such appeal must be  
1105 filed in accordance with the thirty (30) days for filing as  
1106 heretofore provided. Any appeal shall state briefly the nature of  
1107 the proceedings before the State Department of Health and shall  
1108 specify the order complained of. Any person whose rights may be  
1109 materially affected by the action of the State Department of  
1110 Health may appear and become a party or the court may, upon  
1111 motion, order that any such person, organization or entity be  
1112 joined as a necessary party.

1113           (b) Upon the filing of such an appeal, the clerk of  
1114 the \* \* \* court shall serve notice thereof upon the State  
1115 Department of Health, whereupon the State Department of Health  
1116 shall, within fifty (50) days or within such additional time as  
1117 the court may by order for cause allow from the service of such  
1118 notice, certify to the Court of Appeals the record in the case,  
1119 which records shall include a transcript of all testimony,  
1120 together with all exhibits or copies thereof, all pleadings,  
1121 proceedings, orders, findings and opinions entered in the case;  
1122 provided, however, that the parties and the State Department of  
1123 Health may stipulate that a specified portion only of the record  
1124 shall be certified to the court as the record on appeal.



1125 (c) No new or additional evidence shall be introduced  
1126 in the Court of Appeals but the case shall be determined upon the  
1127 record certified to the court.

1128 (d) The court may dispose of the appeal, \* \* \* sustain  
1129 or dismiss the appeal, modify or vacate the order complained of in  
1130 whole or in part as the case may be; but in case the order is  
1131 wholly or partly vacated, the court may also, in its discretion,  
1132 remand the matter to the State Department of Health for such  
1133 further proceedings, not inconsistent with the court's order, as,  
1134 in the opinion of the court, justice may require. The order shall  
1135 not be vacated or set aside, either in whole or in part, except  
1136 for errors of law, unless the court finds that the order of the  
1137 State Department of Health is not supported by substantial  
1138 evidence, is contrary to the manifest weight of the evidence, is  
1139 in excess of the statutory authority or jurisdiction of the State  
1140 Department of Health, or violates any vested constitutional rights  
1141 of any party involved in the appeal. Provided, however, an order  
1142 of the \* \* \* court reversing the denial of a certificate of need  
1143 by the State Department of Health shall not entitle the applicant  
1144 to effectuate the certificate of need until either:

1145 (i) Such order of the \* \* \* court has become final  
1146 and has not been appealed to the Supreme Court; or

1147 (ii) The Supreme Court has entered a final order  
1148 affirming the Court of Appeals.

1149 (e) Appeals in accordance with law may be had to the  
1150 Supreme Court \* \* \*.

1151 (2) The provisions of this subsection (2) shall apply to any  
1152 party appealing any final order of the State Department of Health  
1153 pertaining to a certificate of need for any health care facility  
1154 as defined in Section 41-7-173(h), with the exception of any home  
1155 health agency as defined in Section 41-7-173(h)(ix):

1156 (a) There shall be a "stay of proceedings" of any final  
1157 order issued by the State Department of Health pertaining to the



1158 issuance of a certificate of need for the establishment,  
1159 construction, expansion or replacement of a health care facility  
1160 for a period of thirty (30) days from the date of the order, if an  
1161 existing provider located in the same service area where the  
1162 health care facility is or will be located has requested a hearing  
1163 during the course of review in opposition to the issuance of the  
1164 certificate of need. The stay of proceedings shall expire at the  
1165 termination of thirty (30) days; however, no construction,  
1166 renovation or other capital expenditure that is the subject of the  
1167 order shall be undertaken, no license to operate any facility that  
1168 is the subject of the order shall be issued by the licensing  
1169 agency, and no certification to participate in the Title XVIII or  
1170 Title XIX programs of the Social Security Act shall be granted,  
1171 until all statutory appeals have been exhausted or the time for  
1172 such appeals has expired. Notwithstanding the foregoing, the  
1173 filing of an appeal from a final order of the State Department of  
1174 Health or the Court of Appeals for the issuance of a certificate  
1175 of need shall not prevent the purchase of medical equipment or  
1176 development or offering of institutional health services granted  
1177 in a certificate of need issued by the State Department of Health.

1178 (b) In addition to other remedies now available at law  
1179 or in equity, any party aggrieved by any such final order of the  
1180 State Department of Health shall have the right of appeal to the  
1181 Court of Appeals, which appeal must be filed within twenty (20)  
1182 days after the date of the final order. \* \* \* Such appeal must be  
1183 filed in accordance with the twenty (20) days for filing as  
1184 heretofore provided. Any appeal shall state briefly the nature of  
1185 the proceedings before the State Department of Health and shall  
1186 specify the order complained of.

1187 (c) Upon the filing of such an appeal, the clerk of  
1188 the \* \* \* court shall serve notice thereof upon the State  
1189 Department of Health, whereupon the State Department of Health  
1190 shall, within thirty (30) days of the date of the filing of the



1191 appeal, certify to the Court of Appeals the record in the case,  
1192 which records shall include a transcript of all testimony,  
1193 together with all exhibits or copies thereof, all pleadings,  
1194 proceedings, orders, findings and opinions entered in the case;  
1195 provided, however, that the parties and the State Department of  
1196 Health may stipulate that a specified portion only of the record  
1197 shall be certified to the court as the record on appeal.  
1198 The \* \* \* court shall give preference to any such appeal from a  
1199 final order by the State Department of Health in a certificate of  
1200 need proceeding, and shall render a final order regarding such  
1201 appeal no later than one hundred twenty (120) days from the date  
1202 of the final order by the State Department of Health. If  
1203 the \* \* \* court has not rendered a final order within this 120-day  
1204 period, then the final order of the State Department of Health  
1205 shall be deemed to have been affirmed by the Court of Appeals, and  
1206 any party to the appeal shall have the right to appeal \* \* \* to  
1207 the Supreme Court on the record certified by the State Department  
1208 of Health as otherwise provided in paragraph (g) of this  
1209 subsection. In the event the Court of Appeals has not rendered a  
1210 final order within the 120-day period and an appeal is made to the  
1211 Supreme Court as provided herein, the Supreme Court shall remand  
1212 the case to the Court of Appeals to make an award of costs, fees,  
1213 reasonable expenses and attorney's fees incurred in favor of  
1214 appellee payable by the appellant(s) should the Supreme Court  
1215 affirm the order of the State Department of Health.

1216 (d) Any appeal of a final order by the State Department  
1217 of Health in a certificate of need proceeding shall require the  
1218 giving of a bond by the appellant(s) sufficient to secure the  
1219 appellee against the loss of costs, fees, expenses and attorney's  
1220 fees incurred in defense of the appeal, approved by the \* \* \*  
1221 court within five (5) days of the date of filing the appeal.



1222 (e) No new or additional evidence shall be introduced  
1223 in the \* \* \* court but the case shall be determined upon the  
1224 record certified to the court.

1225 (f) The court may dispose of the appeal, \* \* \* sustain  
1226 or dismiss the appeal, modify or vacate the order complained of in  
1227 whole or in part and may make an award of costs, fees, expenses  
1228 and attorney's fees, as the case may be; but in case the order is  
1229 wholly or partly vacated, the court may also, in its discretion,  
1230 remand the matter to the State Department of Health for such  
1231 further proceedings, not inconsistent with the court's order, as,  
1232 in the opinion of the court, justice may require. The court, as  
1233 part of the final order, shall make an award of costs, fees,  
1234 reasonable expenses and attorney's fees incurred in favor of  
1235 appellee payable by the appellant(s) should the court affirm the  
1236 order of the State Department of Health. The order shall not be  
1237 vacated or set aside, either in whole or in part, except for  
1238 errors of law, unless the court finds that the order of the State  
1239 Department of Health is not supported by substantial evidence, is  
1240 contrary to the manifest weight of the evidence, is in excess of  
1241 the statutory authority or jurisdiction of the State Department of  
1242 Health, or violates any vested constitutional rights of any party  
1243 involved in the appeal. Provided, however, an order of the Court  
1244 of Appeals reversing the denial of a certificate of need by the  
1245 State Department of Health shall not entitle the applicant to  
1246 effectuate the certificate of need until either:

1247 (i) Such order of the Court of Appeals has become  
1248 final and has not been appealed to the Supreme Court; or

1249 (ii) The Supreme Court has entered a final order  
1250 affirming the Court of Appeals.

1251 (g) Appeals in accordance with law may be had to the  
1252 Supreme Court \* \* \*.

1253 (h) Within thirty (30) days from the date of a final  
1254 order by the Supreme Court or a final order of the Court of



1255 Appeals not appealed to the Supreme Court that modifies or wholly  
1256 or partly vacates the final order of the State Department of  
1257 Health granting a certificate of need, the State Department of  
1258 Health shall issue another order in conformity with the final  
1259 order of the Supreme Court, or the final order of the Court of  
1260 Appeals not appealed to the Supreme Court.

1261         **SECTION 16.** Section 41-9-31, Mississippi Code of 1972, is  
1262 amended as follows:

1263         41-9-31. Any applicant or licensee aggrieved by the decision  
1264 of the licensing agency after a hearing may, within thirty (30)  
1265 days after the mailing or serving of notice of the decision as  
1266 provided in Section 41-9-15, file a notice of appeal in the Court  
1267 of Appeals, and the \* \* \* clerk thereof shall serve a copy of the  
1268 notice of appeal upon the licensing agency. Thereupon the  
1269 licensing agency shall, within sixty (60) days or such additional  
1270 time as the court may allow from such notice, certify and file  
1271 with the court a copy of the record and decision, including the  
1272 transcript of the hearings, on which the decision is based.  
1273 Findings of fact by the licensing agency shall be conclusive  
1274 unless substantially contrary to the weight of the evidence.  
1275 However, upon good cause shown, the court may remand the case to  
1276 the licensing agency to take further evidence, and the licensing  
1277 agency may thereupon affirm, reverse or modify its decision. The  
1278 court may affirm, modify or reverse the decision of the licensing  
1279 agency, and either the applicant or licensee or the licensing  
1280 agency may appeal from this decision to the Supreme Court as in  
1281 other cases \* \* \*. Pending final disposition of the matter of the  
1282 status quo of the applicant or licensee shall be preserved, except  
1283 as the court otherwise orders in the public interest. Rules with  
1284 respect to court costs in other cases \* \* \* shall apply equally to  
1285 cases hereunder.

1286         **SECTION 17.** Section 41-26-21, Mississippi Code of 1972, is  
1287 amended as follows:



1288           41-26-21. Following the hearing, the presiding official  
1289 shall enter an order which shall become a final order of the  
1290 director, unless the petitioner or other interested person  
1291 appearing at the hearing, shall, within ten (10) days after the  
1292 date of the final order was made, appeal to the Court of Appeals.  
1293 The petitioner or other interested person shall give a cost bond  
1294 with sufficient sureties, payable to the state in the sum of not  
1295 less than One Hundred Dollars (\$100.00) nor more than Five Hundred  
1296 Dollars (\$500.00), to be fixed in the order appealed from. The  
1297 cost bond shall be filed with and approved by the director, who  
1298 shall certify the bond, together with a certified copy of the  
1299 record of the hearing in the matter, to the Court of Appeals,  
1300 which shall be the record of the cause. Except as provided in  
1301 this section, an appeal to the Court of Appeals as provided in  
1302 this section shall not stay the execution of a final order of the  
1303 director.

1304           Any person who is aggrieved by any final order or other  
1305 decision issued under this section may, within ten (10) days after  
1306 the date of that order or decision, petition the Court of Appeals,  
1307 for an appeal with supersedeas. The court shall grant a hearing  
1308 on that petition. Upon good cause shown, the court may grant the  
1309 appeal with supersedeas. The appellant shall be required to post  
1310 a bond with sufficient sureties according to law in an amount to  
1311 be determined by the Court of Appeals. Appeals shall be  
1312 considered only upon the record as made at the hearing before the  
1313 presiding official. The Court of Appeals shall always be deemed  
1314 open for hearing of appeals \* \* \*. The appeal shall have  
1315 precedence over all civil cases, except election contests. The  
1316 Court of Appeals shall review all questions of law and of fact.  
1317 If no prejudicial error is found, the matter shall be affirmed and  
1318 remanded to the director for enforcement. If a prejudicial error  
1319 is found, the matter shall be reversed and the Court of Appeals  
1320 shall remand the matter to the director for appropriate action as





1321 may be indicated or necessary under the circumstances. Appeals  
1322 may be taken \* \* \* to the Supreme Court in the manner as now  
1323 required by law, but if a supersedeas is desired by the party  
1324 appealing \* \* \*, that party may apply for the supersedeas to the  
1325 Court of Appeals, who shall award a writ of supersedeas, without  
1326 additional bond, if in the court's judgment material damage is not  
1327 likely to result. If material damage is likely to result, the  
1328 court shall require a supersedeas bond as deemed proper, which  
1329 shall be liable to the state for any damage.

1330 **SECTION 18.** Section 41-83-23, Mississippi Code of 1972, is  
1331 amended as follows:

1332 41-83-23. Any person aggrieved by a final decision of the  
1333 department or a private review agent in a contested case under  
1334 this chapter shall have the right of judicial appeal to the Court  
1335 of Appeals.

1336 Notwithstanding any provision of this chapter, the insured  
1337 shall have the express right to pursue any legal remedies he may  
1338 have in a court of competent jurisdiction.

1339 **SECTION 19.** Section 45-23-59, Mississippi Code of 1972, is  
1340 amended as follows:

1341 45-23-59. Within thirty (30) days after any order or act of  
1342 the board, any person aggrieved thereby may file a petition in the  
1343 Court of Appeals for a review thereof. The court shall summarily  
1344 hear the petition and may make any appropriate order.

1345 **SECTION 20.** Section 9-4-3, Mississippi Code of 1972, is  
1346 amended as follows:

1347 9-4-3. (1) The Court of Appeals shall have the power to  
1348 determine or otherwise dispose of any appeal or other proceeding  
1349 assigned to it by the Supreme Court.

1350 Except as otherwise provided by law, the jurisdiction of the  
1351 Court of Appeals is limited to those matters which have been  
1352 assigned to it by the Supreme Court.



1353           The Supreme Court shall prescribe rules for appeals by law to  
1354 the Court of Appeals and for the assignment of other matters to  
1355 the Court of Appeals. These rules may provide for the selective  
1356 assignment of individual cases and may provide for the assignment  
1357 of cases according to subject matter or other general criteria.  
1358 However, the Supreme Court shall retain appeals in cases imposing  
1359 the death penalty, or cases involving utility rates, annexations,  
1360 bond issues, election contests, or a statute held unconstitutional  
1361 by the lower court.

1362           (2) Except as otherwise provided by law, decisions of the  
1363 Court of Appeals are final and are not subject to review by the  
1364 Supreme Court, except by writ of certiorari. The Supreme Court  
1365 may grant certiorari review only by the affirmative vote of four  
1366 (4) of its members. At any time before final decision by the  
1367 Court of Appeals, the Supreme Court may, by order, transfer to the  
1368 Supreme Court any case pending before the Court of Appeals.

1369           (3) The Court of Appeals shall have jurisdiction to issue  
1370 writs of habeas corpus, mandamus, quo warranto, certiorari,  
1371 prohibition or any other process when this may be necessary in any  
1372 case assigned to it by the Supreme Court or by law.

1373           (4) The Court of Appeals shall issue a decision in every  
1374 case heard before the Court of Appeals within two hundred seventy  
1375 (270) days after the final briefs have been filed with the court.

1376           (5) The Supreme Court shall issue a decision in every case  
1377 within its original jurisdiction, including all direct and  
1378 post-conviction collateral relief appeals or applications in cases  
1379 imposing the death penalty, within two hundred seventy (270) days  
1380 after the final briefs have been filed with the court. The  
1381 Supreme Court shall issue a decision in every case received on  
1382 certiorari from the Court of Appeals within one hundred eighty  
1383 (180) days after the final briefs have been filed with the court.

1384           **SECTION 21.** This act shall take effect and be in force from  
1385 and after July 1, 2002.

