

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.

