

By: Representative Smith (39th)

To: Judiciary A

HOUSE BILL NO. 1412
(As Passed the House)

1 AN ACT TO AMEND SECTION 25-43-1.102, MISSISSIPPI CODE OF
2 1972, TO EXTEND THE EXEMPTION FOR THE BOARD OF TRUSTEES OF STATE
3 INSTITUTIONS OF HIGHER LEARNING OR ANY COLLEGE OR UNIVERSITY
4 THEREUNDER FROM THE REQUIREMENTS OF THE ADMINISTRATIVE PROCEDURES
5 ACT; TO AMEND SECTION 25-43-2.101, MISSISSIPPI CODE OF 1972, TO
6 PROVIDE THAT THE SECRETARY OF STATE, INSTEAD OF THE JOINT
7 LEGISLATIVE CODE COMMITTEE, MAY CONTRACT WITH A PUBLISHING COMPANY
8 TO COMPILE, ANNOTATE, INDEX AND PUBLISH THE STATE AGENCY RULES AND
9 REGULATIONS; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** Section 25-43-1.102, Mississippi Code of 1972, is
12 amended as follows:

13 25-43-1.102. **Definitions.**

14 As used in this chapter, the following terms shall have the
15 meanings ascribed to them in this section unless the context
16 otherwise requires:

17 (a) "Agency" means a board, commission, department,
18 officer or other administrative unit of this state, including the
19 agency head, and one or more members of the agency head or agency
20 employees directly or indirectly purporting to act on behalf or
21 under the authority of the agency head. The term does not include
22 the Legislature or any of its component units, the judiciary or
23 any of its component units or the Governor. The term does not
24 include a political subdivision of the state or any of the
25 administrative units of a political subdivision. Furthermore, the
26 Board of Trustees of State Institutions of Higher Learning, or any
27 college or university thereunder, shall be exempt from the
28 provisions of this chapter until July 1, 2009, at which time this
29 exemption shall stand repealed. To the extent it purports to
30 exercise authority subject to any provision of this chapter, an

31 administrative unit otherwise qualifying as an "agency" must be
32 treated as a separate agency even if the unit is located within or
33 subordinate to another agency.

34 (b) "Agency head" or "head of the agency" means an
35 individual or body of individuals in whom the ultimate legal
36 authority of the agency is vested by any provision of law.

37 (c) "Agency proceeding" or "proceeding" means the
38 process by which an agency considers:

39 (i) A declaratory opinion pursuant to Section
40 25-43-2.103, or

41 (ii) A rule pursuant to Article III of this
42 chapter.

43 (d) "Agency record" means the official rule-making
44 record of an agency pursuant to Section 25-43-3.112.

45 (e) "Declaratory opinion" means an agency opinion
46 rendered in accordance with the provisions of Section 25-43-2.103.

47 (f) "Order" means an agency action of particular
48 applicability that determines the legal rights, duties,
49 privileges, immunities or other legal interests of one or more
50 specific persons. An order shall be in writing signed by a person
51 with authority to render the order, or if more than one (1) person
52 has such authority by at least that number of such persons as
53 jointly have the authority to render the order, or by a person
54 authorized to render the order on behalf of all such persons. The
55 term does not include an executive order issued by the Governor
56 pursuant to Section 25-43-1.104, an opinion issued by the Attorney
57 General pursuant to Section 7-5-25, an opinion issued by the
58 Ethics Commission pursuant to Section 25-4-17, or a declaratory
59 opinion rendered in accordance with Section 25-43-2.103.

60 (g) "Person" means an individual, partnership,
61 corporation, association, governmental subdivision or unit
62 thereof, or public or private organization or entity of any
63 character, and includes another agency.

64 (h) "Provision of law" or "law" means the whole or a
65 part of the federal or state Constitution, or of any federal or
66 state (i) statute, (ii) case law or common law, (iii) rule of
67 court, (iv) executive order, or (v) rule or order of an
68 administrative agency.

69 (i) "Rule" means the whole or a part of an agency
70 regulation or other statement of general applicability that
71 implements, interprets or prescribes:

72 (i) Law or policy, or

73 (ii) The organization, procedure or practice
74 requirements of an agency. The term includes the amendment,
75 repeal or suspension of an existing rule. "Rule" does not
76 include:

77 1. A regulation or statement concerning only
78 the internal management of an agency which does not directly and
79 substantially affect the procedural or substantive rights or
80 duties of any segment of the public;

81 2. A regulation or statement that establishes
82 criteria or guidelines to be used by the staff of an agency in
83 performing audits, investigations or inspections, settling
84 commercial disputes, negotiating commercial arrangements or in the
85 defense, prosecution or settlement of cases, if disclosure of the
86 criteria or guidelines would:

87 a. Enable law violators to avoid
88 detection;

89 b. Facilitate disregard of requirements
90 imposed by law; or

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

93 3. A regulation or statement that only
94 establishes specific prices to be charged for particular goods or
95 services sold by an agency;

96 4. A regulation or statement concerning only
97 the physical servicing, maintenance or care of agency owned or
98 operated facilities or property;

99 5. A regulation or statement relating only to
100 the use of a particular facility or property owned, operated or
101 maintained by the state or any of its subdivisions, if the
102 substance of the regulation or statement is adequately indicated
103 by means of signs or signals to persons who use the facility or
104 property;

105 6. A regulation or statement directly related
106 only to inmates of a correctional or detention facility, students
107 enrolled in an educational institution or patients admitted to a
108 hospital, if adopted by that facility, institution or hospital;

109 7. A form whose contents or substantive
110 requirements are prescribed by rule or statute, and instructions
111 for the execution or use of the form;

112 8. An agency budget;

113 9. A compact or agreement between an agency
114 of this state and one or more agencies of another state or states;
115 or

116 10. An opinion of the Attorney General
117 pursuant to Section 7-5-25, an opinion of the Ethics Commission
118 pursuant to Section 25-4-17, or an Executive Order of the
119 Governor.

120 (j) "Rule-making" means the process for formulation and
121 adoption of a rule.

122 **SECTION 2.** Section 25-43-2.101, Mississippi Code of 1972, is
123 amended as follows:

124 25-43-2.101. **Publication, compilation, indexing and public**
125 **inspection of rules.**

126 (1) Subject to the provisions of this chapter, the Secretary
127 of State shall prescribe a uniform numbering system, form, style
128 and transmitting format for all proposed and adopted rules caused

129 to be published by him and, with prior approval of each respective
130 agency involved, may edit rules for publication and codification
131 without changing the meaning or effect of any rule.

132 (2) The Secretary of State shall cause an administrative
133 bulletin to be published in a format and at such regular intervals
134 as the Secretary of State shall prescribe by rule. Upon proper
135 filing of proposed rules, the Secretary of State shall publish
136 them in the administrative bulletin as expeditiously as possible.
137 The administrative bulletin must contain:

138 (a) Notices of proposed rule adoption prepared so that
139 the text of the proposed rule shows the text of any existing rule
140 proposed to be changed and the change proposed;

141 (b) Any other notices and materials designated by law
142 for publication therein; and

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

144 (3) The Secretary of State shall cause an administrative
145 bulletin to be published in a format and at such regular intervals
146 as the Secretary of State shall prescribe by rule. Upon proper
147 filing of newly adopted rules, the Secretary of State shall
148 publish them as expeditiously as possible. The administrative
149 bulletin must contain:

150 (a) Newly filed adopted rules prepared so that the text
151 shows the text of any existing rule being changed and the change
152 being made;

153 (b) Any other notices and materials designated by law
154 for publication therein; and

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

156 (4) The Secretary of State retains the authority to reject
157 proposed and newly adopted rules not properly filed in accordance
158 with the Secretary of State's rules prescribing the numbering
159 system, form, style or transmitting format for such filings. The
160 Secretary of State shall not be empowered to reject filings for
161 reasons of the substance or content or any proposed or newly

162 adopted rule. The Secretary of State shall notify the agency of
163 its rejection of a proposed or newly adopted rule as expeditiously
164 as possible and accompany such notification with a stated reason
165 for the rejection. A rejected filing of a proposed or newly
166 adopted rule does not constitute filing pursuant to Section
167 25-43-3.101 et seq. * * *.

168 (5) (a) The Secretary of State shall cause an
169 administrative code to be compiled, indexed by subject and
170 published in a format prescribed by the Secretary of State by
171 rule. All of the effective rules of each agency must be published
172 and indexed in that publication. The Secretary of State shall
173 also cause supplements to the administrative code to be published
174 in a format and at such regular intervals as the Secretary of
175 State shall prescribe by rule.

176 (b) The Secretary of State may contract with a
177 reputable and competent publishing company on such terms and
178 conditions and at such prices as may be deemed proper to digest,
179 compile, annotate, index and publish the state agency rules and
180 regulations.

181 (6) (a) Copyrights of the Mississippi Administrative Code,
182 including, but not limited to, cross references, tables of cases,
183 notes of decisions, tables of contents, indices, source notes,
184 authority notes, numerical lists and codification guides, other
185 than the actual text of rules or regulations, shall be taken by
186 and in the name of the publishers of the compilation. Such
187 publishers shall thereafter promptly assign the same to the State
188 of Mississippi and said copyright shall be owned by the state.

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

193 (7) The Secretary of State may omit from the administrative
194 bulletin or code any proposed or filed adopted rule, the

195 publication in hard copy of which would be unduly cumbersome,
196 expensive or otherwise inexpedient, if:

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

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

202 (c) The administrative bulletin or code contains a
203 notice stating in detail the specific subject matter of the
204 omitted proposed or adopted rule and how a copy of the omitted
205 material may be obtained.

206 (8) The administrative bulletin and administrative code with
207 supplements must be furnished to designated officials without
208 charge and to all subscribers at a reasonable cost to be
209 determined by the Secretary of State. Each agency shall also make
210 available for public inspection and copying those portions of the
211 administrative bulletin and administrative code containing all
212 rules adopted or used by the agency in the discharge of its
213 functions, and the index to those rules.

214 **SECTION 3.** This act shall take effect and be in force from
215 and after July 1, 2004.