

By: Representatives Upshaw, Ishee

To: Public Health and Human Services; Judiciary A

## HOUSE BILL NO. 504

1       AN ACT TO AMEND SECTIONS 1-3-57, 1-3-58, 7-1-5, 11-5-49,  
2 11-5-113, 11-5-117, 11-51-101, 19-5-43, 19-7-31, 23-15-11,  
3 25-7-61, 29-1-101, 31-11-3, 35-5-31, 41-17-3, 41-17-11, 41-21-35,  
4 43-31-35, 67-1-83, 67-3-53, 73-19-23, 73-39-19, 81-5-33,  
5 81-27-6.307, 89-1-29, 93-1-5, 93-5-1, 93-5-13, 93-5-15, 93-7-3,  
6 93-13-123, 93-13-121, 93-13-131, 97-3-13, 97-9-25, 99-13-1,  
7 99-13-3, 99-13-5, 99-13-7, 99-13-9, 99-19-57, 99-38-9, 99-39-23  
8 AND 99-39-27, MISSISSIPPI CODE OF 1972, TO MODERNIZE THE  
9 TERMINOLOGY THAT IS USED TO REFER TO PERSONS WITH MENTAL ILLNESS  
10 AND PERSONS WITH MENTAL RETARDATION AND THE INSTITUTIONS THAT  
11 PROVIDE TREATMENT AND CARE TO THOSE PERSONS; TO AMEND SECTION  
12 41-19-103, MISSISSIPPI CODE OF 1972, TO UPDATE THE PROVISION  
13 ESTABLISHING ELLISVILLE STATE SCHOOL; TO CREATE NEW SECTIONS  
14 41-19-108, 41-19-112, 41-19-114, 41-19-116 AND 41-19-118,  
15 MISSISSIPPI CODE OF 1972, AND TO AMEND SECTION 41-19-121,  
16 MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING PROVISION;  
17 TO REPEAL SECTIONS 41-5-55, 41-5-81, 41-17-5, 41-17-7, 41-17-9,  
18 41-17-13, 41-19-105, 41-19-107, 41-19-109, 41-19-115, 41-19-117,  
19 41-19-119, 41-21-43, 41-21-45 AND 41-45-1 THROUGH 41-45-19,  
20 MISSISSIPPI CODE OF 1972, WHICH PROHIBIT THE APPRENTICING OF  
21 MENTAL PATIENTS, PROVIDE CERTAIN CRIMINAL PENALTIES, PROVIDE  
22 CERTAIN VISITATION DUTIES FOR DIRECTORS OF MENTAL HOSPITALS,  
23 EXEMPT RESIDENT MENTAL HOSPITAL OFFICERS FROM JURY SERVICE,  
24 REQUIRE A DRUG STORE TO BE KEPT AT EACH MENTAL HOSPITAL, REQUIRE  
25 SEPARATE ACCOMMODATIONS AT WHITFIELD FOR ALCOHOLIC AND DRUG  
26 ADDICTS, PROVIDE FOR THE PLAN OF ELLISVILLE STATE SCHOOL, REQUIRE  
27 ELLISVILLE'S DIRECTOR TO KEEP CERTAIN RECORDS, AUTHORIZE  
28 ELLISVILLE'S DIRECTOR TO SELL CERTAIN PRODUCTS OF THE SCHOOL,  
29 PROVIDE DISCHARGE PROCEDURES FOR ELLISVILLE PATIENTS, PROVIDE FOR  
30 HABEAS CORPUS PROCEEDINGS FOR ELLISVILLE PATIENTS, AUTHORIZE THE  
31 RECEIPT OF GIFTS FOR THE SUPPORT OF ELLISVILLE, REQUIRE COUNTIES  
32 TO TEMPORARILY PROVIDE FOR THE MAINTENANCE OF INDIGENT MENTALLY  
33 RETARDED PERSONS, PROHIBIT COHABITATION WITH MENTALLY RETARDED  
34 PERSONS AND AUTHORIZE THE STERILIZATION OF MENTALLY ILL AND  
35 MENTALLY RETARDED PATIENTS; AND FOR RELATED PURPOSES.

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

37       **SECTION 1.** Section 1-3-57, Mississippi Code of 1972, is  
38 amended as follows:

39       1-3-57. The term "unsound mind," when used in any statute in  
40 reference to persons, shall include persons with mental  
41 retardation, persons with mental illness, and persons non compos  
42 mentis.

43           **SECTION 2.** Section 1-3-58, Mississippi Code of 1972, is  
44 amended as follows:

45           1-3-58. Whenever the term "ward" is used, it shall be  
46 liberally construed and held to include any and all persons under  
47 every form of legal disability, including, but not limited to, the  
48 disabilities of minority, mental retardation, mental illness,  
49 unsound mind, alcoholism, addiction to drugs, and convicted  
50 felons.

51           **SECTION 3.** Section 7-1-5, Mississippi Code of 1972, is  
52 amended as follows:

53           7-1-5. In addition to the powers conferred and duties  
54 imposed on the Governor by the constitution and by the laws as  
55 elsewhere provided, he shall have the powers and perform the  
56 duties following \* \* \*:

57               (a) He is the supreme executive officer of the state.

58               (b) He is the commander in chief of the militia of the  
59 state and may call out the militia to execute the laws, to  
60 suppress insurrections or riots, and to repel invasions.

61               (c) He shall see that the laws are faithfully executed.

62               (d) He is to supervise the official conduct of all  
63 executive and ministerial officers.

64               (e) He is to see that all offices are filled and the  
65 duties of the offices are performed or, in default thereof, apply  
66 such remedy as the law allows; and if the remedy is inadequate, he  
67 shall inform the Legislature \* \* \* at its next session.

68               (f) He shall make appointments and fill vacancies as  
69 prescribed by law.

70               (g) Whenever any suit or legal proceeding is pending  
71 that affects the title of the state to any property, or that may  
72 result in any claim against the state, he may direct the Attorney  
73 General to appear on behalf of the state and protect its interest.

74               (h) He may require the Attorney General, or district  
75 attorney of any district, to inquire into the affairs or

76 management of any corporation existing under the laws of this  
77 state, or doing business in this state under the laws of the  
78 state.

79 (i) He may require the Attorney General to aid any  
80 district attorney in the discharge of his duties.

81 (j) He may offer rewards, not exceeding Two Hundred  
82 Dollars (\$200.00), for persons with mental illness who have  
83 escaped and are dangerous, and such other rewards as are  
84 authorized by law.

85 (k) He may require any officer or board to make special  
86 reports to him upon demand in writing.

87 (l) He shall transact all necessary business with state  
88 officers, shall require them to be present at their respective  
89 offices at all reasonable business hours, and may require  
90 information, in writing, from any such officer relating to the  
91 duties of his office.

92 (m) When deemed advisable upon proceedings for the  
93 arrest in this state of fugitives from justice from other states  
94 or countries, he may commission a special officer to arrest the  
95 fugitive in any part of the state.

96 (n) He may bring any proper suit affecting the general  
97 public interests, in his own name for the State of Mississippi, if  
98 after first requesting the proper officer so to do, the \* \* \*  
99 officer \* \* \* refuses or neglects to do the same.

100 **SECTION 4.** Section 11-5-49, Mississippi Code of 1972, is  
101 amended as follows:

102 11-5-49. In proceedings in matters testamentary and of  
103 administration, in minors' business, and in cases of persons with  
104 mental retardation, persons with mental illness and persons of  
105 unsound mind, as provided for by law, no answer shall be required  
106 to any petition or application of any sort. Such a petition or  
107 application shall not be taken as confessed because of the lack of  
108 an answer, but every petition, application, or account shall be

109 supported by the proper evidence and may be contested without an  
110 answer. All such proceedings shall be as summary, as the statutes  
111 authorizing and regulating them contemplate; however, when either  
112 of the parties having a controversy in court as to any of those  
113 several matters \* \* \* requiresand the court \* \* \* seesproper, it  
114 may direct plenary proceedings by bill or petition, to which there  
115 shall be an answer on oath or affirmation.If an adult or sane  
116 party refusesto answer as to any matter alleged in the bill or  
117 petition and proper for the court to decide upon, the \* \* \* party  
118 refusing may be attached, fined, and imprisoned at the discretion  
119 of the court, and the matter set forth in the bill or petition  
120 shall be taken as confessed and a decree shall be made  
121 accordingly.

122       **SECTION 5.** Section 11-5-113, Mississippi Code of 1972, is  
123 amended as follows:

124       11-5-113. All the provisions of this chapter on the subject  
125 of sales shall apply to all sales of real estate under any decree  
126 in the chancery court made in matters testamentary and of  
127 administration, minors' business, cases of persons with mental  
128 retardation, persons with mental illness and persons of unsound  
129 mind, of partition, and all other matters.

130       **SECTION 6.** Section 11-5-117, Mississippi Code of 1972, is  
131 amended as follows:

132       11-5-117. (1) In addition to the law now in force  
133 authorizing the chancery court to decree the sale of land and  
134 personal property, the chancery court and the chancellor in  
135 vacation are authorized in all matters providing for a sale or  
136 lease of real and personal property, including matters  
137 testamentary and of administration, minor's business, persons with  
138 mental illness, partition and receivers, to order or decree the  
139 sale or lease of real and personal property or any interest in the  
140 property, including timber, oil, gas and minerals, at private  
141 sale, under such terms and conditions as the chancellor may

142 impose. If all of the terms of sale are made certain by the order  
143 or decree, a deed or lease executed in full compliance with the  
144 order or decree shall become immediately effective without further  
145 confirmation by the court or chancellor.

146 (2) This section shall not be construed to invalidate any  
147 proceedings previously done in conformity with this section.

148 **SECTION 7.** Section 11-51-101, Mississippi Code of 1972, is  
149 amended as follows:

150 11-51-101. (1) The state and any county or municipality of  
151 the state, and the officials representing the state, county or  
152 municipality, in any suit or action, and any state, county or  
153 municipal officer who is a party to any suit or action in his  
154 official character, in which suit or action the state, county or  
155 municipality is beneficially interested, and the several  
156 incorporated charitable or educational institutions established  
157 and maintained by the state, and all corporate instrumentalities  
158 wholly owned by the United States government, shall be entitled to  
159 appeal from a judgment, decree, decision or order of any court or  
160 judge from which an appeal may be taken without prepayment of  
161 costs in the lower court; however, \* \* \* the cost of the  
162 preparation of the record of the proceedings in the trial court  
163 shall be prepaid. In any such case, if a supersedeas is allowed  
164 and desired, a bond for supersedeas shall not be required.

165 (2) Any person who is a party to a suit or action in his  
166 individual capacity, which suit arises from allegedly tortious  
167 actions and deeds committed by him during the time he was a  
168 member, trustee, director, superintendent, official or employee,  
169 as the case may be, of the Department of Corrections, the State  
170 Penitentiary or the state psychiatric hospitals or institutions,  
171 and which allegedly tortious acts and deeds were committed by the  
172 person in the performance of his duties or employment, shall be  
173 entitled to appeal from a judgment, decree, decision or order of  
174 any court or judge from which an appeal may be taken without

175 prepayment of costs in the lower court, including the costs of the  
176 preparation of the record of the proceedings in the trial court.  
177 In those cases, if a supersedeas is allowed and desired, a bond  
178 for supersedeas shall not be required. The provisions of this  
179 section shall not apply to any such judgment, decree, decision or  
180 order in favor of the State of Mississippi.

181       **SECTION 8.** Section 19-5-43, Mississippi Code of 1972, is  
182 amended as follows:

183       19-5-43. The boards of supervisors in their respective  
184 counties shall temporarily provide for the care and maintenance of  
185 any person alleged to have mental illness when the person has no  
186 means of paying that expense, pending an investigation into the  
187 mental status of the person alleged to have mental illness before  
188 the chancery clerk of the county, and provide for the care and  
189 maintenance of those persons by the sheriff of their respective  
190 counties after being adjudged as a person with mental illness by  
191 the properly constituted authority, when there is no room in one  
192 (1) of the state psychiatric hospitals or institutions for the  
193 person with mental illness. The boards shall cause all reasonable  
194 and proper allowance for that care and maintenance to be paid out  
195 of the county treasury.

196       **SECTION 9.** Section 19-7-31, Mississippi Code of 1972, is  
197 amended as follows:

198       19-7-31. The board of supervisors of each county in the  
199 state shall have power, by an appropriate order or orders on its  
200 minutes, to establish and maintain in the county courthouse or  
201 other suitable public building adjacent or near thereto, a public  
202 county law library under such rules, regulations and supervision  
203 as it may from time to time ordain and establish, and to that end,  
204 the board may accept gifts, grants, donations or bequests of  
205 money, furniture, fixtures, books, documents, maps, plats or other  
206 property suitable for that purpose.

207       The board of supervisors shall have power to exchange or sell  
208    duplicate volumes or sets of any such books or furniture, and in  
209    case of sale, to invest the proceeds in other suitable books or  
210    furniture. The \* \* \* board may also purchase or lease from time  
211    to time additional books, furniture, or equipment for the public  
212   law library.

213       For the purpose of providing suitable quarters for the public  
214    law library, the \* \* \* board of supervisors may, in its  
215    discretion, expend such sums as may be deemed necessary or proper  
216    for that purpose, and may also employ a suitable person as  
217    librarian and pay the law librarian such salary as the board, in  
218    its discretion, may determine. The board may employ additional  
219    librarians or other employees on either a part-time or full-time  
220    basis and may pay these additional employees as the board, in its  
221    discretion, may determine. The board of supervisors, in their  
222    discretion, may contract with the county or municipal library for  
223    any staff or facilities as they deem necessary for the overall  
224    management and operation of the county law library. The board of  
225    supervisors may contract with the State Law Library for law  
226    library services that may be offered by the State Law Library.

227       In case the public law library is so established, all books,  
228    documents, furniture and other property then belonging to the  
229    county library, as provided for in Section 19-7-25, shall be  
230    transferred to and become part of the public law library, and all  
231    books, documents and publications \* \* \* donated by the state to  
232    the county library shall also become a part of the public law  
233   library. \* \* \* In that case, Sections 19-7-25 and 19-25-65,  
234   relating to the county library, shall be superseded in that county  
235   for as long as the public law library is maintained in the county.

236       The board of supervisors of any such county \* \* \*, in its  
237    discretion, may levy, by way of resolution, additional court costs  
238    not exceeding Two Dollars and Fifty Cents (\$2.50) per case for  
239    each case, both civil and criminal, filed in the chancery, circuit

240 and county courts or any of these in the county, and may levy, by  
241 way of resolution, additional court costs not exceeding One Dollar  
242 and Fifty Cents (\$1.50) per case for each case, both civil and  
243 criminal, filed in the justice courts of the county, for the  
244 support of the library \* \* \* authorized in the county. If the  
245 additional court costs \* \* \* authorized in this section are  
246 levied, the clerk or judge of those courts shall collect those  
247 costs for all cases \* \* \* filed in his court and forward same to  
248 the chancery clerk, who shall deposit the same in a special  
249 account in a county depository for support and maintenance of the  
250 library, and the chancery clerk shall be accountable for those  
251 funds. However, no such levy shall be made against any cause of  
252 action the purpose of which is to commit any person with mental  
253 illness, alcoholic or narcotic addict to any institution for  
254 custodial or medical care, and no such tax shall be collected  
255 under this subsection on any cause of action that the proper clerk  
256 handling same deems to be in its very nature charitable and in  
257 which cause the clerk has not collected his own legal fees.

258 To accomplish the purposes of this section, the board of  
259 supervisors may enter into such arrangement or arrangements with  
260 the county bar association of any such county as may seem  
261 advisable for the care and operation of the law library, and the  
262 board may receive and consider, from time to time, such  
263 recommendations as the bar association may deem appropriate  
264 regarding the library.

265 The board of supervisors of each county in which there are  
266 two (2) judicial districts \* \* \*, in its discretion, may maintain  
267 a law library in each judicial district. In those counties the  
268 board \* \* \*, in its discretion, may pay from the county general  
269 fund or from the special fund \* \* \* authorized in this section all  
270 the costs \* \* \* authorized in this section, provided that the  
271 board shall not spend in each judicial district less than the

272 amount of the special court costs authorized in this section and  
273 collected in each such district.

274       The governing authorities of any municipality \* \* \*, in their  
275 discretion, by resolution duly adopted and entered on their  
276 official minutes, may levy additional court costs not exceeding  
277 One Dollar and Fifty Cents (\$1.50) per case for each conviction in  
278 the municipal court of the municipality, for the support and  
279 maintenance of the county law library in the county within which  
280 the municipality is located. The additional costs shall be  
281 collected by the clerk of the court, forwarded to the chancery  
282 clerk of the county for deposit in a special account in the county  
283 depository, and expended for support and maintenance of the county  
284 law library in the same manner and in accordance with the same  
285 procedure as provided for costs similarly collected in the  
286 chancery, circuit, county and justice courts of the county.

287       **SECTION 10.** Section 23-15-11, Mississippi Code of 1972, is  
288 amended as follows:

289       23-15-11. Every inhabitant of this state, except persons  
290 adjudicated to be non compos mentis, who is a citizen of the  
291 United States of America, eighteen (18) years old and upwards, who  
292 has resided in this state for thirty (30) days and for thirty (30)  
293 days in the county in which he seeks to vote, and for thirty (30)  
294 days in the incorporated municipality in which he seeks to vote,  
295 and who has been duly registered as an elector under Section  
296 23-15-33, and who has never been convicted of any crime listed in  
297 Section 241, Mississippi Constitution of 1890, shall be a  
298 qualified elector in and for the county, municipality and voting  
299 precinct of his residence, and shall be entitled to vote at any  
300 election. Any person who will be eighteen (18) years of age or  
301 older on or before the date of the general election and who is  
302 duly registered to vote not less than thirty (30) days before the  
303 primary election associated with the general election, may vote in  
304 the primary election even though the person has not reached his or

305 her eighteenth birthday at the time that the person seeks to vote  
306 at the primary election. No others than those specified in this  
307 section shall be entitled, or shall be allowed, to vote at any  
308 election.

309         **SECTION 11.** Section 25-7-61, Mississippi Code of 1972, is  
310 amended as follows:

311             25-7-61. (1) Fees of jurors shall be payable as follows:  
312                 (a) Grand jurors and petit jurors in the chancery,  
313 county, circuit and special eminent domain courts shall be paid an  
314 amount to be set by the board of supervisors, not to be less than  
315 Twenty-five Dollars (\$25.00) per day and not to be greater than  
316 Forty Dollars (\$40.00) per day, plus mileage authorized in Section  
317 25-3-41. In the trial of all cases where jurors are in charge of  
318 bailiffs and are not permitted to separate, the sheriff with the  
319 approval of the trial judge may pay for room and board of jurors  
320 on panel for actual time of trial.

321             No grand juror shall receive any compensation except mileage  
322 unless he has been sworn as provided by Section 13-5-45; and no  
323 petit juror except those jurors called on special venires shall  
324 receive any compensation authorized under this subsection except  
325 mileage unless he has been sworn as provided by Section 13-5-71.

326             (b) Jurors making inquisitions of mental retardation,  
327 mental illness or \* \* \* unsound mind and jurors on coroner's  
328 inquest shall be paid Five Dollars (\$5.00) per day plus mileage  
329 authorized in Section 25-3-41 by the county treasurer on order of  
330 the board of supervisors on certificate of the clerk of the  
331 chancery court in which the inquisition is held.

332             (c) Jurors in the justice courts shall be paid an  
333 amount of not less than Ten Dollars (\$10.00) per day and not more  
334 than Fifteen Dollars (\$15.00) per day, to be established by the  
335 board of supervisors. In all criminal cases in the justice court  
336 in which the prosecution fails, the fees of jurors shall be paid  
337 by the county treasurer on order of the board of supervisors on

338 certificate of the county attorney in all counties that have  
339 county attorneys, otherwise by the justice court judge.

340 (2) Any juror may return the fees provided as compensation  
341 for service as a juror to the county that paid for the person's  
342 service as a juror. The fees returned to the county may be  
343 earmarked for a particular purpose to be selected by the juror,  
344 including:

345 (a) The local public library;  
346 (b) Local law enforcement;  
347 (c) The Mississippi Fire Fighters Memorial Burn Center  
348 Fund created in Section 7-9-70; or  
349 (d) Any other governmental agency.

350 \* \* \*

351 **SECTION 12.** Section 29-1-101, Mississippi Code of 1972, is  
352 amended as follows:

353 29-1-101. The Secretary of State, for and on behalf of the  
354 state, may convey an easement or easements for the construction  
355 and maintenance of pipe lines in, on, under, and across all of the  
356 state land owned (including that submerged or wherever the tide  
357 may ebb and flow) now or hereafter acquired, excepting, however,  
358 state highway rights of way, sixteenth section school land, lieu  
359 lands, and \* \* \* forfeited tax land and property the title to  
360 which is subject to any lawful redemption, and excepting the state  
361 land comprising the old asylum property located in the City of  
362 Jackson, \* \* \* property of the Department of Mental Health, the  
363 Parchman Penitentiary property located in Sunflower County,  
364 Mississippi, and all other Penitentiary property, to any person,  
365 firm, or corporation constructing or operating a refinery for the  
366 refining of oil, gas, or petroleum products in the state, or to  
367 any person, firm, or corporation transporting by pipe line any  
368 substance to or from any such refinery in this state, for such  
369 consideration as the Secretary of State deems just and proper,  
370 which shall be subject to approval by the Secretary of State, the

371 Governor, and the Attorney General of the state, for easements in,  
372 on, under, and across the state-owned land.

373       **SECTION 13.** Section 31-11-3, Mississippi Code of 1972, is  
374 amended as follows:

375       31-11-3. (1) The Department of Finance and Administration,  
376 for the purposes of carrying out the provisions of this chapter,  
377 in addition to all other rights and powers granted by law, shall  
378 have full power and authority to employ and compensate architects  
379 or other employees necessary for the purpose of making  
380 inspections, preparing plans and specifications, supervising the  
381 erection of any buildings, and making any repairs or additions as  
382 may be determined by the Department of Finance and Administration  
383 to be necessary, under the rules and regulations of the State  
384 Personnel Board. The department shall have entire control and  
385 supervision of, and determine what, if any, buildings, additions,  
386 repairs or improvements are to be made under the provisions of  
387 this chapter, subject to the approval of the Public Procurement  
388 Review Board.

389       (2) The department shall have full power to erect buildings,  
390 make repairs, additions or improvements, and buy materials,  
391 supplies and equipment for any of the institutions or departments  
392 of the state subject to the approval of the Public Procurement  
393 Review Board. In addition to other powers conferred, the  
394 department shall have full power and authority as directed by the  
395 Legislature, or when funds have been appropriated for its use for  
396 these purposes, to:

397           (a) Build a state office building;  
398           (b) Build suitable plants or buildings for the use and  
399 housing of any state schools or institutions, including the  
400 building of plants or buildings for new state schools or  
401 institutions, as provided for by the Legislature;  
402           (c) Provide state aid for the construction of school  
403 buildings;

404                         (d) Promote and develop the training of returned  
405 veterans of the United States in all sorts of educational and  
406 vocational learning to be supplied by the proper educational  
407 institution of the State of Mississippi, and in so doing, allocate  
408 monies appropriated to it for these purposes to the Governor for  
409 use by him in setting up, maintaining and operating an office and  
410 employing a state director of on-the-job training for veterans and  
411 the personnel necessary in carrying out Public Law No. 346 of the  
412 United States;

413                         (e) Build and equip a hospital and administration  
414 building at the Mississippi State Penitentiary;

415                         (f) Build and equip additional buildings and wards at  
416 the Boswell Retardation Center;

417                         (g) Construct \* \* \* sewage disposal and treatment  
418 plants at the state psychiatric hospitals or institutions, and in  
419 so doing, acquire additional land as may be necessary, and to  
420 exercise the right of eminent domain in the acquisition of this  
421 land;

422                         (h) Build and equip the Mississippi central market and  
423 purchase or acquire by eminent domain, if necessary, any lands  
424 needed for this purpose;

425                         (i) Build and equip suitable facilities for a training  
426 and employing center for the blind;

427                         (j) Build and equip a gymnasium at Columbia Training  
428 School;

429                         (k) Approve or disapprove the expenditure of any money  
430 appropriated by the Legislature when authorized by the bill making  
431 the appropriation;

432                         (l) Expend monies appropriated to it in paying the  
433 state's part of the cost of any street paving;

434                         (m) Sell and convey state lands when authorized by the  
435 Legislature, cause those lands to be properly surveyed and  
436 platted, execute all deeds or other legal instruments, and do any

437 and all other things required to effectively carry out the purpose  
438 and intent of the Legislature. Any transaction that involves  
439 state lands under the provisions of this paragraph shall be done  
440 in a manner consistent with the provisions of Section 29-1-1;

441                 (n) Collect and receive from educational institutions  
442 of the State of Mississippi monies required to be paid by these  
443 institutions to the state in carrying out any veterans'  
444 educational programs;

445                 (o) Purchase lands for building sites, or as additions  
446 to building sites, for the erection of buildings and other  
447 facilities that the department is authorized to erect, and  
448 demolish and dispose of old buildings, when necessary for the  
449 proper construction of new buildings. Any transaction that  
450 involves state lands under the provisions of this paragraph shall  
451 be done in a manner consistent with the provisions of Section  
452 29-1-1; and

453                 (p) Obtain business property insurance with a  
454 deductible of not less than One Hundred Thousand Dollars  
455 (\$100,000.00) on state-owned buildings under the management and  
456 control of the department.

457                 (3) The department shall survey state-owned and  
458 state-utilized buildings to establish an estimate of the costs of  
459 architectural alterations under the Americans With Disabilities  
460 Act of 1990, 42 USCS, Section 12111 et seq. The department shall  
461 establish priorities for making the identified architectural  
462 alterations and shall make known to the Legislative Budget Office  
463 and to the Legislature the required cost to effectuate those  
464 alterations. To meet the requirements of this subsection, the  
465 department shall use standards of accessibility that are at least  
466 as stringent as any applicable federal requirements and may  
467 consider:

468                         (a) Federal minimum guidelines and requirements issued  
469 by the United States Architectural and Transportation Barriers  
470 Compliance Board and standards issued by other federal agencies;  
471                         (b) The criteria contained in the American Standard  
472 Specifications for Making Buildings Accessible and Usable by the  
473 Physically Handicapped and any amendments thereto as approved by  
474 the American Standards Association, Incorporated (ANSI Standards);  
475                         (c) Design manuals;  
476                         (d) Applicable federal guidelines;  
477                         (e) Current literature in the field;  
478                         (f) Applicable safety standards; and  
479                         (g) Any applicable environmental impact statements.

480                         (4) The department shall observe the provisions of Section  
481 31-5-23, in letting contracts and shall use Mississippi products,  
482 including paint, varnish and lacquer that contain as vehicles tung  
483 oil and either ester gum or modified resin (with rosin as the  
484 principal base of constituents), and turpentine shall be used as a  
485 solvent or thinner, where these products are available at a cost  
486 not to exceed the cost of products grown, produced, prepared, made  
487 or manufactured outside of the State of Mississippi.

488                         (5) The department shall have authority to accept grants,  
489 loans or donations from the United States government or from any  
490 other sources for the purpose of matching funds in carrying out  
491 the provisions of this chapter.

492                         (6) The department shall build a wheelchair ramp at the War  
493 Memorial Building that complies with all applicable federal laws,  
494 regulations and specifications regarding wheelchair ramps.

495                         (7) The department shall review and preapprove all  
496 architectural or engineering service contracts entered into by any  
497 state agency, institution, commission, board or authority  
498 regardless of the source of funding used to defray the costs of  
499 the construction or renovation project for which services are to  
500 be obtained. The provisions of this subsection (7) shall not

501 apply to any architectural or engineering contract paid for by  
502 self-generated funds of any of the state institutions of higher  
503 learning, nor shall they apply to community college projects that  
504 are funded from local funds or other nonstate sources that are  
505 outside the Department of Finance and Administration's  
506 appropriations or as directed by the Legislature. The provisions  
507 of this subsection (7) shall not apply to any construction or  
508 design projects of the State Military Department that are funded  
509 from federal funds or other nonstate sources.

510 (8) The department shall have the authority to obtain  
511 annually from the state institutions of higher learning  
512 information on all building, construction and renovation projects  
513 including duties, responsibilities and costs of any architect or  
514 engineer hired by any of those institutions.

515 (9) (a) As an alternative to other methods of awarding  
516 contracts as prescribed by law, the department may use the  
517 design-build method or the design-build bridging method of  
518 contracting for new capital construction projects to be used as a  
519 pilot program for the following projects:

520 (i) Projects for the Mississippi Development  
521 Authority under agreements between both governmental entities;  
522 (ii) Any project with an estimated cost of not  
523 more than Ten Million Dollars (\$10,000,000.00), not to exceed two  
524 (2) projects per fiscal year; and  
525 (iii) Any project that has an estimated cost of  
526 more than Fifty Million Dollars (\$50,000,000.00), not to exceed  
527 one (1) project per fiscal year.

528 (b) As used in this subsection:

529 (i) "Design-build method of contracting" means a  
530 contract that combines the design and construction phases of a  
531 project into a single contract and the contractor is required to  
532 satisfactorily perform, at a minimum, both the design and  
533 construction of the project.

534 (ii) "Design-build bridging method of contracting"  
535 means a contract that requires design through the design  
536 development phase by a professional designer, after which a  
537 request for qualifications for design completion and construction  
538 is required for the completion of the project from a single  
539 contractor that combines the balance of design and construction  
540 phases of a project into a single contract. The contractor is  
541 required to satisfactorily perform, at a minimum, both the balance  
542 of design and construction of the project.

543 (c) The department shall establish detailed criteria  
544 for the selection of the successful design-build/design-build  
545 bridging contractor in each request for design-build/design-build  
546 bridging proposals. The request for qualifications evaluation of  
547 the selection committee is a public record and shall be maintained  
548 for a minimum of three (3) years after project completion.

549 (d) The department shall maintain detailed records on  
550 projects separate and apart from its regular record keeping. The  
551 department shall file a report with the Legislature evaluating the  
552 design-build/design-build bridging method of contracting by  
553 comparing it to the low-bid method of contracting. At a minimum,  
554 the report must include:

555 (i) The management goals and objectives for the  
556 design-build/design-build bridging system of management;

564 (iii) The accountability systems the department  
565 established to monitor any design-build/design-build bridging

566 project's compliance with specific goals and objectives for the  
567 project;

568 (iv) The outcome of any project or any interim  
569 report on an ongoing project let under a design-build/design-build  
570 bridging management system showing compliance with the goals,  
571 objectives, policies and procedures the department set for the  
572 project; and

573 (v) The method used by the department to select  
574 projects to be let under the design-build/design-build bridging  
575 system of management and all other systems, policies and  
576 procedures that the department considered as necessary components  
577 to a design-build/design-build bridging management system.

578 (e) All contracts let under the provisions of this  
579 subsection shall be subject to oversight and review by the State  
580 Auditor.

581 **SECTION 14.** Section 35-5-31, Mississippi Code of 1972, is  
582 amended as follows:

583 35-5-31. (1) Whenever, in any proceeding under the laws of  
584 this state for the commitment of a person alleged to be a person  
585 with mental illness, person with mental retardation, or otherwise  
586 of unsound mind, or otherwise in need of confinement in a hospital  
587 or other institution for his proper care, it is determined after  
588 the adjudication of the status of the person as may be required by  
589 law that commitment to a state psychiatric hospital or institution  
590 or other institution is necessary for safe-keeping or treatment,  
591 and it appears that the person is eligible for care or treatment  
592 by the Veterans Administration or other agency of the United  
593 States government, the court, upon receipt of a certificate from  
594 the Veterans Administration or such other agency showing that  
595 facilities are available and that the person is eligible for care  
596 or treatment in those facilities, may commit the person to the  
597 Veterans Administration or other agency. The person whose  
598 commitment is sought shall be personally served with notice of the

599 pending commitment proceeding in the manner provided by the law of  
600 this state; and nothing in this section shall affect his right to  
601 appear and be heard in the proceedings. Upon commitment, the  
602 person, when admitted to any facility operated by the Veterans  
603 Administration or other agency within or without this state shall  
604 be subject to the rules and regulations of the Veterans  
605 Administration or other agency. The chief officer of any facility  
606 of the Veterans Administration or institution operated by any  
607 other agency of the United States to which the person is so  
608 committed shall, with respect to the person, be vested with the  
609 same powers as superintendents of state psychiatric hospitals or  
610 institutions within this state with respect to retention of  
611 custody, transfer, parole or discharge. Jurisdiction is retained  
612 in the committing or other appropriate court of this state at any  
613 time to inquire into the mental condition of the person so  
614 committed, and to determine the necessity for continuance of his  
615 restraint, and all commitments under this section are so  
616 conditioned.

617 (2) The judgment or order of commitment by a court of  
618 competent jurisdiction of another state or of the District of  
619 Columbia, committing a person to the Veterans Administration or  
620 other agency of the United States government for care or  
621 treatment, shall have the same force and effect as to the  
622 committed person while in this state as in the jurisdiction in  
623 which is situated the court entering the judgment or making the  
624 order, and the courts of the committing state or of the District  
625 of Columbia shall be deemed to have retained jurisdiction of the  
626 person so committed for the purpose of inquiring into the mental  
627 condition of the person and of determining the necessity for  
628 continuance of his restraint, as is provided in subsection (1) of  
629 this section with respect to persons committed by the courts of  
630 this state. Consent is \* \* \* given to the application of the law  
631 of the committing state or District of Columbia in respect to the

632 authority of the chief officer of any facility of the Veterans  
633 Administration or of any institution operated in this state by any  
634 other agency of the United States to retain custody, or transfer,  
635 parole or discharge the committed person.

636       (3) Upon receipt of a certificate of the Veterans  
637 Administration or such other agency of the United States that  
638 facilities are available for the care or treatment of any  
639 person \* \* \* committed to a state psychiatric hospital or \* \* \*  
640 institution \* \* \* or for the care or treatment of persons  
641 similarly afflicted, and that the person is eligible for care or  
642 treatment, the superintendent of the state psychiatric hospital  
643 or institution may cause the transfer of the person to the  
644 Veterans Administration or other agency of the United States for  
645 care or treatment. Upon effecting any such transfer, the  
646 committing court or proper officer of the court shall be notified  
647 of the transfer by the transferring agency. No person shall be  
648 transferred to the Veterans Administration or other agency of the  
649 United States if he is confined because of conviction of any  
650 felony or misdemeanor or if he has been acquitted of the charge  
651 solely on the ground of insanity, unless before transfer, the  
652 court or other authority originally committing the person \* \* \*  
653 enters an order for the transfer after appropriate motion and  
654 hearing.

655       Any person transferred as provided in this section shall be  
656 deemed to be committed to the Veterans Administration or other  
657 agency of the United States under the original commitment.

658       **SECTION 15.** Section 41-17-3, Mississippi Code of 1972, is  
659 amended as follows:

660       41-17-3. The state psychiatric hospital and institution  
661 established at Meridian by the Act of March 8, 1882, shall  
662 continue to exist as a body politic and corporate, under the name  
663 of the "East Mississippi State Hospital," with all the privileges  
664 conferred and the duties enjoined by law. It may hold and use, as

665 required by law, all the property, real and personal, belonging to  
666 or that may be given to it for the purposes of its establishment.

667       **SECTION 16.** Section 41-17-11, Mississippi Code of 1972, is  
668 amended as follows:

669       41-17-11. The directors of the state institutions listed in  
670 Section 41-7-73 each may receive any monies that the United States  
671 government may offer as federal aid in taking care of and giving  
672 special attention to those persons who served with the Armed  
673 Forces of the United States during time of war \* \* \* and who are  
674 now in or may hereafter be in any of those state institutions.  
675 Each of those directors may expend that part of the money paid to  
676 him or his institution, according to his best judgment and the  
677 requirements of the United States government under which the money  
678 is received.

679       **SECTION 17.** Section 41-21-35, Mississippi Code of 1972, is  
680 amended as follows:

681       41-21-35. The rule as to the legal settlement of paupers  
682 shall apply in cases of persons with mental illness and \* \* \*  
683 persons with mental retardation.

684       **SECTION 18.** Section 43-31-35, Mississippi Code of 1972, is  
685 amended as follows:

686       43-31-35. If any person commanding a ship, vessel,  
687 steamboat, or other watercraft imports into this state, or brings  
688 to the shores or within the limits thereof, any infant, person  
689 with mental illness, maimed, aged or infirm person or vagrant who  
690 is likely to become chargeable on the county, on the requisition  
691 of the supervisor of the district or the mayor of any  
692 municipality, the captain, master, or commander of the ship,  
693 vessel, steamboat, or other watercraft shall enter into bond with  
694 sufficient sureties, payable to the county, conditioned to  
695 indemnify the county against all charges that may be incurred in  
696 the support and care of that person. Any captain, master, or  
697 commander failing or refusing to give the bond required shall

698 forfeit and pay to the county the sum of Two Hundred Dollars  
699 (\$200.00) for each infant, person with mental illness, maimed,  
700 aged, or infirm person or vagrant so brought into the state, to be  
701 recovered by action.

702       **SECTION 19.** Section 67-1-83, Mississippi Code of 1972, is  
703 amended as follows:

704       67-1-83. (1) It shall be unlawful for any permittee or  
705 other person to sell or furnish any alcoholic beverage \* \* \* to  
706 any person who is visibly intoxicated, or to any person who is  
707 known to habitually drink alcoholic beverages to excess, or to any  
708 person who is known to be an habitual user of narcotics or other  
709 habit-forming drugs. It shall also be unlawful for the holder of  
710 any package retailer's permit to sell any alcoholic beverages  
711 except by delivery in person to the purchaser at the place of  
712 business of the permittee.

713       (2) It shall be unlawful for any permittee or other person  
714 to sell or furnish any alcoholic beverage to any person to whom  
715 the commission has, after investigation, decided to prohibit the  
716 sale of those beverages because of an appeal to the commission so  
717 to do by the husband, wife, father, mother, brother, sister,  
718 child, or employer of the person. The interdiction in those cases  
719 shall last until removed by the commission, but no person shall be  
720 held to have violated this subsection unless he has been informed  
721 by the commission, by registered letter, that it is forbidden to  
722 sell to that individual or unless that fact is otherwise known to  
723 the permittee or other person.

724       (3) It shall be unlawful for any holder of a package  
725 retailer's permit, or any employee or agent thereof, engaged  
726 solely in the business of package retail sales under this chapter  
727 to sell or furnish any alcoholic beverage before 10:00 a.m. and  
728 after 10:00 p.m. or to sell alcoholic beverages on Sunday and  
729 Christmas Day.

730                 (4) Any person who \* \* \* violates any of the provisions of  
731 this section shall be guilty of a misdemeanor and, upon  
732 conviction, shall be punished by a fine of not more than Five  
733 Hundred Dollars (\$500.00) or by imprisonment in the county jail  
734 for a term of not more than six (6) months or by both that fine  
735 and imprisonment, in the discretion of the court. In addition,  
736 the commission shall immediately revoke the permit of any  
737 permittee who violates the provisions of this section.

738                 **SECTION 20.** Section 67-3-53, Mississippi Code of 1972, is  
739 amended as follows:

740                 67-3-53. In addition to any act declared to be unlawful by  
741 this chapter, or by Sections 27-71-301 through 27-71-347, and  
742 Sections 67-3-17, 67-3-27, 67-3-29 and 67-3-57, it shall be  
743 unlawful for the holder of a permit authorizing the sale of beer  
744 or light wine at retail or for the employee of the holder of such  
745 a permit:

746                     (a) To sell or give to be consumed in or upon any  
747 licensed premises any beer or light wine between the hours of  
748 midnight and seven o'clock the following morning or during any  
749 time the licensed premises may be required to be closed by  
750 municipal ordinance or order of the board of supervisors; \* \* \*  
751 however, in areas where the sale of alcoholic beverages is legal  
752 under the provisions of the Local Option Alcoholic Beverage  
753 Control Law and the hours for selling those alcoholic beverages  
754 have been extended beyond midnight for on-premises permittees  
755 under Section 67-1-37, the hours for selling beer or light wines  
756 are likewise extended in areas where the sale of beer and light  
757 wines is legal in accordance with the provisions of this chapter.

758                     (b) To sell, give or furnish any beer or light wine to  
759 any person visibly or noticeably intoxicated, \* \* \* or to any  
760 habitual drunkard, or to any person under the age of twenty-one  
761 (21) years.

762                         (c) To permit in the premises any lewd, immoral or  
763 improper entertainment, conduct or practices.

764                         (d) To permit loud, boisterous or disorderly conduct of  
765 any kind upon the premises or to permit the use of loud musical  
766 instruments if either or any of the same may disturb the peace and  
767 quietude of the community in which the business is located.

768                         (e) To permit persons of ill repute, known criminals,  
769 prostitutes or minors to frequent the licensed premises, except  
770 minors accompanied by parents or guardians, or under proper  
771 supervision.

772                         (f) To permit or suffer illegal gambling or the  
773 operation of illegal games of chance upon the licensed premises.

774                         (g) To receive, possess or sell on the licensed  
775 premises any beverage of any kind or character containing more  
776 than five percent (5%) of alcohol by weight unless the licensee  
777 also possesses an on-premises permit under the Local Option  
778 Alcoholic Beverage Control Law.

779                 **SECTION 21.** Section 73-19-23, Mississippi Code of 1972, is  
780 amended as follows:

781                 73-19-23. (1) The board shall refuse to grant a certificate  
782 of licensure to any applicant and may cancel, revoke or suspend  
783 the operation of any certificate by it granted for any or all of  
784 the following reasons \* \* \*: unprofessional and unethical conduct  
785 or the conviction of a crime involving moral turpitude, habitual  
786 intemperance in the use of ardent spirits, or stimulants,  
787 narcotics, or any other substance that impairs the intellect and  
788 judgment to such an extent as to incapacitate one for the  
789 performance of the duties of an optometrist. The certificate of  
790 licensure of any person can be revoked for violating any section  
791 of this chapter.

792                 (2) The board shall further be authorized to take  
793 disciplinary action against a licensee for any unlawful acts,

794 which shall include violations of regulations promulgated by the  
795 board, as well as the following acts:

796                 (a) Fraud or misrepresentation in applying for or  
797 procuring an optometric license or in connection with applying for  
798 or procuring periodic renewal of an optometric license.

799                 (b) Cheating on or attempting to subvert the optometric  
800 licensing examination(s).

801                 (c) The conviction of a felony in this state or any  
802 other jurisdiction, or the entry of guilty or nolo contendere plea  
803 to a felony charge.

804                 (d) The conviction of a felony as defined by federal  
805 law, or the entry of a guilty or nolo contendere plea to a felony  
806 charge.

807                 (e) Conduct likely to deceive, defraud or harm the  
808 public.

809                 (f) Making a false or misleading statement regarding  
810 his or her skill or the efficacy or value of the medicine, device,  
811 treatment or remedy prescribed by him or her or used at his or her  
812 direction in the treatment of any disease or other condition.

813                 (g) Willfully or negligently violating the  
814 confidentiality between doctor and patient, except as required by  
815 law.

816                 (h) Negligence or gross incompetence in the practice of  
817 optometry as determined by the board.

818                 (i) Being found to be a person with mental illness or  
819 mental retardation by any court of competent jurisdiction.

820                 (j) The use of any false, fraudulent, deceptive or  
821 misleading statement in any document connected with the practice  
822 of optometry.

823                 (k) Aiding or abetting the practice of optometry by an  
824 unlicensed, incompetent or impaired person.

825                 (l) Commission of any act of sexual abuse, misconduct  
826 or exploitation related to the licensee's practice of optometry.

827 (m) Being addicted or habituated to a drug or  
828 intoxicant.

831 (o) Obtaining any fee by fraud, deceit or  
832 misrepresentation.

840 (q) Failure to report to the board the relocation of  
841 his or her office in or out of the jurisdiction, or to furnish  
842 floor plans as required by regulation.

843                             (r) Violation of any provision(s) of the Optometry  
844 Practice Act or the rules and regulations of the board or of an  
845 action, stipulation or agreement of the board.

848                             (t) The designation of any person licensed under this  
849 chapter, other than by the terms "optometrist," "Doctor of  
850 Optometry" or "O.D."

854 (v) To practice or attempt to practice optometry while  
855 his or her license is suspended.

856                   (3) Any person who is holder of a certificate of licensure  
857 or who is an applicant for examination for a certificate of  
858 licensure, against whom is preferred any charges, shall be  
859 furnished by the board with a copy of the complaint and shall have

860 a hearing in Jackson, Mississippi, before the board, at which  
861 hearing he may be represented by counsel. At the hearing,  
862 witnesses may be examined for and against the accused respecting  
863 those charges, and the hearing orders or appeals will be conducted  
864 according to the procedure now provided in Section 73-25-27. The  
865 suspension of a certificate of licensure by reason of the use of  
866 stimulants or narcotics may be removed when the holder of the  
867 certificate has been adjudged by the \* \* \* board to be cured and  
868 capable of practicing optometry.

869 (4) In addition to the reasons specified in subsections (1)  
870 and (2) of this section, the board shall be authorized to suspend  
871 the license of any licensee for being out of compliance with an  
872 order for support, as defined in Section 93-11-153. The procedure  
873 for suspension of a license for being out of compliance with an  
874 order for support, and the procedure for the reissuance or  
875 reinstatement of a license suspended for that purpose, and the  
876 payment of any fees for the reissuance or reinstatement of a  
877 license suspended for that purpose, shall be governed by Section  
878 93-11-157 or 93-11-163, as the case may be. If there is any  
879 conflict between any provision of Section 93-11-157 or 93-11-163  
880 and any provision of this chapter, the provisions of Section  
881 93-11-157 or 93-11-163, as the case may be, shall control.

882 **SECTION 22.** Section 73-39-19, Mississippi Code of 1972, is  
883 amended as follows:

884 73-39-19. (1) After a hearing held as set out in this  
885 chapter, the board, on concurrence of three (3) members, shall  
886 have the right and power to revoke or suspend the license of a  
887 veterinarian, or the certificate of an animal technician and may  
888 place the veterinarian or technician on probation conditioned on  
889 future good conduct and compliance with this chapter, and may  
890 impose an administrative fine not to exceed One Thousand Dollars  
891 (\$1,000.00) for each such separate offense, for any of the  
892 following reasons:

893                         (a) \* \* \* An adjudication of \* \* \* mental incompetence  
894 by a court of competent jurisdiction.

895                         (b) Chronic inebriety or habitual use of drugs, or any  
896 adjudication by a court of competent jurisdiction that the  
897 veterinarian is an alcoholic or habitual user of drugs. Decrees  
898 of divorce shall not be construed as an adjudication that a  
899 veterinarian is an alcoholic or habitual user of drugs.

900                         (c) A final conviction of a felony or of an offense  
901 involving moral turpitude by a court of competent jurisdiction.

902                         (d) Fraud or dishonesty in the application or reporting  
903 of any test for disease in animals, including intentional  
904 misrepresentation on any forms filed with any governmental agency.

905                         (e) Failure to report or making a false report of any  
906 contagious or infectious disease required by state or federal law  
907 to be reported.

908                         (f) Dishonesty, intentional misrepresentation or gross  
909 negligence in the inspection of foodstuffs or the issuance of  
910 health or inspection certificates.

911                         (g) The refusal of licensing authority of another state  
912 to issue or renew a license, permit or certificate to practice  
913 veterinary medicine in that state or the revocation, suspension or  
914 other restriction imposed on a license, permit or certificate  
915 issued by the licensing authority that prevents or restricts  
916 practice in that state; in addition, any probationary status  
917 imposed by another state that, if the offense occurred in this  
918 state, would have been a violation of this chapter.

919                         (h) The employment of fraud, misrepresentation or  
920 deception in obtaining a license.

921                         (i) The use of advertising or solicitation that is  
922 false or misleading or is deemed unprofessional under rules or  
923 regulations adopted by the board.

924                         (j) Incompetence, gross negligence, cruelty or gross  
925 malpractice in the practice of veterinary medicine.

926                         (k) Employing any person practicing veterinary medicine  
927 unlawfully with the knowledge of that illegal practice by the  
928 employee.

929                         (l) Failure to keep veterinary premises and equipment  
930 in a clean and sanitary condition.

931                         (m) Cruelty to animals in the practice of veterinary  
932 medicine.

933                         (n) Unprofessional or unethical conduct as defined in  
934 regulations adopted by the board.

935                         (o) Administering, dispensing or prescribing any  
936 narcotic drug having addiction-forming, addiction-sustaining or  
937 habituating liability otherwise than in the course of legitimate  
938 professional practice.

939                         (p) Conviction of violation of any federal or state law  
940 regulating the possession, distribution or use of any narcotic  
941 drug or any drug considered a controlled substance under state or  
942 federal law.

943                         (q) Obtaining or procuring, or attempting to obtain or  
944 procure by misrepresentation, fraud, deception or subterfuge, any  
945 narcotic or drug classified as a controlled substance.

946                         (r) Making or causing to be made any false claims  
947 concerning the licensee's professional excellence.

948                         (s) Being guilty of any dishonorable or unethical  
949 conduct likely to deceive, defraud or harm the public.

950                         (t) Refusing to permit the board or any legal  
951 representative of the board to inspect the business premises of  
952 the licensee during regular business hours.

953                         (u) Failure to complete requirement of continuing  
954 education.

955                         (2) A certified copy of any judgment of conviction or  
956 finding of guilt by a court of competent jurisdiction or by a  
957 governmental board or agency authorized to issue licenses or  
958 permits, including the United States Department of Agriculture,

959 Animal and Plant Health Inspection Service, the Mississippi Board  
960 of Animal Health and the Mississippi State Board of Health, of a  
961 veterinarian or animal technician of any of the matters listed in  
962 paragraph (a), (b), (c), (d), (e), (f) or (g) of subsection (1)  
963 shall be admissible in evidence in any hearing held by the board  
964 to discipline the veterinarian and shall constitute prima facie  
965 evidence of the commission of any such act.

966 (3) In addition to the reasons specified in subsection (1)  
967 of this section, the board shall be authorized to suspend the  
968 license or certificate of any licensee or certificate holder for  
969 being out of compliance with an order for support, as defined in  
970 Section 93-11-153. The procedure for suspension of a license or  
971 certificate for being out of compliance with an order for support,  
972 and the procedure for the reissuance or reinstatement of a license  
973 or certificate suspended for that purpose, and the payment of any  
974 fees for the reissuance or reinstatement of a license or  
975 certificate suspended for that purpose, shall be governed by  
976 Section 93-11-157 or 93-11-163, as the case may be. If there is  
977 any conflict between any provision of Section 93-11-157 or  
978 93-11-163 and any provision of this chapter, the provisions of  
979 Section 93-11-157 or 93-11-163, as the case may be, shall control.

980 **SECTION 23.** Section 81-5-33, Mississippi Code of 1972, is  
981 amended as follows:

982 81-5-33. Banks may accept and execute all such trusts and  
983 perform such duties of every description as may be committed to  
984 them by any person or corporation or that may be committed or  
985 transferred to them by order of any court of record. They may  
986 receive money in trust, take and accept by grant, assignment,  
987 transfer, devise or bequest, and hold any real or personal estate  
988 or trusts created according to the laws of this or any other state  
989 or of the United States, and execute those legal trusts in regard  
990 to the same, on such terms as may be directed or agreed  
991 upon \* \* \*. They may act as agent for the investment of money or

992 the management of property for other persons, and as agent for  
993 persons and corporations for the purpose of issuing, registering,  
994 transferring or countersigning the certificates of stock, bonds or  
995 other evidences of debt of any corporation, association,  
996 municipality, state, county or public authority on such terms as  
997 may be agreed upon. They also may act as guardian for any minor  
998 or \* \* \* person with mental illness under the appointment of any  
999 court of record having jurisdiction of the person or estate of  
1000 the minor or \* \* \* person with mental illness and may act as  
1001 administrator or executor of the estate of any deceased person.  
1002 They may act as agent or attorney in fact and as commissioner for  
1003 the sale of property, both real and personal, and may act as  
1004 assignee or receiver, or as trustee in mortgages or bond issues,  
1005 or in any other fiduciary capacity authorized by law. They may  
1006 accept trust funds or other property upon specially agreed terms  
1007 and pay or deliver the same to the owners, beneficiaries or  
1008 others, as the case may be, when and as the same should be paid or  
1009 delivered according to the terms of the trust agreement under  
1010 which it is held. Whenever under the laws of this or any other  
1011 state or under the rule or order of any court, the execution of a  
1012 bond for the protection of a private or court trust is required, a  
1013 trust company shall be authorized to execute the bond for the  
1014 protection of any trust or trust estate being administered by it.

1015 Banking corporations created, organized and doing business  
1016 under the laws of the State of Mississippi may exercise, without  
1017 amendment of their charters, and under their charter authority to  
1018 engage in the general business of banking, all or any of the  
1019 foregoing powers. However, before any bank whose charter merely  
1020 authorizes the exercise of general banking functions may exercise  
1021 those powers, the previous written consent of the Commissioner of  
1022 Banking and Consumer Finance shall be obtained.

1023 Banks exercising any or all of those powers shall segregate  
1024 all assets held in any fiduciary capacity from the general assets

1025 of the bank and shall keep a separate set of books and records  
1026 showing in proper detail all transactions engaged in under the  
1027 authority of this section or under the authority \* \* \* granted to  
1028 them in their charter or otherwise. Those books and records shall  
1029 be inspected and examined by the state bank examiners at each and  
1030 every examination of the bank.

1031 No bank shall receive in its trust department deposits of  
1032 current funds subject to check or the deposit of checks, drafts,  
1033 bills of exchange or other items for collection or exchange  
1034 purposes. Funds deposited or held in trust by the bank awaiting  
1035 investment or distribution shall be carried in a separate account  
1036 and shall not be used by the bank in the conduct of its business,  
1037 unless it \* \* \* first sets aside in the trust department United  
1038 States bonds or bonds of the State of Mississippi or any  
1039 subdivision of the state, the market value of which shall at all  
1040 times be not less than ten percent (10%) in excess of the total  
1041 funds so held, exclusive of the portion of funds insured by the  
1042 Federal Deposit Insurance Corporation.

1043 In the event of the failure or liquidation of the bank, the  
1044 owners of the funds held in trust for investment or distribution  
1045 shall have a prior lien on the bonds or other securities so set  
1046 apart in addition to their claim against the assets of the bank.

1047 In any case in which the laws of this state require that one  
1048 acting as trustee, executor, administrator or in any fiduciary  
1049 capacity must take an oath or make an affidavit, the president,  
1050 vice president, cashier or trust officer of a bank may take the  
1051 necessary oath or execute the necessary affidavit.

1052 In making investments of trust funds, it shall be unlawful  
1053 for any bank to purchase securities from itself or to purchase  
1054 securities in which it may be interested, directly or indirectly.  
1055 However, any bank, including a national bank, authorized to do  
1056 business in this state in a fiduciary capacity may, unless  
1057 prohibited or otherwise limited by the instrument governing the

1058 fiduciary relationship, in the exercise of its investment  
1059 discretion or at the direction of another person authorized to  
1060 direct the investment of funds held by the bank as fiduciary,  
1061 invest and reinvest in the securities of, or other interests in,  
1062 any open-end or closed-end management type investment company or  
1063 investment trust registered under the Investment Company Act of  
1064 1940, 15 USCS Section 80a-1, et seq., as amended, notwithstanding  
1065 that the banking institution or affiliate of the banking  
1066 institution provides services to the investment company or  
1067 investment trust, such as that of an investment advisor,  
1068 custodian, transfer agent, registrar, sponsor, distributor,  
1069 manager or otherwise, and receives reasonable remuneration for  
1070 those services, so long as the total compensation paid by the  
1071 trust or custodial estate as trustee's fees and mutual fund fees  
1072 is reasonable, taking into account the nature and extent of the  
1073 trustee's duties, the nature and extent of the services provided  
1074 to the investment company or investment trust, and the total  
1075 compensation, costs and fees that would otherwise be paid,  
1076 directly or indirectly, by the trust or custodial estate if the  
1077 investment were made in an investment company or investment trust  
1078 for which the bank or its affiliates provided no services. With  
1079 respect to any funds so invested, the banking institution shall  
1080 make available by statement, prospectus or otherwise to all  
1081 current income beneficiaries of an account the basis, expressed as  
1082 a percentage of asset value or otherwise, upon which the  
1083 remuneration is calculated. No bank shall lend to any officer,  
1084 director or employee of the bank any funds held in trust by it,  
1085 and any officer, director or employee making a loan, or to whom  
1086 such a loan is made, shall be guilty of a felony and, upon  
1087 conviction, may be fined not more than Five Thousand Dollars  
1088 (\$5,000.00) or imprisoned in the State Penitentiary for not more  
1089 than five (5) years, or by both that fine and imprisonment, in the  
1090 discretion of the court.

1091       **SECTION 24.** Section 81-27-6.307, Mississippi Code of 1972,  
1092 is amended as follows:

1093       81-27-6.307. (a) A limited liability trust company  
1094 organized under this article is dissolved on:

1095               (1) The expiration of the period fixed for the duration  
1096 of the limited liability trust company;

1097               (2) A vote to dissolve or the execution of a written  
1098 consent to dissolve by all full liability participants, if any,  
1099 and a sufficient number of other participants that combined with  
1100 all full liability participants hold at least two-thirds (2/3) of  
1101 the participation shares in each class in the association, or a  
1102 greater fraction as provided by the articles of association;

1103               (3) Except as provided by the articles of association,  
1104 the death, adjudication of incompetence, expulsion, bankruptcy,  
1105 retirement, or resignation of a participant unless a majority in  
1106 interest of all remaining participants elect in writing not later  
1107 than the ninetieth day after the date of the event to continue the  
1108 business of the association; or

1109               (4) The occurrence of an event of dissolution specified  
1110 in the articles of association.

1111       (b) A dissolution under this section is considered to be the  
1112 initiation of a voluntary liquidation under Subarticle B of  
1113 Article 7 of this chapter.

1114       (c) An event of dissolution described by subsection (a)(3)  
1115 of this section does not cancel or revoke a contract to which the  
1116 state trust company is a party, including a trust indenture or  
1117 agreement or voluntary dissolution under Subarticle B of Article 7  
1118 of this chapter, until the period for the remaining participants  
1119 to continue the business of the state trust company has expired  
1120 without the remaining participants having completed the necessary  
1121 action to continue the business of the state trust company.

1122       **SECTION 25.** Section 89-1-29, Mississippi Code of 1972, is  
1123 amended as follows:

1124       89-1-29. A conveyance, mortgage, deed of trust or other  
1125 incumbrance upon a homestead exempted from execution shall not be  
1126 valid or binding unless signed by the spouse of the owner if the  
1127 owner is married and living with the spouse. But where the spouse  
1128 of the owner of the homestead exempted from execution has been  
1129 adjudicated incompetent, then the owner of the homestead, may file  
1130 a petition in the chancery court and allege in the petition the  
1131 incompetence of the spouse and the adjudication of incompetency of  
1132 the spouse \* \* \* and the facts of the case. The summons for the  
1133 spouse who has been adjudicated incompetent shall be issued and be  
1134 served in the same manner as process is served in other cases on  
1135 \* \* \* persons who are incompetent. The court shall hear the case  
1136 in vacation or in termtime as in other cases, and if the court  
1137 finds the spouse to be incompetent and the owner entitled to  
1138 relief, the court by decree shall authorize and empower the owner  
1139 to execute a conveyance, mortgage, deed of trust or other  
1140 incumbrance upon the homestead without the signature of the  
1141 spouse. However, no mortgage or deed of trust executed in favor  
1142 of the Farmers Home Administration at the time of the purchase of  
1143 real estate to secure the payment of the money used to purchase  
1144 the real estate shall be invalid because it is not signed by the  
1145 spouse of the owner.

1146       **SECTION 26.** Section 93-1-5, Mississippi Code of 1972, is  
1147 amended as follows:

1148       93-1-5. It shall be unlawful for the circuit court clerk to  
1149 issue a marriage license until the following conditions precedent  
1150 have been complied with:

1151           (a) Parties desiring a marriage license shall make  
1152 application for the license in writing to the clerk of the circuit  
1153 court of any county in the State of Mississippi; \* \* \*  
1154 however, \* \* \* if the female applicant is under the age of  
1155 twenty-one (21) years and is a resident of the State of  
1156 Mississippi, the application shall be made to the circuit court

1157 clerk of the county of residence of the female applicant. The  
1158 application shall be immediately filed with the circuit court  
1159 clerk and shall include the names, ages and addresses of the  
1160 parties applying; the names and addresses of the parents of the  
1161 parties applying, and if no parents, then names and addresses of  
1162 the guardian or next of kin; the signatures of witnesses; and any  
1163 other data that may be required by law or the \* \* \* State Board of  
1164 Health. The application shall be sworn to by both applicants.

1165 (b) The application shall remain on file, open to the  
1166 public, in the office of the circuit court clerk for a period of  
1167 three (3) days before the clerk is authorized to issue the  
1168 marriage license. \* \* \* However, \* \* \* if satisfactory proof is  
1169 furnished to the judge of any circuit, chancery or county court  
1170 that sufficient reasons exist, then the judge of any such court in  
1171 the judicial district where either of the parties resides if they  
1172 are over the age of twenty-one (21) years, or where the female  
1173 resides if she is under the age of twenty-one (21), may waive the  
1174 three-day waiting period and by written instrument authorize the  
1175 clerk of the court to issue the marriage license to the parties if  
1176 they are otherwise qualified by law. Authorization shall be a  
1177 part of the confidential files of the clerk of the court, subject  
1178 to inspection only by written permission of the judge. If either  
1179 of the applying parties appears from the evidence to be under  
1180 twenty-one (21) years of age, the circuit court clerk, immediately  
1181 upon filing the application, shall cause notice of the filing of  
1182 the application to be sent by prepaid certified mail to the  
1183 father, mother, guardian or next of kin of both applying parties  
1184 at the address named in the application.

1185 (c) An affidavit showing the age of both applying  
1186 parties shall be made by either the father, mother, guardian or  
1187 next of kin of each of the contracting parties and filed with the  
1188 clerk of the circuit court along with the application; or in lieu  
1189 thereof, \* \* \* both applying parties shall appear in person before

1190 the circuit court clerk and make and subscribe an oath in person,  
1191 which \* \* \* affidavit shall be attached to and noted on the  
1192 application for the marriage license. In addition to either of  
1193 the previous conditions stated, further proof of age shall be  
1194 presented to the circuit court clerk in the form of either a birth  
1195 certificate, baptismal record, armed service discharge, armed  
1196 service identification card, life insurance policy, insurance  
1197 certificate, school record, driver's license, or other official  
1198 document evidencing age. The document substantiating age and date  
1199 of birth shall be examined by the circuit court clerk before whom  
1200 application is made, and the circuit court clerk shall retain in  
1201 his file with the application the document or a certified or  
1202 photostatic copy of the document.

1203 (d) The clerk shall not issue a marriage license under  
1204 the provisions of this section unless the male applicant is at  
1205 least seventeen (17) years of age and the female is at least  
1206 fifteen (15) years of age; \* \* \* however, \* \* \* if satisfactory  
1207 proof is furnished to the judge of any circuit, chancery or county  
1208 court that sufficient reasons exist and that the parties desire to  
1209 be married to each other and that the parents or other person in  
1210 loco parentis of the person or persons so under age consent to the  
1211 marriage, then the judge of any such court in the county where  
1212 either of the parties resides may waive the minimum age  
1213 requirement and by written instrument authorize the clerk of the  
1214 court to issue the marriage license to the parties if they are  
1215 otherwise qualified by law. Authorization shall be a part of the  
1216 confidential files of the clerk of the court, subject to  
1217 inspection only by written permission of the judge.

1218 (e) A medical certificate dated within thirty (30) days  
1219 before the application shall be presented to the circuit court  
1220 clerk showing that the applicant is free from syphilis, as nearly  
1221 as can be determined by a blood test performed in a laboratory  
1222 approved by the State Board of Health. The medical certificate

1223 may be obtained through the local health department by the  
1224 applicant or applicants, or it may be obtained through any private  
1225 laboratory approved by the State Board of Health. The medical  
1226 certificate shall be examined by the circuit court clerk and filed  
1227 in a permanent file kept by the clerk for this purpose.

1228 (f) In no event shall a license be issued by the  
1229 circuit court clerk when it appears to the circuit court clerk  
1230 that the applicants are, or either of them is, drunk or a person  
1231 with mental illness or mental retardation, to the extent that the  
1232 clerk believes that the person does not understand the nature and  
1233 consequences of the request.

1234 Any circuit clerk shall be liable under his official bond  
1235 because of noncompliance with the provisions of this section.

1236 Any circuit court clerk who issues a marriage license without  
1237 complying with the provisions of this section shall be guilty of a  
1238 misdemeanor and, upon conviction, shall be punished by a fine of  
1239 not less than Fifty Dollars (\$50.00) and not more than Five  
1240 Hundred Dollars (\$500.00).

1241 **SECTION 27.** Section 93-5-1, Mississippi Code of 1972, is  
1242 amended as follows:

1243 93-5-1. Divorces from the bonds of matrimony may be decreed  
1244 to the injured party for any one or more of the following twelve  
1245 (12) causes \* \* \*:

1246 First. Natural impotency.

1247 Second. Adultery, unless it should appear that it was  
1248 committed by collusion of the parties for the purpose of procuring  
1249 a divorce, or unless the parties cohabited after a knowledge by  
1250 complainant of the adultery.

1251 Third. Being sentenced to any penitentiary, and not pardoned  
1252 before being sent there.

1253 Fourth. Wilful, continued and obstinate desertion for the  
1254 space of one (1) year.

1255 Fifth. Habitual drunkenness.

1256         Sixth. Habitual and excessive use of opium, morphine or  
1257 other like drug.

1258         Seventh. Habitual cruel and inhuman treatment.

1259         Eighth. Mental illness or mental retardation at the time of  
1260 marriage, if the party complaining did not know of that infirmity.

1261         Ninth. Marriage to some other person at the time of the  
1262 pretended marriage between the parties.

1263         Tenth. Pregnancy of the wife by another person at the time  
1264 of the marriage, if the husband did not know of the pregnancy.

1265         Eleventh. Either party may have a divorce if they are  
1266 related to each other within the degrees of kindred between whom  
1267 marriage is prohibited by law.

1268         Twelfth. Incurable mental illness. However, no divorce  
1269 shall be granted upon this ground unless the \* \* \* party with  
1270 mental illness has been under regular treatment for mental illness  
1271 and causes thereof, confined in an institution for persons with  
1272 mental illness for a period of at least three (3) years  
1273 immediately preceding the commencement of the action. \* \* \*  
1274 However, \* \* \* transfer of a party with mental illness to his or  
1275 her home for treatment or a trial visit on prescription or  
1276 recommendation of a licensed physician, which treatment or trial  
1277 visit proves unsuccessful after a bona fide effort by the  
1278 complaining party to effect a cure, upon the reconfinement of  
1279 the \* \* \* party with mental illness in an institution for persons  
1280 with mental illness, shall be regular treatment for mental illness  
1281 and causes thereof, and the period of time so consumed in seeking  
1282 to effect a cure or while on a trial visit home shall be added to  
1283 the period of actual confinement in an institution for persons  
1284 with mental illness in computing the required period of three (3)  
1285 years confinement immediately preceding the beginning of the  
1286 action. No divorce shall be granted because of mental illness  
1287 until after a thorough examination of the person with mental  
1288 illness by two (2) physicians who are recognized authorities on

1289 mental diseases. One of those physicians shall be either the  
1290 superintendent of a state psychiatric hospital or institution or a  
1291 veterans hospital for persons with mental illness in which the  
1292 patient is confined, or a member of the medical staff of that  
1293 hospital or institution who has had the patient in charge. Before  
1294 incurable mental illness can be successfully proven as a ground  
1295 for divorce, it shall be necessary that both of those physicians  
1296 make affidavit that the patient is a \* \* \* person with mental  
1297 illness at the time of the examination, and both affidavits shall  
1298 be made a part of the permanent record of the divorce proceedings  
1299 and shall create the prima facie presumption of incurable mental  
1300 illness, such as would justify a divorce based on that ground.  
1301 Service of process shall be made on the superintendent of the  
1302 hospital or institution in which the defendant is a patient. If  
1303 the patient is in an hospital or institution outside the state,  
1304 process shall be served by publication, as in other cases of  
1305 service by publication, together with the sending of a copy by  
1306 registered mail to the superintendent of the hospital or  
1307 institution. In addition \* \* \*, process shall be served upon the  
1308 next blood relative and guardian, if any. If there is no legal  
1309 guardian, the court shall appoint a guardian ad litem to represent  
1310 the interest of the \* \* \* person with mental illness. The  
1311 relative or guardian and superintendent of the hospital or  
1312 institution shall be entitled to appear and be heard upon any and  
1313 all issues. The status of the parties as to the support and  
1314 maintenance of the \* \* \* person with mental illness shall not be  
1315 altered in any way by the granting of the divorce.

1316       However, in the discretion of the chancery court, and in  
1317 those cases as the court may deem it necessary and proper, before  
1318 any such decree is granted on the ground of incurable mental  
1319 illness, the complainant, when ordered by the court, shall enter  
1320 into bond, to be approved by the court, in such an amount as the  
1321 court may think just and proper, conditioned for the care and

1322 keeping of the person with mental illness during the remainder of  
1323 his or her natural life, unless the person with mental illness has  
1324 a sufficient estate in his or her own right for that purpose.

1325       **SECTION 28.** Section 93-5-13, Mississippi Code of 1972, is  
1326 amended as follows:

1327       93-5-13. If the defendant is an infant or a person with  
1328 mental illness, the court may appoint a guardian ad litem for the  
1329 defendant.

1330       **SECTION 29.** Section 93-5-15, Mississippi Code of 1972, is  
1331 amended as follows:

1332       93-5-15. From and after March 15, 1934, any marital contract  
1333 previously or hereafter solemnized by and under which parties have  
1334 been duly and legally married, and one (1) of the parties to the  
1335 marriage contract has \* \* \* become or becomes mentally ill to such  
1336 an extent that it is necessary for a guardian to be appointed for  
1337 that party, and the other party to the marital contract has  
1338 committed any act that constitutes ground for divorce under the  
1339 present laws, the guardian for the party with mental illness to  
1340 the contract of marriage shall have the right to file a bill as  
1341 the guardian, in the name of his ward, for the dissolution of the  
1342 marriage, in the same way and manner and at the same place and on  
1343 the same process that the person with mental illness could have  
1344 done, if he had \* \* \* not become mentally ill.

1345       **SECTION 30.** Section 93-7-3, Mississippi Code of 1972, is  
1346 amended as follows:

1347       93-7-3. A marriage may be annulled for any one (1) of the  
1348 following causes existing at the time of the marriage  
1349 ceremony \* \* \*:

1350               (a) Incurable impotency.

1351               (b) Adjudicated mental illness or incompetence of  
1352 either or both parties. Action of a spouse who has been  
1353 adjudicated mentally ill or incompetent may be brought by  
1354 guardian, or in the absence of a guardian, by next friend,

1355 provided that the suit is brought within six (6) months after  
1356 marriage.

1357 (c) Failure to comply with the provisions of Sections  
1358 93-1-5 through 93-1-9 when any marriage affected by that failure  
1359 has not been followed by cohabitation.

1360 Or, in the absence of ratification:

1361 (d) When either of the parties to a marriage is  
1362 incapable, from want of age or understanding, of consenting to any  
1363 marriage, or is incapable from physical causes of entering into  
1364 the marriage state, or where the consent of either party has been  
1365 obtained by force or fraud, the marriage shall be void from the  
1366 time its nullity is declared by a court of competent jurisdiction.

1367 (e) Pregnancy of the wife by another person, if the  
1368 husband did not know of the pregnancy.

1369 Suits for annulment under paragraphs (d) and (e) shall be  
1370 brought within six (6) months after the ground for annulment is or  
1371 should be discovered, and not thereafter.

1372 The causes for annulment of marriage set forth in this  
1373 section are intended to be new remedies and shall in no way affect  
1374 the causes for divorce declared elsewhere to be the law of the  
1375 State of Mississippi as they presently exist or as they may from  
1376 time to time be amended.

1377 **SECTION 31.** Section 93-13-123, Mississippi Code of 1972, is  
1378 amended as follows:

1379 93-13-123. The chancery court of any county in which may be  
1380 situated the property or any part of the property, or debt due to,  
1381 or right of action of any person who has been adjudicated to be  
1382 incompetent by proper proceedings in another state, or of a  
1383 citizen of this state \* \* \* who is incompetent and is confined out  
1384 of this state in a psychiatric hospital or institution, shall have  
1385 jurisdiction to appoint a guardian of the estate of the person  
1386 who is incompetent. The chancery court of the county of residence  
1387 of those persons shall likewise have that jurisdiction.

1388           **SECTION 32.** Section 93-13-121, Mississippi Code of 1972, is  
1389 amended as follows:

1390           93-13-121. In any case where a guardian has been appointed  
1391 for an adult person by a court of competent jurisdiction of any  
1392 state, and the adult thereafter, at the time of filing the  
1393 petition provided for in this section, is a resident of this state  
1394 and is incompetent to manage his or her estate, the chancery court  
1395 of the county of the domicile of the adult shall have jurisdiction  
1396 and authority to appoint a guardian for the incompetent adult upon  
1397 the conditions \* \* \* specified in this section; however,  
1398 infirmities of old age shall not be considered elements of  
1399 infirmities.

1400           The petition for the appointment of a guardian under the  
1401 provisions of this section shall be filed by the incompetent  
1402 person or his guardian in the office of the clerk of the chancery  
1403 court in the county of the residence of the incompetent person and  
1404 process shall be served as provided in Section 93-13-281, unless  
1405 joined in by that person or those persons \* \* \* prescribed in that  
1406 section.

1407           Upon the return day of the process, the chancellor, if in  
1408 vacation, or the court, if in termtime, shall cause the applicant  
1409 to appear in person and then and there examine the applicant and  
1410 all interested parties, and if, after the examination, the  
1411 chancellor in vacation or the court in termtime is of the opinion  
1412 that the applicant is incompetent to manage his or her estate,  
1413 then it shall be the duty of the court to appoint a guardian of  
1414 the estate of the applicant; \* \* \* however, \* \* \* in no instance  
1415 shall the court have authority to appoint a guardian under the  
1416 provisions of this section unless it \* \* \* examines the applicant  
1417 in person and finds after the examination that the applicant is  
1418 incompetent to manage his or her estate.

1419           A guardian appointed under the provisions of this section  
1420 shall be required to make and file annual accounts of his acts and

1421 doings as in case of guardians for \* \* \* persons with mental  
1422 illness.

1423 **SECTION 33.** Section 93-13-131, Mississippi Code of 1972, is  
1424 amended as follows:

1425 93-13-131. The chancery court of the county in which an  
1426 habitual drunkard, habitual user of cocaine, opium or morphine  
1427 resides may appoint a guardian to him on the application of a  
1428 relative or friend. When an application for appointment of a  
1429 guardian is presented, if the court is satisfied there is probable  
1430 grounds for the appointment, it shall direct a writ to the  
1431 sheriff, commanding him to summon the person alleged to be an  
1432 habitual drunkard, habitual user of cocaine, or opium or morphine.  
1433 On return of the summons executed, the court shall examine the  
1434 question and determine whether the person is an habitual drunkard,  
1435 habitual user of cocaine, opium or morphine, and for that purpose  
1436 may summon and hear witnesses, orally or by deposition, and hear  
1437 the parties and their evidence. If the court is satisfied that  
1438 the person is an habitual drunkard, habitual user of cocaine,  
1439 opium or morphine, it shall appoint a guardian to take care of him  
1440 and his estate, both real and personal, and the costs of the  
1441 inquisition shall be paid out of the estate. And the court or  
1442 chancellor may direct the confinement of any person adjudged to be  
1443 an habitual drunkard, habitual user of cocaine, or opium or  
1444 morphine, in a facility that treats alcohol or substance abuse.

1445 **SECTION 34.** Section 97-3-13, Mississippi Code of 1972, is  
1446 amended as follows:

1447 97-3-13. Every person or officer who \* \* \* maliciously sends  
1448 to or confines in a psychiatric hospital or institution or other  
1449 place, any sane person as a person with mental illness, knowing  
1450 the person to be sane, shall be guilty of a felony, and, on  
1451 conviction, shall be punished by a fine of not more than Five  
1452 Hundred Dollars (\$500.00), or by imprisonment in the Penitentiary

1453 not more than one (1) year, or in the county jail not more than  
1454 six (6) months.

1455       **SECTION 35.** Section 97-9-25, Mississippi Code of 1972, is  
1456 amended as follows:

1457       97-9-25. It shall be unlawful for any person, firm,  
1458 copartnership, corporation or association to knowingly entice,  
1459 harbor, employ, or aid, assist or abet in the escape, enticing,  
1460 harboring or employment of any delinquent, person with mental  
1461 illness, person with mental retardation or incorrigible person  
1462 committed to, or confined in any institution maintained by the  
1463 state for the treatment, education or welfare of delinquent  
1464 persons, persons with mental illness, persons with mental  
1465 retardation or incorrigible \* \* \* persons. Any person violating  
1466 the provisions of this section, upon conviction, shall be punished  
1467 by a fine of not less than Twenty-five Dollars (\$25.00) nor more  
1468 than Five Hundred Dollars (\$500.00), or imprisonment in the county  
1469 jail for not less than thirty (30) days, nor more than ninety (90)  
1470 days, or both.

1471       **SECTION 36.** Section 99-13-1, Mississippi Code of 1972, is  
1472 amended as follows:

1473       99-13-1. The term "person with mental retardation," within  
1474 the meaning of this chapter, shall have the same meaning as the  
1475 term "mentally retarded person" in Section 41-21-61.

1476       **SECTION 37.** Section 99-13-3, Mississippi Code of 1972, is  
1477 amended as follows:

1478       99-13-3. When any prisoner or any person charged with a  
1479 crime or delinquency is brought before any conservator of the  
1480 peace, and in the course of the investigation it \* \* \* appears  
1481 that the person was insane when the offense was committed and  
1482 still is insane, or was a person with mental retardation to such  
1483 an extent as not to be responsible for his or her act or omission  
1484 at the time when the act or omission charged was made, he shall  
1485 not be discharged, but the conservator of the peace shall remand

1486 the prisoner to custody and immediately report the case to the  
1487 chancellor or clerk of the chancery court, whose duty it shall be  
1488 to proceed with the case according to the law provided for persons  
1489 of unsound mind or \* \* \* persons with mental retardation.

1490         **SECTION 38.** Section 99-13-5, Mississippi Code of 1972, is  
1491 amended as follows:

1492         99-13-5. When any person is held in prison or on bail,  
1493 charged with an offense, and the grand jury does not find a true  
1494 bill for reason of insanity of the accused or for reason of the  
1495 mental retardation of the accused, which they judge to be such  
1496 that he or she was not responsible for his acts or omissions at  
1497 the time when the act or omission charged was committed or made,  
1498 the grand jury shall certify the fact to the circuit court and  
1499 shall state whether or not the insane \* \* \* person or person with  
1500 mental retardation is a danger to the security of persons and  
1501 property and the peace and safety of the community, and if the  
1502 grand jury reports that insanity or mental retardation and that  
1503 danger, the court shall immediately give notice of the case to the  
1504 chancellor or to the clerk of the chancery court, whose duty it  
1505 shall be to proceed with the insane person and his estate or the  
1506 person with mental retardation according to the law provided in  
1507 the case of persons of unsound mind or \* \* \* persons with mental  
1508 retardation.

1509         **SECTION 39.** Section 99-13-7, Mississippi Code of 1972, is  
1510 amended as follows:

1511         99-13-7. When any person is indicted for an offense and  
1512 acquitted on the ground of insanity, the jury rendering the  
1513 verdict shall state in the verdict that ground and whether the  
1514 accused has since been restored to his sanity and whether he is  
1515 dangerous to the community. \* \* \* If the jury certifies that the  
1516 person is still insane and dangerous, the judge shall order him to  
1517 be conveyed to and confined in one (1) of the state psychiatric  
1518 hospitals or institutions.

1519           **SECTION 40.** Section 99-13-9, Mississippi Code of 1972, is  
1520 amended as follows:

1521       99-13-9. When any person is indicted for an offense and  
1522 acquitted on the ground of mental retardation, the jury rendering  
1523 the verdict shall state in the verdict that ground and whether the  
1524 accused constitutes a danger to life or property and to the peace  
1525 and safety of the community. If the jury certifies that the  
1526 person with mental retardation is dangerous to the peace and  
1527 safety of the community or to himself, the court shall immediately  
1528 give notice of the case to the chancellor or the clerk of the  
1529 chancery court, whose duty it shall be to proceed with the person  
1530 according to the law provided in the case of \* \* \* persons with  
1531 mental retardation, the \* \* \* person with mental retardation  
1532 himself being remanded to custody to await the action of the  
1533 chancery court.

1534           **SECTION 41.** Section 99-19-57, Mississippi Code of 1972, is  
1535 amended as follows:

1536       99-19-57. (1) If the Commissioner of Corrections \* \* \* at  
1537 any time is satisfied that any female offender in his custody  
1538 under sentence of death is pregnant, he shall summon a physician  
1539 to inquire into the pregnancy. The commissioner shall summons and  
1540 swear all necessary witnesses and the commissioner after full  
1541 examination shall certify under his hand what the truth may be in  
1542 relation to the alleged pregnancy, and in case the offender is  
1543 found to be pregnant, the commissioner shall immediately transmit  
1544 his findings to the Governor, and the Governor shall suspend the  
1545 execution of the sentence until he is satisfied that the offender  
1546 is not or is no longer pregnant. The Governor shall then order,  
1547 by his warrant to the commissioner, the execution of the offender  
1548 on a day to be \* \* \* appointed by the Governor according to the  
1549 sentence and judgment of the court.

1550       (2) (a) If it is believed that an offender under sentence  
1551 of death has become mentally ill since the judgment of the court,

1552 the following shall be the exclusive procedural and substantive  
1553 procedure. The offender, or a person acting as his next friend,  
1554 or the Commissioner of Corrections may file an appropriate  
1555 application seeking post-conviction relief with the Mississippi  
1556 Supreme Court. If it is found that the offender is a person with  
1557 mental illness, as defined in this subsection, the court shall  
1558 suspend the execution of the sentence. The offender shall then be  
1559 committed to the forensic unit of the Mississippi State Hospital  
1560 at Whitfield. The order of commitment shall require that the  
1561 offender be examined and a written report be furnished to the  
1562 court at that time and every month thereafter, stating whether  
1563 there is a substantial probability that the offender will become  
1564 sane under this subsection within the foreseeable future and  
1565 whether progress is being made toward that goal. If at any time  
1566 during the commitment, the appropriate official at the state  
1567 hospital \* \* \* considers the offender to be sane under this  
1568 subsection, the official shall promptly notify the court to that  
1569 effect in writing and place the offender in the custody of the  
1570 Commissioner of Corrections. The court then shall \* \* \* conduct a  
1571 hearing on the sanity of the offender. The finding of the circuit  
1572 court is a final order appealable under the terms and conditions  
1573 of the Mississippi Uniform Post-Conviction Collateral Relief Act.

1574 (b) For the purposes of this subsection, a person shall  
1575 be deemed to be a person with mental illness if the court finds  
1576 that the offender does not have sufficient intelligence to  
1577 understand the nature of the proceedings against him, what he was  
1578 tried for, the purpose of his punishment, the impending fate that  
1579 awaits him, and a sufficient understanding to know any fact that  
1580 might exist that would make his punishment unjust or unlawful and  
1581 the intelligence requisite to convey that information to his  
1582 attorneys or the court.

1583 **SECTION 42.** Section 99-38-9, Mississippi Code of 1972, is  
1584 amended as follows:

1585           99-38-9. (1) The Treasurer shall make payments from an  
1586 escrow account established under Section 99-38-5 to the accused or  
1587 convicted person in whose name the account was established upon  
1588 the order of a court of competent jurisdiction, after a showing by  
1589 the person that those monies will be used for the exclusive  
1590 purpose of retaining legal representation at any stage of any  
1591 criminal proceedings against the person, including the appeals  
1592 process.

1593           (2) Whenever it is found that a person accused of a crime is  
1594 unfit to proceed as a result of mental illness because the person  
1595 lacks the capacity to understand the proceedings against him or to  
1596 assist in his own defense, the Treasurer shall bring an action of  
1597 interpleader to determine disposition of the escrow account. For  
1598 the purposes of this chapter, a person found not guilty by reason  
1599 of insanity shall be deemed to be a convicted person.

1600           (3) Except as otherwise provided in subsection (4) of this  
1601 section, upon dismissal of charges or acquittal or subsequent  
1602 exoneration of any person accused of an offense arising out of the  
1603 same circumstances that led to the establishment of an escrow  
1604 account under this chapter, the Treasurer shall immediately pay  
1605 over to the accused person, his legal representative, assignee,  
1606 beneficiary or heirs at law the monies in the escrow account  
1607 established on his or their behalf. Except as otherwise provided  
1608 in subsection (4) of this section, upon a showing that the accused  
1609 person has been convicted or has pleaded guilty to an offense for  
1610 which an escrow account has been established under this chapter  
1611 and that one (1) year has elapsed from the time of establishment  
1612 of the escrow account, and that no civil actions are pending under  
1613 the provisions of subsection (2) of Section 99-38-7, the Treasurer  
1614 shall immediately transfer all monies in the escrow account  
1615 established in the name of the accused person, less such costs and  
1616 expenses as the Treasurer incurs in the administration of the  
1617 account, to the Criminal Justice Fund created in Section 99-19-32.

1618                 (4) Notwithstanding the provisions of subsection (3), upon a  
1619 showing that one (1) year has elapsed from the time of the  
1620 establishment of the escrow account and that no civil actions are  
1621 pending under the provisions of Section 99-38-7(2), and upon a  
1622 showing that the accused in whose name the account is established  
1623 is the parent of one or more minor children and that the minor  
1624 children are in need of financial support, the chancery court of  
1625 the district in which the minor children reside may order the  
1626 Treasurer to pay over an amount set by the court for the support  
1627 of those children until they reach the age of majority. Upon  
1628 order of the court, the Treasurer shall pay the specified amount  
1629 to a guardian appointed by the court for the use and benefit of  
1630 the minor children. In no event shall the total amount to be paid  
1631 for the support of any minor children of the accused in whose name  
1632 the account is established exceed the amount of money in the  
1633 account at the time the court issues its order.

1634                 (5) The Treasurer shall be authorized to promulgate such  
1635 rules and regulations as may be necessary to carry out the  
1636 provisions of this chapter.

1637                 **SECTION 43.** Section 99-39-23, Mississippi Code of 1972, is  
1638 amended as follows:

1639                 99-39-23. (1) If an evidentiary hearing is required, the judge  
1640 may appoint counsel for a petitioner who qualifies for the  
1641 appointment of counsel under Section 99-15-15.

1642                 (2) The hearing shall be conducted as promptly as  
1643 practicable, having regard for the need of counsel for both  
1644 parties for adequate time for investigation and preparation.

1645                 (3) The parties shall be entitled to subpoena witnesses and  
1646 compel their attendance, including, but not being limited to,  
1647 subpoenas duces tecum.

1648                 (4) The court may receive proof by affidavits, depositions,  
1649 oral testimony or other evidence and may order the prisoner  
1650 brought before it for the hearing.

1651                 (5) If the court finds in favor of the prisoner, it shall  
1652 enter an appropriate order with respect to the conviction or  
1653 sentence under attack, and any supplementary orders as to  
1654 rearraignment, retrial, custody, bail, discharge, correction of  
1655 sentence or other matters that may be necessary and proper. The  
1656 court shall make specific findings of fact, and state expressly  
1657 its conclusions of law, relating to each issue presented.

1658                 (6) The order as provided in subsection (5) of this section  
1659 or any order dismissing the prisoner's motion or otherwise denying  
1660 relief under this article is a final judgment and shall be  
1661 conclusive until reversed. It shall be a bar to a second or  
1662 successive motion under this article. Excepted from this  
1663 prohibition is a motion filed under Section 99-19-57(2), raising  
1664 the issue of the offender's supervening mental illness before the  
1665 execution of a sentence of death. A dismissal or denial of a  
1666 motion relating to mental illness under Section 99-19-57(2) shall  
1667 be res judicata on the issue and shall likewise bar any second or  
1668 successive motions on the issue. Likewise excepted from this  
1669 prohibition are those cases in which the prisoner can demonstrate  
1670 either that there has been an intervening decision of the Supreme  
1671 Court of either the State of Mississippi or the United States  
1672 that would have actually adversely affected the outcome of his  
1673 conviction or sentence or that he has evidence, not reasonably  
1674 discoverable at the time of trial, which is of such nature that it  
1675 would be practically conclusive that, if it had \* \* \* been  
1676 introduced at trial, it would have caused a different result in  
1677 the conviction or sentence. Likewise excepted are those cases in  
1678 which the prisoner claims that his sentence has expired or his  
1679 probation, parole or conditional release has been unlawfully  
1680 revoked.

1681                 (7) No relief shall be granted under this article unless the  
1682 prisoner proves by a preponderance of the evidence that he is  
1683 entitled to the relief.

1684                 (8) Proceedings under this section shall be subject to the  
1685 provisions of Section 99-19-42.

1686                 (9) In cases resulting in a sentence of death and upon a  
1687 determination of indigence, appointment of post-conviction counsel  
1688 shall be made by the Office of Capital Post-Conviction Counsel  
1689 upon order entered by the Supreme Court promptly upon announcement  
1690 of the decision on direct appeal affirming the sentence of death.  
1691 The order shall direct the trial court to immediately determine  
1692 indigence and whether the inmate will accept counsel.

1693                 **SECTION 44.** Section 99-39-27, Mississippi Code of 1972, is  
1694 amended as follows:

1695                 99-39-27. (1) The application for leave to proceed in the  
1696 trial court filed with the Supreme Court under Section 99-39-7  
1697 shall name the State of Mississippi as the respondent.

1698                 (2) The application shall contain the original and two (2)  
1699 executed copies of the motion proposed to be filed in the trial  
1700 court together with such other supporting pleadings and  
1701 documentation as the Supreme Court by rule may require.

1702                 (3) The prisoner shall serve an executed copy of the  
1703 application upon the Attorney General simultaneously with the  
1704 filing of the application with the court.

1705                 (4) The original motion, together with all files, records,  
1706 transcripts and correspondence relating to the judgment under  
1707 attack, shall promptly be examined by the court.

1708                 (5) Unless it appears from the face of the application,  
1709 motion, exhibits and the prior record that the claims presented by  
1710 those documents are not procedurally barred under Section 99-39-21  
1711 and that they further present a substantial showing of the denial  
1712 of a state or federal right, the court shall by appropriate order  
1713 deny the application. The court may, in its discretion, require  
1714 the Attorney General upon sufficient notice to respond to the  
1715 application.

1716                 (6) The court, upon satisfaction of the standards set forth  
1717 in this article, is empowered to grant the application.

1718                 (7) In granting the application the court, in its  
1719 discretion, may:

1720                     (a) Where sufficient facts exist from the face of the  
1721 application, motion, exhibits, the prior record and the state's  
1722 response, together with any exhibits submitted with those  
1723 documents, or upon stipulation of the parties, grant or deny any  
1724 or all relief requested in the attached motion.

1725                     (b) Allow the filing of the motion in the trial court  
1726 for further proceedings under Sections 99-39-13 through 99-39-23.

1727                 (8) No application or relief shall be granted without the  
1728 Attorney General being given at least five (5) days to respond.

1729                 (9) The dismissal or denial of an application under this  
1730 section is a final judgment and shall be a bar to a second or  
1731 successive application under this article. Excepted from this  
1732 prohibition is an application filed under Section 99-19-57(2),  
1733 raising the issue of the offender's supervening mental illness  
1734 before the execution of a sentence of death. A dismissal or  
1735 denial of an application relating to mental illness under Section  
1736 99-19-57(2) shall be res judicata on the issue and shall likewise  
1737 bar any second or successive applications on the issue. Likewise  
1738 excepted from this prohibition are those cases in which the  
1739 prisoner can demonstrate either that there has been an intervening  
1740 decision of the Supreme Court of either the State of Mississippi  
1741 or the United States that would have actually adversely affected  
1742 the outcome of his conviction or sentence or that he has evidence,  
1743 not reasonably discoverable at the time of trial, that is of such  
1744 nature that it would be practically conclusive that, if it  
1745 had \* \* \* been introduced at trial, it would have caused a  
1746 different result in the conviction or sentence. Likewise exempted  
1747 are those cases in which the prisoner claims that his sentence has

1748 expired or his probation, parole or conditional release has been  
1749 unlawfully revoked.

1750 (10) Proceedings under this section shall be subject to the  
1751 provisions of Section 99-19-42.

1752 (11) Post-conviction proceedings in which the defendant is  
1753 under sentence of death shall be governed by rules established by  
1754 the Supreme Court as well as the provisions of this section.

1755 **SECTION 45.** Section 41-19-103, Mississippi Code of 1972, is  
1756 amended as follows:

1757 41-19-103. The Ellisville State School \* \* \* established by  
1758 Chapter 210, Laws of Mississippi 1920, is recognized as now  
1759 existing and shall hereafter be known under the name of Ellisville  
1760 State School for the care and treatment of \* \* \* persons with  
1761 mental retardation. The school shall have the power to receive  
1762 and hold property, real, personal and mixed, as a body corporate.  
1763 The school shall be under the direction and control of the State  
1764 Board of \* \* \* Mental Health.

1765 **SECTION 46.** The following shall be codified as Section  
1766 41-19-108, Mississippi Code of 1972:

1767 41-19-108. With funds provided by the Legislature, by direct  
1768 appropriation or authorized bond issue, with federal matching  
1769 funds, or with any other available funds, the Bureau of Building,  
1770 Grounds and Real Property Management may construct and equip the  
1771 necessary residential and service buildings and other facilities  
1772 to care for the residents of Ellisville State School. The general  
1773 design of the school and all construction plans shall be approved  
1774 and recommended by the State Department of Mental Health.

1775 **SECTION 47.** The following shall be codified as Section  
1776 41-19-112, Mississippi Code of 1972:

1777 41-19-112. Ellisville State School shall be administered by  
1778 the State Board of Mental Health. Provisions relating to the  
1779 admission and care of residents at the school shall be promulgated  
1780 by the board.

1781       **SECTION 48.** The following shall be codified as Section  
1782 41-19-114, Mississippi Code of 1972:

1783       41-19-114. Persons admitted to Ellisville State School shall  
1784 be assessed support and maintenance costs in accordance with the  
1785 provisions of the state reimbursement laws as they apply to other  
1786 state institutions.

1787       **SECTION 49.** The following shall be codified as Section  
1788 41-19-116, Mississippi Code of 1972:

1789       41-19-116. Any person who (a) knowingly and unlawfully or  
1790 improperly causes a person to be adjudged to be a person of mental  
1791 retardation, (b) procures the escape of a legally committed  
1792 resident or knowingly conceals an escaped legally committed  
1793 resident of Ellisville State School, or (c) unlawfully brings any  
1794 firearm, deadly weapon or explosive into the school or its  
1795 grounds, or passes any thereof to a resident, employee or officer  
1796 of the school, is guilty of a misdemeanor and, upon conviction,  
1797 shall be punished by a fine of not less than Fifty Dollars  
1798 (\$50.00), nor more than Two Hundred Dollars (\$200.00),  
1799 imprisonment for not less than six (6) months, or both.

1800       **SECTION 50.** The following shall be codified as Section  
1801 41-19-118, Mississippi Code of 1972:

1802       41-19-118. Ellisville State School is designated as a state  
1803 agency for carrying out the purposes of any act of the Congress of  
1804 the United States, now existing or at any time hereafter enacted,  
1805 pertaining to mental retardation.

1806       **SECTION 51.** Section 41-19-121, Mississippi Code of 1972, is  
1807 amended as follows:

1808       41-19-121. The director of \* \* \* Ellisville State School may  
1809 receive free lodging in his institution for himself and his  
1810 family, but not free board, nor free supplies from the  
1811 school. \* \* \*

1812       **SECTION 52.** Sections 41-5-55, 41-5-81, 41-17-5, 41-17-7,  
1813 41-17-9, 41-17-13, 41-19-105, 41-19-107, 41-19-109, 41-19-115,

1814 41-19-117, 41-19-119, 41-21-43, 41-21-45, 41-45-1, 41-45-3,  
1815 41-45-5, 41-45-7, 41-45-9, 41-45-11, 41-45-13, 41-45-15, 41-45-17  
1816 and 41-45-19, Mississippi Code of 1972, which prohibit the  
1817 apprenticing of mental patients, provide certain criminal  
1818 penalties, provide certain visitation duties for directors of  
1819 mental hospitals, exempt resident mental hospital officers from  
1820 jury service, require a drug store to be kept at each mental  
1821 hospital, require separate accommodations at Whitfield for  
1822 alcoholic and drug addicts, provide for the plan of Ellisville  
1823 State School, require Ellisville's director to keep certain  
1824 records, authorize Ellisville's director to sell certain products  
1825 of the school, provide discharge procedures for Ellisville  
1826 patients, provide for habeas corpus proceedings for Ellisville  
1827 patients, authorize the receipt of gifts for the support of  
1828 Ellisville, require counties to temporarily provide for the  
1829 maintenance of indigent mentally retarded persons, prohibit  
1830 cohabitation with mentally retarded persons, and authorize the  
1831 sterilization of mentally ill and mentally retarded patients, are  
1832 repealed.

1833         **SECTION 53.** This act shall take effect and be in force from  
1834 and after July 1, 2005.