

By: Representatives Dedeaux, Bailey, Clarke,  
Hudson, Robinson (63rd)

To: Public Health and Human  
Services; Insurance

## HOUSE BILL NO. 1090

1 AN ACT TO AMEND SECTION 73-11-55, MISSISSIPPI CODE OF 1972,  
2 TO REQUIRE THE STATE BOARD OF FUNERAL SERVICE TO ADOPT RULES TO  
3 PROTECT EMPLOYEES OF FUNERAL ESTABLISHMENTS FROM HEALTH AND SAFETY  
4 RISKS POSED BY THEIR EMPLOYMENT; TO AMEND SECTION 73-11-57,  
5 MISSISSIPPI CODE OF 1972, TO REQUIRE THE STATE BOARD OF FUNERAL  
6 SERVICE TO CONDUCT FOLLOW-UP INSPECTIONS OF FUNERAL ESTABLISHMENTS  
7 AND BRANCH ESTABLISHMENTS THAT WERE CITED FOR NONCOMPLIANCE WITH  
8 LAW OR AGENCY RULES WITHIN THIRTY DAYS OF THE CITATION; AND FOR  
9 RELATED PURPOSES.

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

11 **SECTION 1.** Section 73-11-55, Mississippi Code of 1972, is  
12 amended as follows:

13 73-11-55. (1) No person or party shall conduct, maintain,  
14 manage or operate a funeral establishment or branch thereof unless  
15 a license for each such establishment has been issued by the board  
16 and is conspicuously displayed in such funeral establishment. In  
17 case of funeral services held in any private residence, church,  
18 cemetery, cemetery chapel, cemetery facility, or lodge hall, no  
19 license shall be required.

20 (2) To be licensed as a funeral establishment, a place or  
21 premise must be at a fixed and specified address or location and  
22 must be used for immediate post-death activities, whether used for  
23 the custody, shelter, care, preparation and/or embalming of the  
24 human dead. Every funeral establishment shall be under the charge  
25 and personal supervision of a Mississippi funeral director  
26 licensee or a Mississippi funeral service licensee. The licensee  
27 in charge and the licensee with personal supervisory  
28 responsibilities need not be the same licensee. Each licensed  
29 funeral establishment shall be inspected at least once during each  
30 licensing period. Such inspections may be unannounced.

31           (3) (a) A funeral establishment must contain a preparation  
32 and/or embalming room, adequate casket and/or vault selection  
33 room, and holding facilities or proper room or rooms in which  
34 rites and ceremonies may be held. A funeral establishment shall  
35 be subject to an inspection at least once during a two-year  
36 license period. Each new establishment must be inspected before  
37 the opening. All portions of each facility licensed under this  
38 section shall be kept in a clean and sanitary condition. The  
39 board shall adopt rules setting minimum standards of safety to  
40 protect workers employed in funeral establishments from health and  
41 safety risks.

42           (b) A branch establishment must contain an office  
43 and/or an arrangement room, and a room for viewing and/or a chapel  
44 or proper place for ceremonies. A branch establishment need not  
45 meet all requirements specified in paragraph (a) of this  
46 subsection and need not be under the personal supervision of a  
47 Mississippi funeral director licensee or a Mississippi funeral  
48 service licensee.

49           If the branch meets all requirements of a funeral  
50 establishment as specified in paragraph (a) of this subsection,  
51 such establishment must be under the charge and personal  
52 supervision of a Mississippi funeral director licensee or a  
53 Mississippi funeral service licensee.

54           (c) A commercial mortuary service is a funeral  
55 establishment that embalms and transports for licensed funeral  
56 establishments and does not sell any services or merchandise  
57 directly or at retail to the public.

58           (4) Applications for funeral establishment licenses, branch  
59 establishment licenses or commercial mortuary service licenses  
60 shall be made on blanks furnished by the board and shall be  
61 accompanied by a fee in an amount fixed by the board pursuant to  
62 Section 73-11-56. All establishment licenses shall be issued for

63 a period of two (2) years, except initial licenses may be prorated  
64 from the date of issuance to the next renewal date.

65 Renewal funeral establishment and branch establishment  
66 license applications and license fees shall be due and payable to  
67 the board on or before the expiration date of the license. The  
68 board shall mail the notice of renewal and the due date for  
69 payment of the renewal fee at least thirty (30) days before that  
70 date.

71 (5) If the renewal fee is not paid on or postmarked by the  
72 due date, the license shall by operation of law automatically  
73 expire and become void without further action of the board. All  
74 establishments whose licenses have expired under this section may  
75 be reinstated by filing with the board an application for  
76 reinstatement, submitting to an inspection during which time the  
77 licensee in charge of such establishment shall be interviewed by  
78 the board or its designee and by paying all renewal fees in  
79 arrears and a reinstatement fee.

80 (6) No license shall be assignable or transferable or valid  
81 for any establishment other than the original licensee. License  
82 fees and application fees are nonrefundable.

83 (7) A license for each new establishment, change of  
84 location, change of ownership, or reinstatement of an  
85 establishment shall not be issued until an inspection has been  
86 made, license and inspection fees have been paid, and the licensee  
87 in charge of such establishment has been interviewed by the board  
88 or its designee.

89 (8) No operator of a funeral establishment shall allow any  
90 person licensed for the practice of funeral service or funeral  
91 directing, as the case may be, to operate out of such funeral  
92 establishment unless such licensee is the operator of or an  
93 employee of the operator of a funeral establishment which has been  
94 issued a license by the board.

95 (9) The board is authorized to establish rules and  
96 regulations for the issuance of a special funeral establishment  
97 work permit.

98 **SECTION 2.** Section 73-11-57, Mississippi Code of 1972, is  
99 amended as follows:

100 73-11-57. (1) The board may refuse to examine or to issue  
101 or renew, or may suspend or revoke, any license, or may reprimand  
102 or place the holder thereof on a term of probation, after proper  
103 hearing, upon finding the holder of such license to be guilty of  
104 acts of commission or omission including the following:

105 (a) The employment of fraud or deception in applying  
106 for a license or in passing the examination provided for in this  
107 chapter;

108 (b) The erroneous issuance of a license to any person;

109 (c) The conviction of a felony by any court in this  
110 state or any federal court or by the court of any other state or  
111 territory of the United States;

112 (d) The practice of embalming under a false name or  
113 without a license for the practice of funeral service;

114 (e) The impersonation of another funeral service or  
115 funeral directing licensee;

116 (f) The permitting of a person other than a funeral  
117 service or funeral directing licensee to make arrangements for a  
118 funeral and/or form of disposition;

119 (g) Violation of any provision of this chapter or any  
120 rule or regulation of the board;

121 (h) Having had a license for the practice of funeral  
122 service or funeral directing suspended or revoked in any  
123 jurisdiction, having voluntarily surrendered his license in any  
124 jurisdiction, having been placed on probation in any jurisdiction,  
125 having been placed under disciplinary order(s) or other  
126 restriction in any manner for funeral directing and/or funeral  
127 service, or operating a funeral establishment (a certified copy of

128 the order of suspension, revocation, probation or disciplinary  
129 action shall be prima facie evidence of such action);

130 (i) Solicitation of dead human bodies by the licensee,  
131 his agents, assistants or employees, whether such solicitation  
132 occurs after death or when death is imminent; if the person  
133 solicited has made known a desire not to receive the  
134 communication, or if the solicitation involves coercion, duress or  
135 harassment, or if the solicitation takes place at the residence of  
136 the client or prospective client, is uninvited by the client or  
137 prospective client and has not been previously agreed to by the  
138 client or prospective client; however, this shall not be deemed to  
139 prohibit general advertising;

140 (j) Employment directly or indirectly of any  
141 apprentice, agent, assistant, employee, or other person, on a  
142 part-time or full-time basis or on commission, for the purpose of  
143 calling upon individuals or institutions by whose influence dead  
144 human bodies may be turned over to a particular funeral  
145 establishment;

146 (k) Failure to make responses to communications or  
147 requests of the board within thirty (30) days;

148 (l) Failure to comply with an order of the board within  
149 thirty (30) days;

150 (m) Knowingly performing any act that in any way  
151 assists an unlicensed person to practice funeral service or  
152 funeral directing;

153 (n) Making a false statement on death certificates; or

154 (o) Unprofessional conduct which includes, but is not  
155 limited to:

156 (i) Retaining a dead human body for the payment of  
157 a fee for the performance of services not authorized in writing;

158 (ii) Knowingly performing any act which in any way  
159 assists an unlicensed person to practice funeral service or  
160 funeral directing;

161 (iii) Being guilty of any dishonorable conduct  
162 likely to deceive, defraud or harm the public;

163 (iv) Any act or omission in the practice of  
164 funeral service or directing which constitutes dishonesty, fraud  
165 or misrepresentation with the intent to benefit the licensee,  
166 another person or funeral establishment, or with the intent to  
167 substantially injure another person, licensee or funeral  
168 establishment; or

169 (v) Any act or conduct, whether the same or of a  
170 different character than specified above, which constitutes or  
171 demonstrates bad faith, incompetency or untrustworthiness; or  
172 dishonest, fraudulent or improper dealing; or any other violation  
173 of the provisions of this chapter, the rules and regulations  
174 established by the board or any rule or regulation promulgated by  
175 the Federal Trade Commission relative to the practice of funeral  
176 service or funeral directing.

177 (2) In instances where the board has cited a funeral  
178 establishment or branch establishment for noncompliance with state  
179 law or board policy, the board shall conduct a follow-up  
180 inspection of the funeral establishment within thirty (30) days of  
181 the initial inspection to determine if corrective action has been  
182 taken.

183 (3) The board may, upon satisfactory proof that the  
184 applicant or licensee has been guilty of any of the offenses above  
185 enumerated, refuse to examine or issue a license to the applicant,  
186 or may refuse to renew or revoke or suspend the license of the  
187 licensee, or place on probation or reprimand him, upon a majority  
188 vote of the board members, after a hearing thereon. The board is  
189 hereby vested with full power and authority to hold and conduct  
190 such hearings, compel the attendance of witnesses and the  
191 production of books, records and documents, issue subpoenas  
192 therefor, administer oaths, examine witnesses, and do all things  
193 necessary to properly conduct such hearings. The board may waive

194 the necessity of a hearing if the person accused of a violation  
195 admits that he has been guilty of such offense. Any person who  
196 has been refused a license or whose license has been revoked or  
197 suspended may, within thirty (30) days after the decision of the  
198 board, file with the board a written notice stating that he feels  
199 himself aggrieved by such decision and appeals therefrom to the  
200 circuit court. Upon the filing of such notice, the secretary of  
201 the board shall transmit to the clerk of the circuit court the  
202 records and findings of such proceedings. The circuit court shall  
203 hear and determine as to whether the action of the board was in  
204 accord or consistent with law, or was arbitrary, unwarranted or in  
205 abuse of discretion. An appeal from the circuit court judgment or  
206 decree may be reviewed by the Supreme Court as is provided by law  
207 for other appeals. An appeal of a decision or order of the board  
208 does not act as a supersedeas.

209       (4) In a proceeding conducted under this section by the  
210 board for the revocation or suspension of a license, the board  
211 shall have the power and authority for the grounds stated for such  
212 revocation or suspension, and in addition thereto or in lieu of  
213 such revocation or suspension may assess and levy upon any person  
214 licensed under this chapter, a monetary penalty, as follows:

215               (a) For the first violation of any of the subparagraphs  
216 of subsection (1) of this section, a monetary penalty of not less  
217 than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars  
218 (\$500.00).

219               (b) For the second violation of any of the  
220 subparagraphs of subsection (1) of this section, a monetary  
221 penalty of not less than One Hundred Dollars (\$100.00) nor more  
222 than One Thousand Dollars (\$1,000.00).

223               (c) For the third and any subsequent violation of any  
224 of the subparagraphs of subsection (1) of this section, a monetary  
225 penalty of not less than Five Hundred Dollars (\$500.00) and not  
226 more than Five Thousand Dollars (\$5,000.00).

227           (d) For any violation of any of the subparagraphs of  
228 subsection (1) of this section, those reasonable costs that are  
229 expended by the board in the investigation and conduct of a  
230 proceeding for licensure revocation or suspension, including, but  
231 not limited to, the cost of process service, court reporters,  
232 expert witnesses and investigators.

233           (5) The power and authority of the board to assess and levy  
234 such monetary penalties hereunder shall not be affected or  
235 diminished by any other proceeding, civil or criminal, concerning  
236 the same violation or violations except as provided in this  
237 section.

238           (6) A licensee shall have the right of appeal from the  
239 assessment and levy of a monetary penalty as provided in this  
240 section under the same conditions as a right of appeal is provided  
241 elsewhere for appeals from an adverse ruling, order or decision of  
242 the board.

243           (7) Any monetary penalty assessed and levied under this  
244 section shall not take effect until after the time for appeal  
245 shall have expired.

246           (8) A monetary penalty assessed and levied under this  
247 section shall be paid to the board by the licensee upon the  
248 expiration of the period allowed for appeal of such penalties  
249 under this section or may be paid sooner if the licensee elects.  
250 With the exception of subsection (3)(d) of this section, monetary  
251 penalties collected by the board under this section shall be  
252 deposited to the credit of the General Fund of the State Treasury.  
253 Any monies collected by the board under subsection (3)(d) of this  
254 section shall be deposited into the special fund operating account  
255 of the board.

256           (9) When payment of a monetary penalty assessed and levied  
257 by the board against a licensee in accordance with this section is  
258 not paid by the licensee when due under this section, the board  
259 shall have power to institute and maintain proceedings in its name



260 for enforcement of payment in the chancery court of the county and  
261 judicial district of residence of the licensee, and if the  
262 licensee be a nonresident of the State of Mississippi, such  
263 proceedings shall be in the Chancery Court of the First Judicial  
264 District of Hinds County, Mississippi.

265       (10) In addition to the reasons specified in subsection (1)  
266 of this section, the board shall be authorized to suspend the  
267 license of any licensee for being out of compliance with an order  
268 for support, as defined in Section 93-11-153. The procedure for  
269 suspension of a license for being out of compliance with an order  
270 for support, and the procedure for the reissuance or reinstatement  
271 of a license suspended for that purpose, and the payment of any  
272 fees for the reissuance or reinstatement of a license suspended  
273 for that purpose, shall be governed by Section 93-11-157 or  
274 93-11-163, as the case may be. Actions taken by the board in  
275 suspending a license when required by Section 93-11-157 or  
276 93-11-163 are not actions from which an appeal may be taken under  
277 this section. Any appeal of a license suspension that is required  
278 by Section 93-11-157 or 93-11-163 shall be taken in accordance  
279 with the appeal procedure specified in Section 93-11-157 or  
280 93-11-163, as the case may be, rather than the procedure specified  
281 in this section. If there is any conflict between any provision  
282 of Section 93-11-157 or 93-11-163 and any provision of this  
283 chapter, the provisions of Section 93-11-157 or 93-11-163, as the  
284 case may be, shall control.

285       **SECTION 3.** This act shall take effect and be in force from  
286 and after July 1, 2005.