

By: Representative Holland

To: Public Health and Human
ServicesHOUSE BILL NO. 1198
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 73-11-33, MISSISSIPPI CODE OF 1972,
2 TO EXTEND THE DATE OF THE REPEALER ON THE PROVISIONS OF LAW THAT
3 CREATE THE STATE BOARD OF FUNERAL SERVICE AND PRESCRIBE ITS DUTIES
4 AND POWERS; TO REENACT SECTIONS 73-11-41 THROUGH 73-11-69,
5 MISSISSIPPI CODE OF 1972, WHICH CREATE THE STATE BOARD OF FUNERAL
6 SERVICE AND PRESCRIBE ITS DUTIES AND POWERS; TO AMEND REENACTED
7 SECTION 73-11-41, MISSISSIPPI CODE OF 1972, TO DEFINE CERTAIN
8 TERMS; TO AMEND REENACTED SECTION 73-11-49, MISSISSIPPI CODE OF
9 1972, TO CLARIFY THE LANGUAGE THAT PROHIBITS THE BOARD FROM
10 ADOPTING RULES OR REGULATIONS PERTAINING TO THE TRANSPORTATION OF
11 DEAD BODIES; TO AMEND REENACTED SECTION 73-11-51, MISSISSIPPI CODE
12 OF 1972, TO SPECIFY THE EXAMINATION THAT AN APPLICANT MUST PASS TO
13 BE LICENSED FOR THE PRACTICE OF FUNERAL SERVICE; TO PROVIDE THAT
14 THE BOARD MAY ISSUE LICENSES BY RECIPROCITY TO PERSONS HOLDING A
15 NONRECIPROCAL LICENSE IN ANOTHER STATE HAVING REQUIREMENTS GREATER
16 THAN OR EQUAL TO THOSE OF THIS STATE; TO AUTHORIZE THE BOARD TO
17 ENTER INTO WRITTEN AGREEMENTS WITH OTHER STATES DETAILING THE
18 MANNER AND EXTENT TO WHICH PERSONS LICENSED BY THE STATE OF
19 MISSISSIPPI MAY PRACTICE FUNERAL SERVICE OR DIRECTING IN THOSE
20 STATES; TO AMEND REENACTED SECTION 73-11-53, MISSISSIPPI CODE OF
21 1972, TO PROVIDE THAT RESIDENT TRAINEES MUST SERVE THEIR
22 APPRENTICESHIP IN A FUNERAL ESTABLISHMENT LICENSED BY THE STATE OF
23 MISSISSIPPI AND THEIR PRECEPTOR MUST BE A MISSISSIPPI LICENSEE WHO
24 IS EMPLOYED BY A MISSISSIPPI LICENSED FUNERAL ESTABLISHMENT; TO
25 AMEND REENACTED SECTION 73-11-55, MISSISSIPPI CODE OF 1972, TO
26 REQUIRE FUNERAL ESTABLISHMENTS TO RESOLVE VIOLATIONS FOUND DURING
27 INSPECTIONS AND BE IN FULL COMPLIANCE WITH STATE LAW AND
28 REGULATIONS WITHIN THIRTY DAYS AFTER FILING OF THE INSPECTION
29 REPORT; TO DELETE THE REQUIREMENT FOR INSPECTION AND INTERVIEW
30 BEFORE A CHANGE OF LOCATION, CHANGE OF OWNERSHIP, OR REINSTATEMENT
31 OF AN ESTABLISHMENT IS AUTHORIZED; TO DELETE THE PROHIBITION ON
32 OPERATORS OF A FUNERAL ESTABLISHMENT FROM ALLOWING PERSONS
33 LICENSED FOR THE PRACTICE OF FUNERAL SERVICE OR FUNERAL DIRECTING
34 TO OPERATE OUT OF THE FUNERAL ESTABLISHMENT UNLESS THE LICENSEE IS
35 THE OPERATOR OF OR AN EMPLOYEE OF THE OPERATOR OF A FUNERAL
36 ESTABLISHMENT THAT HAS BEEN ISSUED A LICENSE BY THE BOARD; TO
37 AMEND REENACTED SECTION 73-11-56, MISSISSIPPI CODE OF 1972, TO
38 AUTHORIZE CERTAIN FEES THAT THE BOARD MAY CHARGE; TO AMEND
39 REENACTED SECTION 73-11-57, MISSISSIPPI CODE OF 1972, TO DELETE AS
40 A GROUND FOR DISCIPLINARY ACTION THE FAILURE TO COMPLY WITH AN
41 ORDER OF THE BOARD WITHIN THIRTY DAYS; TO PROVIDE THAT MAKING A
42 FALSE STATEMENT ON A DEATH CERTIFICATE MUST BE DONE KNOWINGLY IN
43 ORDER TO BE GROUNDS FOR DISCIPLINARY ACTION; TO PROVIDE THAT
44 APPEALS OF DISCIPLINARY ACTIONS OF THE BOARD SHALL BE MADE TO THE
45 CIRCUIT COURT OF THE COUNTY AND JUDICIAL DISTRICT OF RESIDENCE OF
46 THE APPELLANT; TO PROVIDE THAT THE AMOUNT OF THE MONETARY
47 PENALTIES THAT THE BOARD MAY IMPOSE SHALL BE A STATED AMOUNT
48 RATHER THAN HAVING A MINIMUM AND MAXIMUM AMOUNT; TO PROVIDE THAT
49 MONETARY PENALTIES COLLECTED BY THE BOARD SHALL BE DEPOSITED IN
50 THE STATE TREASURY TO THE CREDIT OF THE STATE BOARD OF FUNERAL
51 SERVICE INSTEAD OF THE STATE GENERAL FUND; TO CREATE NEW SECTION
52 73-11-58, MISSISSIPPI CODE OF 1972, TO SPECIFY A LIST OF PERSONS

53 THAT MAY AUTHORIZE THE TYPE, METHOD, PLACE, CREMATION AND/OR OTHER
54 DISPOSITION OF A DECEDENT'S BODY IF THE DECEDENT HAS LEFT NO
55 WRITTEN AUTHORIZATION FOR THE CREMATION AND/OR DISPOSITION OF HIS
56 BODY; TO AMEND REENACTED SECTION 73-11-59, MISSISSIPPI CODE OF
57 1972, TO PROVIDE THAT THE AMOUNT OF THE CRIMINAL PENALTIES FOR
58 VIOLATIONS OF THE FUNERAL SERVICE LICENSURE LAW SHALL BE A STATED
59 AMOUNT RATHER THAN HAVING A MINIMUM AND MAXIMUM AMOUNT; TO AMEND
60 REENACTED SECTION 73-11-63, MISSISSIPPI CODE OF 1972, TO REMOVE
61 THE PROHIBITION ON THE BOARD REGULATION OF CEMETERY CREMATORIES;
62 TO AMEND REENACTED SECTION 73-11-67, MISSISSIPPI CODE OF 1972, TO
63 DELETE THE PROVISION THAT RETAIL SELLERS OF CASKETS ARE NOT
64 SUBJECT TO REGULATION OR SUPERVISION BY THE BOARD; TO AMEND
65 REENACTED SECTION 73-11-69, MISSISSIPPI CODE OF 1972, TO PROVIDE
66 THAT THE BOARD SHALL INSPECT EACH LICENSED CREMATORY FACILITY
67 DURING EACH LICENSURE PERIOD; TO AUTHORIZE CREMATORIES AND FUNERAL
68 ESTABLISHMENTS TO DISPOSE OF ANY REMAINS UNCLAIMED BY THE FAMILY
69 AFTER TWELVE MONTHS AFTER CREMATION UPON NOTIFICATION TO THE NEXT
70 OF KIN; AND FOR RELATED PURPOSES.

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

72 **SECTION 1.** Section 73-11-33, Mississippi Code of 1972, is
73 amended as follows:

74 73-11-33. Sections 73-11-41 through 73-11-69, which create
75 the State Board of Funeral Service and prescribe its duties and
76 powers, shall stand repealed as of July 1, 2010.

77 **SECTION 2.** Section 73-11-41, Mississippi Code of 1972, is
78 reenacted and amended as follows:

79 73-11-41. The following terms shall have the meanings
80 ascribed herein unless the context shall otherwise require:

81 (a) "Board" means the State Board of Funeral Service of
82 the State of Mississippi as created by Section 73-11-43, or any
83 successor thereof.

84 (b) "Branch establishment" means an auxiliary facility
85 or division of a main funeral establishment licensed under this
86 chapter that is within seventy-five (75) miles of the main
87 facility.

88 (c) "Embalming" means the disinfection of the dead
89 human body by replacing certain body fluids with preserving and
90 disinfecting chemicals.

91 (d) "Funeral establishment" means a fixed place or
92 premise duly licensed by the board that is devoted to or used in
93 the immediate post-death activities of custody, shelter, care,
94 preparation and/or embalming for final disposition of the body; or

95 used for religious services or other rites or ceremonies
96 associated with the final disposition of human dead; or maintained
97 or held out to the public by advertising or otherwise as such, for
98 the convenience and comfort of the bereaved and the community for
99 viewing or other services in connection with the human dead, and
100 as the office or place for carrying on the profession of funeral
101 service and/or funeral directing.

102 (e) "License for funeral establishment" means a license
103 issued to a place or premise devoted to or used in the immediate
104 post-death activities of custody, shelter, care, preparation
105 and/or embalming for final disposition of the body; or used for
106 religious services or other rites or ceremonies associated with
107 the final disposition of human dead; or maintained for the
108 convenience and comfort of the bereaved and the community for
109 viewing or other services in connection with the human dead, and
110 as the office or place for carrying on the profession of funeral
111 service and/or funeral directing.

112 (f) "License for the practice of funeral directing"
113 means the license given to a person engaging in the "practice of
114 funeral service" who is not engaged in the practice of embalming.

115 (g) "License for the practice of funeral service" means
116 the license given to a person engaging in the "practice of funeral
117 service," including the practice of embalming.

118 (h) "Practice of funeral service" means:

119 (i) Providing shelter, care and custody of the
120 human dead;

121 (ii) Conducting immediate post-death activities;

122 (iii) Preparing of the human dead by embalming or
123 other methods for burial or other disposition;

124 (iv) Being responsible for the transportation of
125 the human dead, bereaved relatives and friends;

126 (v) Making arrangements, financial or otherwise,
127 for the providing of such services;

128 (vi) The sale of funeral merchandise; or
129 (vii) The practice or performance of any function
130 of funeral directing and/or embalming as presently known,
131 including those stipulated herein.

132 This definition shall not include persons or corporations
133 engaging only in the preneed sale of funeral merchandise or
134 service.

135 (i) "Resident trainee" means a person who is preparing
136 to become licensed for the practice of funeral service or funeral
137 directing and who is serving under the supervision and instruction
138 of a person duly licensed for the practice of funeral service or
139 funeral directing in this state.

140 (j) "Solicitation" means the act or practice of
141 approaching someone with a request or plea, or urging someone
142 toward a particular cause, as it may pertain to the care, custody
143 or disposition of a dead human body.

144 (k) "Casket" is defined as a rigid container that is
145 designed for the encasement of human remains and that is usually
146 constructed of wood, metal, fiberglass, plastic or like material
147 and ornamented and lined with fabric.

148 (l) "Cremation" is the technical process, using heat,
149 that reduces human remains to bone fragments.

150 (m) "Crematory" is defined as any person, partnership
151 or corporation that performs cremation. A crematory must comply
152 with any applicable public health laws and rules and must contain
153 the equipment and meet all of the standards established by the
154 rules and regulations adopted by the board.

155 (n) "Direct cremation" means a disposition of human
156 remains by cremation without formal viewing, visitation or
157 ceremony with the body present.

158 (o) "Crematory operator" means the legal entity that
159 operates a crematory and performs cremations.

160 **SECTION 3.** Section 73-11-43, Mississippi Code of 1972, is
161 reenacted as follows:

162 73-11-43. There is hereby created the State Board of Funeral
163 Service which shall consist of seven (7) members, one (1) funeral
164 service licensee and one (1) funeral director licensee to be
165 appointed from each Mississippi Supreme Court district. Three (3)
166 members shall have been licensed for the practice of funeral
167 service under this chapter for five (5) consecutive years and/or
168 have had at least five (5) consecutive years' experience as a
169 funeral director and embalmer in this state immediately preceding
170 his appointment. Three (3) members shall have been licensed for
171 the practice of funeral directing under this chapter for five (5)
172 consecutive years and/or have had at least five (5) consecutive
173 years' experience as a funeral director immediately preceding his
174 appointment. One (1) member shall be a public member and be
175 appointed from the public at large. The members of the board
176 shall be appointed by the Governor with the advice and consent of
177 the Senate. All appointments shall be for terms of four (4) years
178 from the expiration date of the previous term. No board member
179 shall serve more than two (2) consecutive full terms. Vacancies
180 in office shall be filled by appointment by the Governor in the
181 same manner as the appointment to the position which becomes
182 vacant, subject to the advice and consent of the Senate at the
183 next regular session of the Legislature. Appointments for
184 vacancies in office, except those from the public at large, may be
185 made from a joint list of four (4) qualified persons, two (2) each
186 submitted by the Mississippi Funeral Directors Association and the
187 Mississippi Funeral Directors and Morticians Association. Nothing
188 in this chapter or any other statute shall preclude the members of
189 the State Embalming Board from serving as members of the State
190 Board of Funeral Service.

191 **SECTION 4.** Section 73-11-45, Mississippi Code of 1972, is
192 reenacted as follows:

193 73-11-45. The members of the board, before entering upon
194 their duties, shall take and subscribe to the oath of office
195 prescribed for other state officers, which oath shall be
196 administered by properly qualified authority and shall be filed in
197 the Office of the Secretary of State.

198 **SECTION 5.** Section 73-11-47, Mississippi Code of 1972, is
199 reenacted as follows:

200 73-11-47. The board shall hold not less than two (2)
201 meetings annually for the purpose of conducting the business of
202 the board and for examining applications for licenses. Four (4)
203 or more members shall comprise a quorum. Any member who shall not
204 attend two (2) consecutive meetings of the board shall be subject
205 to removal by the Governor. The chairman of the board shall
206 notify the Governor in writing when any such member has failed to
207 attend two (2) consecutive regular meetings.

208 **SECTION 6.** Section 73-11-49, Mississippi Code of 1972, is
209 reenacted and amended as follows:

210 73-11-49. (1) The board is authorized to select from its
211 own membership a chairman, vice chairman and secretary-treasurer.
212 Election of officers shall be held at the first regularly
213 scheduled meeting of the fiscal year.

214 (2) All members of the board shall be reimbursed for their
215 necessary traveling expenses and mileage incident to their
216 attendance upon the business of the board, as provided in Section
217 25-3-41, and shall receive a per diem as provided in Section
218 25-3-69 for every day actually spent upon the business of the
219 board, not to exceed twenty (20) days per year unless authorized
220 by a majority vote of the board.

221 (3) All monies received by the board shall be paid into a
222 special fund in the State Treasury to the credit of the board and
223 shall be used by the board for paying the traveling and necessary
224 expenses and per diem of the members of the board while on board
225 business, and for paying other expenses necessary for the

226 operation of the board in carrying out and involving the
227 provisions of this chapter.

228 (4) The board shall employ an administrator of the board,
229 who shall have complete supervision and be held responsible for
230 the direction of the office of the board, shall have supervision
231 over field inspections and enforcement of the provisions of this
232 chapter, shall have such other duties as may be assigned by the
233 board, shall be responsible and answerable to the board. The
234 board may employ such other clerical assistants and employees as
235 may be necessary to carry out the provisions of this chapter, and
236 the terms and conditions of such employment shall be determined by
237 the board in accordance with applicable state law and rules and
238 regulations of the State Personnel Board.

239 (5) The board, when it shall deem necessary, shall be
240 represented by an assistant Attorney General duly appointed by the
241 Attorney General of this state, and may also request and receive
242 the assistance of other state agencies and county and district
243 attorneys, all of whom are authorized to provide the assistance
244 requested.

245 (6) The board shall have subpoena power in enforcing the
246 provisions of this chapter.

247 (7) The board shall adopt and promulgate rules and
248 regulations for the transaction of its business in accordance with
249 the provisions of the Mississippi Administrative Procedures Law
250 (Section 25-43-1 et seq.). No rule or regulation promulgated by
251 the board affecting any person or agency outside the board shall
252 be adopted, amended or repealed without a public hearing on the
253 proposed action. The board shall give written notice at least
254 thirty (30) days in advance of any meeting with respect to any
255 proposed adoption, amendment or repeal of a rule or regulation of
256 the board, in accordance with the Administrative Procedures Act,
257 as well as notifying the duly elected presidents and secretaries
258 of the Mississippi Funeral Directors Association and the

259 Mississippi Funeral Directors and Morticians Association, or their
260 successors.

261 (8) The board may designate the administrator to perform
262 inspections under this chapter, may employ an individual to
263 perform such inspections or may contract with any other individual
264 or entity to perform such inspections. Any individual or entity
265 that performs such inspections shall have the right of entry into
266 any place in which the business or practice of funeral service
267 and/or funeral directing is carried on or advertised as being
268 carried on, for the purpose of inspection, for the investigation
269 of complaints coming before the board and for such other matters
270 as the board may direct.

271 (9) The board shall not adopt any rule or regulation
272 pertaining to the transportation of dead bodies, and shall not
273 adopt any rule or regulation requiring dead bodies to be embalmed
274 except as required by the State Department of Health's Rule 43 or
275 any subsequent rule adopted by the department.

276 **SECTION 7.** Section 73-11-51, Mississippi Code of 1972, is
277 reenacted and amended as follows:

278 73-11-51. (1) No person shall engage in the business or
279 practice of funeral service, including embalming, and/or funeral
280 directing or hold himself out as transacting or practicing or
281 being entitled to transact or practice funeral service, including
282 embalming, and/or funeral directing in this state unless duly
283 licensed under the provisions of this chapter.

284 (2) The board is authorized and empowered to examine
285 applicants for licenses for the practice of funeral service and
286 funeral directing and shall issue the proper license to those
287 persons who successfully pass the applicable examination and
288 otherwise comply with the provisions of this chapter.

289 (3) To be licensed for the practice of funeral directing
290 under this chapter, a person must:

291 (a) Be at least eighteen (18) years of age;

292 (b) Have a high school diploma or the equivalent
293 thereof;

294 (c) Have served as a resident trainee for not less than
295 twenty-four (24) months under the supervision of a person licensed
296 for the practice of funeral service or funeral directing in this
297 state;

298 (d) Have successfully passed a written and/or oral
299 examination as prepared or approved by the board; and

300 (e) Be of good moral character.

301 (4) To be licensed for the practice of funeral service under
302 this chapter, a person must:

303 (a) Be at least eighteen (18) years of age;

304 (b) Have a high school diploma or the equivalent
305 thereof;

306 (c) Have successfully completed twelve (12) months or
307 more of academic and professional instruction from an institution
308 accredited by the United States Department of Education for
309 funeral service education and have a certificate of completion
310 from an institution accredited by the American Board of Funeral
311 Service Education or any other successor recognized by the United
312 States Department of Education for funeral service education;

313 (d) Have served as a resident trainee for not less than
314 twelve (12) months, either before or after graduation from an
315 accredited institution mentioned above, under the supervision of a
316 person licensed for the practice of funeral service in this state
317 and in an establishment licensed in this state;

318 (e) Have successfully passed the National Conference of
319 Funeral Examiners examination as approved by the board; and

320 (f) Be of good moral character.

321 (5) All applications for examination and license for the
322 practice of funeral service or funeral directing shall be upon
323 forms furnished by the board and shall be accompanied by an
324 examination fee, a licensing fee and a nonrefundable application

325 fee in amounts fixed by the board in accordance with Section
326 73-11-56. The fee for an initial license, however, may be
327 prorated in proportion to the period of time from the date of
328 issuance to the date of biennial license renewal prescribed in
329 subsection (8) of this section. All applications for examination
330 shall be filed with the board office at least sixty (60) days
331 before the date of examination. A candidate shall be deemed to
332 have abandoned the application for examination if he does not
333 appear on the scheduled date of examination unless such failure to
334 appear has been approved by the board.

335 (6) The practice of funeral service or funeral directing
336 must be engaged in at a licensed funeral establishment, at least
337 one (1) of which is listed as the licensee's place of business;
338 and no person, partnership, corporation, association or other
339 organization shall open or maintain a funeral establishment at
340 which to engage in or conduct or hold himself or itself out as
341 engaging in the practice of funeral service or funeral directing
342 until such establishment has complied with the licensing
343 requirements of this chapter. A license for the practice of
344 funeral service or funeral directing shall be used only at
345 licensed funeral establishments; however, this provision shall not
346 prevent a person licensed for the practice of funeral service or
347 funeral directing from conducting a funeral service at a church, a
348 residence, public hall, lodge room or cemetery chapel, if such
349 person maintains a fixed licensed funeral establishment of his own
350 or is in the employ of or an agent of a licensed funeral
351 establishment.

352 (7) Any person holding a valid, unrevoked and unexpired
353 nonreciprocal license in another state or territory having
354 requirements greater than or equal to those of this state as
355 determined by the board may apply for a license to practice in
356 this state by filing with the board a certified statement from the
357 secretary of the licensing board of the state or territory in

358 which the applicant holds his license certifying to his
359 qualifications and good standing with that board by having
360 successfully passed a written and/or oral examination on the
361 Mississippi Funeral Service licensing law and rules and
362 regulations as prepared or approved by the board, and by paying a
363 nonrefundable application fee set by the board under Section
364 73-11-56. If the board finds that the applicant has fulfilled
365 substantially similar requirements, the board shall grant such
366 license upon receipt of a fee in an amount equal to the renewal
367 fee set by the board for a license for the practice of funeral
368 service or funeral directing, as the case may be, in this state.
369 The board may issue a temporary funeral service or funeral
370 directing work permit before a license is granted, before the next
371 regular meeting of the board, if the applicant for a reciprocal
372 license has complied with all requirements, rules and regulations
373 of the board. The temporary permit will expire at the next
374 regular meeting of the board.

375 (8) (a) Any person holding a license for the practice of
376 funeral service or funeral directing may have the same renewed for
377 a period of two (2) years by making and filing with the board an
378 application on or before the due date. Payment of the renewal fee
379 shall be in an amount set by the board in accordance with Section
380 73-11-56. The board shall mail the notice of renewal and the due
381 date for the payment of the renewal fee to the last known address
382 of each licensee at least thirty (30) days before that date. It
383 is the responsibility of the licensee to notify the board in
384 writing of any change of address. An application will be
385 considered late if the application and proper fees are not in the
386 board's office or postmarked by the due date.

387 (b) If the renewal fee is not paid on or postmarked by
388 the due date, the license of such person shall by operation of law
389 automatically expire and become void without further action of the
390 board. The board may reinstate such license if application for

391 licensure is made within a period of five (5) years, upon payment
392 of the renewal fee for the current year, all renewal fees in
393 arrears, and a reinstatement fee. After a period of five (5)
394 years, the licensee must make application, pay the current renewal
395 fee, all fees in arrears, and pass a written and/or oral
396 examination as prepared or approved by the board.

397 (9) No license shall be assignable or valid for any person
398 other than the original licensee.

399 (10) The board may, in its discretion, if there is a major
400 disaster or emergency where human death is likely to occur,
401 temporarily authorize the practice of funeral directing and
402 funeral service by persons licensed to practice in another state
403 but not licensed to practice in this state, provided that such
404 services are only rendered by members of disaster mortuary teams
405 authorized by federal or appropriate local authorities to provide
406 such services. Only persons licensed in this state, however, may
407 sign death certificates.

408 (11) * * * A person who is licensed for the practice of
409 funeral service by another state is authorized to make a removal
410 of a deceased person, embalm a deceased person or conduct a
411 funeral or burial service in this state, and a funeral director
412 who is licensed by another state is authorized to conduct a
413 funeral or burial service in this state, in the same manner and to
414 the same extent as provided by the laws of that state to persons
415 licensed by the State of Mississippi for the practice of funeral
416 service or for the practice of funeral directing. The board is
417 authorized to enter into written agreements with those states
418 detailing the manner and extent to which persons licensed by the
419 State of Mississippi may practice funeral service or directing in
420 that state.

421 (12) Any funeral service technology or mortuary science
422 program accredited by the American Board of Funeral Service
423 Education in the State of Mississippi, as well as students

424 enrolled in such a program, shall be exempt from licensing under
425 this chapter when embalming or otherwise preparing a deceased
426 human body for disposition as part of a student practicum
427 experience, when the student is directly supervised by an
428 instructor or preceptor who holds a current funeral service
429 license. This exemption shall apply to practicum experiences
430 performed at an accredited institution of funeral service
431 technology or mortuary science program or at a duly licensed
432 funeral establishment or commercial mortuary service. Nothing in
433 this subsection shall be construed to allow any funeral service
434 technology or mortuary science program, or those students enrolled
435 in such a program, to engage in practicum experiences for
436 remuneration.

437 (13) Each application or filing made under this section
438 shall include the social security number(s) of the applicant in
439 accordance with Section 93-11-64.

440 * * *

441 **SECTION 8.** Section 73-11-53, Mississippi Code of 1972, is
442 reenacted and amended as follows:

443 73-11-53. (1) A person desiring to become a resident
444 trainee for the practice of funeral service or funeral directing
445 shall make application to the board. Such application shall be
446 sustained by the licensee under whom the applicant is serving, and
447 shall be accompanied by a nonrefundable application fee in an
448 amount set by the board in accordance with Section 73-11-56. When
449 the board is satisfied as to the qualifications of an applicant,
450 it shall issue a certificate of resident traineeship. No credit
451 toward the resident traineeship will be allowed before the receipt
452 of a properly completed application and applicable fee at the
453 board office.

454 (2) The board shall have the power to suspend or revoke a
455 certificate of a resident traineeship for violation of any
456 provision of this chapter.

457 * * *

458 (3) A resident trainee must serve the apprenticeship in a
459 funeral establishment that is licensed by the State of Mississippi
460 and the preceptor must be a Mississippi licensee who is employed
461 by a Mississippi licensed funeral establishment.

462 (4) A resident traineeship certificate shall be renewable
463 upon payment of a renewal fee as set by the board. The
464 certificate will expire on December 31 of each year. The fee and
465 application will be considered late if the fee and application are
466 not in the office or show a postmark of December 31. Applications
467 received late may be reinstated by the payment of a renewal fee
468 and a reinstatement fee.

469 **SECTION 9.** Section 73-11-55, Mississippi Code of 1972, is
470 reenacted and amended as follows:

471 73-11-55. (1) No person or party shall conduct, maintain,
472 manage or operate a funeral establishment or branch thereof unless
473 a license for each such establishment has been issued by the board
474 and is conspicuously displayed in such funeral establishment. In
475 case of funeral services held in any private residence, church,
476 cemetery, cemetery chapel, cemetery facility, or lodge hall, no
477 license shall be required.

478 (2) To be licensed as a funeral establishment, a place or
479 premise must be at a fixed and specified address or location and
480 must be used for immediate post-death activities, whether used for
481 the custody, shelter, care, preparation and/or embalming of the
482 human dead. Every funeral establishment shall be under the charge
483 and personal supervision of a Mississippi funeral director
484 licensee or a Mississippi funeral service licensee. The licensee
485 in charge and the licensee with personal supervisory
486 responsibilities need not be the same licensee. Each licensed
487 funeral establishment shall be inspected at least once during each
488 licensing period. Such inspections may be unannounced. After
489 inspection of a funeral establishment, if the board cites the

490 funeral establishment for failure to comply with any provision of
491 this chapter or a rule or regulation of the board, the funeral
492 establishment shall resolve the violation to the satisfaction of
493 the board and be in full compliance with this chapter and board
494 rules and regulations not later than thirty (30) days after the
495 board files the inspection report.

496 (3) (a) A funeral establishment must contain a preparation
497 and/or embalming room, adequate casket and/or vault selection
498 room, and holding facilities or proper room or rooms in which
499 rites and ceremonies may be held. A funeral establishment shall
500 be subject to an inspection at least once during a two-year
501 license period. Each new establishment must be inspected before
502 the opening. All portions of each facility licensed under this
503 section shall be kept in a clean and sanitary condition.

504 (b) A branch establishment must contain an office
505 and/or an arrangement room, and a room for viewing and/or a chapel
506 or proper place for ceremonies. A branch establishment need not
507 meet all requirements specified in paragraph (a) of this
508 subsection and need not be under the personal supervision of a
509 Mississippi funeral director licensee or a Mississippi funeral
510 service licensee.

511 If the branch meets all requirements of a funeral
512 establishment as specified in paragraph (a) of this subsection,
513 such establishment must be under the charge and personal
514 supervision of a Mississippi funeral director licensee or a
515 Mississippi funeral service licensee.

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

520 (4) Applications for funeral establishment licenses, branch
521 establishment licenses or commercial mortuary service licenses
522 shall be made on blanks furnished by the board and shall be

523 accompanied by a fee in an amount fixed by the board under Section
524 73-11-56. All establishment licenses shall be issued for a period
525 of two (2) years, except initial licenses may be prorated from the
526 date of issuance to the next renewal date.

527 Renewal funeral establishment and branch establishment
528 license applications and license fees shall be due and payable to
529 the board on or before the expiration date of the license. The
530 board shall mail the notice of renewal and the due date for
531 payment of the renewal fee at least thirty (30) days before that
532 date.

533 (5) If the renewal fee is not paid on or postmarked by the
534 due date, the license shall by operation of law automatically
535 expire and become void without further action of the board. All
536 establishments whose licenses have expired under this section may
537 be reinstated by filing with the board an application for
538 reinstatement, submitting to an inspection during which time the
539 licensee in charge of such establishment shall be interviewed by
540 the board or its designee and by paying all renewal fees in
541 arrears and a reinstatement fee.

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

545 (7) A license for each new establishment * * * shall not be
546 issued until an inspection has been made, license and inspection
547 fees have been paid, and the licensee in charge and/or owners of
548 such establishment has been interviewed by the board or its
549 designee.

550 * * *

551 (8) The board is authorized to establish rules and
552 regulations for the issuance of a special funeral establishment
553 work permit.

554 **SECTION 10.** Section 73-11-56, Mississippi Code of 1972, is
555 reenacted and amended as follows:

556 73-11-56. On or before October 1 of each year, the board
 557 shall determine the amount of funds that will be required during
 558 the next ensuing two (2) years to properly administer the laws
 559 which the board is directed to enforce and administer and by rule
 560 and regulation shall fix fees in such reasonable sums as may be
 561 necessary for such purposes within the following limitations:

562 Funeral establishment:

563	Application fee, not more than.....	\$150.00
564	Inspection fee, not more than.....	\$ 75.00
565	Funeral establishment license fee, not more than....	\$150.00
566	Branch establishment license fee, not more than.....	\$150.00
567	Commercial mortuary service license fee, not	
568	more than.....	\$150.00
569	<u>Crematory application fee, not more than.....</u>	<u>\$150.00</u>
570	Renewal application and license fee, not more than...	\$300.00
571	<u>Crematory renewal license fee, not more than.....</u>	<u>\$300.00</u>
572	Special work permit.....	\$150.00

573 Funeral service:

574	Application fee, not more than.....	\$ 50.00
575	Reciprocal application fee, not more than.....	\$100.00
576	License fee, not more than.....	\$ 75.00
577	Renewal license fee, not more than.....	\$ 75.00
578	Work permit, not more than.....	\$ 50.00
579	Examination fee.....	Cost of the examination

580 Funeral director:

581	Application fee, not more than.....	\$ 50.00
582	Reciprocal application fee, not more than.....	\$100.00
583	License fee, not more than.....	\$ 50.00
584	Renewal license fee, not more than.....	\$ 50.00
585	Work permit, not more than.....	\$ 50.00
586	Examination fee.....	Cost of the examination

587 Resident trainee certificate:

588	Funeral service application fee, not more than.....	\$ 50.00
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589 Funeral director application fee, not more than..... \$ 50.00
590 Funeral service renewal application fee,
591 not more than..... \$ 50.00
592 Funeral director renewal application fee,
593 not more than..... \$ 50.00

594 Other fees:

595 Duplicate license fee, not more than..... \$ 25.00
596 Reinstatement of lapsed license fee, equal to the
597 amount of the applicable license fee.

598 All licenses will have a reinstatement fee added to the
599 renewal fee if the payment is not in the board's office or
600 postmarked by the due date.

601 At least thirty (30) days prior to the expiration date of any
602 license issued by the board, the board shall notify the licensee
603 of the applicable renewal fee therefor.

604 **SECTION 11.** Section 73-11-57, Mississippi Code of 1972, is
605 reenacted and amended as follows:

606 73-11-57. (1) The board may refuse to examine or to issue
607 or renew, or may suspend or revoke, any license, or may reprimand
608 or place the holder thereof on a term of probation, after proper
609 hearing, upon finding the holder of such license to be guilty of
610 acts of commission or omission including the following:

611 (a) The employment of fraud or deception in applying
612 for a license or in passing the examination provided for in this
613 chapter;

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

615 (c) The conviction of a felony by any court in this
616 state or any federal court or by the court of any other state or
617 territory of the United States;

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

620 (e) The impersonation of another funeral service or
621 funeral directing licensee;

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

625 (g) Violation of any provision of this chapter or any
626 rule or regulation of the board;

627 (h) Having had a license for the practice of funeral
628 service or funeral directing suspended or revoked in any
629 jurisdiction, having voluntarily surrendered his license in any
630 jurisdiction, having been placed on probation in any jurisdiction,
631 having been placed under disciplinary order(s) or other
632 restriction in any manner for funeral directing and/or funeral
633 service, or operating a funeral establishment (a certified copy of
634 the order of suspension, revocation, probation or disciplinary
635 action shall be prima facie evidence of such action);

636 (i) Solicitation of dead human bodies by the licensee,
637 his agents, assistants or employees, whether such solicitation
638 occurs after death or when death is imminent; if the person
639 solicited has made known a desire not to receive the
640 communication, or if the solicitation involves coercion, duress or
641 harassment, or if the solicitation takes place at the residence of
642 the client or prospective client, is uninvited by the client or
643 prospective client and has not been previously agreed to by the
644 client or prospective client; however, this shall not be deemed to
645 prohibit general advertising;

646 (j) Employment directly or indirectly of any
647 apprentice, agent, assistant, employee, or other person, on a
648 part-time or full-time basis or on commission, for the purpose of
649 calling upon individuals or institutions by whose influence dead
650 human bodies may be turned over to a particular funeral
651 establishment;

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

654 * * *

655 (l) Knowingly performing any act that in any way
656 assists an unlicensed person to practice funeral service or
657 funeral directing;

658 (m) Knowingly making a false statement on death
659 certificates; or

660 (n) Unprofessional conduct which includes, but is not
661 limited to:

662 (i) Retaining a dead human body for the payment of
663 a fee for the performance of services that are not
664 authorized * * *;

665 (ii) Knowingly performing any act which in any way
666 assists an unlicensed person to practice funeral service or
667 funeral directing;

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

670 (iv) Any act or omission in the practice of
671 funeral service or directing which constitutes dishonesty, fraud
672 or misrepresentation with the intent to benefit the licensee,
673 another person or funeral establishment, or with the intent to
674 substantially injure another person, licensee or funeral
675 establishment; or

676 (v) Any act or conduct, whether the same or of a
677 different character than specified above, which constitutes or
678 demonstrates bad faith, incompetency or untrustworthiness; or
679 dishonest, fraudulent or improper dealing; or any other violation
680 of the provisions of this chapter, the rules and regulations
681 established by the board or any rule or regulation promulgated by
682 the Federal Trade Commission relative to the practice of funeral
683 service or funeral directing.

684 (2) The board may, upon satisfactory proof that the
685 applicant or licensee has been guilty of any of the offenses above
686 enumerated, refuse to examine or issue a license to the applicant,
687 or may refuse to renew or revoke or suspend the license of the

688 licensee, or place on probation or reprimand him, upon a majority
689 vote of the board members, after a hearing thereon. The board
690 is * * * vested with full power and authority to hold and conduct
691 such hearings, compel the attendance of witnesses and the
692 production of books, records and documents, issue subpoenas
693 therefor, administer oaths, examine witnesses, and do all things
694 necessary to properly conduct such hearings. The board may waive
695 the necessity of a hearing if the person accused of a violation
696 admits that he has been guilty of such offense. Any person who
697 has been refused a license or whose license has been revoked or
698 suspended may, within thirty (30) days after the decision of the
699 board, file with the board a written notice stating that he feels
700 himself aggrieved by such decision and may appeal therefrom to the
701 circuit court of the county and judicial district of residence of
702 the person, or if the person is a nonresident of the State of
703 Mississippi, to the Circuit Court of the First Judicial District
704 of Hinds County. Upon the filing of such notice, the secretary of
705 the board shall transmit to the clerk of the circuit court the
706 records and findings of such proceedings. The circuit court shall
707 hear and determine as to whether the action of the board was in
708 accord or consistent with law, or was arbitrary, unwarranted or in
709 abuse of discretion. An appeal from the circuit court judgment or
710 decree may be reviewed by the Supreme Court as is provided by law
711 for other appeals. An appeal of a decision or order of the board
712 does not act as a supersedeas.

713 (3) In a proceeding conducted under this section by the
714 board for the revocation or suspension of a license, the board
715 shall have the power and authority for the grounds stated for such
716 revocation or suspension, and in addition thereto or in lieu of
717 such revocation or suspension may assess and levy upon any person
718 licensed under this chapter, a monetary penalty, as follows:

719 (a) For the first violation of any of the subparagraphs
720 of subsection (1) of this section, a monetary penalty of * * *
721 Five Hundred Dollars (\$500.00).

722 (b) For the second violation of any of the
723 subparagraphs of subsection (1) of this section, a monetary
724 penalty of * * * One Thousand Dollars (\$1,000.00).

725 (c) For the third and any subsequent violation of any
726 of the subparagraphs of subsection (1) of this section, a monetary
727 penalty of * * * Five Thousand Dollars (\$5,000.00).

728 (d) For any violation of any of the subparagraphs of
729 subsection (1) of this section, those reasonable costs that are
730 expended by the board in the investigation and conduct of a
731 proceeding for licensure revocation or suspension, including, but
732 not limited to, the cost of process service, court reporters,
733 expert witnesses and investigators.

734 (4) The power and authority of the board to assess and levy
735 such monetary penalties hereunder shall not be affected or
736 diminished by any other proceeding, civil or criminal, concerning
737 the same violation or violations except as provided in this
738 section.

739 (5) A licensee shall have the right of appeal from the
740 assessment and levy of a monetary penalty as provided in this
741 section under the same conditions as a right of appeal is provided
742 elsewhere for appeals from an adverse ruling, order or decision of
743 the board.

744 (6) Any monetary penalty assessed and levied under this
745 section shall not take effect until after the time for appeal
746 shall have expired.

747 (7) A monetary penalty assessed and levied under this
748 section shall be paid to the board by the licensee upon the
749 expiration of the period allowed for appeal of such penalties
750 under this section or may be paid sooner if the licensee elects.

751 With the exception of subsection (3)(d) of this section, monetary
752 penalties collected by the board under this section shall be
753 deposited in the State Treasury to the credit of the State Board
754 of Funeral Service. Any monies collected by the board under
755 subsection (3)(d) of this section shall be deposited into the
756 special fund operating account of the board.

757 (8) When payment of a monetary penalty assessed and levied
758 by the board against a licensee in accordance with this section is
759 not paid by the licensee when due under this section, the board
760 shall have power to institute and maintain proceedings in its name
761 for enforcement of payment in the chancery court of the county and
762 judicial district of residence of the licensee, or if the licensee
763 is a nonresident of the State of Mississippi, * * * in the
764 Chancery Court of the First Judicial District of Hinds County,
765 Mississippi.

766 (9) In addition to the reasons specified in subsection (1)
767 of this section, the board shall be authorized to suspend the
768 license of any licensee for being out of compliance with an order
769 for support, as defined in Section 93-11-153. The procedure for
770 suspension of a license for being out of compliance with an order
771 for support, and the procedure for the reissuance or reinstatement
772 of a license suspended for that purpose, and the payment of any
773 fees for the reissuance or reinstatement of a license suspended
774 for that purpose, shall be governed by Section 93-11-157 or
775 93-11-163, as the case may be. Actions taken by the board in
776 suspending a license when required by Section 93-11-157 or
777 93-11-163 are not actions from which an appeal may be taken under
778 this section. Any appeal of a license suspension that is required
779 by Section 93-11-157 or 93-11-163 shall be taken in accordance
780 with the appeal procedure specified in Section 93-11-157 or
781 93-11-163, as the case may be, rather than the procedure specified
782 in this section. If there is any conflict between any provision
783 of Section 93-11-157 or 93-11-163 and any provision of this

784 chapter, the provisions of Section 93-11-157 or 93-11-163, as the
785 case may be, shall control.

786 **SECTION 12.** The following shall be codified as Section
787 73-11-58, Mississippi Code of 1972:

788 73-11-58. (1) If a decedent has left no written
789 authorization for the cremation and/or disposition of the
790 decedent's body as permitted by law, the following competent
791 persons, in the order of priority listed below, may authorize the
792 type, method, place, cremation and/or other disposition of the
793 decedent's body:

794 (a) The surviving spouse.

795 (b) The surviving children who are at least eighteen
796 (18) years of age and can be located after reasonable efforts.

797 (c) The surviving parents.

798 (d) The surviving siblings who are at least eighteen
799 (18) years of age and can be located after reasonable efforts.

800 (e) A person in the class of the next degree of
801 kinship, in descending order, who, under state law, would inherit
802 the decedent's estate if the decedent died intestate who are at
803 least eighteen (18) years of age and can be located with
804 reasonable effort.

805 (f) A person who has exhibited special care and concern
806 for the decedent and is willing and able to make decisions about
807 the cremation and disposition.

808 (g) In the case of indigents or any other individuals
809 whose final disposition is the responsibility of the state or any
810 of its instrumentalities, a public administrator, medical
811 examiner, coroner, state-appointed guardian, or any other public
812 official charged with arranging the final disposition of the
813 decedent may serve as the authorizing agent.

814 (h) In the case of individuals who have donated their
815 bodies to science or whose death occurred in a nursing home or
816 private institution and in which the institution is charged with

817 making arrangements for the final disposition of the decedent, a
818 representative of the institution may serve as the authorizing
819 agent in the absence of any of the above.

820 (i) In the absence of any of the above, any person
821 willing to assume responsibility for the cremation and disposition
822 of the decedent.

823 (2) No funeral establishment shall accept a dead human body
824 from any public officer or employee or from the official of any
825 institution, hospital or nursing home, or from a physician or any
826 person having a professional relationship with a decedent, without
827 having first made due inquiry as to the desires of the persons who
828 have the legal authority to direct the disposition of the
829 decedent's body. If any persons are found, their authority and
830 directions shall govern the disposal of the remains of the
831 decedent. Any funeral establishment receiving the remains in
832 violation of this subsection shall make no charge for any service
833 in connection with the remains before delivery of the remains as
834 stipulated by the persons having legal authority to direct the
835 disposition of the body. This section shall not prevent any
836 funeral establishment from charging and being reimbursed for
837 services rendered in connection with the removal of the remains of
838 any deceased person in case of accidental or violent death and
839 rendering necessary professional services required until the
840 persons having legal authority to direct the disposition of the
841 body have been notified,

842 **SECTION 13.** Section 73-11-59, Mississippi Code of 1972, is
843 reenacted and amended as follows:

844 73-11-59. Any person, partnership, corporation, association
845 or his or her or its agents or representatives who shall violate
846 any of the provisions of this chapter shall be deemed guilty of a
847 misdemeanor and, upon conviction thereof, shall be punished by a
848 fine of Five Thousand Dollars (\$5,000.00), or by imprisonment for

849 not more than six (6) months in the county jail, or by both such
850 fine and imprisonment.

851 **SECTION 14.** Section 73-11-61, Mississippi Code of 1972, is
852 reenacted as follows:

853 73-11-61. Every funeral director or funeral service licensee
854 shall provide, before the rendering of services, the funeral
855 establishment's current general price list, casket price list,
856 outer container price list, and a statement of goods and services
857 to the person or persons who authorize the services and is
858 responsible for payment of the expenses therefor, in a manner and
859 format as prescribed by the Federal Trade Commission's Funeral
860 Rule of 1984 and any future changes with regard to required
861 disclosures. The general price list must be made available to any
862 person upon request.

863 **SECTION 15.** Section 73-11-63, Mississippi Code of 1972, is
864 reenacted and amended as follows:

865 73-11-63. Nothing in this chapter shall be construed to
866 authorize the regulation or licensing of cemeteries or cemetery
867 chapels * * * by the board, except the regulation or licensing of
868 any funeral establishment operated by a cemetery. In addition,
869 nothing in this chapter shall be construed to prevent or interfere
870 with the ceremonies, customs, religious rites or religion of any
871 people, denomination, or sect, or to prevent or interfere with any
872 religious denomination, sect or anybody composed of persons of a
873 denomination, or to prevent or interfere with any church or
874 synagogue from having its committee or committees prepare human
875 bodies for burial or the families, friends or neighbors of
876 deceased persons who prepare and bury their dead without charge.

877 **SECTION 16.** Section 73-11-65, Mississippi Code of 1972, is
878 reenacted as follows:

879 73-11-65. Every funeral service or interment, or part
880 thereof, that is conducted in Mississippi must be in the actual
881 charge and under the supervision of a funeral director or funeral

882 service licensee who is licensed under this chapter. However,
883 this section shall not prevent a family from burying its own dead
884 without charge.

885 **SECTION 17.** Section 73-11-67, Mississippi Code of 1972, is
886 reenacted and amended as follows:

887 73-11-67. Every person, establishment or company not
888 licensed under this chapter that sells caskets at retail shall
889 register annually with the board. * * * The names of registrants
890 under this section shall be made available to any person upon
891 request during the regular business hours of the board. The
892 procedure for conducting a disciplinary proceeding against any
893 casket retailer accused of failing to register with the board, as
894 well as the penal sanctions available to the board, shall be the
895 same as those set forth in Section 73-11-57.

896 **SECTION 18.** Section 73-11-69, Mississippi Code of 1972, is
897 reenacted and amended as follows:

898 73-11-69. (1) No person shall operate a crematory facility
899 in this state unless the person is licensed by the State Board of
900 Funeral Service. An application for a crematory facility license
901 shall be accompanied by a fee in an amount not to exceed the fee
902 fixed by the board for a funeral establishment license.

903 (2) The operator of a crematory facility shall issue a
904 certificate of cremation to the family of each person cremated in
905 the facility. In addition, the operator of the crematory facility
906 shall maintain a log of all cremations performed in the facility,
907 and this log shall match the certificates of cremation that have
908 been issued by the facility.

909 (3) No operator of a crematory facility shall knowingly
910 represent that an urn or temporary container contains the
911 recovered cremated remains of specific decedent or of body parts
912 removed from a specific decedent when it does not. This
913 subsection does not prohibit the making of such a representation
914 because of the presence in the recovered cremated remains of de

915 minimis amounts of the cremated remains of another decedent or of
916 body parts.

917 (4) The board shall inspect each licensed crematory facility
918 during each licensure period, and at such other times as
919 necessary, to verify that the crematory facility is in compliance
920 with the requirements of this section. Any person who operates a
921 crematory facility in this state without a license, or any person
922 who otherwise violates any provision of this section, is guilty of
923 a felony. Upon conviction for a violation of this section, in
924 addition to any penalty that may be imposed by the court, the
925 board may revoke the person's crematory facility license.

926 (5) The board may promulgate such rules and regulations as
927 deemed necessary for the proper licensure and regulation of
928 crematory facilities in this state.

929 (6) Any crematory or funeral establishment may dispose of
930 any remains unclaimed by the family after twelve (12) months after
931 cremation by scattering or burial upon a final notification to the
932 next of kin by certified mail to their last known address.

933 **SECTION 19.** This act shall take effect and be in force from
934 and after July 1, 2005.