

By: Senator(s) Burton

To: Public Health and  
Welfare

SENATE BILL NO. 2373

1 AN ACT TO REENACT SECTIONS 73-19-1 THROUGH 73-19-29,  
2 MISSISSIPPI CODE OF 1972, AND SECTIONS 73-19-33 THROUGH 73-19-45,  
3 MISSISSIPPI CODE OF 1972, WHICH REGULATE THE PRACTICE OF  
4 OPTOMETRY; TO AMEND SECTION 73-19-31, MISSISSIPPI CODE OF 1972, TO  
5 EXTEND THE REPEALER ON THOSE SECTIONS; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 73-19-1, Mississippi Code of 1972, is  
8 reenacted as follows:

9 73-19-1. The practice of optometry is defined to be the  
10 application of optical principles, through technical methods and  
11 devices in the examination of human eyes for the purpose of  
12 ascertaining departures from the normal, measuring their  
13 functional powers and adapting optical accessories for the aid  
14 thereof. The practice of optometry shall include the prescribing  
15 and use of therapeutic pharmaceutical agents by optometrists  
16 certified under Sections 73-19-153 through 73-19-165. The  
17 practice of optometry shall not include the performing of any  
18 invasive surgery including laser surgery, but shall not preclude  
19 the removal of superficial foreign bodies from the eye or other  
20 noninvasive procedures. Nothing in this section or any other  
21 provision of law shall be construed to prohibit optometrists who  
22 have been certified under Sections 73-19-153 through 73-19-165  
23 from providing postophthalmic surgical or clinical care and  
24 management with the advice and consultation of the operating or  
25 treating physician.

26 **SECTION 2.** Section 73-19-3, Mississippi Code of 1972, is  
27 reenacted as follows:

28           73-19-3. It shall not be lawful for any person in this state  
29 to engage in the practice of optometry or to hold himself out as a  
30 practitioner of optometry, or attempt to determine by an  
31 examination of the eyes the kind of glasses needed by any person,  
32 or to hold himself out as able to examine the eyes of any person  
33 for the purpose of fitting the same with glasses, excepting those  
34 hereinafter exempted, unless he has first fulfilled the  
35 requirements of this chapter and has received a certificate of  
36 licensure from the State Board of Optometry created by this  
37 chapter, nor shall it be lawful for any person in this state to  
38 represent that he is the lawful holder of a certificate of  
39 licensure such as provided for in this chapter, when in fact he is  
40 not such lawful holder or to impersonate any licensed practitioner  
41 of optometry, or to fail to register the certificate as provided  
42 by law.

43           **SECTION 3.** Section 73-19-5, Mississippi Code of 1972, is  
44 reenacted as follows:

45           73-19-5. (1) Any person violating the provisions of this  
46 chapter shall be guilty of a misdemeanor and, upon conviction for  
47 his first offense shall be fined not more than Five Hundred  
48 Dollars (\$500.00) at the discretion of the court, and upon  
49 conviction for a second or later offense shall be fined not less  
50 than Five Hundred Dollars (\$500.00) nor more than One Thousand  
51 Dollars (\$1,000.00) or imprisoned not less than six (6) months nor  
52 more than one (1) year, at the discretion of the court.

53           (2) Any entity, organization or person, including the board,  
54 any member of the board and its agents or employees, acting in  
55 good faith and without malice, who makes any report or information  
56 available to the board regarding violation of any of the  
57 provisions of Sections 73-19-1 through 73-19-111, or who assists  
58 in the organization, investigation or preparation of any such  
59 report or information or assists the board in carrying out any of

60 its duties or functions provided by law, shall be immune from  
61 civil or criminal liability for such acts.

62 **SECTION 4.** Section 73-19-7, Mississippi Code of 1972, is  
63 reenacted as follows:

64 73-19-7. The Governor, with the advice and consent of the  
65 Senate, shall appoint a State Board of Optometry, consisting of  
66 five (5) persons, citizens of Mississippi, each of whom shall be a  
67 nonmedical man or woman actually engaged in the practice of  
68 optometry for five (5) years next preceding his appointment.  
69 Within ninety (90) days after March 25, 1974, the Governor shall  
70 appoint: one (1) member for a term of one (1) year, one (1)  
71 member for a term of two (2) years, one (1) member for a term of  
72 three (3) years, one (1) member for a term of four (4) years, and  
73 one (1) member for a term of five (5) years; and upon the  
74 expiration of all such terms their successors shall be appointed  
75 by the Governor for a term of five (5) years. From and after July  
76 1, 1983, the appointments to the board shall be made with one (1)  
77 member to be appointed from each of the congressional districts as  
78 existing on January 1, 1980; provided that the present members of  
79 the State Board of Optometry whose terms have not expired by July  
80 1, 1983, shall continue to serve until their terms of office have  
81 expired. Each member shall remain in office after the expiration  
82 of his term until his successor shall be duly appointed and  
83 qualified.

84 No person so appointed shall be a stockholder in or a member  
85 of the faculty or of the board of trustees of any school of  
86 optometry, or serve to exceed two (2) five-year terms.

87 Vacancies on said board shall be filled by appointment by the  
88 Governor, with the advice and consent of the Senate, from a list  
89 of names submitted by the Mississippi Optometric Association  
90 consisting of three (3) of its members, or by appointment of any  
91 qualified member of the association.

92           **SECTION 5.** Section 73-19-9, Mississippi Code of 1972, is  
93 reenacted as follows:

94           73-19-9. The State Board of Optometry shall organize by the  
95 election from its members of a president and a secretary, who  
96 shall hold their respective offices for one (1) year.

97           It shall hold regular meetings for examination, beginning on  
98 the second week of January and July of each year, and additional  
99 meetings at such times and places as the board shall determine,  
100 said additional meetings not to exceed ten (10) meeting days  
101 annually, but the July meeting shall be held in the City of  
102 Jackson.

103           A majority of the board shall constitute a quorum, but a less  
104 number may adjourn from time to time.

105           The board shall make such rules and regulations as may be  
106 necessary to carry out the provisions of this chapter; provided,  
107 however, that it shall require the concurrence of a majority of  
108 the members of the board to grant or revoke a license.

109           **SECTION 6.** Section 73-19-11, Mississippi Code of 1972, is  
110 reenacted as follows:

111           73-19-11. Before entering upon the discharge of the duties  
112 of his office the Secretary of the State Board of Optometry shall  
113 give a bond to the state, to be approved by the board, in the sum  
114 of Two Thousand Dollars (\$2,000.00) conditioned for the faithful  
115 discharge of the duties of his office. The premium for such bond  
116 to be paid from the funds paid into the State Treasury by the  
117 secretary of the board.

118           Such bond, with the approval of the board and oath of office  
119 indorsed thereon, shall be deposited with the Secretary of State  
120 and kept in his office. Each month all monies received by the  
121 secretary shall be paid by him into the State Treasury to the  
122 credit of a fund for the use of the State Board of Optometry.

123           **SECTION 7.** Section 73-19-13, Mississippi Code of 1972, is  
124 reenacted as follows:

125           73-19-13. Each member of the State Board of Optometry shall  
126 be entitled to receive per diem as authorized under Section  
127 25-3-69 in addition to all actual, necessary expenses incurred in  
128 the discharge of official duties, including mileage as authorized  
129 by law for state officials and employees.

130           The secretary shall receive an annual salary, to be fixed by  
131 the board, and his necessary expenses incurred in the discharge of  
132 his official duties. The State Board of Optometry may engage the  
133 services of an attorney to assist it in the discharge of its  
134 duties on terms to be fixed by the board.

135           The compensation and expenses of the secretary, attorney and  
136 members of the board, and the expenses of the board necessary in  
137 carrying out the provisions of this chapter, shall be paid from  
138 the fund in the State Treasury for use of the board on the  
139 requisition signed by the president and secretary of the board and  
140 the warrant of the auditor of the state; provided, however, that  
141 said compensation and expenses shall not exceed the amount paid  
142 into the State Treasury under the provisions of this chapter; and  
143 provided further, that all expenditures from such special fund  
144 shall be authorized by the Legislature and shall be subject to all  
145 applicable provisions of the state budget law.

146           **SECTION 8.** Section 73-19-15, Mississippi Code of 1972, is  
147 reenacted as follows:

148           73-19-15. The State Board of Optometry shall have an  
149 official seal and shall keep a record of its proceedings, a  
150 register of persons registered as optometrists and register  
151 licenses by it revoked.

152           Its records shall be open to public inspection, and it shall  
153 keep on file all examination papers for a period of ninety (90)  
154 days after each examination. A transcript of an entry in such  
155 records certified by the secretary under the seal of the board,  
156 shall be evidence of the facts therein stated. The board shall  
157 annually on or before January 1 make a report to the Governor of

158 all its official acts during the preceding year, and of its  
159 receipts and disbursements, and a full and complete report of the  
160 conditions of optometry in this state.

161 **SECTION 9.** Section 73-19-17, Mississippi Code of 1972, is  
162 reenacted as follows:

163 73-19-17. Any person over the age of twenty-one (21) years,  
164 of good moral character, and who has graduated from a high school  
165 or preparatory school affiliated with and recognized by a state  
166 university, and who has graduated from a reputable school or  
167 college of optometry, shall be entitled to stand the examination  
168 for license to practice optometry in Mississippi. The examining  
169 Board of Optometry shall keep on file a list of schools or  
170 colleges of optometry which are recognized by said board. The  
171 examination to practice optometry shall consist of tests in  
172 practical, theoretical and physiological optics, in theoretical  
173 and practical optometry and in anatomy and physiology of the eye  
174 and in pathology as applied to optometry. The State Board of  
175 Optometry shall not examine or certify any optometrist in any  
176 therapeutic procedures unless the optometrist has successfully  
177 completed the proper didactic education and supervised clinical  
178 training taught by an institution accredited by a regional or  
179 professional accreditation organization that is recognized or  
180 approved by the Council on Postsecondary Accreditation of the  
181 United States Department of Education, or its successor, and  
182 approved by the State Board of Optometry with the advice and  
183 consultation of the designated members of the State Board of  
184 Medical Licensure and the State Board of Pharmacy.

185 **SECTION 10.** Section 73-19-19, Mississippi Code of 1972, is  
186 reenacted as follows:

187 73-19-19. Every person desiring to be licensed as in this  
188 chapter provided, shall file with the secretary an application,  
189 verified by oath, setting forth the facts which entitle the  
190 applicant to examination and licensure under the provisions of

191 this chapter. The said board shall hold at least two (2)  
192 examinations each year. In case of failure at any examination the  
193 applicant, after the expiration of six (6) months and within two  
194 (2) years, shall have the privilege of a second examination by the  
195 board without the payment of an additional fee. In the case of  
196 any applicant who shall fail the examination twice, said applicant  
197 shall not be permitted to again take the examination until he has  
198 completed a further course of study outlined by the board and paid  
199 the examination fee therefor. Every applicant who shall pass the  
200 examination, and who shall otherwise comply with the provisions of  
201 this chapter, shall receive from the said board under its seal a  
202 certificate of licensure entitling him to practice optometry in  
203 this state, which certificate shall be duly registered in a record  
204 book to be properly kept by the secretary of the board for that  
205 purpose, which shall be open to public inspection, and a duly  
206 certified copy of said record shall be received as evidence in all  
207 courts of this state in the trial of any case.

208 Each application or filing made under this section shall  
209 include the Social Security number(s) of the applicant in  
210 accordance with Section 93-11-64, Mississippi Code of 1972.

211 **SECTION 11.** Section 73-19-21, Mississippi Code of 1972, is  
212 reenacted as follows:

213 73-19-21. Said board shall charge the following fees for  
214 examination, registrations and renewals of certificates: The sum  
215 of not more than Two Hundred Dollars (\$200.00) for an examination  
216 of an applicant who is a resident of Mississippi and not more than  
217 Three Hundred Dollars (\$300.00) for a nonresident of Mississippi  
218 to cover the additional expenses of checking references, character  
219 and other statements contained in the application. Every  
220 registered optometrist who desires to continue the practice of  
221 optometry shall, biennially, on or before January 1, pay to the  
222 secretary of the board a renewal registration fee of not more than  
223 Four Hundred Dollars (\$400.00) for which he shall receive a

224 renewal of his certificate. The board, in its discretion, may set  
225 the renewal registration fee at different amounts for registered  
226 optometrists, for registered optometrists certified to use  
227 diagnostic pharmaceutical agents, and for registered optometrists  
228 certified to use diagnostic and therapeutic pharmaceutical agents,  
229 not to exceed the maximum amount prescribed in this section.

230 In case of neglect to pay the renewal registration fee herein  
231 specified, the board may revoke such certificate and the holder  
232 thereof may be reinstated by complying with the conditions  
233 specified in this chapter. But no certificate or permit shall be  
234 revoked without giving sixty (60) days' notice to the delinquent,  
235 who, within such period shall have the right of renewal of such  
236 certificate on payment of the renewal fee with a penalty of not  
237 more than Fifteen Dollars (\$15.00), provided, that retirement from  
238 practice for a period not exceeding five (5) years shall not  
239 deprive the holder of said certificate of the right to renew his  
240 certificate on the payment of all lapsed fees. The board shall  
241 adopt a seal and certificate of suitable design and shall conduct  
242 its examination at Jackson, in this state. Its permanent records  
243 shall be kept in the office of the secretary, which records shall  
244 be open to public inspection.

245 **SECTION 12.** Section 73-19-23, Mississippi Code of 1972, is  
246 reenacted as follows:

247 73-19-23. (1) The board shall refuse to grant a certificate  
248 of licensure to any applicant and may cancel, revoke or suspend  
249 the operation of any certificate by it granted for any or all of  
250 the following reasons, to-wit: unprofessional and unethical  
251 conduct or the conviction of a crime involving moral turpitude,  
252 habitual intemperance in the use of ardent spirits, or stimulants,  
253 narcotics, or any other substance which impairs the intellect and  
254 judgment to such an extent as to incapacitate one for the  
255 performance of the duties of an optometrist. The certificate of

256 licensure of any person can be revoked for violating any section  
257 of this chapter.

258 (2) The board shall further be authorized to take  
259 disciplinary action against a licensee for any unlawful acts which  
260 shall include violations of regulations promulgated by the board,  
261 as well as the following acts:

262 (a) Fraud or misrepresentation in applying for or  
263 procuring an optometric license or in connection with applying for  
264 or procuring periodic renewal of an optometric license.

265 (b) Cheating on or attempting to subvert the optometric  
266 licensing examination(s).

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

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

273 (e) Conduct likely to deceive, defraud or harm the  
274 public.

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

279 (g) Willfully or negligently violating the  
280 confidentiality between doctor and patient, except as required by  
281 law.

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

284 (i) Being found mentally incompetent or insane by any  
285 court of competent jurisdiction.

286 (j) The use of any false, fraudulent, deceptive or  
287 misleading statement in any document connected with the practice  
288 of optometry.

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

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

293           (m) Being addicted or habituated to a drug or  
294 intoxicant.

295           (n) Violating any state or federal law or regulation  
296 relating to a drug legally classified as a controlled substance.

297           (o) Obtaining any fee by fraud, deceit or  
298 misrepresentation.

299           (p) Disciplinary action of another state or  
300 jurisdiction against a licensee or other authorization to practice  
301 optometry based upon acts or conduct by the licensee similar to  
302 acts or conduct which would constitute grounds for action as  
303 defined in this chapter, a certified copy of the record of the  
304 action taken by the other state or jurisdiction being conclusive  
305 evidence thereof.

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

309           (r) Violation of any provision(s) of the Optometry  
310 Practice Act or the rules and regulations of the board or of an  
311 action, stipulation or agreement of the board.

312           (s) To advertise in a manner that tends to deceive,  
313 mislead or defraud the public.

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

317           (u) To knowingly submit or cause to be submitted any  
318 misleading, deceptive or fraudulent representation on a claim  
319 form, bill or statement.

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

322 (3) Any person who is holder of a certificate of licensure  
323 or who is an applicant for examination for a certificate of  
324 licensure, against whom is preferred any charges, shall be  
325 furnished by the board with a copy of the complaint and shall have  
326 a hearing in Jackson, Mississippi, before the board, at which  
327 hearing he may be represented by counsel. At such hearing  
328 witnesses may be examined for and against the accused respecting  
329 the said charges, and said hearing orders or appeals will be  
330 conducted according to the procedure now provided in Section  
331 73-25-27. The suspension of a certificate of licensure, by reason  
332 of the use of stimulants or narcotics may be removed when the  
333 holder thereof shall have been adjudged by the said board to be  
334 cured and capable of practicing optometry.

335 (4) In addition to the reasons specified in subsections (1)  
336 and (2) of this section, the board shall be authorized to suspend  
337 the license of any licensee for being out of compliance with an  
338 order for support, as defined in Section 93-11-153. The procedure  
339 for suspension of a license for being out of compliance with an  
340 order for support, and the procedure for the reissuance or  
341 reinstatement of a license suspended for that purpose, and the  
342 payment of any fees for the reissuance or reinstatement of a  
343 license suspended for that purpose, shall be governed by Section  
344 93-11-157 or 93-11-163, as the case may be. If there is any  
345 conflict between any provision of Section 93-11-157 or 93-11-163  
346 and any provision of this chapter, the provisions of Section  
347 93-11-157 or 93-11-163, as the case may be, shall control.

348 **SECTION 13.** Section 73-19-25, Mississippi Code of 1972, is  
349 reenacted as follows:

350 73-19-25. An applicant for a certificate of licensure who  
351 has been examined by the state board of another state which,  
352 through reciprocity, similarly accredits the holder of a  
353 certificate issued by the board of this state to the full  
354 privileges of practice within such state, on the payment of a fee

355 of not more than Fifty Dollars (\$50.00) to the said board and on  
356 filing in the office of the board a true and attested copy of the  
357 said license, certified by the president or secretary of the state  
358 board issuing the same, and showing also that the standard  
359 requirements adopted and enforced by said board are equal to that  
360 provided by this state, may, without further examination, receive  
361 a certificate of licensure, provided that such applicant has not  
362 previously failed at an examination held by the board of this  
363 state.

364         **SECTION 14.** Section 73-19-27, Mississippi Code of 1972, is  
365 reenacted as follows:

366         73-19-27. Nothing in this chapter shall be construed as  
367 conferring on the holder of any certificate of licensure issued by  
368 said board the title of oculist, ophthalmologist, or any other  
369 word or abbreviation indicating that he is engaged in the practice  
370 of medicine or surgery, or the treatment or the diagnosis of  
371 diseases of, or injuries to, the human eye, or the right to use  
372 drugs or medicines in any forms for the treatment or examination  
373 of the human eye. However, optometrists who have been certified  
374 by the board under the provisions of Sections 73-19-101 through  
375 73-19-109 may use diagnostic pharmaceutical agents in the practice  
376 of optometry in accordance with the requirements of Sections  
377 73-19-101 through 73-19-109, and optometrists who have been  
378 certified by the board under the provisions of Sections 73-19-153  
379 through 73-19-165 may use therapeutic pharmaceutical agents in the  
380 practice of optometry in accordance with the requirements of  
381 Sections 73-19-150 through 73-19-165. Nothing contained in  
382 Chapter 303, Laws of 1991, shall be construed as expanding the  
383 scope of practice of a licensed optometrist beyond that authorized  
384 prior to July 1, 1991.

385         **SECTION 15.** Section 73-19-29, Mississippi Code of 1972, is  
386 reenacted as follows:

387           73-19-29. The provisions of this chapter shall not apply to  
388 physicians or surgeons practicing under authority of licenses  
389 issued under the laws of this state for the practice of medicine  
390 or surgery. And provided that this chapter shall not prohibit  
391 merchants and druggists who are actually engaged in business in  
392 this state from selling and assisting purchasers in fitting  
393 spectacles and eye glasses in their place of business at time of  
394 sale.

395           **SECTION 16.** Section 73-19-33, Mississippi Code of 1972, is  
396 reenacted as follows:

397           73-19-33. Complaints, irrespective of source, touching upon  
398 the professional conduct or conduct evincing unfitness for the  
399 practice of optometry made against optometrists licensed in this  
400 state, that may be received by or that may come to the attention  
401 of any member of the board, shall be referred by the president of  
402 the board to an impartial member of the board for preliminary  
403 investigation and further action as may be appropriate. The  
404 complaint must be in writing and signed by the person making the  
405 complaint or charge and shall contain the street address of the  
406 complaining party and each witness.

407           **SECTION 17.** Section 73-19-35, Mississippi Code of 1972, is  
408 reenacted as follows:

409           73-19-35. When any complaint or charge touching upon the  
410 professional conduct or conduct evincing unfitness for the  
411 practice of optometry against any optometrist subject to  
412 discipline hereunder is referred to a member of the board for  
413 investigation, the board member shall take the following action:

414                   (a) Cause the complaint or charge to be filed and  
415 docketed with the secretary of the board; and

416                   (b) Refer the complaint to the board investigator for  
417 further investigation and report.

418           **SECTION 18.** Section 73-19-37, Mississippi Code of 1972, is  
419 reenacted as follows:

420           73-19-37. The board investigator shall immediately  
421 investigate the complaint; and upon completion of his  
422 investigation he shall inform the accused optometrist that a  
423 complaint has been filed against him and that he is under  
424 investigation, advise the accused optometrist of the general  
425 nature of the charges, furnish him a copy of the complaint and any  
426 evidence supporting it, and afford the accused optometrist an  
427 opportunity to respond. Communications and notices to the accused  
428 optometrist shall be transmitted by registered or certified mail,  
429 postage prepaid, to the last known residence or business address  
430 of the licensee.

431           **SECTION 19.** Section 73-19-39, Mississippi Code of 1972, is  
432 reenacted as follows:

433           73-19-39. After completion of his investigation, the board  
434 investigator shall make a report of his findings and  
435 recommendations to the member of the board designated to  
436 investigate the matter. After receipt of the investigator's  
437 report, the board member shall take the following action:

438           (a) If upon review of the complaint, board  
439 investigator's report and any written response by the accused  
440 optometrist, the board member determines that there is not  
441 reasonable ground to believe that the accused optometrist has been  
442 guilty of unprofessional conduct or conduct evincing unfitness for  
443 the practice of optometry, the board member shall present his  
444 findings and recommendations to the board at the next regular  
445 board meeting. The board may dismiss the complaint or may prepare  
446 a formal complaint against the licensee as provided in Section  
447 73-19-41, Mississippi Code of 1972. In the event of dismissal,  
448 the person filing the complaint and the accused optometrist shall  
449 be given written notice of the board's determination.

450           (b) If the board member determines there is reasonable  
451 cause to believe the accused optometrist is guilty of such  
452 conduct, which, if proven, would warrant suspension for a definite

453 or an indefinite period or license revocation, the board member  
454 shall request the board to prepare and file a formal complaint  
455 against the accused optometrist. The board may dismiss the  
456 complaint or may prepare a formal complaint against the licensee  
457 as provided in Section 73-19-41, Mississippi Code of 1972. In the  
458 event of a dismissal, the person filing the complaint and the  
459 accused optometrist shall be given written notice of the board's  
460 determination.

461 **SECTION 20.** Section 73-19-41, Mississippi Code of 1972, is  
462 reenacted as follows:

463 73-19-41. (1) The board shall fix a time and place for any  
464 formal complaint hearing and shall cause a written notice  
465 specifying the offense or offenses for which the licensee is  
466 charged and notice of the time and place of the hearing to be  
467 served upon the licensee at least twenty (20) days prior to the  
468 hearing date. Such notice may be served by mailing a copy thereof  
469 by certified mail, postage prepaid, to the last known residence or  
470 business address of the licensee.

471 (2) The board is hereby authorized and empowered to issue  
472 subpoenas for the attendance of witnesses and the production of  
473 books and papers at such hearing. Process issued by the board  
474 shall extend to all parts of the state and shall be served by any  
475 person designated by the board for such service.

476 (3) The accused shall have the right to appear either  
477 personally or by counsel or both to produce witnesses or evidence  
478 in his behalf, to cross-examine witnesses and to have subpoenas  
479 issued by the board.

480 (4) At the hearing, the board shall administer oaths as may  
481 be necessary for the proper conduct of the hearing. All hearings  
482 shall be conducted by the board, with the exception of the  
483 investigating board member who shall not participate in the  
484 hearing. The board shall not be bound by strict rules of  
485 procedure or by the laws of evidence in the conduct of its

486 proceedings, but the determination shall be based upon sufficient  
487 evidence to sustain it. All proceedings shall be transcribed by a  
488 court reporter.

489 (5) Where, in any proceeding before the board, any witness  
490 fails or refuses to attend upon a subpoena issued by the board,  
491 refuses to testify, or refuses to produce any books and papers the  
492 production of which is called for by a subpoena, the attendance of  
493 such witness, the giving of his testimony or the production of the  
494 books and papers shall be enforced by any court of competent  
495 jurisdiction of this state in the manner provided for the  
496 enforcement of attendance and testimony of witnesses in civil  
497 cases in the courts of this state.

498 (6) The board shall, within sixty (60) days after conclusion  
499 of the hearing, reduce its decision to writing and forward an  
500 attested true copy thereof to the last known residence or business  
501 address of such licensee by way of United States first class,  
502 certified mail, postage prepaid.

503 **SECTION 21.** Section 73-19-43, Mississippi Code of 1972, is  
504 reenacted as follows:

505 73-19-43. (1) Upon finding of the existence of grounds for  
506 discipline of any person holding a license, seeking a license, or  
507 seeking to renew a license under the provisions of this chapter,  
508 the board may impose one or more of the following penalties:

509 (a) Suspension of the offender's license for a term to  
510 be determined by the board;

511 (b) Revocation of the offender's license;

512 (c) Restriction of the offender's license to prohibit  
513 the offender from performing certain acts or from engaging in the  
514 practice of optometry in a particular manner for a term to be  
515 determined by the board;

516 (d) Imposition of a monetary penalty as follows:

517                   (i) For the first violation, a monetary penalty of  
518 not less than Fifty Dollars (\$50.00) nor more than Five Hundred  
519 Dollars (\$500.00) for each violation;

520                   (ii) For the second violation and subsequent  
521 violations, a monetary penalty of not less than One Hundred  
522 Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00)  
523 for each violation;

524                   (e) Refusal to renew offender's license;

525                   (f) Placement of the offender on probation and  
526 supervision by the board for a period to be determined by the  
527 board;

528                   (g) Public or private reprimand.

529           (2) Any person whose license has been suspended, revoked or  
530 restricted pursuant to this chapter, whether voluntarily or by  
531 action of the board, shall have the right to petition the board at  
532 reasonable intervals for reinstatement of such license. Such  
533 petition shall be made in writing and in the form prescribed by  
534 the board. Upon investigation and hearing, the board may, in its  
535 discretion, grant or deny such petition, or it may modify its  
536 original finding to reflect any circumstances which have changed  
537 sufficiently to warrant such modifications. The procedure for the  
538 reinstatement of a license that is suspended for being out of  
539 compliance with an order for support, as defined in Section  
540 93-11-153, shall be governed by Section 93-11-157 or 93-11-163, as  
541 the case may be.

542           (3) Nothing herein shall be construed as barring criminal  
543 prosecutions for violation of this chapter where such violations  
544 are deemed as criminal offenses in other statutes of this state or  
545 of the United States.

546           (4) A monetary penalty assessed and levied under this  
547 section shall be paid to the board by the licensee upon the  
548 expiration of the period allowed for appeal of such penalties  
549 under Section 73-19-45, Mississippi Code of 1972, or may be paid

550 sooner if the licensee elects. Money collected by the board under  
551 this section shall be deposited to the credit of the General Fund  
552 of the State Treasury.

553 (5) When payment of a monetary penalty assessed and levied  
554 by the board against a licensee in accordance with this section is  
555 not paid by the licensee when due under this section, the board  
556 shall have the power to institute and maintain proceedings in its  
557 name for enforcement of payment in the Chancery Court of the First  
558 Judicial District of Hinds County, Mississippi. When such  
559 proceedings are instituted, the board shall certify its order to  
560 the chancery court and the matter shall thereupon be heard in due  
561 course by the court, which shall review the order and make its  
562 determination thereon. The hearing on the matter may, in the  
563 discretion of the chancellor, be tried in vacation. If the  
564 chancellor finds no errors on the face of the board's order, the  
565 board shall have a judgment for the amount due which shall be  
566 enforceable as all other judgments.

567 **SECTION 22.** Section 73-19-45, Mississippi Code of 1972, is  
568 reenacted as follows:

569 73-19-45. (1) The right to appeal from a final action of  
570 the board is hereby granted. Such appeal shall be to the chancery  
571 court of the county of residence of the licensee and shall be on  
572 the record made, including a verbatim transcript of the testimony  
573 at the hearing. The appeal shall be taken within thirty (30) days  
574 after notice of the action of the board. The appeal shall be  
575 perfected upon filing notice of the appeal with the chancery court  
576 and by the prepayment of all costs, including the cost of the  
577 preparation of the record of the proceedings by the board, and the  
578 filing of a bond in the sum of Two Hundred Dollars (\$200.00),  
579 conditioned that if the action of the board be affirmed by the  
580 chancery court, the licensee will pay the costs of the appeal and  
581 the action in the chancery court. A copy of the Notice of Appeal  
582 shall be served upon board counsel.

583           (2) If there is an appeal, such appeal may, in the  
584 discretion of and on motion to the chancery court, act as a  
585 supersedeas. The chancery court shall dispose of the appeal and  
586 enter its decision promptly. The hearing on the appeal may, in  
587 the discretion of the chancellor, be tried in vacation. The scope  
588 of review of the chancery court shall be limited to a review of  
589 the record made before the board to determine if the action of the  
590 board is unlawful for the reason that it was (a) not supported by  
591 substantial evidence, (b) arbitrary or capricious, (c) beyond the  
592 power of the board to make, or (d) in violation of some statutory  
593 or constitutional right of the appellant. The decision of the  
594 chancery court may be appealed to the Supreme Court in the manner  
595 provided by the rules of the Supreme Court.

596           (3) Actions taken by the board in suspending a license when  
597 required by Section 93-11-157 or 93-11-163 are not actions from  
598 which an appeal may be taken under this section. Any appeal of a  
599 license suspension that is required by Section 93-11-157 or  
600 93-11-163 shall be taken in accordance with the appeal procedure  
601 specified in Section 93-11-157 or 93-11-163, as the case may be,  
602 rather than the procedure specified in this section.

603           **SECTION 23.** Section 73-19-31, Mississippi Code of 1972, is  
604 amended as follows:

605           73-19-31. Sections 73-19-1 through 73-19-29 and 73-19-33  
606 through 73-19-45, which create the Mississippi Board of Optometry  
607 and prescribe its duties and powers, shall stand repealed as of  
608 July 1, 2009.

609           **SECTION 24.** This act shall take effect and be in force from  
610 and after July 1, 2005.