

By: Representatives Brown, Watson

To: Judiciary A

HOUSE BILL NO. 21

1 AN ACT TO CREATE NEW SECTION 25-43-1, MISSISSIPPI CODE OF
2 1972, TO ENACT A SHORT TITLE FOR THE MISSISSIPPI ADMINISTRATIVE
3 PROCEDURES LAW; TO CREATE NEW SECTION 25-43-3, MISSISSIPPI CODE OF
4 1972, TO ENACT DEFINITIONS; TO CREATE NEW SECTION 25-43-5,
5 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR AGENCY ADOPTION OF RULES
6 AND FOR PUBLIC INSPECTION OF AGENCY RULES, ORDERS AND DECISIONS;
7 TO CREATE NEW SECTION 25-43-6, MISSISSIPPI CODE OF 1972, TO
8 REQUIRE AN ECONOMIC IMPACT STATEMENT; TO CREATE NEW SECTION
9 25-43-7, MISSISSIPPI CODE OF 1972, TO REQUIRE NOTICE OF PROPOSED
10 AGENCY ADOPTION, AMENDMENT OR REPEAL OF RULES AND PROVIDE FOR
11 EMERGENCY RULES; TO CREATE NEW SECTION 25-43-9, MISSISSIPPI CODE
12 OF 1972, TO REQUIRE FILING OF AGENCY RULES WITH THE SECRETARY OF
13 STATE AND TO PROVIDE FOR THE EFFECTIVE DATE OF RULES; TO CREATE
14 NEW SECTION 25-43-11, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
15 COMPILATION AND INDEXING OF RULES; TO CREATE NEW SECTION 25-43-13,
16 MISSISSIPPI CODE OF 1972, TO REQUIRE NOTICE FOR THE INTENDED
17 REVOCATION, SUSPENSION, ANNULMENT, WITHDRAWAL OR EMERGENCY
18 SUSPENSION OF A LICENSE; TO CREATE NEW SECTION 25-43-15,
19 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE EVENT OF CONFLICT OF
20 LAWS; TO CREATE NEW SECTION 25-43-17, MISSISSIPPI CODE OF 1972, TO
21 REQUIRE HEARING FOR OPPONENTS OF RULES; TO AMEND SECTION 28 OF
22 CHAPTER 304, LAWS OF 2003, AND SECTIONS 25-43-1.101, 25-43-3.111,
23 25-43-3.112 AND 25-43-3.113, MISSISSIPPI CODE OF 1972, TO DELAY
24 THE EFFECTIVE DATE OF THE ADMINISTRATIVE PROCEDURES ACT; TO
25 PROVIDE A SAVINGS CLAUSE FOR MATTERS OCCURRING, ACCRUING OR
26 PENDING IN THE INTERIM BETWEEN JULY 1, 2005, AND THE PASSAGE OF
27 THIS ACT; AND FOR RELATED PURPOSES.

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

29 **SECTION 1.** The following shall be codified as Section
30 25-43-1, Mississippi Code of 1972:

31 25-43-1. This chapter shall be known and may be cited as the
32 "Mississippi Administrative Procedures Law."

33 **SECTION 2.** The following shall be codified as Section
34 25-43-3, Mississippi Code of 1972:

35 25-43-3. As used in this chapter:

36 (a) "Agency" means each state board, commission,
37 department or officer, other than the Legislature, the Governor
38 and the courts, authorized by law to make rules or to determine
39 contested cases.

40 (b) "Contested case" means a proceeding including, but
41 not restricted to, rate-making, price-fixing and licensing in
42 which the legal rights, duties or privileges of a party are
43 required by law to be determined by an agency after an opportunity
44 for a hearing, other than disciplinary proceedings or agency
45 action involving only employees of an agency.

46 (c) "Economic impact statement" means the statement
47 required pursuant to Section 25-43-6 and which estimates the costs
48 of implementation and enforcement of a rule.

49 (d) "License" includes the whole or part of any agency
50 permit, certificate, approval, registration, charter or similar
51 form of permission required by law, but it does not include a
52 license required solely for revenue purposes, and does not include
53 any order, permit or license issued, granted, revoked, suspended,
54 annulled or withdrawn by any state agency in compliance with
55 statutory procedures or in compliance with published rules and
56 regulations adopted by such agency under statutory authority.

57 (e) "Licensing" includes the agency process respecting
58 the grant, denial, renewal, revocation, suspension, annulment,
59 withdrawal or amendment of a license.

60 (f) "Person" means any individual, partnership,
61 corporation, association, governmental subdivision or public or
62 private organization of any character other than an agency.

63 (g) "Rule" means each agency statement of general
64 applicability that implements, interprets or prescribes law or
65 policy or describes the organization, procedure or practice
66 requirements of any agency. The term includes the amendment or
67 repeal of a prior rule but does not include (i) statements
68 concerning only the internal management of an agency and not
69 affecting private rights or procedures available to the public; or
70 (ii) declaratory rulings issued pursuant to Section 25-43-17; or
71 (iii) intra-agency memoranda.

72 **SECTION 3.** The following shall be codified as Section
73 25-43-5, Mississippi Code of 1972:

74 25-43-5. (1) In addition to other rulemaking authority and
75 requirements imposed by law, each agency shall:

76 (a) Adopt as a rule a description of its organization,
77 stating the general course and method of its operations and the
78 methods whereby the public may obtain information or make
79 submissions or requests.

80 (b) Adopt rules of practice setting forth the nature
81 and requirements of all formal and informal procedures available,
82 including all requirements respecting the filing of applications
83 for any license and the licensing procedure employed by the agency
84 and the method whereby persons desiring notice of pending
85 applications may obtain such notice and request an opportunity to
86 be heard.

87 (c) Allow public inspection of all rules and other
88 written statements of policy or interpretations formulated,
89 adopted or used by the agency in the discharge of its functions.

90 (d) Allow public inspection of all final orders,
91 decisions and opinions.

92 (2) No agency rule, order or decision is valid or effective
93 against any person or party, nor may it be invoked by the agency
94 for any purpose, until it has been made available for public
95 inspection as herein required. This provision is not applicable
96 in favor of any person or party who has actual knowledge thereof.

97 **SECTION 4.** The following shall be codified as Section
98 25-43-6, Mississippi Code of 1972:

99 25-43-6. (1) Prior to giving the notice required in Section
100 25-43-7, each agency proposing the adoption of a rule or
101 significant amendment of an existing rule imposing a duty,
102 responsibility or requirement on any person shall consider the
103 economic impact the rule will have on the citizens of our state
104 and the benefits the rule will cause to accrue to those citizens.

105 For purposes of this section, a "significant amendment" means any
106 amendment to a rule for which the total aggregate cost to all
107 persons required to comply with that rule exceeds One Hundred
108 Thousand Dollars (\$100,000.00).

109 (2) Each agency shall prepare a written report providing an
110 economic impact statement for the adoption of a rule or
111 significant amendment to an existing rule imposing a duty,
112 responsibility or requirement on any person, except as provided in
113 subsection (4) of this section. The economic impact statement
114 shall include the following:

115 (a) A description of the need for and the benefits
116 which will likely accrue as the result of the proposed action;

117 (b) An estimate of the cost to the agency, and to any
118 other state or local government entities, of implementing and
119 enforcing the proposed action, including the estimated amount of
120 paperwork, and any anticipated effect on state or local revenues;

121 (c) An estimate of the cost or economic benefit to all
122 persons directly affected by the proposed action;

123 (d) An analysis of the impact of the rule on small
124 business;

125 (e) A comparison of the costs and benefits of the
126 proposed rule to the probable costs and benefits of not adopting
127 the proposed rule or significantly amending an existing rule;

128 (f) A determination of whether less costly methods or
129 less intrusive methods exist for achieving the purpose of the
130 proposed rule where reasonable alternative methods exist which are
131 not precluded by law;

132 (g) A description of reasonable alternative methods,
133 where applicable, for achieving the purpose of the proposed action
134 which were considered by the agency and a statement of reasons for
135 rejecting those alternatives in favor of the proposed rule; and

136 (h) A detailed statement of the data and methodology
137 used in making estimates required by this subsection.

138 (3) No rule or regulation shall be declared invalid based on
139 a challenge to the economic impact statement for the rule unless
140 the issue is raised in administrative proceedings before the
141 agency. No person shall have standing to challenge a rule, based
142 upon the economic impact statement or lack thereof, unless that
143 person provided the agency with information sufficient to make the
144 agency aware of specific concerns regarding the statement in a
145 public meeting or hearing held by the agency or in written
146 comments regarding the rule. The grounds for invalidation of an
147 agency action, based upon the economic impact statement, are
148 limited to the agency's failure to adhere to the procedure for
149 preparation of the economic impact statement as provided in this
150 section, or the agency's failure to consider information submitted
151 to the agency regarding specific concerns about the statement, if
152 that failure substantially impairs the fairness of the rulemaking
153 proceeding.

154 (4) This section does not apply to the adoption or
155 significant amendment of:

156 (a) Any rule which is required by the federal
157 government pursuant to a state/federal program delegation
158 agreement or contract;

159 (b) Any rule which is expressly required by state law;

160 (c) An emergency rule adopted pursuant to Section
161 25-43-7(2); and

162 (d) Any rule for which the notice required in Section
163 25-43-7 has been given prior to the effective date of this act.

164 **SECTION 5.** The following shall be codified as Section
165 25-43-7, Mississippi Code of 1972:

166 25-43-7. (1) Prior to the adoption, amendment or repeal of
167 any rule, the agency shall give at least thirty (30) days' notice
168 of its intended action. The notice shall include a statement of
169 either the terms or substance of the intended action or a
170 description of the subjects and issues involved, and the manner in

171 which interested persons may present their views thereon. The
172 notice shall be filed with the Office of the Secretary of State
173 and mailed by the agency to all persons who have made timely
174 request of the agency for advance notice of its rulemaking
175 proceedings. The Secretary of State shall furnish copies at the
176 request of any person and shall be reimbursed by the requesting
177 person for the expense of providing such service.

178 (2) If an agency finds that an imminent peril to the public
179 health, safety or welfare requires adoption of a rule upon fewer
180 than thirty (30) days' notice and states in writing its reasons
181 for that finding, it may proceed without prior notice of hearing
182 or upon any abbreviated notice and hearing that it finds
183 practicable to adopt an emergency rule. The rule may be effective
184 for a period of not longer than one hundred twenty (120) days,
185 renewable once for a period not exceeding ninety (90) days, but
186 the adoption of an identical rule under subsection (1) of this
187 section is not precluded.

188 (3) No rule hereafter adopted is valid unless adopted in
189 substantial compliance with this section. A proceeding to contest
190 any rule on the ground of noncompliance with the procedural
191 requirements of this section must be commenced within one (1) year
192 from the effective date of the rule.

193 **SECTION 6.** The following shall be codified as Section
194 25-43-9, Mississippi Code of 1972:

195 25-43-9. (1) Each agency shall file in the Office of the
196 Secretary of State a certified copy of each rule adopted by it,
197 including all rules existing on January 1, 1977. The Secretary of
198 State shall keep a permanent register of the rules open to public
199 inspection.

200 (2) Each rule hereafter adopted is effective thirty (30)
201 days after filing, except that:

202 (a) If a later date is required by statute or specified
203 in the rule, the later date is the effective date.

204 (b) Subject to applicable constitutional or statutory
205 provisions, an emergency rule becomes effective immediately upon
206 filing with the Secretary of State, or at a stated date less than
207 thirty (30) days thereafter if the agency finds that this
208 effective date is necessary because of imminent peril to the
209 public health, safety or welfare. The agency's finding and a
210 brief statement of the reasons therefor shall be filed with the
211 rule. The agency shall take appropriate measures to make
212 emergency rules known to the persons who may be affected by them.

213 **SECTION 7.** The following shall be codified as Section
214 25-43-11, Mississippi Code of 1972:

215 25-43-11. (1) The agency shall compile and index all
216 effective rules adopted and shall furnish the Secretary of State
217 with a copy of such rules and index. Compilations shall be
218 supplemented or revised as often as necessary and at least once
219 every two (2) years.

220 (2) Copies of bulletins and compilations shall be made
221 available by the Secretary of State upon request to agencies and
222 officials of this state at no cost to the agencies and officials.
223 Other persons may receive copies by requesting them and
224 reimbursing the Secretary of State for publication and mailing
225 cost.

226 **SECTION 8.** The following shall be codified as Section
227 25-43-13, Mississippi Code of 1972:

228 25-43-13. No revocation, suspension, annulment or withdrawal
229 of any license is lawful unless prior to the institution of agency
230 proceedings the agency gives notice by mail to the licensee of
231 facts or conduct which warrant the intended action and the
232 licensee is given an opportunity to show compliance with all
233 lawful requirements for the retention of the license. If the
234 agency finds that public health, safety or welfare imperatively
235 requires emergency action and incorporates a finding to that
236 effect in its order, summary suspension of a license may be

237 ordered pending proceedings for revocation or other action. These
238 proceedings shall be promptly instituted and determined.

239 **SECTION 9.** The following shall be codified as Section
240 25-43-15, Mississippi Code of 1972:

241 25-43-15. Specific statutory provisions governing agency
242 procedures in contested cases which are in direct conflict with
243 any of the provisions of this chapter shall continue to be applied
244 to all proceedings of any such agency to the extent of such
245 conflict only.

246 **SECTION 10.** The following shall be codified as Section
247 25-43-17, Mississippi Code of 1972:

248 25-43-17. Each agency shall adopt procedures to assure that
249 persons who give timely notice of their desire to contest the
250 making of any rule shall have an opportunity to present their
251 views and have the opportunity for review of adverse rulings.

252 **SECTION 11.** Section 28 of Chapter 304, Laws of 2003, is
253 amended to read as follows:

254 Section 28. Section 27 of this act shall take effect and be
255 in force from and after its passage. The remainder of this act
256 shall take effect and be in force from and after July 1, 2007.

257 **SECTION 12.** Section 25-43-1.101, Mississippi Code of 1972,
258 is amended as follows:

259 25-43-1.101. (1) This chapter may be cited as the
260 "Mississippi Administrative Procedures Law."

261 (2) This chapter is intended to provide a minimum procedural
262 code for the operation of all state agencies when they take action
263 affecting the rights and duties of the public. Nothing in this
264 chapter shall be construed as invalidating any rule or regulation
265 adopted before July 1, 2007, if such rule or regulation was
266 properly adopted in accordance with the law as it existed at the
267 time of adoption. Nothing in this chapter is meant to discourage
268 agencies from adopting procedures providing greater protections to
269 the public or conferring additional rights upon the public; and

270 save for express provisions of this chapter to the contrary,
271 nothing in this chapter is meant to abrogate in whole or in part
272 any statute prescribing procedural duties for an agency which are
273 greater than or in addition to those provided here. This chapter
274 is meant to apply to all rulemaking that is not specifically
275 excluded from this chapter or some portion thereof by its express
276 terms or by the express terms of another chapter.

277 The purposes of the Mississippi Administrative Procedures Law
278 are: to provide legislative oversight of powers and duties
279 delegated to administrative agencies; to increase public
280 accountability of administrative agencies; to simplify government
281 by assuring a uniform minimum procedure to which all agencies will
282 be held in the conduct of their most important functions; to
283 increase public access to governmental information; and to
284 increase public participation in the formulation of administrative
285 rules. In accomplishing its objectives, the intention of this
286 chapter is to strike a fair balance between these purposes and the
287 need for efficient, economical and effective government
288 administration. This chapter is not meant to alter the
289 substantive rights of any person or agency. Its impact is limited
290 to procedural rights with the expectation that better substantive
291 results will be achieved in the everyday conduct of state
292 government by improving the process by which those results are
293 attained.

294 (3) From and after July 1, 2007, any reference to the
295 Mississippi Administrative Procedure Act, the Mississippi
296 Administrative Procedures Act, the Mississippi Administrative
297 Procedure Law, or the Mississippi Administrative Procedures Law,
298 being Section 25-43-1 et seq., Mississippi Code of 1972, shall be
299 deemed to mean and refer to this chapter.

300 **SECTION 13.** Section 25-43-3.111, Mississippi Code of 1972,
301 is amended as follows:

302 25-43-3.111. (1) A rule adopted after July 1, 2007, is
303 invalid unless adopted in substantial compliance with the
304 provisions of Sections 25-43-3.102 through 25-43-3.110.
305 Inadvertent failure to mail a notice of proposed rule adoption to
306 any person as required by Section 25-43-3.103(2) does not
307 invalidate a rule.

308 (2) An action to contest the validity of a rule on the
309 grounds of its noncompliance with any provision of Sections
310 25-43-3.102 through 25-43-3.110 must be commenced within one (1)
311 year after the effective date of the rule.

312 **SECTION 14.** Section 25-43-3.112, Mississippi Code of 1972,
313 is amended as follows:

314 25-43-3.112. An agency shall file in the Office of the
315 Secretary of State each rule it adopts and all rules existing on
316 July 1, 2007, that have not previously been filed. The filing
317 must be done as soon after adoption of the rule as is practicable.
318 At the time of filing, each rule adopted after July 1, 2007, must
319 have included in or attached to it the material set out in Section
320 25-43-3.109. The Secretary of State shall affix to each rule and
321 statement a certification of the date of filing and keep a
322 permanent register open to public inspection of all filed rules
323 and attached material. In filing a rule, each agency shall use a
324 standard format prescribed by the Secretary of State.

325 **SECTION 15.** Section 25-43-3.113, Mississippi Code of 1972,
326 is amended as follows:

327 25-43-3.113. (1) Except to the extent subsection (2) or (3)
328 of this section provides otherwise, each rule adopted after July
329 1, 2007, becomes effective thirty (30) days after its proper
330 filing in the Office of the Secretary of State.

331 (2) (a) A rule becomes effective on a date later than that
332 established by subsection (1) of this section if a later date is
333 required by another statute or specified in the rule.

334 (b) A rule may become effective immediately upon its
335 filing or on any subsequent date earlier than that established by
336 subsection (1) of this section if the agency establishes such an
337 effective date and finds that:

338 (i) It is required by Constitution, statute or
339 court order;

340 (ii) The rule only confers a benefit or removes a
341 restriction on the public or some segment thereof;

342 (iii) The rule only delays the effective date of
343 another rule that is not yet effective; or

344 (iv) The earlier effective date is necessary
345 because of imminent peril to the public health, safety or welfare.

346 (c) The finding and a brief statement of the reasons
347 therefor required by paragraph (b) of this subsection must be made
348 a part of the rule. In any action contesting the effective date
349 of a rule made effective under paragraph (b) of this subsection,
350 the burden is on the agency to justify its finding.

351 (d) A temporary rule may become effective immediately
352 upon its filing or on any subsequent date earlier than that
353 established by subsection (1) of this section.

354 (e) Each agency shall make a reasonable effort to make
355 known to persons who may be affected by it a rule made effective
356 before any date established by subsection (1) of this section.

357 (3) This section does not relieve an agency from compliance
358 with any provision of law requiring that some or all of its rules
359 be approved by other designated officials or bodies before they
360 become effective.

361 **SECTION 16.** Any action taken pursuant to the Mississippi
362 Administrative Procedures Law on or after July 1, 2005, is hereby
363 ratified and confirmed provided that the action taken was in
364 compliance with the Mississippi Administrative Procedures Law
365 (Chapter 304, Laws of 2003), in effect at the time the action was

366 taken. All further actions and proceedings under the Mississippi
367 Administrative Procedures Law shall conform to this act.

368 **SECTION 17.** This act shall take effect and be in force from
369 and after its passage.