

By: Representative Lane

To: Public Health and Human  
Services

## HOUSE BILL NO. 1434

1 AN ACT TO CODIFY NEW SECTION 73-11-71, MISSISSIPPI CODE OF  
2 1972, TO REQUIRE FUNERAL ESTABLISHMENTS TO AFFIX OR ATTACH A  
3 PERMANENT IDENTIFICATION METAL TAG TO A DEAD HUMAN BODY BEFORE  
4 PLACING THE BODY IN A CASKET FOR INTERMENT; TO PROVIDE THAT IF A  
5 DEAD HUMAN BODY IS TO BE CREMATED, THE FUNERAL ESTABLISHMENT SHALL  
6 PLACE A PERMANENT IDENTIFICATION METAL TAG IN THE CREMATORY URN  
7 BEFORE THE REMAINS ARE PLACED IN THE URN; TO AMEND SECTION  
8 73-11-57, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT SOLICITATION  
9 OR ACCEPTANCE OF A FEE FOR PERFORMING THE REQUIREMENTS OF THE  
10 PRECEDING SECTION IS GROUNDS FOR DISCIPLINARY ACTION AGAINST A  
11 LICENSEE; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** The following shall be codified as Section  
14 73-11-71, Mississippi Code of 1972:

15 73-11-71. (1) Before or at the time of placing a dead human  
16 body in a casket for interment or entombment, each funeral  
17 establishment shall securely affix or attach to the body,  
18 preferably upon the ankle, a permanent identification metal tag  
19 approved by the board, containing the decedent's name, date of  
20 birth, date of death and social security number. If that  
21 information is not available to the funeral establishment, then a  
22 permanent identification metal tag stating that the information is  
23 not available shall be affixed or attached to the body.

24 (2) If a dead human body is to be cremated, then a permanent  
25 identification metal tag approved by the board, containing the  
26 decedent's name, date of birth, date of death and social security  
27 number, shall be placed in the crematory urn before the remains  
28 are placed in the urn. If that information is not available to  
29 the funeral establishment, then a permanent identification metal  
30 tag stating that the information is not available shall be placed  
31 in the crematory urn before the remains are placed in the urn.

32 (3) No funeral establishment shall solicit or collect a fee  
33 for the affixing or attaching of a permanent identification metal  
34 tag as required under this section.

35 (4) Failure to comply with this section is a disciplinary  
36 offense and is punishable as provided in Section 73-11-57.

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

39 73-11-57. (1) The board may refuse to examine or to issue  
40 or renew, or may suspend or revoke, any license, or may reprimand  
41 or place the holder thereof on a term of probation, after proper  
42 hearing, upon finding the holder of such license to be guilty of  
43 acts of commission or omission including the following:

44 (a) The employment of fraud or deception in applying  
45 for a license or in passing the examination provided for in this  
46 chapter;

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

48 (c) The conviction of a felony by any court in this  
49 state or any federal court or by the court of any other state or  
50 territory of the United States;

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

53 (e) The impersonation of another funeral service or  
54 funeral directing licensee;

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

58 (g) Violation of any provision of this chapter or any  
59 rule or regulation of the board;

60 (h) Having had a license for the practice of funeral  
61 service or funeral directing suspended or revoked in any  
62 jurisdiction, having voluntarily surrendered his license in any  
63 jurisdiction, having been placed on probation in any jurisdiction,  
64 having been placed under disciplinary order(s) or other

65 restriction in any manner for funeral directing and/or funeral  
66 service, or operating a funeral establishment (a certified copy of  
67 the order of suspension, revocation, probation or disciplinary  
68 action shall be prima facie evidence of such action);

69 (i) Solicitation of dead human bodies by the licensee,  
70 his agents, assistants or employees, whether such solicitation  
71 occurs after death or when death is imminent; if the person  
72 solicited has made known a desire not to receive the  
73 communication, or if the solicitation involves coercion, duress or  
74 harassment, or if the solicitation takes place at the residence of  
75 the client or prospective client, is uninvited by the client or  
76 prospective client and has not been previously agreed to by the  
77 client or prospective client; however, this shall not be deemed to  
78 prohibit general advertising;

79 (j) Employment directly or indirectly of any  
80 apprentice, agent, assistant, employee, or other person, on a  
81 part-time or full-time basis or on commission, for the purpose of  
82 calling upon individuals or institutions by whose influence dead  
83 human bodies may be turned over to a particular funeral  
84 establishment;

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

87 (l) Knowingly performing any act that in any way  
88 assists an unlicensed person to practice funeral service or  
89 funeral directing;

90 (m) Knowingly making a false statement on death  
91 certificates; \* \* \*

92 (n) Unprofessional conduct which includes, but is not  
93 limited to:

94 (i) Retaining a dead human body for the payment of  
95 a fee for the performance of services that are not authorized;

96 (ii) Knowingly performing any act which in any way  
97 assists an unlicensed person to practice funeral service or  
98 funeral directing;

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

101 (iv) Any act or omission in the practice of  
102 funeral service or directing which constitutes dishonesty, fraud  
103 or misrepresentation with the intent to benefit the licensee,  
104 another person or funeral establishment, or with the intent to  
105 substantially injure another person, licensee or funeral  
106 establishment; or

107 (v) Any act or conduct, whether the same or of a  
108 different character than specified above, which constitutes or  
109 demonstrates bad faith, incompetency or untrustworthiness; or  
110 dishonest, fraudulent or improper dealing; or any other violation  
111 of the provisions of this chapter, the rules and regulations  
112 established by the board or any rule or regulation promulgated by  
113 the Federal Trade Commission relative to the practice of funeral  
114 service or funeral directing;

115 (o) Solicitation or acceptance by the licensee of a fee  
116 for the affixing or attaching of a permanent identification metal  
117 tag to a dead human body that is placed in a casket to be interred  
118 or entombed; or

119 (p) Solicitation or acceptance by the licensee of a fee  
120 for the placing of a permanent identification metal tag in a  
121 crematory urn before placing human remains in the urn.

122 (2) The board may, upon satisfactory proof that the  
123 applicant or licensee has been guilty of any of the offenses above  
124 enumerated, refuse to examine or issue a license to the applicant,  
125 or may refuse to renew or revoke or suspend the license of the  
126 licensee, or place on probation or reprimand him, upon a majority  
127 vote of the board members, after a hearing thereon. The board is  
128 vested with full power and authority to hold and conduct such

129 hearings, compel the attendance of witnesses and the production of  
130 books, records and documents, issue subpoenas therefor, administer  
131 oaths, examine witnesses, and do all things necessary to properly  
132 conduct such hearings. The board may waive the necessity of a  
133 hearing if the person accused of a violation admits that he has  
134 been guilty of such offense. Any person who has been refused a  
135 license or whose license has been revoked or suspended may, within  
136 thirty (30) days after the decision of the board, file with the  
137 board a written notice stating that he feels himself aggrieved by  
138 such decision and may appeal therefrom to the circuit court of the  
139 county and judicial district of residence of the person, or if the  
140 person is a nonresident of the State of Mississippi, to the  
141 Circuit Court of the First Judicial District of Hinds County.  
142 Upon the filing of such notice, the secretary of the board shall  
143 transmit to the clerk of the circuit court the records and  
144 findings of such proceedings. The circuit court shall hear and  
145 determine as to whether the action of the board was in accord or  
146 consistent with law, or was arbitrary, unwarranted or in abuse of  
147 discretion. An appeal from the circuit court judgment or decree  
148 may be reviewed by the Supreme Court as is provided by law for  
149 other appeals. An appeal of a decision or order of the board does  
150 not act as a supersedeas.

151 (3) In a proceeding conducted under this section by the  
152 board for the revocation or suspension of a license, the board  
153 shall have the power and authority for the grounds stated for such  
154 revocation or suspension, and in addition thereto or in lieu of  
155 such revocation or suspension may assess and levy upon any person  
156 licensed under this chapter, a monetary penalty, as follows:

157 (a) For the first violation of any of the subparagraphs  
158 of subsection (1) of this section, a monetary penalty of Five  
159 Hundred Dollars (\$500.00).

160           (b) For the second violation of any of the  
161 subparagraphs of subsection (1) of this section, a monetary  
162 penalty of One Thousand Dollars (\$1,000.00).

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

166           (d) For any violation of any of the subparagraphs of  
167 subsection (1) of this section, those reasonable costs that are  
168 expended by the board in the investigation and conduct of a  
169 proceeding for licensure revocation or suspension, including, but  
170 not limited to, the cost of process service, court reporters,  
171 expert witnesses and investigators.

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

177           (5) A licensee shall have the right of appeal from the  
178 assessment and levy of a monetary penalty as provided in this  
179 section under the same conditions as a right of appeal is provided  
180 elsewhere for appeals from an adverse ruling, order or decision of  
181 the board.

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

185           (7) A monetary penalty assessed and levied under this  
186 section shall be paid to the board by the licensee upon the  
187 expiration of the period allowed for appeal of such penalties  
188 under this section or may be paid sooner if the licensee elects.  
189 With the exception of subsection (3)(d) of this section, monetary  
190 penalties collected by the board under this section shall be  
191 deposited in the State Treasury to the credit of the State Board  
192 of Funeral Service. Any monies collected by the board under

193 subsection (3)(d) of this section shall be deposited into the  
194 special fund operating account of the board.

195 (8) When payment of a monetary penalty assessed and levied  
196 by the board against a licensee in accordance with this section is  
197 not paid by the licensee when due under this section, the board  
198 shall have power to institute and maintain proceedings in its name  
199 for enforcement of payment in the chancery court of the county and  
200 judicial district of residence of the licensee, or if the licensee  
201 is a nonresident of the State of Mississippi, in the Chancery  
202 Court of the First Judicial District of Hinds County, Mississippi.

203 (9) In addition to the reasons specified in subsection (1)  
204 of this section, the board shall be authorized to suspend the  
205 license of any licensee for being out of compliance with an order  
206 for support, as defined in Section 93-11-153. The procedure for  
207 suspension of a license for being out of compliance with an order  
208 for support, and the procedure for the reissuance or reinstatement  
209 of a license suspended for that purpose, and the payment of any  
210 fees for the reissuance or reinstatement of a license suspended  
211 for that purpose, shall be governed by Section 93-11-157 or  
212 93-11-163, as the case may be. Actions taken by the board in  
213 suspending a license when required by Section 93-11-157 or  
214 93-11-163 are not actions from which an appeal may be taken under  
215 this section. Any appeal of a license suspension that is required  
216 by Section 93-11-157 or 93-11-163 shall be taken in accordance  
217 with the appeal procedure specified in Section 93-11-157 or  
218 93-11-163, as the case may be, rather than the procedure specified  
219 in this section. If there is any conflict between any provision  
220 of Section 93-11-157 or 93-11-163 and any provision of this  
221 chapter, the provisions of Section 93-11-157 or 93-11-163, as the  
222 case may be, shall control.

223 **SECTION 3.** This act shall take effect and be in force from  
224 and after July 1, 2006.