

By: Senator(s) Nunnelee, Mettetal

To: Public Health and
WelfareCOMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2564

1 AN ACT TO REENACT SECTIONS 73-21-71 THROUGH 73-21-123,
2 MISSISSIPPI CODE OF 1972, WHICH IS THE MISSISSIPPI PHARMACY
3 PRACTICE ACT; TO AMEND SECTION 73-21-69, MISSISSIPPI CODE OF 1972,
4 TO EXTEND THE AUTOMATIC REPEALER ON THE MISSISSIPPI PHARMACY
5 PRACTICE ACT; TO AMEND SECTION 73-21-79, MISSISSIPPI CODE OF 1972,
6 TO CLARIFY CERTAIN CONDITIONS ON THE RESPONSIBILITIES OF THE
7 EXECUTIVE DIRECTOR OF THE STATE BOARD OF PHARMACY; TO AMEND
8 SECTION 73-21-85, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE STATE
9 BOARD OF PHARMACY TO CONDUCT CRIMINAL RECORD BACKGROUND CHECKS ON
10 STUDENTS AT THE UNIVERSITY OF MISSISSIPPI SCHOOL OF PHARMACY; TO
11 AMEND SECTION 73-21-91, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
12 ANNUAL RENEWAL FEES; TO CODIFY SECTION 73-21-125, MISSISSIPPI CODE
13 OF 1972, TO AUTHORIZE AND DIRECT THE BOARD OF PHARMACY TO DEVELOP
14 AND IMPLEMENT A COMPUTER PROGRAM TO TRACK PRESCRIPTIONS FOR
15 CONTROLLED SUBSTANCES AND TO REPORT ILLEGAL ACTIVITY; TO CODIFY
16 SECTION 73-21-126, MISSISSIPPI CODE OF 1972, TO AUTHORIZE AND
17 DIRECT THE STATE BOARD OF PHARMACY TO PROMULGATE RULES REGARDING
18 PERMITS FOR IN AND OUT OF STATE WHOLESALE DISTRIBUTORS, CHAIN
19 PHARMACY WAREHOUSES AND RE-PACKAGERS; TO CREATE THE PHARMACY
20 BENEFIT MANAGEMENT REGULATION ACT; TO PROVIDE DEFINITIONS; TO
21 REQUIRE A CERTIFICATE OF AUTHORITY FROM THE STATE BOARD OF
22 PHARMACY BEFORE OPERATING IN THIS STATE; TO PROVIDE FOR USAGE OF
23 NATIONALLY RECOGNIZED BENCHMARKS TO CALCULATE THE REIMBURSEMENT TO
24 BE PAID TO PHARMACIES OR PHARMACISTS; TO PROVIDE FOR COORDINATION
25 OF BENEFITS REQUIREMENTS; TO PROVIDE FOR RECOUPMENT OF CLAIMS; TO
26 PROVIDE PENALTIES FOR VIOLATIONS OF THE ACT; TO AUTHORIZE CERTAIN
27 ASSESSMENTS AND FEES; TO REQUIRE PHARMACY BENEFIT MANAGERS TO FILE
28 CONTRACT FORMS WITH THE BOARD OF PHARMACY; TO PROHIBIT CERTAIN
29 ACTS BY PHARMACY BENEFIT MANAGERS; AND FOR RELATED PURPOSES.

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

31 **SECTION 1.** Section 73-21-69, Mississippi Code of 1972, is
32 reenacted as follows:

33 73-21-69. Sections 73-21-71 through 73-21-123, which create
34 the State Board of Pharmacy and prescribe its duties and powers,
35 shall stand repealed on July 1, 2011.

36 **SECTION 2.** Section 73-21-71, Mississippi Code of 1972, is
37 reenacted as follows:

38 73-21-71. This chapter shall be known as the "Mississippi
39 Pharmacy Practice Act."

40 **SECTION 3.** Section 73-21-73, Mississippi Code of 1972, is
41 reenacted as follows:

42 73-21-73. As used in this chapter, unless the context
43 requires otherwise:

44 (a) "Administer" shall mean the direct application of a
45 prescription drug pursuant to a lawful order of a practitioner to
46 the body of a patient by injection, inhalation, ingestion or any
47 other means.

48 (b) "Board of Pharmacy," "Pharmacy Board," "MSBP" or
49 "board" shall mean the State Board of Pharmacy.

50 (c) "Compounding" means (i) the production,
51 preparation, propagation, conversion or processing of a sterile or
52 nonsterile drug or device either directly or indirectly by
53 extraction from substances of natural origin or independently by
54 means of chemical or biological synthesis or from bulk chemicals
55 or the preparation, mixing, measuring, assembling, packaging or
56 labeling of a drug or device as a result of a practitioner's
57 prescription drug order or initiative based on the
58 practitioner/patient/pharmacist relationship in the course of
59 professional practice, or (ii) for the purpose of, as an incident
60 to, research, teaching or chemical analysis and not for sale or
61 dispensing. Compounding also includes the preparation of drugs or
62 devices in anticipation of prescription drug orders based on
63 routine regularly observed prescribing patterns.

64 (d) "Continuing education unit" shall mean ten (10)
65 clock hours of study or other such activity as may be approved by
66 the board, including, but not limited to, all programs which have
67 been approved by the American Council on Pharmaceutical Education.

68 (e) "Deliver" or "delivery" shall mean the actual,
69 constructive or attempted transfer of a drug or device from one
70 person to another, whether or not for a consideration.

71 (f) "Device" shall mean an instrument, apparatus,
72 implement, machine, contrivance, implant, in vitro reagent or

73 other similar or related article, including any component part or
74 accessory which is required under federal or state law to be
75 prescribed by a practitioner and dispensed by a pharmacist.

76 (g) "Dispense" or "dispensing" shall mean the
77 interpretation of a valid prescription, order of a practitioner by
78 a pharmacist and the subsequent preparation of the drug or device
79 for administration to or use by a patient or other individual
80 entitled to receive the drug.

81 (h) "Distribute" shall mean the delivery of a drug or
82 device other than by administering or dispensing to persons other
83 than the ultimate consumer.

84 (i) "Drug" shall mean:

85 (i) Articles recognized as drugs in the official
86 United States Pharmacopeia, official National Formulary, official
87 Homeopathic Pharmacopeia, other drug compendium or any supplement
88 to any of them;

89 (ii) Articles intended for use in the diagnosis,
90 cure, mitigation, treatment or prevention of disease in man or
91 other animals;

92 (iii) Articles other than food intended to affect
93 the structure or any function of the body of man or other animals;
94 and

95 (iv) Articles intended for use as a component of
96 any articles specified in subparagraph (i), (ii) or (iii) of this
97 paragraph.

98 (j) "Drugroom" shall mean a business, which does not
99 require the services of a pharmacist, where prescription drugs or
100 prescription devices are bought, sold, maintained or provided to
101 consumers.

102 (k) "Extern" shall mean a student in the professional
103 program of a school of pharmacy accredited by the American Council
104 on Pharmaceutical Education who is making normal progress toward
105 completion of a professional degree in pharmacy.

106 (1) "Foreign pharmacy graduate" shall mean a person
107 whose undergraduate pharmacy degree was conferred by a recognized
108 school of pharmacy outside of the United States, the District of
109 Columbia and Puerto Rico. Recognized schools of pharmacy are
110 those colleges and universities listed in the World Health
111 Organization's World Directory of Schools of Pharmacy, or
112 otherwise approved by the Foreign Pharmacy Graduate Examination
113 Committee (FPGEC) certification program as established by the
114 National Association of Boards of Pharmacy.

115 (m) "Generic equivalent drug product" shall mean a drug
116 product which (i) contains the identical active chemical
117 ingredient of the same strength, quantity and dosage form; (ii) is
118 of the same generic drug name as determined by the United States
119 Adoptive Names and accepted by the United States Food and Drug
120 Administration; and (iii) conforms to such rules and regulations
121 as may be adopted by the board for the protection of the public to
122 assure that such drug product is therapeutically equivalent.

123 (n) "Interested directly" shall mean being employed by,
124 having full or partial ownership of, or control of, any facility
125 permitted or licensed by the Mississippi State Board of Pharmacy.

126 (o) "Interested indirectly" shall mean having a spouse
127 who is employed by any facility permitted or licensed by the
128 Mississippi State Board of Pharmacy.

129 (p) "Intern" shall mean a person who has graduated from
130 a school of pharmacy but has not yet become licensed as a
131 pharmacist.

132 (q) "Manufacturer" shall mean a person, business or
133 other entity engaged in the production, preparation, propagation,
134 conversion or processing of a prescription drug or device, if such
135 actions are associated with promotion and marketing of such drugs
136 or devices.

137 (r) "Manufacturer's distributor" shall mean any person
138 or business who is not an employee of a manufacturer, but who

139 distributes sample drugs or devices, as defined under subsection
140 (i) of this section, under contract or business arrangement for a
141 manufacturer to practitioners.

142 (s) "Manufacturing" of prescription products shall mean
143 the production, preparation, propagation, conversion or processing
144 of a drug or device, either directly or indirectly, by extraction
145 from substances from natural origin or independently by means of
146 chemical or biological synthesis, or from bulk chemicals and
147 includes any packaging or repackaging of the substance(s) or
148 labeling or relabeling of its container, if such actions are
149 associated with promotion and marketing of such drug or devices.

150 (t) "Misappropriation of a prescription drug" shall
151 mean to illegally or unlawfully convert a drug, as defined in
152 subsection (i) of this section, to one's own use or to the use of
153 another.

154 (u) "Nonprescription drugs" shall mean nonnarcotic
155 medicines or drugs that may be sold without a prescription and are
156 prepackaged and labeled for use by the consumer in accordance with
157 the requirements of the statutes and regulations of this state and
158 the federal government.

159 (v) "Person" shall mean an individual, corporation,
160 partnership, association or any other legal entity.

161 (w) "Pharmacist" shall mean an individual health care
162 provider licensed by this state to engage in the practice of
163 pharmacy. This recognizes a pharmacist as a learned professional
164 who is authorized to provide patient services.

165 (x) "Pharmacy" shall mean any location for which a
166 pharmacy permit is required and in which prescription drugs are
167 maintained, compounded and dispensed for patients by a pharmacist.
168 This definition includes any location where pharmacy-related
169 services are provided by a pharmacist.

170 (y) "Prepackaging" shall mean the act of placing small
171 precounted quantities of drug products in containers suitable for

172 dispensing or administering in anticipation of prescriptions or
173 orders.

174 (z) Unlawful or unauthorized "possession" shall mean
175 physical holding or control by a pharmacist of a controlled
176 substance outside the usual and lawful course of employment.

177 (aa) "Practice of pharmacy" shall mean a health care
178 service that includes, but is not limited to, the compounding,
179 dispensing, and labeling of drugs or devices; interpreting and
180 evaluating prescriptions; administering and distributing drugs and
181 devices; the compounding, dispensing and labeling of drugs and
182 devices; maintaining prescription drug records; advising and
183 consulting concerning therapeutic values, content, hazards and
184 uses of drugs and devices; initiating or modifying of drug therapy
185 in accordance with written guidelines or protocols previously
186 established and approved by the board; selecting drugs;
187 participating in drug utilization reviews; storing prescription
188 drugs and devices; ordering lab work in accordance with written
189 guidelines or protocols as defined by paragraph (jj) of this
190 section; providing pharmacotherapeutic consultations; supervising
191 supportive personnel and such other acts, services, operations or
192 transactions necessary or incidental to the conduct of the
193 foregoing.

194 (bb) "Practitioner" shall mean a physician, dentist,
195 veterinarian, or other health care provider authorized by law to
196 diagnose and prescribe drugs.

197 (cc) "Prescription" shall mean a written, verbal or
198 electronically transmitted order issued by a practitioner for a
199 drug or device to be dispensed for a patient by a pharmacist.

200 (dd) "Prescription drug" or "legend drug" shall mean a
201 drug which is required under federal law to be labeled with either
202 of the following statements prior to being dispensed or delivered:

203 (i) "Caution: Federal law prohibits dispensing
204 without prescription," or

205 (ii) "Caution: Federal law restricts this drug to
206 use by or on the order of a licensed veterinarian"; or a drug
207 which is required by any applicable federal or state law or
208 regulation to be dispensed on prescription only or is restricted
209 to use by practitioners only.

210 (ee) "Product selection" shall mean the dispensing of a
211 generic equivalent drug product in lieu of the drug product
212 ordered by the prescriber.

213 (ff) "Provider" or "primary health care provider" shall
214 include a pharmacist who provides health care services within his
215 or her scope of practice pursuant to state law and regulation.

216 (gg) "Registrant" shall mean a pharmacy or other entity
217 which is registered with the Mississippi State Board of Pharmacy
218 to buy, sell or maintain controlled substances.

219 (hh) "Repackager" means a person registered by the
220 Federal Food and Drug Administration as a repackager who removes a
221 prescription drug product from its marketed container and places
222 it into another, usually of smaller size, to be distributed to
223 persons other than the consumer.

224 (ii) "Supportive personnel" or "pharmacist technician"
225 shall mean those individuals utilized in pharmacies whose
226 responsibilities are to provide nonjudgmental technical services
227 concerned with the preparation and distribution of drugs under the
228 direct supervision and responsibility of a pharmacist.

229 (jj) "Written guideline or protocol" shall mean an
230 agreement in which any practitioner authorized to prescribe drugs
231 delegates to a pharmacist authority to conduct specific
232 prescribing functions in an institutional setting, or with
233 individual patients, provided that a specific protocol agreement
234 is signed on each patient and is filed as required by law or by
235 rule or regulation of the board.

236 (kk) "Wholesaler" shall mean a person who buys or
237 otherwise acquires prescription drugs or prescription devices for

238 resale or distribution, or for repackaging for resale or
239 distribution, to persons other than consumers.

240 **SECTION 4.** Section 73-21-75, Mississippi Code of 1972, is
241 reenacted as follows:

242 73-21-75. (1) The State Board of Pharmacy created by former
243 Section 73-21-9 is hereby continued and reconstituted as follows:
244 The board shall consist of seven (7) appointed members. At least
245 one (1) appointment shall be made from each congressional
246 district. Each appointed member of the board shall be appointed
247 by the Governor, with the advice and consent of the Senate, from a
248 list of five (5) names submitted by the Mississippi Pharmacists
249 Association, with input from the Magnolia Pharmaceutical Society
250 and other pharmacist associations or societies. Of the members
251 appointed, one (1) shall, at the time of appointment, have had
252 five (5) years' experience as a pharmacist at a facility holding
253 an institutional permit, and one (1) shall, at the time of
254 appointment, have had five (5) years' experience as a pharmacist
255 at a facility holding a retail permit. Any person appointed to
256 the board shall be limited to two (2) full terms of office during
257 any fifteen-year period, including any member serving on May 14,
258 1992.

259 (2) The members of the board appointed and serving prior to
260 July 1, 1983, whose terms have not expired by July 1, 1983, shall
261 serve the balance of their terms as members of the reconstituted
262 board, and they shall be considered to be from the same
263 congressional districts from which they were originally appointed
264 if they still reside therein, even if the district boundaries have
265 changed subsequent to their original appointments. The Governor
266 shall appoint the remaining members of the reconstituted board in
267 the manner prescribed in subsection (1) of this section on July 1,
268 1983. The initial members of the reconstituted board shall serve
269 terms of office as follows:

270 (a) The term of the member from the First Congressional
271 District shall expire on July 1, 1984; and from and after July 1,
272 1996, this appointment shall be designated as Post 1.

273 (b) The term of the member from the Second
274 Congressional District shall expire on July 1, 1988; and from and
275 after July 1, 1996, this appointment shall be designated as Post
276 2.

277 (c) The term of the member from the Third Congressional
278 District shall expire on July 1, 1986; and from and after July 1,
279 1996, this appointment shall be designated as Post 3.

280 (d) The term of the member from the Fourth
281 Congressional District shall expire on July 1, 1985; and from and
282 after July 1, 1996, this appointment shall be designated as Post
283 4.

284 (e) The term of the member from the Fifth Congressional
285 District shall expire on July 1, 1987; and from and after July 1,
286 1996, this appointment shall be designated as Post 5.

287 (f) The term of one (1) of the members from the state
288 at large shall expire on July 1, 1985; and from and after July 1,
289 1996, this appointment shall be designated as Post 6.

290 (g) The term of the other member from the state at
291 large shall expire on July 1, 1988; and from and after July 1,
292 1996, this appointment shall be designated as Post 7.

293 The appointments of members from congressional districts as
294 provided under this section shall be made from the congressional
295 districts as they existed on July 1, 2001.

296 (3) At the expiration of a term, members of the board shall
297 be appointed in the manner prescribed in subsection (1) of this
298 section for terms of five (5) years from the expiration date of
299 the previous terms. Any vacancy on the board prior to the
300 expiration of a term for any reason, including resignation,
301 removal, disqualification, death or disability, shall be filled by
302 appointment of the Governor in the manner prescribed in subsection

303 (1) of this section for the balance of the unexpired term. The
304 Mississippi Pharmacists Association, with input from the Magnolia
305 Pharmaceutical Society and other pharmacist associations or
306 societies, shall submit a list of nominees no more than thirty
307 (30) days after a vacancy occurs, and the Governor shall fill such
308 vacancies within ninety (90) days after each such vacancy occurs.

309 (4) To be qualified to be a member of the board, a person
310 shall:

311 (a) Be an adult citizen of Mississippi for a period of
312 at least five (5) years preceding his appointment to the board;

313 (b) Be a pharmacist licensed and in good standing to
314 practice pharmacy in the State of Mississippi;

315 (c) Have at least five (5) years' experience as a
316 pharmacist; and

317 (d) Be actively engaged full time in the practice of
318 pharmacy in Mississippi.

319 (5) The Governor may remove any or all members of the board
320 on proof of unprofessional conduct, continued absence from the
321 state, or for failure to perform the duties of his office. Any
322 member who shall not attend two (2) consecutive meetings of the
323 board for any reason other than illness of such member shall be
324 subject to removal by the Governor. The president of the board
325 shall notify the Governor in writing when any such member has
326 failed to attend two (2) consecutive regular meetings. No removal
327 shall be made without first giving the accused an opportunity to
328 be heard in refutation of the charges made against him, and he
329 shall be entitled to receive a copy of the charges at the time of
330 filing.

331 **SECTION 5.** Section 73-21-77, Mississippi Code of 1972, is
332 reenacted as follows:

333 73-21-77. (1) Each person appointed as a member of the
334 board shall qualify by taking the oath prescribed by the
335 Constitution for the state officers, and shall file certificate

336 thereof in the Office of the Secretary of State within fifteen
337 (15) days after his appointment.

338 (2) There shall be a president of the board and such other
339 officers as deemed necessary by the board elected by and from its
340 membership.

341 (3) The board shall meet at least once each quarter to
342 transact business, and may meet at such additional times as it may
343 deem necessary. Such additional meetings may be called by the
344 president of the board or a majority of the members of the board.

345 (4) The place for each meeting shall be determined prior to
346 giving notice of such meeting and shall not be changed after such
347 notice is given without adequate subsequent notice.

348 (5) A majority of the members of the board shall constitute
349 a quorum for the conduct of the meeting and all actions of the
350 board shall be by a majority.

351 (6) Each member of the board shall receive a per diem as
352 provided in Section 25-3-69, not to exceed thirty (30) days in any
353 one (1) period of twelve (12) months, for each day actually
354 engaged in meetings of the board, together with necessary
355 traveling and other expenses as provided in Section 25-3-41.

356 **SECTION 6.** Section 73-21-79, Mississippi Code of 1972, is
357 reenacted and amended as follows:

358 73-21-79. (1) The board shall employ an executive director
359 of the board. The executive director shall be a citizen of
360 Mississippi and a pharmacist licensed and in good standing to
361 practice pharmacy in the State of Mississippi, who has had five
362 (5) years' experience as a pharmacist.

363 (2) The executive director shall receive a salary to be set
364 by the board, subject to the approval of the State Personnel
365 Board, and shall be entitled to necessary expenses incurred in the
366 performance of his official duties. He shall devote full time to
367 the duties of his office and shall not be * * * engaged in any
368 other business that will interfere with the duties of his office.

369 (3) The duties and responsibilities of the executive
370 director shall be defined by rules and regulations prescribed by
371 the board.

372 (4) The board may, in its discretion, employ persons in
373 addition to the executive director in such other positions or
374 capacities as it deems necessary to the proper conduct of board
375 business. Any pharmacist-investigator employed by the board may
376 have other part-time employment, provided that he shall not accept
377 any employment that would cause a conflict of interest in his
378 pharmacist-investigator duties. The board may employ legal
379 counsel to assist in the conduct of its business.

380 **SECTION 7.** Section 73-21-81, Mississippi Code of 1972, is
381 reenacted as follows:

382 73-21-81. The responsibility for the enforcement of the
383 provisions of this chapter shall be vested in the board. The
384 board shall have all of the duties, powers and authority
385 specifically granted by and necessary to the enforcement of this
386 chapter. The board may make, adopt, amend and repeal such rules
387 and regulations as may be deemed necessary by the board from time
388 to time for the proper administration and enforcement of this
389 chapter, in accordance with the provisions of the Mississippi
390 Administrative Procedures Law (Section 25-43-1 et seq.).

391 **SECTION 8.** Section 73-21-83, Mississippi Code of 1972, is
392 reenacted as follows:

393 73-21-83. (1) The board shall be responsible for the
394 control and regulation of the practice of pharmacy, to include the
395 regulation of pharmacy externs or interns and pharmacist
396 technicians, in this state, the regulation of the wholesaler
397 distribution of drugs and devices as defined in Section 73-21-73,
398 and the distribution of sample drugs or devices by manufacturer's
399 distributors as defined in Section 73-21-73 by persons other than
400 the original manufacturer or distributor in this state.

401 (2) A license for the practice of pharmacy shall be obtained
402 by all persons prior to their engaging in the practice of
403 pharmacy. However, the provisions of this chapter shall not apply
404 to physicians, dentists, veterinarians, osteopaths or other
405 practitioners of the healing arts who are licensed under the laws
406 of the State of Mississippi and are authorized to dispense and
407 administer prescription drugs in the course of their professional
408 practice.

409 (3) The initial licensure fee shall be set by the board but
410 shall not exceed Two Hundred Dollars (\$200.00).

411 (4) All students actively enrolled in a professional school
412 of pharmacy accredited by the American Council on Pharmaceutical
413 Education who are making satisfactory progress toward graduation
414 and who act as an extern or intern under the direct supervision of
415 a pharmacist in a location permitted by the Board of Pharmacy must
416 obtain a pharmacy student registration prior to engaging in such
417 activity. The student registration fee shall be set by the board
418 but shall not exceed One Hundred Dollars (\$100.00).

419 (5) All persons licensed to practice pharmacy prior to July
420 1, 1991, by the State Board of Pharmacy under Section 73-21-89
421 shall continue to be licensed under the provisions of Section
422 73-21-91.

423 **SECTION 9.** Section 73-21-85, Mississippi Code of 1972, is
424 reenacted and amended as follows:

425 73-21-85. (1) To obtain a license to engage in the practice
426 of pharmacy by examination, or by score transfer, the applicant
427 shall:

428 (a) Have submitted a written application on the form
429 prescribed by the board;

430 (b) Be of good moral character;

431 (c) Have graduated from a school or college of pharmacy
432 accredited by the American Council of Pharmaceutical Education and
433 have been granted a pharmacy degree therefrom;

434 (d) Have successfully passed an examination approved by
435 the board;

436 (e) Have paid all fees specified by the board for
437 examination, not to exceed the cost to the board of administering
438 the examination;

439 (f) Have paid all fees specified by the board for
440 licensure; and

441 (g) Have submitted evidence of externship and/or
442 internship as specified by the board.

443 (2) To obtain a license to engage in the practice of
444 pharmacy, a foreign pharmacy graduate applicant shall obtain the
445 National Association of Boards of Pharmacy's Foreign Pharmacy
446 Graduate Examination Committee's certification, which shall
447 include, but not be limited to, successfully passing the Foreign
448 Pharmacy Graduate Equivalency Examination and attaining a total
449 score of at least five hundred fifty (550) on the Test of English
450 as a Foreign Language (TOEFL), and shall:

451 (a) Have submitted a written application on the form
452 prescribed by the board;

453 (b) Be of good moral character;

454 (c) Have graduated and been granted a pharmacy degree
455 from a college or school of pharmacy recognized and approved by
456 the National Association of Boards of Pharmacy's Foreign Pharmacy
457 Graduate Examination Committee;

458 (d) Have paid all fees specified by the board for
459 examination, not to exceed the cost to the board of administering
460 the examination;

461 (e) Have successfully passed an examination approved by
462 the board;

463 (f) Have completed the number of internship hours as
464 set forth by regulations of the board; and

465 (g) Have paid all fees specified by the board for
466 licensure.

467 (3) Each application or filing made under this section shall
468 include the social security number(s) of the applicant in
469 accordance with Section 93-11-64.

470 (4) To insure that all applicants are of good moral
471 character, the board shall conduct a criminal history records
472 check on all applicants for a license. In order to determine the
473 applicant's suitability for licensing, the applicant shall be
474 fingerprinted. The board shall submit the fingerprints to the
475 Department of Public Safety for a check of the state criminal
476 records and forwarded to the Federal Bureau of Investigation for a
477 check of the national criminal records. The Department of Public
478 Safety shall disseminate the results of the state check and the
479 national check to the board for a suitability determination. The
480 board shall be authorized to collect from the applicant the amount
481 of the fee that the Department of Public Safety charges the board
482 for the fingerprinting, whether manual or electronic, and the
483 state and national criminal history records checks.

484 (5) To insure that all applicants are of good moral
485 character, the board, upon request of the Dean of the University
486 of Mississippi School of Pharmacy, shall be authorized to conduct
487 a criminal history records check on all applicants for enrollment
488 into the School of Pharmacy. In order to determine the
489 applicant's suitability for enrollment and licensing, the
490 applicant shall be fingerprinted. The board shall submit the
491 fingerprints to the Department of Public Safety for a check of the
492 state criminal records and forwarded to the Federal Bureau of
493 Investigation for a check of the national criminal records. The
494 Department of Public Safety shall disseminate the results of the
495 state check and the national check to the board for a suitability
496 determination and the board shall forward the results to the Dean
497 of the School of Pharmacy. The board shall be authorized to
498 collect from the applicant the amount of the fee that the
499 Department of Public Safety charges the board for the

500 fingerprinting, whether manual or electronic, and the state and
501 national criminal history records checks.

502 **SECTION 10.** Section 73-21-87, Mississippi Code of 1972, is
503 reenacted as follows:

504 73-21-87. (1) To obtain a license to engage in the practice
505 of pharmacy by reciprocity or license transfer, the applicant
506 shall:

507 (a) Have submitted a written application on the form
508 prescribed by the board;

509 (b) Be of good moral character;

510 (c) Have possessed at the time of initial licensure as
511 a pharmacist such other qualifications necessary to have been
512 eligible for licensure at that time in that state;

513 (d) Have presented to the board proof that any license
514 or licenses granted to the applicant by any other states have not
515 been suspended, revoked, cancelled or otherwise restricted for any
516 reason except nonrenewal or the failure to obtain required
517 continuing education credits; and

518 (e) Have paid all fees specified by the board for
519 licensure.

520 (2) No applicant shall be eligible for licensure by
521 reciprocity or license transfer or unless the state in which the
522 applicant was initially licensed also grants a reciprocal license
523 or transfer license to pharmacists licensed by this state under
524 like circumstances and conditions.

525 (3) Each application or filing made under this section shall
526 include the social security number(s) of the applicant in
527 accordance with Section 93-11-64, Mississippi Code of 1972.

528 **SECTION 11.** Section 73-21-89, Mississippi Code of 1972, is
529 reenacted as follows:

530 73-21-89. (1) The board shall issue a license to practice
531 pharmacy to any person, if such person be otherwise qualified,
532 upon presentation to the board of:

533 (a) Satisfactory proof that the applicant has been
534 graduated from the University of Mississippi School of Pharmacy;
535 (b) Written application for licensure; and
536 (c) Payment of all fees specified by the board for
537 licensure.

538 (2) The board shall not issue any new licenses pursuant to
539 this section after June 30, 1987.

540 (3) Each application or filing made under this section shall
541 include the social security number(s) of the applicant in
542 accordance with Section 93-11-64, Mississippi Code of 1972.

543 **SECTION 12.** Section 73-21-91, Mississippi Code of 1972, is
544 reenacted and amended as follows:

545 73-21-91. (1) Every pharmacist shall renew his license
546 annually. To renew his license, a pharmacist shall:

547 (a) Submit an application for renewal on the form
548 prescribed by the board;

549 (b) Submit satisfactory evidence of the completion in
550 the last licensure period of such continuing education units as
551 shall be required by the board, but in no case less than two (2)
552 continuing education units in the last licensure period;

553 (c) Pay such renewal fees as required by the board, not
554 to exceed One Hundred Dollars (\$100.00) for each annual licensing
555 period, provided that the board may add a surcharge of not more
556 than Five Dollars (\$5.00) to a license renewal fee to fund a
557 program to aid impaired pharmacists or pharmacy students. Any
558 pharmacist license renewal received postmarked after December 31
559 of the renewal period will be returned and a Fifty Dollar (\$50.00)
560 late renewal fee will be assessed prior to renewal.

561 (2) Any pharmacist who has defaulted in license renewal may
562 be reinstated within two (2) years upon payment of renewal fees in
563 arrears and presentation of evidence of the required continuing
564 education. Any pharmacist defaulting in license renewal for a
565 period in excess of two (2) years shall be required to

566 successfully complete the examination given by the board pursuant
567 to Section 73-21-85 before being eligible for reinstatement as a
568 pharmacist in Mississippi, or shall be required to appear before
569 the board to be examined for his competence and knowledge of the
570 practice of pharmacy, and may be required to submit evidence of
571 continuing education. If such person is found fit by the board to
572 practice pharmacy in this state, the board may reinstate his
573 license to practice pharmacy upon payment of all renewal fees in
574 arrears.

575 (3) Each application or filing made under this section shall
576 include the social security number(s) of the applicant in
577 accordance with Section 93-11-64, Mississippi Code of 1972.

578 **SECTION 13.** Section 73-21-93, Mississippi Code of 1972, is
579 reenacted as follows:

580 73-21-93. (1) The examination for licensure required under
581 Section 73-21-85 shall be given by the board at least once during
582 each year. The board shall determine the content and subject
583 matter of each examination, the place, time and date of the
584 administration of the examination and those persons who have
585 successfully passed the examination.

586 (2) The examination shall be prepared to measure the
587 competence of the applicant to engage in the practice of pharmacy.
588 The board may employ and cooperate with any organization or
589 consultant in the preparation and grading of an appropriate
590 examination, but shall retain the sole discretion and
591 responsibility of determining which applicants have successfully
592 passed such an examination.

593 (3) The board shall have authority to use the laboratories
594 of the school of pharmacy and other facilities of the University
595 of Mississippi for the purpose of examining applicants.

596 **SECTION 14.** Section 73-21-95, Mississippi Code of 1972, is
597 reenacted as follows:

598 73-21-95. The assistant pharmacist license is hereby
599 abolished after April 30, 1984. The board shall issue a license
600 to practice pharmacy to those persons presently holding an
601 assistant pharmacist license upon their meeting the requirements
602 of Section 73-21-91.

603 **SECTION 15.** Section 73-21-97, Mississippi Code of 1972, is
604 reenacted as follows:

605 73-21-97. (1) The board may refuse to issue or renew, or
606 may suspend, reprimand, revoke or restrict the license,
607 registration or permit of any person upon one or more of the
608 following grounds:

609 (a) Unprofessional conduct as defined by the rules and
610 regulations of the board;

611 (b) Incapacity of a nature that prevents a pharmacist
612 from engaging in the practice of pharmacy with reasonable skill,
613 confidence and safety to the public;

614 (c) Being found guilty by a court of competent
615 jurisdiction of one or more of the following:

616 (i) A felony;

617 (ii) Any act involving moral turpitude or gross
618 immorality; or

619 (iii) Violation of pharmacy or drug laws of this
620 state or rules or regulations pertaining thereto, or of statutes,
621 rules or regulations of any other state or the federal government;

622 (d) Fraud or intentional misrepresentation by a
623 licensee or permit holder in securing the issuance or renewal of a
624 license or permit;

625 (e) Engaging or aiding and abetting an individual to
626 engage in the practice of pharmacy without a license;

627 (f) Violation of any of the provisions of this chapter
628 or rules or regulations adopted pursuant to this chapter;

629 (g) Failure to comply with lawful orders of the board;

630 (h) Negligently or willfully acting in a manner
631 inconsistent with the health or safety of the public;

632 (i) Addiction to or dependence on alcohol or controlled
633 substances or the unauthorized use or possession of controlled
634 substances;

635 (j) Misappropriation of any prescription drug;

636 (k) Being found guilty by the licensing agency in
637 another state of violating the statutes, rules or regulations of
638 that jurisdiction; or

639 (1) The unlawful or unauthorized possession of a
640 controlled substance.

641 (2) In lieu of suspension, revocation or restriction of a
642 license as provided for above, the board may warn or reprimand the
643 offending pharmacist.

644 (3) In addition to the grounds specified in subsection (1)
645 of this section, the board shall be authorized to suspend the
646 license, registration or permit of any person for being out of
647 compliance with an order for support, as defined in Section
648 93-11-153. The procedure for suspension of a license,
649 registration or permit for being out of compliance with an order
650 for support, and the procedure for the reissuance or reinstatement
651 of a license, registration or permit suspended for that purpose,
652 and the payment of any fees for the reissuance or reinstatement of
653 a license, registration or permit suspended for that purpose,
654 shall be governed by Section 93-11-157 or 93-11-163, as the case
655 may be. If there is any conflict between any provision of Section
656 93-11-157 or 93-11-163 and any provision of this chapter, the
657 provisions of Section 93-11-157 or 93-11-163, as the case may be,
658 shall control.

659 **SECTION 16.** Section 73-21-99, Mississippi Code of 1972, is
660 reenacted as follows:

661 73-21-99. (1) Disciplinary action by the board against a
662 licensee, registrant or permit holder, or license, registration or
663 permit shall require the following:

664 (a) A sworn affidavit filed with the board charging a
665 licensee or permit holder with an act which is grounds for
666 disciplinary action as provided in Section 73-21-97; and

667 (b) An order of the Investigations Review Committee of
668 the board which shall cause the executive director of the board to
669 fix a time and place for a hearing by the board. The executive
670 director shall cause a written notice specifying the offense or
671 offenses for which the licensee or permit holder is charged and
672 notice of the time and place of the hearing to be served upon the
673 licensee or permit holder at least thirty (30) days prior to the
674 hearing date. Such notice may be served by mailing a copy thereof
675 by certified mail, postage prepaid, to the last known residence or
676 business address of the licensee or permit holder.

677 (2) The board shall designate two (2) of its members to
678 serve on a rotating no longer than three-consecutive-month basis
679 with the executive director and legal counsel for the board as an
680 Investigations Review Committee, and the board's investigators
681 shall provide status reports solely to the Investigations Review
682 Committee during monthly meetings of the board. Such reports
683 shall be made on all on-going investigations, and shall apply to
684 any routine inspections which may give rise to the filing of a
685 complaint. In the event any complaint on a licensee comes before
686 the board for possible disciplinary action, the members of the
687 board serving on the Investigations Review Committee which
688 reviewed the investigation of such complaint shall recuse
689 themselves and not participate in the disciplinary proceeding.

690 (3) The board acting by and through its Investigation Review
691 Committee may, if deemed necessary, issue a letter of reprimand to
692 any licensee, registrant or permit holder in lieu of formal action
693 by the board.

694 (4) The board, acting by and through its executive director,
695 is hereby authorized and empowered to issue subpoenas for the
696 attendance of witnesses and the production of books and papers at
697 such hearing. Process issued by the board shall extend to all
698 parts of the state and shall be served by any person designated by
699 the board for such service.

700 (5) The accused shall have the right to appear either
701 personally or by counsel or both to produce witnesses or evidence
702 in his behalf, to cross-examine witnesses and to have subpoenas
703 issued by the board.

704 (6) At the hearing, the board shall administer oaths as may
705 be necessary for the proper conduct of the hearing. All hearings
706 shall be conducted by the board, which shall not be bound by
707 strict rules of procedure or by the laws of evidence in the
708 conduct of its proceedings, but the determination shall be based
709 upon sufficient evidence to sustain it.

710 (7) Where, in any proceeding before the board, any witness
711 fails or refuses to attend upon a subpoena issued by the board,
712 refuses to testify, or refuses to produce any books and papers the
713 production of which is called for by a subpoena, the attendance of
714 such witness, the giving of his testimony or the production of the
715 books and papers shall be enforced by any court of competent
716 jurisdiction of this state in the manner provided for the
717 enforcement of attendance and testimony of witnesses in civil
718 cases in the courts of this state.

719 (8) The board shall, within thirty (30) days after
720 conclusion of the hearing, reduce its decision to writing and
721 forward an attested true copy thereof to the last known residence
722 or business address of such licensee or permit holder by way of
723 United States first-class, certified mail, postage prepaid.

724 **SECTION 17.** Section 73-21-101, Mississippi Code of 1972, is
725 reenacted as follows:

726 73-21-101. (1) The right to appeal from the action of the
727 board in denying, revoking, suspending or refusing to renew any
728 license, registration or permit issued by the board, or fining or
729 otherwise disciplining any person is hereby granted. Such appeal
730 shall be to the chancery court of the county of the residence of
731 the licensee or permit holder on the record made, including a
732 verbatim transcript of the testimony at the hearing. The appeal
733 shall be taken within thirty (30) days after notice of the action
734 of the board in denying, revoking, suspending or refusing to renew
735 the license or permit, or fining or otherwise disciplining the
736 person. The appeal shall be perfected upon filing notice of the
737 appeal and by the prepayment of all costs, including the cost of
738 the preparation of the record of the proceedings by the board, and
739 the filing of a bond in the sum of Two Hundred Dollars (\$200.00),
740 conditioned that if the action of the board in denying, revoking,
741 suspending or refusing to renew the license or permit, or fining
742 or otherwise disciplining the person, be affirmed by the chancery
743 court, the licensee or permit holder will pay the costs of the
744 appeal and the action in the chancery court.

745 (2) If there is an appeal, such appeal shall act as a
746 supersedeas. The chancery court shall dispose of the appeal and
747 enter its decision promptly. The hearing on the appeal may, in
748 the discretion of the chancellor, be tried in vacation. The scope
749 of review of the chancery court shall be limited to a review of
750 the record made before the board to determine if the action of the
751 board is unlawful for the reason that it was (a) not supported by
752 substantial evidence, (b) arbitrary or capricious, (c) beyond the
753 power of the board to make, or (d) in violation of some statutory
754 or constitutional right of the appellant. The decision of the
755 chancery court may be appealed to the Supreme Court in the manner
756 provided by law.

757 (3) Actions taken by the board in suspending a license,
758 registration or permit when required by Section 93-11-157 or

759 93-11-163 are not actions from which an appeal may be taken under
760 this section. Any appeal of a suspension of a license,
761 registration or permit that is required by Section 93-11-157 or
762 93-11-163 shall be taken in accordance with the appeal procedure
763 specified in Section 93-11-157 or 93-11-163, as the case may be,
764 rather than the procedure specified in this section.

765 **SECTION 18.** Section 73-21-103, Mississippi Code of 1972, is
766 reenacted as follows:

767 73-21-103. (1) Upon the finding of the existence of grounds
768 for action against any permitted facility or discipline of any
769 person holding a license, registration or permit, seeking a
770 license, registration or permit, or seeking to renew a license or
771 permit under the provisions of this chapter, the board may impose
772 one or more of the following penalties:

773 (a) Suspension of the offender's license, registration
774 and/or permit for a term to be determined by the board;

775 (b) Revocation of the offender's license, registration
776 and/or permit;

777 (c) Restriction of the offender's license, registration
778 and/or permit to prohibit the offender from performing certain
779 acts or from engaging in the practice of pharmacy in a particular
780 manner for a term to be determined by the board;

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

782 (i) For the first violation, a monetary penalty of
783 not less than Two Hundred Fifty Dollars (\$250.00) nor more than
784 One Thousand Dollars (\$1,000.00) for each violation;

785 (ii) For the second violation and subsequent
786 violations, a monetary penalty of not less than Five Hundred
787 Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00)
788 for each violation.

789 Money collected by the board under Section 73-21-103,
790 subsection (1)(d)(i), (ii) and (iv) shall be deposited to the
791 credit of the State General Fund of the State Treasury;

792 (iii) The board may assess a monetary penalty for
793 those reasonable costs that are expended by the board in the
794 investigation and conduct of a proceeding for licensure
795 revocation, suspension or restriction, including, but not limited
796 to, the cost of process service, court reporters, expert witnesses
797 and investigators.

798 Money collected by the board under Section 73-21-103,
799 subsection (1)(d)(iii), shall be deposited to the credit of the
800 Special Fund of the Pharmacy Board;

801 (iv) The board may impose a monetary penalty for
802 those facilities/businesses registered with the Pharmacy Board as
803 wholesalers/manufacturers of not less than Three Hundred Dollars
804 (\$300.00) per violation and not more than Fifty Thousand Dollars
805 (\$50,000.00) per violation;

806 (e) Refusal to renew offender's license, registration
807 and/or permit;

808 (f) Placement of the offender on probation and
809 supervision by the board for a period to be determined by the
810 board;

811 (g) Public or private reprimand.

812 Whenever the board imposes any penalty under this subsection,
813 the board may require rehabilitation and/or additional education
814 as the board may deem proper under the circumstances, in addition
815 to the penalty imposed.

816 (2) Any person whose license, registration and/or permit has
817 been suspended, revoked or restricted pursuant to this chapter,
818 whether voluntarily or by action of the board, shall have the
819 right to petition the board at reasonable intervals for
820 reinstatement of such license, registration and/or permit. Such
821 petition shall be made in writing and in the form prescribed by
822 the board. Upon investigation and hearing, the board may, in its
823 discretion, grant or deny such petition, or it may modify its
824 original finding to reflect any circumstances which have changed

825 sufficiently to warrant such modifications. The procedure for the
826 reinstatement of a license, registration or permit that is
827 suspended for being out of compliance with an order for support,
828 as defined in Section 93-11-153, shall be governed by Section
829 93-11-157 or 93-11-163, as the case may be.

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

834 (4) A monetary penalty assessed and levied under this
835 section shall be paid to the board by the licensee, registrant or
836 permit holder upon the expiration of the period allowed for appeal
837 of such penalties under Section 73-21-101, or may be paid sooner
838 if the licensee, registrant or permit holder elects.

839 (5) When payment of a monetary penalty assessed and levied
840 by the board against a licensee, registrant or permit holder in
841 accordance with this section is not paid by the licensee,
842 registrant or permit holder when due under this section, the board
843 shall have the power to institute and maintain proceedings in its
844 name for enforcement of payment in the chancery court of the
845 county and judicial district of residence of the licensee,
846 registrant or permit holder, or if the licensee, registrant or
847 permit holder is a nonresident of the State of Mississippi, in the
848 Chancery Court of the First Judicial District of Hinds County,
849 Mississippi. When such proceedings are instituted, the board
850 shall certify the record of its proceedings, together with all
851 documents and evidence, to the chancery court and the matter shall
852 thereupon be heard in due course by the court, which shall review
853 the record and make its determination thereon. The hearing on the
854 matter may, in the discretion of the chancellor, be tried in
855 vacation.

856 (6) The board shall develop and implement a uniform penalty
857 policy which shall set the minimum and maximum penalty for any

858 given violation of board regulations and laws governing the
859 practice of pharmacy. The board shall adhere to its uniform
860 penalty policy except in such cases where the board specifically
861 finds, by majority vote, that a penalty in excess of, or less
862 than, the uniform penalty is appropriate. Such vote shall be
863 reflected in the minutes of the board and shall not be imposed
864 unless such appears as having been adopted by the board.

865 **SECTION 19.** Section 73-21-105, Mississippi Code of 1972, is
866 reenacted as follows:

867 73-21-105. (1) Every facility/business that shall engage in
868 the wholesale distribution of prescription drugs, to include
869 without limitation, manufacturing in this state, distribution into
870 this state, or selling or offering to sell in this state, or
871 distribution from or within this state, shall register biennially
872 with the Mississippi State Board of Pharmacy by applying for a
873 permit on a form supplied by the board and accompanied by a fee as
874 set by subsection (4) of this section. The Pharmacy Board shall
875 by regulation determine the classification of permit(s) that shall
876 be required.

877 (2) Every business/facility/pharmacy located in this state
878 that engages in or proposes to engage in the dispensing and
879 delivery of prescription drugs to consumers shall register with
880 the Mississippi State Board of Pharmacy by applying for a permit
881 on a form supplied by the board and accompanied by a fee as set by
882 subsection (4) of this section. The Pharmacy Board shall by
883 regulation determine the classification of permit(s) that shall be
884 required.

885 (3) The board shall establish by rule or regulation the
886 criteria which each business shall meet to qualify for a permit in
887 each classification. The board shall issue a permit to any
888 applicant who meets the criteria as established. The board may
889 issue various types of permits with varying restrictions to

890 businesses where the board deems it necessary by reason of the
891 type of activities conducted by the business requesting a permit.

892 (4) The board shall specify by rule or regulation the
893 registration procedures to be followed, including, but not limited
894 to, specification of forms for use in applying for such permits
895 and times, places and fees for filing such applications. However,
896 the biennial fee for an original or renewal permit shall not
897 exceed Three Hundred Dollars (\$300.00).

898 (5) Applications for permits shall include the following
899 information about the proposed business:

900 (a) Ownership;

901 (b) Location;

902 (c) Identity of the responsible person or pharmacist
903 licensed to practice in the state, who shall be the pharmacist in
904 charge of the pharmacy, where one is required by this chapter, and
905 such further information as the board may deem necessary.

906 (6) Permits issued by the board pursuant to this section
907 shall not be transferable or assignable.

908 (7) The board shall specify by rule or regulation minimum
909 standards for the responsibility in the conduct of any
910 business/facility and/or pharmacy that has been issued a permit.
911 The board is specifically authorized to require that the portion
912 of the facility located in this state to which a pharmacy permit
913 applies be operated only under the direct supervision of no less
914 than one (1) pharmacist licensed to practice in this state, and to
915 provide such other special requirements as deemed necessary.
916 Nothing in this subsection shall be construed to prevent any
917 person from owning a pharmacy.

918 (8) All businesses permitted by the board shall report to
919 the board the occurrence of any of the following changes:

920 (a) Permanent closing;

921 (b) Change of ownership, management, location or
922 pharmacist in charge;

923 (c) Any and all other matters and occurrences as the
924 board may require by rule or regulation.

925 (9) Disasters, accidents and emergencies which may affect
926 the strength, purity or labeling of drugs, medications, devices or
927 other materials used in the diagnosis or the treatment of injury,
928 illness and disease shall be immediately reported to the board.

929 (10) No business that is required to obtain a permit shall
930 be operated until a permit has been issued for such business by
931 the board. Any person, firm or corporation violating any of the
932 provisions of this section shall be guilty of a misdemeanor and,
933 upon conviction thereof, shall be punished by a fine of not less
934 than One Hundred Dollars (\$100.00) nor more than One Thousand
935 Dollars (\$1,000.00), or imprisonment in the county jail for not
936 less than thirty (30) days nor more than ninety (90) days, or by
937 both such fine and imprisonment. However, the provisions of this
938 chapter shall not apply to physicians, dentists, veterinarians,
939 osteopaths or other practitioners of the healing arts who are
940 licensed under the laws of the State of Mississippi and are
941 authorized to dispense and administer prescription drugs in the
942 course of their professional practice.

943 **SECTION 20.** Section 73-21-107, Mississippi Code of 1972, is
944 reenacted as follows:

945 73-21-107. (1) The board or its representative may enter
946 and inspect, during reasonable hours, a facility which has
947 obtained or applied for a permit under Section 73-21-105 relative
948 to the following:

- 949 (a) Drug storage and security;
- 950 (b) Equipment;
- 951 (c) Sanitary conditions; or
- 952 (d) Records, reports, or other documents required to be
953 kept or made under this chapter or the Uniform Controlled
954 Substances Law (Section 41-29-101 et seq.) or rules and
955 regulations adopted under such laws.

956 (2) Prior to an entry and inspection, the board
957 representative shall state his purpose and present appropriate
958 credentials to the owner, pharmacist or agent in charge of a
959 facility.

960 (3) The board representative may:

961 (a) Inspect and copy records, reports, and other
962 documents required to be kept or made under this chapter, the
963 Uniform Controlled Substances Law, or rules and regulations
964 adopted under such laws;

965 (b) Inspect, within reasonable limits and in a
966 reasonable manner, a facility's storage, equipment, security,
967 records, or prescription drugs or devices; or

968 (c) Inventory any stock of any prescription drugs or
969 devices in the facility.

970 (4) Unless the owner, pharmacist, or agent in charge of the
971 facility consents in writing, an inspection authorized by this
972 section may not extend to:

973 (a) Financial data;

974 (b) Sales data other than shipment data; or

975 (c) Pricing data.

976 **SECTION 21.** Section 73-21-109, Mississippi Code of 1972, is
977 reenacted as follows:

978 73-21-109. No person shall make use of the terms
979 "drugstore," "pharmacy," "apothecary" or words of similar meaning
980 which indicate that pharmaceutical services are performed in any
981 sign, letterhead or advertisement unless such person is a permit
982 holder as provided in Section 73-21-105. Any person violating
983 this section shall be guilty of a misdemeanor and, upon conviction
984 thereof, shall be punished by a fine of not less than One Hundred
985 Dollars (\$100.00) nor more than Three Hundred Dollars (\$300.00),
986 or by imprisonment in the county jail for not less than thirty
987 (30) days nor more than ninety (90) days, or by both.

988 **SECTION 22.** Section 73-21-111, Mississippi Code of 1972, is
989 reenacted as follows:

990 73-21-111. (1) The board shall make, adopt, amend and
991 repeal from time to time such rules and regulations for the
992 regulation of supportive personnel as may be deemed necessary by
993 the board.

994 (2) Every person who acts or serves as a pharmacy technician
995 in a pharmacy that is located in this state and permitted by the
996 board shall obtain a registration from the board. To obtain a
997 pharmacy technician registration the applicant must:

998 (a) Have submitted a written application on a form(s)
999 prescribed by the board; and

1000 (b) Be of good moral character; and

1001 (c) Have paid the initial registration fee not to
1002 exceed One Hundred Dollars (\$100.00).

1003 (3) Each pharmacy technician shall renew his or her
1004 registration annually. To renew his or her registration, a
1005 technician must:

1006 (a) Submit an application on a form prescribed by the
1007 board; and

1008 (b) Pay a renewal fee not to exceed One Hundred Dollars
1009 (\$100.00) for each annual registration period. The board may add
1010 a surcharge of not more than Five Dollars (\$5.00) to the
1011 registration renewal fee to assist in funding a program that
1012 assists impaired pharmacists, pharmacy students and pharmacy
1013 technicians.

1014 (4) To insure that all applicants are of good moral
1015 character, the board shall conduct a criminal history records
1016 check on all applicants for a license. In order to determine the
1017 applicant's suitability for licensing, the applicant shall be
1018 fingerprinted. The board shall submit the fingerprints to the
1019 Department of Public Safety for a check of the state criminal
1020 records and forwarded to the Federal Bureau of Investigation for a

1021 check of the national criminal records. The Department of Public
1022 Safety shall disseminate the results of the state check and the
1023 national check to the board for a suitability determination. The
1024 board shall be authorized to collect from the applicant the amount
1025 of the fee that the Department of Public Safety charges the board
1026 for the fingerprinting, whether manual or electronic, and the
1027 state and national criminal history records checks.

1028 **SECTION 23.** Section 73-21-113, Mississippi Code of 1972, is
1029 reenacted as follows:

1030 73-21-113. All fees received by the board from examinations,
1031 licenses, permits and monetary penalties, and any other funds
1032 received by the board, shall be paid to the State Treasurer, who
1033 shall issue receipts therefor and deposit such funds in the State
1034 Treasury in a special fund to the credit of the board. All such
1035 funds shall be expended only pursuant to appropriation approved by
1036 the Legislature and as provided by law.

1037 **SECTION 24.** Section 73-21-115, Mississippi Code of 1972, is
1038 reenacted as follows:

1039 73-21-115. (1) Every prescription written in this state by
1040 a person authorized to issue such prescription shall be on
1041 prescription forms containing two (2) lines for the prescriber's
1042 signature. There shall be a signature line in the lower
1043 right-hand corner of the prescription form beneath which shall be
1044 clearly imprinted the words "substitution permissible." There
1045 shall be a signature line in the lower left-hand corner of the
1046 prescription form beneath which shall be clearly imprinted the
1047 words "dispense as written." The prescriber's signature on either
1048 signature line shall validate the prescription and shall designate
1049 approval or disapproval of product selection.

1050 (2) If a prescription form which does not contain the two
1051 (2) signature lines required in subsection (1) of this section is
1052 utilized by the prescriber, he shall write in his own handwriting

1053 the words "dispense as written" thereupon to prevent product
1054 selection.

1055 (3) A pharmacist licensed by the Mississippi State Board of
1056 Pharmacy may dispense a one-time emergency dispensing of a
1057 prescription of up to a seventy-two-hour supply of a prescribed
1058 medication in the event the pharmacist is unable to contact the
1059 prescriber to obtain refill authorization, provided that:

1060 (a) The prescription is not for a controlled substance;

1061 (b) In the pharmacist's professional judgment, the
1062 interruption of therapy might reasonably produce undesirable
1063 health consequences or may cause physical or mental discomfort;

1064 (c) The dispensing pharmacist notifies the prescriber
1065 or his agent of the emergency dispensing within seven (7) working
1066 days after the one-time emergency dispensing;

1067 (d) The pharmacist properly records the dispensing as a
1068 separate nonrefillable prescription. Said document shall be filed
1069 as is required of all other prescription records. This document
1070 shall be serially numbered and contain all information required of
1071 other prescriptions. In addition it shall contain the number of
1072 the prescription from which it was refilled; and

1073 (e) The pharmacist shall record on the new document the
1074 circumstances which warrant this emergency dispensing.

1075 This emergency dispensing shall be done only in the permitted
1076 facility which contains the nonrefillable prescription.

1077 **SECTION 25.** Section 73-21-117, Mississippi Code of 1972, is
1078 reenacted as follows:

1079 73-21-117. (1) A pharmacist may select a generic equivalent
1080 drug product only when such selection results in lower cost to the
1081 purchaser, unless product selection is expressly prohibited by the
1082 prescriber.

1083 (2) A pharmacist shall select a generic equivalent drug
1084 product when:

1085 (a) The purchaser requests the selection of a generic
1086 equivalent drug product;

1087 (b) The prescriber has not expressly prohibited product
1088 selection; and

1089 (c) Product selection will result in lower cost to the
1090 purchaser.

1091 Before product selection is made, the pharmacist shall advise
1092 the purchaser of his prerogatives under this subsection.

1093 (3) When requested by the purchaser to dispense the drug
1094 product as ordered by the prescriber, a pharmacist shall not
1095 select a generic equivalent drug product.

1096 **SECTION 26.** Section 73-21-119, Mississippi Code of 1972, is
1097 reenacted as follows:

1098 73-21-119. (1) The label of the container of any drug
1099 product which is sold within the State of Mississippi for resale
1100 at retail and which requires a prescription to be dispensed at
1101 retail shall contain at a minimum the name of the manufacturer of
1102 the final dosage unit, expiration date if applicable, batch or lot
1103 number and national drug code.

1104 (2) Whenever product selection is made, the pharmacist shall
1105 indicate on the label of the dispensed container the initials
1106 "G.E." and the proprietary name of the product dispensed or the
1107 generic name of the product dispensed and its manufacturer either
1108 written in full or appropriately abbreviated, unless the
1109 prescriber indicates that the name of the drug product shall not
1110 appear on the label.

1111 **SECTION 27.** Section 73-21-121, Mississippi Code of 1972, is
1112 reenacted as follows:

1113 73-21-121. (1) Product selection as authorized by Sections
1114 73-21-115 through 73-21-119 shall not constitute evidence of
1115 negligence by the dispensing pharmacist when such product
1116 selection is in accordance with reasonable and prudent pharmacy
1117 practice. No prescriber shall be liable for civil damages or in

1118 any criminal prosecution arising from the incorrect product
1119 selection by a pharmacist.

1120 (2) Any person having knowledge relating to a pharmacist or
1121 to a pharmacy student which might provide grounds for disciplinary
1122 action by the board may report relevant facts to the board, and
1123 shall by reason of reporting such facts in good faith be immune
1124 from civil liability.

1125 (3) Any person furnishing information in the form of data,
1126 reports or records to the board or to a pharmacist organization
1127 approved by the board to receive such information, where such
1128 information is furnished for the purpose of aiding a pharmacist or
1129 a pharmacy student impaired by chemical abuse or by mental or by
1130 physical illness, shall by reason of furnishing such information
1131 in good faith be immune from civil liability.

1132 (4) The records of the board or the records of a pharmacist
1133 organization approved by the board to aid pharmacists or pharmacy
1134 students impaired by chemical abuse, where such records relate to
1135 the impairment, shall be confidential and are not considered open
1136 records; provided, however, the board may disclose this
1137 confidential information only:

1138 (a) In a disciplinary hearing before the board, or in
1139 an appeal of an action or order of the board;

1140 (b) To the pharmacist licensing or disciplinary
1141 authorities of other jurisdictions in the case of a pharmacist who
1142 is licensed in, or seeking transfer to, another state; or

1143 (c) Pursuant to an order of a court of competent
1144 jurisdiction.

1145 **SECTION 28.** Section 73-21-123, Mississippi Code of 1972, is
1146 reenacted as follows:

1147 73-21-123. Nothing in this chapter shall be construed to
1148 prevent, or in any manner interfere with, or to require a permit
1149 for the sale of nonnarcotic nonprescription drugs which may be
1150 lawfully sold under the United States Food, Drug and Cosmetic Act

1151 (21 USCS 301 et seq. as now or hereafter amended) without a
1152 prescription, nor shall any rule or regulation be adopted by the
1153 board under the provisions of this chapter which shall require the
1154 sale of nonprescription drugs by a licensed pharmacist of in a
1155 pharmacy or otherwise apply to or interfere with the sale or
1156 distribution of such drugs.

1157 **SECTION 29.** The following provision shall be codified as
1158 Section 73-21-125, Mississippi Code of 1972:

1159 73-21-125. The Board of Pharmacy shall develop and implement
1160 a computerized program to track prescriptions for controlled
1161 substances and to report illegal activity, under the following
1162 conditions:

1163 (a) The prescriptions tracked shall be prescriptions
1164 for controlled substances listed in Schedule II, III, IV or V that
1165 are filled by a pharmacy. The program shall provide information
1166 regarding the inappropriate use of controlled substances in
1167 Schedule II, III, IV and V to pharmacies, practitioners and
1168 appropriate state agencies in order to prevent the improper or
1169 illegal use of such controlled substances. The program shall not
1170 infringe on the legal use of controlled substances for the
1171 management of severe or intractable pain.

1172 (b) The Board of Pharmacy shall report any activity it
1173 reasonably suspects may be fraudulent or illegal to the
1174 appropriate law enforcement agency or occupational licensing board
1175 and provide them with the relevant information obtained for
1176 further investigation.

1177 (c) Information obtained from the program is
1178 confidential and must not be disclosed to any person. Information
1179 must be disclosed upon the request of a person about whom the
1180 information requested concerns or upon the request on his behalf
1181 by his attorney.

1182 (d) Licensed physicians, dentists and pharmacists may
1183 obtain patient specific information in the program by request.

1184 (e) The Board of Pharmacy may apply for any available
1185 grants and accept any gifts, grants or donations to assist in
1186 future development or in maintaining the program.

1187 **SECTION 30.** The following provision shall be codified as
1188 Section 73-21-126, Mississippi Code of 1972:

1189 73-21-126. (1) The State Board of Pharmacy shall promulgate
1190 rules regarding the issuance and renewal of licenses and permits
1191 for new or renewal application requirements for both in and out of
1192 state wholesale distributors, chain pharmacy warehouses and
1193 re-packagers shipping into Mississippi. Requirements for new and
1194 on renewal applications, if information has not been previously
1195 provided to the board, will include, but not be limited to, the
1196 following:

1197 (a) Type of ownership (individual, partnership or
1198 corporation);

1199 (b) Names of principal owners or officers and social
1200 security numbers;

1201 (c) Names of designated representatives and social
1202 security numbers;

1203 (d) Criminal background checks of applicants and
1204 designated representatives as required by rule;

1205 (e) Copy of license in home state;

1206 (f) Bond requirements.

1207 (2) The board shall promulgate rules for the establishment
1208 of a pedigree or electronic file to be used by wholesale
1209 distributors, chain pharmacy warehouses and re-packagers for the
1210 purpose of ensuring the integrity of drugs owned, purchased,
1211 distributed, returned, transferred and sold when the products
1212 leave the normal distribution channel.

1213 (3) The board is authorized to use an outside agency to
1214 accredit wholesale distributors and re-packagers, including the
1215 National Association of Boards of Pharmacy's (NABP) Verified
1216 Accredited Wholesale Distributors (VAWD) program.

1217 (4) Independent pharmacies and chain pharmacies shall not be
1218 responsible for verification or adjudication of the pedigree for
1219 pharmaceuticals.

1220 (5) The board may exempt wholesalers accredited by the VAWD
1221 program from the above requirements.

1222 **SECTION 31.** For purposes of Sections 31 through 45 of this
1223 act, the following words and phrases shall have the meanings
1224 ascribed herein unless the context clearly indicates otherwise:

1225 (a) "Board" means the State Board of Pharmacy.

1226 (b) "Cease and desist" is an order of the board
1227 prohibiting a pharmacy benefit manager or other person or entity
1228 from continuing a particular course of conduct, which violates
1229 this act or its rules and regulations.

1230 (c) "Day" means a calendar day, unless otherwise
1231 defined or limited.

1232 (d) "Electronic claim" means the transmission of data
1233 for purposes of payment of covered prescription drugs, other
1234 products and supplies, and pharmacist services in an electronic
1235 data format specified by a pharmacy benefit manager and approved
1236 by the department.

1237 (e) "Electronic adjudication" means the process of
1238 electronically receiving, reviewing and accepting or rejecting an
1239 electronic claim.

1240 (f) "Enrollee" means an individual who has been
1241 enrolled in a pharmacy benefit management plan.

1242 (g) "Health insurance plan" means benefits consisting
1243 of prescription drugs, other products and supplies, and pharmacist
1244 services provided directly, through insurance or reimbursement, or
1245 otherwise and including items and services paid for as
1246 prescription drugs, other products and supplies, and pharmacist
1247 services under any hospital or medical service policy or
1248 certificate, hospital or medical service plan contract, preferred
1249 provider organization agreement, or health maintenance

1250 organization contract offered by a health insurance issuer, unless
1251 preempted as an employee benefit plan under the Employee
1252 Retirement Income Security Act of 1974. However, "health
1253 insurance coverage" shall not include benefits due under the
1254 workers' compensation laws of this or any other state.

1255 (h) "Pharmacy benefit manager" means a business that
1256 administers the prescription drug/device portion of health
1257 insurance plans on behalf of plan sponsors, insurance companies,
1258 unions and health maintenance organizations. For purposes of
1259 Sections 31 through 45 of this act, a "pharmacy benefit manager"
1260 shall not include an insurance company that provides an integrated
1261 health benefit plan and does not separately contract for pharmacy
1262 benefit management services, the pharmacy benefit manager of the
1263 State and School Employees Health Insurance Plan or the Division
1264 of Medicaid or its contractors when performing services for the
1265 Division of Medicaid.

1266 (i) "Pharmacy benefit management plan" means an
1267 arrangement for the delivery of pharmacist's services in which a
1268 pharmacy benefit manager undertakes to administer the payment or
1269 reimbursement of any of the costs of pharmacist's services for an
1270 enrollee on a prepaid or insured basis which (i) contains one or
1271 more incentive arrangements intended to influence the cost or
1272 level of pharmacist's services between the plan sponsor and one or
1273 more pharmacies with respect to the delivery of pharmacist's
1274 services; and (ii) requires or creates benefit payment
1275 differential incentives for enrollees to use under contract with
1276 the pharmacy benefit manager. A pharmacy benefit plan does not
1277 mean any employee welfare benefit plan (as defined in Section 3(1)
1278 of the Employee Retirement Income Security Act of 1974, 29 USCS
1279 Section 1002(1)), which is self-insured or self-funded.

1280 (j) "Pharmacist," "pharmacist services" and "pharmacy"
1281 or "pharmacies" shall have the same definitions as provided in
1282 Section 73-21-73.

1283 (k) "Uniform claim form" means a form prescribed by
1284 rule by the State Board of Pharmacy.

1285 (l) "Plan sponsors" means the employers, insurance
1286 companies, unions and health maintenance organizations that
1287 contract with a pharmacy benefit manager for delivery of
1288 prescription services.

1289 **SECTION 32.** (1) No person or organization shall establish
1290 or operate a pharmacy benefit manager in this state to provide
1291 pharmacy benefit management plans without obtaining a certificate
1292 of authority from the State Board of Pharmacy in accordance with
1293 Sections 31 through 45 of this act and all applicable federal and
1294 state laws. All pharmacy benefit managers providing pharmacy
1295 benefit management plans in this state shall obtain a certificate
1296 of authority from the State Board of Pharmacy every four (4)
1297 years.

1298 (2) A nonrefundable application fee of Five Hundred Dollars
1299 (\$500.00) shall accompany each application for a certificate of
1300 authority.

1301 (3) The board may suspend or revoke any certificate of
1302 authority issued to a pharmacy benefit manager under Sections 31
1303 through 45 of this act or deny an application for a certificate of
1304 authority if it finds:

1305 (a) That the pharmacy benefit manager is operating
1306 significantly in contravention of its basic organizational
1307 document.

1308 (b) The pharmacy benefit manager does not arrange for
1309 pharmacist's services.

1310 (c) That the pharmacy benefit manager has failed to
1311 meet the requirements for issuance of a certificate of authority
1312 as set forth in Sections 31 through 45 of this act and all
1313 applicable federal and state laws.

1314 (d) That the pharmacy benefit manager is unable to
1315 fulfill its obligation to furnish pharmacist's services as
1316 required under its pharmacy benefit management plan.

1317 (e) The pharmacy benefit manager is no longer
1318 financially responsible and may reasonably be expected to be
1319 unable to meet its obligations to enrollees or prospective
1320 enrollees.

1321 (f) The pharmacy benefit manager, or any person on its
1322 behalf, has advertised or merchandised its services in an untrue,
1323 misrepresentative, misleading, deceptive or unfair manner.

1324 (g) The continued operation of the pharmacy benefit
1325 manager would be hazardous to its enrollees.

1326 (h) The pharmacy benefit manager has failed to file an
1327 annual financial statement, as prescribed by the board, with the
1328 board in a timely manner.

1329 (i) The pharmacy benefit manager has otherwise failed
1330 to substantially comply with Sections 31 through 45 of this act
1331 and any rules and regulations under Sections 31 through 45 of this
1332 act.

1333 When the certificate of authority of a pharmacy benefit
1334 manager is revoked, such organization shall proceed, immediately
1335 following the effective date of the order of revocation, to wind
1336 up its affairs and shall conduct no further business except as may
1337 be essential to the orderly conclusion of the affairs of such
1338 organization. The board may permit such further operation of the
1339 organization as the board may find to be in the best interest of
1340 enrollees to the end that the enrollees will be afforded the
1341 greatest practical opportunity to obtain pharmacist's services.

1342 **SECTION 33.** (1) Reimbursement under a contract to a
1343 pharmacist or pharmacy for prescription drugs and other products
1344 and supplies that is calculated according to a formula that uses a
1345 nationally recognized reference in the pricing calculation shall
1346 use the most current nationally recognized reference price or

1347 amount in the actual or constructive possession of the pharmacy
1348 benefit manager, its agent, or any other party responsible for
1349 reimbursement for prescription drugs and other products and
1350 supplies on the date of electronic adjudication or on the date of
1351 service shown on the nonelectronic claim.

1352 (2) Pharmacy benefit managers, their agents and other
1353 parties responsible for reimbursement for prescription drugs and
1354 other products and supplies shall be required to update the
1355 nationally recognized reference prices or amounts used for
1356 calculation of reimbursement for prescription drugs and other
1357 products and supplies no less than every three (3) business days.

1358 (3) (a) All benefits payable under a pharmacy benefit
1359 management plan shall be paid within ten (10) days after receipt
1360 of due written proof of a clean claim where claims are submitted
1361 electronically, and shall be paid within thirty-five (35) days
1362 after receipt of due written proof of a clean claim where claims
1363 are submitted in paper format. Benefits due under the plan and
1364 claims are overdue if not paid within ten (10) days or thirty-five
1365 (35) days, whichever is applicable, after the pharmacy benefit
1366 manager receives a clean claim containing necessary information
1367 essential for the pharmacy benefit manager to administer
1368 preexisting condition, coordination of benefits and subrogation
1369 provisions under the plan sponsor's health insurance plan. A
1370 "clean claim" means a claim received by an pharmacy benefit
1371 manager for adjudication and which requires no further
1372 information, adjustment or alteration by the pharmacist or
1373 pharmacies or the insured in order to be processed and paid by the
1374 pharmacy benefit manager. A claim is clean if it has no defect or
1375 impropriety, including any lack of substantiating documentation,
1376 or particular circumstance requiring special treatment that
1377 prevents timely payment from being made on the claim under this
1378 subsection. A clean claim includes resubmitted claims with
1379 previously identified deficiencies corrected.

1380 (b) A clean claim does not include any of the
1381 following:
1382 (i) A duplicate claim, which means an original
1383 claim and its duplicate when the duplicate is filed within thirty
1384 (30) days of the original claim;
1385 (ii) Claims which are submitted fraudulently or
1386 that are based upon material misrepresentations;
1387 (iii) Claims that require information essential
1388 for the pharmacy benefit manager to administer preexisting
1389 condition, coordination of benefits or subrogation provisions
1390 under the plan sponsor's health insurance plan; or
1391 (iv) Claims submitted by a pharmacist or pharmacy
1392 more than thirty (30) days after the date of service; if the
1393 pharmacist or pharmacy does not submit the claim on behalf of the
1394 insured, then a claim is not clean when submitted more than thirty
1395 (30) days after the date of billing by the pharmacist or pharmacy
1396 to the insured.
1397 (c) Not later than ten (10) days after the date the
1398 pharmacy benefit manager actually receives an electronic claim,
1399 the pharmacy benefit manager shall pay the appropriate benefit in
1400 full, or any portion of the claim that is clean, and notify the
1401 pharmacist or pharmacy (where the claim is owed to the pharmacist
1402 or pharmacy) of the reasons why the claim or portion thereof is
1403 not clean and will not be paid and what substantiating
1404 documentation and information is required to adjudicate the claim
1405 as clean. Not later than thirty-five (35) days after the date the
1406 pharmacy benefit manager actually receives a paper claim, the
1407 pharmacy benefit manager shall pay the appropriate benefit in
1408 full, or any portion of the claim that is clean, and notify the
1409 pharmacist or pharmacy (where the claim is owed to the pharmacist
1410 or pharmacy) of the reasons why the claim or portion thereof is
1411 not clean and will not be paid and what substantiating
1412 documentation and information is required to adjudicate the claim

1413 as clean. Any claim or portion thereof resubmitted with the
1414 supporting documentation and information requested by the pharmacy
1415 benefit manager shall be paid within twenty (20) days after
1416 receipt.

1417 (4) Any pharmacy benefit manager, agent or other party
1418 responsible for reimbursement for prescription drugs and other
1419 products and supplies that does not comply with the requirements
1420 of this section shall be subject to administrative penalty
1421 provisions to the extent of any amount not paid in accordance with
1422 the requirements of this section. Such penalties shall be
1423 assessed on the following basis:

1424 (a) If the board finds that a pharmacy benefit manager,
1425 during any calendar year, has paid at least eighty-five percent
1426 (85%), but less than ninety-five percent (95%), of all clean
1427 claims, as defined in Sections 31 through 45 of this act,
1428 received from all pharmacists or pharmacies during that year, the
1429 board may levy an aggregate penalty in an amount not to exceed Ten
1430 Thousand Dollars (\$10,000.00). If the board finds that a pharmacy
1431 benefit manager, during any calendar year, has paid at least fifty
1432 percent (50%), but less than eighty-five percent (85%), of all
1433 clean claims received from all pharmacists or pharmacies during
1434 that year, the board may levy an aggregate penalty in an amount of
1435 not less than Ten Thousand Dollars (\$10,000.00) nor more than One
1436 Hundred Thousand Dollars (\$100,000.00). If the board finds that a
1437 pharmacy benefit manager, during any calendar year, has paid less
1438 than fifty percent (50%) of all clean claims received from all
1439 pharmacists or pharmacies during that year, the board may levy an
1440 aggregate penalty in an amount not less than One Hundred Thousand
1441 Dollars (\$100,000.00) nor more than Two Hundred Thousand Dollars
1442 (\$200,000.00). In determining the amount of any fine, the board
1443 shall take into account whether the failure to adequately pay
1444 claims was due to circumstances beyond the control of the pharmacy
1445 benefit manager. The pharmacy benefit manager may request an

1446 administrative hearing to contest the assessment of any
1447 administrative penalty imposed by the board pursuant to this
1448 subsection within thirty (30) days after receipt of the notice of
1449 assessment.

1450 (b) Examinations to determine compliance with this
1451 subsection may be conducted by the board or any of its examiners.
1452 The board may contract with qualified impartial outside sources to
1453 assist in examinations to determine compliance. The expenses of
1454 any such examinations shall be paid by the pharmacy benefit
1455 manager examined.

1456 (c) Nothing in the provisions of this section shall
1457 require a pharmacy benefit manager to pay claims that are not
1458 covered under the terms of a contract or policy of accident and
1459 sickness insurance or prepaid coverage.

1460 (e) The board may adopt rules and regulations necessary
1461 to ensure compliance with this subsection.

1462 **SECTION 34.** (1) Coordination of benefit requirements
1463 adopted by pharmacy benefit managers shall, at a minimum, adhere
1464 to the following requirements:

1465 (a) No plan shall contain a provision that its benefits
1466 are "always excess" or "always secondary" except in accordance
1467 with rules adopted by the board pursuant to Sections 31 through 45
1468 of this act.

1469 (b) A coordination of benefit provision may not be used
1470 that permits a plan to reduce its benefits on the basis of any of
1471 the following:

1472 (i) That another plan exists and the covered
1473 person did not enroll in the plan.

1474 (ii) That a person is or could have been covered
1475 under another plan, except with respect to Part B of Medicare.

1476 (iii) That a person has elected an option under
1477 another plan providing a lower level of benefits than another
1478 option that could have been elected.

1479 (2) The board shall be authorized to adopt such reasonable
1480 regulations as necessary for determining the order of benefit
1481 payments when a person is covered by two (2) or more plans of
1482 health insurance coverage.

1483 SECTION 35. (1) As used in this section, "recoupment" shall
1484 mean a reduction, offset, adjustment or other act to lower or
1485 lessen the payment of a claim or any other amount owed to a
1486 pharmacy or pharmacist for any reason unrelated to that claim or
1487 other amount owed to a pharmacy or pharmacist.

1488 (2) Prior to any recoupment unrelated to a claim for payment
1489 of prescription drugs, other products and supplies, and pharmacist
1490 services provided by a pharmacy or pharmacist or any other amount
1491 owed by a pharmacy benefit manager to a pharmacy or pharmacist,
1492 the pharmacy benefit manager shall provide the pharmacy or
1493 pharmacist written notification that includes the name of the
1494 patient, the date or dates of provision of prescription drugs,
1495 other products and supplies, and pharmacist services, and an
1496 explanation of the reason for recoupment. A pharmacy or
1497 pharmacist shall be allowed thirty (30) days from receipt of
1498 written notification of recoupment to appeal the pharmacy benefit
1499 manager's action and to provide the pharmacy benefit manager the
1500 name of the patient, the date or dates of provision of
1501 prescription drugs, other products and supplies, pharmacist
1502 services, and an explanation of the reason for the appeal.

1503 (3) (a) When a pharmacy or pharmacist fails to respond
1504 timely and in writing to a pharmacy benefit manager's written
1505 notification of recoupment, the pharmacy benefit manager may
1506 consider the recoupment accepted.

1507 (b) If a recoupment is accepted, the pharmacy or
1508 pharmacist may remit the agreed amount to the pharmacy benefit
1509 manager at the time of any written notification of acceptance or
1510 may permit the pharmacy benefit manager to deduct the agreed
1511 amount from future payments due to the pharmacy or pharmacist.

1512 (4) (a) If a pharmacy or pharmacist disputes a pharmacy
1513 benefit manager's written notification of recoupment and a
1514 contract exists between the pharmacy or pharmacist and the
1515 pharmacy benefit manager, the dispute shall be resolved according
1516 to the general dispute resolution provisions in the contract.

1517 (b) If a pharmacy or pharmacist disputes a pharmacy
1518 benefit manager's written notification of recoupment and no
1519 contract exists between the pharmacy or pharmacist and the
1520 pharmacy benefit manager, the dispute shall be resolved as any
1521 other dispute under Mississippi law.

1522 (5) If the recoupment directly affects the payment
1523 responsibility of the insured, the pharmacy benefit manager shall
1524 provide at the same time a revised explanation of benefits to the
1525 pharmacy or pharmacist and the covered person for whose claim the
1526 recoupment is being made. Unless the recoupment of a health
1527 insurance claim payment directly affects the payment
1528 responsibility of the insured, such recoupment shall not result in
1529 any increased liability of an insured.

1530 (6) For purposes of this section, a pharmacy benefit manager
1531 shall include its agent or any other party that makes payment
1532 directly to a pharmacy or pharmacist for prescription drugs, other
1533 products and supplies, and pharmacist services identified on a
1534 claim.

1535 **SECTION 36.** (1) Whenever the board has reason to believe
1536 that any pharmacy benefit manager is not in full compliance with
1537 the requirements of Sections 31 through 45 of this act, he shall
1538 notify such pharmacy benefit manager and, after notice and
1539 opportunity for hearing pursuant to law, the board shall issue and
1540 cause to be served an order requiring the pharmacy benefit manager
1541 to cease and desist from any violation and order any one or more
1542 of the following:

1543 (a) Payment of a monetary penalty of not more than One
1544 Thousand Dollars (\$1,000.00) for each and every act or violation,

1545 not to exceed an aggregate penalty of One Hundred Thousand Dollars
1546 (\$100,000.00). However, if the pharmacy benefit manager knew or
1547 reasonably should have known that it was in violation of Sections
1548 31 through 45 of this act, the penalty shall be not more than
1549 Twenty-five Thousand Dollars (\$25,000.00) for each and every act
1550 or violation, but not to exceed an aggregate penalty of Two
1551 Hundred Fifty Thousand Dollars (\$250,000.00) in any six-month
1552 period.

1553 (b) Suspension or revocation of the certificate of
1554 authority of the pharmacy benefit manager to operate in this state
1555 if it knew or reasonably should have known it was in violation of
1556 Sections 31 through 45 of this act.

1557 (2) Any pharmacy benefit manager who violates a cease and
1558 desist order issued by the board pursuant to this section while
1559 such order is in effect shall, after notice and opportunity for
1560 hearing, be subject at the discretion of the board to any one or
1561 more of the following:

1562 (a) A monetary penalty of not more than Twenty-five
1563 Thousand Dollars (\$25,000.00) for each and every act or violation,
1564 not to exceed an aggregate of Two Hundred Fifty Thousand Dollars
1565 (\$250,000.00).

1566 (b) Suspension or revocation of the certificate of
1567 authority of the pharmacy benefit manager to operate in this
1568 state.

1569 (3) All fines imposed under this section shall be deposited
1570 into the Board of Pharmacy Special Fund to defray the expenses of
1571 administering Sections 31 through 45 of this act.

1572 **SECTION 37.** (1) Each pharmacy benefit manager providing
1573 pharmacy management benefit plans in this state shall file a
1574 statement with the board annually by March 1. The statement shall
1575 be verified by at least two (2) principal officers and shall cover
1576 the preceding calendar year.

1577 (2) The statement shall be on forms prescribed by the board
1578 and shall include:

1579 (a) A financial statement of the organization,
1580 including its balance sheet and income statement for the preceding
1581 year;

1582 (b) The number of persons enrolled during the year, the
1583 number of enrollees as of the end of the year and the number of
1584 enrollments terminated during the year; and

1585 (c) Any other information relating to the operations of
1586 the pharmacy benefit manager required by the board under Sections
1587 31 through 45 of this act.

1588 (3) If the pharmacy benefit manager is audited annually by
1589 an independent certified public accountant, a copy of the
1590 certified audit report shall be filed annually with the board by
1591 June 30 or within thirty (30) days of the report being final.

1592 (4) The board may extend the time prescribed for any
1593 pharmacy benefit manager for filing annual statements or other
1594 reports or exhibits of any kind for good cause shown. However,
1595 the board shall not extend the time for filing annual statements
1596 beyond sixty (60) days after the time prescribed by subsection (1)
1597 of this section. Any pharmacy benefit manager which fails to file
1598 its annual statement within the time prescribed by this section
1599 may have its license revoked by the board or its certificate of
1600 authority revoked or suspended by the board until the annual
1601 statement is filed. The board may waive the requirements for
1602 filing financial information for the pharmacy benefit manager if
1603 an affiliate of the pharmacy benefit manager is already required
1604 to file such information under current law.

1605 **SECTION 38.** (1) In lieu of or in addition to making its own
1606 financial examination of a pharmacy benefit manager, the board may
1607 accept the report of a financial examination of other persons
1608 responsible for the pharmacy benefit manager under the laws of

1609 another state certified by the applicable official of such other
1610 state.

1611 (2) The board shall coordinate financial examinations of a
1612 pharmacy benefit manager that provides pharmacy management benefit
1613 plans in this state to ensure an appropriate level of regulatory
1614 oversight and to avoid any undue duplication of effort or
1615 regulation. The pharmacy benefit manager being examined shall pay
1616 the cost of the examination. The cost of the examination shall be
1617 deposited in a special fund that shall provide all expenses for
1618 the regulation, supervision and examination of all entities
1619 subject to regulation under Sections 31 through 45 of this act.

1620 **SECTION 39.** (1) The expense of administering Sections 31
1621 through 45 of this act shall be assessed annually by the board
1622 against all pharmacy benefit managers operating in this state.
1623 Before determining the assessment, the board shall determine an
1624 estimate of all expenses for the regulation, supervision and
1625 examination of all entities subject to regulation under Sections
1626 31 through 45 of this act. The assessment shall be in proportion
1627 to the business done in this state.

1628 (2) All fees assessed under Sections 31 through 45 of this
1629 act and paid to the board shall be deposited in a special fund
1630 that shall provide all expenses for the regulation, supervision
1631 and examination of all entities subject to regulation under
1632 Sections 31 through 45 of this act.

1633 (3) The board shall give each pharmacy benefit manager
1634 notice of the assessment, which shall be paid to the board on or
1635 before March 1 of each year. Any pharmacy benefit manager that
1636 fails to pay the assessment on or before the date herein
1637 prescribed shall be subject to a penalty imposed by the board.
1638 The penalty shall be ten percent (10%) of the assessment and
1639 interest for the period between the due date and the date of full
1640 payment. If a payment is made in an amount later found to be in
1641 error, the board shall: (a) if an additional amount is due,

1642 notify the company of the additional amount and the company shall
1643 pay the additional amount within fourteen (14) days of the date of
1644 the notice; or (b) if an overpayment is made, order a refund.

1645 (4) If an assessment made under Sections 31 through 45 of
1646 this act is not paid to the board by the prescribed date, the
1647 amount of the assessment, penalty and interest may be recovered
1648 from the defaulting company on motion of the board made in the
1649 name and for the use of the state in the appropriate circuit court
1650 after ten (10) days' notice to the company. The license of any
1651 defaulting company to transact business in this state may be
1652 revoked or suspended by the board until it has paid such
1653 assessment.

1654 **SECTION 40.** (1) Any pharmacy benefit manager that contracts
1655 with a pharmacy or pharmacist to provide pharmacist's services
1656 through a pharmacy management plan for enrollees in this state
1657 shall file such contract forms with the board thirty (30) days
1658 before the execution of such contract. The contract forms shall
1659 be deemed approved unless the board disapproves such contract
1660 forms within thirty (30) days after filing with the board.
1661 Disapproval shall be in writing, stating the reasons therefor and
1662 a copy thereof delivered to the pharmacy benefit manager. The
1663 board shall develop formal criteria for the approval and
1664 disapproval of pharmacy benefit manager contract forms.

1665 (2) The pharmacy benefit manager is required to provide a
1666 contract to the pharmacy that is written in plain English, using
1667 terms that will be generally understood by pharmacists.

1668 (3) Any pharmacy benefit manager that contracts with a
1669 pharmacy or pharmacist to provide pharmacist's services through a
1670 pharmacy management plan for enrollees in this state on behalf of
1671 any health plan sponsors shall be identified as the agent of such
1672 health plan sponsors. The health plan fiduciary responsibilities
1673 shall transfer to the contracting pharmacy benefit manager.

1674 (4) Each contract shall apply the same coinsurance,
1675 co-payment and deductible to covered drug prescriptions filled by
1676 a pharmacy provider who participates in the network.

1677 (5) Nothing in this section shall be construed to prohibit a
1678 contract from applying different coinsurance, co-payment and
1679 deductible factors between generic and brand name drugs that an
1680 enrollee may obtain with a prescription, unless such limit is
1681 applied uniformly to all pharmacy providers in the insurance
1682 policy's network.

1683 (6) No pharmacy benefit management plan shall mandate any
1684 pharmacist to change an enrollee's maintenance drug unless the
1685 prescribing physician and the enrollee agree to such plan.

1686 (7) A pharmacy's participation in any plan or network
1687 offered by a pharmacy benefit manager is at the option and the
1688 discretion of the pharmacy. The pharmacy's participation or lack
1689 of participation in one (1) plan shall not effect their
1690 participation in any other plan or network offered by the pharmacy
1691 benefit manager.

1692 (8) Any pharmacy benefit manager that initiates an audit of
1693 a pharmacy under the provisions of the contract shall limit
1694 methods and procedures that are recognized as fair and equitable
1695 for both the pharmacy benefit manager and the pharmacy.
1696 Extrapolation calculations in an audit are prohibited. Pharmacy
1697 benefit managers shall not recoup any monies due from an audit by
1698 setoff from future remittances until the results of the audit are
1699 resolved and finalized by both the pharmacy benefit manager and
1700 the pharmacy. In the event the findings of an audit cannot be
1701 finalized and agreed to by both parties, then the board shall
1702 establish an independent review board to adjudicate unresolved
1703 grievances.

1704 (9) Prior to the terminating of a pharmacy from the network,
1705 the pharmacy benefit manager must give the pharmacy a written
1706 explanation of the reason of termination thirty (30) days before

1707 the actual termination unless contract termination action is taken
1708 in reaction to (a) loss of the pharmacy's license to practice
1709 pharmacy or loss of professional liability insurance; or (b)
1710 conviction of fraud or misrepresentation in the contract. The
1711 pharmacy may request and receive within thirty (30) days a review
1712 of the proposed termination by the board before such termination.

1713 (10) The pharmacy shall not be held responsible for actions
1714 of the pharmacy benefit manager or plan sponsors and the pharmacy
1715 benefit manager or plan sponsors shall not be held responsible for
1716 the actions of the pharmacy.

1717 **SECTION 41.** (1) The board shall develop formal
1718 investigation and compliance procedures with respect to complaints
1719 by plan sponsors, pharmacists or enrollees concerning the failure
1720 of a pharmacy benefit manager to comply with the provisions of
1721 Sections 31 through 45 of this act. If the board has reason to
1722 believe that there is a violation of Sections 31 through 45 of
1723 this act, it shall issue and serve upon the pharmacy benefit
1724 manager concerned, a statement of the charges and a notice of a
1725 hearing to be held at a time and place fixed in the notice, which
1726 shall not be less than thirty (30) days after notice is served.
1727 The notice shall require the pharmacy benefit manager to show
1728 cause why an order should not be issued directing the alleged
1729 offender to cease and desist from the violation. At such hearing,
1730 the pharmacy benefit manager shall have an opportunity to be heard
1731 and to show cause why an order should not be issued requiring the
1732 pharmacy benefit manager to cease and desist from the violation.

1733 (2) The board may make an examination concerning the quality
1734 of services of any pharmacy benefit manager and pharmacists with
1735 whom the pharmacy benefit manager has contracts, agreements or
1736 other arrangements pursuant to its pharmacy benefit management
1737 plan as often as the board deems necessary for the protection of
1738 the interests of the people of this state. The pharmacy benefit
1739 manager being examined shall pay the cost of the examination.

1740 SECTION 42. (1) No pharmacy benefit manager or its
1741 representative may cause or knowingly permit the use of: (a)
1742 advertising that is untrue or misleading; (b) solicitation that is
1743 untrue or misleading; or (c) any form of evidence of coverage that
1744 is deceptive.

1745 (2) No pharmacy benefit manager, unless licensed as an
1746 insurer, may use in its name, contracts or literature (a) any of
1747 the words "insurance," "casualty," "surety," "mutual"; or (b) any
1748 other words descriptive of the insurance, casualty or surety
1749 business or deceptively similar to the name or description of any
1750 insurance or fidelity and surety insurer doing business in this
1751 state.

1752 (3) No pharmacy benefit manager shall discriminate on the
1753 basis of race, creed, color, sex or religion in the selection of
1754 pharmacies for participation in the organization.

1755 (4) No pharmacy benefit manager shall unreasonably
1756 discriminate against pharmacists when contracting for pharmacist's
1757 services.

1758 (5) The pharmacy benefit manager shall be entitled to access
1759 to usual and customary pricing only for comparison to the
1760 reimbursement of a specific claims payment made by the pharmacy
1761 benefit manager. Usual and customary pricing is confidential and
1762 any other use or disclosure by the pharmacy benefit manager is
1763 prohibited.

1764 (6) A pharmacy benefit manager may not move a plan to
1765 another payment network unless it receives written consent from
1766 the plan sponsor.

1767 (7) No pharmacy benefit manager shall receive or accept any
1768 rebate, kickback or any special payment or favor or advantage of
1769 any valuable consideration or inducement for switching a patient's
1770 drug product unless it is specified in a written contract that has
1771 been filed with the board thirty (30) days before the execution of
1772 such contract.

1773 (8) Claims paid by the pharmacy benefit manager shall not be
1774 retroactively denied or adjusted after seven (7) days from
1775 adjudication of such claims. In no case shall acknowledgement of
1776 eligibility be retroactively reversed. The pharmacy benefit
1777 manager shall be allowed retroactive denial or adjustment in the
1778 event: (a) the original claim was submitted fraudulently; (b) the
1779 original claim payment was incorrect because the provider was
1780 already paid for services rendered; or (c) the services were not
1781 rendered by the pharmacists.

1782 (9) No pharmacy benefit manager shall terminate a pharmacy
1783 from a network because: (a) they express disagreement with a
1784 pharmacy benefit manager's decision to deny or limit benefits to
1785 an eligible person; (b) a pharmacist discusses with a current,
1786 former or prospective eligible person any aspect of such person's
1787 medical condition or treatment alternatives whether a covered
1788 service or not; (c) of the pharmacist's personal recommendations
1789 regarding selecting a pharmacy benefit manager based on the
1790 pharmacist's personal knowledge of the health needs of such
1791 person; (d) of the pharmacy's protesting or expressing
1792 disagreement with a medical decision, medical policy or medical
1793 practice of a pharmacy benefit manager; (e) the pharmacy has in
1794 good faith communicated with or advocated on behalf of one or more
1795 of the pharmacy's current, former or prospective person regarding
1796 the provisions, terms or requirements of the pharmacy benefit
1797 manager's health benefit plans as they relate to the needs of such
1798 persons regarding the method by which the pharmacy is compensated
1799 for services provided under such agreement with the pharmacy
1800 benefit manager.

1801 (10) No pharmacy benefit manager shall terminate a pharmacy
1802 from a network or otherwise penalize a pharmacy solely because of
1803 the pharmacy's invoking of the pharmacy's right under this
1804 agreement or applicable law or regulation.

1805 (11) Termination from a network for reason of competence and
1806 professional behavior shall not release the pharmacy benefit
1807 manager from the obligation to make any payment due to the
1808 pharmacy for services provided in special circumstances
1809 post-termination to the eligible persons at less than agreed upon
1810 rates.

1811 (12) Participation or lack of participation by a pharmacy in
1812 a plan or network cannot effect participation in any other plan or
1813 network offered by the pharmacy benefit manager.

1814 **SECTION 43.** Any disclosures from the pharmacy benefit
1815 manager to the enrollees shall be written in plain English, using
1816 terms that will be generally understood by lay readers and a copy
1817 of the disclosure shall be provided to all pharmacies that are
1818 members of the network. The following shall be provided to the
1819 pharmacy benefit manager's enrollees of a pharmacy benefit
1820 management plan at the time of enrollment or at the time the
1821 contract is issued and shall be made available upon request or at
1822 least annually:

1823 (a) A list of the names and locations of all affiliated
1824 providers.

1825 (b) A description of the service area or areas within
1826 which the pharmacy benefit manager shall provide pharmacist's
1827 services.

1828 (c) A description of the method of resolving complaints
1829 of covered persons, including a description of any arbitration
1830 procedure, if complaints may be resolved through a specified
1831 arbitration agreement.

1832 (d) A notice that the pharmacy benefit manager is
1833 subject to regulation in this state by the State Board of
1834 Pharmacy.

1835 (e) A prominent notice included within the evidence of
1836 coverage providing substantially the following: "If you have any
1837 questions regarding an appeal or grievance concerning the

1838 prescription coverage that you have been provided, which have not
1839 been satisfactorily addressed by your plan, you may contact the
1840 State Board of Pharmacy." Such notice shall also provide the
1841 toll-free telephone number, mailing address and electronic mail
1842 address of the State Board of Pharmacy.

1843 **SECTION 44.** The enrollee in a pharmacy benefit management
1844 plan has the right to privacy and confidentiality in regard to
1845 pharmacist's services. This right may be expressly waived in
1846 writing by the enrollee or the enrollee's guardian.

1847 **SECTION 45.** (1) If a pharmacy benefit manager becomes
1848 insolvent or ceases to be a company in this state in any
1849 assessable or license year, the company shall remain liable for
1850 the payment of the assessment for the period in which it operated
1851 as a pharmacy benefit manager in this state.

1852 (2) In the event of an insolvency of a pharmacy benefit
1853 manager, the board may, after notice and hearing, levy an
1854 assessment on pharmacy benefit managers licensed to do business in
1855 this state. Such assessments shall be paid quarterly to the
1856 board, and upon receipt by the board shall be paid over into an
1857 escrow account in the special fund. This escrow account shall be
1858 solely for the benefit of enrollees of the insolvent pharmacy
1859 benefit manager.

1860 **SECTION 46.** This act shall take effect and be in force from
1861 and after June 30, 2006.