

By: Senator(s) Dawkins

To: Public Health and  
Welfare; Appropriations

## SENATE BILL NO. 2398

1 AN ACT TO AMEND SECTIONS 1-3-57, 1-3-58, 7-1-5, 11-5-49,  
 2 11-5-113, 11-5-117, 11-51-101, 19-5-43, 19-7-31, 23-15-11,  
 3 25-7-61, 29-1-101, 31-11-3, 35-5-31, 41-17-3, 41-17-11, 41-21-35,  
 4 43-31-35, 67-1-83, 67-3-53, 73-19-23, 81-5-33, 81-27-6.307,  
 5 89-1-29, 93-1-5, 93-5-1, 93-5-13, 93-5-15, 93-7-3, 93-13-123,  
 6 93-13-121, 93-13-131, 97-3-13, 97-9-25, 99-13-1, 99-13-3, 99-13-5,  
 7 99-13-7, 99-13-9, 99-19-57, 99-38-9, 99-39-23 AND 99-39-27,  
 8 MISSISSIPPI CODE OF 1972, TO MODERNIZE THE TERMINOLOGY THAT IS  
 9 USED TO REFER TO PERSONS WITH MENTAL ILLNESS AND PERSONS WITH  
 10 MENTAL RETARDATION AND THE INSTITUTIONS THAT PROVIDE TREATMENT AND  
 11 CARE TO THOSE PERSONS; TO AMEND SECTION 41-19-103, MISSISSIPPI  
 12 CODE OF 1972, TO UPDATE THE PROVISION ESTABLISHING ELLISVILLE  
 13 STATE SCHOOL; TO CREATE NEW SECTIONS 41-19-108, 41-19-112,  
 14 41-19-114, 41-19-116 AND 41-19-118, MISSISSIPPI CODE OF 1972, AND  
 15 TO AMEND SECTION 41-19-121, MISSISSIPPI CODE OF 1972, TO CONFORM  
 16 TO THE PRECEDING PROVISION; TO REPEAL SECTIONS 41-5-55, 41-5-81,  
 17 41-17-5, 41-17-7, 41-17-9, 41-17-13, 41-19-105, 41-19-107,  
 18 41-19-109, 41-19-115, 41-19-117, 41-19-119, 41-21-43, 41-21-45 AND  
 19 41-45-1 THROUGH 41-45-19, MISSISSIPPI CODE OF 1972, WHICH PROHIBIT  
 20 THE APPRENTICING OF MENTAL PATIENTS, PROVIDE CERTAIN CRIMINAL  
 21 PENALTIES, PROVIDE CERTAIN VISITATION DUTIES FOR DIRECTORS OF  
 22 MENTAL HOSPITALS, EXEMPT RESIDENT MENTAL HOSPITAL OFFICERS FROM  
 23 JURY SERVICE, REQUIRE A DRUGSTORE TO BE KEPT AT EACH MENTAL  
 24 HOSPITAL, REQUIRE SEPARATE ACCOMMODATIONS AT WHITFIELD FOR  
 25 ALCOHOLIC AND DRUG ADDICTS, PROVIDE FOR THE PLAN OF ELLISVILLE  
 26 STATE SCHOOL, REQUIRE ELLISVILLE'S DIRECTOR TO KEEP CERTAIN  
 27 RECORDS, AUTHORIZE ELLISVILLE'S DIRECTOR TO SELL CERTAIN PRODUCTS  
 28 OF THE SCHOOL, PROVIDE DISCHARGE PROCEDURES FOR ELLISVILLE  
 29 PATIENTS, PROVIDE FOR HABEAS CORPUS PROCEEDINGS FOR ELLISVILLE  
 30 PATIENTS, AUTHORIZE THE RECEIPT OF GIFTS FOR THE SUPPORT OF THE  
 31 ELLISVILLE STATE SCHOOL, REQUIRE COUNTIES TO TEMPORARILY PROVIDE  
 32 FOR THE MAINTENANCE OF INDIGENT MENTALLY RETARDED PERSONS,  
 33 PROHIBIT COHABITATION WITH MENTALLY RETARDED PERSONS AND AUTHORIZE  
 34 THE STERILIZATION OF MENTALLY ILL AND MENTALLY RETARDED PATIENTS;  
 35 AND FOR RELATED PURPOSES.

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

37 **SECTION 1.** Section 1-3-57, Mississippi Code of 1972, is  
 38 amended as follows:

39 1-3-57. The term "unsound mind," when used in any statute in  
 40 reference to persons, shall include persons with mental  
 41 retardation, persons with mental illness, and persons non compos  
 42 mentis.

43           **SECTION 2.** Section 1-3-58, Mississippi Code of 1972, is  
44 amended as follows:

45           1-3-58. Whenever the term "ward" is used, it shall be  
46 liberally construed and held to include any and all persons under  
47 every form of legal disability, including, but not limited to, the  
48 disabilities of minority, mental retardation, mental illness,  
49 unsound mind, alcoholism, addiction to drugs, and convicted  
50 felons.

51           **SECTION 3.** Section 7-1-5, Mississippi Code of 1972, is  
52 amended as follows:

53           7-1-5. In addition to the powers conferred and duties  
54 imposed on the Governor by the constitution and by the laws as  
55 elsewhere provided, he shall have the powers and perform the  
56 duties following \* \* \*:

57           (a) He is the supreme executive officer of the state.

58           (b) He is the commander in chief of the militia of the  
59 state and may call out the militia to execute the laws, to  
60 suppress insurrections or riots, and to repel invasions.

61           (c) He shall see that the laws are faithfully executed.

62           (d) He is to supervise the official conduct of all  
63 executive and ministerial officers.

64           (e) He is to see that all offices are filled and the  
65 duties of the offices are performed or, in default thereof, apply  
66 such remedy as the law allows; and if the remedy is inadequate, he  
67 shall inform the Legislature \* \* \* at its next session.

68           (f) He shall make appointments and fill vacancies as  
69 prescribed by law.

70           (g) Whenever any suit or legal proceeding is pending  
71 that affects the title of the state to any property, or that may  
72 result in any claim against the state, he may direct the Attorney  
73 General to appear on behalf of the state and protect its interest.

74           (h) He may require the Attorney General, or district  
75 attorney of any district, to inquire into the affairs or

76 management of any corporation existing under the laws of this  
77 state, or doing business in this state under the laws of the  
78 state.

79 (i) He may require the Attorney General to aid any  
80 district attorney in the discharge of his duties.

81 (j) He may offer rewards, not exceeding Two Hundred  
82 Dollars (\$200.00), for persons with mental illness who have  
83 escaped \* \* \* and are dangerous, and such other rewards as are  
84 authorized by law.

85 (k) He may require any officer or board to make special  
86 reports to him upon demand in writing.

87 (l) He shall transact all necessary business with state  
88 officers, shall require them to be present at their respective  
89 offices at all reasonable business hours, and may require  
90 information, in writing, from any such officer relating to the  
91 duties of his office.

92 (m) When deemed advisable upon proceedings for the  
93 arrest in this state of fugitives from justice from other states  
94 or countries, he may commission a special officer to arrest the  
95 fugitive in any part of the state.

96 (n) He may bring any proper suit affecting the general  
97 public interests, in his own name for the State of Mississippi, if  
98 after first requesting the proper officer so to do, the \* \* \*  
99 officer \* \* \* refuses or neglects to do the same.

100 **SECTION 4.** Section 11-5-49, Mississippi Code of 1972, is  
101 amended as follows:

102 11-5-49. In proceedings in matters testamentary and of  
103 administration, in minors' business, and in cases of persons with  
104 mental retardation, persons with mental illness and persons of  
105 unsound mind, as provided for by law, no answer shall be required  
106 to any petition or application of any sort. Such a petition or  
107 application shall not be taken as confessed because of the lack of  
108 an answer, but every petition, application, or account shall be

109 supported by the proper evidence and may be contested without an  
110 answer. All such proceedings shall be as summary, as the statutes  
111 authorizing and regulating them contemplate; however, when either  
112 of the parties having a controversy in court as to any of those  
113 several matters \* \* \* requires and the court \* \* \* sees proper, it  
114 may direct plenary proceedings by bill or petition, to which there  
115 shall be an answer on oath or affirmation. If an adult or sane  
116 party refuses to answer as to any matter alleged in the bill or  
117 petition and proper for the court to decide upon, the \* \* \* party  
118 refusing may be attached, fined, and imprisoned at the discretion  
119 of the court, and the matter set forth in the bill or petition  
120 shall be taken as confessed and a decree shall be made  
121 accordingly.

122       **SECTION 5.** Section 11-5-113, Mississippi Code of 1972, is  
123 amended as follows:

124       11-5-113. All the provisions of this chapter on the subject  
125 of sales shall apply to all sales of real estate under any decree  
126 in the chancery court made in matters testamentary and of  
127 administration, minors' business, cases of persons with mental  
128 retardation, persons with mental illness and persons of unsound  
129 mind, of partition, and all other matters.

130       **SECTION 6.** Section 11-5-117, Mississippi Code of 1972, is  
131 amended as follows:

132       11-5-117. (1) In addition to the law now in force  
133 authorizing the chancery court to decree the sale of land and  
134 personal property, the chancery court and the chancellor in  
135 vacation are authorized in all matters providing for a sale or  
136 lease of real and personal property, including matters  
137 testamentary and of administration, minor's business, persons with  
138 mental illness, partition and receivers, to order or decree the  
139 sale or lease of real and personal property or any interest in the  
140 property, including timber, oil, gas and minerals, at private  
141 sale, under such terms and conditions as the chancellor may

142 impose. If all of the terms of sale are made certain by the order  
143 or decree, a deed or lease executed in full compliance with the  
144 order or decree shall become immediately effective without further  
145 confirmation by the court or chancellor.

146 (2) This section shall not be construed to invalidate any  
147 proceedings previously done in conformity with this section.

148 **SECTION 7.** Section 11-51-101, Mississippi Code of 1972, is  
149 amended as follows:

150 11-51-101. (1) The state and any county or municipality of  
151 the state, and the officials representing the state, county or  
152 municipality, in any suit or action, and any state, county or  
153 municipal officer who is a party to any suit or action in his  
154 official character, in which suit or action the state, county or  
155 municipality is beneficially interested, and the several  
156 incorporated charitable or educational institutions established  
157 and maintained by the state, and all corporate instrumentalities  
158 wholly owned by the United States government, shall be entitled to  
159 appeal from a judgment, decree, decision or order of any court or  
160 judge from which an appeal may be taken without prepayment of  
161 costs in the lower court; \* \* \* however, \* \* \* the cost of the  
162 preparation of the record of the proceedings in the trial court  
163 shall be prepaid. In any such case, if a supersedeas is allowed  
164 and desired, a bond for supersedeas shall not be required.

165 (2) Any person who is a party to a suit or action in his  
166 individual capacity, which suit arises from allegedly tortious  
167 actions and deeds committed by him during the time he was a  
168 member, trustee, director, superintendent, official or employee,  
169 as the case may be, of the Department of Corrections, the State  
170 Penitentiary or the state psychiatric hospitals or institutions,  
171 and which allegedly tortious acts and deeds were committed by the  
172 person in the performance of his duties or employment, shall be  
173 entitled to appeal from a judgment, decree, decision or order of  
174 any court or judge from which an appeal may be taken without

175 prepayment of costs in the lower court, including the costs of the  
176 preparation of the record of the proceedings in the trial court.  
177 In those cases, if a supersedeas is allowed and desired, a bond  
178 for supersedeas shall not be required. The provisions of this  
179 section shall not apply to any such judgment, decree, decision or  
180 order in favor of the State of Mississippi.

181 **SECTION 8.** Section 19-5-43, Mississippi Code of 1972, is  
182 amended as follows:

183 19-5-43. The boards of supervisors in their respective  
184 counties shall temporarily provide for the care and maintenance of  
185 any person alleged to have mental illness when the person has no  
186 means of paying that expense, pending an investigation into the  
187 mental status of the person alleged to have mental illness before  
188 the chancery clerk of the county, and provide for the care and  
189 maintenance of those persons by the sheriff of their respective  
190 counties after being adjudged as a person with mental illness by  
191 the properly constituted authority, when there is no room in one  
192 (1) of the state psychiatric hospitals or institutions for the  
193 person with mental illness. The boards shall cause all reasonable  
194 and proper allowance for that care and maintenance to be paid out  
195 of the county treasury.

196 **SECTION 9.** Section 19-7-31, Mississippi Code of 1972, is  
197 amended as follows:

198 19-7-31. The board of supervisors of each county in the  
199 state shall have power, by an appropriate order or orders on its  
200 minutes, to establish and maintain in the county courthouse or  
201 other suitable public building adjacent or near thereto, a public  
202 county law library under such rules, regulations and supervision  
203 as it may from time to time ordain and establish, and to that end,  
204 the board may accept gifts, grants, donations or bequests of  
205 money, furniture, fixtures, books, documents, maps, plats or other  
206 property suitable for that purpose.

207           The board of supervisors shall have power to exchange or sell  
208 duplicate volumes or sets of any such books or furniture, and in  
209 case of sale, to invest the proceeds in other suitable books or  
210 furniture. The \* \* \* board may also purchase or lease from time  
211 to time additional books, furniture, or equipment for the public  
212 law library.

213           For the purpose of providing suitable quarters for the public  
214 law library, the \* \* \* board of supervisors may, in its  
215 discretion, expend such sums as may be deemed necessary or proper  
216 for that purpose, and may also employ a suitable person as  
217 librarian and pay the law librarian such salary as the board, in  
218 its discretion, may determine. The board may employ additional  
219 librarians or other employees on either a part-time or full-time  
220 basis and may pay these additional employees as the board, in its  
221 discretion, may determine. The board of supervisors, in their  
222 discretion, may contract with the county or municipal library for  
223 any staff or facilities as they deem necessary for the overall  
224 management and operation of the county law library. The board of  
225 supervisors may contract with the State Law Library for law  
226 library services that may be offered by the State Law Library.

227           In case the public law library is so established, all books,  
228 documents, furniture and other property then belonging to the  
229 county library, as provided for in Section 19-7-25, shall be  
230 transferred to and become part of the public law library, and all  
231 books, documents and publications \* \* \* donated by the state to  
232 the county library shall also become a part of the public law  
233 library. \* \* \* In that case, Sections 19-7-25 and 19-25-65,  
234 relating to the county library, shall be superseded in that county  
235 for as long as the public law library is maintained in the county.

236           The board of supervisors of any such county \* \* \*, in its  
237 discretion, may levy, by way of resolution, additional court costs  
238 not exceeding Two Dollars and Fifty Cents (\$2.50) per case for  
239 each case, both civil and criminal, filed in the chancery, circuit

240 and county courts or any of these in the county, and may levy, by  
241 way of resolution, additional court costs not exceeding One Dollar  
242 and Fifty Cents (\$1.50) per case for each case, both civil and  
243 criminal, filed in the justice courts of the county, for the  
244 support of the library \* \* \* authorized in the county. If the  
245 additional court costs \* \* \* authorized in this section are  
246 levied, the clerk or judge of those courts shall collect those  
247 costs for all cases \* \* \* filed in his court and forward same to  
248 the chancery clerk, who shall deposit the same in a special  
249 account in a county depository for support and maintenance of the  
250 library, and the chancery clerk shall be accountable for those  
251 funds. However, no such levy shall be made against any cause of  
252 action the purpose of which is to commit any person with mental  
253 illness, alcoholic or narcotic addict to any institution for  
254 custodial or medical care, and no such tax shall be collected  
255 under this subsection on any cause of action that the proper clerk  
256 handling same deems to be in its very nature charitable and in  
257 which cause the clerk has not collected his own legal fees.

258 To accomplish the purposes of this section, the board of  
259 supervisors may enter into such arrangement or arrangements with  
260 the county bar association of any such county as may seem  
261 advisable for the care and operation of the law library, and the  
262 board may receive and consider, from time to time, such  
263 recommendations as the bar association may deem appropriate  
264 regarding the library.

265 The board of supervisors of each county in which there are  
266 two (2) judicial districts \* \* \*, in its discretion, may maintain  
267 a law library in each judicial district. In those counties the  
268 board \* \* \*, in its discretion, may pay from the county general  
269 fund or from the special fund \* \* \* authorized in this section all  
270 the costs \* \* \* authorized in this section, provided that the  
271 board shall not spend in each judicial district less than the



272 amount of the special court costs authorized in this section and  
273 collected in each such district.

274 The governing authorities of any municipality \* \* \*, in their  
275 discretion, by resolution duly adopted and entered on their  
276 official minutes, may levy additional court costs not exceeding  
277 One Dollar and Fifty Cents (\$1.50) per case for each conviction in  
278 the municipal court of the municipality, for the support and  
279 maintenance of the county law library in the county within which  
280 the municipality is located. The additional costs shall be  
281 collected by the clerk of the court, forwarded to the chancery  
282 clerk of the county for deposit in a special account in the county  
283 depository, and expended for support and maintenance of the county  
284 law library in the same manner and in accordance with the same  
285 procedure as provided for costs similarly collected in the  
286 chancery, circuit, county and justice courts of the county.

287 **SECTION 10.** Section 23-15-11, Mississippi Code of 1972, is  
288 amended as follows:

289 23-15-11. Every inhabitant of this state, except a person  
290 adjudicated to be non compos mentis, who is a citizen of the  
291 United States of America, eighteen (18) years old and upwards, who  
292 has resided in this state for thirty (30) days and for thirty (30)  
293 days in the county in which he seeks to vote, and for thirty (30)  
294 days in the incorporated municipality in which he seeks to vote,  
295 and who has been duly registered as an elector under Section  
296 23-15-33, and who has never been convicted of any crime listed in  
297 Section 241, Mississippi Constitution of 1890, shall be a  
298 qualified elector in and for the county, municipality and voting  
299 precinct of his residence, and shall be entitled to vote at any  
300 election. Any person who will be eighteen (18) years of age or  
301 older on or before the date of the general election and who is  
302 duly registered to vote not less than thirty (30) days before the  
303 primary election associated with the general election, may vote in  
304 the primary election even though the person has not reached his or

305 her eighteenth birthday at the time that the person seeks to vote  
306 at the primary election. No others than those specified in this  
307 section shall be entitled, or shall be allowed, to vote at any  
308 election.

309         **SECTION 11.** Section 25-7-61, Mississippi Code of 1972, is  
310 amended as follows:

311         **[Effective until January 1, 2008, this section shall read as**  
312 **follows:]**

313         25-7-61. (1) Fees of jurors shall be payable as follows:

314                 (a) Grand jurors and petit jurors in the chancery,  
315 county, circuit and special eminent domain courts shall be paid an  
316 amount to be set by the board of supervisors, not to be less than  
317 Twenty-five Dollars (\$25.00) per day and not to be greater than  
318 Forty Dollars (\$40.00) per day, plus mileage authorized in Section  
319 25-3-41. In the trial of all cases where jurors are in charge of  
320 bailiffs and are not permitted to separate, the sheriff with the  
321 approval of the trial judge may pay for room and board of jurors  
322 on panel for actual time of trial.

323         No grand juror shall receive any compensation except mileage  
324 unless he has been sworn as provided by Section 13-5-45; and no  
325 petit juror except those jurors called on special venires shall  
326 receive any compensation authorized under this subsection except  
327 mileage unless he has been sworn as provided by Section 13-5-71.

328                 (b) Jurors making inquisitions of mental retardation,  
329 mental illness or \* \* \* unsound mind and jurors on coroner's  
330 inquest shall be paid Five Dollars (\$5.00) per day plus mileage  
331 authorized in Section 25-3-41 by the county treasurer on order of  
332 the board of supervisors on certificate of the clerk of the  
333 chancery court in which such inquisition is held.

334                 (c) Jurors in the justice courts shall be paid an  
335 amount of not less than Ten Dollars (\$10.00) per day and not more  
336 than Fifteen Dollars (\$15.00) per day, to be established by the  
337 board of supervisors. In all criminal cases in the justice court

338 wherein the prosecution fails, the fees of jurors shall be paid by  
339 the county treasurer on order of the board of supervisors on  
340 certificate of the county attorney in all counties that have  
341 county attorneys, otherwise by the justice court judge.

342 (2) Any juror may return the fees provided as compensation  
343 for service as a juror to the county that paid for the person's  
344 service as a juror. The fees returned to the county may be  
345 earmarked for a particular purpose to be selected by the juror,  
346 including:

347 (a) The local public library;

348 (b) Local law enforcement;

349 (c) The Mississippi Burn Care Fund created in Section  
350 7-9-70, Mississippi Code of 1972; or

351 (d) Any other governmental agency.

352 **[Effective from and after January 1, 2008, this section shall**  
353 **read as follows:]**

354 25-7-61. (1) Fees of jurors shall be payable as follows:

355 (a) Grand jurors and petit jurors in the chancery,  
356 county, circuit and special eminent domain courts shall be paid an  
357 amount to be set by the board of supervisors, not to be less than  
358 Twenty-five Dollars (\$25.00) per day and not to be greater than  
359 Forty Dollars (\$40.00) per day, plus mileage authorized in Section  
360 25-3-41. In the trial of all cases where jurors are in charge of  
361 bailiffs and are not permitted to separate, the sheriff with the  
362 approval of the trial judge may pay for room and board of jurors  
363 on panel for actual time of trial.

364 No grand juror shall receive any compensation except mileage  
365 unless he has been sworn as provided by Section 13-5-45; and no  
366 petit juror except those jurors called on special venires shall  
367 receive any compensation authorized under this subsection except  
368 mileage unless he has been sworn as provided by Section 13-5-71.

369 (b) Jurors making inquisitions of mental retardation,  
370 mental illness or \* \* \* unsound mind and jurors on coroner's

371 inquest shall be paid Five Dollars (\$5.00) per day plus mileage  
372 authorized in Section 25-3-41 by the county treasurer on order of  
373 the board of supervisors on certificate of the clerk of the  
374 chancery court in which such inquisition is held.

375 (c) Jurors in the justice courts shall be paid an  
376 amount of not less than Ten Dollars (\$10.00) per day and not more  
377 than Fifteen Dollars (\$15.00) per day, to be established by the  
378 board of supervisors. In all criminal cases in the justice court  
379 wherein the prosecution fails, the fees of jurors shall be paid by  
380 the county treasurer on order of the board of supervisors on  
381 certificate of the county attorney in all counties that have  
382 county attorneys, otherwise by the justice court judge.

383 (2) Any juror may return the fees provided as compensation  
384 for service as a juror to the county that paid for the person's  
385 service as a juror. The fees returned to the county may be  
386 earmarked for a particular purpose to be selected by the juror,  
387 including:

388 (a) The local public library;

389 (b) Local law enforcement;

390 (c) The Mississippi Burn Care Fund created in Section  
391 7-9-70, Mississippi Code of 1972; or

392 (d) Any other governmental agency.

393 (3) The Administrative Office of Courts shall promulgate  
394 rules to establish a Lengthy Trial Fund to be used to provide full  
395 or partial wage replacement or wage supplementation to jurors who  
396 serve as petit jurors in civil cases for more than ten (10) days.

397 (a) The court rules shall provide for the following:

398 (i) The selection and appointment of an  
399 administrator for the fund.

400 (ii) Procedures for the administration of the  
401 fund, including payments of salaries of the administrator and  
402 other necessary personnel.

403 (iii) Procedures for the accounting, auditing and  
404 investment of money in the Lengthy Trial Fund.

405 (iv) A report by the Administrative Office of  
406 Courts on the administration of the Lengthy Trial Fund in its  
407 annual report on the judicial branch, setting forth the money  
408 collected for and disbursed from the fund.

409 (b) The administrator shall use any monies deposited in  
410 the Lengthy Trial Fund to pay full or partial wage replacement or  
411 supplementation to jurors whose employers pay less than full  
412 regular wages when the period of jury service lasts more than ten  
413 (10) days.

414 (c) To the extent funds are available in the Lengthy  
415 Trial Fund, and in accordance with any rules or regulations  
416 promulgated by the Administrative Office of Courts, the court may  
417 pay replacement or supplemental wages out of the Lengthy Trial  
418 Fund not to exceed Three Hundred Dollars (\$300.00) per day per  
419 juror beginning on the eleventh day of jury service. In addition,  
420 for any jurors who qualify for payment by virtue of having served  
421 on a jury for more than ten (10) days, the court, upon finding  
422 that such service posed a significant financial hardship to a  
423 juror, even in light of payments made with respect to jury service  
424 after the tenth day, may award replacement or supplemental wages  
425 out of the Lengthy Trial Fund not to exceed One Hundred Dollars  
426 (\$100.00) per day from the fourth to the tenth day of jury  
427 service.

428 (d) Any juror who is serving or has served on a jury  
429 that qualifies for payment from the Lengthy Trial Fund, provided  
430 the service commenced on or after January 1, 2008, may submit a  
431 request for payment from the Lengthy Trial Fund on a form that the  
432 administrator provides. Payment shall be limited to the  
433 difference between the jury fee specified in subsection (1) of  
434 this section and the actual amount of wages a juror earns, up to

435 the maximum level payable, minus any amount the juror actually  
436 receives from the employer during the same time period.

437 (i) The form shall disclose the juror's regular  
438 wages, the amount the employer will pay during the term of jury  
439 service starting on the eleventh day and thereafter, the amount of  
440 replacement or supplemental wages requested, and any other  
441 information the administrator deems necessary for proper payment.

442 (ii) The juror also shall be required to submit  
443 verification from the employer as to the wage information provided  
444 to the administrator, for example, the employee's most recent  
445 earnings statement or similar document, prior to initiation of  
446 payment from the fund.

447 (iii) If an individual is self-employed or  
448 receives compensation other than wages, the individual may provide  
449 a sworn affidavit attesting to his or her approximate gross weekly  
450 income, together with such other information as the administrator  
451 may require, in order to verify weekly income.

452 (4) Nothing in this section shall be construed to impose an  
453 obligation on any county to place monies in the Lengthy Trial Fund  
454 or to pay replacement or supplemental wages to any juror from  
455 county funds.

456 **SECTION 12.** Section 29-1-101, Mississippi Code of 1972, is  
457 amended as follows:

458 29-1-101. The Secretary of State, for and on behalf of the  
459 state, may convey an easement or easements for the construction  
460 and maintenance of pipelines in, on, under, and across all of the  
461 state land owned (including that submerged or wherever the tide  
462 may ebb and flow) now or hereafter acquired, excepting, however,  
463 state highway rights of way, sixteenth section school land, lieu  
464 lands, and \* \* \* forfeited tax land and property the title to  
465 which is subject to any lawful redemption, and excepting the state  
466 land comprising the old asylum property located in the City of  
467 Jackson, \* \* \* property of the Department of Mental Health, the

468 Parchman Penitentiary property located in Sunflower County,  
469 Mississippi, and all other Penitentiary property, to any person,  
470 firm, or corporation constructing or operating a refinery for the  
471 refining of oil, gas, or petroleum products in the state, or to  
472 any person, firm, or corporation transporting by pipeline any  
473 substance to or from any such refinery in this state, for such  
474 consideration as the Secretary of State deems just and proper,  
475 which shall be subject to approval by the Secretary of State, the  
476 Governor, and the Attorney General of the state, for easements in,  
477 on, under, and across the state-owned land.

478 **SECTION 13.** Section 31-11-3, Mississippi Code of 1972, is  
479 amended as follows:

480 31-11-3. (1) The Department of Finance and Administration,  
481 for the purposes of carrying out the provisions of this chapter,  
482 in addition to all other rights and powers granted by law, shall  
483 have full power and authority to employ and compensate architects  
484 or other employees necessary for the purpose of making  
485 inspections, preparing plans and specifications, supervising the  
486 erection of any buildings, and making any repairs or additions as  
487 may be determined by the Department of Finance and Administration  
488 to be necessary, under the rules and regulations of the State  
489 Personnel Board. The department shall have entire control and  
490 supervision of, and determine what, if any, buildings, additions,  
491 repairs or improvements are to be made under the provisions of  
492 this chapter, subject to the approval of the Public Procurement  
493 Review Board.

494 (2) The department shall have full power to erect buildings,  
495 make repairs, additions or improvements, and buy materials,  
496 supplies and equipment for any of the institutions or departments  
497 of the state subject to the approval of the Public Procurement  
498 Review Board. In addition to other powers conferred, the  
499 department shall have full power and authority as directed by the

500 Legislature, or when funds have been appropriated for its use for  
501 these purposes, to:

502 (a) Build a state office building;

503 (b) Build suitable plants or buildings for the use and  
504 housing of any state schools or institutions, including the  
505 building of plants or buildings for new state schools or  
506 institutions, as provided for by the Legislature;

507 (c) Provide state aid for the construction of school  
508 buildings;

509 (d) Promote and develop the training of returned  
510 veterans of the United States in all sorts of educational and  
511 vocational learning to be supplied by the proper educational  
512 institution of the State of Mississippi, and in so doing allocate  
513 monies appropriated to it for these purposes to the Governor for  
514 use by him in setting up, maintaining and operating an office and  
515 employing a state director of on-the-job training for veterans and  
516 the personnel necessary in carrying out Public Law No. 346 of the  
517 United States;

518 (e) Build and equip a hospital and administration  
519 building at the Mississippi State Penitentiary;

520 (f) Build and equip additional buildings and wards at  
521 the Boswell Retardation Center;

522 (g) Construct \* \* \* sewage disposal and treatment  
523 plants at the state psychiatric hospitals or institutions, and in  
524 so doing acquire additional land as may be necessary, and to  
525 exercise the right of eminent domain in the acquisition of this  
526 land;

527 (h) Build and equip the Mississippi central market and  
528 purchase or acquire by eminent domain, if necessary, any lands  
529 needed for this purpose;

530 (i) Build and equip suitable facilities for a training  
531 and employing center for the blind;



532           (j) Build and equip a gymnasium at Columbia Training  
533 School;

534           (k) Approve or disapprove the expenditure of any money  
535 appropriated by the Legislature when authorized by the bill making  
536 the appropriation;

537           (l) Expend monies appropriated to it in paying the  
538 state's part of the cost of any street paving;

539           (m) Sell and convey state lands when authorized by the  
540 Legislature, cause those lands to be properly surveyed and  
541 platted, execute all deeds or other legal instruments, and do any  
542 and all other things required to effectively carry out the purpose  
543 and intent of the Legislature. Any transaction that involves  
544 state lands under the provisions of this paragraph shall be done  
545 in a manner consistent with the provisions of Section 29-1-1;

546           (n) Collect and receive from educational institutions  
547 of the State of Mississippi monies required to be paid by these  
548 institutions to the state in carrying out any veterans'  
549 educational programs;

550           (o) Purchase lands for building sites, or as additions  
551 to building sites, for the erection of buildings and other  
552 facilities that the department is authorized to erect, and  
553 demolish and dispose of old buildings, when necessary for the  
554 proper construction of new buildings. Any transaction that  
555 involves state lands under the provisions of this paragraph shall  
556 be done in a manner consistent with the provisions of Section  
557 29-1-1;

558           (p) Obtain business property insurance with a  
559 deductible of not less than One Hundred Thousand Dollars  
560 (\$100,000.00) on state-owned buildings under the management and  
561 control of the department; and

562           (q) In consultation with and approval by the Chairmen  
563 of the Public Property Committees of the Senate and the House of  
564 Representatives, enter into contracts for the purpose of providing

565 parking spaces for state employees who work in the Woolfolk  
566 Building, the Carroll Gartin Justice Building or the Walter  
567 Sillers Office Building. The provisions of this paragraph (q)  
568 shall stand repealed on July 1, 2010.

569 (3) The department shall survey state-owned and  
570 state-utilized buildings to establish an estimate of the costs of  
571 architectural alterations under the Americans With Disabilities  
572 Act of 1990, 42 USCS, Section 12111 et seq. The department shall  
573 establish priorities for making the identified architectural  
574 alterations and shall make known to the Legislative Budget Office  
575 and to the Legislature the required cost to effectuate those  
576 alterations. To meet the requirements of this subsection, the  
577 department shall use standards of accessibility that are at least  
578 as stringent as any applicable federal requirements and may  
579 consider:

580 (a) Federal minimum guidelines and requirements issued  
581 by the United States Architectural and Transportation Barriers  
582 Compliance Board and standards issued by other federal agencies;

583 (b) The criteria contained in the American Standard  
584 Specifications for Making Buildings Accessible and Usable by the  
585 Physically Handicapped and any amendments thereto as approved by  
586 the American Standards Association, Incorporated (ANSI Standards);

587 (c) Design manuals;

588 (d) Applicable federal guidelines;

589 (e) Current literature in the field;

590 (f) Applicable safety standards; and

591 (g) Any applicable environmental impact statements.

592 (4) The department shall observe the provisions of Section  
593 31-5-23, in letting contracts and shall use Mississippi products,  
594 including paint, varnish and lacquer that contain as vehicles tung  
595 oil and either ester gum or modified resin (with rosin as the  
596 principal base of constituents), and turpentine shall be used as a  
597 solvent or thinner, where these products are available at a cost

598 not to exceed the cost of products grown, produced, prepared, made  
599 or manufactured outside of the State of Mississippi.

600 (5) The department shall have authority to accept grants,  
601 loans or donations from the United States government or from any  
602 other sources for the purpose of matching funds in carrying out  
603 the provisions of this chapter.

604 (6) The department shall build a wheelchair ramp at the War  
605 Memorial Building that complies with all applicable federal laws,  
606 regulations and specifications regarding wheelchair ramps.

607 (7) The department shall review and preapprove all  
608 architectural or engineering service contracts entered into by any  
609 state agency, institution, commission, board or authority  
610 regardless of the source of funding used to defray the costs of  
611 the construction or renovation project for which services are to  
612 be obtained. The provisions of this subsection (7) shall not  
613 apply to any architectural or engineering contract paid for by  
614 self-generated funds of any of the state institutions of higher  
615 learning, nor shall they apply to community college projects that  
616 are funded from local funds or other nonstate sources that are  
617 outside the Department of Finance and Administration's  
618 appropriations or as directed by the Legislature. The provisions  
619 of this subsection (7) shall not apply to any construction or  
620 design projects of the State Military Department that are funded  
621 from federal funds or other nonstate sources.

622 (8) The department shall have the authority to obtain  
623 annually from the state institutions of higher learning  
624 information on all building, construction and renovation projects  
625 including duties, responsibilities and costs of any architect or  
626 engineer hired by any of those institutions.

627 (9) When funding is provided through the Bureau of Building,  
628 Grounds and Real Property Management, the department may authorize  
629 the state institutions of higher learning, community and junior  
630 colleges, and other state agencies to manage any construction or

631 renovation project with a value not exceeding Two Hundred Fifty  
632 Thousand Dollars (\$250,000.00). The department shall develop  
633 criteria for management of such projects that each agency must  
634 follow in order to manage the projects. Only agencies that the  
635 department deems capable of managing by the criteria may manage  
636 these projects. Additionally, the department shall require  
637 agencies managing these projects to do the following:

638 (a) Use standard departmentally approved contracts and  
639 project management procedures; and

640 (b) Conduct projects on a reimbursable basis and  
641 require documentation that the department deems appropriate for  
642 payment of claims. Reimbursement shall be on a one-time basis at  
643 completion and approval of project documentation submittals.

644 The department shall revoke the authority of any agency to  
645 perform these project management functions if, in its opinion, an  
646 agency has not followed the department's requirements for managing  
647 projects. The authority granted to the department in this section  
648 shall not apply to projects funded directly to the institutions of  
649 higher learning, community and junior colleges, or other state  
650 agencies through separate appropriation or other means.

651 (10) The department shall adopt building code standards for  
652 the new construction of public facilities in a manner consistent  
653 with the provisions of Section 31-11-33.

654 **SECTION 14.** Section 35-5-31, Mississippi Code of 1972, is  
655 amended as follows:

656 35-5-31. (1) Whenever, in any proceeding under the laws of  
657 this state for the commitment of a person alleged to be a person  
658 with mental illness, person with mental retardation, or otherwise  
659 of unsound mind, or otherwise in need of confinement in a hospital  
660 or other institution for his proper care, it is determined after  
661 the adjudication of the status of the person as may be required by  
662 law that commitment to a state psychiatric hospital or institution  
663 or other institution is necessary for safekeeping or treatment,

664 and it appears that the person is eligible for care or treatment  
665 by the Veterans Administration or other agency of the United  
666 States government, the court, upon receipt of a certificate from  
667 the Veterans Administration or such other agency showing that  
668 facilities are available and that the person is eligible for care  
669 or treatment in those facilities, may commit the person to the  
670 Veterans Administration or other agency. The person whose  
671 commitment is sought shall be personally served with notice of the  
672 pending commitment proceeding in the manner provided by the law of  
673 this state; and nothing in this section shall affect his right to  
674 appear and be heard in the proceedings. Upon commitment, the  
675 person, when admitted to any facility operated by the Veterans  
676 Administration or other agency within or without this state shall  
677 be subject to the rules and regulations of the Veterans  
678 Administration or other agency. The chief officer of any facility  
679 of the Veterans Administration or institution operated by any  
680 other agency of the United States to which the person is so  
681 committed shall, with respect to the person, be vested with the  
682 same powers as superintendents of state psychiatric hospitals or  
683 institutions within this state with respect to retention of  
684 custody, transfer, parole or discharge. Jurisdiction is retained  
685 in the committing or other appropriate court of this state at any  
686 time to inquire into the mental condition of the person so  
687 committed, and to determine the necessity for continuance of his  
688 restraint, and all commitments under this section are so  
689 conditioned.

690 (2) The judgment or order of commitment by a court of  
691 competent jurisdiction of another state or of the District of  
692 Columbia, committing a person to the Veterans Administration or  
693 other agency of the United States government for care or  
694 treatment, shall have the same force and effect as to the  
695 committed person while in this state as in the jurisdiction in  
696 which is situated the court entering the judgment or making the

697 order, and the courts of the committing state or of the District  
698 of Columbia shall be deemed to have retained jurisdiction of the  
699 person so committed for the purpose of inquiring into the mental  
700 condition of the person and of determining the necessity for  
701 continuance of his restraint, as is provided in subsection (1) of  
702 this section with respect to persons committed by the courts of  
703 this state. Consent is \* \* \* given to the application of the law  
704 of the committing state or District of Columbia in respect to the  
705 authority of the chief officer of any facility of the Veterans  
706 Administration or of any institution operated in this state by any  
707 other agency of the United States to retain custody, or transfer,  
708 parole or discharge the committed person.

709 (3) Upon receipt of a certificate of the Veterans  
710 Administration or such other agency of the United States that  
711 facilities are available for the care or treatment of any  
712 person \* \* \* committed to a state psychiatric hospital or \* \* \*  
713 institution \* \* \* or for the care or treatment of persons  
714 similarly afflicted, and that the person is eligible for care or  
715 treatment, the superintendent of the state psychiatric hospital  
716 or institution may cause the transfer of the person to the  
717 Veterans Administration or other agency of the United States for  
718 care or treatment. Upon effecting any such transfer, the  
719 committing court or proper officer of the court shall be notified  
720 of the transfer by the transferring agency. No person shall be  
721 transferred to the Veterans Administration or other agency of the  
722 United States if he is confined because of conviction of any  
723 felony or misdemeanor or if he has been acquitted of the charge  
724 solely on the ground of insanity, unless before transfer, the  
725 court or other authority originally committing the person \* \* \*  
726 enters an order for the transfer after appropriate motion and  
727 hearing.

728 Any person transferred as provided in this section shall be  
729 deemed to be committed to the Veterans Administration or other  
730 agency of the United States under the original commitment.

731 **SECTION 15.** Section 41-17-3, Mississippi Code of 1972, is  
732 amended as follows:

733 41-17-3. The state psychiatric hospital and institution  
734 established at Meridian by the Act of March 8, 1882, shall  
735 continue to exist as a body politic and corporate, under the name  
736 of the "East Mississippi State Hospital," with all the privileges  
737 conferred and the duties enjoined by law. It may hold and use, as  
738 required by law, all the property, real and personal, belonging to  
739 or that may be given to it for the purposes of its establishment.

740 **SECTION 16.** Section 41-17-11, Mississippi Code of 1972, is  
741 amended as follows:

742 41-17-11. The directors of the state institutions listed in  
743 Section 41-7-73 each may receive any monies that the United States  
744 government may offer as federal aid in taking care of and giving  
745 special attention to those persons who served with the Armed  
746 Forces of the United States during time of war \* \* \* and who are  
747 now in or may hereafter be in any of those state institutions.  
748 Each of those directors may expend that part of the money paid to  
749 him or his institution, according to his best judgment and the  
750 requirements of the United States government under which the money  
751 is received.

752 **SECTION 17.** Section 41-21-35, Mississippi Code of 1972, is  
753 amended as follows:

754 41-21-35. The rule as to the legal settlement of paupers  
755 shall apply in cases of persons with mental illness and \* \* \*  
756 persons with mental retardation.

757 **SECTION 18.** Section 43-31-35, Mississippi Code of 1972, is  
758 amended as follows:

759 43-31-35. If any person commanding a ship, vessel,  
760 steamboat, or other watercraft imports into this state, or brings

761 to the shores or within the limits thereof, any infant, person  
762 with mental illness, maimed, aged or infirm person or vagrant who  
763 is likely to become chargeable on the county, on the requisition  
764 of the supervisor of the district or the mayor of any  
765 municipality, the captain, master, or commander of the ship,  
766 vessel, steamboat, or other watercraft shall enter into bond with  
767 sufficient sureties, payable to the county, conditioned to  
768 indemnify the county against all charges that may be incurred in  
769 the support and care of that person. Any captain, master, or  
770 commander failing or refusing to give the bond required shall  
771 forfeit and pay to the county the sum of Two Hundred Dollars  
772 (\$200.00) for each infant, person with mental illness, maimed,  
773 aged, or infirm person or vagrant so brought into the state, to be  
774 recovered by action.

775 **SECTION 19.** Section 67-1-83, Mississippi Code of 1972, is  
776 amended as follows:

777 67-1-83. (1) It shall be unlawful for any permittee or  
778 other person to sell or furnish any alcoholic beverage \* \* \* to  
779 any person who is visibly intoxicated, or to any person who is  
780 known to habitually drink alcoholic beverages to excess, or to any  
781 person who is known to be an habitual user of narcotics or other  
782 habit-forming drugs. It shall also be unlawful for the holder of  
783 any package retailer's permit to sell any alcoholic beverages  
784 except by delivery in person to the purchaser at the place of  
785 business of the permittee.

786 (2) It shall be unlawful for any permittee or other person  
787 to sell or furnish any alcoholic beverage to any person to whom  
788 the commission has, after investigation, decided to prohibit the  
789 sale of those beverages because of an appeal to the commission so  
790 to do by the husband, wife, father, mother, brother, sister,  
791 child, or employer of the person. The interdiction in those cases  
792 shall last until removed by the commission, but no person shall be  
793 held to have violated this subsection unless he has been informed



794 by the commission, by registered letter, that it is forbidden to  
795 sell to that individual or unless that fact is otherwise known to  
796 the permittee or other person.

797 (3) It shall be unlawful for any holder of a package  
798 retailer's permit, or any employee or agent thereof, engaged  
799 solely in the business of package retail sales under this chapter  
800 to sell or furnish any alcoholic beverage before 10:00 a.m. and  
801 after 10:00 p.m. or to sell alcoholic beverages on Sunday and  
802 Christmas Day.

803 (4) Any person who \* \* \* violates any of the provisions of  
804 this section shall be guilty of a misdemeanor and, upon  
805 conviction, shall be punished by a fine of not more than Five  
806 Hundred Dollars (\$500.00) or by imprisonment in the county jail  
807 for a term of not more than six (6) months or by both that fine  
808 and imprisonment, in the discretion of the court. In addition,  
809 the commission shall immediately revoke the permit of any  
810 permittee who violates the provisions of this section.

811 **SECTION 20.** Section 67-3-53, Mississippi Code of 1972, is  
812 amended as follows:

813 67-3-53. In addition to any act declared to be unlawful by  
814 this chapter, or by Sections 27-71-301 through 27-71-347, and  
815 Sections 67-3-17, 67-3-27, 67-3-29 and 67-3-57, it shall be  
816 unlawful for the holder of a permit authorizing the sale of beer  
817 or light wine at retail or for the employee of the holder of such  
818 a permit:

819 (a) To sell or give to be consumed in or upon any  
820 licensed premises any beer or light wine between the hours of  
821 midnight and seven o'clock the following morning or during any  
822 time the licensed premises may be required to be closed by  
823 municipal ordinance or order of the board of supervisors; \* \* \*  
824 however, in areas where the sale of alcoholic beverages is legal  
825 under the provisions of the Local Option Alcoholic Beverage  
826 Control Law and the hours for selling those alcoholic beverages

827 have been extended beyond midnight for on-premises permittees  
828 under Section 67-1-37, the hours for selling beer or light wines  
829 are likewise extended in areas where the sale of beer and light  
830 wines is legal in accordance with the provisions of this chapter.

831 (b) To sell, give or furnish any beer or light wine to  
832 any person visibly or noticeably intoxicated, \* \* \* or to any  
833 habitual drunkard, or to any person under the age of twenty-one  
834 (21) years.

835 (c) To permit in the premises any lewd, immoral or  
836 improper entertainment, conduct or practices.

837 (d) To permit loud, boisterous or disorderly conduct of  
838 any kind upon the premises or to permit the use of loud musical  
839 instruments if either or any of the same may disturb the peace and  
840 quietude of the community in which the business is located.

841 (e) To permit persons of ill repute, known criminals,  
842 prostitutes or minors to frequent the licensed premises, except  
843 minors accompanied by parents or guardians, or under proper  
844 supervision.

845 (f) To permit or suffer illegal gambling or the  
846 operation of illegal games of chance upon the licensed premises.

847 (g) To receive, possess or sell on the licensed  
848 premises any beverage of any kind or character containing more  
849 than five percent (5%) of alcohol by weight unless the licensee  
850 also possesses an on-premises permit under the Local Option  
851 Alcoholic Beverage Control Law.

852 **SECTION 21.** Section 73-19-23, Mississippi Code of 1972, is  
853 amended as follows:

854 73-19-23. (1) The board shall refuse to grant a certificate  
855 of licensure to any applicant and may cancel, revoke or suspend  
856 the operation of any certificate by it granted for any or all of  
857 the following reasons \* \* \*: unprofessional and unethical conduct  
858 or the conviction of a crime involving moral turpitude, habitual  
859 intemperance in the use of ardent spirits, or stimulants,

860 narcotics, or any other substance that impairs the intellect and  
861 judgment to such an extent as to incapacitate one for the  
862 performance of the duties of an optometrist. The certificate of  
863 licensure of any person can be revoked for violating any section  
864 of this chapter.

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

869 (a) Fraud or misrepresentation in applying for or  
870 procuring an optometric license or in connection with applying for  
871 or procuring periodic renewal of an optometric license.

872 (b) Cheating on or attempting to subvert the optometric  
873 licensing examination(s).

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

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

880 (e) Conduct likely to deceive, defraud or harm the  
881 public.

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

886 (g) Willfully or negligently violating the  
887 confidentiality between doctor and patient, except as required by  
888 law.

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

891 (i) Being found to be a person with mental illness or  
892 mental retardation by any court of competent jurisdiction.

893           (j) The use of any false, fraudulent, deceptive or  
894 misleading statement in any document connected with the practice  
895 of optometry.

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

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

900           (m) Being addicted or habituated to a drug or  
901 intoxicant.

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

904           (o) Obtaining any fee by fraud, deceit or  
905 misrepresentation.

906           (p) Disciplinary action of another state or  
907 jurisdiction against a licensee or other authorization to practice  
908 optometry based upon acts or conduct by the licensee similar to  
909 acts or conduct that would constitute grounds for action as  
910 defined in this chapter, a certified copy of the record of the  
911 action taken by the other state or jurisdiction being conclusive  
912 evidence thereof.

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

916           (r) Violation of any provision(s) of the Optometry  
917 Practice Act or the rules and regulations of the board or of an  
918 action, stipulation or agreement of the board.

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

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

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

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

929           (3) Any person who is holder of a certificate of licensure  
930 or who is an applicant for examination for a certificate of  
931 licensure, against whom is preferred any charges, shall be  
932 furnished by the board with a copy of the complaint and shall have  
933 a hearing in Jackson, Mississippi, before the board, at which  
934 hearing he may be represented by counsel. At the hearing,  
935 witnesses may be examined for and against the accused respecting  
936 the those charges, and the hearing orders or appeals will be  
937 conducted according to the procedure now provided in Section  
938 73-25-27. The suspension of a certificate of licensure, by reason  
939 of the use of stimulants or narcotics may be removed when the  
940 holder of the certificate has been adjudged by the \* \* \* board to  
941 be cured and capable of practicing optometry.

942           (4) In addition to the reasons specified in subsections (1)  
943 and (2) of this section, the board shall be authorized to suspend  
944 the license of any licensee for being out of compliance with an  
945 order for support, as defined in Section 93-11-153. The procedure  
946 for suspension of a license for being out of compliance with an  
947 order for support, and the procedure for the reissuance or  
948 reinstatement of a license suspended for that purpose, and the  
949 payment of any fees for the reissuance or reinstatement of a  
950 license suspended for that purpose, shall be governed by Section  
951 93-11-157 or 93-11-163, as the case may be. If there is any  
952 conflict between any provision of Section 93-11-157 or 93-11-163  
953 and any provision of this chapter, the provisions of Section  
954 93-11-157 or 93-11-163, as the case may be, shall control.

955           **SECTION 22.** Section 81-5-33, Mississippi Code of 1972, is  
956 amended as follows:

957           81-5-33. Banks may accept and execute all such trusts and  
958 perform such duties of every description as may be committed to  
959 them by any person or corporation or that may be committed or  
960 transferred to them by order of any court of record. They may  
961 receive money in trust, take and accept by grant, assignment,  
962 transfer, devise or bequest, and hold any real or personal estate  
963 or trusts created according to the laws of this or any other state  
964 or of the United States, and execute those legal trusts in regard  
965 to the same, on such terms as may be directed or agreed  
966 upon \* \* \*. They may act as agent for the investment of money or  
967 the management of property for other persons, and as agent for  
968 persons and corporations for the purpose of issuing, registering,  
969 transferring or countersigning the certificates of stock, bonds or  
970 other evidences of debt of any corporation, association,  
971 municipality, state, county or public authority on such terms as  
972 may be agreed upon. They also may act as guardian for any minor  
973 or \* \* \* person with mental illness under the appointment of any  
974 court of record having jurisdiction of the person or estate of  
975 the minor or \* \* \* person with mental illness and may act as  
976 administrator or executor of the estate of any deceased person.  
977 They may act as agent or attorney in fact and as commissioner for  
978 the sale of property, both real and personal, and may act as  
979 assignee or receiver, or as trustee in mortgages or bond issues,  
980 or in any other fiduciary capacity authorized by law. They may  
981 accept trust funds or other property upon specially agreed terms  
982 and pay or deliver the same to the owners, beneficiaries or  
983 others, as the case may be, when and as the same should be paid or  
984 delivered according to the terms of the trust agreement under  
985 which it is held. Whenever under the laws of this or any other  
986 state or under the rule or order of any court, the execution of a  
987 bond for the protection of a private or court trust is required, a  
988 trust company shall be authorized to execute the bond for the  
989 protection of any trust or trust estate being administered by it.

990 Banking corporations created, organized and doing business  
991 under the laws of the State of Mississippi may exercise, without  
992 amendment of their charters, and under their charter authority to  
993 engage in the general business of banking, all or any of the  
994 foregoing powers. However, before any bank whose charter merely  
995 authorizes the exercise of general banking functions may exercise  
996 those powers, the previous written consent of the Commissioner of  
997 Banking and Consumer Finance shall be obtained.

998 Banks exercising any or all of those powers shall segregate  
999 all assets held in any fiduciary capacity from the general assets  
1000 of the bank and shall keep a separate set of books and records  
1001 showing in proper detail all transactions engaged in under the  
1002 authority of this section or under the authority \* \* \* granted to  
1003 them in their charter or otherwise. Those books and records shall  
1004 be inspected and examined by the state bank examiners at each and  
1005 every examination of the bank.

1006 No bank shall receive in its trust department deposits of  
1007 current funds subject to check or the deposit of checks, drafts,  
1008 bills of exchange or other items for collection or exchange  
1009 purposes. Funds deposited or held in trust by the bank awaiting  
1010 investment or distribution shall be carried in a separate account  
1011 and shall not be used by the bank in the conduct of its business,  
1012 unless it \* \* \* first sets aside in the trust department United  
1013 States bonds or bonds of the State of Mississippi or any  
1014 subdivision of the state, the market value of which shall at all  
1015 times be not less than ten percent (10%) in excess of the total  
1016 funds so held, exclusive of the portion of funds insured by the  
1017 Federal Deposit Insurance Corporation.

1018 In the event of the failure or liquidation of the bank, the  
1019 owners of the funds held in trust for investment or distribution  
1020 shall have a prior lien on the bonds or other securities so set  
1021 apart in addition to their claim against the assets of the bank.

1022           In any case in which the laws of this state require that one  
1023 acting as trustee, executor, administrator or in any fiduciary  
1024 capacity must take an oath or make an affidavit, the president,  
1025 vice president, cashier or trust officer of a bank may take the  
1026 necessary oath or execute the necessary affidavit.

1027           In making investments of trust funds, it shall be unlawful  
1028 for any bank to purchase securities from itself or to purchase  
1029 securities in which it may be interested, directly or indirectly.  
1030 However, any bank, including a national bank, authorized to do  
1031 business in this state in a fiduciary capacity may, unless  
1032 prohibited or otherwise limited by the instrument governing the  
1033 fiduciary relationship, in the exercise of its investment  
1034 discretion or at the direction of another person authorized to  
1035 direct the investment of funds held by the bank as fiduciary,  
1036 invest and reinvest in the securities of, or other interests in,  
1037 any open-end or closed-end management type investment company or  
1038 investment trust registered under the Investment Company Act of  
1039 1940, 15 USCS Section 80a-1, et seq., as amended, notwithstanding  
1040 that the banking institution or affiliate of the banking  
1041 institution provides services to the investment company or  
1042 investment trust, such as that of an investment advisor,  
1043 custodian, transfer agent, registrar, sponsor, distributor,  
1044 manager or otherwise, and receives reasonable remuneration for  
1045 those services, so long as the total compensation paid by the  
1046 trust or custodial estate as trustee's fees and mutual fund fees  
1047 is reasonable, taking into account the nature and extent of the  
1048 trustee's duties, the nature and extent of the services provided  
1049 to the investment company or investment trust, and the total  
1050 compensation, costs and fees that would otherwise be paid,  
1051 directly or indirectly, by the trust or custodial estate if the  
1052 investment were made in an investment company or investment trust  
1053 for which the bank or its affiliates provided no services. With  
1054 respect to any funds so invested, the banking institution shall



1055 make available by statement, prospectus or otherwise to all  
1056 current income beneficiaries of an account the basis, expressed as  
1057 a percentage of asset value or otherwise, upon which the  
1058 remuneration is calculated. No bank shall lend to any officer,  
1059 director or employee of the bank any funds held in trust by it,  
1060 and any officer, director or employee making a loan, or to whom  
1061 such a loan is made, shall be guilty of a felony and, upon  
1062 conviction, may be fined not more than Five Thousand Dollars  
1063 (\$5,000.00) or imprisoned in the State Penitentiary for not more  
1064 than five (5) years, or by both that fine and imprisonment, in the  
1065 discretion of the court.

1066       **SECTION 23.** Section 81-27-6.307, Mississippi Code of 1972,  
1067 is amended as follows:

1068       81-27-6.307. (a) A limited liability trust company  
1069 organized under this article is dissolved on:

1070               (1) The expiration of the period fixed for the duration  
1071 of the limited liability trust company;

1072               (2) A vote to dissolve or the execution of a written  
1073 consent to dissolve by all full liability participants, if any,  
1074 and a sufficient number of other participants that combined with  
1075 all full liability participants hold at least two-thirds (2/3) of  
1076 the participation shares in each class in the association, or a  
1077 greater fraction as provided by the articles of association;

1078               (3) Except as provided by the articles of association,  
1079 the death, adjudication of incompetence, expulsion, bankruptcy,  
1080 retirement, or resignation of a participant unless a majority in  
1081 interest of all remaining participants elect in writing not later  
1082 than the ninetieth day after the date of the event to continue the  
1083 business of the association; or

1084               (4) The occurrence of an event of dissolution specified  
1085 in the articles of association.

1086 (b) A dissolution under this section is considered to be the  
1087 initiation of a voluntary liquidation under Subarticle B of  
1088 Article 7 of this chapter.

1089 (c) An event of dissolution described by subsection (a)(3)  
1090 of this section does not cancel or revoke a contract to which the  
1091 state trust company is a party, including a trust indenture or  
1092 agreement or voluntary dissolution under Subarticle B of Article 7  
1093 of this chapter, until the period for the remaining participants  
1094 to continue the business of the state trust company has expired  
1095 without the remaining participants having completed the necessary  
1096 action to continue the business of the state trust company.

1097 **SECTION 24.** Section 89-1-29, Mississippi Code of 1972, is  
1098 amended as follows:

1099 89-1-29. A conveyance, mortgage, deed of trust or other  
1100 incumbrance upon a homestead exempted from execution shall not be  
1101 valid or binding unless signed by the spouse of the owner if the  
1102 owner is married and living with the spouse. But where the spouse  
1103 of the owner of the homestead exempted from execution has been  
1104 adjudicated incompetent, then the owner of the homestead, may file  
1105 a petition in the chancery court and allege in the petition the  
1106 incompetence of the spouse and the adjudication of incompetency of  
1107 the spouse \* \* \* and the facts of the case. The summons for the  
1108 spouse who has been adjudicated incompetent shall be issued and be  
1109 served in the same manner as process is served in other cases  
1110 on \* \* \* persons who are incompetent. The court shall hear the  
1111 case in vacation or in termtime as in other cases, and if the  
1112 court finds the spouse to be incompetent and the owner entitled to  
1113 relief, the court by decree shall authorize and empower the owner  
1114 to execute a conveyance, mortgage, deed of trust or other  
1115 incumbrance upon the homestead without the signature of the  
1116 spouse. However, no mortgage or deed of trust executed in favor  
1117 of the Farmers Home Administration at the time of the purchase of  
1118 real estate to secure the payment of the money used to purchase

1119 the real estate shall be invalid because it is not signed by the  
1120 spouse of the owner.

1121 **SECTION 25.** Section 93-1-5, Mississippi Code of 1972, is  
1122 amended as follows:

1123 93-1-5. It shall be unlawful for the circuit court clerk to  
1124 issue a marriage license until the following conditions precedent  
1125 have been complied with:

1126 (a) Parties desiring a marriage license shall make  
1127 application for the license in writing to the clerk of the circuit  
1128 court of any county in the State of Mississippi; \* \* \*  
1129 however, \* \* \* if the female applicant is under the age of  
1130 twenty-one (21) years and is a resident of the State of  
1131 Mississippi, the application shall be made to the circuit court  
1132 clerk of the county of residence of the female applicant. The  
1133 application shall be immediately filed with the circuit court  
1134 clerk and shall include the names, ages and addresses of the  
1135 parties applying; the names and addresses of the parents of the  
1136 parties applying, and if no parents, then names and addresses of  
1137 the guardian or next of kin; the signatures of witnesses; and any  
1138 other data that may be required by law or the \* \* \* State Board of  
1139 Health. The application shall be sworn to by both applicants.

1140 (b) The application shall remain on file, open to the  
1141 public, in the office of the circuit court clerk for a period of  
1142 three (3) days before the clerk is authorized to issue the  
1143 marriage license. \* \* \* However, \* \* \* if satisfactory proof is  
1144 furnished to the judge of any circuit, chancery or county court  
1145 that sufficient reasons exist, then the judge of any such court in  
1146 the judicial district where either of the parties resides if they  
1147 are over the age of twenty-one (21) years, or where the female  
1148 resides if she is under the age of twenty-one (21), may waive the  
1149 three-day waiting period and by written instrument authorize the  
1150 clerk of the court to issue the marriage license to the parties if  
1151 they are otherwise qualified by law. Authorization shall be a

1152 part of the confidential files of the clerk of the court, subject  
1153 to inspection only by written permission of the judge. If either  
1154 of the applying parties appears from the evidence to be under  
1155 twenty-one (21) years of age, the circuit court clerk, immediately  
1156 upon filing the application, shall cause notice of the filing of  
1157 the application to be sent by prepaid certified mail to the  
1158 father, mother, guardian or next of kin of both applying parties  
1159 at the address named in the application.

1160 (c) An affidavit showing the age of both applying  
1161 parties shall be made by either the father, mother, guardian or  
1162 next of kin of each of the contracting parties and filed with the  
1163 clerk of the circuit court along with the application; or in lieu  
1164 thereof, \* \* \* both applying parties shall appear in person before  
1165 the circuit court clerk and make and subscribe an oath in person,  
1166 which \* \* \* affidavit shall be attached to and noted on the  
1167 application for the marriage license. In addition to either of  
1168 the previous conditions stated, further proof of age shall be  
1169 presented to the circuit court clerk in the form of either a birth  
1170 certificate, baptismal record, armed service discharge, armed  
1171 service identification card, life insurance policy, insurance  
1172 certificate, school record, driver's license, or other official  
1173 document evidencing age. The document substantiating age and date  
1174 of birth shall be examined by the circuit court clerk before whom  
1175 application is made, and the circuit court clerk shall retain in  
1176 his file with the application the document or a certified or  
1177 photostatic copy of the document.

1178 (d) The clerk shall not issue a marriage license under  
1179 the provisions of this section unless the male applicant is at  
1180 least seventeen (17) years of age and the female is at least  
1181 fifteen (15) years of age; \* \* \* however, \* \* \* if satisfactory  
1182 proof is furnished to the judge of any circuit, chancery or county  
1183 court that sufficient reasons exist and that the parties desire to  
1184 be married to each other and that the parents or other person in

1185 loco parentis of the person or persons so under age consent to the  
1186 marriage, then the judge of any such court in the county where  
1187 either of the parties resides may waive the minimum age  
1188 requirement and by written instrument authorize the clerk of the  
1189 court to issue the marriage license to the parties if they are  
1190 otherwise qualified by law. Authorization shall be a part of the  
1191 confidential files of the clerk of the court, subject to  
1192 inspection only by written permission of the judge.

1193 (e) A medical certificate dated within thirty (30) days  
1194 before the application shall be presented to the circuit court  
1195 clerk showing that the applicant is free from syphilis, as nearly  
1196 as can be determined by a blood test performed in a laboratory  
1197 approved by the State Board of Health. The medical certificate  
1198 may be obtained through the local health department by the  
1199 applicant or applicants, or it may be obtained through any private  
1200 laboratory approved by the State Board of Health. The medical  
1201 certificate shall be examined by the circuit court clerk and filed  
1202 in a permanent file kept by the clerk for this purpose.

1203 (f) In no event shall a license be issued by the  
1204 circuit court clerk when it appears to the circuit court clerk  
1205 that the applicants are, or either of them is, drunk or a person  
1206 with mental illness or mental retardation, to the extent that the  
1207 clerk believes that the person does not understand the nature and  
1208 consequences of the request.

1209 Any circuit clerk shall be liable under his official bond  
1210 because of noncompliance with the provisions of this section.

1211 Any circuit court clerk who issues a marriage license without  
1212 complying with the provisions of this section shall be guilty of a  
1213 misdemeanor and, upon conviction, shall be punished by a fine of  
1214 not less than Fifty Dollars (\$50.00) and not more than Five  
1215 Hundred Dollars (\$500.00).

1216 **SECTION 26.** Section 93-5-1, Mississippi Code of 1972, is  
1217 amended as follows:

1218 93-5-1. Divorces from the bonds of matrimony may be decreed  
1219 to the injured party for any one or more of the following twelve  
1220 (12) causes \* \* \*:

1221 First. Natural impotency.

1222 Second. Adultery, unless it should appear that it was  
1223 committed by collusion of the parties for the purpose of procuring  
1224 a divorce, or unless the parties cohabited after a knowledge by  
1225 complainant of the adultery.

1226 Third. Being sentenced to any penitentiary, and not pardoned  
1227 before being sent there.

1228 Fourth. Willful, continued and obstinate desertion for the  
1229 space of one (1) year.

1230 Fifth. Habitual drunkenness.

1231 Sixth. Habitual and excessive use of opium, morphine or  
1232 other like drug.

1233 Seventh. Habitual cruel and inhuman treatment.

1234 Eighth. Mental illness or mental retardation at the time of  
1235 marriage, if the party complaining did not know of that infirmity.

1236 Ninth. Marriage to some other person at the time of the  
1237 pretended marriage between the parties.

1238 Tenth. Pregnancy of the wife by another person at the time  
1239 of the marriage, if the husband did not know of the pregnancy.

1240 Eleventh. Either party may have a divorce if they are  
1241 related to each other within the degrees of kindred between whom  
1242 marriage is prohibited by law.

1243 Twelfth. Incurable mental illness. However, no divorce  
1244 shall be granted upon this ground unless the \* \* \* party with  
1245 mental illness has been under regular treatment for mental illness  
1246 and causes thereof, confined in an institution for persons with  
1247 mental illness for a period of at least three (3) years  
1248 immediately preceding the commencement of the action. \* \* \*

1249 However, \* \* \* transfer of a party with mental illness to his or  
1250 her home for treatment or a trial visit on prescription or

1251 recommendation of a licensed physician, which treatment or trial  
1252 visit proves unsuccessful after a bona fide effort by the  
1253 complaining party to effect a cure, upon the reconfinement of  
1254 the \* \* \* party with mental illness in an institution for persons  
1255 with mental illness, shall be regular treatment for mental illness  
1256 and causes thereof, and the period of time so consumed in seeking  
1257 to effect a cure or while on a trial visit home shall be added to  
1258 the period of actual confinement in an institution for persons  
1259 with mental illness in computing the required period of three (3)  
1260 years confinement immediately preceding the beginning of the  
1261 action. No divorce shall be granted because of mental illness  
1262 until after a thorough examination of the person with mental  
1263 illness by two (2) physicians who are recognized authorities on  
1264 mental diseases. One of those physicians shall be either the  
1265 superintendent of a state psychiatric hospital or institution or a  
1266 veterans hospital for persons with mental illness in which the  
1267 patient is confined, or a member of the medical staff of that  
1268 hospital or institution who has had the patient in charge. Before  
1269 incurable mental illness can be successfully proven as a ground  
1270 for divorce, it shall be necessary that both of those physicians  
1271 make affidavit that the patient is a \* \* \* person with mental  
1272 illness at the time of the examination, and both affidavits shall  
1273 be made a part of the permanent record of the divorce proceedings  
1274 and shall create the prima facie presumption of incurable mental  
1275 illness, such as would justify a divorce based on that ground.  
1276 Service of process shall be made on the superintendent of the  
1277 hospital or institution in which the defendant is a patient. If  
1278 the patient is in a hospital or institution outside the state,  
1279 process shall be served by publication, as in other cases of  
1280 service by publication, together with the sending of a copy by  
1281 registered mail to the superintendent of the hospital or  
1282 institution. In addition \* \* \*, process shall be served upon the  
1283 next blood relative and guardian, if any. If there is no legal

1284 guardian, the court shall appoint a guardian ad litem to represent  
1285 the interest of the \* \* \* person with mental illness. The  
1286 relative or guardian and superintendent of the hospital or  
1287 institution shall be entitled to appear and be heard upon any and  
1288 all issues. The status of the parties as to the support and  
1289 maintenance of the \* \* \* person with mental illness shall not be  
1290 altered in any way by the granting of the divorce.

1291 However, in the discretion of the chancery court, and in  
1292 those cases as the court may deem it necessary and proper, before  
1293 any such decree is granted on the ground of incurable mental  
1294 illness, the complainant, when ordered by the court, shall enter  
1295 into bond, to be approved by the court, in such an amount as the  
1296 court may think just and proper, conditioned for the care and  
1297 keeping of the person with mental illness during the remainder of  
1298 his or her natural life, unless the person with mental illness has  
1299 a sufficient estate in his or her own right for that purpose.

1300 **SECTION 27.** Section 93-5-13, Mississippi Code of 1972, is  
1301 amended as follows:

1302 93-5-13. If the defendant is an infant or a person with  
1303 mental illness, the court may appoint a guardian ad litem for the  
1304 defendant.

1305 **SECTION 28.** Section 93-5-15, Mississippi Code of 1972, is  
1306 amended as follows:

1307 93-5-15. From and after March 15, 1934, any marital contract  
1308 previously or hereafter solemnized by and under which parties have  
1309 been duly and legally married, and one (1) of the parties to the  
1310 marriage contract has \* \* \* become or becomes mentally ill to such  
1311 an extent that it is necessary for a guardian to be appointed for  
1312 that party, and the other party to the marital contract has  
1313 committed any act that constitutes ground for divorce under the  
1314 present laws, the guardian for the party with mental illness to  
1315 the contract of marriage shall have the right to file a bill as  
1316 the guardian, in the name of his ward, for the dissolution of the



1317 marriage, in the same way and manner and at the same place and on  
1318 the same process that the person with mental illness could have  
1319 done, if he had \* \* \* not become mentally ill.

1320 **SECTION 29.** Section 93-7-3, Mississippi Code of 1972, is  
1321 amended as follows:

1322 93-7-3. A marriage may be annulled for any one (1) of the  
1323 following causes existing at the time of the marriage  
1324 ceremony \* \* \*:

1325 (a) Incurable impotency.

1326 (b) Adjudicated mental illness or incompetence of  
1327 either or both parties. Action of a spouse who has been  
1328 adjudicated mentally ill or incompetent may be brought by  
1329 guardian, or in the absence of a guardian, by next friend,  
1330 provided that the suit is brought within six (6) months after  
1331 marriage.

1332 (c) Failure to comply with the provisions of Sections  
1333 93-1-5 through 93-1-9 when any marriage affected by that failure  
1334 has not been followed by cohabitation.

1335 Or, in the absence of ratification:

1336 (d) When either of the parties to a marriage is  
1337 incapable, from want of age or understanding, of consenting to any  
1338 marriage, or is incapable from physical causes of entering into  
1339 the marriage state, or where the consent of either party has been  
1340 obtained by force or fraud, the marriage shall be void from the  
1341 time its nullity is declared by a court of competent jurisdiction.

1342 (e) Pregnancy of the wife by another person, if the  
1343 husband did not know of the pregnancy.

1344 Suits for annulment under paragraphs (d) and (e) shall be  
1345 brought within six (6) months after the ground for annulment is or  
1346 should be discovered, and not thereafter.

1347 The causes for annulment of marriage set forth in this  
1348 section are intended to be new remedies and shall in no way affect  
1349 the causes for divorce declared elsewhere to be the law of the

1350 State of Mississippi as they presently exist or as they may from  
1351 time to time be amended.

1352 **SECTION 30.** Section 93-13-123, Mississippi Code of 1972, is  
1353 amended as follows:

1354 93-13-123. The chancery court of any county in which may be  
1355 situated the property or any part of the property, or debt due to,  
1356 or right of action of any person who has been adjudicated to be  
1357 incompetent by proper proceedings in another state, or of a  
1358 citizen of this state \* \* \* who is incompetent and is confined out  
1359 of this state in a psychiatric hospital or institution, shall have  
1360 jurisdiction to appoint a guardian of the estate of the person  
1361 who is incompetent. The chancery court of the county of residence  
1362 of those persons shall likewise have that jurisdiction.

1363 **SECTION 31.** Section 93-13-121, Mississippi Code of 1972, is  
1364 amended as follows:

1365 93-13-121. In any case where a guardian has been appointed  
1366 for an adult person by a court of competent jurisdiction of any  
1367 state, and the adult thereafter, at the time of filing the  
1368 petition provided for in this section, is a resident of this state  
1369 and is incompetent to manage his or her estate, the chancery court  
1370 of the county of the domicile of the adult shall have jurisdiction  
1371 and authority to appoint a guardian for the incompetent adult upon  
1372 the conditions \* \* \* specified in this section; however,  
1373 infirmities of old age shall not be considered elements of  
1374 infirmities.

1375 The petition for the appointment of a guardian under the  
1376 provisions of this section shall be filed by the incompetent  
1377 person or his guardian in the office of the clerk of the chancery  
1378 court in the county of the residence of the incompetent person and  
1379 process shall be served as provided in Section 93-13-281, unless  
1380 joined in by that person or those persons \* \* \* prescribed in that  
1381 section.

1382           Upon the return day of the process, the chancellor, if in  
1383 vacation, or the court, if in termtime, shall cause the applicant  
1384 to appear in person and then and there examine the applicant and  
1385 all interested parties, and if, after the examination, the  
1386 chancellor in vacation or the court in termtime is of the opinion  
1387 that the applicant is incompetent to manage his or her estate,  
1388 then it shall be the duty of the court to appoint a guardian of  
1389 the estate of the applicant; \* \* \* however, \* \* \* in no instance  
1390 shall the court have authority to appoint a guardian under the  
1391 provisions of this section unless it \* \* \* examines the applicant  
1392 in person and finds after the examination that the applicant is  
1393 incompetent to manage his or her estate.

1394           A guardian appointed under the provisions of this section  
1395 shall be required to make and file annual accounts of his acts and  
1396 doings as in case of guardians for \* \* \* persons with mental  
1397 illness.

1398           **SECTION 32.** Section 93-13-131, Mississippi Code of 1972, is  
1399 amended as follows:

1400           93-13-131. The chancery court of the county in which an  
1401 habitual drunkard, habitual user of cocaine, opium or morphine  
1402 resides may appoint a guardian to him on the application of a  
1403 relative or friend. When an application for appointment of a  
1404 guardian is presented, if the court is satisfied there is probable  
1405 grounds for the appointment, it shall direct a writ to the  
1406 sheriff, commanding him to summon the person alleged to be an  
1407 habitual drunkard, habitual user of cocaine, or opium or morphine.  
1408 On return of the summons executed, the court shall examine the  
1409 question and determine whether the person is an habitual drunkard,  
1410 habitual user of cocaine, opium or morphine, and for that purpose  
1411 may summon and hear witnesses, orally or by deposition, and hear  
1412 the parties and their evidence. If the court is satisfied that  
1413 the person is an habitual drunkard, habitual user of cocaine,  
1414 opium or morphine, it shall appoint a guardian to take care of him

1415 and his estate, both real and personal, and the costs of the  
1416 inquisition shall be paid out of the estate. And the court or  
1417 chancellor may direct the confinement of any person adjudged to be  
1418 an habitual drunkard, habitual user of cocaine, or opium or  
1419 morphine, in a facility that treats alcohol or substance abuse.

1420 **SECTION 33.** Section 97-3-13, Mississippi Code of 1972, is  
1421 amended as follows:

1422 97-3-13. Every person or officer who \* \* \* maliciously sends  
1423 to or confines in a psychiatric hospital or institution or other  
1424 place, any sane person as a person with mental illness, knowing  
1425 the person to be sane, shall be guilty of a felony, and, on  
1426 conviction, shall be punished by a fine of not more than Five  
1427 Hundred Dollars (\$500.00), or by imprisonment in the Penitentiary  
1428 not more than one (1) year, or in the county jail not more than  
1429 six (6) months.

1430 **SECTION 34.** Section 97-9-25, Mississippi Code of 1972, is  
1431 amended as follows:

1432 97-9-25. It shall be unlawful for any person, firm,  
1433 copartnership, corporation or association to knowingly entice,  
1434 harbor, employ, or aid, assist or abet in the escape, enticing,  
1435 harboring or employment of any delinquent, person with mental  
1436 illness, person with mental retardation or incorrigible person  
1437 committed to, or confined in any institution maintained by the  
1438 state for the treatment, education or welfare of delinquent  
1439 persons, persons with mental illness, persons with mental  
1440 retardation or incorrigible \* \* \* persons. Any person violating  
1441 the provisions of this section, upon conviction, shall be punished  
1442 by a fine of not less than Twenty-five Dollars (\$25.00) nor more  
1443 than Five Hundred Dollars (\$500.00), or imprisonment in the county  
1444 jail for not less than thirty (30) days, nor more than ninety (90)  
1445 days, or both.

1446 **SECTION 35.** Section 99-13-1, Mississippi Code of 1972, is  
1447 amended as follows:

1448           99-13-1. The term "person with mental retardation," within  
1449 the meaning of this chapter, shall have the same meaning as the  
1450 term "mentally retarded person" in Section 41-21-61.

1451           **SECTION 36.** Section 99-13-3, Mississippi Code of 1972, is  
1452 amended as follows:

1453           99-13-3. When any prisoner or any person charged with a  
1454 crime or delinquency is brought before any conservator of the  
1455 peace, and in the course of the investigation it \* \* \* appears  
1456 that the person was insane when the offense was committed and  
1457 still is insane, or was a person with mental retardation to such  
1458 an extent as not to be responsible for his or her act or omission  
1459 at the time when the act or omission charged was made, he shall  
1460 not be discharged, but the conservator of the peace shall remand  
1461 the prisoner to custody and immediately report the case to the  
1462 chancellor or clerk of the chancery court, whose duty it shall be  
1463 to proceed with the case according to the law provided for persons  
1464 of unsound mind or \* \* \* persons with mental retardation.

1465           **SECTION 37.** Section 99-13-5, Mississippi Code of 1972, is  
1466 amended as follows:

1467           99-13-5. When any person is held in prison or on bail,  
1468 charged with an offense, and the grand jury does not find a true  
1469 bill for reason of insanity of the accused or for reason of the  
1470 mental retardation of the accused, which they judge to be such  
1471 that he or she was not responsible for his acts or omissions at  
1472 the time when the act or omission charged was committed or made,  
1473 the grand jury shall certify the fact to the circuit court and  
1474 shall state whether or not the insane \* \* \* person or person with  
1475 mental retardation is a danger to the security of persons and  
1476 property and the peace and safety of the community, and if the  
1477 grand jury reports that insanity or mental retardation and that  
1478 danger, the court shall immediately give notice of the case to the  
1479 chancellor or to the clerk of the chancery court, whose duty it  
1480 shall be to proceed with the insane person and his estate or the

1481 person with mental retardation according to the law provided in  
1482 the case of persons of unsound mind or \* \* \* persons with mental  
1483 retardation.

1484 **SECTION 38.** Section 99-13-7, Mississippi Code of 1972, is  
1485 amended as follows:

1486 99-13-7. When any person is indicted for an offense and  
1487 acquitted on the ground of insanity, the jury rendering the  
1488 verdict shall state in the verdict that ground and whether the  
1489 accused has since been restored to his sanity and whether he is  
1490 dangerous to the community. \* \* \* If the jury certifies that the  
1491 person is still insane and dangerous, the judge shall order him to  
1492 be conveyed to and confined in one (1) of the state psychiatric  
1493 hospitals or institutions.

1494 **SECTION 39.** Section 99-13-9, Mississippi Code of 1972, is  
1495 amended as follows:

1496 99-13-9. When any person is indicted for an offense and  
1497 acquitted on the ground of mental retardation, the jury rendering  
1498 the verdict shall state in the verdict that ground and whether the  
1499 accused constitutes a danger to life or property and to the peace  
1500 and safety of the community. If the jury certifies that the  
1501 person with mental retardation is dangerous to the peace and  
1502 safety of the community or to himself, the court shall immediately  
1503 give notice of the case to the chancellor or the clerk of the  
1504 chancery court, whose duty it shall be to proceed with the person  
1505 according to the law provided in the case of \* \* \* persons with  
1506 mental retardation, the \* \* \* person with mental retardation  
1507 himself being remanded to custody to await the action of the  
1508 chancery court.

1509 **SECTION 40.** Section 99-19-57, Mississippi Code of 1972, is  
1510 amended as follows:

1511 99-19-57. (1) If the Commissioner of Corrections \* \* \* at  
1512 any time is satisfied that any female offender in his custody  
1513 under sentence of death is pregnant, he shall summon a physician

1514 to inquire into the pregnancy. The commissioner shall summons and  
1515 swear all necessary witnesses and the commissioner after full  
1516 examination shall certify under his hand what the truth may be in  
1517 relation to the alleged pregnancy, and in case the offender is  
1518 found to be pregnant, the commissioner shall immediately transmit  
1519 his findings to the Governor, and the Governor shall suspend the  
1520 execution of the sentence until he is satisfied that the offender  
1521 is not or is no longer pregnant. The Governor shall then order,  
1522 by his warrant to the commissioner, the execution of the offender  
1523 on a day to be \* \* \* appointed by the Governor according to the  
1524 sentence and judgment of the court.

1525 (2) (a) If it is believed that an offender under sentence  
1526 of death has become mentally ill since the judgment of the court,  
1527 the following shall be the exclusive procedural and substantive  
1528 procedure. The offender, or a person acting as his next friend,  
1529 or the Commissioner of Corrections may file an appropriate  
1530 application seeking post-conviction relief with the Mississippi  
1531 Supreme Court. If it is found that the offender is a person with  
1532 mental illness, as defined in this subsection, the court shall  
1533 suspend the execution of the sentence. The offender shall then be  
1534 committed to the forensic unit of the Mississippi State Hospital  
1535 at Whitfield. The order of commitment shall require that the  
1536 offender be examined and a written report be furnished to the  
1537 court at that time and every month thereafter, stating whether  
1538 there is a substantial probability that the offender will become  
1539 sane under this subsection within the foreseeable future and  
1540 whether progress is being made toward that goal. If at any time  
1541 during the commitment, the appropriate official at the state  
1542 hospital \* \* \* considers the offender to be sane under this  
1543 subsection, the official shall promptly notify the court to that  
1544 effect in writing and place the offender in the custody of the  
1545 Commissioner of Corrections. The court then shall \* \* \* conduct a  
1546 hearing on the sanity of the offender. The finding of the circuit

1547 court is a final order appealable under the terms and conditions  
1548 of the Mississippi Uniform Post-Conviction Collateral Relief Act.

1549 (b) For the purposes of this subsection, a person shall  
1550 be deemed to be a person with mental illness if the court finds  
1551 that the offender does not have sufficient intelligence to  
1552 understand the nature of the proceedings against him, what he was  
1553 tried for, the purpose of his punishment, the impending fate that  
1554 awaits him, and a sufficient understanding to know any fact that  
1555 might exist that would make his punishment unjust or unlawful and  
1556 the intelligence requisite to convey that information to his  
1557 attorneys or the court.

1558 **SECTION 41.** Section 99-38-9, Mississippi Code of 1972, is  
1559 amended as follows:

1560 99-38-9. (1) The Treasurer shall make payments from an  
1561 escrow account established under Section 99-38-5 to the accused or  
1562 convicted person in whose name the account was established upon  
1563 the order of a court of competent jurisdiction, after a showing by  
1564 the person that those monies will be used for the exclusive  
1565 purpose of retaining legal representation at any stage of any  
1566 criminal proceedings against the person, including the appeals  
1567 process.

1568 (2) Whenever it is found that a person accused of a crime is  
1569 unfit to proceed as a result of mental illness because the person  
1570 lacks the capacity to understand the proceedings against him or to  
1571 assist in his own defense, the Treasurer shall bring an action of  
1572 interpleader to determine disposition of the escrow account. For  
1573 the purposes of this chapter, a person found not guilty by reason  
1574 of insanity shall be deemed to be a convicted person.

1575 (3) Except as otherwise provided in subsection (4) of this  
1576 section, upon dismissal of charges or acquittal or subsequent  
1577 exoneration of any person accused of an offense arising out of the  
1578 same circumstances that led to the establishment of an escrow  
1579 account under this chapter, the Treasurer shall immediately pay



1580 over to the accused person, his legal representative, assignee,  
1581 beneficiary or heirs at law the monies in the escrow account  
1582 established on his or their behalf. Except as otherwise provided  
1583 in subsection (4) of this section, upon a showing that the accused  
1584 person has been convicted or has pleaded guilty to an offense for  
1585 which an escrow account has been established under this chapter  
1586 and that one (1) year has elapsed from the time of establishment  
1587 of the escrow account, and that no civil actions are pending under  
1588 the provisions of subsection (2) of Section 99-38-7, the Treasurer  
1589 shall immediately transfer all monies in the escrow account  
1590 established in the name of the accused person, less such costs and  
1591 expenses as the Treasurer incurs in the administration of the  
1592 account, to the Criminal Justice Fund created in Section 99-19-32.

1593 (4) Notwithstanding the provisions of subsection (3), upon a  
1594 showing that one (1) year has elapsed from the time of the  
1595 establishment of the escrow account and that no civil actions are  
1596 pending under the provisions of Section 99-38-7(2), and upon a  
1597 showing that the accused in whose name the account is established  
1598 is the parent of one or more minor children and that the minor  
1599 children are in need of financial support, the chancery court of  
1600 the district in which the minor children reside may order the  
1601 Treasurer to pay over an amount set by the court for the support  
1602 of those children until they reach the age of majority. Upon  
1603 order of the court, the Treasurer shall pay the specified amount  
1604 to a guardian appointed by the court for the use and benefit of  
1605 the minor children. In no event shall the total amount to be paid  
1606 for the support of any minor children of the accused in whose name  
1607 the account is established exceed the amount of money in the  
1608 account at the time the court issues its order.

1609 (5) The Treasurer shall be authorized to promulgate such  
1610 rules and regulations as may be necessary to carry out the  
1611 provisions of this chapter.

1612           **SECTION 42.** Section 99-39-23, Mississippi Code of 1972, is  
1613 amended as follows:

1614           99-39-23. (1) If an evidentiary hearing is required, the  
1615 judge may appoint counsel for a petitioner who qualifies for the  
1616 appointment of counsel under Section 99-15-15.

1617           (2) The hearing shall be conducted as promptly as  
1618 practicable, having regard for the need of counsel for both  
1619 parties for adequate time for investigation and preparation.

1620           (3) The parties shall be entitled to subpoena witnesses and  
1621 compel their attendance, including, but not being limited to,  
1622 subpoenas duces tecum.

1623           (4) The court may receive proof by affidavits, depositions,  
1624 oral testimony or other evidence and may order the prisoner  
1625 brought before it for the hearing.

1626           (5) If the court finds in favor of the prisoner, it shall  
1627 enter an appropriate order with respect to the conviction or  
1628 sentence under attack, and any supplementary orders as to  
1629 rearraignment, retrial, custody, bail, discharge, correction of  
1630 sentence or other matters that may be necessary and proper. The  
1631 court shall make specific findings of fact, and state expressly  
1632 its conclusions of law, relating to each issue presented.

1633           (6) The order as provided in subsection (5) of this section  
1634 or any order dismissing the prisoner's motion or otherwise denying  
1635 relief under this article is a final judgment and shall be  
1636 conclusive until reversed. It shall be a bar to a second or  
1637 successive motion under this article. Excepted from this  
1638 prohibition is a motion filed under Section 99-19-57(2), raising  
1639 the issue of the offender's supervening mental illness before the  
1640 execution of a sentence of death. A dismissal or denial of a  
1641 motion relating to mental illness under Section 99-19-57(2) shall  
1642 be res judicata on the issue and shall likewise bar any second or  
1643 successive motions on the issue. Likewise excepted from this  
1644 prohibition are those cases in which the prisoner can demonstrate

1645 either that there has been an intervening decision of the Supreme  
1646 Court of either the State of Mississippi or the United States  
1647 that would have actually adversely affected the outcome of his  
1648 conviction or sentence or that he has evidence, not reasonably  
1649 discoverable at the time of trial, which is of such nature that it  
1650 would be practically conclusive that, if it had \* \* \* been  
1651 introduced at trial, it would have caused a different result in  
1652 the conviction or sentence. Likewise excepted are those cases in  
1653 which the prisoner claims that his sentence has expired or his  
1654 probation, parole or conditional release has been unlawfully  
1655 revoked.

1656 (7) No relief shall be granted under this article unless the  
1657 prisoner proves by a preponderance of the evidence that he is  
1658 entitled to the relief.

1659 (8) Proceedings under this section shall be subject to the  
1660 provisions of Section 99-19-42.

1661 (9) In cases resulting in a sentence of death and upon a  
1662 determination of indigence, appointment of post-conviction counsel  
1663 shall be made by the Office of Capital Post-Conviction Counsel  
1664 upon order entered by the Supreme Court promptly upon announcement  
1665 of the decision on direct appeal affirming the sentence of death.  
1666 The order shall direct the trial court to immediately determine  
1667 indigence and whether the inmate will accept counsel.

1668 **SECTION 43.** Section 99-39-27, Mississippi Code of 1972, is  
1669 amended as follows:

1670 99-39-27. (1) The application for leave to proceed in the  
1671 trial court filed with the Supreme Court under Section 99-39-7  
1672 shall name the State of Mississippi as the respondent.

1673 (2) The application shall contain the original and two (2)  
1674 executed copies of the motion proposed to be filed in the trial  
1675 court together with such other supporting pleadings and  
1676 documentation as the Supreme Court by rule may require.

1677           (3) The prisoner shall serve an executed copy of the  
1678 application upon the Attorney General simultaneously with the  
1679 filing of the application with the court.

1680           (4) The original motion, together with all files, records,  
1681 transcripts and correspondence relating to the judgment under  
1682 attack, shall promptly be examined by the court.

1683           (5) Unless it appears from the face of the application,  
1684 motion, exhibits and the prior record that the claims presented by  
1685 those documents are not procedurally barred under Section 99-39-21  
1686 and that they further present a substantial showing of the denial  
1687 of a state or federal right, the court shall by appropriate order  
1688 deny the application. The court may, in its discretion, require  
1689 the Attorney General upon sufficient notice to respond to the  
1690 application.

1691           (6) The court, upon satisfaction of the standards set forth  
1692 in this article, is empowered to grant the application.

1693           (7) In granting the application the court, in its  
1694 discretion, may:

1695           (a) Where sufficient facts exist from the face of the  
1696 application, motion, exhibits, the prior record and the state's  
1697 response, together with any exhibits submitted with those  
1698 documents, or upon stipulation of the parties, grant or deny any  
1699 or all relief requested in the attached motion.

1700           (b) Allow the filing of the motion in the trial court  
1701 for further proceedings under Sections 99-39-13 through 99-39-23.

1702           (8) No application or relief shall be granted without the  
1703 Attorney General being given at least five (5) days to respond.

1704           (9) The dismissal or denial of an application under this  
1705 section is a final judgment and shall be a bar to a second or  
1706 successive application under this article. Excepted from this  
1707 prohibition is an application filed under Section 99-19-57(2),  
1708 raising the issue of the offender's supervening mental illness  
1709 before the execution of a sentence of death. A dismissal or

1710 denial of an application relating to mental illness under Section  
1711 99-19-57(2) shall be res judicata on the issue and shall likewise  
1712 bar any second or successive applications on the issue. Likewise  
1713 excepted from this prohibition are those cases in which the  
1714 prisoner can demonstrate either that there has been an intervening  
1715 decision of the Supreme Court of either the State of Mississippi  
1716 or the United States that would have actually adversely affected  
1717 the outcome of his conviction or sentence or that he has evidence,  
1718 not reasonably discoverable at the time of trial, that is of such  
1719 nature that it would be practically conclusive that, if it  
1720 had \* \* \* been introduced at trial, it would have caused a  
1721 different result in the conviction or sentence. Likewise exempted  
1722 are those cases in which the prisoner claims that his sentence has  
1723 expired or his probation, parole or conditional release has been  
1724 unlawfully revoked.

1725 (10) Proceedings under this section shall be subject to the  
1726 provisions of Section 99-19-42.

1727 (11) Post-conviction proceedings in which the defendant is  
1728 under sentence of death shall be governed by rules established by  
1729 the Supreme Court as well as the provisions of this section.

1730 **SECTION 44.** Section 41-19-103, Mississippi Code of 1972, is  
1731 amended as follows:

1732 41-19-103. The Ellisville State School \* \* \* established by  
1733 Chapter 210, Laws of Mississippi 1920, is recognized as now  
1734 existing and shall hereafter be known under the name of Ellisville  
1735 State School for the care and treatment of \* \* \* persons with  
1736 mental retardation. The school shall have the power to receive  
1737 and hold property, real, personal and mixed, as a body corporate.  
1738 The school shall be under the direction and control of the State  
1739 Board of \* \* \* Mental Health \* \* \*.

1740 **SECTION 45.** The following shall be codified as Section  
1741 41-19-108, Mississippi Code of 1972:

1742           41-19-108. With funds provided by the Legislature, by direct  
1743 appropriation or authorized bond issue, with federal matching  
1744 funds, or with any other available funds, the Bureau of Building,  
1745 Grounds and Real Property Management may construct and equip the  
1746 necessary residential and service buildings and other facilities  
1747 to care for the residents of Ellisville State School. The general  
1748 design of the school and all construction plans shall be approved  
1749 and recommended by the State Department of Mental Health.

1750           **SECTION 46.** The following shall be codified as Section  
1751 41-19-112, Mississippi Code of 1972:

1752           41-19-112. Ellisville State School shall be administered by  
1753 the State Board of Mental Health. Provisions relating to the  
1754 admission and care of residents at the school shall be promulgated  
1755 by the board.

1756           **SECTION 47.** The following shall be codified as Section  
1757 41-19-114, Mississippi Code of 1972:

1758           41-19-114. Persons admitted to Ellisville State School shall  
1759 be assessed support and maintenance costs in accordance with the  
1760 provisions of the state reimbursement laws as they apply to other  
1761 state institutions.

1762           **SECTION 48.** The following shall be codified as Section  
1763 41-19-116, Mississippi Code of 1972:

1764           41-19-116. Any person who (a) knowingly and unlawfully or  
1765 improperly causes a person to be adjudged to be a person of mental  
1766 retardation, (b) procures the escape of a legally committed  
1767 resident or knowingly conceals an escaped legally committed  
1768 resident of Ellisville State School, or (c) unlawfully brings any  
1769 firearm, deadly weapon or explosive into the school or its  
1770 grounds, or passes any thereof to a resident, employee or officer  
1771 of the school, is guilty of a misdemeanor and, upon conviction,  
1772 shall be punished by a fine of not less than Fifty Dollars  
1773 (\$50.00), nor more than Two Hundred Dollars (\$200.00),  
1774 imprisonment for not less than six (6) months, or both.

1775           **SECTION 49.** The following shall be codified as Section  
1776 41-19-118, Mississippi Code of 1972:

1777           41-19-118. Ellisville State School is designated as a state  
1778 agency for carrying out the purposes of any act of the Congress of  
1779 the United States, now existing or at any time hereafter enacted,  
1780 pertaining to mental retardation.

1781           **SECTION 50.** Section 41-19-121, Mississippi Code of 1972, is  
1782 amended as follows:

1783           41-19-121. The Director of \* \* \* Ellisville State School may  
1784 receive free lodging in his institution for himself and his  
1785 family, but not free board, nor free supplies from the  
1786 school. \* \* \*

1787           **SECTION 51.** Sections 41-5-55, 41-5-81, 41-17-5, 41-17-7,  
1788 41-17-9, 41-17-13, 41-19-105, 41-19-107, 41-19-109, 41-19-115,  
1789 41-19-117, 41-19-119, 41-21-43, 41-21-45, 41-45-1, 41-45-3,  
1790 41-45-5, 41-45-7, 41-45-9, 41-45-11, 41-45-13, 41-45-15, 41-45-17  
1791 and 41-45-19, Mississippi Code of 1972, which prohibit the  
1792 apprenticing of mental patients, provide certain criminal  
1793 penalties, provide certain visitation duties for directors of  
1794 mental hospitals, exempt resident mental hospital officers from  
1795 jury service, require a drug store to be kept at each mental  
1796 hospital, require separate accommodations at Whitfield for  
1797 alcoholic and drug addicts, provide for the plan of Ellisville  
1798 State School, require Ellisville's director to keep certain  
1799 records, authorize Ellisville's director to sell certain products  
1800 of the school, provide discharge procedures for Ellisville  
1801 patients, provide for habeas corpus proceedings for Ellisville  
1802 patients, authorize the receipt of gifts for the support of  
1803 Ellisville, require counties to temporarily provide for the  
1804 maintenance of indigent mentally retarded persons, prohibit  
1805 cohabitation with mentally retarded persons, and authorize the  
1806 sterilization of mentally ill and mentally retarded patients, are  
1807 repealed.

1808           **SECTION 52.** This act shall take effect and be in force from  
1809 and after July 1, 2007.