

By: Senator(s) Tindell

To: Judiciary, Division A

SENATE BILL NO. 2649
(As Sent to Governor)

1 AN ACT TO AMEND SECTIONS 41-43-7 AND 75-63-69, MISSISSIPPI
2 CODE OF 1972, TO PROVIDE A PROCESS FOR APPEAL OF ANY PENALTIES
3 IMPOSED BY THE SECRETARY OF STATE FOR VIOLATIONS OF THE PROVISIONS
4 OF LAW REGULATING THE PLACEMENT AND SALE OF CEMETERIES; TO AMEND
5 SECTION 97-17-71.1, MISSISSIPPI CODE OF 1972, TO PROVIDE A PROCESS
6 FOR APPEAL OF PENALTIES IMPOSED BY THE SECRETARY OF STATE FOR
7 VIOLATIONS OF THE PROVISIONS OF LAW REGULATING SCRAP METAL; TO
8 AMEND SECTION 79-11-509, MISSISSIPPI CODE OF 1972, TO PROVIDE A
9 PROCESS FOR APPEAL OF PENALTIES IMPOSED BY THE SECRETARY OF STATE
10 FOR VIOLATIONS OF THE PROVISIONS OF LAW REGULATING CHARITABLE
11 CORPORATIONS; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** Section 41-43-7, Mississippi Code of 1972, is
14 amended as follows:

15 41-43-7. (1) The Secretary of State may impose, following
16 notice and an opportunity for a hearing, monetary penalties not to
17 exceed One Thousand Dollars (\$1,000.00) per occurrence for any
18 violation of this chapter or any rule, regulation or order issued
19 by the Secretary of State.

20 (2) Any person aggrieved by a final order of the Secretary
21 of State may obtain a review of the order in the Chancery Court of
22 the First Judicial District of Hinds County, Mississippi, by



23 filing in the court, within thirty (30) days after the entry of
24 the order, a written petition praying that the order be modified
25 or set aside, in whole or in part. A copy of the petition shall
26 be forthwith served upon the Secretary of State and thereupon the
27 Secretary of State shall certify and file in the court a copy of
28 the filing and evidence upon which the order was entered. When
29 these have been filed, the court has exclusive jurisdiction to
30 affirm, modify, enforce or set aside the order, in whole or in
31 part.

32 **SECTION 2.** Section 75-63-69, Mississippi Code of 1972, is
33 amended as follows:

34 75-63-69. (1) Whenever it appears to the Secretary of State
35 that any person has engaged, or is about to engage, in any act or
36 practice constituting a violation of any provision of this article
37 or any rule or order under this article, he may, in his
38 discretion, seek any or all of the following remedies:

39 (a) Issue a cease and desist order with a prior hearing
40 against the person or persons engaged in the prohibited activities
41 directing them to cease and desist from further illegal activity;

42 (b) (i) Issue an order in the case of any person,
43 partnership or, if a corporation, the officers and directors who
44 sell or offer to sell preneed contracts, or other person who
45 violated this article, imposing an administrative penalty up to a
46 maximum of One Thousand Dollars (\$1,000.00) for each offense, and
47 each violation shall be considered as a separate offense in a



48 single proceeding or a series of related proceedings, with total
49 penalties not to exceed Ten Thousand Dollars (\$10,000.00) in any
50 of those proceedings, to be paid to the Secretary of State and
51 requiring reimbursement to the Secretary of State for all costs
52 and expenses incurred in the investigation of the violation(s) and
53 in the institution of administrative proceedings, if any, as a
54 result thereof;

55 (ii) For the purpose of determining the amount or
56 extent of a sanction, if any, to be imposed under paragraph (b)(i)
57 of this subsection, the Secretary of State shall consider, among
58 other factors, the frequency, persistence and willfulness of the
59 conduct constituting a violation of this article or a rule
60 promulgated under this article, or an order of the Secretary of
61 State, the number of persons adversely affected by the conduct and
62 the resources of the person committing the violation;

63 (c) Bring an action in chancery court to enjoin the
64 acts or practices to enforce compliance with this article or any
65 rule or order under this article. Upon a proper showing, a
66 permanent or temporary injunction, restraining order or writ of
67 mandamus shall be granted and a receiver or conservator may be
68 appointed for the defendant or the defendant's assets. In
69 addition, upon a proper showing by the Secretary of State, the
70 court may enter an order of rescission or restitution directed to
71 any person who has engaged in any act constituting a violation of
72 any provision of this article or any rule or order under this



73 article, or the court may impose a civil penalty up to a maximum
74 of One Thousand Dollars (\$1,000.00) for each offense, and each
75 violation shall be considered as a separate offense in a single
76 proceeding or a series of related proceedings, with total
77 penalties not to exceed Ten Thousand Dollars (\$10,000.00) in any
78 of those proceedings. The court may not require the Secretary of
79 State to post a bond.

80 (2) The Secretary of State may, with a prior hearing,
81 suspend or revoke any preneed establishment or salesperson
82 registration for violation of statutes, regulations, or an order
83 issued under this article.

84 (3) Any person, partnership or, if a corporation, the
85 officers and directors who sell or offer to sell a preneed
86 contract with a suspended or revoked registration shall be guilty
87 of a misdemeanor and, upon conviction thereof, shall be punishable
88 by a fine not less than Two Hundred Dollars (\$200.00) nor more
89 than Five Hundred Dollars (\$500.00) or by imprisonment for a term
90 of not more than one (1) year, or both fine and imprisonment.

91 (4) Any person, partnership or, if a corporation, the
92 officers and directors who embezzle or fraudulently or knowingly
93 and willfully misapply or convert preneed funds shall, upon
94 conviction, be punished by imprisonment in the custody of the
95 Mississippi Department of Corrections for a term of not less than
96 ten (10) years, or be fined not more than One Thousand Dollars
97 (\$1,000.00) and imprisoned in the county jail not more than one



98 (1) year, or both fine and imprisonment. Each such violation
99 shall constitute a separate offense.

100 (5) Upon reasonable belief that a person or corporation is
101 acting in violation of the portions of this article requiring
102 fines or imprisonment, the Secretary of State shall immediately
103 report this violation accompanied by all relevant records to the
104 Insurance Integrity Enforcement Bureau within the Office of
105 Attorney General created in Section 7-5-301, or to the district
106 attorney, county or municipal attorney having jurisdiction for the
107 same.

108 (6) No order shall be entered under this section without the
109 following:

110 (a) An appropriate prior notice to the applicant or
111 registrant;

112 (b) An opportunity for a hearing; and

113 (c) Written findings of fact and conclusions of law.

114 (7) Any person aggrieved by a final order of the Secretary
115 of State may obtain a review of the order in the Chancery Court of
116 the First Judicial District of Hinds County, Mississippi, by
117 filing in the court, within thirty (30) days after the entry of
118 the order, a written petition praying that the order be modified
119 or set aside, in whole or in part. A copy of the petition shall
120 be forthwith served upon the Secretary of State and thereupon the
121 Secretary of State shall certify and file in court a copy of the
122 filing and evidence upon which the order was entered. When these



123 have been filed, the court has exclusive jurisdiction to affirm,
124 modify, enforce or set aside the order, in whole or in part.

125 **SECTION 3.** Section 97-17-71.1, Mississippi Code of 1972, is
126 amended as follows:

127 97-17-71.1. (1) (a) From and after August 7, 2008, it
128 shall be unlawful for any scrap metal dealer or any person who
129 purchases scrap metal, deals in scrap metal, or otherwise engages
130 in the scrap metal business to fail to register with the Secretary
131 of State. All registrations under this section shall expire two
132 (2) years from the date of the registration or the renewal
133 thereof.

134 (b) The Secretary of State may promulgate and adopt
135 such rules and regulations as are reasonably necessary to carry
136 out the provisions of this section and establish such registration
137 and renewal fees as are adequate to cover the administrative costs
138 associated with the registration program.

139 (c) The Secretary of State may deny, suspend, revoke or
140 refuse to renew any registration following notice to the applicant
141 or registrant in accordance with the promulgated rules and an
142 opportunity for a hearing for any failure to comply with this
143 section, or for other good cause.

144 (2) A violation of this section is a misdemeanor punishable
145 by a fine of not less than Five Hundred Dollars (\$500.00) but not
146 to exceed One Thousand Dollars (\$1,000.00) for the first offense.
147 Any person who shall be guilty of any subsequent violations of



148 this section requiring registration shall be guilty of a felony
149 offense and shall be imprisoned in the custody of the Department
150 of Corrections for a term not to exceed three (3) years, fined not
151 more than Five Thousand Dollars (\$5,000.00), or both.

152 (3) (a) To register or renew registration, the registrant
153 must declare, under penalty of perjury, whether such registrant
154 has ever been convicted of a violation of Section 97-17-71 or
155 convicted of a criminal offense of larceny, burglary or vandalism,
156 where the offense involved metal property as defined in Section
157 97-17-71.

158 (b) (i) An applicant who has been convicted of a
159 violation of Section 97-17-71, or who has a conviction for a
160 criminal offense of larceny, burglary or vandalism where such
161 offense involved metal property, shall be prohibited from
162 registering under this section for five (5) years from the date of
163 conviction.

164 (ii) Any false statement submitted to the
165 Secretary of State for the purpose of unlawfully registering under
166 this section shall be punished as perjury in the manner provided
167 in Section 97-9-61, and a person so convicted shall be
168 disqualified for life from registering as a scrap metal dealer
169 under this section.

170 (4) The Secretary of State shall immediately report any
171 suspected criminal violation accompanied by all relevant records



172 to the Office of Attorney General and the appropriate district
173 attorney for further proceedings.

174 (5) The Secretary of State shall have the authority to:

175 (a) Conduct and carry out criminal background history
176 verification of the information provided by the applicant or
177 registrant and to require the submission of information and forms
178 from the applicant or registrant in order to accomplish the
179 registration duties imposed by this section;

180 (b) Issue a cease and desist order, with a prior
181 hearing, against the scrap metal dealer or other purchaser alleged
182 to be in violation of this section, directing the person or
183 persons to cease and desist from further illegal activity;

184 (c) (i) Issue an order against any scrap metal dealer
185 or other purchaser for any violation of this section, imposing an
186 administrative penalty up to a maximum of One Thousand Dollars
187 (\$1,000.00) for each offense. Each violation shall be considered
188 a separate offense in a single proceeding or a series of related
189 proceedings. Any administrative penalty, plus reimbursement for
190 all costs and expenses incurred in the investigation of the
191 violation and any administrative proceedings, shall be paid to the
192 Secretary of State;

193 (ii) For the purpose of determining the amount or
194 extent of a sanction, if any, to be imposed under paragraph (c)(i)
195 of this subsection, the Secretary of State shall consider, among
196 other factors, the frequency, persistence and willfulness of the



197 conduct constituting a violation of this section or any rule or
198 order hereunder; the number of persons adversely affected by the
199 conduct; and the resources of the person committing the violation;

200 (d) Bring an action in chancery court to enjoin the
201 acts or practices complained of to enforce compliance with this
202 section or any rule promulgated or order entered hereunder. Upon
203 a proper showing, a permanent or temporary injunction, restraining
204 order, or writ of mandamus shall be granted and a receiver or
205 conservator may be appointed for the defendant or the defendant's
206 assets. In addition, upon a proper showing by the Secretary of
207 State, the court may enter an order of rescission or restitution
208 directed to any person who has engaged in any act constituting a
209 violation of any provision of this section or any rule or order
210 hereunder, or the court may impose a civil penalty up to a maximum
211 of One Thousand Dollars (\$1,000.00) for each offense, provided
212 that each violation shall be considered as a separate offense in a
213 single proceeding or a series of related proceedings. The court
214 may not require the Secretary of State to post a bond.

215 (6) Any person aggrieved by a final order of the Secretary
216 of State may obtain a review of the order in the Chancery Court of
217 the First Judicial District of Hinds County, Mississippi, by
218 filing in the court, within thirty (30) days after the entry of
219 the order, a written petition praying that the order be modified
220 or set aside, in whole or in part. A copy of the petition shall
221 be forthwith served upon the Secretary of State and thereupon the



222 Secretary of State shall certify and file in court a copy of the
223 filing and evidence upon which the order was entered. When these
224 have been filed, the court has exclusive jurisdiction to affirm,
225 modify, enforce or set aside the order, in whole or in part.

226 **SECTION 4.** Section 79-11-509, Mississippi Code of 1972, is
227 amended as follows:

228 79-11-509. (1) The Secretary of State shall deny, suspend
229 or revoke a registration or an exemption for the following
230 reasons:

231 (a) The application for registration or renewal is
232 incomplete.

233 (b) The application or renewal fee (where applicable)
234 has not been paid.

235 (c) A document filed with the Secretary of State
236 contains one or more false or misleading statements or omits
237 material facts.

238 (d) The charitable contributions have not been or are
239 not being applied for the purpose or purposes stated in the
240 documents filed with the Secretary of State.

241 (e) The applicant or registrant has violated or failed
242 to comply with any provisions of this chapter or any rule or order
243 thereunder.

244 (f) Any applicant, registrant, officer, director, or
245 partner of the applicant or registrant, or any agent or employee
246 thereof who has been convicted of a felony or a misdemeanor



247 involving misrepresentation, misapplication or misuse of the money
248 or property of another maintains a position where he or she has
249 access to or control over the funds of the charitable
250 organization.

251 (g) The applicant or registrant has engaged in the use
252 or employment of dishonesty, fraud, deception, misrepresentation,
253 false promise or false pretense.

254 (h) The applicant or registrant has had the authority
255 to engage in charitable or fund-raising activities denied, revoked
256 or suspended by the Secretary of State or any other state or
257 jurisdiction.

258 (i) The applicant or registrant has been convicted of
259 any criminal offense committed in connection with the performance
260 of activities regulated under Sections 79-11-501 through 79-11-529
261 or any criminal offense involving untruthfulness or dishonesty or
262 any criminal offense relating adversely to the registrant's or
263 applicant's fitness to perform activities regulated by Sections
264 79-11-501 through 79-11-529. For the purposes of this paragraph,
265 a plea of guilty, non vult, nolo contendere or any other similar
266 disposition of alleged criminal activity shall be deemed a
267 conviction.

268 (j) Any applicant, registrant, officer, director, or
269 partner of the applicant or registrant, or any agent, volunteer or
270 employee thereof, who has been convicted under federal or state
271 law of any criminal offense involving acts against children



272 maintains a position where he or she is in close contact with
273 children.

274 (k) Any officer, director, partner, employee, agent or
275 volunteer has accrued three (3) or more unremediated citations
276 issued by the Secretary of State pursuant to this section.

277 (l) The applicant or registrant has engaged in other
278 forms of misconduct as may be determined by the rules adopted by
279 the Secretary of State.

280 (2) The Secretary of State shall notify the applicant or
281 licensee of his intent to deny, suspend or revoke a license. The
282 notification shall contain the reasons for the action and shall
283 inform him of his right to request an administrative hearing
284 within thirty (30) days of receipt of the notification. The
285 denial, suspension or revocation shall become effective thirty
286 (30) days after receipt of the notification unless a request for
287 an administrative hearing is received by the Secretary of State
288 before the expiration of the thirty (30) days. If a hearing is
289 requested and the denial, suspension or revocation is upheld, the
290 denial, suspension or revocation shall become effective upon the
291 service of the final administrative decision on the applicant or
292 licensee.

293 (3) Registration shall become effective no later than noon
294 of the thirtieth day after a completed application is filed, if no
295 denial order is in effect and no proceeding is pending under this
296 chapter. The Secretary of State may, by rule or order, specify an



297 earlier effective date, and the Secretary of State may, by order,
298 defer the effective date until noon of the thirtieth day after the
299 filing of any amendment.

300 (4) Whenever it appears to the Secretary of State that any
301 person has engaged in or is about to engage in any act or practice
302 constituting a violation of any provision of this chapter or any
303 rule or order hereunder, he may, in his discretion, seek one or
304 more of the following remedies in addition to other remedies
305 authorized by law:

306 (a) Issue a cease and desist order, with or without a
307 prior hearing against the person or persons engaged in the
308 prohibited activities, directing them to cease and desist from
309 further illegal activity;

310 (b) Administratively dissolve or seek the judicial
311 dissolution of a domestic corporation that is a charitable
312 organization, or revoke the certificate of authority of a foreign
313 corporation that is a charitable organization; or

314 (c) Issue an order imposing an administrative penalty
315 up to a maximum of Twenty-five Thousand Dollars (\$25,000.00) for
316 each offense, each violation to be considered as a separate
317 offense in a single proceeding or a series of related proceedings;

318 (d) For the purpose of determining the amount or extent
319 of a sanction, if any, to be imposed under paragraph (b) or (c) of
320 this subsection, the Secretary of State shall consider, among
321 other factors, the frequency, persistence and willfulness of the



322 conduct constituting a violation of this chapter or a rule
323 promulgated thereunder or an order of the Secretary of State, the
324 number of persons adversely affected by the conduct, and the
325 resources of the person committing the violation.

326 (5) In addition to the above remedies, the Secretary of
327 State may issue a citation to any person engaging in any act or
328 practice constituting a violation of any provision of this chapter
329 or any rule or order hereunder. The Secretary of State shall
330 establish rules providing remediation of certain citations, and
331 the decision whether to allow such remediation will be within the
332 Secretary of State's discretion.

333 (6) Whenever it appears to the Secretary of State or
334 Attorney General that any person has engaged in or is about to
335 engage in any act or practice constituting a violation of any
336 provision of Sections 79-11-501 through 79-11-529 or any rule or
337 order thereunder, either official may, in his discretion, take any
338 or all of the following actions: bring an action in chancery
339 court to obtain a temporary restraining order or injunction to
340 enjoin the acts or practices and enforce compliance with Sections
341 79-11-501 through 79-11-529 or any rule or order thereunder;
342 collect administrative penalties imposed under this section; or
343 obtain on behalf of a charitable organization the return or
344 repayment of any property or consideration received as private
345 inurement or an excess benefit in violation of Section
346 79-11-519(3)(j). Upon a proper showing a permanent or temporary



347 injunction, restraining order or writ of mandamus shall be granted
348 and a receiver or conservator may be appointed for the defendant
349 or the defendant's assets. In addition, upon a proper showing,
350 the court may enter an order of rescission, restitution or
351 disgorgement directed to any person who has engaged in any act
352 constituting a violation of any provision of Sections 79-11-501
353 through 79-11-529 or any rule or order thereunder. In addition
354 the court may impose a civil penalty up to a maximum of
355 Twenty-five Thousand Dollars (\$25,000.00) for each offense, and
356 each violation shall be considered as a separate offense in a
357 single proceeding or a series of related proceedings. The court
358 may not require the Secretary of State or Attorney General to post
359 a bond.

360 (7) Any person aggrieved by a final order of the Secretary
361 of State may obtain a review of the order in the Chancery Court of
362 the First Judicial District of Hinds County, Mississippi, by
363 filing in the court, within thirty (30) days after the entry of
364 the order, a written petition praying that the order be modified
365 or set aside, in whole or in part. A copy of the petition shall
366 be forthwith served upon the Secretary of State and thereupon the
367 Secretary of State shall certify and file in court a copy of the
368 filing and evidence upon which the order was entered. When these
369 have been filed, the court has exclusive jurisdiction to affirm,
370 modify, enforce or set aside the order, in whole or in part.



371 **SECTION 5.** This act shall take effect and be in force from
372 and after July 1, 2016.

