

By: Senator(s) Fillingane, Jackson (11th)

To: Business and Financial
Institutions

SENATE BILL NO. 2423

1 AN ACT TO AMEND SECTION 75-71-412, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE GROUNDS FOR DISCIPLINE FOR VIOLATIONS OF THE
3 MISSISSIPPI SECURITIES ACT; TO AMEND SECTION 75-71-701,
4 MISSISSIPPI CODE OF 1972, TO CLARIFY THE APPLICABILITY OF THE
5 PREDECESSOR ACT TO PENDING PROCEEDINGS AND EXISTING RIGHTS; AND
6 FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 75-71-412, Mississippi Code of 1972, is
9 amended as follows:

10 75-71-412. (a) **Disciplinary conditions-applicants.** If the
11 administrator finds that the order is in the public interest and
12 subsection (d) authorizes the action, an order issued under this
13 chapter may deny an application, or may condition or limit
14 registration of an applicant to be a broker-dealer, agent,
15 investment adviser, or investment adviser representative, and, if
16 the applicant is a broker-dealer or investment adviser, of a
17 partner, officer, director, or person having a similar status or
18 performing similar functions, or a person directly or indirectly
19 in control, of the broker-dealer or investment adviser.



20 (b) **Disciplinary conditions-registrants.** If the
21 administrator finds that the order is in the public interest and
22 subsection (d) authorizes the action, an order issued under this
23 chapter may revoke, suspend, condition, or limit the registration
24 of a registrant and, if the registrant is a broker-dealer or
25 investment adviser, of a partner, officer, director, or person
26 having a similar status or performing similar functions, or a
27 person directly or indirectly in control, of the broker-dealer or
28 investment adviser. However, the administrator may not:

29 (1) Institute a revocation or suspension proceeding
30 under this subsection (b) based on an order issued under a law of
31 another state that is reported to the administrator or a designee
32 of the administrator more than one (1) year after the date of the
33 order on which it is based; or

34 (2) Under subsection (d) (5) (A) or (B), issue an order
35 on the basis of an order issued under the securities act of
36 another state unless the other order was based on conduct for
37 which subsection (d) would authorize the action had the conduct
38 occurred in this state.

39 (c) **Disciplinary penalties-registrants.** If the
40 administrator finds that the order is in the public interest and
41 subsection (d) (1) through (6), (8), (9), (10), (12) or (13)
42 authorizes the action, an order under this chapter may censure,
43 impose a bar, or impose a civil penalty in an amount not to exceed
44 a maximum of the amount specified in Section 75-71-613 for each



45 violation on a registrant, and, if the registrant is a
46 broker-dealer or investment adviser, a partner, officer, director,
47 or person having a similar status or performing similar functions,
48 or a person directly or indirectly in control of the broker-dealer
49 or investment adviser.

50 (d) **Grounds for discipline.** A person may be disciplined
51 under subsections (a) through (c) if the person:

52 (1) Has filed an application for registration in this
53 state under this chapter or the predecessor act within the
54 previous ten (10) years, which, as of the effective date of
55 registration or as of any date after filing in the case of an
56 order denying effectiveness, was incomplete in any material
57 respect or contained a statement that, in light of the
58 circumstances under which it was made, was false or misleading
59 with respect to a material fact;

60 (2) Willfully violated or willfully failed to comply
61 with this chapter or the predecessor act or a rule adopted or
62 order issued under this chapter or the predecessor act within the
63 previous * * * fifteen (15) years; for purposes of an ongoing
64 failure to supervise, each twelve-month period or less of the
65 conduct is a separate violation of this subsection, and if the
66 person has failed to supervise more than one (1) individual at a
67 time during the twelve (12) consecutive months' time period, then
68 it shall be a separate violation of this subsection for each



69 individual that the person failed to supervise during the
70 applicable time period;

71 (3) Has been convicted of a felony or within the
72 previous ten (10) years has been convicted of a misdemeanor
73 involving a security, a commodity future or option contract, or an
74 aspect of a business involving securities, commodities,
75 investments, franchises, insurance, banking, or finance;

76 (4) Is enjoined or restrained by a court of competent
77 jurisdiction in an action instituted by the administrator under
78 this chapter or the predecessor act, a state, the Securities and
79 Exchange Commission, or the United States from engaging in or
80 continuing an act, practice, or course of business involving an
81 aspect of a business involving securities, commodities,
82 investments, franchises, insurance, banking, or finance;

83 (5) Is the subject of an order, issued after notice and
84 opportunity for hearing by:

85 (A) The securities or other financial services
86 regulator of a state or the Securities and Exchange Commission or
87 other federal agency denying, revoking, barring, or suspending
88 registration as a broker-dealer, agent, investment adviser,
89 federal covered investment adviser, or investment adviser
90 representative;

91 (B) The securities regulator of a state or the
92 Securities and Exchange Commission against a broker-dealer, agent,



93 investment adviser, investment adviser representative, or federal
94 covered investment adviser;

95 (C) The Securities and Exchange Commission or a
96 self-regulatory organization suspending or expelling the
97 registrant from membership in the self-regulatory organization;

98 (D) A court adjudicating a United States Postal
99 Service fraud order;

100 (E) The insurance regulator of a state denying,
101 suspending, or revoking registration as an insurance agent; or

102 (F) A depository institution or financial services
103 regulator suspending or barring the person from the depository
104 institution or other financial services business;

105 (6) Is the subject of an adjudication or determination,
106 after notice and opportunity for hearing, by the Securities and
107 Exchange Commission, the Commodity Futures Trading Commission; the
108 Federal Trade Commission; a federal depository institution
109 regulator, or a depository institution, insurance, or other
110 financial services regulator of a state that the person willfully
111 violated the Securities Act of 1933, the Securities Exchange Act
112 of 1934, the Investment Advisers Act of 1940, the Investment
113 Company Act of 1940, or the Commodity Exchange Act, the securities
114 or commodities law of a state, or a federal or state law under
115 which a business involving investments, franchises, insurance,
116 banking, or finance is regulated;



117 (7) Is insolvent, either because the person's
118 liabilities exceed the person's assets or because the person
119 cannot meet the person's obligations as they mature, but the
120 administrator may not enter an order against an applicant or
121 registrant under this subsection (d) without a finding of
122 insolvency as to the applicant or registrant;

123 (8) Refuses to allow or otherwise impedes the
124 administrator from conducting an audit or inspection under Section
125 75-71-411(d) or refuses access to a registrant's office to conduct
126 an audit or inspection under Section 75-71-411(d);

127 (9) Has failed to reasonably supervise an agent,
128 investment adviser representative, or other individual, if the
129 agent, investment adviser representative, or other individual was
130 subject to the person's supervision and committed a violation of
131 this chapter or the predecessor act or a rule adopted or order
132 issued under this chapter or the predecessor act within the
133 previous * * * fifteen (15) years;

134 (10) Has not paid the proper filing fee within thirty
135 (30) days after having been notified by the administrator of a
136 deficiency, but the administrator shall vacate an order under this
137 subsection (d) when the deficiency is corrected;

138 (11) After notice and opportunity for a hearing, has
139 been found within the previous ten (10) years:

140 (A) By a court of competent jurisdiction to have
141 willfully violated the laws of a foreign jurisdiction under which



142 the business of securities, commodities, investment, franchises,
143 insurance, banking, or finance is regulated;

144 (B) To have been the subject of an order of a
145 securities regulator of a foreign jurisdiction denying, revoking,
146 or suspending the right to engage in the business of securities as
147 a broker-dealer, agent, investment adviser, investment adviser
148 representative, or similar person; or

149 (C) To have been suspended or expelled from
150 membership by or participation in a securities exchange or
151 securities association operating under the securities laws of a
152 foreign jurisdiction;

153 (12) Is the subject of a cease and desist order issued
154 by the Securities and Exchange Commission or issued under the
155 securities, commodities, investment, franchise, banking, finance,
156 or insurance laws of a state;

157 (13) Has engaged in dishonest or unethical practices in
158 the securities, commodities, investment, franchise, banking,
159 finance, or insurance business within the previous ten (10) years;
160 or

161 (14) Is not qualified on the basis of factors such as
162 training, experience, and knowledge of the securities business.
163 However, in the case of an application by an agent for a
164 broker-dealer that is a member of a self-regulatory organization
165 or by an individual for registration as an investment adviser
166 representative, a denial order may not be based on this subsection



167 if the individual has successfully completed all examinations
168 required by subsection (e). The administrator may require an
169 applicant for registration under Section 75-71-402 or 75-71-404
170 who has not been registered in a state within the two (2) years
171 preceding the filing of an application in this state to
172 successfully complete an examination.

173 (e) **Examinations.** A rule adopted or order issued under this
174 chapter may require that an examination, including an examination
175 developed or approved by an organization of securities regulators,
176 be successfully completed by a class of individuals or all
177 individuals. An order issued under this chapter may waive, in
178 whole or in part, an examination as to an individual and a rule
179 adopted under this chapter may waive, in whole or in part, an
180 examination as to a class of individuals if the administrator
181 determines that the examination is not necessary or appropriate in
182 the public interest and for the protection of investors.

183 (f) **Summary process.** The administrator may suspend or deny
184 an application summarily; restrict, condition, limit, or suspend a
185 registration; or censure, bar, or impose a civil penalty on a
186 registrant before final determination of an administrative
187 proceeding. Upon the issuance of an order, the administrator
188 shall promptly notify each person subject to the order that the
189 order has been issued, the reasons for the action, and that within
190 fifteen (15) days after the receipt of a request in a record from
191 the person the matter will be scheduled for a hearing. If a



192 hearing is not requested and none is ordered by the administrator
193 within thirty (30) days after the date of service of the order,
194 the order becomes final by operation of law. If a hearing is
195 requested or ordered, the administrator, after notice of and
196 opportunity for hearing to each person subject to the order, may
197 modify or vacate the order or extend the order until final
198 determination.

199 (g) **Procedural requirements.** An order issued may not be
200 issued under this section, except under subsection (f), without:

201 (1) Appropriate notice to the applicant or registrant;

202 (2) Opportunity for hearing; and

203 (3) Findings of fact and conclusions of law in a record
204 in accordance with the administrative hearing procedures set forth
205 in the rules.

206 (h) **Control person liability.** A person that controls,
207 directly or indirectly, a person not in compliance with this
208 section may be disciplined by order of the administrator under
209 subsections (a) through (c) to the same extent as the noncomplying
210 person, unless the controlling person did not know, and in the
211 exercise of reasonable care could not have known, of the existence
212 of conduct that is a ground for discipline under this section.

213 (i) **Limit on investigation or proceeding.** The administrator
214 may not institute a proceeding under subsection (a), (b), or (c)
215 based solely on material facts actually known by the administrator
216 unless an investigation or the proceeding is instituted within one



217 (1) year after the administrator actually acquires knowledge of
218 the material facts.

219 **SECTION 2.** Section 75-71-701, Mississippi Code of 1972, is
220 amended as follows:

221 75-71-701. (a) **Applicability of predecessor chapter to**
222 **pending proceedings and existing rights.** The predecessor chapter
223 exclusively governs all actions or proceedings that are pending on
224 January 1, 2010, or may be instituted on the basis of conduct
225 occurring before January 1, 2010, but a private civil action may
226 not be maintained to enforce any liability under the predecessor
227 chapter unless instituted within any period of limitation that
228 applied when the cause of action accrued or within five (5) years
229 after January 1, 2010, whichever is earlier. This time limitation
230 shall not apply to a civil enforcement action or an administrative
231 enforcement action instituted by the administrator under Section
232 75-71-603 or Section 75-71-604.

233 (b) **Continued effectiveness under predecessor chapter.** All
234 effective registrations under the predecessor chapter, all
235 administrative orders relating to the registrations, rules,
236 statements of policy, interpretative opinions, declaratory
237 rulings, no-action determinations, and conditions imposed on the
238 registrations under the predecessor chapter remain in effect while
239 they would have remained in effect if this chapter had not been
240 enacted. They are considered to have been filed, issued, or



241 imposed under this chapter, but are exclusively governed by the
242 predecessor chapter.

243 (c) **Applicability of predecessor chapter to offers or sales.**

244 The predecessor chapter exclusively applies to an offer or sale
245 made within one (1) year after January 1, 2010, pursuant to an
246 offering made in good faith before January 1, 2010, on the basis
247 of an exemption available under the predecessor chapter.

248 (d) For the purposes of this chapter, "predecessor chapter"
249 means Chapter 71 of Title 75, Mississippi Code of 1972, as it
250 existed on December 31, 2009.

251 **SECTION 3.** This act shall take effect and be in force from
252 and after July 1, 2017.

