

By: Representative Hobgood-Wilkes (By
Request)

To: Judiciary A

HOUSE BILL NO. 1488

1 AN ACT TO BE KNOWN AS THE "PERMIT FREEDOM ACT"; TO REQUIRE
2 STATE AND LOCAL GOVERNMENTAL AGENCIES TO ADOPT UNAMBIGUOUS
3 LANGUAGE RELATING TO THE ISSUANCE OF LICENSES OR PERMITS TO ENGAGE
4 IN CONSTITUTIONALLY PROTECTED ACTIVITY; TO PRESCRIBE REQUIREMENTS
5 FOR HEARINGS HELD BEFORE AN AGENCY HEARING OFFICER ON THE LICENSE
6 AND PERMIT APPLICATIONS; TO AUTHORIZE A PARTY AGGRIEVED BY A
7 HEARING OFFICER'S ADMINISTRATIVE DECISION TO APPEAL TO THE
8 CHANCERY COURT FOR A DE NOVO REVIEW; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** This act shall be known and may be cited as the
11 "Permit Freedom Act."

12 **SECTION 2.** Notwithstanding any other provision of law, in
13 any case in which a license or permit is required before a person
14 engages in a constitutionally protected activity, the criteria for
15 the granting or denial of that license or permit must be specified
16 in clear and unambiguous language. An applicant is entitled to a
17 review and determination of that permit or license application
18 within thirty (30) days or at such other time as the Legislature
19 may prescribe. The determination of what constitutes clear and
20 unambiguous language is a judicial question, without deference to



the Legislature or the licensing or permitting governmental agency.

SECTION 3. (1) Unless knowingly and voluntarily waived by the parties, each state and local governmental agency holding a hearing on a license or permit application must comply with the Mississippi Rules of Civil Procedure and the Mississippi Rules of Evidence. Notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties must be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed, including any staff memoranda or data, and parties must be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be used in the evaluation of the evidence.

(2) The parties to a contested case or appealable agency action may be represented by counsel or proceed without counsel, submit evidence, and cross-examine witnesses.

(3) A party may file a motion with the head of the agency to disqualify a hearing officer from conducting a hearing for bias, prejudice, personal interest or lack of technical expertise necessary for a hearing. The hearing officer may issue subpoenas to compel the attendance of witnesses and the production of documents. The subpoenas must be served and enforced in the manner provided by law for the service and enforcement of



subpoenas in civil matters. The hearing officer may administer oaths and affirmations to witnesses.

(4) All hearings pursuant to this section must be recorded. The hearing officer shall secure either a court reporter or an electronic means of producing a clear and accurate record of the proceeding at the agency's expense.

(5) On application of a party or the agency and for use as evidence, the hearing officer may permit a deposition of a witness who cannot be subpoenaed or who is unable to attend the hearing to be taken. The deposition must be taken in the manner and on the terms designated by the hearing officer. A subpoena for the production of documents may be ordered by the hearing officer if the party seeking the discovery demonstrates that the party has reasonable need for the materials being sought. All provisions of law that compel a person under subpoena to testify are applicable.

(6) Disposition may be made by stipulation, agreed settlement, consent order or default. Findings of fact must be based exclusively on the evidence and on matters officially noticed. A final administrative decision must include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(7) The burden of proof in an agency hearing on a license or permit application is a preponderance of the evidence.



Notwithstanding any other law, at a hearing on an agency's denial of a license or permit or a denial of an application or request for modification of a license or permit, the agency has the burden of persuasion. At a hearing on an agency action to suspend, revoke, terminate or modify, on its own initiative, material conditions of a license or permit, the agency has the burden of persuasion. At a hearing on an agency's imposition of fees or penalties or any agency compliance order, the agency has the burden of persuasion.

SECTION 4. In an action to review a final administrative decision on a license or permit application, the parties are entitled to a speedy and public determination by the chancery court in the county in which the application was made. If requested by a party to an action within thirty (30) days after filing a notice of appeal or petition for review, the court must hold an evidentiary hearing, including testimony and argument, to the extent necessary to make the determination. Notwithstanding any other provision of law, for review of final administrative decisions, the court shall decide de novo all relevant questions of law, including the interpretation of constitutional, statutory and regulatory provisions, unless the parties stipulate otherwise. On demand of any party, the determination of facts may be made by a jury. Relevant and admissible exhibits and testimony that were not received during the administrative hearing may be admitted so long as compliant with the Mississippi Rules of Evidence, and



96 objections that a party failed to make to evidence offered at the
97 administrative hearing must be considered unless either of the
98 following is true:

99 (a) The exhibit, testimony or objection was withheld
100 for purposes of delay, harassment or other improper purpose; or

101 (b) Allowing admission of the exhibit or testimony or
102 consideration of the objection would cause substantial prejudice
103 to another party.

104 **SECTION 5.** This act shall take effect and be in force from
105 and after July 1, 2024.

