

By: Senator(s) Posey

To: Business and Financial
Institutions

SENATE BILL NO. 2549

1 AN ACT TO AMEND SECTION 73-11-55, MISSISSIPPI CODE OF 1972,
2 TO REQUIRE THE STATE BOARD OF FUNERAL SERVICE TO ADOPT RULES
3 ESTABLISHING MINIMUM STANDARDS OF SAFETY FOR EMPLOYEES OF FUNERAL
4 ESTABLISHMENTS; TO AMEND SECTION 73-11-57, MISSISSIPPI CODE OF
5 1972, TO REQUIRE STATE BOARD OF FUNERAL SERVICE TO CONDUCT
6 FOLLOW-UP INSPECTIONS OF FUNERAL ESTABLISHMENTS THAT WERE CITED
7 FOR NONCOMPLIANCE; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 73-11-55, Mississippi Code of 1972, is
10 amended as follows:

11 73-11-55. (1) No person or party shall conduct, maintain,
12 manage or operate a funeral establishment or branch thereof unless
13 a license for each such establishment has been issued by the board
14 and is conspicuously displayed in such funeral establishment. In
15 case of funeral services held in any private residence, church,
16 cemetery, cemetery chapel, cemetery facility, or lodge hall, no
17 license shall be required.

18 (2) To be licensed as a funeral establishment, a place or
19 premise must be at a fixed and specified address or location and
20 must be used for immediate post-death activities, whether used for
21 the custody, shelter, care, preparation and/or embalming of the
22 human dead. Every funeral establishment shall be under the charge
23 and personal supervision of a Mississippi funeral director
24 licensee or a Mississippi funeral service licensee. The licensee
25 in charge and the licensee with personal supervisory
26 responsibilities need not be the same licensee. Each licensed
27 funeral establishment shall be inspected at least once during each
28 licensing period. Such inspections may be unannounced.

29 (3) (a) A funeral establishment must contain a preparation
30 and/or embalming room, adequate casket and/or vault selection
31 room, and holding facilities or proper room or rooms in which
32 rites and ceremonies may be held. A funeral establishment shall
33 be subject to an inspection at least once during a two-year
34 license period. Each new establishment must be inspected before
35 the opening. All portions of each facility licensed under this
36 section shall be kept in a clean and sanitary condition. The
37 board shall adopt rules establishing minimum standards of safety
38 for workers employed in funeral establishments from health and
39 safety risks.

40 (b) A branch establishment must contain an office
41 and/or an arrangement room, and a room for viewing and/or a chapel
42 or proper place for ceremonies. A branch establishment need not
43 meet all requirements specified in paragraph (a) of this
44 subsection and need not be under the personal supervision of a
45 Mississippi funeral director licensee or a Mississippi funeral
46 service licensee.

47 If the branch meets all requirements of a funeral
48 establishment as specified in paragraph (a) of this subsection,
49 such establishment must be under the charge and personal
50 supervision of a Mississippi funeral director licensee or a
51 Mississippi funeral service licensee.

52 (c) A commercial mortuary service is a funeral
53 establishment that embalms and transports for licensed funeral
54 establishments and does not sell any services or merchandise
55 directly or at retail to the public.

56 (4) Applications for funeral establishment licenses, branch
57 establishment licenses or commercial mortuary service licenses
58 shall be made on blanks furnished by the board and shall be
59 accompanied by a fee in an amount fixed by the board pursuant to
60 Section 73-11-56. All establishment licenses shall be issued for

61 a period of two (2) years, except initial licenses may be prorated
62 from the date of issuance to the next renewal date.

63 Renewal funeral establishment and branch establishment
64 license applications and license fees shall be due and payable to
65 the board on or before the expiration date of the license. The
66 board shall mail the notice of renewal and the due date for
67 payment of the renewal fee at least thirty (30) days before that
68 date.

69 (5) If the renewal fee is not paid on or postmarked by the
70 due date, the license shall by operation of law automatically
71 expire and become void without further action of the board. All
72 establishments whose licenses have expired under this section may
73 be reinstated by filing with the board an application for
74 reinstatement, submitting to an inspection during which time the
75 licensee in charge of such establishment shall be interviewed by
76 the board or its designee and by paying all renewal fees in
77 arrears and a reinstatement fee.

78 (6) No license shall be assignable or transferable or valid
79 for any establishment other than the original licensee. License
80 fees and application fees are nonrefundable.

81 (7) A license for each new establishment, change of
82 location, change of ownership, or reinstatement of an
83 establishment shall not be issued until an inspection has been
84 made, license and inspection fees have been paid, and the licensee
85 in charge of such establishment has been interviewed by the board
86 or its designee.

87 (8) No operator of a funeral establishment shall allow any
88 person licensed for the practice of funeral service or funeral
89 directing, as the case may be, to operate out of such funeral
90 establishment unless such licensee is the operator of or an
91 employee of the operator of a funeral establishment which has been
92 issued a license by the board.

93 (9) The board is authorized to establish rules and
94 regulations for the issuance of a special funeral establishment
95 work permit.

96 **SECTION 2.** Section 73-11-57, Mississippi Code of 1972, is
97 amended as follows:

98 73-11-57. (1) The board may refuse to examine or to issue
99 or renew, or may suspend or revoke, any license, or may reprimand
100 or place the holder thereof on a term of probation, after proper
101 hearing, upon finding the holder of such license to be guilty of
102 acts of commission or omission including the following:

103 (a) The employment of fraud or deception in applying
104 for a license or in passing the examination provided for in this
105 chapter;

106 (b) The erroneous issuance of a license to any person;

107 (c) The conviction of a felony by any court in this
108 state or any federal court or by the court of any other state or
109 territory of the United States;

110 (d) The practice of embalming under a false name or
111 without a license for the practice of funeral service;

112 (e) The impersonation of another funeral service or
113 funeral directing licensee;

114 (f) The permitting of a person other than a funeral
115 service or funeral directing licensee to make arrangements for a
116 funeral and/or form of disposition;

117 (g) Violation of any provision of this chapter or any
118 rule or regulation of the board;

119 (h) Having had a license for the practice of funeral
120 service or funeral directing suspended or revoked in any
121 jurisdiction, having voluntarily surrendered his license in any
122 jurisdiction, having been placed on probation in any jurisdiction,
123 having been placed under disciplinary order(s) or other
124 restriction in any manner for funeral directing and/or funeral
125 service, or operating a funeral establishment (a certified copy of

126 the order of suspension, revocation, probation or disciplinary
127 action shall be prima facie evidence of such action);

128 (i) Solicitation of dead human bodies by the licensee,
129 his agents, assistants or employees, whether such solicitation
130 occurs after death or when death is imminent; if the person
131 solicited has made known a desire not to receive the
132 communication, or if the solicitation involves coercion, duress or
133 harassment, or if the solicitation takes place at the residence of
134 the client or prospective client, is uninvited by the client or
135 prospective client and has not been previously agreed to by the
136 client or prospective client; however, this shall not be deemed to
137 prohibit general advertising;

138 (j) Employment directly or indirectly of any
139 apprentice, agent, assistant, employee, or other person, on a
140 part-time or full-time basis or on commission, for the purpose of
141 calling upon individuals or institutions by whose influence dead
142 human bodies may be turned over to a particular funeral
143 establishment;

144 (k) Failure to make responses to communications or
145 requests of the board within thirty (30) days;

146 (l) Failure to comply with an order of the board within
147 thirty (30) days;

148 (m) Knowingly performing any act that in any way
149 assists an unlicensed person to practice funeral service or
150 funeral directing;

151 (n) Making a false statement on death certificates; or

152 (o) Unprofessional conduct which includes, but is not
153 limited to:

154 (i) Retaining a dead human body for the payment of
155 a fee for the performance of services not authorized in writing;

156 (ii) Knowingly performing any act which in any way
157 assists an unlicensed person to practice funeral service or
158 funeral directing;

159 (iii) Being guilty of any dishonorable conduct
160 likely to deceive, defraud or harm the public;

161 (iv) Any act or omission in the practice of
162 funeral service or directing which constitutes dishonesty, fraud
163 or misrepresentation with the intent to benefit the licensee,
164 another person or funeral establishment, or with the intent to
165 substantially injure another person, licensee or funeral
166 establishment; or

167 (v) Any act or conduct, whether the same or of a
168 different character than specified above, which constitutes or
169 demonstrates bad faith, incompetency or untrustworthiness; or
170 dishonest, fraudulent or improper dealing; or any other violation
171 of the provisions of this chapter, the rules and regulations
172 established by the board or any rule or regulation promulgated by
173 the Federal Trade Commission relative to the practice of funeral
174 service or funeral directing.

175 (2) In instances where the board has cited a funeral
176 establishment or branch establishment for noncompliance with state
177 law or board policy, the board shall conduct a follow-up
178 inspection of the funeral establishment within thirty (30) days of
179 the initial inspection to determine if corrective action has been
180 taken.

181 (3) The board may, upon satisfactory proof that the
182 applicant or licensee has been guilty of any of the offenses above
183 enumerated, refuse to examine or issue a license to the applicant,
184 or may refuse to renew or revoke or suspend the license of the
185 licensee, or place on probation or reprimand him, upon a majority
186 vote of the board members, after a hearing thereon. The board is
187 hereby vested with full power and authority to hold and conduct
188 such hearings, compel the attendance of witnesses and the
189 production of books, records and documents, issue subpoenas
190 therefor, administer oaths, examine witnesses, and do all things
191 necessary to properly conduct such hearings. The board may waive

192 the necessity of a hearing if the person accused of a violation
193 admits that he has been guilty of such offense. Any person who
194 has been refused a license or whose license has been revoked or
195 suspended may, within thirty (30) days after the decision of the
196 board, file with the board a written notice stating that he feels
197 himself aggrieved by such decision and appeals therefrom to the
198 circuit court. Upon the filing of such notice, the secretary of
199 the board shall transmit to the clerk of the circuit court the
200 records and findings of such proceedings. The circuit court shall
201 hear and determine as to whether the action of the board was in
202 accord or consistent with law, or was arbitrary, unwarranted or in
203 abuse of discretion. An appeal from the circuit court judgment or
204 decree may be reviewed by the Supreme Court as is provided by law
205 for other appeals. An appeal of a decision or order of the board
206 does not act as a supersedeas.

207 (4) In a proceeding conducted under this section by the
208 board for the revocation or suspension of a license, the board
209 shall have the power and authority for the grounds stated for such
210 revocation or suspension, and in addition thereto or in lieu of
211 such revocation or suspension may assess and levy upon any person
212 licensed under this chapter, a monetary penalty, as follows:

213 (a) For the first violation of any of the subparagraphs
214 of subsection (1) of this section, a monetary penalty of not less
215 than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars
216 (\$500.00).

217 (b) For the second violation of any of the
218 subparagraphs of subsection (1) of this section, a monetary
219 penalty of not less than One Hundred Dollars (\$100.00) nor more
220 than One Thousand Dollars (\$1,000.00).

221 (c) For the third and any subsequent violation of any
222 of the subparagraphs of subsection (1) of this section, a monetary
223 penalty of not less than Five Hundred Dollars (\$500.00) and not
224 more than Five Thousand Dollars (\$5,000.00).

225 (d) For any violation of any of the subparagraphs of
226 subsection (1) of this section, those reasonable costs that are
227 expended by the board in the investigation and conduct of a
228 proceeding for licensure revocation or suspension, including, but
229 not limited to, the cost of process service, court reporters,
230 expert witnesses and investigators.

231 (5) The power and authority of the board to assess and levy
232 such monetary penalties hereunder shall not be affected or
233 diminished by any other proceeding, civil or criminal, concerning
234 the same violation or violations except as provided in this
235 section.

236 (6) A licensee shall have the right of appeal from the
237 assessment and levy of a monetary penalty as provided in this
238 section under the same conditions as a right of appeal is provided
239 elsewhere for appeals from an adverse ruling, order or decision of
240 the board.

241 (7) Any monetary penalty assessed and levied under this
242 section shall not take effect until after the time for appeal
243 shall have expired.

244 (8) A monetary penalty assessed and levied under this
245 section shall be paid to the board by the licensee upon the
246 expiration of the period allowed for appeal of such penalties
247 under this section or may be paid sooner if the licensee elects.
248 With the exception of subsection (4)(d) of this section, monetary
249 penalties collected by the board under this section shall be
250 deposited to the credit of the General Fund of the State Treasury.
251 Any monies collected by the board under subsection (4)(d) of this
252 section shall be deposited into the special fund operating account
253 of the board.

254 (9) When payment of a monetary penalty assessed and levied
255 by the board against a licensee in accordance with this section is
256 not paid by the licensee when due under this section, the board
257 shall have power to institute and maintain proceedings in its name

258 for enforcement of payment in the chancery court of the county and
259 judicial district of residence of the licensee, and if the
260 licensee be a nonresident of the State of Mississippi, such
261 proceedings shall be in the Chancery Court of the First Judicial
262 District of Hinds County, Mississippi.

263 (10) In addition to the reasons specified in subsection (1)
264 of this section, the board shall be authorized to suspend the
265 license of any licensee for being out of compliance with an order
266 for support, as defined in Section 93-11-153. The procedure for
267 suspension of a license for being out of compliance with an order
268 for support, and the procedure for the reissuance or reinstatement
269 of a license suspended for that purpose, and the payment of any
270 fees for the reissuance or reinstatement of a license suspended
271 for that purpose, shall be governed by Section 93-11-157 or
272 93-11-163, as the case may be. Actions taken by the board in
273 suspending a license when required by Section 93-11-157 or
274 93-11-163 are not actions from which an appeal may be taken under
275 this section. Any appeal of a license suspension that is required
276 by Section 93-11-157 or 93-11-163 shall be taken in accordance
277 with the appeal procedure specified in Section 93-11-157 or
278 93-11-163, as the case may be, rather than the procedure specified
279 in this section. If there is any conflict between any provision
280 of Section 93-11-157 or 93-11-163 and any provision of this
281 chapter, the provisions of Section 93-11-157 or 93-11-163, as the
282 case may be, shall control.

283 **SECTION 3.** This act shall take effect and be in force from
284 and after July 1, 2005.