

By: Senator(s) Dawkins

To: Public Health and
Welfare; Appropriations

SENATE BILL NO. 2600

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

312 25-7-61. (1) Fees of jurors shall be payable as follows:

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

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

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

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

339 certificate of the county attorney in all counties that have
340 county attorneys, otherwise by the justice court judge.

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

346 (a) The local public library;

347 (b) Local law enforcement;

348 (c) The Mississippi Fire Fighters Memorial Burn Center
349 Fund created in Section 7-9-70; or

350 (d) Any other governmental agency.

351 * * *

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

354 29-1-101. The Secretary of State, for and on behalf of the
355 state, may convey an easement or easements for the construction
356 and maintenance of pipelines in, on, under, and across all of the
357 state land owned (including that submerged or wherever the tide
358 may ebb and flow) now or hereafter acquired, excepting, however,
359 state highway rights of way, sixteenth section school land, lieu
360 lands, and * * * forfeited tax land and property the title to
361 which is subject to any lawful redemption, and excepting the state
362 land comprising the old asylum property located in the City of
363 Jackson, * * * property of the Department of Mental Health, the
364 Parchman Penitentiary property located in Sunflower County,
365 Mississippi, and all other Penitentiary property, to any person,
366 firm, or corporation constructing or operating a refinery for the
367 refining of oil, gas, or petroleum products in the state, or to
368 any person, firm, or corporation transporting by pipeline any
369 substance to or from any such refinery in this state, for such
370 consideration as the Secretary of State deems just and proper,
371 which shall be subject to approval by the Secretary of State, the

372 Governor, and the Attorney General of the state, for easements in,
373 on, under, and across the state-owned land.

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

376 31-11-3. (1) The Department of Finance and Administration,
377 for the purposes of carrying out the provisions of this chapter,
378 in addition to all other rights and powers granted by law, shall
379 have full power and authority to employ and compensate architects
380 or other employees necessary for the purpose of making
381 inspections, preparing plans and specifications, supervising the
382 erection of any buildings, and making any repairs or additions as
383 may be determined by the Department of Finance and Administration
384 to be necessary, under the rules and regulations of the State
385 Personnel Board. The department shall have entire control and
386 supervision of, and determine what, if any, buildings, additions,
387 repairs or improvements are to be made under the provisions of
388 this chapter, subject to the approval of the Public Procurement
389 Review Board.

390 (2) The department shall have full power to erect buildings,
391 make repairs, additions or improvements, and buy materials,
392 supplies and equipment for any of the institutions or departments
393 of the state subject to the approval of the Public Procurement
394 Review Board. In addition to other powers conferred, the
395 department shall have full power and authority as directed by the
396 Legislature, or when funds have been appropriated for its use for
397 these purposes, to:

398 (a) Build a state office building;

399 (b) Build suitable plants or buildings for the use and
400 housing of any state schools or institutions, including the
401 building of plants or buildings for new state schools or
402 institutions, as provided for by the Legislature;

403 (c) Provide state aid for the construction of school
404 buildings;

405 (d) Promote and develop the training of returned
406 veterans of the United States in all sorts of educational and
407 vocational learning to be supplied by the proper educational
408 institution of the State of Mississippi, and in so doing, allocate
409 monies appropriated to it for these purposes to the Governor for
410 use by him in setting up, maintaining and operating an office and
411 employing a state director of on-the-job training for veterans and
412 the personnel necessary in carrying out Public Law No. 346 of the
413 United States;

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

416 (f) Build and equip additional buildings and wards at
417 the Boswell Retardation Center;

418 (g) Construct * * * sewage disposal and treatment
419 plants at the state psychiatric hospitals or institutions, and in
420 so doing, acquire additional land as may be necessary, and to
421 exercise the right of eminent domain in the acquisition of this
422 land;

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

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

428 (j) Build and equip a gymnasium at Columbia Training
429 School;

430 (k) Approve or disapprove the expenditure of any money
431 appropriated by the Legislature when authorized by the bill making
432 the appropriation;

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

435 (m) Sell and convey state lands when authorized by the
436 Legislature, cause those lands to be properly surveyed and
437 platted, execute all deeds or other legal instruments, and do any

438 and all other things required to effectively carry out the purpose
439 and intent of the Legislature. Any transaction that involves
440 state lands under the provisions of this paragraph shall be done
441 in a manner consistent with the provisions of Section 29-1-1;

442 (n) Collect and receive from educational institutions
443 of the State of Mississippi monies required to be paid by these
444 institutions to the state in carrying out any veterans'
445 educational programs;

446 (o) Purchase lands for building sites, or as additions
447 to building sites, for the erection of buildings and other
448 facilities that the department is authorized to erect, and
449 demolish and dispose of old buildings, when necessary for the
450 proper construction of new buildings. Any transaction that
451 involves state lands under the provisions of this paragraph shall
452 be done in a manner consistent with the provisions of Section
453 29-1-1; and

454 (p) Obtain business property insurance with a
455 deductible of not less than One Hundred Thousand Dollars
456 (\$100,000.00) on state-owned buildings under the management and
457 control of the department.

458 (3) The department shall survey state-owned and
459 state-utilized buildings to establish an estimate of the costs of
460 architectural alterations under the Americans With Disabilities
461 Act of 1990, 42 USCS, Section 12111 et seq. The department shall
462 establish priorities for making the identified architectural
463 alterations and shall make known to the Legislative Budget Office
464 and to the Legislature the required cost to effectuate those
465 alterations. To meet the requirements of this subsection, the
466 department shall use standards of accessibility that are at least
467 as stringent as any applicable federal requirements and may
468 consider:

469 (a) Federal minimum guidelines and requirements issued
470 by the United States Architectural and Transportation Barriers
471 Compliance Board and standards issued by other federal agencies;

472 (b) The criteria contained in the American Standard
473 Specifications for Making Buildings Accessible and Usable by the
474 Physically Handicapped and any amendments thereto as approved by
475 the American Standards Association, Incorporated (ANSI Standards);

476 (c) Design manuals;

477 (d) Applicable federal guidelines;

478 (e) Current literature in the field;

479 (f) Applicable safety standards; and

480 (g) Any applicable environmental impact statements.

481 (4) The department shall observe the provisions of Section
482 31-5-23, in letting contracts and shall use Mississippi products,
483 including paint, varnish and lacquer that contain as vehicles tung
484 oil and either ester gum or modified resin (with rosin as the
485 principal base of constituents), and turpentine shall be used as a
486 solvent or thinner, where these products are available at a cost
487 not to exceed the cost of products grown, produced, prepared, made
488 or manufactured outside of the State of Mississippi.

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

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

496 (7) The department shall review and preapprove all
497 architectural or engineering service contracts entered into by any
498 state agency, institution, commission, board or authority
499 regardless of the source of funding used to defray the costs of
500 the construction or renovation project for which services are to
501 be obtained. The provisions of this subsection (7) shall not

502 apply to any architectural or engineering contract paid for by
503 self-generated funds of any of the state institutions of higher
504 learning, nor shall they apply to community college projects that
505 are funded from local funds or other nonstate sources that are
506 outside the Department of Finance and Administration's
507 appropriations or as directed by the Legislature. The provisions
508 of this subsection (7) shall not apply to any construction or
509 design projects of the State Military Department that are funded
510 from federal funds or other nonstate sources.

511 (8) The department shall have the authority to obtain
512 annually from the state institutions of higher learning
513 information on all building, construction and renovation projects
514 including duties, responsibilities and costs of any architect or
515 engineer hired by any of those institutions.

516 (9) (a) As an alternative to other methods of awarding
517 contracts as prescribed by law, the department may use the
518 design-build method or the design-build bridging method of
519 contracting for new capital construction projects to be used as a
520 pilot program for the following projects:

521 (i) Projects for the Mississippi Development
522 Authority under agreements between both governmental entities;

523 (ii) Any project with an estimated cost of not
524 more than Ten Million Dollars (\$10,000,000.00), not to exceed two
525 (2) projects per fiscal year; and

526 (iii) Any project that has an estimated cost of
527 more than Fifty Million Dollars (\$50,000,000.00), not to exceed
528 one (1) project per fiscal year.

529 (b) As used in this subsection:

530 (i) "Design-build method of contracting" means a
531 contract that combines the design and construction phases of a
532 project into a single contract and the contractor is required to
533 satisfactorily perform, at a minimum, both the design and
534 construction of the project.

535 (ii) "Design-build bridging method of contracting"
536 means a contract that requires design through the design
537 development phase by a professional designer, after which a
538 request for qualifications for design completion and construction
539 is required for the completion of the project from a single
540 contractor that combines the balance of design and construction
541 phases of a project into a single contract. The contractor is
542 required to satisfactorily perform, at a minimum, both the balance
543 of design and construction of the project.

544 (c) The department shall establish detailed criteria
545 for the selection of the successful design-build/design-build
546 bridging contractor in each request for design-build/design-build
547 bridging proposals. The request for qualifications evaluation of
548 the selection committee is a public record and shall be maintained
549 for a minimum of three (3) years after project completion.

550 (d) The department shall maintain detailed records on
551 projects separate and apart from its regular record keeping. The
552 department shall file a report with the Legislature evaluating the
553 design-build/design-build bridging method of contracting by
554 comparing it to the low-bid method of contracting. At a minimum,
555 the report must include:

556 (i) The management goals and objectives for the
557 design-build/design-build bridging system of management;

558 (ii) A complete description of the components of
559 the design-build/design-build bridging management system,
560 including a description of the system the department put into
561 place on all projects managed under the system to insure that it
562 has the complete information on building segment costs and to
563 insure proper analysis of any proposal the department receives
564 from a contractor;

565 (iii) The accountability systems the department
566 established to monitor any design-build/design-build bridging

567 project's compliance with specific goals and objectives for the
568 project;

569 (iv) The outcome of any project or any interim
570 report on an ongoing project let under a design-build/design-build
571 bridging management system showing compliance with the goals,
572 objectives, policies and procedures the department set for the
573 project; and

574 (v) The method used by the department to select
575 projects to be let under the design-build/design-build bridging
576 system of management and all other systems, policies and
577 procedures that the department considered as necessary components
578 to a design-build/design-build bridging management system.

579 (e) All contracts let under the provisions of this
580 subsection shall be subject to oversight and review by the State
581 Auditor.

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

584 35-5-31. (1) Whenever, in any proceeding under the laws of
585 this state for the commitment of a person alleged to be a person
586 with mental illness, person with mental retardation, or otherwise
587 of unsound mind, or otherwise in need of confinement in a hospital
588 or other institution for his proper care, it is determined after
589 the adjudication of the status of the person as may be required by
590 law that commitment to a state psychiatric hospital or institution
591 or other institution is necessary for safekeeping or treatment,
592 and it appears that the person is eligible for care or treatment
593 by the Veterans Administration or other agency of the United
594 States government, the court, upon receipt of a certificate from
595 the Veterans Administration or such other agency showing that
596 facilities are available and that the person is eligible for care
597 or treatment in those facilities, may commit the person to the
598 Veterans Administration or other agency. The person whose
599 commitment is sought shall be personally served with notice of the

600 pending commitment proceeding in the manner provided by the law of
601 this state; and nothing in this section shall affect his right to
602 appear and be heard in the proceedings. Upon commitment, the
603 person, when admitted to any facility operated by the Veterans
604 Administration or other agency within or without this state shall
605 be subject to the rules and regulations of the Veterans
606 Administration or other agency. The chief officer of any facility
607 of the Veterans Administration or institution operated by any
608 other agency of the United States to which the person is so
609 committed shall, with respect to the person, be vested with the
610 same powers as superintendents of state psychiatric hospitals or
611 institutions within this state with respect to retention of
612 custody, transfer, parole or discharge. Jurisdiction is retained
613 in the committing or other appropriate court of this state at any
614 time to inquire into the mental condition of the person so
615 committed, and to determine the necessity for continuance of his
616 restraint, and all commitments under this section are so
617 conditioned.

618 (2) The judgment or order of commitment by a court of
619 competent jurisdiction of another state or of the District of
620 Columbia, committing a person to the Veterans Administration or
621 other agency of the United States government for care or
622 treatment, shall have the same force and effect as to the
623 committed person while in this state as in the jurisdiction in
624 which is situated the court entering the judgment or making the
625 order, and the courts of the committing state or of the District
626 of Columbia shall be deemed to have retained jurisdiction of the
627 person so committed for the purpose of inquiring into the mental
628 condition of the person and of determining the necessity for
629 continuance of his restraint, as is provided in subsection (1) of
630 this section with respect to persons committed by the courts of
631 this state. Consent is * * * given to the application of the law
632 of the committing state or District of Columbia in respect to the

633 authority of the chief officer of any facility of the Veterans
634 Administration or of any institution operated in this state by any
635 other agency of the United States to retain custody, or transfer,
636 parole or discharge the committed person.

637 (3) Upon receipt of a certificate of the Veterans
638 Administration or such other agency of the United States that
639 facilities are available for the care or treatment of any
640 person * * * committed to a state psychiatric hospital or * * *
641 institution * * * or for the care or treatment of persons
642 similarly afflicted, and that the person is eligible for care or
643 treatment, the superintendent of the state psychiatric hospital
644 or institution may cause the transfer of the person to the
645 Veterans Administration or other agency of the United States for
646 care or treatment. Upon effecting any such transfer, the
647 committing court or proper officer of the court shall be notified
648 of the transfer by the transferring agency. No person shall be
649 transferred to the Veterans Administration or other agency of the
650 United States if he is confined because of conviction of any
651 felony or misdemeanor or if he has been acquitted of the charge
652 solely on the ground of insanity, unless before transfer, the
653 court or other authority originally committing the person * * *
654 enters an order for the transfer after appropriate motion and
655 hearing.

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

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

661 41-17-3. The state psychiatric hospital and institution
662 established at Meridian by the Act of March 8, 1882, shall
663 continue to exist as a body politic and corporate, under the name
664 of the "East Mississippi State Hospital," with all the privileges
665 conferred and the duties enjoined by law. It may hold and use, as

666 required by law, all the property, real and personal, belonging to
667 or that may be given to it for the purposes of its establishment.

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

670 41-17-11. The directors of the state institutions listed in
671 Section 41-7-73 each may receive any monies that the United States
672 government may offer as federal aid in taking care of and giving
673 special attention to those persons who served with the Armed
674 Forces of the United States during time of war * * * and who are
675 now in or may hereafter be in any of those state institutions.
676 Each of those directors may expend that part of the money paid to
677 him or his institution, according to his best judgment and the
678 requirements of the United States government under which the money
679 is received.

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

682 41-21-35. The rule as to the legal settlement of paupers
683 shall apply in cases of persons with mental illness and * * *
684 persons with mental retardation.

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

687 43-31-35. If any person commanding a ship, vessel,
688 steamboat, or other watercraft imports into this state, or brings
689 to the shores or within the limits thereof, any infant, person
690 with mental illness, maimed, aged or infirm person or vagrant who
691 is likely to become chargeable on the county, on the requisition
692 of the supervisor of the district or the mayor of any
693 municipality, the captain, master, or commander of the ship,
694 vessel, steamboat, or other watercraft shall enter into bond with
695 sufficient sureties, payable to the county, conditioned to
696 indemnify the county against all charges that may be incurred in
697 the support and care of that person. Any captain, master, or
698 commander failing or refusing to give the bond required shall

699 forfeit and pay to the county the sum of Two Hundred Dollars
700 (\$200.00) for each infant, person with mental illness, maimed,
701 aged, or infirm person or vagrant so brought into the state, to be
702 recovered by action.

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

705 67-1-83. (1) It shall be unlawful for any permittee or
706 other person to sell or furnish any alcoholic beverage * * * to
707 any person who is visibly intoxicated, or to any person who is
708 known to habitually drink alcoholic beverages to excess, or to any
709 person who is known to be an habitual user of narcotics or other
710 habit-forming drugs. It shall also be unlawful for the holder of
711 any package retailer's permit to sell any alcoholic beverages
712 except by delivery in person to the purchaser at the place of
713 business of the permittee.

714 (2) It shall be unlawful for any permittee or other person
715 to sell or furnish any alcoholic beverage to any person to whom
716 the commission has, after investigation, decided to prohibit the
717 sale of those beverages because of an appeal to the commission so
718 to do by the husband, wife, father, mother, brother, sister,
719 child, or employer of the person. The interdiction in those cases
720 shall last until removed by the commission, but no person shall be
721 held to have violated this subsection unless he has been informed
722 by the commission, by registered letter, that it is forbidden to
723 sell to that individual or unless that fact is otherwise known to
724 the permittee or other person.

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

731 (4) Any person who * * * violates any of the provisions of
732 this section shall be guilty of a misdemeanor and, upon
733 conviction, shall be punished by a fine of not more than Five
734 Hundred Dollars (\$500.00) or by imprisonment in the county jail
735 for a term of not more than six (6) months or by both that fine
736 and imprisonment, in the discretion of the court. In addition,
737 the commission shall immediately revoke the permit of any
738 permittee who violates the provisions of this section.

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

741 67-3-53. In addition to any act declared to be unlawful by
742 this chapter, or by Sections 27-71-301 through 27-71-347, and
743 Sections 67-3-17, 67-3-27, 67-3-29 and 67-3-57, it shall be
744 unlawful for the holder of a permit authorizing the sale of beer
745 or light wine at retail or for the employee of the holder of such
746 a permit:

747 (a) To sell or give to be consumed in or upon any
748 licensed premises any beer or light wine between the hours of
749 midnight and seven o'clock the following morning or during any
750 time the licensed premises may be required to be closed by
751 municipal ordinance or order of the board of supervisors; * * *
752 however, in areas where the sale of alcoholic beverages is legal
753 under the provisions of the Local Option Alcoholic Beverage
754 Control Law and the hours for selling those alcoholic beverages
755 have been extended beyond midnight for on-premises permittees
756 under Section 67-1-37, the hours for selling beer or light wines
757 are likewise extended in areas where the sale of beer and light
758 wines is legal in accordance with the provisions of this chapter.

759 (b) To sell, give or furnish any beer or light wine to
760 any person visibly or noticeably intoxicated, * * * or to any
761 habitual drunkard, or to any person under the age of twenty-one
762 (21) years.

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

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

769 (e) To permit persons of ill repute, known criminals,
770 prostitutes or minors to frequent the licensed premises, except
771 minors accompanied by parents or guardians, or under proper
772 supervision.

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

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

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

782 73-19-23. (1) The board shall refuse to grant a certificate
783 of licensure to any applicant and may cancel, revoke or suspend
784 the operation of any certificate by it granted for any or all of
785 the following reasons * * *: unprofessional and unethical conduct
786 or the conviction of a crime involving moral turpitude, habitual
787 intemperance in the use of ardent spirits, or stimulants,
788 narcotics, or any other substance that impairs the intellect and
789 judgment to such an extent as to incapacitate one for the
790 performance of the duties of an optometrist. The certificate of
791 licensure of any person can be revoked for violating any section
792 of this chapter.

793 (2) The board shall further be authorized to take
794 disciplinary action against a licensee for any unlawful acts,

795 which shall include violations of regulations promulgated by the
796 board, as well as the following acts:

797 (a) Fraud or misrepresentation in applying for or
798 procuring an optometric license or in connection with applying for
799 or procuring periodic renewal of an optometric license.

800 (b) Cheating on or attempting to subvert the optometric
801 licensing examination(s).

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

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

808 (e) Conduct likely to deceive, defraud or harm the
809 public.

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

814 (g) Willfully or negligently violating the
815 confidentiality between doctor and patient, except as required by
816 law.

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

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

821 (j) The use of any false, fraudulent, deceptive or
822 misleading statement in any document connected with the practice
823 of optometry.

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

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

- 828 (m) Being addicted or habituated to a drug or
829 intoxicant.
- 830 (n) Violating any state or federal law or regulation
831 relating to a drug legally classified as a controlled substance.
- 832 (o) Obtaining any fee by fraud, deceit or
833 misrepresentation.
- 834 (p) Disciplinary action of another state or
835 jurisdiction against a licensee or other authorization to practice
836 optometry based upon acts or conduct by the licensee similar to
837 acts or conduct that would constitute grounds for action as
838 defined in this chapter, a certified copy of the record of the
839 action taken by the other state or jurisdiction being conclusive
840 evidence thereof.
- 841 (q) Failure to report to the board the relocation of
842 his or her office in or out of the jurisdiction, or to furnish
843 floor plans as required by regulation.
- 844 (r) Violation of any provision(s) of the Optometry
845 Practice Act or the rules and regulations of the board or of an
846 action, stipulation or agreement of the board.
- 847 (s) To advertise in a manner that tends to deceive,
848 mislead or defraud the public.
- 849 (t) The designation of any person licensed under this
850 chapter, other than by the terms "optometrist," "Doctor of
851 Optometry" or "O.D."
- 852 (u) To knowingly submit or cause to be submitted any
853 misleading, deceptive or fraudulent representation on a claim
854 form, bill or statement.
- 855 (v) To practice or attempt to practice optometry while
856 his or her license is suspended.
- 857 (3) Any person who is holder of a certificate of licensure
858 or who is an applicant for examination for a certificate of
859 licensure, against whom is preferred any charges, shall be
860 furnished by the board with a copy of the complaint and shall have

861 a hearing in Jackson, Mississippi, before the board, at which
862 hearing he may be represented by counsel. At the hearing,
863 witnesses may be examined for and against the accused respecting
864 those charges, and the hearing orders or appeals will be conducted
865 according to the procedure now provided in Section 73-25-27. The
866 suspension of a certificate of licensure by reason of the use of
867 stimulants or narcotics may be removed when the holder of the
868 certificate has been adjudged by the * * * board to be cured and
869 capable of practicing optometry.

870 (4) In addition to the reasons specified in subsections (1)
871 and (2) of this section, the board shall be authorized to suspend
872 the license of any licensee for being out of compliance with an
873 order for support, as defined in Section 93-11-153. The procedure
874 for suspension of a license for being out of compliance with an
875 order for support, and the procedure for the reissuance or
876 reinstatement of a license suspended for that purpose, and the
877 payment of any fees for the reissuance or reinstatement of a
878 license suspended for that purpose, shall be governed by Section
879 93-11-157 or 93-11-163, as the case may be. If there is any
880 conflict between any provision of Section 93-11-157 or 93-11-163
881 and any provision of this chapter, the provisions of Section
882 93-11-157 or 93-11-163, as the case may be, shall control.

883 **SECTION 22.** Section 73-39-19, Mississippi Code of 1972, is
884 amended as follows:

885 73-39-19. (1) After a hearing held as set out in this
886 chapter, the board, on concurrence of three (3) members, shall
887 have the right and power to revoke or suspend the license of a
888 veterinarian, or the certificate of an animal technician and may
889 place the veterinarian or technician on probation conditioned on
890 future good conduct and compliance with this chapter, and may
891 impose an administrative fine not to exceed One Thousand Dollars
892 (\$1,000.00) for each such separate offense, for any of the
893 following reasons:

894 (a) * * * An adjudication of * * * mental incompetence
895 by a court of competent jurisdiction.

896 (b) Chronic inebriety or habitual use of drugs, or any
897 adjudication by a court of competent jurisdiction that the
898 veterinarian is an alcoholic or habitual user of drugs. Decrees
899 of divorce shall not be construed as an adjudication that a
900 veterinarian is an alcoholic or habitual user of drugs.

901 (c) A final conviction of a felony or of an offense
902 involving moral turpitude by a court of competent jurisdiction.

903 (d) Fraud or dishonesty in the application or reporting
904 of any test for disease in animals, including intentional
905 misrepresentation on any forms filed with any governmental agency.

906 (e) Failure to report or making a false report of any
907 contagious or infectious disease required by state or federal law
908 to be reported.

909 (f) Dishonesty, intentional misrepresentation or gross
910 negligence in the inspection of foodstuffs or the issuance of
911 health or inspection certificates.

912 (g) The refusal of licensing authority of another state
913 to issue or renew a license, permit or certificate to practice
914 veterinary medicine in that state or the revocation, suspension or
915 other restriction imposed on a license, permit or certificate
916 issued by the licensing authority that prevents or restricts
917 practice in that state; in addition, any probationary status
918 imposed by another state that, if the offense occurred in this
919 state, would have been a violation of this chapter.

920 (h) The employment of fraud, misrepresentation or
921 deception in obtaining a license.

922 (i) The use of advertising or solicitation that is
923 false or misleading or is deemed unprofessional under rules or
924 regulations adopted by the board.

925 (j) Incompetence, gross negligence, cruelty or gross
926 malpractice in the practice of veterinary medicine.

927 (k) Employing any person practicing veterinary medicine
928 unlawfully with the knowledge of that illegal practice by the
929 employee.

930 (l) Failure to keep veterinary premises and equipment
931 in a clean and sanitary condition.

932 (m) Cruelty to animals in the practice of veterinary
933 medicine.

934 (n) Unprofessional or unethical conduct as defined in
935 regulations adopted by the board.

936 (o) Administering, dispensing or prescribing any
937 narcotic drug having addiction-forming, addiction-sustaining or
938 habituating liability otherwise than in the course of legitimate
939 professional practice.

940 (p) Conviction of violation of any federal or state law
941 regulating the possession, distribution or use of any narcotic
942 drug or any drug considered a controlled substance under state or
943 federal law.

944 (q) Obtaining or procuring, or attempting to obtain or
945 procure by misrepresentation, fraud, deception or subterfuge, any
946 narcotic or drug classified as a controlled substance.

947 (r) Making or causing to be made any false claims
948 concerning the licensee's professional excellence.

949 (s) Being guilty of any dishonorable or unethical
950 conduct likely to deceive, defraud or harm the public.

951 (t) Refusing to permit the board or any legal
952 representative of the board to inspect the business premises of
953 the licensee during regular business hours.

954 (u) Failure to complete requirement of continuing
955 education.

956 (2) A certified copy of any judgment of conviction or
957 finding of guilt by a court of competent jurisdiction or by a
958 governmental board or agency authorized to issue licenses or
959 permits, including the United States Department of Agriculture,

960 Animal and Plant Health Inspection Service, the Mississippi Board
961 of Animal Health and the Mississippi State Board of Health, of a
962 veterinarian or animal technician of any of the matters listed in
963 paragraph (a), (b), (c), (d), (e), (f) or (g) of subsection (1)
964 shall be admissible in evidence in any hearing held by the board
965 to discipline the veterinarian and shall constitute prima facie
966 evidence of the commission of any such act.

967 (3) In addition to the reasons specified in subsection (1)
968 of this section, the board shall be authorized to suspend the
969 license or certificate of any licensee or certificate holder for
970 being out of compliance with an order for support, as defined in
971 Section 93-11-153. The procedure for suspension of a license or
972 certificate for being out of compliance with an order for support,
973 and the procedure for the reissuance or reinstatement of a license
974 or certificate suspended for that purpose, and the payment of any
975 fees for the reissuance or reinstatement of a license or
976 certificate suspended for that purpose, shall be governed by
977 Section 93-11-157 or 93-11-163, as the case may be. If there is
978 any conflict between any provision of Section 93-11-157 or
979 93-11-163 and any provision of this chapter, the provisions of
980 Section 93-11-157 or 93-11-163, as the case may be, shall control.

981 **SECTION 23.** Section 81-5-33, Mississippi Code of 1972, is
982 amended as follows:

983 81-5-33. Banks may accept and execute all such trusts and
984 perform such duties of every description as may be committed to
985 them by any person or corporation or that may be committed or
986 transferred to them by order of any court of record. They may
987 receive money in trust, take and accept by grant, assignment,
988 transfer, devise or bequest, and hold any real or personal estate
989 or trusts created according to the laws of this or any other state
990 or of the United States, and execute those legal trusts in regard
991 to the same, on such terms as may be directed or agreed
992 upon * * *. They may act as agent for the investment of money or

993 the management of property for other persons, and as agent for
994 persons and corporations for the purpose of issuing, registering,
995 transferring or countersigning the certificates of stock, bonds or
996 other evidences of debt of any corporation, association,
997 municipality, state, county or public authority on such terms as
998 may be agreed upon. They also may act as guardian for any minor
999 or * * * person with mental illness under the appointment of any
1000 court of record having jurisdiction of the person or estate of
1001 the minor or * * * person with mental illness and may act as
1002 administrator or executor of the estate of any deceased person.
1003 They may act as agent or attorney in fact and as commissioner for
1004 the sale of property, both real and personal, and may act as
1005 assignee or receiver, or as trustee in mortgages or bond issues,
1006 or in any other fiduciary capacity authorized by law. They may
1007 accept trust funds or other property upon specially agreed terms
1008 and pay or deliver the same to the owners, beneficiaries or
1009 others, as the case may be, when and as the same should be paid or
1010 delivered according to the terms of the trust agreement under
1011 which it is held. Whenever under the laws of this or any other
1012 state or under the rule or order of any court, the execution of a
1013 bond for the protection of a private or court trust is required, a
1014 trust company shall be authorized to execute the bond for the
1015 protection of any trust or trust estate being administered by it.

1016 Banking corporations created, organized and doing business
1017 under the laws of the State of Mississippi may exercise, without
1018 amendment of their charters, and under their charter authority to
1019 engage in the general business of banking, all or any of the
1020 foregoing powers. However, before any bank whose charter merely
1021 authorizes the exercise of general banking functions may exercise
1022 those powers, the previous written consent of the Commissioner of
1023 Banking and Consumer Finance shall be obtained.

1024 Banks exercising any or all of those powers shall segregate
1025 all assets held in any fiduciary capacity from the general assets

1026 of the bank and shall keep a separate set of books and records
1027 showing in proper detail all transactions engaged in under the
1028 authority of this section or under the authority * * * granted to
1029 them in their charter or otherwise. Those books and records shall
1030 be inspected and examined by the state bank examiners at each and
1031 every examination of the bank.

1032 No bank shall receive in its trust department deposits of
1033 current funds subject to check or the deposit of checks, drafts,
1034 bills of exchange or other items for collection or exchange
1035 purposes. Funds deposited or held in trust by the bank awaiting
1036 investment or distribution shall be carried in a separate account
1037 and shall not be used by the bank in the conduct of its business,
1038 unless it * * * first sets aside in the trust department United
1039 States bonds or bonds of the State of Mississippi or any
1040 subdivision of the state, the market value of which shall at all
1041 times be not less than ten percent (10%) in excess of the total
1042 funds so held, exclusive of the portion of funds insured by the
1043 Federal Deposit Insurance Corporation.

1044 In the event of the failure or liquidation of the bank, the
1045 owners of the funds held in trust for investment or distribution
1046 shall have a prior lien on the bonds or other securities so set
1047 apart in addition to their claim against the assets of the bank.

1048 In any case in which the laws of this state require that one
1049 acting as trustee, executor, administrator or in any fiduciary
1050 capacity must take an oath or make an affidavit, the president,
1051 vice president, cashier or trust officer of a bank may take the
1052 necessary oath or execute the necessary affidavit.

1053 In making investments of trust funds, it shall be unlawful
1054 for any bank to purchase securities from itself or to purchase
1055 securities in which it may be interested, directly or indirectly.
1056 However, any bank, including a national bank, authorized to do
1057 business in this state in a fiduciary capacity may, unless
1058 prohibited or otherwise limited by the instrument governing the

1059 fiduciary relationship, in the exercise of its investment
1060 discretion or at the direction of another person authorized to
1061 direct the investment of funds held by the bank as fiduciary,
1062 invest and reinvest in the securities of, or other interests in,
1063 any open-end or closed-end management type investment company or
1064 investment trust registered under the Investment Company Act of
1065 1940, 15 USCS Section 80a-1, et seq., as amended, notwithstanding
1066 that the banking institution or affiliate of the banking
1067 institution provides services to the investment company or
1068 investment trust, such as that of an investment advisor,
1069 custodian, transfer agent, registrar, sponsor, distributor,
1070 manager or otherwise, and receives reasonable remuneration for
1071 those services, so long as the total compensation paid by the
1072 trust or custodial estate as trustee's fees and mutual fund fees
1073 is reasonable, taking into account the nature and extent of the
1074 trustee's duties, the nature and extent of the services provided
1075 to the investment company or investment trust, and the total
1076 compensation, costs and fees that would otherwise be paid,
1077 directly or indirectly, by the trust or custodial estate if the
1078 investment were made in an investment company or investment trust
1079 for which the bank or its affiliates provided no services. With
1080 respect to any funds so invested, the banking institution shall
1081 make available by statement, prospectus or otherwise to all
1082 current income beneficiaries of an account the basis, expressed as
1083 a percentage of asset value or otherwise, upon which the
1084 remuneration is calculated. No bank shall lend to any officer,
1085 director or employee of the bank any funds held in trust by it,
1086 and any officer, director or employee making a loan, or to whom
1087 such a loan is made, shall be guilty of a felony and, upon
1088 conviction, may be fined not more than Five Thousand Dollars
1089 (\$5,000.00) or imprisoned in the State Penitentiary for not more
1090 than five (5) years, or by both that fine and imprisonment, in the
1091 discretion of the court.

1092 **SECTION 24.** Section 81-27-6.307, Mississippi Code of 1972,
1093 is amended as follows:

1094 81-27-6.307. (a) A limited liability trust company
1095 organized under this article is dissolved on:

1096 (1) The expiration of the period fixed for the duration
1097 of the limited liability trust company;

1098 (2) A vote to dissolve or the execution of a written
1099 consent to dissolve by all full liability participants, if any,
1100 and a sufficient number of other participants that combined with
1101 all full liability participants hold at least two-thirds (2/3) of
1102 the participation shares in each class in the association, or a
1103 greater fraction as provided by the articles of association;

1104 (3) Except as provided by the articles of association,
1105 the death, adjudication of incompetence, expulsion, bankruptcy,
1106 retirement, or resignation of a participant unless a majority in
1107 interest of all remaining participants elect in writing not later
1108 than the ninetieth day after the date of the event to continue the
1109 business of the association; or

1110 (4) The occurrence of an event of dissolution specified
1111 in the articles of association.

1112 (b) A dissolution under this section is considered to be the
1113 initiation of a voluntary liquidation under Subarticle B of
1114 Article 7 of this chapter.

1115 (c) An event of dissolution described by subsection (a)(3)
1116 of this section does not cancel or revoke a contract to which the
1117 state trust company is a party, including a trust indenture or
1118 agreement or voluntary dissolution under Subarticle B of Article 7
1119 of this chapter, until the period for the remaining participants
1120 to continue the business of the state trust company has expired
1121 without the remaining participants having completed the necessary
1122 action to continue the business of the state trust company.

1123 **SECTION 25.** Section 89-1-29, Mississippi Code of 1972, is
1124 amended as follows:

1125 89-1-29. A conveyance, mortgage, deed of trust or other
1126 incumbrance upon a homestead exempted from execution shall not be
1127 valid or binding unless signed by the spouse of the owner if the
1128 owner is married and living with the spouse. But where the spouse
1129 of the owner of the homestead exempted from execution has been
1130 adjudicated incompetent, then the owner of the homestead, may file
1131 a petition in the chancery court and allege in the petition the
1132 incompetence of the spouse and the adjudication of incompetency of
1133 the spouse * * * and the facts of the case. The summons for the
1134 spouse who has been adjudicated incompetent shall be issued and be
1135 served in the same manner as process is served in other cases
1136 on * * * persons who are incompetent. The court shall hear the
1137 case in vacation or in termtime as in other cases, and if the
1138 court finds the spouse to be incompetent and the owner entitled to
1139 relief, the court by decree shall authorize and empower the owner
1140 to execute a conveyance, mortgage, deed of trust or other
1141 incumbrance upon the homestead without the signature of the
1142 spouse. However, no mortgage or deed of trust executed in favor
1143 of the Farmers Home Administration at the time of the purchase of
1144 real estate to secure the payment of the money used to purchase
1145 the real estate shall be invalid because it is not signed by the
1146 spouse of the owner.

1147 **SECTION 26.** Section 93-1-5, Mississippi Code of 1972, is
1148 amended as follows:

1149 93-1-5. It shall be unlawful for the circuit court clerk to
1150 issue a marriage license until the following conditions precedent
1151 have been complied with:

1152 (a) Parties desiring a marriage license shall make
1153 application for the license in writing to the clerk of the circuit
1154 court of any county in the State of Mississippi; * * *
1155 however, * * * if the female applicant is under the age of
1156 twenty-one (21) years and is a resident of the State of
1157 Mississippi, the application shall be made to the circuit court

1158 clerk of the county of residence of the female applicant. The
1159 application shall be immediately filed with the circuit court
1160 clerk and shall include the names, ages and addresses of the
1161 parties applying; the names and addresses of the parents of the
1162 parties applying, and if no parents, then names and addresses of
1163 the guardian or next of kin; the signatures of witnesses; and any
1164 other data that may be required by law or the * * * State Board of
1165 Health. The application shall be sworn to by both applicants.

1166 (b) The application shall remain on file, open to the
1167 public, in the office of the circuit court clerk for a period of
1168 three (3) days before the clerk is authorized to issue the
1169 marriage license. * * * However, * * * if satisfactory proof is
1170 furnished to the judge of any circuit, chancery or county court
1171 that sufficient reasons exist, then the judge of any such court in
1172 the judicial district where either of the parties resides if they
1173 are over the age of twenty-one (21) years, or where the female
1174 resides if she is under the age of twenty-one (21), may waive the
1175 three-day waiting period and by written instrument authorize the
1176 clerk of the court to issue the marriage license to the parties if
1177 they are otherwise qualified by law. Authorization shall be a
1178 part of the confidential files of the clerk of the court, subject
1179 to inspection only by written permission of the judge. If either
1180 of the applying parties appears from the evidence to be under
1181 twenty-one (21) years of age, the circuit court clerk, immediately
1182 upon filing the application, shall cause notice of the filing of
1183 the application to be sent by prepaid certified mail to the
1184 father, mother, guardian or next of kin of both applying parties
1185 at the address named in the application.

1186 (c) An affidavit showing the age of both applying
1187 parties shall be made by either the father, mother, guardian or
1188 next of kin of each of the contracting parties and filed with the
1189 clerk of the circuit court along with the application; or in lieu
1190 thereof, * * * both applying parties shall appear in person before

1191 the circuit court clerk and make and subscribe an oath in person,
1192 which * * * affidavit shall be attached to and noted on the
1193 application for the marriage license. In addition to either of
1194 the previous conditions stated, further proof of age shall be
1195 presented to the circuit court clerk in the form of either a birth
1196 certificate, baptismal record, armed service discharge, armed
1197 service identification card, life insurance policy, insurance
1198 certificate, school record, driver's license, or other official
1199 document evidencing age. The document substantiating age and date
1200 of birth shall be examined by the circuit court clerk before whom
1201 application is made, and the circuit court clerk shall retain in
1202 his file with the application the document or a certified or
1203 photostatic copy of the document.

1204 (d) The clerk shall not issue a marriage license under
1205 the provisions of this section unless the male applicant is at
1206 least seventeen (17) years of age and the female is at least
1207 fifteen (15) years of age; * * * however, * * * if satisfactory
1208 proof is furnished to the judge of any circuit, chancery or county
1209 court that sufficient reasons exist and that the parties desire to
1210 be married to each other and that the parents or other person in
1211 loco parentis of the person or persons so under age consent to the
1212 marriage, then the judge of any such court in the county where
1213 either of the parties resides may waive the minimum age
1214 requirement and by written instrument authorize the clerk of the
1215 court to issue the marriage license to the parties if they are
1216 otherwise qualified by law. Authorization shall be a part of the
1217 confidential files of the clerk of the court, subject to
1218 inspection only by written permission of the judge.

1219 (e) A medical certificate dated within thirty (30) days
1220 before the application shall be presented to the circuit court
1221 clerk showing that the applicant is free from syphilis, as nearly
1222 as can be determined by a blood test performed in a laboratory
1223 approved by the State Board of Health. The medical certificate

1224 may be obtained through the local health department by the
1225 applicant or applicants, or it may be obtained through any private
1226 laboratory approved by the State Board of Health. The medical
1227 certificate shall be examined by the circuit court clerk and filed
1228 in a permanent file kept by the clerk for this purpose.

1229 (f) In no event shall a license be issued by the
1230 circuit court clerk when it appears to the circuit court clerk
1231 that the applicants are, or either of them is, drunk or a person
1232 with mental illness or mental retardation, to the extent that the
1233 clerk believes that the person does not understand the nature and
1234 consequences of the request.

1235 Any circuit clerk shall be liable under his official bond
1236 because of noncompliance with the provisions of this section.

1237 Any circuit court clerk who issues a marriage license without
1238 complying with the provisions of this section shall be guilty of a
1239 misdemeanor and, upon conviction, shall be punished by a fine of
1240 not less than Fifty Dollars (\$50.00) and not more than Five
1241 Hundred Dollars (\$500.00).

1242 **SECTION 27.** Section 93-5-1, Mississippi Code of 1972, is
1243 amended as follows:

1244 93-5-1. Divorces from the bonds of matrimony may be decreed
1245 to the injured party for any one or more of the following twelve
1246 (12) causes * * *:

1247 First. Natural impotency.

1248 Second. Adultery, unless it should appear that it was
1249 committed by collusion of the parties for the purpose of procuring
1250 a divorce, or unless the parties cohabited after a knowledge by
1251 complainant of the adultery.

1252 Third. Being sentenced to any penitentiary, and not pardoned
1253 before being sent there.

1254 Fourth. Willful, continued and obstinate desertion for the
1255 space of one (1) year.

1256 Fifth. Habitual drunkenness.

1257 Sixth. Habitual and excessive use of opium, morphine or
1258 other like drug.

1259 Seventh. Habitual cruel and inhuman treatment.

1260 Eighth. Mental illness or mental retardation at the time of
1261 marriage, if the party complaining did not know of that infirmity.

1262 Ninth. Marriage to some other person at the time of the
1263 pretended marriage between the parties.

1264 Tenth. Pregnancy of the wife by another person at the time
1265 of the marriage, if the husband did not know of the pregnancy.

1266 Eleventh. Either party may have a divorce if they are
1267 related to each other within the degrees of kindred between whom
1268 marriage is prohibited by law.

1269 Twelfth. Incurable mental illness. However, no divorce
1270 shall be granted upon this ground unless the * * * party with
1271 mental illness has been under regular treatment for mental illness
1272 and causes thereof, confined in an institution for persons with
1273 mental illness for a period of at least three (3) years
1274 immediately preceding the commencement of the action. * * *

1275 However, * * * transfer of a party with mental illness to his or
1276 her home for treatment or a trial visit on prescription or
1277 recommendation of a licensed physician, which treatment or trial
1278 visit proves unsuccessful after a bona fide effort by the
1279 complaining party to effect a cure, upon the reconfinement of
1280 the * * * party with mental illness in an institution for persons
1281 with mental illness, shall be regular treatment for mental illness
1282 and causes thereof, and the period of time so consumed in seeking
1283 to effect a cure or while on a trial visit home shall be added to
1284 the period of actual confinement in an institution for persons
1285 with mental illness in computing the required period of three (3)
1286 years confinement immediately preceding the beginning of the
1287 action. No divorce shall be granted because of mental illness
1288 until after a thorough examination of the person with mental
1289 illness by two (2) physicians who are recognized authorities on

1290 mental diseases. One of those physicians shall be either the
1291 superintendent of a state psychiatric hospital or institution or a
1292 veterans hospital for persons with mental illness in which the
1293 patient is confined, or a member of the medical staff of that
1294 hospital or institution who has had the patient in charge. Before
1295 incurable mental illness can be successfully proven as a ground
1296 for divorce, it shall be necessary that both of those physicians
1297 make affidavit that the patient is a * * * person with mental
1298 illness at the time of the examination, and both affidavits shall
1299 be made a part of the permanent record of the divorce proceedings
1300 and shall create the prima facie presumption of incurable mental
1301 illness, such as would justify a divorce based on that ground.
1302 Service of process shall be made on the superintendent of the
1303 hospital or institution in which the defendant is a patient. If
1304 the patient is in an hospital or institution outside the state,
1305 process shall be served by publication, as in other cases of
1306 service by publication, together with the sending of a copy by
1307 registered mail to the superintendent of the hospital or
1308 institution. In addition * * *, process shall be served upon the
1309 next blood relative and guardian, if any. If there is no legal
1310 guardian, the court shall appoint a guardian ad litem to represent
1311 the interest of the * * * person with mental illness. The
1312 relative or guardian and superintendent of the hospital or
1313 institution shall be entitled to appear and be heard upon any and
1314 all issues. The status of the parties as to the support and
1315 maintenance of the * * * person with mental illness shall not be
1316 altered in any way by the granting of the divorce.

1317 However, in the discretion of the chancery court, and in
1318 those cases as the court may deem it necessary and proper, before
1319 any such decree is granted on the ground of incurable mental
1320 illness, the complainant, when ordered by the court, shall enter
1321 into bond, to be approved by the court, in such an amount as the
1322 court may think just and proper, conditioned for the care and

1323 keeping of the person with mental illness during the remainder of
1324 his or her natural life, unless the person with mental illness has
1325 a sufficient estate in his or her own right for that purpose.

1326 **SECTION 28.** Section 93-5-13, Mississippi Code of 1972, is
1327 amended as follows:

1328 93-5-13. If the defendant is an infant or a person with
1329 mental illness, the court may appoint a guardian ad litem for the
1330 defendant.

1331 **SECTION 29.** Section 93-5-15, Mississippi Code of 1972, is
1332 amended as follows:

1333 93-5-15. From and after March 15, 1934, any marital contract
1334 previously or hereafter solemnized by and under which parties have
1335 been duly and legally married, and one (1) of the parties to the
1336 marriage contract has * * * become or becomes mentally ill to such
1337 an extent that it is necessary for a guardian to be appointed for
1338 that party, and the other party to the marital contract has
1339 committed any act that constitutes ground for divorce under the
1340 present laws, the guardian for the party with mental illness to
1341 the contract of marriage shall have the right to file a bill as
1342 the guardian, in the name of his ward, for the dissolution of the
1343 marriage, in the same way and manner and at the same place and on
1344 the same process that the person with mental illness could have
1345 done, if he had * * * not become mentally ill.

1346 **SECTION 30.** Section 93-7-3, Mississippi Code of 1972, is
1347 amended as follows:

1348 93-7-3. A marriage may be annulled for any one (1) of the
1349 following causes existing at the time of the marriage
1350 ceremony * * *:

1351 (a) Incurable impotency.

1352 (b) Adjudicated mental illness or incompetence of
1353 either or both parties. Action of a spouse who has been
1354 adjudicated mentally ill or incompetent may be brought by
1355 guardian, or in the absence of a guardian, by next friend,

1356 provided that the suit is brought within six (6) months after
1357 marriage.

1358 (c) Failure to comply with the provisions of Sections
1359 93-1-5 through 93-1-9 when any marriage affected by that failure
1360 has not been followed by cohabitation.

1361 Or, in the absence of ratification:

1362 (d) When either of the parties to a marriage is
1363 incapable, from want of age or understanding, of consenting to any
1364 marriage, or is incapable from physical causes of entering into
1365 the marriage state, or where the consent of either party has been
1366 obtained by force or fraud, the marriage shall be void from the
1367 time its nullity is declared by a court of competent jurisdiction.

1368 (e) Pregnancy of the wife by another person, if the
1369 husband did not know of the pregnancy.

1370 Suits for annulment under paragraphs (d) and (e) shall be
1371 brought within six (6) months after the ground for annulment is or
1372 should be discovered, and not thereafter.

1373 The causes for annulment of marriage set forth in this
1374 section are intended to be new remedies and shall in no way affect
1375 the causes for divorce declared elsewhere to be the law of the
1376 State of Mississippi as they presently exist or as they may from
1377 time to time be amended.

1378 **SECTION 31.** Section 93-13-123, Mississippi Code of 1972, is
1379 amended as follows:

1380 93-13-123. The chancery court of any county in which may be
1381 situated the property or any part of the property, or debt due to,
1382 or right of action of any person who has been adjudicated to be
1383 incompetent by proper proceedings in another state, or of a
1384 citizen of this state * * * who is incompetent and is confined out
1385 of this state in a psychiatric hospital or institution, shall have
1386 jurisdiction to appoint a guardian of the estate of the person
1387 who is incompetent. The chancery court of the county of residence
1388 of those persons shall likewise have that jurisdiction.

1389 **SECTION 32.** Section 93-13-121, Mississippi Code of 1972, is
1390 amended as follows:

1391 93-13-121. In any case where a guardian has been appointed
1392 for an adult person by a court of competent jurisdiction of any
1393 state, and the adult thereafter, at the time of filing the
1394 petition provided for in this section, is a resident of this state
1395 and is incompetent to manage his or her estate, the chancery court
1396 of the county of the domicile of the adult shall have jurisdiction
1397 and authority to appoint a guardian for the incompetent adult upon
1398 the conditions * * * specified in this section; however,
1399 infirmities of old age shall not be considered elements of
1400 infirmities.

1401 The petition for the appointment of a guardian under the
1402 provisions of this section shall be filed by the incompetent
1403 person or his guardian in the office of the clerk of the chancery
1404 court in the county of the residence of the incompetent person and
1405 process shall be served as provided in Section 93-13-281, unless
1406 joined in by that person or those persons * * * prescribed in that
1407 section.

1408 Upon the return day of the process, the chancellor, if in
1409 vacation, or the court, if in termtime, shall cause the applicant
1410 to appear in person and then and there examine the applicant and
1411 all interested parties, and if, after the examination, the
1412 chancellor in vacation or the court in termtime is of the opinion
1413 that the applicant is incompetent to manage his or her estate,
1414 then it shall be the duty of the court to appoint a guardian of
1415 the estate of the applicant; * * * however, * * * in no instance
1416 shall the court have authority to appoint a guardian under the
1417 provisions of this section unless it * * * examines the applicant
1418 in person and finds after the examination that the applicant is
1419 incompetent to manage his or her estate.

1420 A guardian appointed under the provisions of this section
1421 shall be required to make and file annual accounts of his acts and

1422 doings as in case of guardians for * * * persons with mental
1423 illness.

1424 **SECTION 33.** Section 93-13-131, Mississippi Code of 1972, is
1425 amended as follows:

1426 93-13-131. The chancery court of the county in which an
1427 habitual drunkard, habitual user of cocaine, opium or morphine
1428 resides may appoint a guardian to him on the application of a
1429 relative or friend. When an application for appointment of a
1430 guardian is presented, if the court is satisfied there is probable
1431 grounds for the appointment, it shall direct a writ to the
1432 sheriff, commanding him to summon the person alleged to be an
1433 habitual drunkard, habitual user of cocaine, or opium or morphine.
1434 On return of the summons executed, the court shall examine the
1435 question and determine whether the person is an habitual drunkard,
1436 habitual user of cocaine, opium or morphine, and for that purpose
1437 may summon and hear witnesses, orally or by deposition, and hear
1438 the parties and their evidence. If the court is satisfied that
1439 the person is an habitual drunkard, habitual user of cocaine,
1440 opium or morphine, it shall appoint a guardian to take care of him
1441 and his estate, both real and personal, and the costs of the
1442 inquisition shall be paid out of the estate. And the court or
1443 chancellor may direct the confinement of any person adjudged to be
1444 an habitual drunkard, habitual user of cocaine, or opium or
1445 morphine, in a facility that treats alcohol or substance abuse.

1446 **SECTION 34.** Section 97-3-13, Mississippi Code of 1972, is
1447 amended as follows:

1448 97-3-13. Every person or officer who * * * maliciously sends
1449 to or confines in a psychiatric hospital or institution or other
1450 place, any sane person as a person with mental illness, knowing
1451 the person to be sane, shall be guilty of a felony, and, on
1452 conviction, shall be punished by a fine of not more than Five
1453 Hundred Dollars (\$500.00), or by imprisonment in the Penitentiary

1454 not more than one (1) year, or in the county jail not more than
1455 six (6) months.

1456 **SECTION 35.** Section 97-9-25, Mississippi Code of 1972, is
1457 amended as follows:

1458 97-9-25. It shall be unlawful for any person, firm,
1459 copartnership, corporation or association to knowingly entice,
1460 harbor, employ, or aid, assist or abet in the escape, enticing,
1461 harboring or employment of any delinquent, person with mental
1462 illness, person with mental retardation or incorrigible person
1463 committed to, or confined in any institution maintained by the
1464 state for the treatment, education or welfare of delinquent
1465 persons, persons with mental illness, persons with mental
1466 retardation or incorrigible * * * persons. Any person violating
1467 the provisions of this section, upon conviction, shall be punished
1468 by a fine of not less than Twenty-five Dollars (\$25.00) nor more
1469 than Five Hundred Dollars (\$500.00), or imprisonment in the county
1470 jail for not less than thirty (30) days, nor more than ninety (90)
1471 days, or both.

1472 **SECTION 36.** Section 99-13-1, Mississippi Code of 1972, is
1473 amended as follows:

1474 99-13-1. The term "person with mental retardation," within
1475 the meaning of this chapter, shall have the same meaning as the
1476 term "mentally retarded person" in Section 41-21-61.

1477 **SECTION 37.** Section 99-13-3, Mississippi Code of 1972, is
1478 amended as follows:

1479 99-13-3. When any prisoner or any person charged with a
1480 crime or delinquency is brought before any conservator of the
1481 peace, and in the course of the investigation it * * * appears
1482 that the person was insane when the offense was committed and
1483 still is insane, or was a person with mental retardation to such
1484 an extent as not to be responsible for his or her act or omission
1485 at the time when the act or omission charged was made, he shall
1486 not be discharged, but the conservator of the peace shall remand

1487 the prisoner to custody and immediately report the case to the
1488 chancellor or clerk of the chancery court, whose duty it shall be
1489 to proceed with the case according to the law provided for persons
1490 of unsound mind or * * * persons with mental retardation.

1491 **SECTION 38.** Section 99-13-5, Mississippi Code of 1972, is
1492 amended as follows:

1493 99-13-5. When any person is held in prison or on bail,
1494 charged with an offense, and the grand jury does not find a true
1495 bill for reason of insanity of the accused or for reason of the
1496 mental retardation of the accused, which they judge to be such
1497 that he or she was not responsible for his acts or omissions at
1498 the time when the act or omission charged was committed or made,
1499 the grand jury shall certify the fact to the circuit court and
1500 shall state whether or not the insane * * * person or person with
1501 mental retardation is a danger to the security of persons and
1502 property and the peace and safety of the community, and if the
1503 grand jury reports that insanity or mental retardation and that
1504 danger, the court shall immediately give notice of the case to the
1505 chancellor or to the clerk of the chancery court, whose duty it
1506 shall be to proceed with the insane person and his estate or the
1507 person with mental retardation according to the law provided in
1508 the case of persons of unsound mind or * * * persons with mental
1509 retardation.

1510 **SECTION 39.** Section 99-13-7, Mississippi Code of 1972, is
1511 amended as follows:

1512 99-13-7. When any person is indicted for an offense and
1513 acquitted on the ground of insanity, the jury rendering the
1514 verdict shall state in the verdict that ground and whether the
1515 accused has since been restored to his sanity and whether he is
1516 dangerous to the community. * * * If the jury certifies that the
1517 person is still insane and dangerous, the judge shall order him to
1518 be conveyed to and confined in one (1) of the state psychiatric
1519 hospitals or institutions.

1520 **SECTION 40.** Section 99-13-9, Mississippi Code of 1972, is
1521 amended as follows:

1522 99-13-9. When any person is indicted for an offense and
1523 acquitted on the ground of mental retardation, the jury rendering
1524 the verdict shall state in the verdict that ground and whether the
1525 accused constitutes a danger to life or property and to the peace
1526 and safety of the community. If the jury certifies that the
1527 person with mental retardation is dangerous to the peace and
1528 safety of the community or to himself, the court shall immediately
1529 give notice of the case to the chancellor or the clerk of the
1530 chancery court, whose duty it shall be to proceed with the person
1531 according to the law provided in the case of * * * persons with
1532 mental retardation, the * * * person with mental retardation
1533 himself being remanded to custody to await the action of the
1534 chancery court.

1535 **SECTION 41.** Section 99-19-57, Mississippi Code of 1972, is
1536 amended as follows:

1537 99-19-57. (1) If the Commissioner of Corrections * * * at
1538 any time is satisfied that any female offender in his custody
1539 under sentence of death is pregnant, he shall summon a physician
1540 to inquire into the pregnancy. The commissioner shall summons and
1541 swear all necessary witnesses and the commissioner after full
1542 examination shall certify under his hand what the truth may be in
1543 relation to the alleged pregnancy, and in case the offender is
1544 found to be pregnant, the commissioner shall immediately transmit
1545 his findings to the Governor, and the Governor shall suspend the
1546 execution of the sentence until he is satisfied that the offender
1547 is not or is no longer pregnant. The Governor shall then order,
1548 by his warrant to the commissioner, the execution of the offender
1549 on a day to be * * * appointed by the Governor according to the
1550 sentence and judgment of the court.

1551 (2) (a) If it is believed that an offender under sentence
1552 of death has become mentally ill since the judgment of the court,

1553 the following shall be the exclusive procedural and substantive
1554 procedure. The offender, or a person acting as his next friend,
1555 or the Commissioner of Corrections may file an appropriate
1556 application seeking post-conviction relief with the Mississippi
1557 Supreme Court. If it is found that the offender is a person with
1558 mental illness, as defined in this subsection, the court shall
1559 suspend the execution of the sentence. The offender shall then be
1560 committed to the forensic unit of the Mississippi State Hospital
1561 at Whitfield. The order of commitment shall require that the
1562 offender be examined and a written report be furnished to the
1563 court at that time and every month thereafter, stating whether
1564 there is a substantial probability that the offender will become
1565 sane under this subsection within the foreseeable future and
1566 whether progress is being made toward that goal. If at any time
1567 during the commitment, the appropriate official at the state
1568 hospital * * * considers the offender to be sane under this
1569 subsection, the official shall promptly notify the court to that
1570 effect in writing and place the offender in the custody of the
1571 Commissioner of Corrections. The court then shall * * * conduct a
1572 hearing on the sanity of the offender. The finding of the circuit
1573 court is a final order appealable under the terms and conditions
1574 of the Mississippi Uniform Post-Conviction Collateral Relief Act.

1575 (b) For the purposes of this subsection, a person shall
1576 be deemed to be a person with mental illness if the court finds
1577 that the offender does not have sufficient intelligence to
1578 understand the nature of the proceedings against him, what he was
1579 tried for, the purpose of his punishment, the impending fate that
1580 awaits him, and a sufficient understanding to know any fact that
1581 might exist that would make his punishment unjust or unlawful and
1582 the intelligence requisite to convey that information to his
1583 attorneys or the court.

1584 **SECTION 42.** Section 99-38-9, Mississippi Code of 1972, is
1585 amended as follows:

1586 99-38-9. (1) The Treasurer shall make payments from an
1587 escrow account established under Section 99-38-5 to the accused or
1588 convicted person in whose name the account was established upon
1589 the order of a court of competent jurisdiction, after a showing by
1590 the person that those monies will be used for the exclusive
1591 purpose of retaining legal representation at any stage of any
1592 criminal proceedings against the person, including the appeals
1593 process.

1594 (2) Whenever it is found that a person accused of a crime is
1595 unfit to proceed as a result of mental illness because the person
1596 lacks the capacity to understand the proceedings against him or to
1597 assist in his own defense, the Treasurer shall bring an action of
1598 interpleader to determine disposition of the escrow account. For
1599 the purposes of this chapter, a person found not guilty by reason
1600 of insanity shall be deemed to be a convicted person.

1601 (3) Except as otherwise provided in subsection (4) of this
1602 section, upon dismissal of charges or acquittal or subsequent
1603 exoneration of any person accused of an offense arising out of the
1604 same circumstances that led to the establishment of an escrow
1605 account under this chapter, the Treasurer shall immediately pay
1606 over to the accused person, his legal representative, assignee,
1607 beneficiary or heirs at law the monies in the escrow account
1608 established on his or their behalf. Except as otherwise provided
1609 in subsection (4) of this section, upon a showing that the accused
1610 person has been convicted or has pleaded guilty to an offense for
1611 which an escrow account has been established under this chapter
1612 and that one (1) year has elapsed from the time of establishment
1613 of the escrow account, and that no civil actions are pending under
1614 the provisions of subsection (2) of Section 99-38-7, the Treasurer
1615 shall immediately transfer all monies in the escrow account
1616 established in the name of the accused person, less such costs and
1617 expenses as the Treasurer incurs in the administration of the
1618 account, to the Criminal Justice Fund created in Section 99-19-32.

1619 (4) Notwithstanding the provisions of subsection (3), upon a
1620 showing that one (1) year has elapsed from the time of the
1621 establishment of the escrow account and that no civil actions are
1622 pending under the provisions of Section 99-38-7(2), and upon a
1623 showing that the accused in whose name the account is established
1624 is the parent of one or more minor children and that the minor
1625 children are in need of financial support, the chancery court of
1626 the district in which the minor children reside may order the
1627 Treasurer to pay over an amount set by the court for the support
1628 of those children until they reach the age of majority. Upon
1629 order of the court, the Treasurer shall pay the specified amount
1630 to a guardian appointed by the court for the use and benefit of
1631 the minor children. In no event shall the total amount to be paid
1632 for the support of any minor children of the accused in whose name
1633 the account is established exceed the amount of money in the
1634 account at the time the court issues its order.

1635 (5) The Treasurer shall be authorized to promulgate such
1636 rules and regulations as may be necessary to carry out the
1637 provisions of this chapter.

1638 **SECTION 43.** Section 99-39-23, Mississippi Code of 1972, is
1639 amended as follows:

1640 99-39-23. (1) If an evidentiary hearing is required, the
1641 judge may appoint counsel for a petitioner who qualifies for the
1642 appointment of counsel under Section 99-15-15.

1643 (2) The hearing shall be conducted as promptly as
1644 practicable, having regard for the need of counsel for both
1645 parties for adequate time for investigation and preparation.

1646 (3) The parties shall be entitled to subpoena witnesses and
1647 compel their attendance, including, but not being limited to,
1648 subpoenas duces tecum.

1649 (4) The court may receive proof by affidavits, depositions,
1650 oral testimony or other evidence and may order the prisoner
1651 brought before it for the hearing.

1652 (5) If the court finds in favor of the prisoner, it shall
1653 enter an appropriate order with respect to the conviction or
1654 sentence under attack, and any supplementary orders as to
1655 rearraignment, retrial, custody, bail, discharge, correction of
1656 sentence or other matters that may be necessary and proper. The
1657 court shall make specific findings of fact, and state expressly
1658 its conclusions of law, relating to each issue presented.

1659 (6) The order as provided in subsection (5) of this section
1660 or any order dismissing the prisoner's motion or otherwise denying
1661 relief under this article is a final judgment and shall be
1662 conclusive until reversed. It shall be a bar to a second or
1663 successive motion under this article. Excepted from this
1664 prohibition is a motion filed under Section 99-19-57(2), raising
1665 the issue of the offender's supervening mental illness before the
1666 execution of a sentence of death. A dismissal or denial of a
1667 motion relating to mental illness under Section 99-19-57(2) shall
1668 be res judicata on the issue and shall likewise bar any second or
1669 successive motions on the issue. Likewise excepted from this
1670 prohibition are those cases in which the prisoner can demonstrate
1671 either that there has been an intervening decision of the Supreme
1672 Court of either the State of Mississippi or the United States
1673 that would have actually adversely affected the outcome of his
1674 conviction or sentence or that he has evidence, not reasonably
1675 discoverable at the time of trial, which is of such nature that it
1676 would be practically conclusive that, if it had * * * been
1677 introduced at trial, it would have caused a different result in
1678 the conviction or sentence. Likewise excepted are those cases in
1679 which the prisoner claims that his sentence has expired or his
1680 probation, parole or conditional release has been unlawfully
1681 revoked.

1682 (7) No relief shall be granted under this article unless the
1683 prisoner proves by a preponderance of the evidence that he is
1684 entitled to the relief.

1685 (8) Proceedings under this section shall be subject to the
1686 provisions of Section 99-19-42.

1687 (9) In cases resulting in a sentence of death and upon a
1688 determination of indigence, appointment of post-conviction counsel
1689 shall be made by the Office of Capital Post-Conviction Counsel
1690 upon order entered by the Supreme Court promptly upon announcement
1691 of the decision on direct appeal affirming the sentence of death.
1692 The order shall direct the trial court to immediately determine
1693 indigence and whether the inmate will accept counsel.

1694 **SECTION 44.** Section 99-39-27, Mississippi Code of 1972, is
1695 amended as follows:

1696 99-39-27. (1) The application for leave to proceed in the
1697 trial court filed with the Supreme Court under Section 99-39-7
1698 shall name the State of Mississippi as the respondent.

1699 (2) The application shall contain the original and two (2)
1700 executed copies of the motion proposed to be filed in the trial
1701 court together with such other supporting pleadings and
1702 documentation as the Supreme Court by rule may require.

1703 (3) The prisoner shall serve an executed copy of the
1704 application upon the Attorney General simultaneously with the
1705 filing of the application with the court.

1706 (4) The original motion, together with all files, records,
1707 transcripts and correspondence relating to the judgment under
1708 attack, shall promptly be examined by the court.

1709 (5) Unless it appears from the face of the application,
1710 motion, exhibits and the prior record that the claims presented by
1711 those documents are not procedurally barred under Section 99-39-21
1712 and that they further present a substantial showing of the denial
1713 of a state or federal right, the court shall by appropriate order
1714 deny the application. The court may, in its discretion, require
1715 the Attorney General upon sufficient notice to respond to the
1716 application.

1717 (6) The court, upon satisfaction of the standards set forth
1718 in this article, is empowered to grant the application.

1719 (7) In granting the application the court, in its
1720 discretion, may:

1721 (a) Where sufficient facts exist from the face of the
1722 application, motion, exhibits, the prior record and the state's
1723 response, together with any exhibits submitted with those
1724 documents, or upon stipulation of the parties, grant or deny any
1725 or all relief requested in the attached motion.

1726 (b) Allow the filing of the motion in the trial court
1727 for further proceedings under Sections 99-39-13 through 99-39-23.

1728 (8) No application or relief shall be granted without the
1729 Attorney General being given at least five (5) days to respond.

1730 (9) The dismissal or denial of an application under this
1731 section is a final judgment and shall be a bar to a second or
1732 successive application under this article. Excepted from this
1733 prohibition is an application filed under Section 99-19-57(2),
1734 raising the issue of the offender's supervening mental illness
1735 before the execution of a sentence of death. A dismissal or
1736 denial of an application relating to mental illness under Section
1737 99-19-57(2) shall be res judicata on the issue and shall likewise
1738 bar any second or successive applications on the issue. Likewise
1739 excepted from this prohibition are those cases in which the
1740 prisoner can demonstrate either that there has been an intervening
1741 decision of the Supreme Court of either the State of Mississippi
1742 or the United States that would have actually adversely affected
1743 the outcome of his conviction or sentence or that he has evidence,
1744 not reasonably discoverable at the time of trial, that is of such
1745 nature that it would be practically conclusive that, if it
1746 had * * * been introduced at trial, it would have caused a
1747 different result in the conviction or sentence. Likewise exempted
1748 are those cases in which the prisoner claims that his sentence has

1749 expired or his probation, parole or conditional release has been
1750 unlawfully revoked.

1751 (10) Proceedings under this section shall be subject to the
1752 provisions of Section 99-19-42.

1753 (11) Post-conviction proceedings in which the defendant is
1754 under sentence of death shall be governed by rules established by
1755 the Supreme Court as well as the provisions of this section.

1756 **SECTION 45.** Section 41-19-103, Mississippi Code of 1972, is
1757 amended as follows:

1758 41-19-103. The Ellisville State School * * * established by
1759 Chapter 210, Laws of Mississippi 1920, is recognized as now
1760 existing and shall hereafter be known under the name of Ellisville
1761 State School for the care and treatment of * * * persons with
1762 mental retardation. The school shall have the power to receive
1763 and hold property, real, personal and mixed, as a body corporate.
1764 The school shall be under the direction and control of the State
1765 Board of * * * Mental Health.

1766 **SECTION 46.** The following shall be codified as Section
1767 41-19-108, Mississippi Code of 1972:

1768 41-19-108. With funds provided by the Legislature, by direct
1769 appropriation or authorized bond issue, with federal matching
1770 funds, or with any other available funds, the Bureau of Building,
1771 Grounds and Real Property Management may construct and equip the
1772 necessary residential and service buildings and other facilities
1773 to care for the residents of Ellisville State School. The general
1774 design of the school and all construction plans shall be approved
1775 and recommended by the State Department of Mental Health.

1776 **SECTION 47.** The following shall be codified as Section
1777 41-19-112, Mississippi Code of 1972:

1778 41-19-112. Ellisville State School shall be administered by
1779 the State Board of Mental Health. Provisions relating to the
1780 admission and care of residents at the school shall be promulgated
1781 by the board.

1782 **SECTION 48.** The following shall be codified as Section
1783 41-19-114, Mississippi Code of 1972:

1784 41-19-114. Persons admitted to Ellisville State School shall
1785 be assessed support and maintenance costs in accordance with the
1786 provisions of the state reimbursement laws as they apply to other
1787 state institutions.

1788 **SECTION 49.** The following shall be codified as Section
1789 41-19-116, Mississippi Code of 1972:

1790 41-19-116. Any person who (a) knowingly and unlawfully or
1791 improperly causes a person to be adjudged to be a person of mental
1792 retardation, (b) procures the escape of a legally committed
1793 resident or knowingly conceals an escaped legally committed
1794 resident of Ellisville State School, or (c) unlawfully brings any
1795 firearm, deadly weapon or explosive into the school or its
1796 grounds, or passes any thereof to a resident, employee or officer
1797 of the school, is guilty of a misdemeanor and, upon conviction,
1798 shall be punished by a fine of not less than Fifty Dollars
1799 (\$50.00), nor more than Two Hundred Dollars (\$200.00),
1800 imprisonment for not less than six (6) months, or both.

1801 **SECTION 50.** The following shall be codified as Section
1802 41-19-118, Mississippi Code of 1972:

1803 41-19-118. Ellisville State School is designated as a state
1804 agency for carrying out the purposes of any act of the Congress of
1805 the United States, now existing or at any time hereafter enacted,
1806 pertaining to mental retardation.

1807 **SECTION 51.** Section 41-19-121, Mississippi Code of 1972, is
1808 amended as follows:

1809 41-19-121. The director of * * * Ellisville State School may
1810 receive free lodging in his institution for himself and his
1811 family, but not free board, nor free supplies from the
1812 school. * * *

1813 **SECTION 52.** Sections 41-5-55, 41-5-81, 41-17-5, 41-17-7,
1814 41-17-9, 41-17-13, 41-19-105, 41-19-107, 41-19-109, 41-19-115,

1815 41-19-117, 41-19-119, 41-21-43, 41-21-45, 41-45-1, 41-45-3,
1816 41-45-5, 41-45-7, 41-45-9, 41-45-11, 41-45-13, 41-45-15, 41-45-17
1817 and 41-45-19, Mississippi Code of 1972, which prohibit the
1818 apprenticing of mental patients, provide certain criminal
1819 penalties, provide certain visitation duties for directors of
1820 mental hospitals, exempt resident mental hospital officers from
1821 jury service, require a drug store to be kept at each mental
1822 hospital, require separate accommodations at Whitfield for
1823 alcoholic and drug addicts, provide for the plan of Ellisville
1824 State School, require Ellisville's director to keep certain
1825 records, authorize Ellisville's director to sell certain products
1826 of the school, provide discharge procedures for Ellisville
1827 patients, provide for habeas corpus proceedings for Ellisville
1828 patients, authorize the receipt of gifts for the support of
1829 Ellisville, require counties to temporarily provide for the
1830 maintenance of indigent mentally retarded persons, prohibit
1831 cohabitation with mentally retarded persons, and authorize the
1832 sterilization of mentally ill and mentally retarded patients, are
1833 repealed.

1834 **SECTION 53.** This act shall take effect and be in force from
1835 and after July 1, 2005.