

By: Senator(s) Dawkins

To: Public Health and  
Welfare; Appropriations

## SENATE BILL NO. 2746

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

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

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

39 1-3-57. The term "unsound mind," when used in any statute in  
40 reference to persons, shall include persons with mental  
41 retardation, persons with mental illness, and persons non compos  
42 mentis.

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

45           1-3-58. Whenever the term "ward" is used, it shall be  
46 liberally construed and held to include any and all persons under  
47 every form of legal disability, including, but not limited to, the  
48 disabilities of minority, mental retardation, mental illness,  
49 unsound mind, alcoholism, addiction to drugs, and convicted  
50 felons.

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

53           7-1-5. In addition to the powers conferred and duties  
54 imposed on the Governor by the constitution and by the laws as  
55 elsewhere provided, he shall have the powers and perform the  
56 duties following \* \* \*:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

102 11-5-49. In proceedings in matters testamentary and of  
103 administration, in minors' business, and in cases of persons with  
104 mental retardation, persons with mental illness and persons of  
105 unsound mind, as provided for by law, no answer shall be required  
106 to any petition or application of any sort. Such a petition or  
107 application shall not be taken as confessed because of the lack of  
108 an answer, but every petition, application, or account shall be

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

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

124 11-5-113. All the provisions of this chapter on the subject  
125 of sales shall apply to all sales of real estate under any decree  
126 in the chancery court made in matters testamentary and of  
127 administration, minors' business, cases of persons with mental  
128 retardation, persons with mental illness and persons of unsound  
129 mind, of partition, and all other matters.

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

132 11-5-117. (1) In addition to the law now in force  
133 authorizing the chancery court to decree the sale of land and  
134 personal property, the chancery court and the chancellor in  
135 vacation are authorized in all matters providing for a sale or  
136 lease of real and personal property, including matters  
137 testamentary and of administration, minor's business, persons with  
138 mental illness, partition and receivers, to order or decree the  
139 sale or lease of real and personal property or any interest in the  
140 property, including timber, oil, gas and minerals, at private  
141 sale, under such terms and conditions as the chancellor may

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

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

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

150 11-51-101. (1) The state and any county or municipality of  
151 the state, and the officials representing the state, county or  
152 municipality, in any suit or action, and any state, county or  
153 municipal officer who is a party to any suit or action in his  
154 official character, in which suit or action the state, county or  
155 municipality is beneficially interested, and the several  
156 incorporated charitable or educational institutions established  
157 and maintained by the state, and all corporate instrumentalities  
158 wholly owned by the United States government, shall be entitled to  
159 appeal from a judgment, decree, decision or order of any court or  
160 judge from which an appeal may be taken without prepayment of  
161 costs in the lower court; however, \* \* \* the cost of the  
162 preparation of the record of the proceedings in the trial court  
163 shall be prepaid. In any such case, if a supersedeas is allowed  
164 and desired, a bond for supersedeas shall not be required.

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

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

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

183 19-5-43. The boards of supervisors in their respective  
184 counties shall temporarily provide for the care and maintenance of  
185 any person alleged to have mental illness when the person has no  
186 means of paying that expense, pending an investigation into the  
187 mental status of the person alleged to have mental illness before  
188 the chancery clerk of the county, and provide for the care and  
189 maintenance of those persons by the sheriff of their respective  
190 counties after being adjudged as a person with mental illness by  
191 the properly constituted authority, when there is no room in one  
192 (1) of the state psychiatric hospitals or institutions for the  
193 person with mental illness. The boards shall cause all reasonable  
194 and proper allowance for that care and maintenance to be paid out  
195 of the county treasury.

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

198 19-7-31. The board of supervisors of each county in the  
199 state shall have power, by an appropriate order or orders on its  
200 minutes, to establish and maintain in the county courthouse or  
201 other suitable public building adjacent or near thereto, a public  
202 county law library under such rules, regulations and supervision  
203 as it may from time to time ordain and establish, and to that end,  
204 the board may accept gifts, grants, donations or bequests of  
205 money, furniture, fixtures, books, documents, maps, plats or other  
206 property suitable for that purpose.

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

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

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

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

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

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

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



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

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

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

289 23-15-11. Every inhabitant of this state, except a person  
290 adjudicated to be non compos mentis, who is a citizen of the  
291 United States of America, eighteen (18) years old and upwards, who  
292 has resided in this state for thirty (30) days and for thirty (30)  
293 days in the county in which he seeks to vote, and for thirty (30)  
294 days in the incorporated municipality in which he seeks to vote,  
295 and who has been duly registered as an elector under Section  
296 23-15-33, and who has never been convicted of any crime listed in  
297 Section 241, Mississippi Constitution of 1890, shall be a  
298 qualified elector in and for the county, municipality and voting  
299 precinct of his residence, and shall be entitled to vote at any  
300 election. Any person who will be eighteen (18) years of age or  
301 older on or before the date of the general election and who is  
302 duly registered to vote not less than thirty (30) days before the  
303 primary election associated with the general election, may vote in  
304 the primary election even though the person has not reached his or

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

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

311 25-7-61. (1) Fees of jurors shall be payable as follows:

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

321 No grand juror shall receive any compensation except mileage  
322 unless he has been sworn as provided by Section 13-5-45; and no  
323 petit juror except those jurors called on special venires shall  
324 receive any compensation authorized under this subsection except  
325 mileage unless he has have been sworn as provided by Section  
326 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 such 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, Mississippi Code of 1972; 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;

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; and

458           (q) In consultation with and approval by the Chairmen  
459 of the Public Property Committees of the Senate and the House of  
460 Representatives, enter into contracts for the purpose of providing  
461 parking spaces for state employees who work in the Woolfolk  
462 Building, the Carroll Gartin Justice Building or the Walter  
463 Sillers Office Building. The provisions of this paragraph (q)  
464 shall stand repealed on July 1, 2006.

465           (3) The department shall survey state-owned and  
466 state-utilized buildings to establish an estimate of the costs of  
467 architectural alterations under the Americans With Disabilities

468 Act of 1990, 42 USCS, Section 12111 et seq. The department shall  
469 establish priorities for making the identified architectural  
470 alterations and shall make known to the Legislative Budget Office  
471 and to the Legislature the required cost to effectuate those  
472 alterations. To meet the requirements of this subsection, the  
473 department shall use standards of accessibility that are at least  
474 as stringent as any applicable federal requirements and may  
475 consider:

476 (a) Federal minimum guidelines and requirements issued  
477 by the United States Architectural and Transportation Barriers  
478 Compliance Board and standards issued by other federal agencies;

479 (b) The criteria contained in the American Standard  
480 Specifications for Making Buildings Accessible and Usable by the  
481 Physically Handicapped and any amendments thereto as approved by  
482 the American Standards Association, Incorporated (ANSI Standards);

483 (c) Design manuals;

484 (d) Applicable federal guidelines;

485 (e) Current literature in the field;

486 (f) Applicable safety standards; and

487 (g) Any applicable environmental impact statements.

488 (4) The department shall observe the provisions of Section  
489 31-5-23, in letting contracts and shall use Mississippi products,  
490 including paint, varnish and lacquer that contain as vehicles tung  
491 oil and either ester gum or modified resin (with rosin as the  
492 principal base of constituents), and turpentine shall be used as a  
493 solvent or thinner, where these products are available at a cost  
494 not to exceed the cost of products grown, produced, prepared, made  
495 or manufactured outside of the State of Mississippi.

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

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

503 (7) The department shall review and preapprove all  
504 architectural or engineering service contracts entered into by any  
505 state agency, institution, commission, board or authority  
506 regardless of the source of funding used to defray the costs of  
507 the construction or renovation project for which services are to  
508 be obtained. The provisions of this subsection (7) shall not  
509 apply to any architectural or engineering contract paid for by  
510 self-generated funds of any of the state institutions of higher  
511 learning, nor shall they apply to community college projects that  
512 are funded from local funds or other nonstate sources that are  
513 outside the Department of Finance and Administration's  
514 appropriations or as directed by the Legislature. The provisions  
515 of this subsection (7) shall not apply to any construction or  
516 design projects of the State Military Department that are funded  
517 from federal funds or other nonstate sources.

518 (8) The department shall have the authority to obtain  
519 annually from the state institutions of higher learning  
520 information on all building, construction and renovation projects  
521 including duties, responsibilities and costs of any architect or  
522 engineer hired by any of those institutions.

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

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

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



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

536 (b) As used in this subsection:

537 (i) "Design-build method of contracting" means a  
538 contract that combines the design and construction phases of a  
539 project into a single contract and the contractor is required to  
540 satisfactorily perform, at a minimum, both the design and  
541 construction of the project.

542 (ii) "Design-build bridging method of contracting"  
543 means a contract that requires design through the design  
544 development phase by a professional designer, after which a  
545 request for qualifications for design completion and construction  
546 is required for the completion of the project from a single  
547 contractor that combines the balance of design and construction  
548 phases of a project into a single contract. The contractor is  
549 required to satisfactorily perform, at a minimum, both the balance  
550 of design and construction of the project.

551 (c) The department shall establish detailed criteria  
552 for the selection of the successful design-build/design-build  
553 bridging contractor in each request for design-build/design-build  
554 bridging proposals. The request for qualifications evaluation of  
555 the selection committee is a public record and shall be maintained  
556 for a minimum of three (3) years after project completion.

557 (d) The department shall maintain detailed records on  
558 projects separate and apart from its regular record keeping. The  
559 department shall file a report with the Legislature evaluating the  
560 design-build/design-build bridging method of contracting by  
561 comparing it to the low-bid method of contracting. At a minimum,  
562 the report must include:

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

565 (ii) A complete description of the components of  
566 the design-build/design-build bridging management system,  
567 including a description of the system the department put into  
568 place on all projects managed under the system to insure that it  
569 has the complete information on building segment costs and to  
570 insure proper analysis of any proposal the department receives  
571 from a contractor;

572 (iii) The accountability systems the department  
573 established to monitor any design-build/design-build bridging  
574 project's compliance with specific goals and objectives for the  
575 project;

576 (iv) The outcome of any project or any interim  
577 report on an ongoing project let under a design-build/design-build  
578 bridging management system showing compliance with the goals,  
579 objectives, policies and procedures the department set for the  
580 project; and

581 (v) The method used by the department to select  
582 projects to be let under the design-build/design-build bridging  
583 system of management and all other systems, policies and  
584 procedures that the department considered as necessary components  
585 to a design-build/design-build bridging management system.

586 (e) All contracts let under the provisions of this  
587 subsection shall be subject to oversight and review by the State  
588 Auditor.

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

591 35-5-31. (1) Whenever, in any proceeding under the laws of  
592 this state for the commitment of a person alleged to be a person  
593 with mental illness, person with mental retardation, or otherwise  
594 of unsound mind, or otherwise in need of confinement in a hospital  
595 or other institution for his proper care, it is determined after  
596 the adjudication of the status of the person as may be required by  
597 law that commitment to a state psychiatric hospital or institution

598 or other institution is necessary for safekeeping or treatment,  
599 and it appears that the person is eligible for care or treatment  
600 by the Veterans Administration or other agency of the United  
601 States government, the court, upon receipt of a certificate from  
602 the Veterans Administration or such other agency showing that  
603 facilities are available and that the person is eligible for care  
604 or treatment in those facilities, may commit the person to the  
605 Veterans Administration or other agency. The person whose  
606 commitment is sought shall be personally served with notice of the  
607 pending commitment proceeding in the manner provided by the law of  
608 this state; and nothing in this section shall affect his right to  
609 appear and be heard in the proceedings. Upon commitment, the  
610 person, when admitted to any facility operated by the Veterans  
611 Administration or other agency within or without this state shall  
612 be subject to the rules and regulations of the Veterans  
613 Administration or other agency. The chief officer of any facility  
614 of the Veterans Administration or institution operated by any  
615 other agency of the United States to which the person is so  
616 committed shall, with respect to the person, be vested with the  
617 same powers as superintendents of state psychiatric hospitals or  
618 institutions within this state with respect to retention of  
619 custody, transfer, parole or discharge. Jurisdiction is retained  
620 in the committing or other appropriate court of this state at any  
621 time to inquire into the mental condition of the person so  
622 committed, and to determine the necessity for continuance of his  
623 restraint, and all commitments under this section are so  
624 conditioned.

625 (2) The judgment or order of commitment by a court of  
626 competent jurisdiction of another state or of the District of  
627 Columbia, committing a person to the Veterans Administration or  
628 other agency of the United States government for care or  
629 treatment, shall have the same force and effect as to the  
630 committed person while in this state as in the jurisdiction in

631 which is situated the court entering the judgment or making the  
632 order, and the courts of the committing state or of the District  
633 of Columbia shall be deemed to have retained jurisdiction of the  
634 person so committed for the purpose of inquiring into the mental  
635 condition of the person and of determining the necessity for  
636 continuance of his restraint, as is provided in subsection (1) of  
637 this section with respect to persons committed by the courts of  
638 this state. Consent is \* \* \* given to the application of the law  
639 of the committing state or District of Columbia in respect to the  
640 authority of the chief officer of any facility of the Veterans  
641 Administration or of any institution operated in this state by any  
642 other agency of the United States to retain custody, or transfer,  
643 parole or discharge the committed person.

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

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

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

668 41-17-3. The state psychiatric hospital and institution  
669 established at Meridian by the Act of March 8, 1882, shall  
670 continue to exist as a body politic and corporate, under the name  
671 of the "East Mississippi State Hospital," with all the privileges  
672 conferred and the duties enjoined by law. It may hold and use, as  
673 required by law, all the property, real and personal, belonging to  
674 or that may be given to it for the purposes of its establishment.

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

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

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

689 41-21-35. The rule as to the legal settlement of paupers  
690 shall apply in cases of persons with mental illness and \* \* \*  
691 persons with mental retardation.

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

694 43-31-35. If any person commanding a ship, vessel,  
695 steamboat, or other watercraft imports into this state, or brings

696 to the shores or within the limits thereof, any infant, person  
697 with mental illness, maimed, aged or infirm person or vagrant who  
698 is likely to become chargeable on the county, on the requisition  
699 of the supervisor of the district or the mayor of any  
700 municipality, the captain, master, or commander of the ship,  
701 vessel, steamboat, or other watercraft shall enter into bond with  
702 sufficient sureties, payable to the county, conditioned to  
703 indemnify the county against all charges that may be incurred in  
704 the support and care of that person. Any captain, master, or  
705 commander failing or refusing to give the bond required shall  
706 forfeit and pay to the county the sum of Two Hundred Dollars  
707 (\$200.00) for each infant, person with mental illness, maimed,  
708 aged, or infirm person or vagrant so brought into the state, to be  
709 recovered by action.

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

712 67-1-83. (1) It shall be unlawful for any permittee or  
713 other person to sell or furnish any alcoholic beverage \* \* \* to  
714 any person who is visibly intoxicated, or to any person who is  
715 known to habitually drink alcoholic beverages to excess, or to any  
716 person who is known to be an habitual user of narcotics or other  
717 habit-forming drugs. It shall also be unlawful for the holder of  
718 any package retailer's permit to sell any alcoholic beverages  
719 except by delivery in person to the purchaser at the place of  
720 business of the permittee.

721 (2) It shall be unlawful for any permittee or other person  
722 to sell or furnish any alcoholic beverage to any person to whom  
723 the commission has, after investigation, decided to prohibit the  
724 sale of those beverages because of an appeal to the commission so  
725 to do by the husband, wife, father, mother, brother, sister,  
726 child, or employer of the person. The interdiction in those cases  
727 shall last until removed by the commission, but no person shall be  
728 held to have violated this subsection unless he has been informed

729 by the commission, by registered letter, that it is forbidden to  
730 sell to that individual or unless that fact is otherwise known to  
731 the permittee or other person.

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

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

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

748 67-3-53. In addition to any act declared to be unlawful by  
749 this chapter, or by Sections 27-71-301 through 27-71-347, and  
750 Sections 67-3-17, 67-3-27, 67-3-29 and 67-3-57, it shall be  
751 unlawful for the holder of a permit authorizing the sale of beer  
752 or light wine at retail or for the employee of the holder of such  
753 a permit:

754 (a) To sell or give to be consumed in or upon any  
755 licensed premises any beer or light wine between the hours of  
756 midnight and seven o'clock the following morning or during any  
757 time the licensed premises may be required to be closed by  
758 municipal ordinance or order of the board of supervisors; \* \* \*  
759 however, in areas where the sale of alcoholic beverages is legal  
760 under the provisions of the Local Option Alcoholic Beverage  
761 Control Law and the hours for selling those alcoholic beverages

762 have been extended beyond midnight for on-premises permittees  
763 under Section 67-1-37, the hours for selling beer or light wines  
764 are likewise extended in areas where the sale of beer and light  
765 wines is legal in accordance with the provisions of this chapter.

766 (b) To sell, give or furnish any beer or light wine to  
767 any person visibly or noticeably intoxicated, \* \* \* or to any  
768 habitual drunkard, or to any person under the age of twenty-one  
769 (21) years.

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

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

776 (e) To permit persons of ill repute, known criminals,  
777 prostitutes or minors to frequent the licensed premises, except  
778 minors accompanied by parents or guardians, or under proper  
779 supervision.

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

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

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

789 73-19-23. (1) The board shall refuse to grant a certificate  
790 of licensure to any applicant and may cancel, revoke or suspend  
791 the operation of any certificate by it granted for any or all of  
792 the following reasons \* \* \*: unprofessional and unethical conduct  
793 or the conviction of a crime involving moral turpitude, habitual  
794 intemperance in the use of ardent spirits, or stimulants,



795 narcotics, or any other substance that impairs the intellect and  
796 judgment to such an extent as to incapacitate one for the  
797 performance of the duties of an optometrist. The certificate of  
798 licensure of any person can be revoked for violating any section  
799 of this chapter.

800 (2) The board shall further be authorized to take  
801 disciplinary action against a licensee for any unlawful acts,  
802 which shall include violations of regulations promulgated by the  
803 board, as well as the following acts:

804 (a) Fraud or misrepresentation in applying for or  
805 procuring an optometric license or in connection with applying for  
806 or procuring periodic renewal of an optometric license.

807 (b) Cheating on or attempting to subvert the optometric  
808 licensing examination(s).

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

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

815 (e) Conduct likely to deceive, defraud or harm the  
816 public.

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

821 (g) Willfully or negligently violating the  
822 confidentiality between doctor and patient, except as required by  
823 law.

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

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

828           (j) The use of any false, fraudulent, deceptive or  
829 misleading statement in any document connected with the practice  
830 of optometry.

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

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

835           (m) Being addicted or habituated to a drug or  
836 intoxicant.

837           (n) Violating any state or federal law or regulation  
838 relating to a drug legally classified as a controlled substance.

839           (o) Obtaining any fee by fraud, deceit or  
840 misrepresentation.

841           (p) Disciplinary action of another state or  
842 jurisdiction against a licensee or other authorization to practice  
843 optometry based upon acts or conduct by the licensee similar to  
844 acts or conduct that would constitute grounds for action as  
845 defined in this chapter, a certified copy of the record of the  
846 action taken by the other state or jurisdiction being conclusive  
847 evidence thereof.

848           (q) Failure to report to the board the relocation of  
849 his or her office in or out of the jurisdiction, or to furnish  
850 floor plans as required by regulation.

851           (r) Violation of any provision(s) of the Optometry  
852 Practice Act or the rules and regulations of the board or of an  
853 action, stipulation or agreement of the board.

854           (s) To advertise in a manner that tends to deceive,  
855 mislead or defraud the public.

856           (t) The designation of any person licensed under this  
857 chapter, other than by the terms "optometrist," "Doctor of  
858 Optometry" or "O.D."

859           (u) To knowingly submit or cause to be submitted any  
860 misleading, deceptive or fraudulent representation on a claim  
861 form, bill or statement.

862           (v) To practice or attempt to practice optometry while  
863 his or her license is suspended.

864           (3) Any person who is holder of a certificate of licensure  
865 or who is an applicant for examination for a certificate of  
866 licensure, against whom is preferred any charges, shall be  
867 furnished by the board with a copy of the complaint and shall have  
868 a hearing in Jackson, Mississippi, before the board, at which  
869 hearing he may be represented by counsel. At the hearing,  
870 witnesses may be examined for and against the accused respecting  
871 those charges, and the hearing orders or appeals will be conducted  
872 according to the procedure now provided in Section 73-25-27. The  
873 suspension of a certificate of licensure by reason of the use of  
874 stimulants or narcotics may be removed when the holder of the  
875 certificate has been adjudged by the \* \* \* board to be cured and  
876 capable of practicing optometry.

877           (4) In addition to the reasons specified in subsections (1)  
878 and (2) of this section, the board shall be authorized to suspend  
879 the license of any licensee for being out of compliance with an  
880 order for support, as defined in Section 93-11-153. The procedure  
881 for suspension of a license for being out of compliance with an  
882 order for support, and the procedure for the reissuance or  
883 reinstatement of a license suspended for that purpose, and the  
884 payment of any fees for the reissuance or reinstatement of a  
885 license suspended for that purpose, shall be governed by Section  
886 93-11-157 or 93-11-163, as the case may be. If there is any  
887 conflict between any provision of Section 93-11-157 or 93-11-163  
888 and any provision of this chapter, the provisions of Section  
889 93-11-157 or 93-11-163, as the case may be, shall control.

890           **SECTION 22.** Section 81-5-33, Mississippi Code of 1972, is  
891 amended as follows:

892           81-5-33. Banks may accept and execute all such trusts and  
893 perform such duties of every description as may be committed to  
894 them by any person or corporation or that may be committed or  
895 transferred to them by order of any court of record. They may  
896 receive money in trust, take and accept by grant, assignment,  
897 transfer, devise or bequest, and hold any real or personal estate  
898 or trusts created according to the laws of this or any other state  
899 or of the United States, and execute those legal trusts in regard  
900 to the same, on such terms as may be directed or agreed  
901 upon \* \* \*. They may act as agent for the investment of money or  
902 the management of property for other persons, and as agent for  
903 persons and corporations for the purpose of issuing, registering,  
904 transferring or countersigning the certificates of stock, bonds or  
905 other evidences of debt of any corporation, association,  
906 municipality, state, county or public authority on such terms as  
907 may be agreed upon. They also may act as guardian for any minor  
908 or \* \* \* person with mental illness under the appointment of any  
909 court of record having jurisdiction of the person or estate of  
910 the minor or \* \* \* person with mental illness and may act as  
911 administrator or executor of the estate of any deceased person.  
912 They may act as agent or attorney in fact and as commissioner for  
913 the sale of property, both real and personal, and may act as  
914 assignee or receiver, or as trustee in mortgages or bond issues,  
915 or in any other fiduciary capacity authorized by law. They may  
916 accept trust funds or other property upon specially agreed terms  
917 and pay or deliver the same to the owners, beneficiaries or  
918 others, as the case may be, when and as the same should be paid or  
919 delivered according to the terms of the trust agreement under  
920 which it is held. Whenever under the laws of this or any other  
921 state or under the rule or order of any court, the execution of a  
922 bond for the protection of a private or court trust is required, a  
923 trust company shall be authorized to execute the bond for the  
924 protection of any trust or trust estate being administered by it.

925 Banking corporations created, organized and doing business  
926 under the laws of the State of Mississippi may exercise, without  
927 amendment of their charters, and under their charter authority to  
928 engage in the general business of banking, all or any of the  
929 foregoing powers. However, before any bank whose charter merely  
930 authorizes the exercise of general banking functions may exercise  
931 those powers, the previous written consent of the Commissioner of  
932 Banking and Consumer Finance shall be obtained.

933 Banks exercising any or all of those powers shall segregate  
934 all assets held in any fiduciary capacity from the general assets  
935 of the bank and shall keep a separate set of books and records  
936 showing in proper detail all transactions engaged in under the  
937 authority of this section or under the authority \* \* \* granted to  
938 them in their charter or otherwise. Those books and records shall  
939 be inspected and examined by the state bank examiners at each and  
940 every examination of the bank.

941 No bank shall receive in its trust department deposits of  
942 current funds subject to check or the deposit of checks, drafts,  
943 bills of exchange or other items for collection or exchange  
944 purposes. Funds deposited or held in trust by the bank awaiting  
945 investment or distribution shall be carried in a separate account  
946 and shall not be used by the bank in the conduct of its business,  
947 unless it \* \* \* first sets aside in the trust department United  
948 States bonds or bonds of the State of Mississippi or any  
949 subdivision of the state, the market value of which shall at all  
950 times be not less than ten percent (10%) in excess of the total  
951 funds so held, exclusive of the portion of funds insured by the  
952 Federal Deposit Insurance Corporation.

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

957           In any case in which the laws of this state require that one  
958 acting as trustee, executor, administrator or in any fiduciary  
959 capacity must take an oath or make an affidavit, the president,  
960 vice president, cashier or trust officer of a bank may take the  
961 necessary oath or execute the necessary affidavit.

962           In making investments of trust funds, it shall be unlawful  
963 for any bank to purchase securities from itself or to purchase  
964 securities in which it may be interested, directly or indirectly.  
965 However, any bank, including a national bank, authorized to do  
966 business in this state in a fiduciary capacity may, unless  
967 prohibited or otherwise limited by the instrument governing the  
968 fiduciary relationship, in the exercise of its investment  
969 discretion or at the direction of another person authorized to  
970 direct the investment of funds held by the bank as fiduciary,  
971 invest and reinvest in the securities of, or other interests in,  
972 any open-end or closed-end management type investment company or  
973 investment trust registered under the Investment Company Act of  
974 1940, 15 USCS Section 80a-1, et seq., as amended, notwithstanding  
975 that the banking institution or affiliate of the banking  
976 institution provides services to the investment company or  
977 investment trust, such as that of an investment advisor,  
978 custodian, transfer agent, registrar, sponsor, distributor,  
979 manager or otherwise, and receives reasonable remuneration for  
980 those services, so long as the total compensation paid by the  
981 trust or custodial estate as trustee's fees and mutual fund fees  
982 is reasonable, taking into account the nature and extent of the  
983 trustee's duties, the nature and extent of the services provided  
984 to the investment company or investment trust, and the total  
985 compensation, costs and fees that would otherwise be paid,  
986 directly or indirectly, by the trust or custodial estate if the  
987 investment were made in an investment company or investment trust  
988 for which the bank or its affiliates provided no services. With  
989 respect to any funds so invested, the banking institution shall

990 make available by statement, prospectus or otherwise to all  
991 current income beneficiaries of an account the basis, expressed as  
992 a percentage of asset value or otherwise, upon which the  
993 remuneration is calculated. No bank shall lend to any officer,  
994 director or employee of the bank any funds held in trust by it,  
995 and any officer, director or employee making a loan, or to whom  
996 such a loan is made, shall be guilty of a felony and, upon  
997 conviction, may be fined not more than Five Thousand Dollars  
998 (\$5,000.00) or imprisoned in the State Penitentiary for not more  
999 than five (5) years, or by both that fine and imprisonment, in the  
1000 discretion of the court.

1001       **SECTION 23.** Section 81-27-6.307, Mississippi Code of 1972,  
1002 is amended as follows:

1003       81-27-6.307. (a) A limited liability trust company  
1004 organized under this article is dissolved on:

1005             (1) The expiration of the period fixed for the duration  
1006 of the limited liability trust company;

1007             (2) A vote to dissolve or the execution of a written  
1008 consent to dissolve by all full liability participants, if any,  
1009 and a sufficient number of other participants that combined with  
1010 all full liability participants hold at least two-thirds (2/3) of  
1011 the participation shares in each class in the association, or a  
1012 greater fraction as provided by the articles of association;

1013             (3) Except as provided by the articles of association,  
1014 the death, adjudication of incompetence, expulsion, bankruptcy,  
1015 retirement, or resignation of a participant unless a majority in  
1016 interest of all remaining participants elect in writing not later  
1017 than the ninetieth day after the date of the event to continue the  
1018 business of the association; or

1019             (4) The occurrence of an event of dissolution specified  
1020 in the articles of association.

1021 (b) A dissolution under this section is considered to be the  
1022 initiation of a voluntary liquidation under Subarticle B of  
1023 Article 7 of this chapter.

1024 (c) An event of dissolution described by subsection (a)(3)  
1025 of this section does not cancel or revoke a contract to which the  
1026 state trust company is a party, including a trust indenture or  
1027 agreement or voluntary dissolution under Subarticle B of Article 7  
1028 of this chapter, until the period for the remaining participants  
1029 to continue the business of the state trust company has expired  
1030 without the remaining participants having completed the necessary  
1031 action to continue the business of the state trust company.

1032 **SECTION 24.** Section 89-1-29, Mississippi Code of 1972, is  
1033 amended as follows:

1034 89-1-29. A conveyance, mortgage, deed of trust or other  
1035 incumbrance upon a homestead exempted from execution shall not be  
1036 valid or binding unless signed by the spouse of the owner if the  
1037 owner is married and living with the spouse. But where the spouse  
1038 of the owner of the homestead exempted from execution has been  
1039 adjudicated incompetent, then the owner of the homestead, may file  
1040 a petition in the chancery court and allege in the petition the  
1041 incompetence of the spouse and the adjudication of incompetency of  
1042 the spouse \* \* \* and the facts of the case. The summons for the  
1043 spouse who has been adjudicated incompetent shall be issued and be  
1044 served in the same manner as process is served in other cases  
1045 on \* \* \* persons who are incompetent. The court shall hear the  
1046 case in vacation or in termtime as in other cases, and if the  
1047 court finds the spouse to be incompetent and the owner entitled to  
1048 relief, the court by decree shall authorize and empower the owner  
1049 to execute a conveyance, mortgage, deed of trust or other  
1050 incumbrance upon the homestead without the signature of the  
1051 spouse. However, no mortgage or deed of trust executed in favor  
1052 of the Farmers Home Administration at the time of the purchase of  
1053 real estate to secure the payment of the money used to purchase



1054 the real estate shall be invalid because it is not signed by the  
1055 spouse of the owner.

1056 **SECTION 25.** Section 93-1-5, Mississippi Code of 1972, is  
1057 amended as follows:

1058 93-1-5. It shall be unlawful for the circuit court clerk to  
1059 issue a marriage license until the following conditions precedent  
1060 have been complied with:

1061 (a) Parties desiring a marriage license shall make  
1062 application for the license in writing to the clerk of the circuit  
1063 court of any county in the State of Mississippi; \* \* \*  
1064 however, \* \* \* if the female applicant is under the age of  
1065 twenty-one (21) years and is a resident of the State of  
1066 Mississippi, the application shall be made to the circuit court  
1067 clerk of the county of residence of the female applicant. The  
1068 application shall be immediately filed with the circuit court  
1069 clerk and shall include the names, ages and addresses of the  
1070 parties applying; the names and addresses of the parents of the  
1071 parties applying, and if no parents, then names and addresses of  
1072 the guardian or next of kin; the signatures of witnesses; and any  
1073 other data that may be required by law or the \* \* \* State Board of  
1074 Health. The application shall be sworn to by both applicants.

1075 (b) The application shall remain on file, open to the  
1076 public, in the office of the circuit court clerk for a period of  
1077 three (3) days before the clerk is authorized to issue the  
1078 marriage license. \* \* \* However, \* \* \* if satisfactory proof is  
1079 furnished to the judge of any circuit, chancery or county court  
1080 that sufficient reasons exist, then the judge of any such court in  
1081 the judicial district where either of the parties resides if they  
1082 are over the age of twenty-one (21) years, or where the female  
1083 resides if she is under the age of twenty-one (21), may waive the  
1084 three-day waiting period and by written instrument authorize the  
1085 clerk of the court to issue the marriage license to the parties if  
1086 they are otherwise qualified by law. Authorization shall be a

1087 part of the confidential files of the clerk of the court, subject  
1088 to inspection only by written permission of the judge. If either  
1089 of the applying parties appears from the evidence to be under  
1090 twenty-one (21) years of age, the circuit court clerk, immediately  
1091 upon filing the application, shall cause notice of the filing of  
1092 the application to be sent by prepaid certified mail to the  
1093 father, mother, guardian or next of kin of both applying parties  
1094 at the address named in the application.

1095 (c) An affidavit showing the age of both applying  
1096 parties shall be made by either the father, mother, guardian or  
1097 next of kin of each of the contracting parties and filed with the  
1098 clerk of the circuit court along with the application; or in lieu  
1099 thereof, \* \* \* both applying parties shall appear in person before  
1100 the circuit court clerk and make and subscribe an oath in person,  
1101 which \* \* \* affidavit shall be attached to and noted on the  
1102 application for the marriage license. In addition to either of  
1103 the previous conditions stated, further proof of age shall be  
1104 presented to the circuit court clerk in the form of either a birth  
1105 certificate, baptismal record, armed service discharge, armed  
1106 service identification card, life insurance policy, insurance  
1107 certificate, school record, driver's license, or other official  
1108 document evidencing age. The document substantiating age and date  
1109 of birth shall be examined by the circuit court clerk before whom  
1110 application is made, and the circuit court clerk shall retain in  
1111 his file with the application the document or a certified or  
1112 photostatic copy of the document.

1113 (d) The clerk shall not issue a marriage license under  
1114 the provisions of this section unless the male applicant is at  
1115 least seventeen (17) years of age and the female is at least  
1116 fifteen (15) years of age; \* \* \* however, \* \* \* if satisfactory  
1117 proof is furnished to the judge of any circuit, chancery or county  
1118 court that sufficient reasons exist and that the parties desire to  
1119 be married to each other and that the parents or other person in

1120 loco parentis of the person or persons so under age consent to the  
1121 marriage, then the judge of any such court in the county where  
1122 either of the parties resides may waive the minimum age  
1123 requirement and by written instrument authorize the clerk of the  
1124 court to issue the marriage license to the parties if they are  
1125 otherwise qualified by law. Authorization shall be a part of the  
1126 confidential files of the clerk of the court, subject to  
1127 inspection only by written permission of the judge.

1128 (e) A medical certificate dated within thirty (30) days  
1129 before the application shall be presented to the circuit court  
1130 clerk showing that the applicant is free from syphilis, as nearly  
1131 as can be determined by a blood test performed in a laboratory  
1132 approved by the State Board of Health. The medical certificate  
1133 may be obtained through the local health department by the  
1134 applicant or applicants, or it may be obtained through any private  
1135 laboratory approved by the State Board of Health. The medical  
1136 certificate shall be examined by the circuit court clerk and filed  
1137 in a permanent file kept by the clerk for this purpose.

1138 (f) In no event shall a license be issued by the  
1139 circuit court clerk when it appears to the circuit court clerk  
1140 that the applicants are, or either of them is, drunk or a person  
1141 with mental illness or mental retardation, to the extent that the  
1142 clerk believes that the person does not understand the nature and  
1143 consequences of the request.

1144 Any circuit clerk shall be liable under his official bond  
1145 because of noncompliance with the provisions of this section.

1146 Any circuit court clerk who issues a marriage license without  
1147 complying with the provisions of this section shall be guilty of a  
1148 misdemeanor and, upon conviction, shall be punished by a fine of  
1149 not less than Fifty Dollars (\$50.00) and not more than Five  
1150 Hundred Dollars (\$500.00).

1151 **SECTION 26.** Section 93-5-1, Mississippi Code of 1972, is  
1152 amended as follows:

1153 93-5-1. Divorces from the bonds of matrimony may be decreed  
1154 to the injured party for any one or more of the following twelve  
1155 (12) causes \* \* \*:

1156 First. Natural impotency.

1157 Second. Adultery, unless it should appear that it was  
1158 committed by collusion of the parties for the purpose of procuring  
1159 a divorce, or unless the parties cohabited after a knowledge by  
1160 complainant of the adultery.

1161 Third. Being sentenced to any penitentiary, and not pardoned  
1162 before being sent there.

1163 Fourth. Willful, continued and obstinate desertion for the  
1164 space of one (1) year.

1165 Fifth. Habitual drunkenness.

1166 Sixth. Habitual and excessive use of opium, morphine or  
1167 other like drug.

1168 Seventh. Habitual cruel and inhuman treatment.

1169 Eighth. Mental illness or mental retardation at the time of  
1170 marriage, if the party complaining did not know of that infirmity.

1171 Ninth. Marriage to some other person at the time of the  
1172 pretended marriage between the parties.

1173 Tenth. Pregnancy of the wife by another person at the time  
1174 of the marriage, if the husband did not know of the pregnancy.

1175 Eleventh. Either party may have a divorce if they are  
1176 related to each other within the degrees of kindred between whom  
1177 marriage is prohibited by law.

1178 Twelfth. Incurable mental illness. However, no divorce  
1179 shall be granted upon this ground unless the \* \* \* party with  
1180 mental illness has been under regular treatment for mental illness  
1181 and causes thereof, confined in an institution for persons with  
1182 mental illness for a period of at least three (3) years  
1183 immediately preceding the commencement of the action. \* \* \*

1184 However, \* \* \* transfer of a party with mental illness to his or  
1185 her home for treatment or a trial visit on prescription or

1186 recommendation of a licensed physician, which treatment or trial  
1187 visit proves unsuccessful after a bona fide effort by the  
1188 complaining party to effect a cure, upon the reconfinement of  
1189 the \* \* \* party with mental illness in an institution for persons  
1190 with mental illness, shall be regular treatment for mental illness  
1191 and causes thereof, and the period of time so consumed in seeking  
1192 to effect a cure or while on a trial visit home shall be added to  
1193 the period of actual confinement in an institution for persons  
1194 with mental illness in computing the required period of three (3)  
1195 years confinement immediately preceding the beginning of the  
1196 action. No divorce shall be granted because of mental illness  
1197 until after a thorough examination of the person with mental  
1198 illness by two (2) physicians who are recognized authorities on  
1199 mental diseases. One of those physicians shall be either the  
1200 superintendent of a state psychiatric hospital or institution or a  
1201 veterans hospital for persons with mental illness in which the  
1202 patient is confined, or a member of the medical staff of that  
1203 hospital or institution who has had the patient in charge. Before  
1204 incurable mental illness can be successfully proven as a ground  
1205 for divorce, it shall be necessary that both of those physicians  
1206 make affidavit that the patient is a \* \* \* person with mental  
1207 illness at the time of the examination, and both affidavits shall  
1208 be made a part of the permanent record of the divorce proceedings  
1209 and shall create the prima facie presumption of incurable mental  
1210 illness, such as would justify a divorce based on that ground.  
1211 Service of process shall be made on the superintendent of the  
1212 hospital or institution in which the defendant is a patient. If  
1213 the patient is in an hospital or institution outside the state,  
1214 process shall be served by publication, as in other cases of  
1215 service by publication, together with the sending of a copy by  
1216 registered mail to the superintendent of the hospital or  
1217 institution. In addition \* \* \*, process shall be served upon the  
1218 next blood relative and guardian, if any. If there is no legal

1219 guardian, the court shall appoint a guardian ad litem to represent  
1220 the interest of the \* \* \* person with mental illness. The  
1221 relative or guardian and superintendent of the hospital or  
1222 institution shall be entitled to appear and be heard upon any and  
1223 all issues. The status of the parties as to the support and  
1224 maintenance of the \* \* \* person with mental illness shall not be  
1225 altered in any way by the granting of the divorce.

1226 However, in the discretion of the chancery court, and in  
1227 those cases as the court may deem it necessary and proper, before  
1228 any such decree is granted on the ground of incurable mental  
1229 illness, the complainant, when ordered by the court, shall enter  
1230 into bond, to be approved by the court, in such an amount as the  
1231 court may think just and proper, conditioned for the care and  
1232 keeping of the person with mental illness during the remainder of  
1233 his or her natural life, unless the person with mental illness has  
1234 a sufficient estate in his or her own right for that purpose.

1235 **SECTION 27.** Section 93-5-13, Mississippi Code of 1972, is  
1236 amended as follows:

1237 93-5-13. If the defendant is an infant or a person with  
1238 mental illness, the court may appoint a guardian ad litem for the  
1239 defendant.

1240 **SECTION 28.** Section 93-5-15, Mississippi Code of 1972, is  
1241 amended as follows:

1242 93-5-15. From and after March 15, 1934, any marital contract  
1243 previously or hereafter solemnized by and under which parties have  
1244 been duly and legally married, and one (1) of the parties to the  
1245 marriage contract has \* \* \* become or becomes mentally ill to such  
1246 an extent that it is necessary for a guardian to be appointed for  
1247 that party, and the other party to the marital contract has  
1248 committed any act that constitutes ground for divorce under the  
1249 present laws, the guardian for the party with mental illness to  
1250 the contract of marriage shall have the right to file a bill as  
1251 the guardian, in the name of his ward, for the dissolution of the

1252 marriage, in the same way and manner and at the same place and on  
1253 the same process that the person with mental illness could have  
1254 done, if he had \* \* \* not become mentally ill.

1255 **SECTION 29.** Section 93-7-3, Mississippi Code of 1972, is  
1256 amended as follows:

1257 93-7-3. A marriage may be annulled for any one (1) of the  
1258 following causes existing at the time of the marriage  
1259 ceremony \* \* \*:

1260 (a) Incurable impotency.

1261 (b) Adjudicated mental illness or incompetence of  
1262 either or both parties. Action of a spouse who has been  
1263 adjudicated mentally ill or incompetent may be brought by  
1264 guardian, or in the absence of a guardian, by next friend,  
1265 provided that the suit is brought within six (6) months after  
1266 marriage.

1267 (c) Failure to comply with the provisions of Sections  
1268 93-1-5 through 93-1-9 when any marriage affected by that failure  
1269 has not been followed by cohabitation.

1270 Or, in the absence of ratification:

1271 (d) When either of the parties to a marriage is  
1272 incapable, from want of age or understanding, of consenting to any  
1273 marriage, or is incapable from physical causes of entering into  
1274 the marriage state, or where the consent of either party has been  
1275 obtained by force or fraud, the marriage shall be void from the  
1276 time its nullity is declared by a court of competent jurisdiction.

1277 (e) Pregnancy of the wife by another person, if the  
1278 husband did not know of the pregnancy.

1279 Suits for annulment under paragraphs (d) and (e) shall be  
1280 brought within six (6) months after the ground for annulment is or  
1281 should be discovered, and not thereafter.

1282 The causes for annulment of marriage set forth in this  
1283 section are intended to be new remedies and shall in no way affect  
1284 the causes for divorce declared elsewhere to be the law of the

1285 State of Mississippi as they presently exist or as they may from  
1286 time to time be amended.

1287 **SECTION 30.** Section 93-13-123, Mississippi Code of 1972, is  
1288 amended as follows:

1289 93-13-123. The chancery court of any county in which may be  
1290 situated the property or any part of the property, or debt due to,  
1291 or right of action of any person who has been adjudicated to be  
1292 incompetent by proper proceedings in another state, or of a  
1293 citizen of this state \* \* \* who is incompetent and is confined out  
1294 of this state in a psychiatric hospital or institution, shall have  
1295 jurisdiction to appoint a guardian of the estate of the person  
1296 who is incompetent. The chancery court of the county of residence  
1297 of those persons shall likewise have that jurisdiction.

1298 **SECTION 31.** Section 93-13-121, Mississippi Code of 1972, is  
1299 amended as follows:

1300 93-13-121. In any case where a guardian has been appointed  
1301 for an adult person by a court of competent jurisdiction of any  
1302 state, and the adult thereafter, at the time of filing the  
1303 petition provided for in this section, is a resident of this state  
1304 and is incompetent to manage his or her estate, the chancery court  
1305 of the county of the domicile of the adult shall have jurisdiction  
1306 and authority to appoint a guardian for the incompetent adult upon  
1307 the conditions \* \* \* specified in this section; however,  
1308 infirmities of old age shall not be considered elements of  
1309 infirmities.

1310 The petition for the appointment of a guardian under the  
1311 provisions of this section shall be filed by the incompetent  
1312 person or his guardian in the office of the clerk of the chancery  
1313 court in the county of the residence of the incompetent person and  
1314 process shall be served as provided in Section 93-13-281, unless  
1315 joined in by that person or those persons \* \* \* prescribed in that  
1316 section.



1317           Upon the return day of the process, the chancellor, if in  
1318 vacation, or the court, if in termtime, shall cause the applicant  
1319 to appear in person and then and there examine the applicant and  
1320 all interested parties, and if, after the examination, the  
1321 chancellor in vacation or the court in termtime is of the opinion  
1322 that the applicant is incompetent to manage his or her estate,  
1323 then it shall be the duty of the court to appoint a guardian of  
1324 the estate of the applicant; \* \* \* however, \* \* \* in no instance  
1325 shall the court have authority to appoint a guardian under the  
1326 provisions of this section unless it \* \* \* examines the applicant  
1327 in person and finds after the examination that the applicant is  
1328 incompetent to manage his or her estate.

1329           A guardian appointed under the provisions of this section  
1330 shall be required to make and file annual accounts of his acts and  
1331 doings as in case of guardians for \* \* \* persons with mental  
1332 illness.

1333           **SECTION 32.** Section 93-13-131, Mississippi Code of 1972, is  
1334 amended as follows:

1335           93-13-131. The chancery court of the county in which an  
1336 habitual drunkard, habitual user of cocaine, opium or morphine  
1337 resides may appoint a guardian to him on the application of a  
1338 relative or friend. When an application for appointment of a  
1339 guardian is presented, if the court is satisfied there is probable  
1340 grounds for the appointment, it shall direct a writ to the  
1341 sheriff, commanding him to summon the person alleged to be an  
1342 habitual drunkard, habitual user of cocaine, or opium or morphine.  
1343 On return of the summons executed, the court shall examine the  
1344 question and determine whether the person is an habitual drunkard,  
1345 habitual user of cocaine, opium or morphine, and for that purpose  
1346 may summon and hear witnesses, orally or by deposition, and hear  
1347 the parties and their evidence. If the court is satisfied that  
1348 the person is an habitual drunkard, habitual user of cocaine,  
1349 opium or morphine, it shall appoint a guardian to take care of him

1350 and his estate, both real and personal, and the costs of the  
1351 inquisition shall be paid out of the estate. And the court or  
1352 chancellor may direct the confinement of any person adjudged to be  
1353 an habitual drunkard, habitual user of cocaine, or opium or  
1354 morphine, in a facility that treats alcohol or substance abuse.

1355 **SECTION 33.** Section 97-3-13, Mississippi Code of 1972, is  
1356 amended as follows:

1357 97-3-13. Every person or officer who \* \* \* maliciously sends  
1358 to or confines in a psychiatric hospital or institution or other  
1359 place, any sane person as a person with mental illness, knowing  
1360 the person to be sane, shall be guilty of a felony, and, on  
1361 conviction, shall be punished by a fine of not more than Five  
1362 Hundred Dollars (\$500.00), or by imprisonment in the Penitentiary  
1363 not more than one (1) year, or in the county jail not more than  
1364 six (6) months.

1365 **SECTION 34.** Section 97-9-25, Mississippi Code of 1972, is  
1366 amended as follows:

1367 97-9-25. It shall be unlawful for any person, firm,  
1368 copartnership, corporation or association to knowingly entice,  
1369 harbor, employ, or aid, assist or abet in the escape, enticing,  
1370 harboring or employment of any delinquent, person with mental  
1371 illness, person with mental retardation or incorrigible person  
1372 committed to, or confined in any institution maintained by the  
1373 state for the treatment, education or welfare of delinquent  
1374 persons, persons with mental illness, persons with mental  
1375 retardation or incorrigible \* \* \* persons. Any person violating  
1376 the provisions of this section, upon conviction, shall be punished  
1377 by a fine of not less than Twenty-five Dollars (\$25.00) nor more  
1378 than Five Hundred Dollars (\$500.00), or imprisonment in the county  
1379 jail for not less than thirty (30) days, nor more than ninety (90)  
1380 days, or both.

1381 **SECTION 35.** Section 99-13-1, Mississippi Code of 1972, is  
1382 amended as follows:

1383           99-13-1. The term "person with mental retardation," within  
1384 the meaning of this chapter, shall have the same meaning as the  
1385 term "mentally retarded person" in Section 41-21-61.

1386           **SECTION 36.** Section 99-13-3, Mississippi Code of 1972, is  
1387 amended as follows:

1388           99-13-3. When any prisoner or any person charged with a  
1389 crime or delinquency is brought before any conservator of the  
1390 peace, and in the course of the investigation it \* \* \* appears  
1391 that the person was insane when the offense was committed and  
1392 still is insane, or was a person with mental retardation to such  
1393 an extent as not to be responsible for his or her act or omission  
1394 at the time when the act or omission charged was made, he shall  
1395 not be discharged, but the conservator of the peace shall remand  
1396 the prisoner to custody and immediately report the case to the  
1397 chancellor or clerk of the chancery court, whose duty it shall be  
1398 to proceed with the case according to the law provided for persons  
1399 of unsound mind or \* \* \* persons with mental retardation.

1400           **SECTION 37.** Section 99-13-5, Mississippi Code of 1972, is  
1401 amended as follows:

1402           99-13-5. When any person is held in prison or on bail,  
1403 charged with an offense, and the grand jury does not find a true  
1404 bill for reason of insanity of the accused or for reason of the  
1405 mental retardation of the accused, which they judge to be such  
1406 that he or she was not responsible for his acts or omissions at  
1407 the time when the act or omission charged was committed or made,  
1408 the grand jury shall certify the fact to the circuit court and  
1409 shall state whether or not the insane \* \* \* person or person with  
1410 mental retardation is a danger to the security of persons and  
1411 property and the peace and safety of the community, and if the  
1412 grand jury reports that insanity or mental retardation and that  
1413 danger, the court shall immediately give notice of the case to the  
1414 chancellor or to the clerk of the chancery court, whose duty it  
1415 shall be to proceed with the insane person and his estate or the

1416 person with mental retardation according to the law provided in  
1417 the case of persons of unsound mind or \* \* \* persons with mental  
1418 retardation.

1419 **SECTION 38.** Section 99-13-7, Mississippi Code of 1972, is  
1420 amended as follows:

1421 99-13-7. When any person is indicted for an offense and  
1422 acquitted on the ground of insanity, the jury rendering the  
1423 verdict shall state in the verdict that ground and whether the  
1424 accused has since been restored to his sanity and whether he is  
1425 dangerous to the community. \* \* \* If the jury certifies that the  
1426 person is still insane and dangerous, the judge shall order him to  
1427 be conveyed to and confined in one (1) of the state psychiatric  
1428 hospitals or institutions.

1429 **SECTION 39.** Section 99-13-9, Mississippi Code of 1972, is  
1430 amended as follows:

1431 99-13-9. When any person is indicted for an offense and  
1432 acquitted on the ground of mental retardation, the jury rendering  
1433 the verdict shall state in the verdict that ground and whether the  
1434 accused constitutes a danger to life or property and to the peace  
1435 and safety of the community. If the jury certifies that the  
1436 person with mental retardation is dangerous to the peace and  
1437 safety of the community or to himself, the court shall immediately  
1438 give notice of the case to the chancellor or the clerk of the  
1439 chancery court, whose duty it shall be to proceed with the person  
1440 according to the law provided in the case of \* \* \* persons with  
1441 mental retardation, the \* \* \* person with mental retardation  
1442 himself being remanded to custody to await the action of the  
1443 chancery court.

1444 **SECTION 40.** Section 99-19-57, Mississippi Code of 1972, is  
1445 amended as follows:

1446 99-19-57. (1) If the Commissioner of Corrections \* \* \* at  
1447 any time is satisfied that any female offender in his custody  
1448 under sentence of death is pregnant, he shall summon a physician

1449 to inquire into the pregnancy. The commissioner shall summons and  
1450 swear all necessary witnesses and the commissioner after full  
1451 examination shall certify under his hand what the truth may be in  
1452 relation to the alleged pregnancy, and in case the offender is  
1453 found to be pregnant, the commissioner shall immediately transmit  
1454 his findings to the Governor, and the Governor shall suspend the  
1455 execution of the sentence until he is satisfied that the offender  
1456 is not or is no longer pregnant. The Governor shall then order,  
1457 by his warrant to the commissioner, the execution of the offender  
1458 on a day to be \* \* \* appointed by the Governor according to the  
1459 sentence and judgment of the court.

1460 (2) (a) If it is believed that an offender under sentence  
1461 of death has become mentally ill since the judgment of the court,  
1462 the following shall be the exclusive procedural and substantive  
1463 procedure. The offender, or a person acting as his next friend,  
1464 or the Commissioner of Corrections may file an appropriate  
1465 application seeking post-conviction relief with the Mississippi  
1466 Supreme Court. If it is found that the offender is a person with  
1467 mental illness, as defined in this subsection, the court shall  
1468 suspend the execution of the sentence. The offender shall then be  
1469 committed to the forensic unit of the Mississippi State Hospital  
1470 at Whitfield. The order of commitment shall require that the  
1471 offender be examined and a written report be furnished to the  
1472 court at that time and every month thereafter, stating whether  
1473 there is a substantial probability that the offender will become  
1474 sane under this subsection within the foreseeable future and  
1475 whether progress is being made toward that goal. If at any time  
1476 during the commitment, the appropriate official at the state  
1477 hospital \* \* \* considers the offender to be sane under this  
1478 subsection, the official shall promptly notify the court to that  
1479 effect in writing and place the offender in the custody of the  
1480 Commissioner of Corrections. The court then shall \* \* \* conduct a  
1481 hearing on the sanity of the offender. The finding of the circuit

1482 court is a final order appealable under the terms and conditions  
1483 of the Mississippi Uniform Post-Conviction Collateral Relief Act.

1484 (b) For the purposes of this subsection, a person shall  
1485 be deemed to be a person with mental illness if the court finds  
1486 that the offender does not have sufficient intelligence to  
1487 understand the nature of the proceedings against him, what he was  
1488 tried for, the purpose of his punishment, the impending fate that  
1489 awaits him, and a sufficient understanding to know any fact that  
1490 might exist that would make his punishment unjust or unlawful and  
1491 the intelligence requisite to convey that information to his  
1492 attorneys or the court.

1493 **SECTION 41.** Section 99-38-9, Mississippi Code of 1972, is  
1494 amended as follows:

1495 99-38-9. (1) The Treasurer shall make payments from an  
1496 escrow account established under Section 99-38-5 to the accused or  
1497 convicted person in whose name the account was established upon  
1498 the order of a court of competent jurisdiction, after a showing by  
1499 the person that those monies will be used for the exclusive  
1500 purpose of retaining legal representation at any stage of any  
1501 criminal proceedings against the person, including the appeals  
1502 process.

1503 (2) Whenever it is found that a person accused of a crime is  
1504 unfit to proceed as a result of mental illness because the person  
1505 lacks the capacity to understand the proceedings against him or to  
1506 assist in his own defense, the Treasurer shall bring an action of  
1507 interpleader to determine disposition of the escrow account. For  
1508 the purposes of this chapter, a person found not guilty by reason  
1509 of insanity shall be deemed to be a convicted person.

1510 (3) Except as otherwise provided in subsection (4) of this  
1511 section, upon dismissal of charges or acquittal or subsequent  
1512 exoneration of any person accused of an offense arising out of the  
1513 same circumstances that led to the establishment of an escrow  
1514 account under this chapter, the Treasurer shall immediately pay

1515 over to the accused person, his legal representative, assignee,  
1516 beneficiary or heirs at law the monies in the escrow account  
1517 established on his or their behalf. Except as otherwise provided  
1518 in subsection (4) of this section, upon a showing that the accused  
1519 person has been convicted or has pleaded guilty to an offense for  
1520 which an escrow account has been established under this chapter  
1521 and that one (1) year has elapsed from the time of establishment  
1522 of the escrow account, and that no civil actions are pending under  
1523 the provisions of subsection (2) of Section 99-38-7, the Treasurer  
1524 shall immediately transfer all monies in the escrow account  
1525 established in the name of the accused person, less such costs and  
1526 expenses as the Treasurer incurs in the administration of the  
1527 account, to the Criminal Justice Fund created in Section 99-19-32.

1528 (4) Notwithstanding the provisions of subsection (3), upon a  
1529 showing that one (1) year has elapsed from the time of the  
1530 establishment of the escrow account and that no civil actions are  
1531 pending under the provisions of Section 99-38-7(2), and upon a  
1532 showing that the accused in whose name the account is established  
1533 is the parent of one or more minor children and that the minor  
1534 children are in need of financial support, the chancery court of  
1535 the district in which the minor children reside may order the  
1536 Treasurer to pay over an amount set by the court for the support  
1537 of those children until they reach the age of majority. Upon  
1538 order of the court, the Treasurer shall pay the specified amount  
1539 to a guardian appointed by the court for the use and benefit of  
1540 the minor children. In no event shall the total amount to be paid  
1541 for the support of any minor children of the accused in whose name  
1542 the account is established exceed the amount of money in the  
1543 account at the time the court issues its order.

1544 (5) The Treasurer shall be authorized to promulgate such  
1545 rules and regulations as may be necessary to carry out the  
1546 provisions of this chapter.

1547           **SECTION 42.** Section 99-39-23, Mississippi Code of 1972, is  
1548 amended as follows:

1549           99-39-23. (1) If an evidentiary hearing is required, the  
1550 judge may appoint counsel for a petitioner who qualifies for the  
1551 appointment of counsel under Section 99-15-15.

1552           (2) The hearing shall be conducted as promptly as  
1553 practicable, having regard for the need of counsel for both  
1554 parties for adequate time for investigation and preparation.

1555           (3) The parties shall be entitled to subpoena witnesses and  
1556 compel their attendance, including, but not being limited to,  
1557 subpoenas duces tecum.

1558           (4) The court may receive proof by affidavits, depositions,  
1559 oral testimony or other evidence and may order the prisoner  
1560 brought before it for the hearing.

1561           (5) If the court finds in favor of the prisoner, it shall  
1562 enter an appropriate order with respect to the conviction or  
1563 sentence under attack, and any supplementary orders as to  
1564 rearraignment, retrial, custody, bail, discharge, correction of  
1565 sentence or other matters that may be necessary and proper. The  
1566 court shall make specific findings of fact, and state expressly  
1567 its conclusions of law, relating to each issue presented.

1568           (6) The order as provided in subsection (5) of this section  
1569 or any order dismissing the prisoner's motion or otherwise denying  
1570 relief under this article is a final judgment and shall be  
1571 conclusive until reversed. It shall be a bar to a second or  
1572 successive motion under this article. Excepted from this  
1573 prohibition is a motion filed under Section 99-19-57(2), raising  
1574 the issue of the offender's supervening mental illness before the  
1575 execution of a sentence of death. A dismissal or denial of a  
1576 motion relating to mental illness under Section 99-19-57(2) shall  
1577 be res judicata on the issue and shall likewise bar any second or  
1578 successive motions on the issue. Likewise excepted from this  
1579 prohibition are those cases in which the prisoner can demonstrate



1580 either that there has been an intervening decision of the Supreme  
1581 Court of either the State of Mississippi or the United States  
1582 that would have actually adversely affected the outcome of his  
1583 conviction or sentence or that he has evidence, not reasonably  
1584 discoverable at the time of trial, which is of such nature that it  
1585 would be practically conclusive that, if it had \* \* \* been  
1586 introduced at trial, it would have caused a different result in  
1587 the conviction or sentence. Likewise excepted are those cases in  
1588 which the prisoner claims that his sentence has expired or his  
1589 probation, parole or conditional release has been unlawfully  
1590 revoked.

1591 (7) No relief shall be granted under this article unless the  
1592 prisoner proves by a preponderance of the evidence that he is  
1593 entitled to the relief.

1594 (8) Proceedings under this section shall be subject to the  
1595 provisions of Section 99-19-42.

1596 (9) In cases resulting in a sentence of death and upon a  
1597 determination of indigence, appointment of post-conviction counsel  
1598 shall be made by the Office of Capital Post-Conviction Counsel  
1599 upon order entered by the Supreme Court promptly upon announcement  
1600 of the decision on direct appeal affirming the sentence of death.  
1601 The order shall direct the trial court to immediately determine  
1602 indigence and whether the inmate will accept counsel.

1603 **SECTION 43.** Section 99-39-27, Mississippi Code of 1972, is  
1604 amended as follows:

1605 99-39-27. (1) The application for leave to proceed in the  
1606 trial court filed with the Supreme Court under Section 99-39-7  
1607 shall name the State of Mississippi as the respondent.

1608 (2) The application shall contain the original and two (2)  
1609 executed copies of the motion proposed to be filed in the trial  
1610 court together with such other supporting pleadings and  
1611 documentation as the Supreme Court by rule may require.

1612 (3) The prisoner shall serve an executed copy of the  
1613 application upon the Attorney General simultaneously with the  
1614 filing of the application with the court.

1615 (4) The original motion, together with all files, records,  
1616 transcripts and correspondence relating to the judgment under  
1617 attack, shall promptly be examined by the court.

1618 (5) Unless it appears from the face of the application,  
1619 motion, exhibits and the prior record that the claims presented by  
1620 those documents are not procedurally barred under Section 99-39-21  
1621 and that they further present a substantial showing of the denial  
1622 of a state or federal right, the court shall by appropriate order  
1623 deny the application. The court may, in its discretion, require  
1624 the Attorney General upon sufficient notice to respond to the  
1625 application.

1626 (6) The court, upon satisfaction of the standards set forth  
1627 in this article, is empowered to grant the application.

1628 (7) In granting the application the court, in its  
1629 discretion, may:

1630 (a) Where sufficient facts exist from the face of the  
1631 application, motion, exhibits, the prior record and the state's  
1632 response, together with any exhibits submitted with those  
1633 documents, or upon stipulation of the parties, grant or deny any  
1634 or all relief requested in the attached motion.

1635 (b) Allow the filing of the motion in the trial court  
1636 for further proceedings under Sections 99-39-13 through 99-39-23.

1637 (8) No application or relief shall be granted without the  
1638 Attorney General being given at least five (5) days to respond.

1639 (9) The dismissal or denial of an application under this  
1640 section is a final judgment and shall be a bar to a second or  
1641 successive application under this article. Excepted from this  
1642 prohibition is an application filed under Section 99-19-57(2),  
1643 raising the issue of the offender's supervening mental illness  
1644 before the execution of a sentence of death. A dismissal or

1645 denial of an application relating to mental illness under Section  
1646 99-19-57(2) shall be res judicata on the issue and shall likewise  
1647 bar any second or successive applications on the issue. Likewise  
1648 excepted from this prohibition are those cases in which the  
1649 prisoner can demonstrate either that there has been an intervening  
1650 decision of the Supreme Court of either the State of Mississippi  
1651 or the United States that would have actually adversely affected  
1652 the outcome of his conviction or sentence or that he has evidence,  
1653 not reasonably discoverable at the time of trial, that is of such  
1654 nature that it would be practically conclusive that, if it  
1655 had \* \* \* been introduced at trial, it would have caused a  
1656 different result in the conviction or sentence. Likewise exempted  
1657 are those cases in which the prisoner claims that his sentence has  
1658 expired or his probation, parole or conditional release has been  
1659 unlawfully revoked.

1660 (10) Proceedings under this section shall be subject to the  
1661 provisions of Section 99-19-42.

1662 (11) Post-conviction proceedings in which the defendant is  
1663 under sentence of death shall be governed by rules established by  
1664 the Supreme Court as well as the provisions of this section.

1665 **SECTION 44.** Section 41-19-103, Mississippi Code of 1972, is  
1666 amended as follows:

1667 41-19-103. The Ellisville State School \* \* \* established by  
1668 Chapter 210, Laws of Mississippi 1920, is recognized as now  
1669 existing and shall hereafter be known under the name of Ellisville  
1670 State School for the care and treatment of \* \* \* persons with  
1671 mental retardation. The school shall have the power to receive  
1672 and hold property, real, personal and mixed, as a body corporate.  
1673 The school shall be under the direction and control of the State  
1674 Board of \* \* \* Mental Health.

1675 **SECTION 45.** The following shall be codified as Section  
1676 41-19-108, Mississippi Code of 1972:

1677           41-19-108. With funds provided by the Legislature, by direct  
1678 appropriation or authorized bond issue, with federal matching  
1679 funds, or with any other available funds, the Bureau of Building,  
1680 Grounds and Real Property Management may construct and equip the  
1681 necessary residential and service buildings and other facilities  
1682 to care for the residents of Ellisville State School. The general  
1683 design of the school and all construction plans shall be approved  
1684 and recommended by the State Department of Mental Health.

1685           **SECTION 46.** The following shall be codified as Section  
1686 41-19-112, Mississippi Code of 1972:

1687           41-19-112. Ellisville State School shall be administered by  
1688 the State Board of Mental Health. Provisions relating to the  
1689 admission and care of residents at the school shall be promulgated  
1690 by the board.

1691           **SECTION 47.** The following shall be codified as Section  
1692 41-19-114, Mississippi Code of 1972:

1693           41-19-114. Persons admitted to Ellisville State School shall  
1694 be assessed support and maintenance costs in accordance with the  
1695 provisions of the state reimbursement laws as they apply to other  
1696 state institutions.

1697           **SECTION 48.** The following shall be codified as Section  
1698 41-19-116, Mississippi Code of 1972:

1699           41-19-116. Any person who (a) knowingly and unlawfully or  
1700 improperly causes a person to be adjudged to be a person of mental  
1701 retardation, (b) procures the escape of a legally committed  
1702 resident or knowingly conceals an escaped legally committed  
1703 resident of Ellisville State School, or (c) unlawfully brings any  
1704 firearm, deadly weapon or explosive into the school or its  
1705 grounds, or passes any thereof to a resident, employee or officer  
1706 of the school, is guilty of a misdemeanor and, upon conviction,  
1707 shall be punished by a fine of not less than Fifty Dollars  
1708 (\$50.00), nor more than Two Hundred Dollars (\$200.00),  
1709 imprisonment for not less than six (6) months, or both.

1710           **SECTION 49.** The following shall be codified as Section  
1711 41-19-118, Mississippi Code of 1972:

1712           41-19-118. Ellisville State School is designated as a state  
1713 agency for carrying out the purposes of any act of the Congress of  
1714 the United States, now existing or at any time hereafter enacted,  
1715 pertaining to mental retardation.

1716           **SECTION 50.** Section 41-19-121, Mississippi Code of 1972, is  
1717 amended as follows:

1718           41-19-121. The director of \* \* \* Ellisville State School may  
1719 receive free lodging in his institution for himself and his  
1720 family, but not free board, nor free supplies from the  
1721 school. \* \* \*

1722           **SECTION 51.** Sections 41-5-55, 41-5-81, 41-17-5, 41-17-7,  
1723 41-17-9, 41-17-13, 41-19-105, 41-19-107, 41-19-109, 41-19-115,  
1724 41-19-117, 41-19-119, 41-21-43, 41-21-45, 41-45-1, 41-45-3,  
1725 41-45-5, 41-45-7, 41-45-9, 41-45-11, 41-45-13, 41-45-15, 41-45-17  
1726 and 41-45-19, Mississippi Code of 1972, which prohibit the  
1727 apprenticing of mental patients, provide certain criminal  
1728 penalties, provide certain visitation duties for directors of  
1729 mental hospitals, exempt resident mental hospital officers from  
1730 jury service, require a drug store to be kept at each mental  
1731 hospital, require separate accommodations at Whitfield for  
1732 alcoholic and drug addicts, provide for the plan of Ellisville  
1733 State School, require Ellisville's director to keep certain  
1734 records, authorize Ellisville's director to sell certain products  
1735 of the school, provide discharge procedures for Ellisville  
1736 patients, provide for habeas corpus proceedings for Ellisville  
1737 patients, authorize the receipt of gifts for the support of  
1738 Ellisville, require counties to temporarily provide for the  
1739 maintenance of indigent mentally retarded persons, prohibit  
1740 cohabitation with mentally retarded persons, and authorize the  
1741 sterilization of mentally ill and mentally retarded patients, are  
1742 repealed.

1743           **SECTION 52.** This act shall take effect and be in force from  
1744 and after July 1, 2006.