

By: Representatives Gunn, Baker, Lamar, Snowden, Rogers (61st), Upshaw, Monsour, Formby, White, Martinson, Zuber, Turner, Lott, Jennings, Woods, Hamilton, Boyd, Alday, Shirley, Crawford, Eure, DeBar, Weathersby, Barton, Rushing, Morgan, Aldridge, Carpenter, Massengill, Pigott, Haney, Mettetal, Brown (20th), Mims, Staples, Hood, Denny, Chism, Gipson, Moore, Byrd

To: Judiciary A

HOUSE BILL NO. 211
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 7-5-1, MISSISSIPPI CODE OF 1972, TO
 2 CLARIFY AND REVISE THE DUTIES OF THE ATTORNEY GENERAL; TO AMEND
 3 SECTION 7-5-5, MISSISSIPPI CODE OF 1972, TO REQUIRE DETAILED TIME
 4 AND EXPENSE RECORDS TO BE MAINTAINED BY OUTSIDE COUNSEL; TO AMEND
 5 SECTION 7-5-7, MISSISSIPPI CODE OF 1972, TO PLACE CERTAIN
 6 RESTRICTIONS UPON CONTINGENT FEE CONTRACTS FOR LEGAL SERVICES
 7 WITH OUTSIDE COUNSEL; TO CREATE NEW SECTION 7-5-8, MISSISSIPPI
 8 CODE OF 1972, TO ENUMERATE RESTRICTIONS ON CONTINGENT FEE
 9 CONTRACTS; TO AMEND SECTION 7-5-21, MISSISSIPPI CODE OF 1972, TO
 10 REVISE THE REQUIREMENTS FOR THE CASE DOCKET TO BE KEPT BY THE
 11 ATTORNEY GENERAL; TO AMEND SECTION 7-5-39, MISSISSIPPI CODE OF
 12 1972, TO REQUIRE THE ATTORNEY GENERAL TO AUTHORIZE OUTSIDE COUNSEL
 13 UNDER CERTAIN CIRCUMSTANCES; TO AMEND SECTION 27-104-105,
 14 MISSISSIPPI CODE OF 1972, TO CONFORM STATE AGENCY PAYMENT FOR
 15 LEGAL SERVICES TO THE TENOR OF THIS ACT; TO AMEND SECTIONS
 16 7-7-225, 17-18-41, 27-33-49, 27-104-17, 27-104-19, 29-3-39,
 17 31-29-23, 41-9-35, 43-11-27, 43-15-121, 43-16-21, 43-20-21,
 18 43-27-14, 49-5-98, 53-1-47, 57-10-533, 57-61-35, 57-71-33,
 19 57-77-39, 59-5-65, 59-17-57, 65-26-37, 69-2-33, 69-27-359,
 20 73-11-49, 73-13-39, 73-13-95, 73-15-33, 73-29-39, 73-29-43,
 21 73-31-25, 73-36-35, 73-63-25, 75-76-25, 83-1-5 AND 97-33-109,
 22 MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED
 23 PURPOSES.

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

25 **SECTION 1.** Section 7-5-1, Mississippi Code of 1972, is
 26 amended as follows:

27 7-5-1. The Attorney General provided for by Section 173 of
 28 the Mississippi Constitution shall be elected at the same time and
 29 in the same manner as the Governor is elected. His term of office
 30 shall be four (4) years and his compensation shall be fixed by the
 31 Legislature. He shall be the chief legal officer and advisor for
 32 the state, both civil and criminal, and is charged with managing
 33 all litigation on behalf of the state, except as otherwise
 34 specifically provided by law. No arm or agency of the state
 35 government shall bring or defend a suit against another * * * arm
 36 or agency without prior written approval of the Attorney General.



37 He shall have the powers of the Attorney General at common law
38 and, except as otherwise provided by law, is given the sole power
39 to bring or defend a lawsuit on behalf of a state agency, the
40 subject matter of which is of statewide interest. * * * He shall
41 intervene and argue the constitutionality of any statute when
42 notified of a challenge thereto, pursuant to the Mississippi Rules
43 of Civil Procedure. His qualifications for office shall be as
44 provided for chancery and circuit judges in Section 154 of the
45 Mississippi Constitution.

46 **SECTION 2.** Section 7-5-5, Mississippi Code of 1972, is
47 amended as follows:

48 7-5-5. (1) The Attorney General shall appoint nine (9)
49 competent attorneys, each of whom shall be designated as an
50 assistant attorney general. The assistants shall each possess all
51 of the qualifications required by law of the Attorney General and
52 shall have power and authority under the direction and supervision
53 of the Attorney General to perform all of the duties required by
54 law of that officer; and each shall be liable to the pains and
55 penalties to which the Attorney General is liable. The assistants
56 shall serve at the will and pleasure of the Attorney General, and
57 they shall devote their entire time and attention to the duties
58 pertaining to the department of justice as required by the general
59 laws. The compensation of * * * all * * * assistants authorized
60 by law shall be fixed by the Attorney General not to exceed the
61 compensation fixed by law * * *.

62 (2) (a) The Attorney General shall designate three (3) of
63 the * * * assistant attorneys general authorized under subsection
64 (1) of this section to devote their time and attention primarily
65 to defending and aiding in the defense in all courts of any suit,
66 filed or threatened, against the State of Mississippi, against any
67 subdivision thereof, or against any agency or instrumentality of
68 the state or subdivision, including all elected officials and any
69 other officer or employee thereof. When the circumstances permit,



70 the assistants may perform any of the Attorney General's powers
71 and duties, including, but not limited to, engaging in lawsuits
72 outside the state when in his opinion this would help bring about
73 the equal application of federal laws and court decisions in every
74 state and guaranteeing equal protection of the laws as guaranteed
75 every citizen by the United States Constitution.

76 (b) * * * The Attorney General * * * may employ outside
77 counsel as special assistant attorneys general * * * on a fee or
78 contract basis; * * * the Attorney General shall be the sole judge
79 of the compensation in such cases except as otherwise provided in
80 Section 7-5-8.

81 (i) Any contract for services of outside counsel
82 shall require current and complete written time and expense
83 records that describe in detail the time, in increments of no
84 greater than one tenth (1/10) of an hour, and money spent each day
85 in performance of the contract.

86 (ii) On conclusion of the matter for which the
87 outside legal services were obtained, outside counsel shall
88 provide a complete written statement of all fees and expenses, and
89 the final complete time and expense records.

90 (3) The Attorney General may discharge any assistant
91 attorney general or special assistant attorney general at his
92 pleasure and appoint another in his stead. The assistant
93 attorneys general shall devote their entire time and attention to
94 the duties pertaining to the Department of Justice under the
95 control and supervision of the Attorney General.

96 **SECTION 3.** Section 7-5-7, Mississippi Code of 1972, is
97 amended as follows:

98 7-5-7. (1) The Governor may engage outside counsel on a
99 noncontingent fee basis to assist the Attorney General in cases to
100 which the state is a party when, in his opinion, the interest of
101 the state requires it, subject to the action of the Legislature in



102 providing compensation for such services not to exceed recognized
103 bar rates for similar services.

104 (2) (a) The Attorney General is hereby authorized and
105 empowered to appoint and employ outside counsel, on a fee or
106 salary basis not to exceed recognized bar rates for similar
107 services, to assist the Attorney General in the preparation for,
108 prosecution, or defense of any litigation in the state or federal
109 courts or before any federal commission or agency in which the
110 state is a party or has an interest. The Attorney General may
111 designate the outside counsel as special assistant Attorney
112 General * * *.

113 (b) If the compensation agreed upon will be governed by
114 a contingency fee contract, that contract must conform with the
115 requirements of Section 7-5-8.

116 (3) The Attorney General may also employ special
117 investigators on a per diem or salary basis, to be agreed upon at
118 the time of employment, for the purpose of interviewing witnesses,
119 ascertaining facts, or rendering any other services that may be
120 needed by the Attorney General in the preparation for and
121 prosecution of suits by or against the State of Mississippi, or in
122 suits in which the Attorney General is participating on account of
123 same being of statewide interest.

124 (4) The Attorney General may pay travel and other expenses
125 of employees and appointees under this chapter in the same manner
126 and amount as authorized by law for the payment of travel and
127 expenses of state employees and officials.

128 (5) The compensation of appointees and employees under this
129 chapter shall be paid out of the Attorney General's contingent
130 fund, or out of any other funds appropriated to the Attorney
131 General's office.

132 **SECTION 4.** The following shall be codified as Section 7-5-8,
133 Mississippi Code of 1972:



134 7-5-8. (1) Before entering into a contingency fee contract
135 with outside counsel, the state, an arm or agency of the state, or
136 a statewide elected officer acting in his official capacity must
137 first make a written determination that contingency fee
138 representation is both cost-effective and in the public interest.
139 The required written determination shall include specific findings
140 for each of the following factors:

141 (a) Whether there exist sufficient and appropriate
142 legal and financial resources within the Attorney General's office
143 to handle the matter.

144 (b) The time and labor required; the novelty,
145 complexity, and difficulty of the questions involved; and the
146 skill requisite to perform the attorney services properly.

147 (c) The geographic area where the attorney services are
148 to be provided.

149 (d) The amount of experience desired for the particular
150 kind of attorney services to be provided and the nature of the
151 outside attorney's experience with similar issues or cases.

152 (2) (a) The state, an arm or agency of the state, or a
153 statewide elected officer acting in his official capacity may not
154 enter into a contingency fee contract that provides for the
155 outside attorney to receive a contingency fee, exclusive of
156 reasonable costs and expenses incurred in connection with the
157 case, which is in excess of the following:

158 (i) Twenty-five percent (25%) of any recovery of
159 up to Ten Million Dollars (\$10,000,000.00); plus

160 (ii) Twenty percent (20%) of any portion of such
161 recovery between Ten Million Dollars (\$10,000,000.00) and Fifteen
162 Million Dollars (\$15,000,000.00); plus

163 (iii) Fifteen percent (15%) of any portion of such
164 recovery between Fifteen Million Dollars (\$15,000,000.00) and
165 Twenty Million Dollars (\$20,000,000.00); plus



166 (iv) Ten percent (10%) of any portion of such
167 recovery between Twenty Million Dollars (\$20,000,000.00) and
168 Twenty-five Million Dollars (25,000,000.00); plus

169 (v) Five percent (5%) of any portion of such
170 recovery exceeding Twenty-five Million Dollars (\$25,000,000.00).

171 (b) Except as provided in subsection (3) of this
172 section, a contingency fee shall not exceed an aggregate of Fifty
173 Million Dollars (\$50,000,000.00), exclusive of reasonable costs
174 and expenses incurred in connection with the case, and
175 irrespective of the number of lawsuits filed or the number of
176 attorneys retained to achieve the recovery.

177 (c) A contingency fee shall not be based on penalties
178 or civil fines awarded or any amounts attributable to penalties or
179 civil fines.

180 (3) The limits on fees set forth in subsection (2) of this
181 section shall not apply if:

182 (a) The state, an arm or agency of the state, or a
183 statewide elected officer acting in his official capacity makes a
184 written determination stating the reasons why a greater fee is
185 necessary, proper, and in the best interests of the state in a
186 particular case; and

187 (b) The Outside Counsel Oversight Commission approves
188 any terms of the contingency contract that exceed the limits set
189 forth in subsection (2) of this section.

190 (4) The Outside Counsel Oversight Commission shall consist
191 of the Governor, the Lieutenant Governor, and the Secretary of
192 State; actions of the commission shall be taken by majority vote.
193 Appeal from a decision of the Outside Counsel Oversight Commission
194 shall be to any court of competent jurisdiction.

195 (5) (a) Copies of any executed contingency fee contract and
196 the applicable written determination to enter into a contingency
197 fee contract with the outside attorney shall be posted on the
198 Attorney General's website for public inspection within five (5)



199 business days after the date the contract is executed unless the
200 state, arm or agency of the state, or statewide elected officer
201 retaining outside counsel makes a determination, subject to the
202 approval of the Outside Counsel Oversight Commission, that to do
203 so would negatively affect the state's interest, and shall remain
204 posted on the website for the duration of the contingency fee
205 contract, including any extensions or amendments to the contract.

206 (b) If the determination is made and duly approved that
207 posting the contract will negatively affect the interests of the
208 state, the contract will be posted on the Attorney General's
209 website within five (5) days of the occurrence of the earliest of
210 the following:

211 (i) Filing of the lawsuit for which the contract
212 was executed;

213 (ii) Entry of appearance for any pending matter
214 for which the contract was executed; or

215 (iii) From the time the outside attorney engages
216 in any substantive action on behalf of the state relative to the
217 subject matter for which the contract was executed.

218 (c) Any payment of contingency fees shall be posted on
219 the Attorney General's website within fifteen (15) days after the
220 payment of the contingency fees to the outside attorney and shall
221 remain posted on the website for at least one (1) year after the
222 date payment is made.

223 (6) An outside attorney under contract to provide services
224 to the state on a contingency fee basis shall, from the inception
225 of the contract until not less than four (4) years after the
226 contract expires or is terminated, maintain detailed current
227 records, including documentation of all expenses, disbursements,
228 charges, credits, underlying receipts and invoices, and other
229 financial transactions that concern the providing of attorney
230 services. In addition, the outside attorney shall maintain
231 detailed contemporaneous time records for the attorneys and



232 paralegals working on the matter in increments of no greater than
233 one-tenth (1/10) of an hour, and shall promptly provide these
234 records to the Attorney General upon request.

235 (7) (a) If an arm or agency of the state or a statewide
236 elected officer contracts for outside legal counsel pursuant to
237 Section 7-5-39(3) on a contingency fee basis, the arm or agency of
238 the state or the statewide elected officer shall provide complete
239 and timely information to the Office of the Attorney General as to
240 every requirement of this section for inclusion in the report
241 under this section. The Office of the Attorney General shall post
242 the information as received on its website within five (5) days of
243 receipt.

244 (b) The arm or agency of the state or statewide elected
245 official responsible for retaining outside counsel shall provide
246 complete and timely information to the Office of the Attorney
247 General as to every requirement of Section 7-5-21 for inclusion in
248 the docket required by that section.

249 **SECTION 5.** Section 7-5-21, Mississippi Code of 1972, is
250 amended as follows:

251 7-5-21. The Attorney General shall keep a docket of all
252 causes in which he is required to appear, whether through his
253 office or through outside counsel, which * * * is a public record
254 and must show the full style of the case, the cause number of the
255 action, the county, district and court in which the causes have
256 been instituted and tried, and whether the case is civil or
257 criminal. If civil, the docket must show the nature of the
258 demand, the stage of the proceedings, the name and address of any
259 outside counsel, a description of the fee arrangement with any
260 outside counsel, a memorandum of the judgment when prosecuted to
261 judgment, any process issued thereon, whether satisfied or not,
262 and if not satisfied, the return of the sheriff. If criminal, the
263 docket must show the nature of the crime, the mode of prosecution,
264 the stage of the proceedings, a memorandum of the sentence when



265 prosecuted to a sentence, the execution thereof, if executed, and,
266 if not executed, the reasons of delay or prevention.

267 **SECTION 6.** Section 7-5-39, Mississippi Code of 1972, is
268 amended as follows:

269 7-5-39. (1) Except as otherwise provided by law, the
270 Attorney General shall * * * represent the state, in person or by
271 his assistant, as counsel in all suits against the state in other
272 courts or the Supreme Court at the seat of government, and he
273 shall, in like manner, act as counsel for any of the state
274 officers in suits brought by or against them in their official
275 capacity, touching any official duty or trust * * *.

276 (2) No civil legal action on behalf of the state, any arm or
277 agency of the state, or any statewide elected officer acting in
278 his official capacity may be taken until seven (7) working days'
279 written notice of the proposed legal action is given to the
280 statewide elected officer or proper person in charge of the arm or
281 agency unless irreparable injury to the state would result by
282 waiting for the expiration of the seven-day period.

283 (3) (a) The Attorney General shall authorize retention of
284 independent counsel from outside his office by an arm or agency of
285 the state or a statewide elected officer acting in his official
286 capacity if the Attorney General declines representation when
287 requested.

288 (b) (i) The Attorney General shall authorize retention
289 of independent counsel from outside his office by an arm or agency
290 of the state or a statewide elected officer acting in his official
291 capacity and shall withdraw from representation of the arm or
292 agency of the state or the statewide elected officer if there is a
293 significant disagreement with the Attorney General as to the legal
294 strategy to be used in the matter, and the Outside Counsel
295 Oversight Commission has first approved the retention of outside
296 counsel.



297 (ii) If an arm or agency of the state or statewide
298 elected officer acting in his official capacity retains outside
299 counsel under this subsection (3), the counsel shall be selected
300 by the arm or agency of the state or the statewide elected
301 officer. Fees of counsel employed on a fee basis shall not exceed
302 recognized bar rates for similar services; any contract for
303 outside counsel employed on a contingency fee basis shall conform
304 to the provisions of Section 7-5-8.

305 (4) The Attorney General may pursue the collection of any
306 claim or judgment in favor of the state outside of the state.

307 **SECTION 7.** Section 27-104-105, Mississippi Code of 1972, is
308 amended as follows:

309 27-104-105. The Department of Finance and Administration
310 shall not process any warrant requested by any state agency for
311 payment for legal services without first determining that the
312 services and contract were approved either by the Attorney General
313 and the State Personnel Board, or as authorized under Section
314 7-5-39(3); contracts for legal services performed for the State
315 Highway Department in eminent domain cases shall not require
316 approval by the State Personnel Board. The State Auditor shall
317 test for compliance with this section.

318 **SECTION 8.** Section 7-7-225, Mississippi Code of 1972, is
319 amended as follows:

320 7-7-225. The State Auditor * * *, when conducting agency
321 audits, shall test to determine whether or not the state
322 institutions of higher learning and any state agency which does
323 not draw warrants on the Treasury have either received approval of
324 the Attorney General or complied with the provisions of Section
325 7-5-39, with regard to any contract for legal services.

326 **SECTION 9.** Section 17-18-41, Mississippi Code of 1972, is
327 amended as follows:

328 17-18-41. (1) No member, officer or employee of the
329 department, authority or committee while acting within the scope



330 of their authority shall be subject to any personal liability by
331 reason of any act or omission in connection with the exercise of
332 any power or performance of any duty whether expressed or implied
333 pursuant to this chapter.

334 (2) Except as otherwise authorized in Section 7-5-39, the
335 Attorney General shall be the legal representative of the
336 authority and the committee and shall provide legal advice and
337 counsel without cost to the authority and the committee.

338 **SECTION 10.** Section 27-33-49, Mississippi Code of 1972, is
339 amended as follows:

340 27-33-49. Except as otherwise authorized in Section 7-5-39,
341 the Attorney General of the state shall be the attorney for the
342 commission and shall represent it in any proceedings before any
343 court. In any hearing before the commission, where the services
344 of an attorney are desired or needed, the Attorney General shall
345 attend on behalf of the commission. The Attorney General shall
346 construe any doubtful or conflicting provisions of this article,
347 and his opinion shall be controlling on all officers.

348 **SECTION 11.** Section 27-104-17, Mississippi Code of 1972, is
349 amended as follows:

350 27-104-17. (1) An allotment period shall be one-half (1/2)
351 of twelve (12) months, and expenditure one-half (1/2) of the
352 appropriated amount, unless otherwise specified in the
353 appropriation bill or justified by the agency to the Department of
354 Finance and Administration, and the first allotment period shall
355 commence on July 1. Estimates shall be filed with the Department
356 of Finance and Administration not later than the first day of the
357 month preceding the beginning period.

358 * * * The Department of Finance and Administration may, in
359 its discretion, restrict an agency to a monthly allotment period
360 when it becomes evident that an agency's rate of expenditure to
361 date indicates this restriction will be necessary to prevent
362 depletion of its appropriation prior to the close of the fiscal



363 year or when the condition of the State General Fund requires
364 monthly monitoring and control of the rate of General Fund
365 expenditures.

366 (2) * * * Unless otherwise specified in the agency
367 appropriation bill, in the event any emergency or unforeseen
368 circumstances shall arise, the agency head may authorize increases
369 in major objects of expenditure within each specific budget within
370 each appropriation bill in total amounts not to exceed ten percent
371 (10%) of the appropriated amount of each object, provided that
372 other major objects of expenditure are decreased by a
373 corresponding dollar amount. Except as otherwise authorized in
374 Section 7-5-39, no transfers shall be authorized which increase or
375 decrease the major object of expenditure "Salaries, Wages and
376 Fringe Benefits," or which increase the major object of
377 expenditure "Capital Outlay - Equipment." The agency head shall
378 submit written justification for the transfer to the Legislative
379 Budget Office, the Department of Finance and Administration, and
380 the State Auditor, on or before the fifteenth of the month prior
381 to the effective date of the transfer. The transfer shall be
382 effective the first working day of the month following timely
383 submissions required herein. In cases of extreme hardship,
384 certified in writing by the agency head and submitted with timely
385 submissions required herein, the Executive Director of the
386 Department of Finance and Administration, in his discretion, may
387 authorize an earlier effective date for the transfer.

388 * * *

389 (3) No former employee who is receiving State of Mississippi
390 retirement benefits shall be hired under contract for an amount
391 exceeding Twenty Thousand Dollars (\$20,000.00) a year without
392 prior approval by an agency's proper governing board or authority.
393 Upon approval of such contracts a written report shall be
394 submitted detailing the cost and need of such contract services to



395 the Chairmen and members of the Senate and House Appropriations
396 Committees.

397 **SECTION 12.** Section 27-104-19, Mississippi Code of 1972, is
398 amended as follows:

399 27-104-19. Except as otherwise authorized in Section 7-5-39,
400 when an operating budget has been approved, the amount approved
401 shall be available and shall constitute the maximum of obligations
402 or indebtedness which may be incurred by the agency for any
403 purpose during the allotment period to be paid from such funds.

404 **SECTION 13.** Section 29-3-39, Mississippi Code of 1972, is
405 amended as follows:

406 29-3-39. It shall be the duty of the board of education to
407 survey periodically the classification of all sixteenth section
408 land under its jurisdiction and to reclassify that land as it may
409 deem advisable because of changes of conditions, and when any land
410 is so reclassified, the board of education shall file a report
411 thereof with the Secretary of State. From time to time the
412 Secretary of State may institute proceedings to reclassify any
413 sixteenth section lands which he may deem advisable and when any
414 land is so reclassified, the Secretary of State shall file a
415 report thereof with the board of education. When any land is
416 reclassified under this section, notice thereof, rights to object
417 thereto and rights to appeal therefrom shall be given in the same
418 manner provided in Section 29-3-37 with reference to the original
419 classification. * * * However, * * * all sixteenth section land
420 shall be classified, or reclassified as is necessary, within one
421 (1) year prior to the expiration date of any existing lease, and
422 within sixty (60) days of the terminating of any lease of
423 sixteenth section land by final court order. In all litigation
424 which may result from the classification or reclassification of
425 lands by the Secretary of State under Sections 29-3-31 through
426 29-3-39, the Secretary of State shall be represented by the
427 Attorney General, who shall have control of the litigation except



428 as otherwise authorized in Section 7-5-39, but it shall be the
429 duty of the various boards of education to furnish local legal
430 assistance when requested so to do by the Attorney General.

431 **SECTION 14.** Section 31-29-23, Mississippi Code of 1972, is
432 amended as follows:

433 31-29-23. Except as otherwise authorized in Section 7-5-39,
434 the Attorney General of the State of Mississippi shall represent
435 the State Bond Commission in issuing, selling and validating bonds
436 herein provided for, and the bond commission is hereby authorized
437 and empowered to expend from the proceeds derived from the sale of
438 the bonds authorized hereunder all necessary administrative, legal
439 and other expenses incidental and related to the issuance of bonds
440 authorized under this chapter.

441 **SECTION 15.** Section 41-9-35, Mississippi Code of 1972, is
442 amended as follows:

443 41-9-35. Notwithstanding the existence or pursuit of any
444 other remedy, the licensing agency, may in the manner provided by
445 law, upon the advice of the Attorney General who, except as
446 otherwise authorized in Section 7-5-39, shall represent the
447 licensing agency in the proceedings, maintain an action in the
448 name of the state for an injunction or other process against any
449 person or governmental unit to restrain or prevent the
450 establishment, conduct, management or operation of a hospital
451 without a license as provided for in Section 41-9-11.

452 **SECTION 16.** Section 43-11-27, Mississippi Code of 1972, is
453 amended as follows:

454 43-11-27. Notwithstanding the existence or pursuit of any
455 other remedy, the licensing agency may, in the manner provided by
456 law, upon the advice of the Attorney General who, except as
457 otherwise authorized in Section 7-5-39, shall represent the
458 licensing agency in the proceedings, maintain an action in the
459 name of the state for injunction or other process against any
460 person to restrain or prevent the establishment, conduct,



461 management or operation of an institution for the aged or infirm
462 without a license under this chapter.

463 **SECTION 17.** Section 43-15-121, Mississippi Code of 1972, is
464 amended as follows:

465 43-15-121. In addition to, and notwithstanding, any other
466 remedy provided by law, the division may, in a manner provided by
467 law and upon the advice of the Attorney General who, except as
468 otherwise authorized in Section 7-5-39, shall represent the
469 division in the proceedings, maintain an action in the name of the
470 state for injunction or other process against any person or entity
471 to restrain or prevent the establishment, management or operation
472 of a program or facility or performance of services in violation
473 of this article or rules of the division.

474 **SECTION 18.** Section 43-16-21, Mississippi Code of 1972, is
475 amended as follows:

476 43-16-21. Notwithstanding the existence of any other remedy,
477 the department may, in the manner provided by law, in termtime or
478 in vacation, upon the advice of the Attorney General who, except
479 as otherwise authorized in Section 7-5-39, shall represent the
480 department in the proceedings, maintain an action in the name of
481 the state for an injunction or restraining order to cease the
482 operation of the home, and to provide for the appropriate removal
483 of the children from the home and placement in the custody of the
484 parents or legal guardians, the Department of Human Services, or
485 any other appropriate entity in the discretion of the court. Such
486 action shall be brought in the chancery court or the youth court,
487 as appropriate, of the county in which such child residential home
488 is located, and shall only be initiated for the following
489 violations:

490 (a) Providing supervision, care, lodging or maintenance
491 for any children in such home without filing notification in
492 accordance with this chapter.



493 (b) Failure to satisfactorily comply with local health
494 department or State Fire Marshal inspections made pursuant to
495 Section 43-16-15, regarding the health, nutrition, cleanliness,
496 safety, sanitation, written records and discipline policy of such
497 home.

498 (c) Suspected abuse and/or neglect of the children
499 served by such home, as defined in Section 43-21-105 * * *.

500 **SECTION 19.** Section 43-20-21, Mississippi Code of 1972, is
501 amended as follows:

502 43-20-21. Notwithstanding the existence of any other remedy,
503 the licensing agency may, in the manner provided by law, in
504 termtime or in vacation, upon the advice of the Attorney General
505 who, except as otherwise authorized in Section 7-5-39, shall
506 represent the licensing agency in the proceedings, maintain an
507 action in the name of the state for an injunction or other proper
508 remedy against any person to restrain or prevent the
509 establishment, conduct, management or operation of a child care
510 facility without license under this chapter, or otherwise in
511 violation of this chapter.

512 **SECTION 20.** Section 43-27-14, Mississippi Code of 1972, is
513 amended as follows:

514 43-27-14. The Department of Youth Services shall have the
515 authority to accept any allotments of federal funds and
516 commodities and shall manage and dispose of them in whatever
517 manner may be required by federal law, and may take advantage of
518 any federal programs, grants-in-aid, or other public or private
519 assistance which may be offered or available which will accomplish
520 or further the objectives of the department. Except as otherwise
521 authorized in Section 7-5-39, the Attorney General shall be the
522 legal representative of the department.

523 **SECTION 21.** Section 49-5-98, Mississippi Code of 1972, is
524 amended as follows:



525 49-5-98. Except as otherwise authorized in Section 7-5-39,
526 the Attorney General of the State of Mississippi shall represent
527 the commission in issuing, selling and validating bonds herein
528 provided for, and the commission may expend any sum not exceeding
529 Fifteen Thousand Dollars (\$15,000.00) from the proceeds derived
530 from the sale of the bonds authorized hereunder to pay the cost of
531 attorney's fees, validating, printing, and cost of delivery of
532 bonds authorized under Sections 49-5-86 through 49-5-98.

533 **SECTION 22.** Section 53-1-47, Mississippi Code of 1972, is
534 amended as follows:

535 53-1-47. (a) (i) Any person, who, for the purpose of
536 evading the provisions of Sections 53-1-1 through 53-1-47,
537 inclusive, or any rule, regulation or order made thereunder, shall
538 make or cause to be made any false entry, statement of fact or
539 omission in any report required by such sections or by any rule,
540 regulation or order thereunder or in any account, record or
541 memorandum kept in connection with the provisions thereof or who,
542 for such purpose, shall mutilate, alter, conceal or falsify any
543 such report, account, record or memorandum, shall be subject to a
544 penalty of not more than Ten Thousand Dollars (\$10,000.00) per day
545 for each day of such violation to be assessed by the board. In
546 determining the amount of the penalty, the board shall consider
547 the factors specified in subsection (d) of this section. Such
548 penalties shall be assessed according to the procedures set forth
549 in subsection (b) of this section.

550 (ii) Any person, who, for the purpose of evading the
551 provisions of Sections 53-1-1 through 53-1-47, inclusive, or any
552 rule, regulation or order made thereunder, shall intentionally
553 make or cause to be made any false entry, statement of fact or
554 omission in any report required by said sections or by any rule,
555 regulation or order thereunder or in any account, record or
556 memorandum kept in connection with the provisions thereof or who,
557 for such purpose, shall mutilate, alter, conceal or falsify any



558 such report, account, record or memorandum shall be deemed guilty
559 of a misdemeanor and shall be subject, upon conviction in any
560 court of competent jurisdiction, to a fine of not less than Five
561 Hundred Dollars (\$500.00) nor more than One Thousand Dollars
562 (\$1,000.00), or imprisonment for a term of not less than ten (10)
563 days nor more than six (6) months for each such violation, or both
564 such fine and imprisonment.

565 (b) Any person who violates any provision of Sections 53-1-1
566 through 53-1-47, inclusive, or Sections 53-3-1 through 53-3-33,
567 and 53-3-39 through 53-3-165, or any lawful rule, regulation or
568 order of the board made hereunder, shall, in addition to any
569 penalty for such violation that is otherwise provided for herein,
570 be subject to a penalty of not to exceed Ten Thousand Dollars
571 (\$10,000.00) per day for each day of such violation to be assessed
572 by the board. When any charge is filed with the board charging
573 any person with any such violation, the board shall conduct an
574 adjudicative proceeding in accordance with the Administrative
575 Procedures Law. Such proceeding shall be held by not less than
576 three (3) members of the board and a unanimous verdict of all
577 members hearing such charge shall be necessary for conviction and
578 in the event of a conviction all members of the board hearing such
579 cause must agree on the penalty assessed.

580 Except as otherwise authorized in Section 7-5-39, the
581 Attorney General, by his designated assistant, shall represent the
582 board in all such proceedings. If he represents the board, the
583 Attorney General shall also designate a member of his staff to
584 present evidence and proof of such violation in the event such
585 charge is contested.

586 All penalties assessed by the board under the provisions of
587 this section shall have the force and effect of a judgment of the
588 circuit court and shall be enrolled in the office of the circuit
589 clerk and execution may be issued thereon. All such penalties



590 paid or collected shall be paid to the State Treasurer for credit
591 to the Special Oil and Gas Board Fund.

592 Any person adjudged guilty of any such violation shall have
593 the right of appeal in accordance with the provisions of Section
594 53-1-39.

595 The payment of any penalty as provided herein shall not have
596 the effect of changing illegal oil into legal oil, illegal gas
597 into legal gas or illegal product into legal product, nor shall
598 such payment have the effect of authorizing the sale or purchase
599 or acquisition or the transportation, refining, processing or
600 handling in any other way of such illegal oil, illegal gas or
601 illegal product.

602 (c) Any person who aids or abets any other person in the
603 violation of any provision of Sections 53-1-1 through 53-1-47,
604 inclusive, or Sections 53-3-1 through 53-3-21, inclusive, or any
605 rule, regulation or order made thereunder, shall be subject to the
606 same penalties as are prescribed herein for the violation by such
607 other person.

608 (d) In determining the amount of the penalty under
609 subsection (a), (b) or (c) of this section, the board shall
610 consider at a minimum the following factors:

611 (i) The willfulness of the violation;

612 (ii) Any damage to water, land or other natural
613 resources of the state or their users;

614 (iii) Any cost of restoration and abatement;

615 (iv) Any economic benefit to the violator as a result
616 of noncompliance;

617 (v) The seriousness of the violation, including any
618 harm to the environment and any harm to the health and safety of
619 the public; and

620 (vi) Any prior violation by such violator.

621 (e) The board is authorized to utilize the provisions of
622 Section 85-7-132 to enforce penalties provided by this section.



623 **SECTION 23.** Section 57-10-533, Mississippi Code of 1972, is
624 amended as follows:

625 57-10-533. Except as otherwise authorized in Section 7-5-39,
626 the Attorney General of the State of Mississippi shall represent
627 the seller in issuing, selling and validating bonds or notes
628 herein provided for, and the seller is hereby authorized and
629 empowered to expend from the proceeds derived from the sale of the
630 bonds or notes authorized hereunder all necessary administrative,
631 legal and other expenses incidental and related to the issuance of
632 bonds or notes authorized under this article.

633 **SECTION 24.** Section 57-61-35, Mississippi Code of 1972, is
634 amended as follows:

635 57-61-35. Except as otherwise authorized in Section 7-5-39,
636 the Attorney General of the State of Mississippi shall represent
637 the seller in issuing, selling and validating bonds herein
638 provided for, and the seller is hereby authorized and empowered to
639 expend from the proceeds derived from the sale of the bonds
640 authorized hereunder all necessary administrative, legal and other
641 expenses incidental and related to the issuance of bonds
642 authorized under this chapter.

643 **SECTION 25.** Section 57-71-33, Mississippi Code of 1972, is
644 amended as follows:

645 57-71-33. Except as otherwise authorized in Section 7-5-39,
646 the Attorney General of the State of Mississippi shall represent
647 the seller in issuing, selling and validating bonds or notes
648 herein provided for, and the seller is hereby authorized and
649 empowered to expend from the proceeds derived from the sale of the
650 bonds or notes authorized hereunder all necessary administrative,
651 legal and other expenses incidental and related to the issuance of
652 bonds or notes authorized under this act.

653 **SECTION 26.** Section 57-77-39, Mississippi Code of 1972, is
654 amended as follows:



655 57-77-39. Except as otherwise authorized in Section 7-5-39,
656 the Attorney General of the State of Mississippi shall represent
657 the seller in issuing, selling and validating bonds or notes
658 herein provided for, and the seller is hereby authorized and
659 empowered to expend from the proceeds derived from the sale of the
660 bonds or notes authorized hereunder all necessary administrative,
661 legal and other expenses incidental and related to the issuance of
662 bonds or notes authorized under this chapter.

663 **SECTION 27.** Section 59-5-65, Mississippi Code of 1972, is
664 amended as follows:

665 59-5-65. Except as otherwise authorized in Section 7-5-39,
666 the Attorney General of the State of Mississippi shall represent
667 the State Bond Commission in issuing, selling and validating bonds
668 herein provided for. The State Bond Commission is hereby
669 authorized and empowered to pay the costs that are incident to the
670 sale, issuance and delivery of the bonds herein provided for, and
671 such costs may be paid for out of the proceeds derived from the
672 sale of such bonds.

673 **SECTION 28.** Section 59-17-57, Mississippi Code of 1972, is
674 amended as follows:

675 59-17-57. Except as otherwise authorized in Section 7-5-39,
676 the Attorney General of the State of Mississippi shall represent
677 the State Bond Commission in issuing, selling and validating bonds
678 herein provided for, and the board is hereby authorized and
679 empowered to expend any sum not exceeding Fifteen Thousand Dollars
680 (\$15,000.00) from the proceeds derived from the sale of any one
681 (1) series of bonds authorized hereunder to pay for the cost of
682 the approving attorney's fees, validating, printing and cost of
683 delivery of bonds authorized under this chapter.

684 **SECTION 29.** Section 65-26-37, Mississippi Code of 1972, is
685 amended as follows:

686 65-26-37. Except as otherwise authorized in Section 7-5-39,
687 the Attorney General of the State of Mississippi shall represent



688 the Transportation Commission in issuing, selling and validating
689 bonds herein provided for, and said Transportation Commission is
690 hereby authorized and empowered to expend any sum not to exceed
691 Forty Thousand Dollars (\$40,000.00) on approval by the State Bond
692 Commission from the proceeds derived from the sale of bonds
693 authorized in subsections (1) and (2) of Section 65-26-15, or from
694 other funds available to the Transportation Commission, to pay the
695 cost of approving attorney's fees, validating, printing and cost
696 of delivery of bonds authorized under this chapter.

697 **SECTION 30.** Section 69-2-33, Mississippi Code of 1972, is
698 amended as follows:

699 69-2-33. Except as otherwise authorized in Section 7-5-39,
700 the Attorney General of the State of Mississippi shall represent
701 the department in issuing, selling and validating bonds or notes
702 authorized under Sections 69-2-19 through 69-2-39 of this chapter,
703 and the department is authorized to pay from the proceeds derived
704 from the sale of such bonds or notes, or from other funds
705 available to the department, the reasonable cost of approving
706 attorney's fees, validating, printing and cost of delivery of such
707 bonds or notes.

708 **SECTION 31.** Section 69-27-359, Mississippi Code of 1972, is
709 amended as follows:

710 69-27-359. Except as otherwise authorized in Section 7-5-39,
711 the Attorney General of the State of Mississippi shall represent
712 the Soil and Water Conservation Commission in issuing, selling and
713 validating bonds authorized under Sections 69-27-345 through
714 69-27-365, and the commission is authorized to pay from the
715 proceeds derived from the sale of such bonds or from other funds
716 available to the commission, the reasonable cost of approving
717 attorney's fees, validating, printing, cost of delivery of such
718 bonds and any other necessary costs of issuance.

719 **SECTION 32.** Section 73-11-49, Mississippi Code of 1972, is
720 amended as follows:



721 73-11-49. (1) The board is authorized to select from its
722 own membership a chairman, vice chairman and secretary-treasurer.
723 Election of officers shall be held at the first regularly
724 scheduled meeting of the fiscal year.

725 (2) All members of the board shall be reimbursed for their
726 necessary traveling expenses and mileage incident to their
727 attendance upon the business of the board, as provided in Section
728 25-3-41, and shall receive a per diem as provided in Section
729 25-3-69 for every day actually spent upon the business of the
730 board, not to exceed twenty (20) days per year unless authorized
731 by a majority vote of the board.

732 (3) All monies received by the board shall be paid into a
733 special fund in the State Treasury to the credit of the board and
734 shall be used by the board for paying the traveling and necessary
735 expenses and per diem of the members of the board while on board
736 business, and for paying other expenses necessary for the
737 operation of the board in carrying out and involving the
738 provisions of this chapter.

739 (4) The board shall employ an administrator of the board,
740 who shall have complete supervision and be held responsible for
741 the direction of the office of the board, shall have supervision
742 over field inspections and enforcement of the provisions of this
743 chapter, shall have such other duties as may be assigned by the
744 board, shall be responsible and answerable to the board. The
745 board may employ such other clerical assistants and employees as
746 may be necessary to carry out the provisions of this chapter, and
747 the terms and conditions of such employment shall be determined by
748 the board in accordance with applicable state law and rules and
749 regulations of the State Personnel Board.

750 (5) Except as otherwise authorized in Section 7-5-39, the
751 board, when it shall deem necessary, shall be represented by an
752 assistant attorney general duly appointed by the Attorney General
753 of this state, and may also request and receive the assistance of



754 other state agencies and county and district attorneys, all of
755 whom are authorized to provide the assistance requested.

756 (6) The board shall have subpoena power in enforcing the
757 provisions of this chapter.

758 (7) The board shall adopt and promulgate rules and
759 regulations for the transaction of its business in accordance with
760 the provisions of the Mississippi Administrative Procedures Law
761 (Section 25-43-1 et seq.). No rule or regulation promulgated by
762 the board affecting any person or agency outside the board shall
763 be adopted, amended or repealed without a public hearing on the
764 proposed action. The board shall give written notice at least
765 thirty (30) days in advance of any meeting with respect to any
766 proposed adoption, amendment or repeal of a rule or regulation of
767 the board, in accordance with the Administrative Procedures Act,
768 as well as notifying the duly elected presidents and secretaries
769 of the Mississippi Funeral Directors Association and the
770 Mississippi Funeral Directors and Morticians Association, or their
771 successors.

772 (8) The board may designate the administrator to perform
773 inspections under this chapter, may employ an individual to
774 perform such inspections or may contract with any other individual
775 or entity to perform such inspections. Any individual or entity
776 that performs such inspections shall have the right of entry into
777 any place in which the business or practice of funeral service
778 and/or funeral directing is carried on or advertised as being
779 carried on, for the purpose of inspection, for the investigation
780 of complaints coming before the board and for such other matters
781 as the board may direct.

782 (9) The board shall not adopt any rule or regulation
783 pertaining to the transportation of dead bodies, and shall not
784 adopt any rule or regulation requiring dead bodies to be embalmed
785 except as required by the State Department of Health's Rule 43 or
786 any subsequent rule adopted by the department.



787 **SECTION 33.** Section 73-13-39, Mississippi Code of 1972, is
788 amended as follows:

789 73-13-39. Any person or firm who shall practice, or offer to
790 practice, engineering in this state without being licensed in
791 accordance with the provisions of Sections 73-13-1 through
792 73-13-45, or any person presenting or attempting to use as his own
793 the certificate of licensure or seal of another, or any person who
794 shall give any false or forged evidence of any kind to the board
795 or to any member thereof in obtaining a certificate of licensure,
796 or any person who shall falsely impersonate any other licensee of
797 like or different name, or any person or firm who shall attempt to
798 use an expired or revoked certificate of licensure, or any person
799 or firm who shall violate any of the provisions of Sections
800 73-13-1 through 73-13-45, shall be guilty of a misdemeanor, and
801 shall, upon conviction, be sentenced to pay a fine of not less
802 than One Hundred Dollars (\$100.00), nor more than Five Thousand
803 Dollars (\$5,000.00) in addition to reimbursement of investigative
804 expenses and court costs, or suffer imprisonment for a period not
805 exceeding three (3) months, or both. The criminal penalties
806 provided for in this section may be assessed in addition to those
807 civil penalties provided for in Section 73-13-37.

808 Unless licensed in accordance with the provisions of Sections
809 73-13-1 through 73-13-45, no person shall:

810 (a) Directly or indirectly employ, use, cause to be
811 used or make use of any of the following terms or any
812 combinations, variations or abbreviations thereof as a
813 professional, business or commercial identification, title, name,
814 representation, claim, asset or means of advantage or benefit:
815 "engineer," "professional engineer," "licensed engineer,"
816 "registered engineer," "registered professional engineer,"
817 "licensed professional engineer," "engineered," "engineering"; or

818 (b) Directly or indirectly employ, use, cause to be
819 used or make use of any letter, abbreviation, word, symbol,



820 slogan, sign or any combinations or variations thereof which in
821 any manner whatsoever tends or is likely to create any impression
822 with the public or any member thereof that any person is qualified
823 or authorized to practice engineering; or

824 (c) Receive any fee or compensation or the promise of
825 any fee or compensation for performing, offering or attempting to
826 perform any service, work, act or thing which is any part of the
827 practice of engineering.

828 Any person, firm, partnership, association or corporation
829 which shall do, offer or attempt to do any one or more of the acts
830 or things set forth in items (a) through (c) of the preceding
831 paragraph shall be conclusively presumed and regarded as engaged
832 in the practice of engineering.

833 It shall be the duty of all duly constituted officers of the
834 law of this state, or any political subdivision thereof, to
835 enforce the provisions of Sections 73-13-1 through 73-13-45 and to
836 prosecute any persons violating same. Except as otherwise
837 authorized in Section 7-5-39, the Attorney General of the state or
838 his assistant shall act as legal advisor of the board in carrying
839 out the provisions of Sections 73-13-1 through 73-13-45.

840 **SECTION 34.** Section 73-13-95, Mississippi Code of 1972, is
841 amended as follows:

842 73-13-95. Any person who shall practice, or offer to
843 practice, surveying in this state without being licensed in
844 accordance with the provisions of Sections 73-13-71 through
845 73-13-105, or any person presenting or attempting to use as his
846 own the certificate of licensure or the seal of another, or any
847 person who shall give any false or forged evidence of any kind to
848 the board or to any member thereof in obtaining a certificate of
849 licensure, or any person who shall falsely impersonate any other
850 licensee of like or different name, or any person who shall
851 knowingly attempt to use a license which has been expired for more
852 than twelve (12) consecutive months or revoked certificate of



853 licensure, or any person who shall violate any of the provisions
854 of Sections 73-13-71 through 73-13-105, shall be guilty of a
855 misdemeanor, and shall, upon conviction of a first offense of
856 violating this section, be sentenced to pay a fine of not less
857 than One Hundred Dollars (\$100.00), nor more than Five Thousand
858 Dollars (\$5,000.00), and in addition thereto shall make
859 restitution to the board for investigative expenses and court
860 costs, or suffer imprisonment for a period of not exceeding three
861 (3) months, or both. Upon any second and subsequent conviction of
862 violating this section, such person shall be sentenced to pay a
863 fine of not less than Five Thousand Dollars (\$5,000.00), nor more
864 than Ten Thousand Dollars (\$10,000.00), or by imprisonment in the
865 county jail for not more than one (1) year, or both. The criminal
866 penalties provided for in this section may be assessed in addition
867 to those civil penalties provided for in Section 73-13-37.

868 Unless licensed in accordance with the provisions of Sections
869 73-13-71 through 73-13-105, no person shall:

870 (a) Directly or indirectly employ, use, cause to be
871 used or make use of any of the following terms or any combination,
872 variations or abbreviations thereof as a professional, business or
873 commercial identification, title, name, representation, claim,
874 asset or means of advantage or benefit: "surveyor," "professional
875 surveyor," "licensed surveyor," "registered surveyor," "registered
876 professional surveyor," "licensed professional surveyor,"
877 "surveyed," "surveying," "professional land surveyor," or
878 "licensed professional land surveyor";

879 (b) Directly or indirectly employ, use, cause to be
880 used or make use of any letter, abbreviation, word, symbol,
881 slogan, sign or any combinations or variations thereof, which in
882 any manner whatsoever tends or is likely to create any impression
883 with the public or any member thereof that any person is qualified
884 or authorized to practice surveying; or



885 (c) Receive any fee or compensation or the promise of
886 any fee or compensation for performing, offering or attempting to
887 perform any service, work, act or thing which is any part of the
888 practice of surveying.

889 Any person, firm, partnership, association or corporation
890 which shall do, offer or attempt to do any one or more of the acts
891 or things set forth in items (a) through (c) of the preceding
892 paragraph shall be conclusively presumed and regarded as engaged
893 in the practice of surveying.

894 It shall be the duty of all duly constituted officers of the
895 law of this state, or any political subdivision thereof, to
896 enforce the provisions of Sections 73-13-71 through 73-13-105 and
897 to prosecute any persons violating same. Except as otherwise
898 authorized in Section 7-5-39, the Attorney General of the state or
899 his assistant shall act as legal adviser of the board and render
900 such legal assistance as may be necessary in carrying out the
901 provisions of Sections 73-13-71 through 73-13-105.

902 **SECTION 35.** Section 73-15-33, Mississippi Code of 1972, is
903 amended as follows:

904 73-15-33. It is unlawful for any person, including a
905 corporation or association, to:

906 (a) Sell, fraudulently obtain or furnish any nursing
907 diploma, license, renewal of license, or record, or to aid or abet
908 therein;

909 (b) Practice nursing as defined by this article under
910 cover of any diploma, license, renewal of license, or record
911 illegally or fraudulently obtained or signed or issued unlawfully
912 or under fraudulent representation;

913 (c) Practice or offer to practice nursing as defined by
914 this article unless duly licensed or privileged to practice under
915 the provisions of this article;

916 (d) Use any title, designation or abbreviation by which
917 a person presents to the public that he or she is a registered



918 nurse, a licensed practical nurse or any other type of nurse,
919 unless the person is duly licensed or privileged to practice under
920 the provisions of this article; however, this paragraph does not
921 prohibit a certified nurse assistant or certified nursing
922 assistant from using the word "nurse" or "nursing" as part of his
923 or her job title;

924 (e) Practice as a registered nurse or a licensed
925 practical nurse during the time his or her license or privilege to
926 practice issued under the provisions of this article is under
927 suspension or revocation;

928 (f) Conduct a nursing education program for the
929 preparation of registered nurses, unless the program has been
930 accredited by the Board of Trustees of State Institutions of
931 Higher Learning, or conduct a nursing education program for the
932 preparation of licensed practical nurses unless the program has
933 been accredited by the Department of Education through the
934 Division of Vocational Education;

935 (g) Willfully employ unlicensed persons or persons not
936 holding the privilege to practice, to practice as registered
937 nurses or licensed practical nurses; or

938 (h) Willfully aid or abet any person who violates any
939 provisions of this article.

940 Any person, firm or corporation who violates any provisions
941 of this article shall be guilty of a misdemeanor and, upon
942 conviction thereof, shall be punished by a fine not less than One
943 Hundred Dollars (\$100.00) nor more than One Thousand Dollars
944 (\$1,000.00) or by imprisonment in the county jail for not less
945 than twelve (12) months, or by both such fine and imprisonment.
946 It shall be necessary to prove, in any prosecution under this
947 article, only a single act prohibited by law, or a single holding
948 out or an attempt without proving a general course of conduct in
949 order to constitute a violation. Each violation may constitute a
950 separate offense. Except as otherwise authorized in Section



951 7-5-39, it shall be the duty of the Attorney General to advise
952 with the board in preparing charges, to assist in conducting board
953 disciplinary hearings, to provide assistance with appropriate
954 affidavits and other charges for filing in the appropriate court,
955 and to assist the county or district attorney in prosecution, if
956 any.

957 **SECTION 36.** Section 73-29-39, Mississippi Code of 1972, is
958 amended as follows:

959 73-29-39. Any person dissatisfied with the action of the
960 board in refusing his application or suspending or revoking his
961 license, or any other action of the board, may appeal the action
962 of the board by filing a petition within thirty (30) days
963 thereafter in the circuit court in the county where the person
964 resides or in the Circuit Court of Hinds County, Mississippi, and
965 the court is vested with jurisdiction and it shall be the duty of
966 the court to set the matter for hearing upon ten (10) days'
967 written notice to the board and the attorney representing the
968 board. The court in which the petition of appeal is filed shall
969 determine whether or not a cancellation or suspension of a license
970 shall be abated until the hearing shall have been consummated with
971 final judgment thereon or whether any other action of the board
972 should be suspended pending hearing, and enter its order
973 accordingly, which shall be operative when served upon the board,
974 and the court shall provide the attorney representing the board
975 with a copy of the petition and order. Except as otherwise
976 authorized in Section 7-5-39, the board shall be represented in
977 such appeals by the district or county attorney of the county or
978 the Attorney General, or any of their assistants. The board shall
979 initially determine all facts, but the court upon appeal shall set
980 aside the determination of the board if the board's determination
981 (1) is not based upon substantial evidence upon the entire record;
982 (2) is arbitrary or capricious; (3) is in violation of statutory



983 requirements; or (4) was made without affording to licensee or
984 applicant due process of law.

985 Actions taken by the board in suspending a license when
986 required by Section 93-11-157 or 93-11-163 are not actions from
987 which an appeal may be taken under this section. Any appeal of a
988 license suspension that is required by Section 93-11-157 or
989 93-11-163 shall be taken in accordance with the appeal procedure
990 specified in Section 93-11-157 or 93-11-163, as the case may be,
991 rather than the procedure specified in this section.

992 **SECTION 37.** Section 73-29-43, Mississippi Code of 1972, is
993 amended as follows:

994 73-29-43. If any person violates any provisions of this
995 chapter, the secretary shall, upon direction of a majority of the
996 board, in the name of the State of Mississippi, through the
997 Attorney General of the State of Mississippi, except as otherwise
998 authorized in Section 7-5-39, apply in any chancery court of
999 competent jurisdiction, for an order enjoining such violation or
1000 for an order enforcing compliance with this chapter. Upon the
1001 filing of a verified petition in the court, the court, or any
1002 judge thereof, if satisfied by affidavit or otherwise that the
1003 person has violated this chapter, may issue a temporary
1004 injunction, without notice or bond, enjoining such continued
1005 violation and if it is established that the person has violated or
1006 is violating this chapter, the court, or any judge thereof, may
1007 enter a decree perpetually enjoining the violation or enforcing
1008 compliance with this chapter. In case of violation of any order
1009 or decree issued under the provisions of this section, the court,
1010 or any judge thereof, may try and punish the offender for contempt
1011 of court. Proceedings under this section shall be in addition to,
1012 and not in lieu of, all other remedies and penalties provided by
1013 this chapter.

1014 **SECTION 38.** Section 73-31-25, Mississippi Code of 1972, is
1015 amended as follows:



1016 73-31-25. The board may, in the name of the people of the
1017 State of Mississippi, through the Attorney General, except as
1018 otherwise authorized in Section 7-5-39, apply for an injunction in
1019 any court of competent jurisdiction to enjoin any person from
1020 committing any act declared to be a misdemeanor by this chapter.

1021 If it is established that the defendant has been or is
1022 committing an act declared to be a misdemeanor by this chapter,
1023 the court, or any judge thereof, shall enter a decree perpetually
1024 enjoining the defendant from further committing that act. In case
1025 of violation of any injunction issued under the provisions of this
1026 section, the court, or any judge thereof, may summarily try and
1027 punish the offender for contempt of court. Those injunctive
1028 proceedings shall be in addition to, and not in lieu of, all
1029 penalties and other remedies provided for in this chapter.

1030 **SECTION 39.** Section 73-36-35, Mississippi Code of 1972, is
1031 amended as follows:

1032 73-36-35. Any person who practices or offers to practice the
1033 profession of forestry in this state without being registered in
1034 accordance with this chapter, or any person who uses in connection
1035 with his name, or otherwise assumes, uses or advertises any title
1036 or description tending to convey the impression that he is a
1037 registered forester without being registered in accordance with
1038 this chapter, or any person who presents or attempts to use as his
1039 own the license of another, or any person who gives any false or
1040 forged evidence of any kind to the board or any member in
1041 obtaining a license, or any person who attempts to use an expired
1042 or revoked license, or any person, firm, partnership or
1043 corporation who violates any of the provisions of this chapter and
1044 has not been issued an administrative fine by the board for the
1045 violation is guilty of a misdemeanor and, upon conviction, shall
1046 be fined not more than Five Thousand Dollars (\$5,000.00) for each
1047 violation. The board, or any person or persons as may be
1048 designated by the board to act in its stead, is empowered to



1049 prefer charges for any violations of this chapter in any court of
1050 competent jurisdiction. It shall be the duty of all duly
1051 constituted officers of the law of this state to enforce the
1052 provisions of this chapter and to prosecute any persons, firms,
1053 partnerships or corporations violating same. Except as otherwise
1054 authorized in Section 7-5-39, the Attorney General of the state or
1055 his designated assistant shall act as legal advisor of the board
1056 and render such assistance as may be necessary in carrying out the
1057 provisions of this chapter.

1058 **SECTION 40.** Section 73-63-25, Mississippi Code of 1972, is
1059 amended as follows:

1060 73-63-25. Except as otherwise authorized in Section 7-5-39,
1061 the Attorney General shall be counsel and attorney for the board
1062 and shall provide any legal services as may be requested by the
1063 board from time to time. The board * * * may retain outside
1064 counsel and investigators to provide any legal and investigative
1065 assistance as may be necessary in enforcing this chapter as
1066 authorized in House Bill No. 211, 2012 Regular Session.

1067 **SECTION 41.** Section 75-76-25, Mississippi Code of 1972, is
1068 amended as follows:

1069 75-76-25. Except as otherwise authorized in Section 7-5-39,
1070 the Attorney General and his assistants shall represent the
1071 commission and the executive director in any proceeding to which
1072 the commission or the executive director is a party under this
1073 chapter * * * and shall also advise the commission and the
1074 executive director in all other matters, including representing
1075 the commission when the commission sits in a quasi-judicial
1076 capacity.

1077 **SECTION 42.** Section 83-1-5, Mississippi Code of 1972, is
1078 amended as follows:

1079 83-1-5. The commissioner shall receive a compensation to be
1080 fixed by law. He is hereby authorized to employ a clerk and
1081 stenographer and an actuary at a salary to be fixed by law; and in



1082 addition shall be allowed a sufficient sum for traveling expenses
1083 and for extra clerical help.

1084 Further, the commissioner may appoint or employ special
1085 counsel pursuant to the provisions of Section 7-5-39.

1086 **SECTION 43.** Section 97-33-109, Mississippi Code of 1972, is
1087 amended as follows:

1088 97-33-109. (1) The commission shall monitor the conduct or
1089 business of licensees, both on a routine scheduled and an
1090 unscheduled basis, to the extent necessary to ensure compliance
1091 with the provisions of charitable bingo game laws and regulations
1092 of the state.

1093 (2) In carrying out its enforcement responsibilities, the
1094 commission may:

1095 (a) Inspect and examine all premises in which
1096 charitable bingo games are conducted or supplies or equipment for
1097 such games are manufactured and distributed;

1098 (b) Inspect all such supplies and equipment in, upon or
1099 about such premises;

1100 (c) Seize and remove from such premises and impound
1101 such supplies and equipment for the purpose of examination and
1102 inspection pursuant to an appropriate court order;

1103 (d) Demand access to and audit and inspect books and
1104 records of licensees for the purpose of determining compliance
1105 with laws and regulations relative to charitable bingo games;

1106 (e) Conduct in-depth audits and investigations; and

1107 (f) Mandate that internal controls be executed in
1108 accordance with the provisions of the Charitable Bingo Law and
1109 other applicable laws and regulations.

1110 (3) The commission shall require licensees to maintain
1111 records and submit reports.

1112 (4) In addition to license revocation or suspension or any
1113 criminal penalty imposed, the commission may assess a fine against
1114 any person who violates any law or regulation relative to



1115 charitable bingo games. Such a fine shall only be assessed after
1116 notice and an opportunity for a hearing to be held.

1117 (5) All departments, commissions, boards, agencies, officers
1118 and institutions of the state, and all subdivisions thereof, shall
1119 cooperate with the commission in carrying out its enforcement
1120 responsibilities.

1121 (6) Except as otherwise authorized in Section 7-5-39, the
1122 Attorney General shall be the attorney for the commission in
1123 regard to its duties to regulate the Charitable Bingo Law and he
1124 shall represent it in all legal proceedings and shall prosecute
1125 any civil action for a violation of the provisions of Sections
1126 97-33-51 through 97-33-203 or the rules and regulations of the
1127 commission.

1128 (7) It is the duty of the sheriffs, deputy sheriffs and
1129 police officers of this state to assist the commission in the
1130 enforcement of the provisions of Sections 97-33-51 through
1131 97-33-203 and to arrest and complain against any person violating
1132 the provisions of Sections 97-33-51 through 97-33-203. It is the
1133 duty of the district attorneys of this state to prosecute all
1134 violations of the provisions of Sections 97-33-51 through
1135 97-33-203 if requested to do so by the commission.

1136 (8) (a) Whenever any person who is a resident of the State
1137 of Mississippi has reason to believe that a person or organization
1138 is or has violated the provisions of Sections 97-33-51 through
1139 97-33-203 and that proceedings would be in the public interest, he
1140 may bring an action in the name of the state against such person
1141 to restrain by temporary or permanent injunction such violation,
1142 upon at least five (5) days' summons before the hearing of the
1143 action. The action shall be brought in the chancery or county
1144 court of the county in which such violation has occurred or, with
1145 consent of the parties, may be brought in the chancery or county
1146 court of the county in which the State Capitol is located. The
1147 said courts are authorized to issue temporary or permanent



1148 injunctions to restrain and prevent violations of Sections
1149 97-33-51 through 97-33-203, and such injunctions shall be issued
1150 without bond.

1151 (b) Any person who violates the terms of an injunction
1152 issued under this subsection shall forfeit and pay to the state a
1153 civil penalty of not more than Five Thousand Dollars (\$5,000.00)
1154 per violation which shall be payable to the General Fund of the
1155 State of Mississippi. For the purposes of this subsection, the
1156 chancery or county court issuing an injunction shall retain
1157 jurisdiction, and the cause shall be continued, and in such cases
1158 the person bringing the action may petition for recovery of civil
1159 penalties.

1160 (c) In any action brought under this subsection, if the
1161 court finds that a person is willfully violating the provisions of
1162 Sections 97-33-51 through 97-33-203, the person bringing the
1163 action, upon petition to the court, may recover on behalf of the
1164 state a civil penalty of not exceeding Five Hundred Dollars
1165 (\$500.00) per violation which shall be payable to the General Fund
1166 of the State of Mississippi.

1167 (d) No penalty authorized by this subsection shall be
1168 deemed to limit the court's powers to insure compliance with its
1169 orders, decrees and judgments, or punish for the violations
1170 thereof.

1171 (e) For purposes of this subsection, a willful
1172 violation occurs when the party committing the violation knew or
1173 should have known that his conduct was a violation of the
1174 provisions of Sections 97-33-51 through 97-33-203.

1175 **SECTION 44.** This act shall take effect and be in force from
1176 and after July 1, 2012.

