



MISSISSIPPI LEGISLATURE
2016 Regular Session
To: Judiciary, Division A
By: Senator(s) Tindell

Senate Bill 2649

(As Sent to Governor)

AN ACT TO AMEND SECTIONS 41-43-7 AND 75-63-69, MISSISSIPPI CODE OF 1972, TO PROVIDE A PROCESS FOR APPEAL OF ANY PENALTIES IMPOSED BY THE SECRETARY OF STATE FOR VIOLATIONS OF THE PROVISIONS OF LAW REGULATING THE PLACEMENT AND SALE OF CEMETERIES; TO AMEND SECTION 97-17-71.1, MISSISSIPPI CODE OF 1972, TO PROVIDE A PROCESS FOR APPEAL OF PENALTIES IMPOSED BY THE SECRETARY OF STATE FOR VIOLATIONS OF THE PROVISIONS OF LAW REGULATING SCRAP METAL; TO AMEND SECTION 79-11-509, MISSISSIPPI CODE OF 1972, TO PROVIDE A PROCESS FOR APPEAL OF PENALTIES IMPOSED BY THE SECRETARY OF STATE FOR VIOLATIONS OF THE PROVISIONS OF LAW REGULATING CHARITABLE CORPORATIONS; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 41-43-7, Mississippi Code of 1972, is amended as follows:

41-43-7. (1) The Secretary of State may impose, following notice and an opportunity for a hearing, monetary penalties not to exceed One Thousand Dollars (\$1,000.00) per occurrence for any violation of this chapter or any rule, regulation or order issued by the Secretary of State.

(2) Any person aggrieved by a final order of the Secretary of State may obtain a review of the order in the Chancery Court of the First Judicial District of Hinds County, Mississippi, by filing in the court, within thirty (30) days after the entry of the order, a written petition praying that the order be modified or set aside, in whole or in part. A copy of the petition shall be forthwith served upon the Secretary of State and thereupon the Secretary of State shall certify and file in the court a copy of the filing and evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce or set aside the order, in whole or in part.

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SECTION 2. Section 75-63-69, Mississippi Code of 1972, is amended as follows:

75-63-69. (1) Whenever it appears to the Secretary of State that any person has engaged, or is about to engage, in any act or practice constituting a violation of any provision of this article or any rule or order under this article, he may, in his discretion, seek any or all of the following remedies:

(a) Issue a cease and desist order with a prior hearing against the person or persons engaged in the prohibited activities directing them to cease and desist from further illegal activity;

(b) (i) Issue an order in the case of any person, partnership or, if a corporation, the officers and directors who sell or offer to sell preneed contracts, or other person who violated this article, imposing an administrative penalty up to a maximum of One Thousand Dollars (\$1,000.00) for each offense, and each violation shall be considered as a separate offense in a single proceeding or a series of related proceedings, with total penalties not to exceed Ten Thousand Dollars (\$10,000.00) in any of those proceedings, to be paid to the Secretary of State and requiring reimbursement to the Secretary of State for all costs and expenses incurred in the investigation of the violation(s) and in the institution of administrative proceedings, if any, as a result thereof;

(ii) For the purpose of determining the amount or extent of a sanction, if any, to be imposed under paragraph (b)(i) of this subsection, the Secretary of State shall consider, among other factors, the frequency, persistence and willfulness of the conduct constituting a violation of this article or a rule promulgated under this article, or an order of the Secretary of State, the

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number of persons adversely affected by the conduct and the resources of the person committing the violation;

(c) Bring an action in chancery court to enjoin the acts or practices to enforce compliance with this article or any rule or order under this article. Upon a proper showing, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. In addition, upon a proper showing by the Secretary of State, the court may enter an order of rescission or restitution directed to any person who has engaged in any act constituting a violation of any provision of this article or any rule or order under this article, or the court may impose a civil penalty up to a maximum of One Thousand Dollars (\$1,000.00) for each offense, and each violation shall be considered as a separate offense in a single proceeding or a series of related proceedings, with total penalties not to exceed Ten Thousand Dollars (\$10,000.00) in any of those proceedings. The court may not require the Secretary of State to post a bond.

(2) The Secretary of State may, with a prior hearing, suspend or revoke any preneed establishment or salesperson registration for violation of statutes, regulations, or an order issued under this article.

(3) Any person, partnership or, if a corporation, the officers and directors who sell or offer to sell a preneed contract with a suspended or revoked registration shall be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a fine not less than Two Hundred Dollars (\$200.00) nor more than Five Hundred Dollars (\$500.00) or by imprisonment for a term of not more than one (1) year, or both fine and imprisonment.

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(4) Any person, partnership or, if a corporation, the officers and directors who embezzle or fraudulently or knowingly and willfully misapply or convert preneed funds shall, upon conviction, be punished by imprisonment in the custody of the Mississippi Department of Corrections for a term of not less than ten (10) years, or be fined not more than One Thousand Dollars (\$1,000.00) and imprisoned in the county jail not more than one (1) year, or both fine and imprisonment. Each such violation shall constitute a separate offense.

(5) Upon reasonable belief that a person or corporation is acting in violation of the portions of this article requiring fines or imprisonment, the Secretary of State shall immediately report this violation accompanied by all relevant records to the Insurance Integrity Enforcement Bureau within the Office of Attorney General created in Section 7-5-301, or to the district attorney, county or municipal attorney having jurisdiction for the same.

(6) No order shall be entered under this section without the following:

- (a) An appropriate prior notice to the applicant or registrant;
- (b) An opportunity for a hearing; and
- (c) Written findings of fact and conclusions of law.

(7) Any person aggrieved by a final order of the Secretary of State may obtain a review of the order in the Chancery Court of the First Judicial District of Hinds County, Mississippi, by filing in the court, within thirty (30) days after the entry of the order, a written petition praying that the order be modified or set aside, in whole or in part. A copy of the petition shall be forthwith served upon the Secretary of State and thereupon the Secretary of State shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these have

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been filed, the court has exclusive jurisdiction to affirm, modify, enforce or set aside the order, in whole or in part.

SECTION 3. Section 97-17-71.1, Mississippi Code of 1972, is amended as follows:

97-17-71.1. (1) (a) From and after August 7, 2008, it shall be unlawful for any scrap metal dealer or any person who purchases scrap metal, deals in scrap metal, or otherwise engages in the scrap metal business to fail to register with the Secretary of State. All registrations under this section shall expire two (2) years from the date of the registration or the renewal thereof.

(b) The Secretary of State may promulgate and adopt such rules and regulations as are reasonably necessary to carry out the provisions of this section and establish such registration and renewal fees as are adequate to cover the administrative costs associated with the registration program.

(c) The Secretary of State may deny, suspend, revoke or refuse to renew any registration following notice to the applicant or registrant in accordance with the promulgated rules and an opportunity for a hearing for any failure to comply with this section, or for other good cause.

(2) A violation of this section is a misdemeanor punishable by a fine of not less than Five Hundred Dollars (\$500.00) but not to exceed One Thousand Dollars (\$1,000.00) for the first offense. Any person who shall be guilty of any subsequent violations of this section requiring registration shall be guilty of a felony offense and shall be imprisoned in the custody of the Department of Corrections for a term not to exceed three (3) years, fined not more than Five Thousand Dollars (\$5,000.00), or both.

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(3) (a) To register or renew registration, the registrant must declare, under penalty of perjury, whether such registrant has ever been convicted of a violation of Section 97-17-71 or convicted of a criminal offense of larceny, burglary or vandalism, where the offense involved metal property as defined in Section 97-17-71.

(b) (i) An applicant who has been convicted of a violation of Section 97-17-71, or who has a conviction for a criminal offense of larceny, burglary or vandalism where such offense involved metal property, shall be prohibited from registering under this section for five (5) years from the date of conviction.

(ii) Any false statement submitted to the Secretary of State for the purpose of unlawfully registering under this section shall be punished as perjury in the manner provided in Section 97-9-61, and a person so convicted shall be disqualified for life from registering as a scrap metal dealer under this section.

(4) The Secretary of State shall immediately report any suspected criminal violation accompanied by all relevant records to the Office of Attorney General and the appropriate district attorney for further proceedings.

(5) The Secretary of State shall have the authority to:

(a) Conduct and carry out criminal background history verification of the information provided by the applicant or registrant and to require the submission of information and forms from the applicant or registrant in order to accomplish the registration duties imposed by this section;

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(b) Issue a cease and desist order, with a prior hearing, against the scrap metal dealer or other purchaser alleged to be in violation of this section, directing the person or persons to cease and desist from further illegal activity;

(c) (i) Issue an order against any scrap metal dealer or other purchaser for any violation of this section, imposing an administrative penalty up to a maximum of One Thousand Dollars (\$1,000.00) for each offense. Each violation shall be considered a separate offense in a single proceeding or a series of related proceedings. Any administrative penalty, plus reimbursement for all costs and expenses incurred in the investigation of the violation and any administrative proceedings, shall be paid to the Secretary of State;

(ii) For the purpose of determining the amount or extent of a sanction, if any, to be imposed under paragraph (c)(i) of this subsection, the Secretary of State shall consider, among other factors, the frequency, persistence and willfulness of the conduct constituting a violation of this section or any rule or order hereunder; the number of persons adversely affected by the conduct; and the resources of the person committing the violation;

(d) Bring an action in chancery court to enjoin the acts or practices complained of to enforce compliance with this section or any rule promulgated or order entered hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. In addition, upon a proper showing by the Secretary of State, the court may enter an order of rescission or restitution directed to any person who has engaged in any act constituting a violation of any provision of this section or any rule or order hereunder, or the court may impose a civil penalty up to a maximum of One Thousand Dollars (\$1,000.00) for

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each offense, provided that each violation shall be considered as a separate offense in a single proceeding or a series of related proceedings. The court may not require the Secretary of State to post a bond.

(6) Any person aggrieved by a final order of the Secretary of State may obtain a review of the order in the Chancery Court of the First Judicial District of Hinds County, Mississippi, by filing in the court, within thirty (30) days after the entry of the order, a written petition praying that the order be modified or set aside, in whole or in part. A copy of the petition shall be forthwith served upon the Secretary of State and thereupon the Secretary of State shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce or set aside the order, in whole or in part.

SECTION 4. Section 79-11-509, Mississippi Code of 1972, is amended as follows:

79-11-509. (1) The Secretary of State shall deny, suspend or revoke a registration or an exemption for the following reasons:

- (a) The application for registration or renewal is incomplete.
- (b) The application or renewal fee (where applicable) has not been paid.
- (c) A document filed with the Secretary of State contains one or more false or misleading statements or omits material facts.
- (d) The charitable contributions have not been or are not being applied for the purpose or purposes stated in the documents filed with the Secretary of State.
- (e) The applicant or registrant has violated or failed to comply with any provisions of this chapter or any rule or order thereunder.

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(f) Any applicant, registrant, officer, director, or partner of the applicant or registrant, or any agent or employee thereof who has been convicted of a felony or a misdemeanor involving misrepresentation, misapplication or misuse of the money or property of another maintains a position where he or she has access to or control over the funds of the charitable organization.

(g) The applicant or registrant has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense.

(h) The applicant or registrant has had the authority to engage in charitable or fund-raising activities denied, revoked or suspended by the Secretary of State or any other state or jurisdiction.

(i) The applicant or registrant has been convicted of any criminal offense committed in connection with the performance of activities regulated under Sections 79-11-501 through 79-11-529 or any criminal offense involving untruthfulness or dishonesty or any criminal offense relating adversely to the registrant's or applicant's fitness to perform activities regulated by Sections 79-11-501 through 79-11-529. For the purposes of this paragraph, a plea of guilty, non vult, nolo contendere or any other similar disposition of alleged criminal activity shall be deemed a conviction.

(j) Any applicant, registrant, officer, director, or partner of the applicant or registrant, or any agent, volunteer or employee thereof, who has been convicted under federal or state law of any criminal offense involving acts against children maintains a position where he or she is in close contact with children.

(k) Any officer, director, partner, employee, agent or volunteer has accrued three (3) or more unremediated citations issued by the Secretary of State pursuant to this section.

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(1) The applicant or registrant has engaged in other forms of misconduct as may be determined by the rules adopted by the Secretary of State.

(2) The Secretary of State shall notify the applicant or licensee of his intent to deny, suspend or revoke a license. The notification shall contain the reasons for the action and shall inform him of his right to request an administrative hearing within thirty (30) days of receipt of the notification. The denial, suspension or revocation shall become effective thirty (30) days after receipt of the notification unless a request for an administrative hearing is received by the Secretary of State before the expiration of the thirty (30) days. If a hearing is requested and the denial, suspension or revocation is upheld, the denial, suspension or revocation shall become effective upon the service of the final administrative decision on the applicant or licensee.

(3) Registration shall become effective no later than noon of the thirtieth day after a completed application is filed, if no denial order is in effect and no proceeding is pending under this chapter. The Secretary of State may, by rule or order, specify an earlier effective date, and the Secretary of State may, by order, defer the effective date until noon of the thirtieth day after the filing of any amendment.

(4) Whenever it appears to the Secretary of State that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, he may, in his discretion, seek one or more of the following remedies in addition to other remedies authorized by law:

(a) Issue a cease and desist order, with or without a prior hearing against the person or persons engaged in the prohibited activities, directing them to cease and desist from further illegal activity;

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(b) Administratively dissolve or seek the judicial dissolution of a domestic corporation that is a charitable organization, or revoke the certificate of authority of a foreign corporation that is a charitable organization; or

(c) Issue an order imposing an administrative penalty up to a maximum of Twenty-five Thousand Dollars (\$25,000.00) for each offense, each violation to be considered as a separate offense in a single proceeding or a series of related proceedings;

(d) For the purpose of determining the amount or extent of a sanction, if any, to be imposed under paragraph (b) or (c) of this subsection, the Secretary of State shall consider, among other factors, the frequency, persistence and willfulness of the conduct constituting a violation of this chapter or a rule promulgated thereunder or an order of the Secretary of State, the number of persons adversely affected by the conduct, and the resources of the person committing the violation.

(5) In addition to the above remedies, the Secretary of State may issue a citation to any person engaging in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder. The Secretary of State shall establish rules providing remediation of certain citations, and the decision whether to allow such remediation will be within the Secretary of State's discretion.

(6) Whenever it appears to the Secretary of State or Attorney General that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of Sections 79-11-501 through 79-11-529 or any rule or order thereunder, either official may, in his discretion, take any or all of the following actions: bring an action in chancery court to obtain a temporary restraining order or injunction to enjoin the acts or practices and

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enforce compliance with Sections 79-11-501 through 79-11-529 or any rule or order thereunder; collect administrative penalties imposed under this section; or obtain on behalf of a charitable organization the return or repayment of any property or consideration received as private inurement or an excess benefit in violation of Section 79-11-519(3)(j). Upon a proper showing a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. In addition, upon a proper showing, the court may enter an order of rescission, restitution or disgorgement directed to any person who has engaged in any act constituting a violation of any provision of Sections 79-11-501 through 79-11-529 or any rule or order thereunder. In addition the court may impose a civil penalty up to a maximum of Twenty-five Thousand Dollars (\$25,000.00) for each offense, and each violation shall be considered as a separate offense in a single proceeding or a series of related proceedings. The court may not require the Secretary of State or Attorney General to post a bond.

(7) Any person aggrieved by a final order of the Secretary of State may obtain a review of the order in the Chancery Court of the First Judicial District of Hinds County, Mississippi, by filing in the court, within thirty (30) days after the entry of the order, a written petition praying that the order be modified or set aside, in whole or in part. A copy of the petition shall be forthwith served upon the Secretary of State and thereupon the Secretary of State shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce or set aside the order, in whole or in part.

SECTION 5. This act shall take effect and be in force from and after July 1, 2016.

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<http://billstatus.ls.state.ms.us/documents/2016/html/SB/2600-2699/SB2649SG.htm>

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