

By: Chaney, Ross, King

To: Public Health and
Welfare; Judiciary

SENATE BILL NO. 2310

1 AN ACT TO FOSTER INCREASED ACCESS TO NEEDED HEALTH CARE
2 SERVICES AMONG PERSONS WITHOUT THE ABILITY TO PAY FOR SUCH
3 SERVICES BY PROVIDING CHARITABLE IMMUNITY FROM LIABILITY IN
4 CERTAIN CIRCUMSTANCES; TO AMEND SECTIONS 43-13-125, 73-25-38 AND
5 95-9-1, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR
6 RELATED PURPOSES.

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

8 SECTION 1. Any licensed physician who provides needed
9 medical or health services to any person without the expectation
10 of payment due to the inability of such person to pay for such
11 services shall be immune from liability for any civil action
12 arising out of the provision of such medical or health services
13 provided in good faith on a charitable basis except where the
14 qualified physician engages in acts or omissions which are
15 intentional, willful, wanton, reckless, malicious or grossly
16 negligent.

17 SECTION 2. Section 43-13-125, Mississippi Code of 1972, is
18 amended as follows:

19 43-13-125. (1) If medical assistance is provided to a
20 recipient under this article for injuries, disease or sickness
21 caused under circumstances creating a cause of action in favor of
22 the recipient against any person, firm or corporation, then the
23 division shall be entitled to recover the proceeds that may result

24 from the exercise of any rights of recovery which the recipient
25 may have against any such person, firm or corporation to the
26 extent of the actual amount of the medical assistance payments
27 made by the Division of Medicaid on behalf of the recipient. The
28 recipient shall execute and deliver instruments and papers to do
29 whatever is necessary to secure such rights and shall do nothing
30 after said medical assistance is provided to prejudice the
31 subrogation rights of the division. Court orders or agreements
32 for reimbursement of Medicaid payments shall direct such payments
33 to the Division of Medicaid, which shall be authorized to endorse
34 any and all checks, drafts, money orders, or other negotiable
35 instruments representing Medicaid payment recoveries that are
36 received.

37 The division, with the approval of the Governor, may
38 compromise or settle any such claim and execute a release of any
39 claim it has by virtue of this section.

40 (2) The acceptance of medical assistance under this article
41 or the making of a claim thereunder shall not affect the right of
42 a recipient or his legal representative to recover the medical
43 assistance payments made by the division as an element of special
44 damages in any action at law; provided, however, that a copy of
45 the pleadings shall be certified to the division at the time of
46 the institution of suit, and proof of such notice shall be filed
47 of record in such action. The division may, at any time before
48 the trial on the facts, join in such action or may intervene
49 therein. Any amount recovered by a recipient or his legal
50 representative shall be applied as follows:

51 (a) The reasonable costs of the collection, including
52 attorney's fees, as approved and allowed by the court in which
53 such action is pending, or in case of settlement without suit, by
54 the legal representative of the division;

55 (b) The actual amount of the medical assistance
56 payments made by the division on behalf of the recipient; or such
57 pro rata amount as may be arrived at by the legal representative
58 of the division and the recipient's attorney, or as set by the
59 court having jurisdiction; and

60 (c) Any excess shall be awarded to the recipient.

61 (3) No compromise of any claim by the recipient or his legal
62 representative shall be binding upon or affect the rights of the
63 division against the third party unless the division, with the
64 approval of the Governor, has entered into the compromise. Any
65 compromise effected by the recipient or his legal representative
66 with the third party in the absence of advance notification to and
67 approved by the division shall constitute conclusive evidence of
68 the liability of the third party, and the division, in litigating
69 its claim against said third party, shall be required only to
70 prove the amount and correctness of its claim relating to such
71 injury, disease or sickness. It is further provided that should
72 the recipient or his legal representative fail to notify the
73 division of the institution of legal proceedings against a third
74 party for which the division has a cause of action, the facts
75 relating to negligence and the liability of the third party, if
76 judgment is rendered for the recipient, shall constitute
77 conclusive evidence of liability in a subsequent action maintained
78 by the division and only the amount and correctness of the
79 division's claim relating to injuries, disease or sickness shall
80 be tried before the court. The division shall be authorized in
81 bringing such action against the third party and his insurer
82 jointly or against the insurer alone.

83 (4) Nothing herein shall be construed to diminish or
84 otherwise restrict the subrogation rights of the Division of
85 Medicaid against a third party for medical assistance paid by the
86 Division of Medicaid or the Medicaid Commission in behalf of the
87 recipient as a result of injuries, disease or sickness caused
88 under circumstances creating a cause of action in favor of the
89 recipient against such a third party.

90 (5) Any amounts recovered by the division under this section
91 shall, by the division, be placed to the credit of the funds
92 appropriated for benefits under this article proportionate to the
93 amounts provided by the state and federal governments
94 respectively.

95 (6) Nothing in this section shall affect the immunity
96 granted to a physician providing health services on a charitable
97 basis as provided in Section 1 of Senate Bill No. _____, 2000
98 Regular Session.

99 SECTION 3. Section 73-25-38, Mississippi Code of 1972, is
100 amended as follows:

101 73-25-38. (1) Any licensed physician or certified nurse
102 practitioner who voluntarily provides needed medical or health
103 services to any person without the expectation of payment due to
104 the inability of such person to pay for said services shall be
105 immune from liability for any civil action arising out of the
106 provision of such medical or health services provided in good
107 faith on a charitable basis. This section shall not extend
108 immunity to acts of willful or gross negligence. Except in cases
109 of rendering emergency care wherein the provisions of Section
110 73-25-37, Mississippi Code of 1972, apply, immunity under this

111 section shall be extended only if the physician or certified nurse
112 practitioner and patient execute a written waiver in advance of
113 the rendering of such medical services specifying that such
114 services are provided without the expectation of payment and that
115 the licensed physician or certified nurse practitioner shall be
116 immune as provided herein. The immunity from liability granted by
117 this section shall also extend to any church that operates a
118 medical clinic for the purpose of providing charitable medical
119 services to persons who are unable to pay for such services.

120 (2) Any physician who voluntarily renders any medical
121 service under a special volunteer medical license authorized under
122 Section 73-25-18 without any payment or compensation or the
123 expectation or promise of any payment or compensation shall be
124 immune from liability for any civil action arising out of any act
125 or omission resulting from the rendering of the medical service
126 unless the act or omission was the result of the physician's gross
127 negligence or willful misconduct. In order for the immunity under
128 this subsection to apply, there must be a written or oral
129 agreement for the physician to provide a voluntary noncompensated
130 medical service before the rendering of the service by the
131 physician.

132 SECTION 4. Section 95-9-1, Mississippi Code of 1972, is
133 amended as follows:

134 95-9-1. (1) For the purposes of this section, unless the
135 context otherwise requires:

136 (a) "Qualified volunteer" means any person who freely
137 provides services, goods or the use of real or personal property
138 or equipment, without any compensation or charge to any volunteer

139 agency in connection with a volunteer activity, including a
140 physician who provides health services on a charitable basis as
141 provided in Section 1 of Senate Bill No. _____, 2000 Regular
142 Session. For purposes of this chapter, reimbursement of actual
143 expenses, including travel expenses, necessarily incurred in the
144 discharge of a member's duties, insurance coverage and workers'
145 compensation coverage of volunteers, shall not be considered
146 monetary compensation.

147 (b) "Volunteer agency" means any department,
148 institution, community volunteer organization or any nonprofit
149 corporation designated 501(c)(3) by the United States Internal
150 Revenue Service, except an agency established primarily for the
151 recreational benefit of its stockholders or members. Volunteer
152 agency shall also include any volunteer fire fighter association
153 which is eligible to be designated as a nonprofit corporation
154 under 501(c)(3) by the United States Internal Revenue Service.

155 (c) "Volunteer activity" means any activity within the
156 scope of any project, program or other activity regularly
157 sponsored by a volunteer agency with the intent to effect a
158 charitable purpose, or other public benefit including, but not
159 limited to, fire protection, rescue services, the enhancement of
160 the cultural, civic, religious, educational, scientific or
161 economic resources of the community or equine activity as provided
162 in Section 95-11-1 et seq.

163 (2) A qualified volunteer shall not be held vicariously
164 liable for the negligence of another in connection with or as a
165 consequence of his volunteer activities.

166 (3) A qualified volunteer who renders assistance to a

167 participant in, or a recipient, consumer or user of the services
168 or benefits of a volunteer activity shall not be liable for any
169 civil damages for any personal injury or property damage caused to
170 a person as a result of any acts or omissions committed in good
171 faith except:

172 (a) Where the qualified volunteer engages in acts or
173 omissions which are intentional, willful, wanton, reckless or
174 grossly negligent; or

175 (b) Where the qualified volunteer negligently operates
176 a motor vehicle, aircraft, boat or other powered mode of
177 conveyance.

178 SECTION 5. This act shall take effect and be in force from
179 and after July 1, 2000, and shall apply only to causes of action
180 accruing from and after that date.