

By: Senator(s) Dawkins, Williamson

To: Public Health and Welfare; Appropriations

SENATE BILL NO. 2758

1 AN ACT TO ESTABLISH UNDER THE DIRECTION OF THE STATE BOARD OF
2 PHARMACY A DRUG REPOSITORY PROGRAM TO ACCEPT AND DISPENSE
3 PRESCRIPTION DRUGS DONATED FOR THE PURPOSE OF BEING DISPENSED TO
4 INDIVIDUALS WHO MEET CERTAIN ELIGIBILITY STANDARDS; TO PROVIDE
5 THAT THE PROGRAM SHALL BE DEVELOPED JOINTLY BY THE STATE BOARD OF
6 PHARMACY, THE STATE DEPARTMENT OF HEALTH AND THE DIVISION OF
7 MEDICAID; TO PROVIDE THE CRITERIA FOR DRUGS TO BE ACCEPTED AND
8 DISPENSED UNDER THE PROGRAM; TO PROVIDE CERTAIN IMMUNITY TO
9 PARTICIPANTS IN THE PROGRAM; TO PROVIDE THAT THE PROGRAM WILL BE
10 FULLY IMPLEMENTED NOT LATER THAN JULY 1, 2004; AND FOR RELATED
11 PURPOSES.

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

13 **SECTION 1.** As used in this act, the following terms have the
14 following meanings, unless the context requires otherwise:

- 15 (a) "Board" means the State Board of Pharmacy.
- 16 (b) "Health care facility" means any of the following:
 - 17 (i) A hospital as defined under Section 41-9-3;
 - 18 (ii) An institution for the aged or infirm as
19 defined in Section 43-11-1;
 - 20 (iii) A home health agency as defined in Section
21 41-71-1;
 - 22 (iv) A hospice as defined in Section 41-85-3.
- 23 (c) "Hospital" has the meaning as defined in Section
24 41-9-3.
- 25 (d) "Nonprofit clinic" means a charitable nonprofit
26 corporation organized and operated under Section 79-11-101 et
27 seq., or any charitable organization not organized and not
28 operated for profit, that provides health care services to
29 indigent and uninsured persons. "Nonprofit clinic" does not
30 include a health care facility as defined in this section, or a
31 facility that is operated for profit.



32 (e) "Pharmacy" has the meaning as defined under Section
33 73-21-73.

34 (f) "Prescription drug" means any drug to which the
35 following applies:

36 (i) Under the federal Food, Drug, and Cosmetic
37 Act, as amended (21 USCS Section 301), the drug is required to
38 bear a label containing the legend, "Caution: Federal law
39 prohibits dispensing without prescription" or "Caution: Federal
40 law restricts this drug to use by or on the order of a licensed
41 veterinarian" or any similar restrictive statement, or the drug
42 may be dispensed only upon a prescription.

43 (ii) Under the Uniform Controlled Substances Law,
44 (Section 41-29-101 et seq.), the drug may be dispensed only upon a
45 prescription.

46 **SECTION 2.** (1) Not later than November 1, 2003, the State
47 Board of Pharmacy, the State Department of Health and the Division
48 of Medicaid jointly shall establish a plan for a drug repository
49 program to accept and dispense prescription drugs donated for the
50 purpose of being dispensed to individuals who meet the eligibility
51 standards established in the rules adopted by the board under
52 Section 5 of this act. The plan shall be submitted to the
53 Chairmen of the Public Health and Welfare Committees of the
54 Mississippi House of Representatives and Senate for their review.
55 Under the drug repository program:

56 (a) Only drugs in their original sealed and
57 tamper-evident unit dose packaging may be accepted and dispensed.

58 (b) The packaging must be unopened, except that drugs
59 packaged in single unit doses may be accepted and dispensed when
60 the outside packaging is opened if the single unit dose packaging
61 is undisturbed.

62 (c) The drugs must have been properly stored such that
63 the integrity of the medicine remains intact.



64 (d) A drug shall not be accepted or dispensed if there
65 is reason to believe that it is adulterated as described in
66 Section 75-29-3.

67 (e) Subject to the limitation specified in this
68 subsection, unused drugs dispensed for the purposes of the
69 Medicaid program may be accepted and dispensed.

70 (2) Nothing in subsection (1) of this section shall be
71 construed as prohibiting a pharmacy from accepting drugs that are
72 not eligible to be dispensed under the drug repository program,
73 for the proper disposal of those drugs.

74 (3) The drug repository program shall be fully implemented
75 not later than July 1, 2004.

76 **SECTION 3.** (1) Any person, including a drug manufacturer,
77 health care facility or government entity may donate prescription
78 drugs to the drug repository program. The drugs must be donated
79 at a pharmacy, hospital or nonprofit clinic that participates in
80 the drug repository program under the criteria for participation
81 established in the rules adopted by the board under Section 5 of
82 this act.

83 (2) A pharmacy, hospital or nonprofit clinic that
84 participates in the drug repository program shall dispense drugs
85 donated under this section to individuals who meet the eligibility
86 standards established in the rules adopted by the board under
87 Section 5 of this act, or to other government entities and
88 nonprofit private entities to be dispensed to individuals who meet
89 the eligibility standards. A drug may be dispensed only pursuant
90 to a prescription issued by a licensed practitioner as defined in
91 Section 73-21-73. A pharmacy, hospital or nonprofit clinic that
92 accepts donated drugs shall comply with all applicable federal
93 laws and laws of this state dealing with storage and distribution
94 of dangerous drugs, and shall inspect all drugs before dispensing
95 them to determine that they are not adulterated. The pharmacy,
96 hospital, or nonprofit clinic may charge individuals receiving



97 donated drugs a handling fee established in accordance with the
98 rules adopted by the board under Section 5 of this act. Drugs
99 donated to the repository may not be resold.

100 **SECTION 4.** (1) As used in this section, the term "health
101 care professional" means any of the following:

102 (a) Physicians and osteopaths licensed under Section
103 73-25-1 et seq.;

104 (b) Podiatrists licensed under Section 73-27-1 et seq.;

105 (c) Dentists and dental hygienists licensed under
106 Section 73-9-1 et seq.;

107 (d) Optometrists licensed under Section 73-19-1 et
108 seq.;

109 (e) Pharmacists licensed under Section 73-21-71 et
110 seq.;

111 (f) Registered nurses and licensed practical nurses
112 licensed under Section 73-15-1 et seq.; and

113 (g) Physician assistants licensed under Section 73-26-1
114 et seq.

115 (2) The State Board of Pharmacy; the State Department of
116 Health; the Division of Medicaid; any person, including a drug
117 manufacturer, or health care facility or government entity that
118 donates drugs to the repository program; any pharmacy, hospital,
119 nonprofit clinic or health care professional that accepts or
120 dispenses drugs under the program; and any pharmacy, hospital, or
121 nonprofit clinic that employs a health care professional who
122 accepts or dispenses drugs under the program, shall not, in the
123 absence of bad faith, be subject to any of the following for
124 matters related to donating, accepting or dispensing drugs under
125 the program: criminal prosecution; liability in tort or other
126 civil action for injury, death or loss to person or property; or
127 professional disciplinary action.

128 A drug manufacturer shall not, in the absence of bad faith,
129 be subject to criminal prosecution or liability in tort or other



130 civil action for injury, death, or loss to person or property for
131 matters related to the donation, acceptance or dispensing of a
132 drug manufactured by the drug manufacturer that is donated by any
133 person, health care facility or government entity under the
134 program, including, but not limited to, liability for failure to
135 transfer or communicate product or consumer information or the
136 expiration date of the donated drug.

137 **SECTION 5.** (1) Not later than November 1, 2003, the State
138 Board of Pharmacy, in consultation with the State Department of
139 Health and the Division of Medicaid, shall adopt rules, in
140 accordance with the Administrative Procedures Law (Section 25-43-1
141 et seq.), governing the drug repository program that establish all
142 of the following:

143 (a) Eligibility criteria for pharmacies, hospitals and
144 nonprofit clinics to receive and dispense donated drugs under the
145 program;

146 (b) Standards and procedures for accepting, safely
147 storing and dispensing donated drugs;

148 (c) Standards and procedures for inspecting donated
149 drugs to determine that the original unit dose packaging is sealed
150 and tamper-evident and that the drugs are unadulterated, safe and
151 suitable for dispensing;

152 (d) Eligibility standards based on economic need for
153 individuals to receive drugs;

154 (e) A means, such as an identification card, by which
155 an individual who is eligible to receive donated drugs may
156 demonstrate eligibility to the pharmacy, hospital or nonprofit
157 clinic dispensing the drugs;

158 (f) A form that an individual receiving a drug from the
159 repository must sign before receiving the drug to confirm that the
160 individual understands the immunity provisions of the program;



161 (g) A formula to determine the amount of a handling fee
162 that pharmacies, hospitals and nonprofit clinics may charge to
163 drug recipients to cover restocking and dispensing costs;

164 (h) In addition, for drugs donated to the repository by
165 individuals:

166 (i) A list of drugs, arranged either by category
167 or by individual drug, that the repository will accept from
168 individuals;

169 (ii) A list of drugs, arranged either by category
170 or by individual drug, that the repository will not accept from
171 individuals. The list must include a statement as to why the drug
172 is ineligible for donation; and

173 (iii) A form each donor must sign stating that the
174 donor is the owner of the drugs and intends to voluntarily donate
175 them to the repository;

176 (i) In addition, for drugs donated to the repository by
177 health care facilities or government entities:

178 (i) A list of drugs, arranged either by category
179 or by individual drug, that the repository will accept from health
180 care facilities or government entities; and

181 (ii) A list of drugs, arranged either by category
182 or by individual drug, that the repository will not accept from
183 health care facilities or government entities. The list must
184 include a statement as to why the drug is ineligible for donation;
185 and

186 (j) Any other standards and procedures the board
187 considers appropriate.

188 (2) The provisions of paragraphs (h)(ii) and (i)(ii) of
189 subsection (1) of this section shall not be construed as
190 prohibiting a pharmacy from accepting drugs that are not eligible
191 to be dispensed under the drug repository program, for the proper
192 disposal of those drugs.



193 **SECTION 6.** This act shall take effect and be in force from
194 and after July 1, 2003.

