

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.

