

By: Senator(s) Dawkins

To: Public Health and
Welfare; Appropriations

SENATE BILL NO. 2425

1 AN ACT TO AMEND SECTION 33-15-11, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY THE AUTHORITY OF THE GOVERNOR TO DECLARE A STATE OF
3 ALERT; TO ENACT A DEFINITION OF "TERRORISM"; TO AMEND SECTION
4 13-1-21, MISSISSIPPI CODE OF 1972, TO PERMIT DISCLOSURE OF MEDICAL
5 INFORMATION IN THE EVENT OF AN EMERGENCY DECLARATION BY THE
6 GOVERNOR; TO AMEND SECTION 13-1-23, MISSISSIPPI CODE OF 1972, TO
7 ALLOW DECLARATION OF PRESUMPTION OF DEATH IN SITUATIONS OF MASS
8 CASUALTIES; TO AMEND SECTION 41-23-1, MISSISSIPPI CODE OF 1972, TO
9 EXPAND THE CLASSIFICATION OF DISEASES, CONDITIONS OR THREATS WHICH
10 ARE REPORTABLE, TO REQUIRE VETERINARIANS AND OTHER PERSONS WORKING
11 IN THE ANIMAL HEALTH FIELD TO REPORT, AND TO REQUIRE PHARMACIST
12 REPORTING OF UNUSUAL PRESCRIPTIONS OR RATES OF PRESCRIPTIONS; TO
13 AMEND SECTION 41-23-2, MISSISSIPPI CODE OF 1972, TO REVISE THE
14 PENALTY FOR ANY PERSON VIOLATING A LAWFUL ORDER OF THE COUNTY,
15 DISTRICT OR STATE HEALTH OFFICER; TO AMEND SECTION 41-23-5,
16 MISSISSIPPI CODE OF 1972, TO REVISE THE AUTHORITY OF THE STATE
17 HEALTH OFFICER TO PROTECT THE PUBLIC HEALTH; TO AMEND SECTION
18 41-3-15, MISSISSIPPI CODE OF 1972, TO REVISE THE AUTHORITY OF THE
19 DEPARTMENT OF HEALTH TO INSPECT ANY PLACE RATHER THAN ONLY A
20 PUBLIC PLACE; TO CREATE NEW SECTION 41-39-55, MISSISSIPPI CODE OF
21 1972, TO PROVIDE EMERGENCY MEASURES TO HANDLE LARGE NUMBERS OF
22 CORPSES OR HUMAN REMAINS; TO AMEND SECTION 41-29-133, MISSISSIPPI
23 CODE OF 1972, TO CREATE A CENTRAL REPORTING BUREAU FOR PHARMACISTS
24 TO REPORT CERTAIN INFORMATION CONCERNING UNUSUAL PRESCRIPTIONS OR
25 RATES OF PRESCRIPTIONS; TO AMEND SECTION 11-46-9, MISSISSIPPI CODE
26 OF 1972, TO PROVIDE GOVERNMENTAL IMMUNITY FOR RESPONSE TO A
27 TERRORISTIC THREAT OR ACT; AND FOR RELATED PURPOSES.

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

29 **SECTION 1.** Section 33-15-11, Mississippi Code of 1972, is
30 amended as follows:

31 33-15-11. (a) The Governor shall have general direction and
32 control of the activities of the Emergency Management Agency and
33 Council and shall be responsible for the carrying out of the
34 provisions of this article, and in the event of a man-made,
35 technological or natural disaster or emergency beyond local
36 control, may assume direct operational control over all or any
37 part of the emergency management functions within this state.

38 (b) In performing his duties under this article, the
39 Governor is further authorized and empowered:

40 (1) To make, amend and rescind the necessary orders,
41 rules and regulations to carry out the provisions of this article
42 with due consideration of the plans of the federal government, and
43 to enter into disaster assistance grants and agreements with the
44 federal government under the terms as may be required by federal
45 law.

46 (2) To work with the Mississippi Emergency Management
47 Agency in preparing a comprehensive plan and program for the
48 emergency management of this state, such plan and program to be
49 integrated into and coordinated with the emergency management
50 plans of the federal government and of other states to the fullest
51 possible extent, and to coordinate the preparation of plans and
52 programs for emergency management by the political subdivisions of
53 this state, such local plans to be integrated into and coordinated
54 with the emergency management plan and program of this state to
55 the fullest possible extent.

56 (3) In accordance with such plan and program for
57 emergency management of this state, to ascertain the requirements
58 of the state or the political subdivisions thereof for food or
59 clothing or other necessities of life in the event of attack or
60 natural or man-made or technological disasters and to plan for and
61 procure supplies, medicines, materials and equipment, and to use
62 and employ from time to time any of the property, services and
63 resources within the state, for the purposes set forth in this
64 article; to make surveys of the industries, resources and
65 facilities within the state as are necessary to carry out the
66 purposes of this article; to institute training programs and
67 public information programs, and to take all other preparatory
68 steps, including the partial or full mobilization of emergency
69 management organizations in advance of actual disaster, to insure
70 the furnishing of adequately trained and equipped forces of
71 emergency management personnel in time of need.

72 (4) To cooperate with the President and the heads of
73 the Armed Forces, and the Emergency Management Agency of the
74 United States, and with the officers and agencies of other states
75 in matters pertaining to the emergency management of the state and
76 nation and the incidents thereof; and in connection therewith, to
77 take any measures which he may deem proper to carry into effect
78 any request of the President and the appropriate federal officers
79 and agencies, for any action looking to emergency management,
80 including the direction or control of (a) blackouts and practice
81 blackouts, air raid drills, mobilization of emergency management
82 forces, and other tests and exercises, (b) warnings and signals
83 for drills or attacks and the mechanical devices to be used in
84 connection therewith, (c) the effective screening or extinguishing
85 of all lights and lighting devices and appliances, (d) shutting
86 off water mains, gas mains, electric power connections and the
87 suspension of all other utility services, (e) the conduct of
88 civilians and the movement and cessation of movement of
89 pedestrians and vehicular traffic during, prior and subsequent to
90 drills or attack, (f) public meetings or gatherings under
91 emergency conditions, and (g) the evacuation and reception of the
92 civilian population.

93 (5) To take such action and give such directions to
94 state and local law enforcement officers and agencies as may be
95 reasonable and necessary for the purpose of securing compliance
96 with the provisions of this article and with the orders, rules and
97 regulations made pursuant thereto.

98 (6) To employ such measures and give such directions to
99 the state or local boards of health as may be reasonably necessary
100 for the purpose of securing compliance with the provisions of this
101 article or with the findings or recommendations of such boards of
102 health by reason of conditions arising from enemy attack or the
103 threat of enemy attack or natural, man-made or technological
104 disaster.

105 (7) To utilize the services and facilities of existing
106 officers and agencies of the state and of the political
107 subdivisions thereof; and all such officers and agencies shall
108 cooperate with and extend their services and facilities to the
109 Governor as he may request.

110 (8) To establish agencies and offices and to appoint
111 executive, technical, clerical and other personnel as may be
112 necessary to carry out the provisions of this article including,
113 with due consideration to the recommendation of the local
114 authorities, part-time or full-time state and regional area
115 directors.

116 (9) To delegate any authority vested in him under this
117 article, and to provide for the subdelegation of any such
118 authority.

119 (10) On behalf of this state to enter into reciprocal
120 aid agreements or compacts with other states and the federal
121 government, either on a statewide basis or local political
122 subdivision basis or with a neighboring state or province of a
123 foreign country. Such mutual aid arrangements shall be limited to
124 the furnishings or exchange of food, clothing, medicine and other
125 supplies; engineering services; emergency housing; police
126 services; national or state guards while under the control of the
127 state; health, medical and related services; fire fighting,
128 rescue, transportation and construction services and equipment;
129 personnel necessary to provide or conduct these services; and such
130 other supplies, equipment, facilities, personnel and services as
131 may be needed; the reimbursement of costs and expenses for
132 equipment, supplies, personnel and similar items for mobile
133 support units, fire fighting and police units and health units;
134 and on such terms and conditions as are deemed necessary.

135 (11) To sponsor and develop mutual aid plans and
136 agreements between the political subdivisions of the state,

similar to the mutual aid arrangements with other states referred to above.

(12) To collect information and data for assessment of vulnerabilities and capabilities within the borders of Mississippi as it pertains to the nation and state's security and homeland defense. This information shall be exempt from the Mississippi Public Records Act, Section 25-61-1 et seq.

(13) Authorize any agency or arm of the state to create a special emergency management revolving fund, accept donations, contributions, fees, grants, including federal funds, as may be necessary for such agency or arm of the state to administer its functions of this article as set forth in the Executive Order of the Governor.

(14) To authorize the Commissioner of Public Safety to select, train, organize and equip a ready reserve of auxiliary highway patrolmen.

(15) To suspend or limit the sale, dispensing or transportation of alcoholic beverages, firearms, explosives and combustibles.

(16) To control, restrict and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation or other means, the use, sale or distribution of food, feed, fuel, clothing and other commodities, materials, goods or services.

(17) To proclaim a state of emergency or state of alert in an area affected or likely to be affected thereby when he finds that the conditions described in Section 33-15-5(g) exist, or when he is requested to do so by the mayor of a municipality or by the president of the board of supervisors of a county, or when he finds that a local authority is unable to cope with the emergency. Such proclamation shall be in writing and shall take effect immediately upon its execution by the Governor. As soon thereafter as possible, such proclamation shall be filed with the

Secretary of State and be given widespread notice and publicity.
The Governor, upon advice of the director, shall review the need
for continuing the state of emergency at least every thirty (30)
days until the emergency is terminated and shall proclaim the
termination of the state of emergency at the earliest possible
date that conditions warrant.

(c) In addition to the powers conferred upon the Governor in
this section, the Legislature hereby expressly delegates to the
Governor the following powers and duties in the event of an
impending enemy attack, an enemy attack, or a man-made,
technological or natural disaster where such disaster is beyond
local control:

(1) To suspend the provisions of any regulatory statute
prescribing the procedures for conduct of state business, or the
orders, rules or regulations of any state agency, if strict
compliance with the provisions of any statute, order, rule or
regulation would in any way prevent, hinder or delay necessary
action in coping with a disaster or emergency.

(2) To transfer the direction, personnel or functions
of state agencies, boards, commissions or units thereof for the
purpose of performing or facilitating disaster or emergency
services.

(3) To commandeer or utilize any private property if
necessary to cope with a disaster or emergency, provided that such
private property so commandeered or utilized shall be paid for
under terms and conditions agreed upon by the participating
parties. The owner of said property shall immediately be given a
receipt for the said private property and said receipt shall serve
as a valid claim against the Treasury of the State of Mississippi
for the agreed upon market value of said property.

(4) To perform and exercise such other functions,
powers and duties as may be necessary to promote and secure the

safety and protection of the civilian population in coping with a disaster or emergency.

SECTION 2. The term "terrorism" means activities that involve violent acts or acts dangerous to human life that are intended to and do put another person in fear of serious bodily harm under circumstances manifesting extreme indifference to the value of human life that appear to be intended to intimidate or coerce a civilian population or to affect the conduct of government through the activities.

SECTION 3. Section 13-1-21, Mississippi Code of 1972, is amended as follows:

13-1-21. (1) All communications made to a physician, osteopath, dentist, hospital, nurse, pharmacist, podiatrist, optometrist or chiropractor by a patient under his charge or by one seeking professional advice are hereby declared to be privileged, and such party shall not be required to disclose the same in any legal proceeding except at the instance of the patient or, in case of the death of the patient, at the instance of his personal representative or legal heirs in case there be no personal representative, or except, if the validity of the will of the decedent is in question, at the instance of the personal representative or any of the legal heirs or any contestant or proponent of the will.

(2) There shall be waiver of the medical privilege of patients regarding the release of medical information to health care personnel, the State Board of Health or local health departments, made to comply with Sections 41-3-15, 41-23-1 and 41-23-2 and related rules * * *. The medical privilege likewise shall be waived to allow any physician, osteopath, dentist, hospital, nurse, pharmacist, podiatrist, optometrist or chiropractor to report to the State Department of Health necessary information regarding any person afflicted with any communicable disease or infected with the causative agent thereof who neglects

or refuses to comply with accepted protective measures to prevent the transmission of the communicable disease or in cases of actual, threatened or reasonably suspected chemical or biological terrorism.

(3) Willful violations of the provisions of this section shall constitute a misdemeanor and shall be punishable as provided for by law. Any physician, osteopath, dentist, hospital, nurse, pharmacist, podiatrist, optometrist, or chiropractor shall be civilly liable for damages for any willful or reckless and wanton acts or omissions constituting such violations.

(4) In any action commenced or claim made after July 1, 1983, against a physician, hospital, hospital employee, osteopath, dentist, nurse, pharmacist, podiatrist, optometrist or chiropractor for professional services rendered or which should have been rendered, the delivery of written notice of such claim or the filing of such an action shall constitute a waiver of the medical privilege and any medical information relevant to the allegation upon which the cause of action or claim is based shall be disclosed upon the request of the defendant, or his or her counsel.

(5) In any disciplinary action commencing on or after July 1, 1987, against a medical physician, an osteopathic physician or a podiatrist pursuant to the provisions of Sections 73-25-1 through 73-25-39, 73-25-51 through 73-25-67, 73-25-81 through 73-25-95 and 73-27-1 through 73-27-19, waiver of the medical privilege of a patient to the extent of any information other than that which would identify the patient shall be implied.

SECTION 4. Section 41-23-1, Mississippi Code of 1972, is amended as follows:

41-23-1. (1) The State Board of Health shall adopt rules and regulations (a) defining and classifying communicable diseases and other diseases, conditions and threats that are a danger to health based upon the characteristics of the disease, condition or

268 threat; and (b) establishing reporting, monitoring, examination,
269 treatment and preventive procedures for those diseases, conditions
270 or threats.

271 (2) Upon the death of any person who has been diagnosed as
272 having Human Immunodeficiency Virus/Acquired Immune Deficiency
273 Syndrome (HIV/AIDS) or any Class 1 disease as designated by the
274 State Board of Health, in a hospital or other health care
275 facility, in all other cases where there is an attending
276 physician, and in cases in which the medical examiner, as defined
277 in Section 41-61-53(f), investigates and certifies the cause of
278 death, the attending physician, the person in charge of the
279 hospital or health care facility, or the medical examiner, as the
280 case may be, shall report as soon as practicable to the Executive
281 Officer of the State Board of Health or to other authorities the
282 cause or contributing cause of death as required by the State
283 Board of Health. Such reporting shall be according to procedures
284 as required by the State Board of Health.

285 (3) Upon the death of any person who has been diagnosed as
286 having Human Immunodeficiency Virus/Acquired Immune Deficiency
287 Syndrome (HIV/AIDS), where there is not an attending physician,
288 any family member or other person making disposition of the body
289 who knows that such decedent had been diagnosed as having HIV/AIDS
290 shall report this fact to the medical examiner as defined in
291 Section 41-61-53(f), who shall report as soon as practicable to
292 the Executive Officer of the State Board of Health or to other
293 authorities the cause or contributing cause of death as required
294 by the State Board of Health. Such reporting shall be according
295 to procedures as required by the State Board of Health.

296 (4) Every practicing or licensed physician, or person in
297 charge of a hospital, health care facility, insurance company
298 which causes to be performed blood tests for underwriting purposes
299 or laboratory, shall report immediately to the Executive Officer
300 of the State Board of Health or to other authorities as required

by the State Board of Health every case of such diseases and
conditions as shall be required to be reported by the State Board
of Health. Such reporting shall be according to procedures, and
shall include such information about the case, as shall be
required by the State Board of Health. Insurance companies having
such blood test results shall report immediately to the Executive
Officer of the State Board of Health or to other authorities as
required by the State Board of Health every case of such diseases
and conditions as shall be required to be reported by the State
Board of Health. The insurance company shall notify the
individual on whom the blood test was performed in writing by
certified mail of an adverse underwriting decision based upon the
results of such individual's blood test but shall not disclose the
specific results of such blood tests to the individual. The
insurance company shall also inform the individual on whom the
blood test was performed that the results of the blood test will
be sent to the physician designated by the individual at the time
of application and that such physician should be contacted for
information regarding the blood test results. If a physician was
not designated at the time of application, the insurance company
shall request that the individual name a physician to whom a copy
of the blood test can be sent.

(5) Any practicing or licensed physician, or person in
charge of a hospital or health care facility, who knows that a
patient has a medical condition specified by the Department of
Health as requiring special precautions by health care providers,
shall report this fact and the need for appropriate precautions to
any other institution or provider of health care services to whom
such patient is transferred or referred, according to regulations
established by the State Board of Health.

(6) Any practicing or licensed physician or person in charge
of a hospital, health care facility or laboratory who fails to
make the reports required under this section regarding Human

Immunodeficiency Virus/Acquired Immune Deficiency Syndrome (HIV/AIDS) or any Class 1 disease or condition as designated by the State Board of Health shall be reported to the Board of Medical Licensure, in the case of a physician, or to the applicable licensing agency in the case of institutions, and such failure shall be grounds for suspension of license.

(7) Every veterinarian, livestock owner, veterinary diagnostic laboratory director or other person having the care of animals shall report animals having or suspected of having any disease that may be caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or biological or other toxins that might pose a substantial risk of a significant number of human or animal fatalities or incidents of permanent or long-term disability.

(8) Any person other than a practicing or licensed physician, or person in charge of a hospital or health care facility, willfully failing to make the reports required under this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) or by confinement in the county jail for not more than thirty (30) days, or both.

(9) The provisions of this section are cumulative and supplemental to any other provision of law, and a conviction or penalty imposed under this section shall not preclude any other action at law, proceedings for professional discipline or other criminal proceedings.

(10) Notwithstanding any law of this state to the contrary, the State Board of Health is authorized to establish the rules by which exceptions may be made to the confidentiality provisions of the laws of this state for the notification of third parties of an individual's infection with any Class 1 or Class 2 disease, as designated by the State Board of Health, when exposure is indicated or there exists a threat to the public health and

welfare. All notifications authorized by this section shall be within the rules established according to this subsection. All persons who receive notification of the infectious condition of an individual under this subsection and the rules established under this subsection shall hold such information in the strictest of confidence and privilege, shall not reveal the information to others, and shall take only those actions necessary to protect the health of the infected person or other persons where there is a foreseeable, real or probable risk of transmission of the disease.

(11) Each public or private correctional facility housing state offenders, federal offenders or offenders from any other jurisdiction shall require all offenders in the facility to be tested for tuberculosis and Human Immunodeficiency Virus (HIV) in conjunction with the rules and regulations of the State Department of Health. The reporting shall be according to procedures and shall include any information about the case that is required by the State Board of Health. In order to carry out the provisions of this section, the following shall apply:

(a) Any such public or private correctional facility may contract with the Mississippi Department of Corrections, the Mississippi State Department of Health, or other such appropriate state, federal or local entity for the inspection, monitoring or provision of any assistance necessary or desirable to maintain appropriate facilities for the purpose of identification, prevention, and treatment of communicable diseases and other conditions considered prejudicial to public health; and

(b) Any such public or private correctional facility shall grant representatives of the State Department of Health, in the discharge of its duties, access to all areas of the facility and to the offenders and staff at all times. The facility shall reimburse the State Department of Health for all costs incurred for the control of communicable diseases or other conditions prejudicial to public health in the facility and for the costs

incurred for the control of communicable diseases or other conditions prejudicial to public health spreading from the facility, staff or inmates to other individuals or property in the county or state.

SECTION 5. Section 41-23-2, Mississippi Code of 1972, is amended as follows:

41-23-2. Any person who shall knowingly and willfully violate the lawful order of the county, district or State Health Officer where that person is afflicted with a life-threatening communicable disease or condition or the causative agent thereof, or who shall knowingly and willfully violate the lawful order of the county, district or State Health Officer subsequent to the issuance by the Governor of an order declaring a state of alert or emergency due to the health threat where such order is intended to prevent the spread of a disease, condition or threat which poses a clear and present danger to the public health, shall be guilty of a felony and, upon conviction, shall be punished by a fine not exceeding Five Thousand Dollars (\$5,000.00) or by imprisonment in the Penitentiary for not more than five (5) years, or by both.

SECTION 6. Section 41-23-5, Mississippi Code of 1972, is amended as follows:

41-23-5. (1) The State Department of Health shall have the authority to investigate and control the causes of epidemic, infectious and other disease, condition or threat affecting the public health, including the authority to establish, maintain and enforce isolation and quarantine and decontaminate buildings, and in pursuance thereof, to exercise such physical control over property and individuals as the department may find necessary for the protection of the public health.

(2) Notwithstanding any other provision of law to the contrary, following a declaration of emergency or war emergency by the Governor, the State Health Officer may exercise such authority as he deems proper and necessary to protect the public health,

433 including investigation and certification as to the cause of
434 death, and may appoint private physicians to conduct said
435 investigations into and certifications of the cause of death.

436 **SECTION 7.** Section 13-1-23, Mississippi Code of 1972, is
437 amended as follows:

438 13-1-23. (1) Any person who shall remain beyond the sea, or
439 absent himself from this state, or conceal himself in this state,
440 for seven (7) years successively without being heard of, shall be
441 presumed to be dead in any case where his death shall come in
442 question, unless proof be made that he was alive within that time.
443 Any property or estate recovered in any such case shall be
444 restored to the person evicted or deprived thereof, if, in a
445 subsequent action, it shall be proved that the person so presumed
446 to be dead is living.

447 (2) In the event the Governor declares a state of emergency
448 due to terrorism or other disaster resulting in mass casualties,
449 the chancery court may order presumption of death in the absence
450 of recovery of a corpse after a reasonable period of less than
451 seven (7) years should the person be unable to be located with
452 whereabouts unknown, and it reasonably appears to the court that
453 the person died as a result of the event causing the mass
454 casualties.

455 **SECTION 8.** Section 41-3-15, Mississippi Code of 1972, is
456 amended as follows:

457 41-3-15. (1) There shall be a State Department of Health
458 which shall be organized into such bureaus and divisions as are
459 considered necessary by the executive officer, and shall be
460 assigned appropriate functions as are required of the State Board
461 of Health by law, subject to the approval of the board.

462 (2) The State Board of Health shall have the authority to
463 establish an Office of Rural Health within the department. The
464 duties and responsibilities of this office shall include the
465 following:

(a) To collect and evaluate data on rural health conditions and needs;

(b) To engage in policy analysis, policy development and economic impact studies with regard to rural health issues;

(c) To develop and implement plans and provide technical assistance to enable community health systems to respond to various changes in their circumstances;

(d) To plan and assist in professional recruitment and retention of medical professionals and assistants; and

(e) To establish information clearinghouses to improve access to and sharing of rural health care information.

(3) The State Board of Health shall have general supervision of the health interests of the people of the state and to exercise the rights, powers and duties of those acts which it is authorized by law to enforce.

(4) The State Board of Health shall have authority:

(a) To make investigations and inquiries with respect to the causes of disease and death, and to investigate the effect of environment, including conditions of employment and other conditions which may affect health, and to make such other investigations as it may deem necessary for the preservation and improvement of health.

(b) To make such sanitary investigations as it may, from time to time, deem necessary for the protection and improvement of health and to investigate nuisance questions which affect the security of life and health within the state.

(c) To direct and control sanitary and quarantine measures for dealing with all diseases within the state possible to suppress same and prevent their spread.

(d) To obtain, collect and preserve such information relative to mortality, morbidity, disease and health as may be useful in the discharge of its duties or may contribute to the prevention of disease or the promotion of health in this state.

499 (e) To enter into contracts or agreements with any
500 other state or federal agency, or with any private person,
501 organization or group capable of contracting, if it finds such
502 action to be in the public interest.

503 (f) To charge and collect reasonable fees for health
504 services, including immunizations, inspections and related
505 activities, and the board shall charge fees for such services;
506 provided, however, if it is determined that a person receiving
507 services is unable to pay the total fee, the board shall collect
508 any amount such person is able to pay.

509 (g) To accept gifts, trusts, bequests, grants,
510 endowments or transfers of property of any kind.

511 (h) To receive monies coming to it by way of fees for
512 services or by appropriations.

513 (i) (i) To establish standards for, issue permits and
514 exercise control over, any cafes, restaurants, food or drink
515 stands, sandwich manufacturing establishments, and all other
516 establishments, other than churches, church-related and private
517 schools, and other nonprofit or charitable organizations, where
518 food or drink is regularly prepared, handled and served for pay;
519 and

520 (ii) To require that a permit be obtained from the
521 Department of Health before such persons begin operation.

522 (j) To promulgate rules and regulations and exercise
523 control over the production and sale of milk pursuant to the
524 provisions of Sections 75-31-41 through 75-31-49.

525 (k) On presentation of proper authority, to enter into
526 or onto and inspect any * * * place or building where the State
527 Health Officer or his representative deems it necessary and proper
528 to enter for the discovery and suppression of disease and for the
529 enforcement of any health or sanitary laws and regulations in the
530 state.

531 (1) To conduct investigations, inquiries and hearings,
532 and to issue subpoenas for the attendance of witnesses and the
533 production of books and records at any hearing when authorized and
534 required by statute to be conducted by the State Health Officer or
535 the State Board of Health.

536 (m) To employ, subject to the regulations of the State
537 Personnel Board, qualified professional personnel in the subject
538 matter or fields of each bureau, and such other technical and
539 clerical staff as may be required for the operation of the
540 department. The executive officer shall be the appointing
541 authority for the department, and shall have the power to delegate
542 the authority to appoint or dismiss employees to appropriate
543 subordinates, subject to the rules and regulations of the State
544 Personnel Board.

545 (n) To promulgate rules and regulations, and to collect
546 data and information, on (i) the delivery of services through the
547 practice of telemedicine; and (ii) the use of electronic records
548 for the delivery of telemedicine services.

549 (o) To enforce and regulate domestic and imported fish
550 as authorized under Section 69-7-601 et seq.

551 (5) (a) The State Board of Health shall have the authority,
552 in its discretion, to establish programs to promote the public
553 health, to be administered by the State Department of Health.
554 Specifically, such programs may include, but shall not be limited
555 to, programs in the following areas:

- 556 (i) Maternal and child health;
- 557 (ii) Family planning;
- 558 (iii) Pediatric services;
- 559 (iv) Services to crippled and disabled children;
- 560 (v) Control of communicable and noncommunicable
561 disease;
- 562 (vi) Child care licensure;
- 563 (vii) Radiological health;

(viii) Dental health;
(ix) Milk sanitation;
(x) Occupational safety and health;
(xi) Food, vector control and general sanitation;
(xii) Protection of drinking water;
(xiii) Sanitation in food handling establishments
open to the public;
(xiv) Registration of births and deaths and other
vital events;
(xv) Such public health programs and services as
may be assigned to the State Board of Health by the Legislature or
by executive order; and
(xvi) Regulation of domestic and imported fish for
human consumption.

(b) The State Board of Health and State Department of
Health shall not be authorized to sell, transfer, alienate or
otherwise dispose of any of the home health agencies owned and
operated by the department on January 1, 1995, and shall not be
authorized to sell, transfer, assign, alienate or otherwise
dispose of the license of any of those home health agencies,
except upon the specific authorization of the Legislature by an
amendment to this section. However, this paragraph (b) shall not
prevent the board or the department from closing or terminating
the operation of any home health agency owned and operated by the
department, or closing or terminating any office, branch office or
clinic of any such home health agency, or otherwise discontinuing
the providing of home health services through any such home health
agency, office, branch office or clinic, if the board first
demonstrates that there are other providers of home health
services in the area being served by the department's home health
agency, office, branch office or clinic that will be able to
provide adequate home health services to the residents of the area
if the department's home health agency, office, branch office or

597 clinic is closed or otherwise discontinues the providing of home
598 health services. This demonstration by the board that there are
599 other providers of adequate home health services in the area shall
600 be spread at length upon the minutes of the board at a regular or
601 special meeting of the board at least thirty (30) days before a
602 home health agency, office, branch office or clinic is proposed to
603 be closed or otherwise discontinue the providing of home health
604 services.

605 (c) The State Department of Health may undertake such
606 technical programs and activities as may be required for the
607 support and operation of such programs, including maintaining
608 physical, chemical, bacteriological and radiological laboratories,
609 and may make such diagnostic tests for diseases and tests for the
610 evaluation of health hazards as may be deemed necessary for the
611 protection of the people of the state.

612 (6) (a) The State Board of Health shall administer the
613 local governments and rural water systems improvements loan
614 program in accordance with the provisions of Section 41-3-16.

615 (b) The State Board of Health shall have authority:

616 (i) To enter into capitalization grant agreements
617 with the United States Environmental Protection Agency, or any
618 successor agency thereto;

619 (ii) To accept capitalization grant awards made
620 under the federal Safe Drinking Water Act, as amended;

621 (iii) To provide annual reports and audits to the
622 United States Environmental Protection Agency, as may be required
623 by federal capitalization grant agreements; and

624 (iv) To establish and collect fees to defray the
625 reasonable costs of administering the revolving fund or emergency
626 fund if the State Board of Health determines that such costs will
627 exceed the limitations established in the federal Safe Drinking
628 Water Act, as amended. The administration fees may be included in
629 loan amounts to loan recipients for the purpose of facilitating

payment to the board; however, such fees may not exceed five percent (5%) of the loan amount.

SECTION 9. The following shall be codified as Section 41-39-55, Mississippi Code of 1972:

41-39-55. The Mississippi State Board of Health may exercise, for such period as a state of emergency or public health emergency exists, the following powers regarding the safe disposal of corpses:

(a) Adopt and enforce measures to provide for the safe disposal of corpses as may be reasonably necessary for emergency response. Such measures may include, but are not limited to, the embalming, burial, cremation, interment, disinterment, transportation and disposal of corpses.

(b) Take possession of or control of any corpse or other remains.

(c) Dispose of or order the disposal of any corpse or other remains of a person who has died of an infectious disease, communicable disease or other condition or threat to the public health, through burial or cremation within a period of time to be determined by the State Health Officer.

(d) Compel any business or facility authorized to embalm, bury, cremate, inter, disinter, transport or dispose of corpses to accept any corpse or provide the use of its business or facility if such actions are reasonable and necessary for emergency response. The use of the business or facility may include transferring the management and supervision of such business or facility to the State Health Officer for a limited or unlimited period of time, but shall not exceed the termination of the state of emergency or public health emergency.

(e) To procure, by condemnation or otherwise, any business or facility authorized to embalm, bury, cremate, inter, disinter, transport and dispose of corpses as may be reasonable

662 and necessary for emergency response, with the right to take
663 immediate possession thereof.

664 (f) Every corpse prior to disposal shall be clearly
665 labeled with all available information to identify the decedent
666 and the circumstances of death. Any corpse of a deceased person
667 with an infectious disease shall have an external, clearly visible
668 tag indicating that the corpse is infected and, if known, the
669 infectious disease.

670 (g) Every person in charge of disposing of any corpse
671 shall maintain a written and photographic record of each corpse
672 and all available information to identify the decedent and the
673 circumstances of death and disposal. If a corpse cannot be
674 identified, prior to disposal a qualified person shall, to the
675 extent possible, take fingerprints and one or more photographs of
676 the corpse, and collect a DNA specimen. All information gathered
677 under this paragraph shall be forwarded to the Department of
678 Health.

679 **SECTION 10.** Section 41-29-133, Mississippi Code of 1972, is
680 amended as follows:

681 41-29-133. (1) Persons registered to manufacture,
682 distribute, or dispense controlled substances under this article
683 shall keep records and maintain inventories in conformance with
684 the record keeping and inventory requirements of federal law and
685 with any additional rules the State Board of Pharmacy, the State
686 Board of Medical Licensure, the State Board of Dental Examiners or
687 the Mississippi Board of Nursing may issue.

688 (2) Persons registered to dispense controlled substances
689 under this article may report any unusual or increased
690 prescription rates, unusual types of prescriptions, or unusual
691 trends in pharmacy visits that may be caused by bioterrorism,
692 epidemic or pandemic disease, or novel and highly fatal infectious
693 agents or biological or other toxins that might pose a substantial
694 risk of a significant number of human fatalities or incidents of

permanent or long-term disability. Prescription-related events
that suggest a report include, but are not limited to: an unusual
increase in the number of prescriptions to treat fever,
respiratory or gastrointestinal complaints; an unusual increase in
the number of prescriptions for antibiotics; an unusual increase
in the number of requests for information on over-the-counter
pharmaceuticals to treat fever, respiratory or gastrointestinal
complaints; and any prescription that treats a disease that is
relatively uncommon and has bioterrorism potential. The report
may be transmitted to the State Board of Pharmacy central
repository and include as much of the following information as
possible:

(a) Recipient's name, when feasible to submit;
(b) Recipient's identification number;
(c) National Drug Code number of the substance
dispensed;
(d) Date of the dispensation;
(e) Quantity of the substance dispensed;
(f) Prescriber's United States Drug Enforcement
Administration registration number; and
(g) Dispenser's registration number and location.

(3) The information collected at the central repository
pursuant to subsection (2) of this section shall be confidential
and shall not be open to the public. Access to the information
shall be limited to:

(a) Bureau of Narcotics agents and special contract
agents of the bureau pursuant to Section 41-29-112;
(b) The United States Drug Enforcement Administration
Diversion Group Supervisor; and
(c) The executive director or chief investigator as
designated by each board, of the State Boards of Dental Examiners,
Pharmacy, Medical Licensure, Nursing and Veterinary Medical
Examiners, provided, however, that the executive director or chief

investigator of each of these boards shall be limited to access to
information relevant to licensees of his employing board.

(4) Any unauthorized disclosure of any information collected
at the central repository shall be a misdemeanor. Violation of
the provisions of this subsection (4) shall be deemed willful
neglect of duty and shall be grounds for removal from office.

(5) All access to information in the central repository
shall be controlled by and made through the State Board of
Pharmacy, which shall develop criteria for the production of
exception reports out of the information collected at the central
repository in consultation with the State Boards of Dental
Examiners, Medical Licensure, and Veterinary Medical Examiners,
and Mississippi Dental Association, Mississippi Pharmaceutical
Association, Mississippi State Medical Association, Mississippi
Veterinary Medical Association and Bureau of Narcotics in
developing these criteria.

(6) The State Board of Pharmacy shall promulgate and adopt
rules to implement and enforce this section.

SECTION 11. Section 11-46-9, Mississippi Code of 1972, is
amended as follows:

11-46-9. (1) A governmental entity and its employees acting
within the course and scope of their employment or duties shall
not be liable for any claim:

(a) Arising out of a legislative or judicial action or
inaction, or administrative action or inaction of a legislative or
judicial nature;

(b) Arising out of any act or omission of an employee
of a governmental entity exercising ordinary care in reliance
upon, or in the execution or performance of, or in the failure to
execute or perform, a statute, ordinance or regulation, whether or
not the statute, ordinance or regulation be valid;

(c) Arising out of any act or omission of an employee
of a governmental entity engaged in the performance or execution

761 of duties or activities relating to police or fire protection
762 unless the employee acted in reckless disregard of the safety and
763 well-being of any person not engaged in criminal activity at the
764 time of injury;

765 (d) Based upon the exercise or performance or the
766 failure to exercise or perform a discretionary function or duty on
767 the part of a governmental entity or employee thereof, whether or
768 not the discretion be abused;

769 (e) Arising out of an injury caused by adopting or
770 failing to adopt a statute, ordinance or regulation;

771 (f) Which is limited or barred by the provisions of any
772 other law;

773 (g) Arising out of the exercise of discretion in
774 determining whether or not to seek or provide the resources
775 necessary for the purchase of equipment, the construction or
776 maintenance of facilities, the hiring of personnel and, in
777 general, the provision of adequate governmental services;

778 (h) Arising out of the issuance, denial, suspension or
779 revocation of, or the failure or refusal to issue, deny, suspend
780 or revoke any privilege, ticket, pass, permit, license,
781 certificate, approval, order or similar authorization where the
782 governmental entity or its employee is authorized by law to
783 determine whether or not such authorization should be issued,
784 denied, suspended or revoked unless such issuance, denial,
785 suspension or revocation, or failure or refusal thereof, is of a
786 malicious or arbitrary and capricious nature;

787 (i) Arising out of the assessment or collection of any
788 tax or fee;

789 (j) Arising out of the detention of any goods or
790 merchandise by any law enforcement officer, unless such detention
791 is of a malicious or arbitrary and capricious nature;

792 (k) Arising out of the imposition or establishment of a
793 quarantine, whether such quarantine relates to persons or
794 property;

795 (l) Of any claimant who is an employee of a
796 governmental entity and whose injury is covered by the Workers'
797 Compensation Law of this state by benefits furnished by the
798 governmental entity by which he is employed;

799 (m) Of any claimant who at the time the claim arises is
800 an inmate of any detention center, jail, workhouse, penal farm,
801 penitentiary or other such institution, regardless of whether such
802 claimant is or is not an inmate of any detention center, jail,
803 workhouse, penal farm, penitentiary or other such institution when
804 the claim is filed;

805 (n) Arising out of any work performed by a person
806 convicted of a crime when the work is performed pursuant to any
807 sentence or order of any court or pursuant to laws of the State of
808 Mississippi authorizing or requiring such work;

809 (o) Under circumstances where liability has been or is
810 hereafter assumed by the United States, to the extent of such
811 assumption of liability, including, but not limited to, any claim
812 based on activities of the Mississippi National Guard when such
813 claim is cognizable under the National Guard Tort Claims Act of
814 the United States, 32 USC 715 (32 USCS 715), or when such claim
815 accrues as a result of active federal service or state service at
816 the call of the Governor for quelling riots and civil
817 disturbances;

818 (p) Arising out of a plan or design for construction or
819 improvements to public property, including, but not limited to,
820 public buildings, highways, roads, streets, bridges, levees,
821 dikes, dams, impoundments, drainage channels, diversion channels,
822 harbors, ports, wharfs or docks, where such plan or design has
823 been approved in advance of the construction or improvement by the
824 legislative body or governing authority of a governmental entity

825 or by some other body or administrative agency, exercising
826 discretion by authority to give such approval, and where such plan
827 or design is in conformity with engineering or design standards in
828 effect at the time of preparation of the plan or design;

829 (q) Arising out of an injury caused solely by the
830 effect of weather conditions on the use of streets and highways;

831 (r) Arising out of the lack of adequate personnel or
832 facilities at a state hospital or state corrections facility if
833 reasonable use of available appropriations has been made to
834 provide such personnel or facilities;

835 (s) Arising out of loss, damage or destruction of
836 property of a patient or inmate of a state institution;

837 (t) Arising out of any loss of benefits or compensation
838 due under a program of public assistance or public welfare;

839 (u) Arising out of or resulting from riots, unlawful
840 assemblies, unlawful public demonstrations, mob violence or civil
841 disturbances;

842 (v) Arising out of an injury caused by a dangerous
843 condition on property of the governmental entity that was not
844 caused by the negligent or other wrongful conduct of an employee
845 of the governmental entity or of which the governmental entity did
846 not have notice, either actual or constructive, and adequate
847 opportunity to protect or warn against; provided, however, that a
848 governmental entity shall not be liable for the failure to warn of
849 a dangerous condition which is obvious to one exercising due care;

850 (w) Arising out of the absence, condition, malfunction
851 or removal by third parties of any sign, signal, warning device,
852 illumination device, guardrail or median barrier, unless the
853 absence, condition, malfunction or removal is not corrected by the
854 governmental entity responsible for its maintenance within a
855 reasonable time after actual or constructive notice; * * *

856 (x) Arising out of the administration of corporal
857 punishment or the taking of any action to maintain control and

858 discipline of students, as defined in Section 37-11-57, by a
859 teacher, assistant teacher, principal or assistant principal of a
860 public school district in the state unless the teacher, assistant
861 teacher, principal or assistant principal acted in bad faith or
862 with malicious purpose or in a manner exhibiting a wanton and
863 willful disregard of human rights or safety; or

864 (y) Arising out of a response to a terroristic threat
865 or act.

866 (2) A governmental entity shall also not be liable for any
867 claim where the governmental entity:

868 (a) Is inactive and dormant;

869 (b) Receives no revenue;

870 (c) Has no employees; and

871 (d) Owns no property.

872 (3) If a governmental entity exempt from liability by
873 subsection (2) becomes active, receives income, hires employees or
874 acquires any property, such governmental entity shall no longer be
875 exempt from liability as provided in subsection (2) and shall be
876 subject to the provisions of this chapter.

877 **SECTION 12.** This act shall take effect and be in force from
878 and after July 1, 2005.