

By: Representative Denny

To: Public Health and Human Services

HOUSE BILL NO. 71

1 AN ACT TO AMEND SECTION 41-37-5, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT ONLY PHYSICIANS WHO ARE CERTIFIED PATHOLOGISTS MAY
3 PERFORM AUTOPSIES; TO AMEND SECTION 41-61-65, MISSISSIPPI CODE OF
4 1972, TO PROVIDE THAT THE STATE MEDICAL EXAMINER MAY PERFORM
5 AUTOPSIES IF HE IS A PATHOLOGIST; TO AMEND SECTIONS 41-37-7,
6 41-37-9, 41-37-11, 41-37-13, 41-37-15, 41-37-21, 41-37-23 AND
7 41-37-25, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING
8 PROVISIONS; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 41-37-5, Mississippi Code of 1972, is
11 amended as follows:

12 41-37-5. Only a physician duly licensed by the * * * State
13 Board of Medical Licensure who is a certified pathologist may
14 perform an autopsy.

15 **SECTION 2.** Section 41-61-65, Mississippi Code of 1972, is
16 amended as follows:

17 41-61-65. (1) If, in the opinion of the medical examiner
18 investigating the case, it is advisable and in the public interest
19 that an autopsy or other study be made for the purpose of
20 determining the primary and/or contributing cause of death, an
21 autopsy or other study shall be made by the State Medical
22 Examiner, if he is a pathologist, or by a competent pathologist
23 designated by the State Medical Examiner. The State Medical
24 Examiner or designated pathologist may retain any tissues as
25 needed for further postmortem studies or documentation. When the
26 medical examiner has received notification under Section
27 41-39-15(6) that the deceased is medically suitable to be an organ
28 and/or tissue donor, the State Medical Examiner or designated
29 pathologist may retain any biopsy or medically approved sample of
30 the organ and/or tissue in accordance with the provisions of

31 Section 41-39-15(6). A complete autopsy report of findings and
32 interpretations, prepared on forms designated for this purpose,
33 shall be submitted promptly to the State Medical Examiner. Copies
34 of the report shall be furnished to the authorizing medical
35 examiner, district attorney and court clerk. A copy of the report
36 shall be furnished to one (1) adult member of the immediate family
37 of the deceased or the legal representative or legal guardian of
38 members of the immediate family of the deceased upon request. In
39 determining the need for an autopsy, the medical examiner may
40 consider the request from the district attorney or county
41 prosecuting attorney, law enforcement or other public officials or
42 private persons. However, if the death occurred in the manner
43 specified in subsection (2)(j) of Section 41-61-59, an autopsy
44 shall be performed by the State Medical Examiner, if he is a
45 pathologist, or by his designated pathologist, and the report of
46 findings shall be forwarded promptly to the State Medical
47 Examiner, investigating medical examiner, the State Department of
48 Health, the infant's attending physician and the local sudden
49 infant death syndrome coordinator.

50 (2) Any medical examiner * * * performing authorized
51 investigations and any pathologist performing authorized autopsies
52 as provided in Sections 41-61-51 through 41-61-79, who in good
53 faith complies with the provisions of Sections 41-61-51 through
54 41-61-79 in the determination of the cause and/or manner of death
55 for the purpose of certification of that death, shall not be
56 liable for damages on account thereof, and shall be immune from
57 any civil liability that might otherwise be incurred or imposed.

58 (3) Family members or others who disagree with the medical
59 examiner's determination shall be able to petition and present
60 written argument to the State Medical Examiner for further review.
61 If the petitioner still disagrees, he may petition the circuit
62 court, which may, in its discretion, hold a formal hearing. In
63 all those proceedings, the State Medical Examiner and the county

64 medical examiner or county medical examiner investigator who
65 certified the information shall be made defendants. All costs of
66 the petitioning and hearing shall be borne by the petitioner.

67 **SECTION 3.** Section 41-37-7, Mississippi Code of 1972, is
68 amended as follows:

69 41-37-7. A pathologist authorized to perform an autopsy as
70 provided in this chapter, * * * who in good faith complies with
71 the provisions of this chapter in the performance of an autopsy,
72 shall not be liable for damages on account thereof.

73 **SECTION 4.** Section 41-37-9, Mississippi Code of 1972, is
74 amended as follows:

75 41-37-9. A circuit judge, chancellor or county judge of the
76 county or district where a person died or where the body of the
77 deceased person may be or where the mortal stroke or other cause
78 of death occurred, may, in his discretion, either in termtime or
79 in vacation, order an autopsy to be performed upon the body of the
80 deceased person (1) upon the petition of a county prosecuting
81 attorney of the county where the person died, or where the body of
82 the deceased person may be at the time or where the mortal stroke
83 or other cause of death occurred, or (2) upon petition of the
84 district attorney of the district where the person died, or where
85 the body of the deceased person may be at the time or where the
86 mortal stroke or other cause of death occurred. If the petition
87 is filed by the county prosecuting attorney or district attorney,
88 it shall contain allegations that the petitioner believes, has
89 reason to believe, or suspects that the deceased person came to
90 his death by some criminal means or agency, or that the cause of
91 justice would be promoted by having an autopsy performed upon the
92 body of the deceased person. The petition shall be sworn to and
93 shall be filed in the court of the judge or chancellor who makes
94 the order, and shall be docketed by the clerk as are other cases
95 or suits. If the body of the deceased person has already been
96 interred, the petition shall so state, and if an autopsy is

97 ordered, the order shall order the disinterment of the body for
98 the autopsy and shall order any lawful officer of the county where
99 the body may be buried to employ suitable help to disinter the
100 body and to keep it in a suitable place until the autopsy has been
101 performed. If there has been no interment of the body of the
102 deceased person, a copy of the order ordering an autopsy upon the
103 deceased shall be served by the sheriff of the county, or any
104 other person authorized to serve process, upon any person who may
105 be found in charge of any funeral home where the body may be, and
106 the funeral home shall hold the body for autopsy. If the body of
107 the deceased person is not found in any funeral home, the sheriff
108 of the county where it may be found shall take the body and keep
109 it in a suitable place until the autopsy has been performed. If
110 an autopsy is ordered as provided in this section, the petitioner
111 shall immediately secure the services of a qualified pathologist
112 to perform the autopsy.

113 **SECTION 5.** Section 41-37-11, Mississippi Code of 1972, is
114 amended as follows:

115 41-37-11. The pathologist performing the autopsy in criminal
116 investigations may obtain the services of a chemist competent to
117 make a chemical analysis, or those services may be ordered by the
118 judge or chancellor in termtime or in vacation. The records of
119 the chemical analysis shall be made a part of the autopsy report.

120 **SECTION 6.** Section 41-37-13, Mississippi Code of 1972, is
121 amended as follows:

122 41-37-13. In all cases where an autopsy is performed as
123 provided in Section 41-37-9, the pathologist making the autopsy
124 shall file a report, in duplicate, of the autopsy with the circuit
125 clerk of the county where the death is being investigated. The
126 circuit clerk shall keep and preserve the report and make it
127 available to the district attorney, county prosecuting attorney,
128 grand jury, coroner, and to the accused.

129 **SECTION 7.** Section 41-37-15, Mississippi Code of 1972, is
130 amended as follows:

131 41-37-15. The pathologist performing the autopsy shall be
132 paid a fee not exceeding the sum of Four Hundred Dollars
133 (\$400.00), which sum shall be paid out of the treasury of the
134 county in the interest of which the autopsy was ordered, upon the
135 allowance and warrant of the board of supervisors of the
136 county. * * *

137 A chemist whose services are used under Section 41-37-11 may
138 be paid a fee not to exceed Sixty Dollars (\$60.00) for that
139 chemical analysis. The fee of the chemist for that analysis shall
140 be paid in like manner as that of the autopsy pathologist.

141 **SECTION 8.** Section 41-37-21, Mississippi Code of 1972, is
142 amended as follows:

143 41-37-21. The pathologist performing the autopsy or the
144 chemist performing the analysis in criminal investigations may be
145 subpoenaed as a witness in any such criminal case. If subpoenaed
146 as a prosecution witness, he shall be paid a fee of Fifty Dollars
147 (\$50.00) per day as an expert witness for each day while in
148 attendance at the trial, and in addition thereto he shall be paid
149 Seven Cents (7¢) per mile for travel from his home to the location
150 of the trial and return. The fees * * * provided for in this
151 section shall be paid to prosecution witnesses as otherwise
152 provided for by law for the payment of * * * witness fees. If
153 subpoenaed as a witness by the defense, the pathologist or chemist
154 may collect a fee from the defendant not to exceed that prescribed
155 in this section for prosecution witnesses.

156 **SECTION 9.** Section 41-37-23, Mississippi Code of 1972, is
157 amended as follows:

158 41-37-23. The executive officer of the * * * State Board of
159 Health or a county health officer may petition in like manner, as
160 is provided in Section 41-37-9, a circuit judge, chancellor, or
161 county judge in any county in which a person dies or where the

162 body of the deceased person may be, and the circuit judge,
163 chancellor, or county judge may order an autopsy to be performed
164 upon the body of the deceased person in the interest of public
165 health and welfare in cases where the cause of death is not known
166 and cannot be determined with reasonable certainty without an
167 autopsy and when it would appear to the judge or chancellor by the
168 petition and evidence in support thereof that death may have been
169 due to communicable disease or contagious disease or to poison,
170 foreign substance, radiation or for any other reason exact
171 knowledge as to which would be of benefit to the public health and
172 welfare. In those cases, the same fees as specified in criminal
173 investigations to the autopsy pathologist and chemist shall be
174 allowed by the board of supervisors out of the general fund of the
175 county in which the petition is filed, except that no fee shall be
176 allowed and paid to any pathologist or chemist who is a regular
177 salaried employee of the state or county. A copy of the report of
178 the autopsy pathologist and chemist in those cases shall be filed
179 with the clerk of the court in which the order was entered, with
180 the county health officer of the county and with the executive
181 officer of the State Board of Health.

182 **SECTION 10.** Section 41-37-25, Mississippi Code of 1972, is
183 amended as follows:

184 41-37-25. An autopsy may be performed without court order by
185 a qualified pathologist when authorized by (a) the decedent,
186 during his lifetime, or (b) any of the following persons who * * *
187 have assumed custody of the body for the purpose of burial: a
188 surviving spouse, either parent or any person in loco parentis, a
189 descendant over the age of eighteen (18) years, a guardian, or the
190 next of kin. In the absence of any of the foregoing persons, any
191 friend of the deceased who has assumed responsibility for burial,
192 or any other person charged by law with responsibility for burial,
193 may give that consent. If two (2) or more persons have assumed

194 custody of the body of an adult for purposes of burial, the
195 consent of one (1) of those persons shall be deemed sufficient.

196 In the case of a minor, however, the consent of either parent
197 shall be deemed sufficient, unless the other parent gives written
198 notice to the pathologist who is to perform the autopsy of the
199 parent's objection thereto before the commencement of the autopsy.
200 If neither parent has legal custody of the minor, the guardian
201 shall have the right to authorize an autopsy. The fees provided
202 in this chapter for autopsies in criminal investigations shall not
203 be applicable to this section.

204 No autopsy shall be held under this section over the
205 objection of the surviving spouse, or if there is no surviving
206 spouse, or any surviving parent, or if there is neither a
207 surviving spouse nor parent, then of any surviving child.

208 **SECTION 11.** This act shall take effect and be in force from
209 and after July 1, 2006.