

By: Senator(s) Nunnelee

To: Public Health and Welfare

SENATE BILL NO. 2758

1 AN ACT ENTITLED THE "EMERGENCY HEALTH POWERS ACT"; TO PROVIDE
 2 DEFINITIONS; TO GRANT SPECIAL POWERS TO THE STATE BOARD OF HEALTH
 3 DURING A STATE OF PUBLIC HEALTH EMERGENCY INCLUDING A HURRICANE
 4 DISASTER; TO AUTHORIZE THE STATE BOARD OF HEALTH TO CONTROL THE
 5 USE OF HEALTH CARE FACILITIES OR SERVICES IN RESPONSE TO A PUBLIC
 6 HEALTH EMERGENCY; TO SET FORTH POWERS AND DUTIES OF THE STATE
 7 BOARD OF HEALTH REGARDING THE SAFE DISPOSAL OF HUMAN REMAINS; TO
 8 PROVIDE FOR THE PURCHASE AND DISTRIBUTION OF PHARMACEUTICAL AGENTS
 9 OR MEDICAL SUPPLIES DURING A PUBLIC HEALTH EMERGENCY; TO REQUIRE
 10 CIVIL PROCEEDINGS PRIOR TO THE DESTRUCTION OF ANY PROPERTY UNDER
 11 THE PUBLIC HEALTH EMERGENCY POWERS ACT; TO AUTHORIZE THE STATE
 12 BOARD OF HEALTH TO REQUIRE ASSISTANCE BY IN-STATE HEALTH CARE
 13 PROVIDERS AND APPOINT OUT-OF-STATE PROVIDERS AND EMERGENCY MEDICAL
 14 EXAMINERS; AND FOR RELATED PURPOSES.

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

16 **SECTION 1. Short title.** This act may be cited as the
 17 "Emergency Health Powers Act."

18 **SECTION 2. Legislative findings and intent.** The Legislature
 19 finds that:

20 (a) New and emerging dangers, including recurring
 21 hurricanes, tornadoes and emergent and resurgent infectious
 22 diseases and incidents of civilian mass casualties, pose serious
 23 and immediate threats;

24 (b) A renewed focus on the prevention, detection,
 25 management and containment of public health emergencies is called
 26 for;

27 (c) Emergency health threats, including those caused by
 28 hurricanes, tornadoes, chemical terrorism, radiological terrorism,
 29 bioterrorism and epidemics, require the exercise of extraordinary
 30 government functions;

31 (d) This state must have the ability to respond,
 32 rapidly and effectively, to potential or actual public health
 33 emergencies;

34 (e) The exercise of emergency health powers must
35 promote the common good;

36 (f) Emergency health powers must be grounded in a
37 thorough scientific understanding of public health threats and
38 disease transmission;

39 (g) Guided by principles of justice, it is the duty of
40 this state to act with fairness and tolerance toward individuals
41 and groups;

42 (h) The rights of people to liberty, bodily integrity,
43 and privacy must be respected to the fullest extent possible
44 consistent with the overriding importance of the public's health
45 and security; and

46 (i) This act is necessary to protect the health and
47 safety of the citizens of this state.

48 **SECTION 3. Purpose.** The purposes of this act are:

49 (a) To grant state officials the authority to provide
50 care and treatment to persons who are ill or who have been exposed
51 to infection, and to separate affected individuals from the
52 population at large for the purpose of interrupting the
53 transmission of infectious disease;

54 (b) To grant state officials the authority to use and
55 appropriate property as necessary for the care, treatment, and
56 housing of patients, and for the destruction or decontamination of
57 contaminated materials;

58 (c) To facilitate the early detection of a qualifying
59 health event or public health emergency, and allow for immediate
60 investigation of such an emergency by granting access to
61 individuals' health information under specified circumstances;

62 (d) To provide state officials with the ability to
63 prevent, detect, manage and contain emergency health threats
64 without unduly interfering with civil rights and liberties; and

65 (e) To require the development of a comprehensive plan
66 to provide for a coordinated, appropriate response in the event of
67 a public health emergency.

68 **SECTION 4. Definitions.** As used in the act:

69 (a) "Biological agent" means a microorganism, virus,
70 infectious substance, naturally occurring or bioengineered
71 product, or other biological material that could cause death,
72 disease or other harm to a human, an animal, a plant or another
73 living organism.

74 (b) "Bioterrorism" means the intentional use or
75 threatened use of a biological agent to harm or endanger members
76 of the public.

77 (c) "Chemical agent" means a poisonous chemical agent
78 that has the capacity to cause death, disease or other harm to a
79 human, an animal, a plant or another living organism.

80 (d) "Chemical terrorism" means the intentional use or
81 threatened use of a chemical agent to harm or endanger members of
82 the public.

83 (e) "Chain of custody" means the methodology of
84 tracking specimens for the purpose of maintaining control and
85 accountability from initial collection to final disposition of the
86 specimens and providing for accountability at each stage of
87 collecting, handling, testing, storing and transporting the
88 specimens and reporting test results.

89 (f) "State Health Officer" means the Executive Director
90 of the State Department of Health.

91 (g) "Contagious disease" is an infectious disease that
92 can be transmitted from person to person, animal to person, or
93 insect to person.

94 (h) "Coroners, medical examiners and funeral directors"
95 have the same meanings as provided in general law.

96 (i) "Department" means the State Department of Health
97 or any person authorized to act on behalf of the State Department
98 of Health.

99 (j) "Facility" means any real property, building,
100 structure, or other improvement to real property or any motor
101 vehicle, rolling stock, aircraft, watercraft or other means of
102 transportation.

103 (k) "Health care facility" means any nonfederal
104 institution, building, or agency or portion thereof, whether
105 public or private (for-profit or nonprofit) that is used, operated
106 or designed to provide health services, medical treatment, or
107 nursing, rehabilitative, or preventive care to any person or
108 persons, which is licensed by the State Department of Health.
109 This includes, but is not limited to, ambulatory surgical
110 facilities, health maintenance organizations, home health
111 agencies, hospices, hospitals, infirmaries, intermediate care
112 facilities, kidney treatment centers, long-term care facilities,
113 medical assistance facilities, mental health centers, outpatient
114 facilities, public health centers, rehabilitation facilities,
115 residential treatment facilities, skilled nursing facilities, and
116 adult daycare centers. The term also includes, but is not limited
117 to, the following related property when used for or in connection
118 with the foregoing: laboratories, research facilities,
119 pharmacies, laundry facilities, health personnel training and
120 lodging facilities, and patient, guest, and health personnel food
121 service facilities, and offices and office buildings for persons
122 engaged in health care professions or services.

123 (l) "Health care provider" means any person or entity
124 who provides health care services and is licensed by an agency of
125 the State of Mississippi, including, but not limited to,
126 hospitals, nursing homes, special care facilities, medical
127 laboratories, physicians, pharmacists, dentists, physician
128 assistants, nurse practitioners, registered and other nurses,

129 paramedics, fire fighters who provide emergency medical care,
130 emergency medical or laboratory technicians, and ambulance and
131 emergency medical workers. This includes out-of-state medical
132 laboratories, provided that such laboratories have agreed to the
133 reporting requirements of Mississippi. Results must be reported
134 by the laboratory that performs the test, but an in-state
135 laboratory that sends specimens to an out-of-state laboratory is
136 also responsible for reporting results.

137 (m) "Infectious disease" is a disease caused by a
138 living organism or virus. An infectious disease may, or may not,
139 be transmissible from person to person, animal to person, or
140 insect to person.

141 (n) "Isolation" and "quarantine" mean the compulsory
142 physical separation (including the restriction of movement or
143 confinement) of individuals and/or groups believed to have been
144 exposed to or known to have been infected with a contagious
145 disease from individuals who are believed not to have been exposed
146 or infected, in order to prevent or limit the transmission of the
147 disease to others; if the context so requires, "quarantine" means
148 compulsory physical separation, including restriction of movement,
149 of populations or groups of healthy people who have been
150 potentially exposed to a contagious disease, or to efforts to
151 segregate these persons within specified geographic areas.
152 "Isolation" means the separation and confinement of individuals
153 known or suspected (via signs, symptoms or laboratory criteria) to
154 be infected with a contagious disease to prevent them from
155 transmitting disease to others.

156 (o) "Protected health information" means any
157 information, whether oral, written, electronic, visual, pictorial,
158 physical or any other form, that relates to an individual's past,
159 present, or future physical or mental health status, condition,
160 treatment, service, products purchased, or provision of care, and
161 that reveals the identity of the individual whose health care is

162 the subject of the information, or where there is a reasonable
163 basis to believe such information could be utilized (either alone
164 or with other information that is, or reasonably should be known
165 to be, available to predictable recipients of such information) to
166 reveal the identity of that individual.

167 (p) "Public health emergency" means the occurrence or
168 imminent risk of a qualifying health condition, and shall
169 specifically include a hurricane, tornado or other declared
170 natural disaster.

171 (q) "Public safety authority" means the Department of
172 Public Safety or designated persons authorized to act on behalf of
173 the Department of Public Safety, including, but not limited to,
174 local governmental agencies that act principally to protect or
175 preserve the public safety, or full-time commissioned law
176 enforcement persons.

177 (r) "Qualifying health condition" means an illness or
178 health condition that may be caused by natural disaster,
179 terrorism, epidemic or pandemic disease, or a novel infectious
180 agent or biological or chemical agent and that poses a substantial
181 risk of a significant number of human fatalities, widespread
182 illness, or serious economic impact to the agricultural sector,
183 including food supply.

184 (s) "Radioactive material" means a radioactive
185 substance that has the capacity to cause bodily injury or death to
186 a human, an animal, a plant, or another living organism.

187 (t) "Radiological terrorism" means the intentional use
188 or threatened use of a radioactive material to harm or endanger
189 members of the public.

190 (u) "Specimens" include, but are not limited to, blood,
191 sputum, urine, stool, other bodily fluids, wastes, tissues, and
192 cultures necessary to perform required tests, and environmental
193 samples or other samples needed to diagnose potential chemical,
194 biological or radiological contamination.

195 (v) "Tests" include, but are not limited to, any
196 diagnostic or investigative analyses necessary to prevent the
197 spread of disease or protect the public's health, safety and
198 welfare.

199 (w) "Trial court" is the chancery court for the county
200 in which the isolation or quarantine is to occur or to the circuit
201 court for the county in which a public health emergency has been
202 declared.

203 **SECTION 5. Powers over dangerous facilities and materials.**

204 After the declaration of a state of public health emergency, the
205 State Board of Health, acting through the State Department of
206 Health, may exercise, in coordination with state agencies, local
207 governments, and other organizations responsible for
208 implementation of the emergency support functions in the State
209 Emergency Operations Plan for handling dangerous facilities and
210 materials, for such period as the state of public health emergency
211 exists, the following powers over dangerous facilities or
212 materials:

213 (a) To close, direct and compel the evacuation of, or
214 to decontaminate or cause to be decontaminated, any facility of
215 which there is reasonable cause to believe that it may endanger
216 the public health; and

217 (b) To decontaminate or cause to be decontaminated, any
218 material of which there is reasonable cause to believe that it may
219 endanger the public health.

220 **SECTION 6. Use of health care facility or services in**

221 **response to public health emergency.** After the declaration of a
222 state of public health emergency, the State Board of Health,
223 acting through the State Department of Health, and in coordination
224 with the guidelines of the State Emergency Operations Plan, may,
225 for such period as the state of public health emergency exists and
226 as may be reasonable and necessary for emergency response, require
227 a health care facility to provide services or the use of its

228 facility if the services are reasonable and necessary to respond
229 to the public health emergency as a condition of licensure,
230 authorization, or the ability to continue doing business in the
231 state as a health care facility. When the department needs the
232 use or services of the facility to isolate or quarantine
233 individuals during a public health emergency, the management and
234 supervision of the health care facility must be coordinated with
235 the department to ensure protection of existing patients and
236 compliance with the terms of this act. The authority provided in
237 this section shall specifically include the authority of the State
238 Board of Health to order the evacuation of patients to another
239 public or private facility with appropriate services in a safe
240 environment, and to provide for the transportation of such
241 evacuees.

242 **SECTION 7. Powers and duties regarding safe disposal of**
243 **human remains.** (1) The department must coordinate with coroners,
244 medical examiners and funeral directors, for such period as the
245 state of public health emergency exists, to exercise, in addition
246 to existing powers, the following powers regarding the safe
247 disposal of human remains:

248 (a) To take possession or control of any human remains
249 which cannot be safely handled otherwise;

250 (b) To order the disposal of human remains of a person
251 who has died of an infectious disease through burial or cremation
252 within twenty-four (24) hours after death;

253 (c) To require any business or facility authorized to
254 embalm, bury, cremate, inter, disinter, transport and dispose of
255 human remains under the laws of this state to accept any human
256 remains or provide the use of its business or facility if these
257 actions are reasonable and necessary for emergency response. When
258 necessary during the period of time of the public health
259 emergency, the department must coordinate with the business or

260 facility on the management or supervision of the business or
261 facility; and

262 (d) To procure, by order or otherwise, any business or
263 facility authorized to embalm, bury, cremate, inter, disinter,
264 transport, and dispose of human remains under the laws of this
265 state as may be reasonable and necessary for emergency response,
266 with the right to take immediate possession thereof.

267 (2) Where possible, existing provisions set forth in the
268 State Operations Plan for the safe disposal of human remains must
269 be used in a public health emergency. Where the State Operations
270 Plan is not sufficient to handle the safe disposal of human
271 remains for a public health emergency, the department, in
272 coordination with coroners, medical examiners and funeral
273 directors, must adopt and enforce measures to provide for the safe
274 disposal of human remains as may be reasonable and necessary for
275 emergency response. These measures may include, but are not
276 limited to, the embalming, burial, cremation, interment,
277 disinterment, transportation and disposal of human remains.

278 (3) All human remains prior to disposal must be clearly
279 labeled with all available information to identify the decedent
280 and the circumstances of death. Any human remains of a deceased
281 person with an infectious disease must have an external, clearly
282 visible tag indicating that the human remains are infected and, if
283 known, the infectious disease.

284 (4) Every person in charge of disposing of any human remains
285 must maintain a written record of each set of human remains and
286 all available information to identify the decedent and the
287 circumstances of death and disposal. If the human remains cannot
288 be identified, prior to disposal, a qualified person must, to the
289 extent possible, take fingerprints and one or more photographs of
290 the human remains, and collect a DNA specimen. All information
291 gathered under this subsection must be promptly forwarded to the

292 department. Identification must be handled by the agencies that
293 have laboratories suitable for DNA identification.

294 **SECTION 8. Purchase and distribution of pharmaceutical**
295 **agents or medical supplies; rationing and quotas.** (1) After the
296 declaration of a public health emergency, the State Board of
297 Health, acting through the department, may purchase and distribute
298 antitoxins, serums, vaccines, immunizing agents, antibiotics, and
299 other pharmaceutical agents or medical supplies that it considers
300 advisable in the interest of preparing for or controlling a public
301 health emergency, without any additional legislative
302 authorization.

303 (2) (a) If a state of public health emergency results in a
304 statewide or regional shortage or threatened shortage of any
305 product covered by subsection (1), whether or not such product has
306 been purchased by the department, it may control, restrict, and
307 regulate by rationing and using quotas, prohibitions on shipments,
308 price fixing, allocation or other means, the use, sale,
309 dispensing, distribution, or transportation of the relevant
310 product necessary to protect the health, safety, and welfare of
311 the people of the state. In making rationing or other supply and
312 distribution decisions, the department must give preference to
313 health care providers, disaster response personnel and mortuary
314 staff.

315 (b) During a state of public health emergency, the
316 department may procure, store or distribute any antitoxins,
317 serums, vaccines, immunizing agents, antibiotics, and other
318 pharmaceutical agents or medical supplies located within the state
319 as may be reasonable and necessary for emergency response, with
320 the right to take immediate possession thereof.

321 (c) If a public health emergency simultaneously affects
322 more than one state, nothing in this section shall be construed to
323 allow the department to obtain antitoxins, serums, vaccines,
324 immunizing agents, antibiotics, and other pharmaceutical agents or

325 medical supplies for the primary purpose of hoarding such items or
326 preventing their fair and equitable distribution among affected
327 states.

328 **SECTION 9. Destruction of property; civil proceedings.** To
329 the extent practicable and consistent with the protection of
330 public health, prior to the destruction of any property under this
331 act, the department in coordination with the applicable law
332 enforcement agency must institute appropriate civil proceedings
333 against the property to be destroyed in accordance with the
334 existing laws and rules of the chancery courts of this state or
335 any such rules that may be developed by the chancery courts for
336 use during a state of public health emergency. Any property
337 acquired by the department through such proceedings must, after
338 entry of the decree, be disposed of by destruction as the chancery
339 court may direct.

340 **SECTION 10. Access to protected health information;**
341 **disclosure.** (1) Access to protected health information of
342 persons who have participated in medical testing, treatment,
343 vaccination, isolation, or quarantine programs or efforts by the
344 department during a public health emergency is limited to those
345 persons having a legitimate need to:

346 (a) Provide treatment to the individual who is the
347 subject of the health information;

348 (b) Conduct epidemiological research; or

349 (c) Investigate the causes of transmission.

350 (2) Protected health information held by the department must
351 only be disclosed in compliance with federal Health Information
352 and Privacy Protection Act (HIPPA) regulations, except for
353 disclosures made to coroners, medical examiners, or funeral
354 directors or others dealing with human remains to identify a
355 deceased individual or determine the manner or cause of death.

356 **SECTION 11. Requiring assistance by in-state providers;**
357 **appointment of out-of-state providers and emergency medical**

358 **examiners or coroners; waiver of licensing fees and requirements.**

359 (1) The appropriate licensing authority, in coordination with the
360 State Board of Health, may exercise, for such period as the state
361 of public health emergency exists, in addition to existing
362 emergency powers, the following emergency powers regarding
363 licensing of health personnel:

364 (a) To require in-state health care providers to assist
365 in the performance of vaccination, treatment, examination, or
366 testing of any individual as a condition of licensure,
367 authorization, or the ability to continue to function as a health
368 care provider in this state;

369 (b) To appoint and prescribe the duties of such
370 out-of-state emergency health care providers as may be reasonable
371 and necessary for emergency response; and

372 (c) To authorize the medical examiner or coroner to
373 appoint and prescribe the duties of such emergency assistant
374 medical examiners or coroners as may be required for the proper
375 performance of the duties of the office.

376 (2) (a) The appointment of out-of-state emergency health
377 care providers pursuant to this section may be for a limited or
378 unlimited time, but must not exceed the termination of the state
379 of public health emergency. The appropriate licensing authority
380 may terminate the out-of-state appointments at any time or for any
381 reason provided that any termination will not jeopardize the
382 health, safety, and welfare of the people of this state.

383 (b) The appropriate licensing authority may waive any
384 or all licensing requirements, permits, or fees required by law
385 and applicable orders, rules or regulations for health care
386 providers from other jurisdictions to practice in this state.

387 (c) Any out-of-state emergency health care provider
388 appointed pursuant to this section shall not be held liable for
389 any civil damages as a result of medical care or treatment related
390 to the emergency response unless the damages result from

391 providing, or failing to provide, medical care or treatment under
392 circumstances demonstrating a reckless disregard for the
393 consequences so as to affect the life or health of the patient.

394 (3) (a) The appointment of emergency assistant medical
395 examiners or coroners pursuant to this section may be for a
396 limited or unlimited time, but must not exceed the termination of
397 the state of public health emergency. The medical examiner or
398 coroner may terminate the emergency appointments at any time or
399 for any reason, provided that any such termination will not impede
400 the performance of the duties of the office.

401 (b) The medical examiner or coroner may waive any or
402 all licensing requirements, permits, or fees required by law and
403 applicable orders, rules or regulations for the performance of
404 these duties.

405 (c) Any person appointed pursuant to this section who
406 in good faith performs the assigned duties is not liable for any
407 civil damages for any personal injury as the result of any act or
408 omission, except acts or omissions amounting to gross negligence
409 or willful or wanton misconduct.

410 **SECTION 12.** This act shall take effect and be in force from
411 and after July 1, 2006.