HOUSE BILL NO. 977

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

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

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

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

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

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

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

(d) This state must have the ability to respond, rapidly and effectively, to potential or actual public health emergencies;
(e) The exercise of emergency health powers must promote the common good;

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

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

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

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

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

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

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

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

(d) To provide state officials with the ability to prevent, detect, manage and contain emergency health threats without unduly interfering with civil rights and liberties; and
(e) To require the development of a comprehensive plan to provide for a coordinated, appropriate response in the event of a public health emergency.

SECTION 4. Definitions. As used in the act:

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

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

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

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

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

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

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

(h) "Coroners," "medical examiners" and "funeral directors" have the same meanings as provided in the laws of this state.
(i) "Department" means the State Department of Health or any person authorized to act on behalf of the State Department of Health.

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

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

(l) "Health care provider" means any person or entity who provides health care services and is licensed by an agency of the State of Mississippi, including, but not limited to, hospitals, nursing homes, special care facilities, medical laboratories, physicians, pharmacists, dentists, physician assistants, nurse practitioners, registered and other nurses,
paramedics, fire fighters who provide emergency medical care,
emergency technicians (EMT), medical laboratory technicians and
ambulance and emergency medical workers. This includes
out-of-state medical laboratories, provided that the laboratories
have agreed to the reporting requirements of Mississippi. Results
must be reported by the laboratory that performs the test, but an
in-state laboratory that sends specimens to an out-of-state
laboratory also is responsible for reporting results.

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

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

(o) "Protected health information" means any
information, whether oral, written, electronic, visual, pictorial,
physical or any other form, that relates to an individual's past,
present or future physical or mental health status, condition,
treatment, service, products purchased, or provision of care, and
that reveals the identity of the individual whose health care is
the subject of the information, or where there is a reasonable basis to believe that the information could be utilized (either alone or with other information that is, or reasonably should be known to be, available to predictable recipients of the information) to reveal the identity of that individual.

(p) "Public health emergency" means the occurrence or imminent risk of a qualifying health condition, and specifically includes a hurricane, tornado or other declared natural disaster, whether natural or man-made.

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

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

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

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

(u) "Specimens" include, but are not limited to, blood, sputum, urine, stool, other bodily fluids, wastes, tissues and cultures necessary to perform required tests, and environmental samples or other samples needed to diagnose potential chemical, biological or radiological contamination.
(v) "Tests" include, but are not limited to, any diagnostic or investigative analyses necessary to prevent the spread of disease or protect the public's health, safety and welfare.

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

SECTION 5. Powers over dangerous facilities and materials.

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

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

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

SECTION 6. Use of health care facility or services in response to public health emergency. After the declaration of a state of public health emergency, the State Board of Health, acting through the State Department of Health, and in coordination with the guidelines of the State Emergency Operations Plan, may, for such period as the state of public health emergency exists and as may be reasonable and necessary for emergency response, require a health care facility to provide services or the use of its facility if the services are reasonable and necessary to respond
to the public health emergency as a condition of licensure, authorization, or the ability to continue doing business in the state as a health care facility. When the department needs the use or services of the facility to isolate or quarantine individuals during a public health emergency, the management and supervision of the health care facility must be coordinated with the department to ensure protection of existing patients and compliance with the terms of this act. The authority provided in this section shall specifically include the authority of the State Board of Health to order the evacuation of patients to another public or private facility with appropriate services in a safe environment, and to provide for the transportation of those evacuees.

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

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

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

(c) To require any business or facility authorized to embalm, bury, cremate, inter, disinter, transport and dispose of human remains under the laws of this state to accept any human remains or provide the use of its business or facility if these actions are reasonable and necessary for emergency response. When necessary during the period of time of the public health emergency, the department must coordinate with the business or facility on the management or supervision of the business or facility; and
(d) To procure, by order or otherwise, any business or facility authorized to embalm, bury, cremate, inter, disinter, transport and dispose of human remains under the laws of this state as may be reasonable and necessary for emergency response, with the right to take immediate possession thereof.

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

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

(4) Every person in charge of disposing of any human remains must maintain a written record of each set of human remains and all available information to identify the decedent and the circumstances of death and disposal. If the human remains cannot be identified, before disposal, a qualified person must, to the extent possible, take fingerprints and one or more photographs of the human remains, and collect a DNA specimen. All information gathered under this subsection must be promptly forwarded to the department. Identification must be handled by the agencies that have laboratories suitable for DNA identification.
SECTION 8. Purchase and distribution of pharmaceutical agents or medical supplies; rationing and quotas. (1) After the declaration of a public health emergency, the State Board of Health, acting through the department, may purchase and distribute antitoxins, serums, vaccines, immunizing agents, antibiotics and other pharmaceutical agents or medical supplies that it considers advisable in the interest of preparing for or controlling a public health emergency, without any additional legislative authorization.

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

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

(c) If a public health emergency simultaneously affects more than one state, nothing in this section shall be construed to allow the department to obtain antitoxins, serums, vaccines, immunizing agents, antibiotics and other pharmaceutical agents or medical supplies for the primary purpose of hoarding those items.
or preventing their fair and equitable distribution among affected states.

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

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

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

(b) Conduct epidemiological research; or

(c) Investigate the causes of transmission.

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

SECTION 11. Requiring assistance by in-state providers; appointment of out-of-state providers and emergency medical examiners or coroners; waiver of licensing fees and requirements.
(1) The appropriate licensing authority, in coordination with the State Board of Health, may exercise, for such period as the state of public health emergency exists, in addition to existing emergency powers, the following emergency powers regarding licensing of health personnel:

(a) To require in-state health care providers, consistent with the provider's licensure, certification or training, to assist in the performance of vaccination, treatment, examination or testing of any individual as a condition of licensure, authorization, or the ability to continue to function as a health care provider in this state;

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

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

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

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

(c) Any out-of-state emergency health care provider appointed under this section shall not be held liable for any civil damages as a result of medical care or treatment related to the emergency response unless the damages result from providing,
or failing to provide, medical care or treatment under circumstances demonstrating a reckless disregard for the consequences so as to affect the life or health of the patient.

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

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

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

SECTION 12. This act shall take effect and be in force from and after July 1, 2007.