

By: Senator(s) Fillingane

To: Public Health and Welfare

SENATE BILL NO. 2323

1 AN ACT TO AMEND SECTION 41-13-35, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY AND EXPAND THE POWERS AND AUTHORITY OF THE BOARDS OF
3 TRUSTEES OF COMMUNITY HOSPITALS AND TO PROVIDE THAT ANY
4 CONSOLIDATION OR COLLABORATION INVOLVING A COMMUNITY HOSPITAL AND
5 OTHER PUBLIC OR PRIVATE HOSPITALS, HEALTH CARE FACILITIES OR
6 PROVIDERS SHALL BE IMMUNE FROM LIABILITY UNDER THE FEDERAL AND
7 STATE ANTITRUST OR COMPETITION LAWS TO THE FULLEST EXTENT ALLOWED
8 BY LAW; TO AMEND SECTION 41-13-29, MISSISSIPPI CODE OF 1972, TO
9 INCREASE THE MAXIMUM PER DIEM PAYABLE TO TRUSTEES; TO AMEND
10 SECTION 37-115-50, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE
11 ACADEMIC MEDICAL CENTER AND ITS HEALTH CARE COLLABORATIVES ACTING
12 INDIVIDUALLY OR JOINTLY SHALL BE IMMUNIZED FROM LIABILITY UNDER
13 THE FEDERAL AND STATE ANTITRUST OR COMPETITION LAWS TO THE FULLEST
14 EXTENT ALLOWED BY LAW; TO CREATE NEW SECTION 37-115-50.2,
15 MISSISSIPPI CODE OF 1972, TO PROVIDE CERTAIN LEGISLATIVE FINDINGS
16 AND DECLARATIONS RELATED TO THE ACT; TO CREATE NEW SECTION
17 37-115-50.3, MISSISSIPPI CODE OF 1972, TO PROVIDE CERTAIN POWERS
18 TO THE ACADEMIC MEDICAL CENTER AND ITS HEALTH CARE COLLABORATIVES
19 SUBJECT TO ANY REQUIRED APPROVAL OF THE BOARD OF TRUSTEES OF STATE
20 INSTITUTIONS OF HIGHER LEARNING; AND FOR RELATED PURPOSES.

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

22 **SECTION 1.** Section 41-13-35, Mississippi Code of 1972, is
23 amended as follows:

24 41-13-35. (1) The board of trustees of any community
25 hospital shall have full authority to appoint an administrator,
26 who shall not be a member of the board of trustees, and to
27 delegate reasonable authority to such administrator for the



28 operation and maintenance of such hospital and all property and
29 facilities otherwise appertaining thereto.

30 (2) The board of trustees shall have full authority to
31 select from its members, officers and committees and, by
32 resolution or through the board bylaws, to delegate to such
33 officers and committees reasonable authority to carry out and
34 enforce the powers and duties of the board of trustees during the
35 interim periods between regular meetings of the board of trustees;
36 provided, however, that any such action taken by an officer or
37 committee shall be subject to review by the board, and actions may
38 be withdrawn or nullified at the next subsequent meeting of the
39 board of trustees if the action is in excess of delegated
40 authority.

41 (3) The board of trustees shall be responsible for governing
42 the community hospital under its control and shall make and
43 enforce staff and hospital bylaws and/or rules and regulations
44 necessary for the administration, government, maintenance and/or
45 expansion of such hospitals. The board of trustees shall keep
46 minutes of its official business and shall comply with Section
47 41-9-68.

48 (4) The decisions of said board of trustees of the community
49 hospital shall be valid and binding unless expressly prohibited by
50 applicable statutory or constitutional provisions.

51 (5) The power of the board of trustees shall specifically
52 include, but not be limited to, the following authority:



53 (a) To deposit and invest funds of the community
54 hospital in accordance with Section 27-105-365;

55 (b) To establish such equitable wage and salary
56 programs and other employment benefits as may be deemed expedient
57 or proper, and in so doing, to expend reasonable funds for such
58 employee salary and benefits. Allowable employee programs shall
59 specifically include, but not be limited to, medical benefit,
60 life, accidental death and dismemberment, disability, retirement
61 and other employee coverage plans. The hospital may offer and
62 fund such programs directly or by contract with any third party
63 and shall be authorized to take all actions necessary to
64 implement, administer and operate such plans, including payroll
65 deductions for such plans;

66 (c) To authorize employees to attend and to pay actual
67 expenses incurred by employees while engaged in hospital business
68 or in attending recognized educational or professional meetings;

69 (d) To enter into loan or scholarship agreements with
70 employees or students to provide educational assistance where such
71 student or employee agrees to work for a stipulated period of time
72 for the hospital;

73 (e) To devise and implement employee incentive
74 programs;

75 (f) To recruit and financially assist physicians and
76 other health care practitioners in establishing, or relocating
77 practices within the service area of the community hospital



78 including, without limitation, direct and indirect financial
79 assistance, loan agreements, agreements guaranteeing minimum
80 incomes for a stipulated period from opening of the practice and
81 providing free office space or reduced rental rates for office
82 space where such recruitment would directly benefit the community
83 hospital and/or the health and welfare of the citizens of the
84 service area;

85 (g) To contract by way of lease, lease-purchase or
86 otherwise, with any agency, department or other office of
87 government or any individual, partnership, corporation, owner,
88 other board of trustees, or other health care facility, for the
89 providing of property, equipment or services by or to the
90 community hospital or other entity or regarding any facet of the
91 construction, management, funding or operation of the community
92 hospital or any division or department thereof, or any related
93 activity, including, without limitation, shared management
94 expertise or employee insurance and retirement programs, and to
95 terminate said contracts when deemed in the best interests of the
96 community hospital;

97 (h) To file suit on behalf of the community hospital to
98 enforce any right or claims accruing to the hospital and to defend
99 and/or settle claims against the community hospital and/or its
100 board of trustees;

101 (i) To sell or otherwise dispose of any chattel
102 property of the community hospital by any method deemed



103 appropriate by the board where such disposition is consistent with
104 the hospital purposes or where such property is deemed by the
105 board to be surplus or otherwise unneeded;

106 (j) To let contracts for the construction, remodeling,
107 expansion or acquisition, by lease or purchase, of hospital or
108 health care facilities, including real property, within the
109 service area for community hospital purposes where such may be
110 done with operational funds without encumbrancing the general
111 funds of the county or municipality, provided that any contract
112 for the purchase of real property must be ratified by the owner;

113 (k) To borrow money and enter other financing
114 arrangements for community hospital and related purposes and to
115 grant security interests in hospital equipment and other hospital
116 assets and to pledge a percentage of hospital revenues as security
117 for such financings where needed; provided that the owner shall
118 specify by resolution the maximum borrowing authority and maximum
119 percent of revenue which may be pledged by the board of trustees
120 during any given fiscal year;

121 (l) To expend hospital funds for public relations or
122 advertising programs;

123 (m) To offer the following inpatient and outpatient
124 services, after complying with applicable health planning,
125 licensure statutes and regulations, whether or not heretofore
126 offered by such hospital or other similar hospitals in this state
127 and whether or not heretofore authorized to be offered, long-term



128 care, extended care, home care, after-hours clinic services,
129 ambulatory surgical clinic services, preventative health care
130 services including wellness services, health education,
131 rehabilitation and diagnostic and treatment services; to promote,
132 develop, operate and maintain a center providing care or
133 residential facilities for the aged, convalescent or handicapped;
134 and to promote, develop and institute any other services having an
135 appropriate place in the operation of a hospital offering complete
136 community health care;

137 (n) To promote, develop, acquire, operate and maintain
138 on a nonprofit basis, or on a profit basis if the community
139 hospital's share of profits is used solely for community hospital
140 and related purposes in accordance with this chapter, either
141 separately or jointly with one or more other hospitals or
142 health-related organizations, facilities and equipment for
143 providing goods, services and programs for hospitals, other health
144 care providers, and other persons or entities in need of such
145 goods, services and programs and, in doing so, to provide for
146 contracts of employment or contracts for services and ownership of
147 property on terms that will protect the public interest;

148 (o) To establish and operate medical offices, child
149 care centers, wellness or fitness centers and other facilities and
150 programs which the board determines are appropriate in the
151 operation of a community hospital for the benefit of its
152 employees, personnel and/or medical staff which shall be operated



153 as an integral part of the hospital and which may, in the
154 direction of the board of trustees, be offered to the general
155 public. If such programs are not established in existing
156 facilities or constructed on real estate previously acquired by
157 the owners, the board of trustees shall also have authority to
158 acquire, by lease or purchase, such facilities and real property
159 within the service area, whether or not adjacent to existing
160 facilities, provided that any contract for the purchase of real
161 property shall be ratified by the owner. The trustees shall lease
162 any such medical offices to members of the medical staff at rates
163 deemed appropriate and may, in its discretion, establish rates to
164 be paid for the use of other facilities or programs by its
165 employees or personnel or members of the public whom the trustees
166 may determine may properly use such other facilities or programs;

167 (p) Provide, at its discretion, ambulance service
168 and/or to contract with any third party, public or private, for
169 the providing of such service;

170 (q) Establish a fair and equitable system for the
171 billing of patients for care or users of services received through
172 the community hospital, which in the exercise of the board of
173 trustees' prudent fiscal discretion, may allow for rates to be
174 classified according to the potential usage by an identified group
175 or groups of patients of the community hospital's services and may
176 allow for standard discounts where the discount is designed to
177 reduce the operating costs or increase the revenues of the



178 community hospital. Such billing system may also allow for the
179 payment of charges by means of a credit card or similar device and
180 allow for payment of administrative fees as may be regularly
181 imposed by a banking institution or other credit service
182 organization for the use of such cards;

183 (r) To establish as an organizational part of the
184 hospital or to aid in establishing as a separate entity from the
185 hospital, hospital auxiliaries designed to aid the hospital, its
186 patients, and/or families and visitors of patients, and when the
187 auxiliary is established as a separate entity from the hospital,
188 the board of trustees may cooperate with the auxiliary in its
189 operations as the board of trustees deems appropriate; and

190 (s) To make any agreements or contracts with the
191 federal government or any agency thereof, the State of Mississippi
192 or any agency thereof, and any county, city, town, supervisors
193 district or election district within this state, jointly or
194 separately, for the maintenance of charity facilities.

195 (t) To acquire hospitals, health care facilities and
196 other healthcare-related operations and assets, through direct
197 purchase, merger, consolidation, lease or other means;

198 (u) To enter into joint ventures, joint-operating
199 agreements or similar arrangements with other public or private
200 healthcare-related organizations, or with for-profit or nonprofit
201 corporations, limited liability companies or other organizations,
202 either directly or through a nonprofit corporation formed or owned



203 by the community hospital, for the joint operation of all or part
204 of the community hospital, or the joint operation of any
205 healthcare facilities or healthcare services, and in doing so, to
206 convey the community hospital's assets, service lines or
207 facilities to the joint venture or to any other organization or
208 entity for fair market value, and to provide for contracts of
209 employment or contracts for services and ownership of property
210 that will protect the public interest;

211 (v) To form, establish, fund and operate nonprofit
212 corporations, limited liability companies or other organizations,
213 either directly or through a nonprofit corporation formed by the
214 community hospital, which are jointly owned with other public or
215 private hospitals, nonprofit or for-profit corporations, or other
216 healthcare-related organizations, for the purpose of conducting
217 activities within or outside of the community hospital's service
218 area for the benefit of the community hospital, including, but not
219 limited to, joint-hospital acquisitions, group purchasing,
220 clinically integrated networks, payor contracting, and joint
221 requests for federal and state grants and funding.

222 (w) To make capital contributions, loans, debt or
223 equity financing to or for any joint venture or similar
224 arrangement in which the community hospital, or any nonprofit
225 corporation formed or owned by the community hospital, has or
226 acquires an ownership interest, and to guarantee loans and any
227 other obligations for such purposes;



228 (x) To establish arrangements for the community
229 hospital to participate in financial integration and/or clinical
230 integration or clinically integrated networks with a joint
231 venture, with other public or private health-related
232 organizations, or through a joint-operating agreement;

233 (y) To have an ownership interest in, make capital
234 contributions to, and assume financial risk under, accountable
235 care organizations or similar organizations;

236 (z) To enter into any contract for a term of any
237 length, regardless of whether the length or term of the contract
238 exceeds the term of the board of trustees of the community
239 hospital;

240 (aa) To elect any or all of the members of the board of
241 directors of any nonprofit corporation of which the community
242 hospital is a member;

243 (bb) To create, establish, acquire, operate or support
244 subsidiaries and affiliates, either for-profit or nonprofit, to
245 assist the community hospital in fulfilling its purposes;

246 (cc) To create, establish or support nonaffiliated
247 for-profit or nonprofit corporations or other lawful business
248 organizations that operate and have as their purposes the
249 furtherance of the community hospital's purposes;

250 (dd) Without limiting the generality of any provisions
251 of this section, to accomplish and facilitate the creation,
252 establishment, acquisition, operation or support of any such



253 subsidiary, affiliate, nonaffiliated corporation or other lawful
254 business organization, by means of loans of funds, acquisition or
255 transfer of assets, leases of real or personal property, gifts and
256 grants of funds or guarantees of indebtedness of such
257 subsidiaries, affiliates and nonaffiliated corporations;

258 (ee) To exercise all powers granted hereunder in such a
259 manner as the community hospital, through its board of trustees,
260 may determine to be consistent with the purposes of this act,
261 including the state action immunity provided by this act from
262 state and federal antitrust laws to the fullest extent possible,
263 notwithstanding that as a consequence of such exercise of such
264 powers it engages in activities that may be deemed
265 "anticompetitive" or which displace competition within the meaning
266 or contemplation of the antitrust laws of this state or of the
267 United States;

268 (ff) To make contributions, as defined in Section
269 23-15-801(e) (i), to political committees, as defined in Section
270 23-15-801(c).

271 (6) No board of trustees of any community hospital may
272 accept any grant of money or other thing of value from any
273 not-for-profit or for-profit organization established for the
274 purpose of supporting health care in the area served by the
275 facility unless two-thirds (2/3) of the trustees vote to accept
276 the grant.



277 (7) No board of trustees, individual trustee or any other
278 person who is an agent or servant of the trustees of any community
279 hospital shall have any personal financial interest in any
280 not-for-profit or for-profit organization which, regardless of its
281 stated purpose of incorporation, provides assistance in the form
282 of grants of money or property to community hospitals or provides
283 services to community hospitals in the form of performance of
284 functions normally associated with the operations of a hospital.

285 (8) The Legislature hereby finds and declares as follows:

286 (a) The needs of the residents of Mississippi can best
287 be served by community hospitals having the legal, financial and
288 operational flexibility to take full advantage of opportunities
289 and challenges presented by the evolving health care environment
290 and to take whatever actions are necessary to enable the community
291 hospitals' continuation as healthcare systems which provides the
292 finest possible quality of care consistent with reasonable costs.

293 (b) In this environment, the community hospitals must
294 have the ability to respond to changing conditions by having the
295 power to develop efficient and cost-effective methods and
296 structures to provide for health care needs, while maintaining a
297 public mission and character. Further, community hospitals in
298 Mississippi are political subdivisions of the state. Accordingly,
299 the Legislature finds that there is a compelling interest in
300 establishing a structure and process for a community hospital to
301 adapt to this dynamic environment, to operate efficiently, to



302 offer competitive health care services, to respond more
303 effectively to new developments and regulatory changes in the
304 health care area, and to continue to serve and promote the health,
305 wellness and welfare of the citizens of Mississippi. The
306 acquisition, operation and financing of hospitals and other health
307 care facilities by the community hospitals are hereby declared to
308 be for a public and governmental purpose and a matter of public
309 necessity.

310 (c) The geographic areas served by community hospitals
311 include rural populations and other groups that experience
312 significant health disparities. Health disparities are
313 differences in health status when compared to the population
314 overall, often characterized by indicators such as higher
315 incidence of disease and/or disability, increased mortality rates,
316 and lower life expectancies. Rural risk factors for health
317 disparities include geographic isolation, lower socioeconomic
318 status, higher rates of health risk behaviors and limited access
319 to healthcare specialists and subspecialists. As a result of
320 these health disparities, the residents of areas served by
321 community hospitals have high rates of mortality and morbidity,
322 heart disease, cancer, and other illnesses. The areas also
323 include a high percentage of uninsured individuals and Medicaid
324 patients, which are medically underserved groups. Community
325 hospitals have demonstrated their ability to provide high quality
326 healthcare and to improve health conditions and outcomes as well



327 as access to care. This act will significantly strengthen the
328 ability of community hospitals to serve the health care needs of
329 the residents of their service areas.

330 (d) The community hospitals' investment of significant
331 public assets and their efforts to provide high-quality health
332 care services to medically underserved populations are jeopardized
333 by potential limits on the ability of community hospitals to
334 collaborate and consolidate with other public and private health
335 care facilities and providers. The Legislature expressly finds
336 that the benefits of collaboration and consolidation by the
337 community hospitals outweigh any adverse impact on competition.
338 The benefits of the community hospitals' efforts to collaborate
339 and consolidate include, but are not limited to, preserving and
340 expanding needed health care services in its service area;
341 consolidating unneeded or duplicative health care services;
342 enhancing the quality of, and expanding access to, health care
343 delivered to medically underserved and rural populations; and
344 lowering costs and improving the efficiency of the health care
345 services it delivers. Based on the findings contained in this
346 section, the Legislature hereby affirmatively expresses a policy
347 to allow community hospitals to consolidate with other public or
348 private hospitals, health care facilities and providers and to
349 engage in collaborative activities consistent with their health
350 care purposes, notwithstanding that those consolidations and
351 collaborations may have the effect of displacing competition in



352 the provision of hospital or other healthcare-related services.
353 In engaging in such consolidations and collaborations with other
354 public or private hospitals, health care facilities and providers,
355 the community hospital shall be considered to be acting pursuant
356 to clearly articulated state policy as established in this act and
357 shall not be subject to federal or state antitrust laws while so
358 acting. With respect to the consolidations, collaborative
359 activities and other activities contemplated in this act, the
360 community hospital and the public or private entities with which
361 it consolidates, collaborates, or enters into any of the
362 transactions set forth in this act, shall be immune from liability
363 under the federal and state antitrust laws and those activities
364 are provided with state action immunity from federal and state
365 antitrust laws to the fullest extent possible; provided, however,
366 that the state action immunity from federal and state antitrust
367 laws shall not apply to health care facility acquisitions or joint
368 ventures in which the community hospital does not maintain a
369 majority, controlling interest in the acquired health care
370 facility or joint venture. Additionally, state action immunity
371 shall not apply to the activities of a community hospital that has
372 been acquired by, leased to or whose assets or business line is
373 controlled in any way by a private party.

374 **SECTION 2.** Section 41-13-29, Mississippi Code of 1972, is
375 amended as follows:



376 41-13-29. (1) (a) The owners are authorized to appoint
377 trustees for the purpose of operating and governing community
378 hospitals. The owner of a community hospital may remove a trustee
379 after appointment for good cause shown, upon a unanimous vote of
380 all members of the governing board of the owner that appointed the
381 trustee, or upon a majority vote of the governing board of the
382 owner that appointed the trustee after a recommendation from the
383 board of trustees of the hospital that the trustee be removed. To
384 be eligible for appointment, an appointee must be an adult legal
385 resident of the county which has an ownership interest in the
386 community hospital or the county in which the municipality or
387 other political subdivision holding the ownership interest in the
388 community hospital is located. The authority to appoint trustees
389 shall not apply to leased facilities, unless specifically reserved
390 by the owner in the applicable lease agreement.

391 (b) The board of trustees shall consist of not more
392 than seven (7) members nor less than five (5) members, except
393 where specifically authorized by statute, and shall be appointed
394 by the respective owners on a pro rata basis comparable to the
395 ownership interests in the community hospital. Where the
396 community hospital is owned solely by a county, or any supervisors
397 districts, judicial districts or election district of a county, or
398 by a municipality, the trustees shall be residents of the owning
399 entity.



400 (c) Trustees for municipally owned community hospitals
401 shall be appointed by the governing authority of the municipality.
402 Trustees for a community hospital owned by a county shall be
403 appointed by the board of supervisors with each supervisor having
404 the right to nominate one (1) trustee from his district or from
405 the county at large. Appointments exceeding five (5) in number
406 shall be from the county at large. Trustees for a community
407 hospital owned solely by supervisors districts, judicial districts
408 or election district of a county, shall be appointed by the board
409 of supervisors of the county from nominees submitted by the
410 supervisor or supervisors representing the owner district or
411 districts.

412 (2) (a) Initially the board of trustees shall be appointed
413 as follows: one (1) for a term of one (1) year, one (1) for a
414 term of two (2) years, one (1) for a term of three (3) years, one
415 (1) for a term of four (4) years, and one (1) for a term of five
416 (5) years. Appointments exceeding five (5) in number shall be for
417 terms of four (4) and five (5) years, respectively. Thereafter,
418 all terms shall be for five (5) years. No community hospital
419 trustee holding office on July 1, 1982, shall be affected by this
420 provision, but the terms shall be filled at the expiration thereof
421 according to the provisions of this section; provided, however,
422 that any other specific appointment procedures presently
423 authorized shall likewise not be affected by the terms hereof.
424 Any vacancy on the board of trustees shall be filled within ninety



425 (90) days by appointment by the applicable owner for the remainder
426 of the unexpired term.

427 (b) From and after January 1, 2016, to be eligible for
428 appointment, an appointee must have no felony convictions, possess
429 at least a high school diploma or the equivalent, owe no
430 outstanding debt to the community hospital, and not be a plaintiff
431 in any pending lawsuit against the community hospital. The
432 appointee may not own an interest in, or be an officer or employee
433 of, a company or business that provides goods or services in
434 direct competition with the community hospital, nor may the
435 appointee's spouse own an interest in, or be an officer of, such
436 company or business.

437 (3) (a) Any community hospital erected, owned, maintained
438 and operated by any county located in the geographical center of
439 the State of Mississippi and in which State Highways No. 12 and
440 No. 35 intersect, shall be operated by a board of trustees of five
441 (5) members who have the qualifications set forth in this section
442 to be appointed by the board of supervisors from the county at
443 large, one (1) for a term of one (1) year, one (1) for a term of
444 two (2) years, one (1) for a term of three (3) years, one (1) for
445 a term of four (4) years, and one (1) for a term of five (5)
446 years. Thereafter all trustees shall be appointed from the county
447 at large for a period of five (5) years.

448 (b) Any community hospital erected, owned, maintained
449 and operated by any county situated in the Yazoo-Mississippi Delta



450 Levee District and bordering on the Mississippi River and having a
451 population of not less than forty-five thousand (45,000) and
452 having an assessed valuation of not less than Thirty Million
453 Dollars (\$30,000,000.00) for the year 1954, shall be operated by a
454 board of trustees which may consist of not more than eleven (11)
455 members who have the qualifications set forth in this section.

456 (c) Any hospital erected, owned, maintained and
457 operated by any county having two (2) judicial districts, which is
458 traversed by U.S. Interstate Highway 59, which intersects Highway
459 84 therein, shall be operated by a board of trustees which shall
460 consist of seven (7) members who have the qualifications set forth
461 in this section. The first seven (7) members appointed under
462 authority of this paragraph shall be appointed by the board of
463 supervisors for terms as follows:

464 Each supervisor of Supervisors Districts One and Two shall
465 nominate and the board of supervisors shall appoint one (1) person
466 from each said beat for a one-year term. Each supervisor of
467 Supervisors Districts Three and Four shall nominate and the board
468 of supervisors shall appoint one (1) person from each beat for a
469 two-year term. The supervisor of Supervisors District Five shall
470 nominate and the board of supervisors shall appoint one (1) person
471 from the beat for a three-year term. The medical staff at the
472 hospital shall submit a list of four (4) nominees and the
473 supervisors shall appoint two (2) trustees from the list of
474 nominees, one (1) for a three-year term and one (1) for a one-year



475 term. Thereafter, as the terms of the board of trustee members
476 authorized by this paragraph expire, all but the trustee
477 originally appointed from the medical staff nominees for a
478 one-year term shall be appointed by the board of supervisors for
479 terms of three (3) years. The term of the trustee originally
480 appointed from the medical staff nominees by the board of
481 supervisors for a term of one (1) year shall remain a term of one
482 (1) year and shall thereafter be appointed for a term of one (1)
483 year. The two (2) members appointed from medical staff nominees
484 shall be appointed from a list of two (2) nominees for each
485 position to be submitted by the medical staff of the hospital for
486 each vacancy to be filled. It is the intent of the Legislature
487 that the board of trustees which existed prior to July 1, 1985,
488 was abolished by amendment to this section under Section 5,
489 Chapter 511, Laws of 1985, and the amendment authorized the
490 appointment of a new board of trustees on or after July 1, 1985,
491 in the manner provided in this paragraph. Any member of the board
492 of trustees which existed before July 1, 1985, who has the
493 qualifications set forth in this section shall be eligible for
494 reappointment subject to the provisions of this paragraph.

495 (d) Any community hospital erected, owned, maintained
496 and operated by any county bordering on the Mississippi River
497 having two (2) judicial districts, wherein U.S. Highway 61 and
498 Mississippi Highway 8 intersect, lying wholly within a levee
499 district, shall be operated by a board of trustees which may



500 consist of not more than nine (9) members who have the
501 qualifications set forth in this section.

502 (e) Any community hospital system owned, maintained and
503 operated by any county bordering on the Gulf of Mexico and the
504 State of Alabama shall be operated by a board of trustees
505 constituted as follows: seven (7) members shall be selected as
506 provided in subsection (1) of this section and two (2) advisors
507 who shall be the chiefs of staff at those hospitals which are a
508 part of the hospital system; the members must have the
509 qualifications set forth in this section. The term of the chiefs
510 of staff on the board of trustees shall coincide with their
511 service as chiefs of staff at their respective hospitals.

512 (4) Any community hospital owned, maintained and operated by
513 any county wherein Mississippi Highways 16 and 19 intersect,
514 having a land area of five hundred sixty-eight (568) square miles,
515 and having a population in excess of twenty-three thousand seven
516 hundred (23,700) according to the 1980 federal decennial census,
517 shall be operated by a board of trustees of five (5) members who
518 have the qualifications set forth in this section, one (1) of whom
519 shall be elected by the qualified electors of each supervisors
520 district of the county in the manner provided herein. Each member
521 so elected shall be a resident and qualified elector of the
522 district from which he is elected. The first elected members of
523 the board of trustees shall be elected at the regular general
524 election held on November 4, 1986. At the election, the members



525 of the board from Supervisors Districts One and Two shall be
526 elected for a term of six (6) years; members of the board from
527 Supervisors Districts Three and Four shall be elected for a term
528 of two (2) years; and the member of the board from Supervisors
529 District Five shall be elected for a term of four (4) years. Each
530 subsequent member of the board shall be elected for a term of six
531 (6) years at the same time as the general election in which the
532 member of the county board of education representing the same
533 supervisors district is elected. All members of the board shall
534 take office on the first Monday of January following the date of
535 their election. The terms of all seven (7) appointed members of
536 the board of trustees holding office on the effective date of this
537 act (Laws 1986, Chapter 462) shall expire on the date that the
538 first elected members of the board take office. The board of
539 trustees provided for herein shall not lease or sell the community
540 hospital property under its jurisdiction unless the board of
541 supervisors of the county calls for an election on the proposition
542 and a majority voting in the election shall approve the lease or
543 sale.

544 The members of the board of trustees provided for in this
545 subsection shall be compensated a per diem and reimbursed for
546 their expenses and mileage in the same amount and subject to the
547 same restrictions provided for members of the county board of
548 education in Section 37-5-21 and may, at the discretion of the
549 board, choose to participate in any hospital medical benefit plan



550 which may be in effect for hospital employees. Any member of the
551 board of trustees choosing to participate in the plan shall pay
552 the full cost of his participation in the plan so that no
553 expenditure of hospital funds is required.

554 The name of any qualified elector who is a candidate for the
555 community hospital board of trustees shall be placed on the ballot
556 used in the general elections by the county election
557 commissioners, if the candidate files with the county election
558 commissioners, not more than ninety (90) days and not less than
559 thirty (30) days before the date of the general election, a
560 petition of nomination signed by not less than fifty (50)
561 qualified electors of the county residing within each supervisors
562 district. The candidate in each supervisors district who receives
563 the highest number of votes cast in the district shall be declared
564 elected.

565 (5) A board of trustees provided for herein may, in its
566 discretion, where funds are available, compensate each trustee per
567 diem in at least the amount established by Section 25-3-69 up to
568 the maximum amount of not more than * * * Two Hundred Dollars
569 (\$200.00) for each meeting of the board of trustees or meeting of
570 a committee established by the board of trustees where the trustee
571 was in attendance, and in addition thereto provide meals at the
572 meetings and compensate each member attending travel expenses at
573 the rate authorized by Section 25-3-41 for actual mileage traveled
574 to and from the place of meeting.



575 (6) The owner which appointed a trustee may likewise remove
576 him from office by majority vote for failure to attend at least
577 fifty percent (50%) of the regularly scheduled meetings of the
578 board during the twelve-month period preceding the vote, or for
579 violation of any statute relating to the responsibilities of his
580 office, based upon the recommendation of a majority of the
581 remaining trustees.

582 (7) For community hospitals located in a county having a
583 population of less than one hundred thousand (100,000) according
584 to the most recent federal decennial census, the members of the
585 board of trustees, administrator and any other officials of the
586 community hospital as may be deemed necessary or proper by the
587 board of trustees shall be under bond in an amount not less than
588 Ten Thousand Dollars (\$10,000.00) nor more than One Hundred
589 Thousand Dollars (\$100,000.00) with some surety company authorized
590 to do business in the State of Mississippi to faithfully perform
591 the duties of his office. For community hospitals located in a
592 county having a population of one hundred thousand (100,000) or
593 more according to the most recent federal decennial census, the
594 bond shall be in an amount not less than Fifty Thousand Dollars
595 (\$50,000.00) nor more than Five Hundred Thousand Dollars
596 (\$500,000.00). Premiums for the bonds shall be paid from funds of
597 the community hospital.

598 (8) The members of the board of trustees of a community
599 hospital may, at the discretion of the board, choose to



600 participate in any hospital medical benefit plan or health
601 insurance plan, whether self-funded or otherwise, which may be in
602 effect for hospital employees. Any member of the board of
603 trustees choosing to participate in such plan shall pay the same
604 amount for his or her participation in the plan as hospital
605 employees are required to pay for their participation in such
606 plan.

607 **SECTION 3.** Section 37-115-50, Mississippi Code of 1972, is
608 amended as follows:

609 37-115-50. For purposes of Sections 37-115-50 and
610 37-115-50.1, the following terms shall have the following
611 meanings:

612 (a) "Academic medical center" means the teaching,
613 research, and clinical facilities and services provided,
614 established, or operated by a public university under Chapter 115,
615 Title 37, Mississippi Code of 1972.

616 (b) "Health sciences school" means any school of
617 medicine, dentistry, nursing, pharmacy and any other health
618 care-related educational program operated or provided by an
619 academic medical center in this state

620 (c) "Health care collaborative" means any consolidation
621 or collaboration involving the academic center and any other
622 public or private health care facilities and providers.

623 **SECTION 4.** The following shall be codified as Section
624 37-115-50.2, Mississippi Code of 1972:



625 37-115-50.2. (1) The Legislature finds and declares all of
626 the following:

627 (a) The academic medical center and health care
628 collaboratives organized under Section 37-115-50.1, together with
629 the Board of Trustees of State Institutions of Higher Learning
630 under which the academic medical center operates, are each (acting
631 individually and collectively) performing essential public
632 functions on behalf of the state, and other governmental entities
633 in the state.

634 (b) The needs of the residents of Mississippi can best
635 be served by the academic medical center and health care
636 collaboratives having the legal, financial and operational
637 flexibility to take full advantage of opportunities and challenges
638 presented by the evolving health care environment and to take
639 whatever actions are necessary to enable the academic medical
640 center and health care collaboratives' continuation as a health
641 system which provides the finest possible quality of care
642 consistent with reasonable costs and which serves the health care
643 needs of uninsured, underinsured residents in addition to its
644 scientific and educational missions.

645 (c) In this environment, the academic medical center
646 and its health care collaboratives must have the ability to
647 respond to changing conditions by having the power to develop
648 efficient and cost-effective methods and structures to provide for
649 health care needs, while maintaining a public mission and



650 character. Further, the academic medical center is a political
651 subdivision of the state. Accordingly, the Legislature finds that
652 there is a compelling interest in establishing a structure and
653 process for the academic medical center to adapt to this dynamic
654 environment, to operate efficiently, to offer competitive health
655 care services, to respond more effectively to new developments and
656 regulatory changes in the health care area, and to continue to
657 serve and promote the health, wellness and welfare of the citizens
658 of Mississippi. The acquisition, operation and financing of
659 hospitals and other health care facilities by the academic medical
660 are hereby declared to be for a public and governmental purpose
661 and a matter of public necessity.

662 (d) The geographic areas served by the academic medical
663 center and its health care collaboratives include rural
664 populations and other groups that experience significant health
665 disparities. Health disparities are differences in health status
666 when compared to the population overall, often characterized by
667 indicators such as higher incidence of disease and/or disability,
668 increased mortality rates, and lower life expectancies. Rural
669 risk factors for health disparities include geographic isolation,
670 lower socioeconomic status, higher rates of health risk behaviors,
671 and limited access to healthcare specialists and subspecialists.
672 As a result of these health disparities, the residents of areas
673 served by the academic medical center and its health care
674 collaboratives have high rates of mortality and morbidity, heart



675 disease, cancer, and other illnesses. The areas also include a
676 high percentage of uninsured individuals and Medicaid patients,
677 which are medically underserved groups. The academic medical
678 center and its health care collaboratives have demonstrated their
679 ability to provide high-quality healthcare and to improve health
680 conditions and outcomes as well as access to care. This act will
681 significantly strengthen the ability of the academic medical
682 center and its health care collaboratives to serve the health care
683 needs of the residents of their service areas.

684 (e) The investment of significant public assets by the
685 academic medical center, the academic medical center's investment
686 in health care collaboratives and their collective efforts to
687 provide high quality health care services to medically underserved
688 populations are jeopardized by potential limits on the ability of
689 the academic medical center and its health care collaboratives to
690 collaborate and consolidate with other public and private health
691 care facilities and providers. The Legislature expressly finds
692 that the benefits of collaboration and consolidation by the
693 academic medical center and its health care collaboratives
694 outweigh any adverse impact on competition. The benefits of the
695 academic medical center and its health care collaboratives efforts
696 to collaborate and consolidate include, but are not limited to,
697 preserving and expanding needed health care services in its
698 service areas; consolidating unneeded or duplicative health care
699 services; enhancing the quality of, and expanding access to,



700 health care delivered to medically underserved and rural
701 populations; and lowering costs and improving the efficiency of
702 the health care services it delivers. Based on the findings
703 contained in this section, the Legislature hereby affirmatively
704 expresses a policy to allow the academic medical center and health
705 care collaboratives to consolidate with hospitals, health care
706 facilities and other health care providers and to engage in
707 collaborative activities consistent with their health care
708 purposes, notwithstanding that those consolidations and
709 collaborations may have the effect of displacing competition in
710 the provision of hospital or other health care related services.
711 In engaging in such consolidations and collaborations with other
712 hospitals, health care facilities and providers, the academic
713 medical center and its health care collaboratives (acting
714 individually or collectively) shall be considered to be acting
715 pursuant to clearly articulated state policy as established in
716 this act and shall not be subject to federal or state antitrust
717 laws while so acting. With respect to the consolidations,
718 collaborative activities and other activities contemplated in this
719 act, the academic medical center and its health care
720 collaboratives (acting individually or collectively) and the
721 public or private entities with which it (or they) consolidate(s),
722 collaborate(s), or enter(s) into any of the transactions set forth
723 in this act, shall be immune from liability under the federal and
724 state antitrust laws and those activities are provided with state



725 action immunity from federal and state antitrust laws to the
726 fullest extent possible; provided, however, that the state action
727 immunity from federal and state antitrust laws shall not apply to
728 health care facility acquisitions or joint ventures in which the
729 academic medical center and its health care collaboratives (acting
730 individually or collectively) does not maintain a majority,
731 controlling interest in the acquired health care facility or joint
732 venture. Additionally, state action immunity shall not apply to
733 the activities of the academic medical center or any of its health
734 care collaboratives that are under the control of a private third
735 party.

736 (f) In furtherance of the findings and authorizations
737 contained in paragraph (e) above, if a court of competent
738 jurisdiction were to find that any of the activities of the
739 academic medical center and its health care collaboratives (acting
740 individually or collectively) authorized hereunder would be immune
741 from the application of state and federal antitrust laws under the
742 state action antitrust immunity doctrine pursuant to applicable
743 jurisprudence only if such activities were subject to what has
744 come to be known in relevant antitrust jurisprudence as "active
745 supervision" by the state, the Legislatures finds that the
746 academic medical center and its health care collaboratives are
747 subject to direct and indirect supervision of the Board of
748 Trustees of State Institutions of Higher Learning, which
749 supervision has been, is currently, and is required to continue to



750 be actively exercised by such constitutional body of state
751 government such that, even if such judicial requirement were
752 applied to the academic medical center and its health care
753 collaboratives with respect to application of the state action
754 antitrust immunity doctrine, the academic medical center and each
755 of its health care collaboratives (acting individually or
756 collectively), when exercising its powers under this act, shall
757 enjoy immunity from the application of state and federal antitrust
758 laws.

759 **SECTION 5.** The following shall be codified as Section
760 37-115-50.3, Mississippi Code of 1972:

761 37-115-50.3 (1) In addition to all powers granted in
762 Section 37-115-50.1, subject to any required approval of the Board
763 of Trustees of State Institutions of Higher Learning, the academic
764 medical center and its health care collaboratives (acting
765 individually or collectively) shall be empowered hereunder:

766 (a) To acquire hospitals, health care facilities and
767 other healthcare-related operations and assets, through direct
768 purchase, merger, consolidation, lease or other means;

769 (b) To form, establish, fund and operate nonprofit
770 corporations, limited liability companies or other organizations,
771 either directly or through a nonprofit corporation formed by the
772 academic medical center and its health care collaboratives (acting
773 individually or collectively), which are jointly owned with other
774 public or private hospitals, nonprofit or for-profit corporations,



775 or other healthcare-related organizations, for the purpose of
776 conducting activities within or outside of the service area the
777 academic medical center or its health care collaboratives for the
778 benefit of the academic medical center and its health care
779 collaboratives including, but not limited to, joint hospital
780 acquisitions, group purchasing, clinically integrated networks,
781 payor contracting, and joint requests for federal and state grants
782 and funding.

783 (c) To make capital contributions, loans, debt or
784 equity financing to or for any joint venture or similar
785 arrangement in which the academic medical center and its health
786 care collaboratives (acting individually or collectively), or any
787 nonprofit corporation formed or owned by the academic medical
788 center or one of its health care collaboratives, has or acquires
789 an ownership interest, and to guarantee loans and any other
790 obligations for such purposes;

791 (d) To have an ownership interest in, make capital
792 contributions to, and assume financial risk under, accountable
793 care organizations or similar organizations;

794 (e) To enter into any contract for a term of any
795 length, regardless of whether the length or term of the contract
796 exceeds the term of the board of trustees of a health care
797 collaborative;

798 (f) To create, establish, acquire, operate or support
799 subsidiaries and affiliates, either for-profit or nonprofit, to



800 assist the academic medical center and its health care
801 collaboratives (acting individually or collectively) in fulfilling
802 its purposes;

803 (g) To create, establish or support nonaffiliated for
804 profit or nonprofit corporations or other lawful business
805 organizations that operate and have as their purposes the
806 furtherance of the purposes of the academic medical center and its
807 health care collaboratives (acting individually or collectively);

808 (h) Without limiting the generality of any provisions
809 of this section, to accomplish and facilitate the creation,
810 establishment, acquisition, operation or support of any such
811 subsidiary, affiliate, nonaffiliated corporation or other lawful
812 business organization, by means of loans of funds, acquisition or
813 transfer of assets, leases of real or personal property, gifts and
814 grants of funds or guarantees of indebtedness of such
815 subsidiaries, affiliates and nonaffiliated corporations;

816 (i) Subject to the approval of the Board of Trustees of
817 State Institutions of Higher Learning (where applicable), to
818 exercise all powers granted hereunder in such a manner as the
819 academic medical center and its health care collaboratives (acting
820 individually or collectively) may determine to be consistent with
821 the purposes of this act, including the state action immunity
822 provided by this act from state and federal antitrust laws to the
823 fullest extent possible, notwithstanding that as a consequence of
824 such exercise of such powers it engages in activities that may be



825 deemed "anticompetitive" or which displace competition within the
826 meaning or contemplation of the antitrust laws of this state or of
827 the United States.

828 **SECTION 6.** It is the intent of the Legislature that this act
829 be liberally construed so as to give effect to the intent,
830 purposes and findings described in this act, and insofar as the
831 provisions of this act may be inconsistent with the provisions of
832 any other law, the provisions of this act shall be controlling.

833 **SECTION 7.** This act shall take effect and be in force from
834 and after its passage.

