

By: Representative Denny

To: Public Health and Human Services

HOUSE BILL NO. 289

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

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

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

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

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

17 41-61-65. (1) If, in the opinion of the medical examiner
18 investigating the case, it is advisable and in the public interest
19 that an autopsy or other study be made for the purpose of
20 determining the primary and/or contributing cause of death, an
21 autopsy or other study shall be made by the State Medical
22 Examiner, if he is a pathologist, or by a competent pathologist
23 designated by the State Medical Examiner. The State Medical
24 Examiner or designated pathologist may retain any tissues as
25 needed for further postmortem studies or documentation. A
26 complete autopsy report of findings and interpretations, prepared
27 on forms designated for this purpose, shall be submitted promptly
28 to the State Medical Examiner. Copies of the report shall be
29 furnished to the authorizing medical examiner, district attorney
30 and court clerk. A copy of the report shall be furnished to one

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

44 (2) Any medical examiner * * * performing authorized
45 investigations and any pathologist performing authorized autopsies
46 as provided in Sections 41-61-51 through 41-61-79, who in good
47 faith complies with the provisions of Sections 41-61-51 through
48 41-61-79 in the determination of the cause and/or manner of death
49 for the purpose of certification of that death, shall not be
50 liable for damages on account thereof, and shall be immune from
51 any civil liability that might otherwise be incurred or imposed.

52 (3) Family members or others who disagree with the medical
53 examiner's determination shall be able to petition and present
54 written argument to the State Medical Examiner for further review.
55 If the petitioner still disagrees, he may petition the circuit
56 court, which may, in its discretion, hold a formal hearing. In
57 all those proceedings, the State Medical Examiner and the county
58 medical examiner or county medical examiner investigator who
59 certified the information shall be made defendants. All costs of
60 the petitioning and hearing shall be borne by the petitioner.

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

63 41-37-7. A pathologist authorized to perform an autopsy as
64 provided in this chapter, * * * who in good faith complies with
65 the provisions of this chapter in the performance of an autopsy,
66 shall not be liable for damages on account thereof.

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

69 41-37-9. A circuit judge, chancellor or county judge of the
70 county or district where a person died or where the body of the
71 deceased person may be or where the mortal stroke or other cause
72 of death occurred, may, in his discretion, either in termtime or
73 in vacation, order an autopsy to be performed upon the body of the
74 deceased person (1) upon the petition of a county prosecuting
75 attorney of the county where the person died, or where the body of
76 the deceased person may be at the time or where the mortal stroke
77 or other cause of death occurred, or (2) upon petition of the
78 district attorney of the district where the person died, or where
79 the body of the deceased person may be at the time or where the
80 mortal stroke or other cause of death occurred. If the petition
81 is filed by the county prosecuting attorney or district attorney,
82 it shall contain allegations that the petitioner believes, has
83 reason to believe, or suspects that the deceased person came to
84 his death by some criminal means or agency, or that the cause of
85 justice would be promoted by having an autopsy performed upon the
86 body of the deceased person. The petition shall be sworn to and
87 shall be filed in the court of the judge or chancellor who makes
88 the order, and shall be docketed by the clerk as are other cases
89 or suits. If the body of the deceased person has already been
90 interred, the petition shall so state, and if an autopsy is
91 ordered, the order shall order the disinterment of the body for
92 the autopsy and shall order any lawful officer of the county where
93 the body may be buried to employ suitable help to disinter the
94 body and to keep it in a suitable place until the autopsy has been
95 performed. If there has been no interment of the body of the

96 deceased person, a copy of the order ordering an autopsy upon the
97 deceased shall be served by the sheriff of the county, or any
98 other person authorized to serve process, upon any person who may
99 be found in charge of any funeral home where the body may be, and
100 the funeral home shall hold the body for autopsy. If the body of
101 the deceased person is not found in any funeral home, the sheriff
102 of the county where it may be found shall take the body and keep
103 it in a suitable place until the autopsy has been performed. If
104 an autopsy is ordered as provided in this section, the petitioner
105 shall immediately secure the services of a qualified pathologist
106 to perform the autopsy.

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

109 41-37-11. The pathologist performing the autopsy in criminal
110 investigations may obtain the services of a chemist competent to
111 make a chemical analysis, or those services may be ordered by the
112 judge or chancellor in termtime or in vacation. The records of
113 the chemical analysis shall be made a part of the autopsy report.

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

116 41-37-13. In all cases where an autopsy is performed as
117 provided in Section 41-37-9, the pathologist making the autopsy
118 shall file a report, in duplicate, of the autopsy with the circuit
119 clerk of the county where the death is being investigated. The
120 circuit clerk shall keep and preserve the report and make it
121 available to the district attorney, county prosecuting attorney,
122 grand jury, coroner, and to the accused.

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

125 41-37-15. The pathologist performing the autopsy shall be
126 paid a fee not exceeding the sum of Four Hundred Dollars
127 (\$400.00), which sum shall be paid out of the treasury of the
128 county in the interest of which the autopsy was ordered, upon the

129 allowance and warrant of the board of supervisors of the
130 county. * * *

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

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

137 41-37-21. The pathologist performing the autopsy or the
138 chemist performing the analysis in criminal investigations may be
139 subpoenaed as a witness in any such criminal case. If subpoenaed
140 as a prosecution witness, he shall be paid a fee of Fifty Dollars
141 (\$50.00) per day as an expert witness for each day while in
142 attendance at the trial, and in addition thereto he shall be paid
143 Seven Cents (7¢) per mile for travel from his home to the location
144 of the trial and return. The fees * * * provided for in this
145 section shall be paid to prosecution witnesses as otherwise
146 provided for by law for the payment of * * * witness fees. If
147 subpoenaed as a witness by the defense, the pathologist or chemist
148 may collect a fee from the defendant not to exceed that prescribed
149 in this section for prosecution witnesses.

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

152 41-37-23. The executive officer of the * * * State Board of
153 Health or a county health officer may petition in like manner, as
154 is provided in Section 41-37-9, a circuit judge, chancellor, or
155 county judge in any county in which a person dies or where the
156 body of the deceased person may be, and the circuit judge,
157 chancellor, or county judge may order an autopsy to be performed
158 upon the body of the deceased person in the interest of public
159 health and welfare in cases where the cause of death is not known
160 and cannot be determined with reasonable certainty without an
161 autopsy and when it would appear to the judge or chancellor by the

162 petition and evidence in support thereof that death may have been
163 due to communicable disease or contagious disease or to poison,
164 foreign substance, radiation or for any other reason exact
165 knowledge as to which would be of benefit to the public health and
166 welfare. In those cases, the same fees as specified in criminal
167 investigations to the autopsy pathologist and chemist shall be
168 allowed by the board of supervisors out of the general fund of the
169 county in which the petition is filed, except that no fee shall be
170 allowed and paid to any pathologist or chemist who is a regular
171 salaried employee of the state or county. A copy of the report of
172 the autopsy pathologist and chemist in those cases shall be filed
173 with the clerk of the court in which the order was entered, with
174 the county health officer of the county and with the executive
175 officer of the State Board of Health.

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

178 41-37-25. An autopsy may be performed without court order by
179 a qualified pathologist when authorized by (a) the decedent,
180 during his lifetime, or (b) any of the following persons who * * *
181 have assumed custody of the body for the purpose of burial: a
182 surviving spouse, either parent or any person in loco parentis, a
183 descendant over the age of eighteen (18) years, a guardian, or the
184 next of kin. In the absence of any of the foregoing persons, any
185 friend of the deceased who has assumed responsibility for burial,
186 or any other person charged by law with responsibility for burial,
187 may give that consent. If two (2) or more persons have assumed
188 custody of the body of an adult for purposes of burial, the
189 consent of one (1) of those persons shall be deemed sufficient.

190 In the case of a minor, however, the consent of either parent
191 shall be deemed sufficient, unless the other parent gives written
192 notice to the pathologist who is to perform the autopsy of the
193 parent's objection thereto before the commencement of the autopsy.
194 If neither parent has legal custody of the minor, the guardian

195 shall have the right to authorize an autopsy. The fees provided
196 in this chapter for autopsies in criminal investigations shall not
197 be applicable to this section.

198 No autopsy shall be held under this section over the
199 objection of the surviving spouse, or if there is no surviving
200 spouse, or any surviving parent, or if there is neither a
201 surviving spouse nor parent, then of any surviving child.

202 **SECTION 11.** This act shall take effect and be in force from
203 and after July 1, 2005.