

By: Representative Holland

To: Public Health and Human
Services

HOUSE BILL NO. 977

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 BEFORE THE DESTRUCTION OF ANY PROPERTY UNDER THE
11 PUBLIC HEALTH EMERGENCY POWERS ACT; TO AUTHORIZE THE STATE BOARD
12 OF HEALTH TO REQUIRE ASSISTANCE BY IN-STATE HEALTH CARE PROVIDERS
13 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" means an infectious disease
92 that can be transmitted from person to person, animal to person,
93 or insect to person.

94 (h) "Coroners," "medical examiners" and "funeral
95 directors" have the same meanings as provided in the laws of this
96 state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

205 After the declaration of a state of public health emergency, the
206 State Board of Health, acting through the State Department of
207 Health, may exercise, in coordination with state agencies, local
208 governments and other organizations responsible for implementation
209 of the emergency support functions in the State Emergency
210 Operations Plan for handling dangerous facilities and materials,
211 for such period as the state of public health emergency exists,
212 the following powers over dangerous facilities or 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 those
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 that 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 before 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, before 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 the 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 product
310 necessary to protect the health, safety and welfare of the people
311 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 those items

326 or 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, before 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 those 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
360 with the State Board of Health, may exercise, for such period as
361 the state of public health emergency exists, in addition to
362 existing emergency powers, the following emergency powers
363 regarding licensing of health personnel:

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

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

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

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

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

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

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

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

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

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

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