

By: Senator(s) Dawkins

To: Public Health and
Welfare

SENATE BILL NO. 2972

1 AN ACT TO AMEND SECTION 33-15-11, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY THE AUTHORITY OF THE GOVERNOR TO DECLARE A STATE OF
3 ALERT; TO ENACT A DEFINITION OF "TERRORISM"; TO AMEND SECTION
4 13-1-21, MISSISSIPPI CODE OF 1972, TO PERMIT DISCLOSURE OF MEDICAL
5 INFORMATION IN THE EVENT OF AN EMERGENCY DECLARATION BY THE
6 GOVERNOR; TO AMEND SECTION 13-1-23, MISSISSIPPI CODE OF 1972, TO
7 ALLOW DECLARATION OF PRESUMPTION OF DEATH IN SITUATIONS OF MASS
8 CASUALTIES; TO AMEND SECTION 41-23-1, MISSISSIPPI CODE OF 1972, TO
9 EXPAND THE CLASSIFICATION OF DISEASES, CONDITIONS OR THREATS WHICH
10 ARE REPORTABLE, TO REQUIRE VETERINARIANS AND OTHER PERSONS WORKING
11 IN THE ANIMAL HEALTH FIELD TO REPORT, AND TO REQUIRE PHARMACIST
12 REPORTING OF UNUSUAL PRESCRIPTIONS OR RATES OF PRESCRIPTIONS; TO
13 AMEND SECTION 41-23-2, MISSISSIPPI CODE OF 1972, TO REVISE THE
14 PENALTY FOR ANY PERSON VIOLATING A LAWFUL ORDER OF THE COUNTY,
15 DISTRICT OR STATE HEALTH OFFICER; TO AMEND SECTION 41-23-5,
16 MISSISSIPPI CODE OF 1972, TO REVISE THE AUTHORITY OF THE STATE
17 HEALTH OFFICER TO PROTECT THE PUBLIC HEALTH; TO AMEND SECTION
18 41-3-15, MISSISSIPPI CODE OF 1972, TO REVISE THE AUTHORITY OF THE
19 DEPARTMENT OF HEALTH TO INSPECT ANY PLACE RATHER THAN ONLY A
20 PUBLIC PLACE; TO CREATE NEW SECTION 41-39-55, MISSISSIPPI CODE OF
21 1972, TO PROVIDE EMERGENCY MEASURES TO HANDLE LARGE NUMBERS OF
22 CORPSES OR HUMAN REMAINS; TO AMEND SECTION 41-29-133, MISSISSIPPI
23 CODE OF 1972, TO CREATE A CENTRAL REPORTING BUREAU FOR PHARMACISTS
24 TO REPORT CERTAIN INFORMATION CONCERNING UNUSUAL PRESCRIPTIONS OR
25 RATES OF PRESCRIPTIONS; TO AMEND SECTION 11-46-9, MISSISSIPPI CODE
26 OF 1972, TO PROVIDE GOVERNMENTAL IMMUNITY FOR RESPONSE TO A
27 TERRORISTIC THREAT OR ACT; AND FOR RELATED PURPOSES.

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

29 **SECTION 1.** Section 33-15-11, Mississippi Code of 1972, is
30 amended as follows:

31 33-15-11. (a) The Governor shall have general direction and
32 control of the activities of the Emergency Management Agency and
33 Council and shall be responsible for the carrying out of the
34 provisions of this article, and in the event of a man-made,
35 technological or natural disaster or emergency beyond local
36 control, may assume direct operational control over all or any
37 part of the emergency management functions within this state.

38 (b) In performing his duties under this article, the
39 Governor is further authorized and empowered:

40 (1) To make, amend and rescind the necessary orders,
41 rules and regulations to carry out the provisions of this article
42 with due consideration of the plans of the federal government, and
43 to enter into disaster assistance grants and agreements with the
44 federal government under the terms as may be required by federal
45 law.

46 (2) To work with the Mississippi Emergency Management
47 Agency in preparing a comprehensive plan and program for the
48 emergency management of this state, such plan and program to be
49 integrated into and coordinated with the emergency management
50 plans of the federal government and of other states to the fullest
51 possible extent, and to coordinate the preparation of plans and
52 programs for emergency management by the political subdivisions of
53 this state, such local plans to be integrated into and coordinated
54 with the emergency management plan and program of this state to
55 the fullest possible extent.

56 (3) In accordance with such plan and program for
57 emergency management of this state, to ascertain the requirements
58 of the state or the political subdivisions thereof for food or
59 clothing or other necessities of life in the event of attack or
60 natural or man-made or technological disasters and to plan for and
61 procure supplies, medicines, materials and equipment, and to use
62 and employ from time to time any of the property, services and
63 resources within the state, for the purposes set forth in this
64 article; to make surveys of the industries, resources and
65 facilities within the state as are necessary to carry out the
66 purposes of this article; to institute training programs and
67 public information programs, and to take all other preparatory
68 steps, including the partial or full mobilization of emergency
69 management organizations in advance of actual disaster, to insure
70 the furnishing of adequately trained and equipped forces of
71 emergency management personnel in time of need.

72 (4) To cooperate with the President and the heads of
73 the Armed Forces, and the Emergency Management Agency of the
74 United States, and with the officers and agencies of other states
75 in matters pertaining to the emergency management of the state and
76 nation and the incidents thereof; and in connection therewith, to
77 take any measures which he may deem proper to carry into effect
78 any request of the President and the appropriate federal officers
79 and agencies, for any action looking to emergency management,
80 including the direction or control of (a) blackouts and practice
81 blackouts, air raid drills, mobilization of emergency management
82 forces, and other tests and exercises, (b) warnings and signals
83 for drills or attacks and the mechanical devices to be used in
84 connection therewith, (c) the effective screening or extinguishing
85 of all lights and lighting devices and appliances, (d) shutting
86 off water mains, gas mains, electric power connections and the
87 suspension of all other utility services, (e) the conduct of
88 civilians and the movement and cessation of movement of
89 pedestrians and vehicular traffic during, prior and subsequent to
90 drills or attack, (f) public meetings or gatherings under
91 emergency conditions, and (g) the evacuation and reception of the
92 civilian population.

93 (5) To take such action and give such directions to
94 state and local law enforcement officers and agencies as may be
95 reasonable and necessary for the purpose of securing compliance
96 with the provisions of this article and with the orders, rules and
97 regulations made pursuant thereto.

98 (6) To employ such measures and give such directions to
99 the state or local boards of health as may be reasonably necessary
100 for the purpose of securing compliance with the provisions of this
101 article or with the findings or recommendations of such boards of
102 health by reason of conditions arising from enemy attack or the
103 threat of enemy attack or natural, man-made or technological
104 disaster.

105 (7) To utilize the services and facilities of existing
106 officers and agencies of the state and of the political
107 subdivisions thereof; and all such officers and agencies shall
108 cooperate with and extend their services and facilities to the
109 Governor as he may request.

110 (8) To establish agencies and offices and to appoint
111 executive, technical, clerical and other personnel as may be
112 necessary to carry out the provisions of this article including,
113 with due consideration to the recommendation of the local
114 authorities, part-time or full-time state and regional area
115 directors.

116 (9) To delegate any authority vested in him under this
117 article, and to provide for the subdelegation of any such
118 authority.

119 (10) On behalf of this state to enter into reciprocal
120 aid agreements or compacts with other states and the federal
121 government, either on a statewide basis or local political
122 subdivision basis or with a neighboring state or province of a
123 foreign country. Such mutual aid arrangements shall be limited to
124 the furnishings or exchange of food, clothing, medicine and other
125 supplies; engineering services; emergency housing; police
126 services; national or state guards while under the control of the
127 state; health, medical and related services; fire fighting,
128 rescue, transportation and construction services and equipment;
129 personnel necessary to provide or conduct these services; and such
130 other supplies, equipment, facilities, personnel and services as
131 may be needed; the reimbursement of costs and expenses for
132 equipment, supplies, personnel and similar items for mobile
133 support units, fire fighting and police units and health units;
134 and on such terms and conditions as are deemed necessary.

135 (11) To sponsor and develop mutual aid plans and
136 agreements between the political subdivisions of the state,

137 similar to the mutual aid arrangements with other states referred
138 to above.

139 (12) To collect information and data for assessment of
140 vulnerabilities and capabilities within the borders of Mississippi
141 as it pertains to the nation and state's security and homeland
142 defense. This information shall be exempt from the Mississippi
143 Public Records Act, Section 25-61-1 et seq.

144 (13) Authorize any agency or arm of the state to create
145 a special emergency management revolving fund, accept donations,
146 contributions, fees, grants, including federal funds, as may be
147 necessary for such agency or arm of the state to administer its
148 functions of this article as set forth in the Executive Order of
149 the Governor.

150 (14) To authorize the Commissioner of Public Safety to
151 select, train, organize and equip a ready reserve of auxiliary
152 highway patrolmen.

153 (15) To suspend or limit the sale, dispensing or
154 transportation of alcoholic beverages, firearms, explosives and
155 combustibles.

156 (16) To control, restrict and regulate by rationing,
157 freezing, use of quotas, prohibitions on shipments, price fixing,
158 allocation or other means, the use, sale or distribution of food,
159 feed, fuel, clothing and other commodities, materials, goods or
160 services.

161 (17) To proclaim a state of emergency or state of alert
162 in an area affected or likely to be affected thereby when he finds
163 that the conditions described in Section 33-15-5(g) exist, or when
164 he is requested to do so by the mayor of a municipality or by the
165 president of the board of supervisors of a county, or when he
166 finds that a local authority is unable to cope with the emergency.
167 Such proclamation shall be in writing and shall take effect
168 immediately upon its execution by the Governor. As soon
169 thereafter as possible, such proclamation shall be filed with the

170 Secretary of State and be given widespread notice and publicity.
171 The Governor, upon advice of the director, shall review the need
172 for continuing the state of emergency at least every thirty (30)
173 days until the emergency is terminated and shall proclaim a
174 reduction of area or the termination of the state of emergency at
175 the earliest possible date that conditions warrant.

176 (18) To declare an emergency impact area when he finds
177 that the conditions described in Section 33-15-5(o) exist. The
178 proclamation shall be in writing and shall take effect immediately
179 upon its execution by the Governor. As soon as possible, the
180 proclamation shall be filed with the Secretary of State and be
181 given widespread notice and publicity. The Governor shall review
182 the need for continuing the declaration of emergency impact area
183 at least every thirty (30) days until the emergency is terminated,
184 and shall proclaim the reduction of the emergency impact area or
185 termination of the declaration of emergency impact area at the
186 earliest date or dates possible.

187 (c) In addition to the powers conferred upon the Governor in
188 this section, the Legislature hereby expressly delegates to the
189 Governor the following powers and duties in the event of an
190 impending enemy attack, an enemy attack, or a man-made,
191 technological or natural disaster where such disaster is beyond
192 local control:

193 (1) To suspend the provisions of any regulatory statute
194 prescribing the procedures for conduct of state business, or the
195 orders, rules or regulations of any state agency, if strict
196 compliance with the provisions of any statute, order, rule or
197 regulation would in any way prevent, hinder or delay necessary
198 action in coping with a disaster or emergency.

199 (2) To transfer the direction, personnel or functions
200 of state agencies, boards, commissions or units thereof for the
201 purpose of performing or facilitating disaster or emergency
202 services.

203 (3) To commandeer or utilize any private property if
204 necessary to cope with a disaster or emergency, provided that such
205 private property so commandeered or utilized shall be paid for
206 under terms and conditions agreed upon by the participating
207 parties. The owner of said property shall immediately be given a
208 receipt for the said private property and said receipt shall serve
209 as a valid claim against the Treasury of the State of Mississippi
210 for the agreed upon market value of said property.

211 (4) To perform and exercise such other functions,
212 powers and duties as may be necessary to promote and secure the
213 safety and protection of the civilian population in coping with a
214 disaster or emergency.

215 **SECTION 2.** The term "terrorism" means activities that
216 involve violent acts or acts dangerous to human life that are
217 intended to and do put another person in fear of serious bodily
218 harm under circumstances manifesting extreme indifference to the
219 value of human life that appear to be intended to intimidate or
220 coerce a civilian population or to affect the conduct of
221 government through the activities.

222 **SECTION 3.** Section 13-1-21, Mississippi Code of 1972, is
223 amended as follows:

224 13-1-21. (1) All communications made to a physician,
225 osteopath, dentist, hospital, nurse, pharmacist, podiatrist,
226 optometrist or chiropractor by a patient under his charge or by
227 one seeking professional advice are hereby declared to be
228 privileged, and such party shall not be required to disclose the
229 same in any legal proceeding except at the instance of the patient
230 or, in case of the death of the patient, at the instance of his
231 personal representative or legal heirs in case there be no
232 personal representative, or except, if the validity of the will of
233 the decedent is in question, at the instance of the personal
234 representative or any of the legal heirs or any contestant or
235 proponent of the will.

236 (2) There shall be waiver of the medical privilege of
237 patients regarding the release of medical information to health
238 care personnel, the State Board of Health or local health
239 departments, made to comply with Sections 41-3-15, 41-23-1 and
240 41-23-2 and related rules * * *. The medical privilege likewise
241 shall be waived to allow any physician, osteopath, dentist,
242 hospital, nurse, pharmacist, podiatrist, optometrist or
243 chiropractor to report to the State Department of Health necessary
244 information regarding any person afflicted with any communicable
245 disease or infected with the causative agent thereof who neglects
246 or refuses to comply with accepted protective measures to prevent
247 the transmission of the communicable disease or in cases of
248 actual, threatened or reasonably suspected chemical or biological
249 terrorism.

250 (3) Willful violations of the provisions of this section
251 shall constitute a misdemeanor and shall be punishable as provided
252 for by law. Any physician, osteopath, dentist, hospital, nurse,
253 pharmacist, podiatrist, optometrist, or chiropractor shall be
254 civilly liable for damages for any willful or reckless and wanton
255 acts or omissions constituting such violations.

256 (4) In any action commenced or claim made after July 1,
257 1983, against a physician, hospital, hospital employee, osteopath,
258 dentist, nurse, pharmacist, podiatrist, optometrist or
259 chiropractor for professional services rendered or which should
260 have been rendered, the delivery of written notice of such claim
261 or the filing of such an action shall constitute a waiver of the
262 medical privilege and any medical information relevant to the
263 allegation upon which the cause of action or claim is based shall
264 be disclosed upon the request of the defendant, or his or her
265 counsel.

266 (5) In any disciplinary action commencing on or after July
267 1, 1987, against a medical physician, an osteopathic physician or
268 a podiatrist pursuant to the provisions of Sections 73-25-1

269 through 73-25-39, 73-25-51 through 73-25-67, 73-25-81 through
270 73-25-95 and 73-27-1 through 73-27-19, waiver of the medical
271 privilege of a patient to the extent of any information other than
272 that which would identify the patient shall be implied.

273 **SECTION 4.** Section 13-1-23, Mississippi Code of 1972, is
274 amended as follows:

275 13-1-23. (1) Any person who shall remain beyond the sea, or
276 absent himself from this state, or conceal himself in this state,
277 for seven (7) years successively without being heard of, shall be
278 presumed to be dead in any case where his death shall come in
279 question, unless proof be made that he was alive within that time.
280 Any property or estate recovered in any such case shall be
281 restored to the person evicted or deprived thereof, if, in a
282 subsequent action, it shall be proved that the person so presumed
283 to be dead is living.

284 (2) In the event the Governor declares a state of emergency
285 due to terrorism or other disaster resulting in mass casualties,
286 the chancery court may order presumption of death in the absence
287 of recovery of a corpse after a reasonable period of less than
288 seven (7) years should the person be unable to be located with
289 whereabouts unknown, and it reasonably appears to the court that
290 the person died as a result of the event causing the mass
291 casualties.

292 **SECTION 5.** Section 41-23-1, Mississippi Code of 1972, is
293 amended as follows:

294 41-23-1. (1) The State Board of Health shall adopt rules
295 and regulations (a) defining and classifying communicable diseases
296 and other diseases, conditions and threats that are a danger to
297 health based upon the characteristics of the disease, condition or
298 threat; and (b) establishing reporting, monitoring, examination,
299 treatment and preventive procedures for those diseases, conditions
300 or threats.

301 (2) Upon the death of any person who has been diagnosed as
302 having Human Immunodeficiency Virus/Acquired Immune Deficiency
303 Syndrome (HIV/AIDS) or any Class 1 disease as designated by the
304 State Board of Health, in a hospital or other health care
305 facility, in all other cases where there is an attending
306 physician, and in cases in which the medical examiner, as defined
307 in Section 41-61-53(f), investigates and certifies the cause of
308 death, the attending physician, the person in charge of the
309 hospital or health care facility, or the medical examiner, as the
310 case may be, shall report as soon as practicable to the Executive
311 Officer of the State Board of Health or to other authorities the
312 cause or contributing cause of death as required by the State
313 Board of Health. Such reporting shall be according to procedures
314 as required by the State Board of Health.

315 (3) Upon the death of any person who has been diagnosed as
316 having Human Immunodeficiency Virus/Acquired Immune Deficiency
317 Syndrome (HIV/AIDS), where there is not an attending physician,
318 any family member or other person making disposition of the body
319 who knows that such decedent had been diagnosed as having HIV/AIDS
320 shall report this fact to the medical examiner as defined in
321 Section 41-61-53(f), who shall report as soon as practicable to
322 the Executive Officer of the State Board of Health or to other
323 authorities the cause or contributing cause of death as required
324 by the State Board of Health. Such reporting shall be according
325 to procedures as required by the State Board of Health.

326 (4) Every practicing or licensed physician, or person in
327 charge of a hospital, health care facility, insurance company
328 which causes to be performed blood tests for underwriting purposes
329 or laboratory, shall report immediately to the Executive Officer
330 of the State Board of Health or to other authorities as required
331 by the State Board of Health every case of such diseases and
332 conditions as shall be required to be reported by the State Board
333 of Health. Such reporting shall be according to procedures, and

334 shall include such information about the case, as shall be
335 required by the State Board of Health. Insurance companies having
336 such blood test results shall report immediately to the Executive
337 Officer of the State Board of Health or to other authorities as
338 required by the State Board of Health every case of such diseases
339 and conditions as shall be required to be reported by the State
340 Board of Health. The insurance company shall notify the
341 individual on whom the blood test was performed in writing by
342 certified mail of an adverse underwriting decision based upon the
343 results of such individual's blood test but shall not disclose the
344 specific results of such blood tests to the individual. The
345 insurance company shall also inform the individual on whom the
346 blood test was performed that the results of the blood test will
347 be sent to the physician designated by the individual at the time
348 of application and that such physician should be contacted for
349 information regarding the blood test results. If a physician was
350 not designated at the time of application, the insurance company
351 shall request that the individual name a physician to whom a copy
352 of the blood test can be sent.

353 (5) Any practicing or licensed physician, or person in
354 charge of a hospital or health care facility, who knows that a
355 patient has a medical condition specified by the Department of
356 Health as requiring special precautions by health care providers,
357 shall report this fact and the need for appropriate precautions to
358 any other institution or provider of health care services to whom
359 such patient is transferred or referred, according to regulations
360 established by the State Board of Health.

361 (6) Any practicing or licensed physician or person in charge
362 of a hospital, health care facility or laboratory who fails to
363 make the reports required under this section regarding Human
364 Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
365 (HIV/AIDS) or any Class 1 disease or condition as designated by
366 the State Board of Health shall be reported to the Board of

367 Medical Licensure, in the case of a physician, or to the
368 applicable licensing agency in the case of institutions, and such
369 failure shall be grounds for suspension of license.

370 (7) Every veterinarian, livestock owner, veterinary
371 diagnostic laboratory director or other person having the care of
372 animals shall report animals having or suspected of having any
373 disease that may be caused by bioterrorism, epidemic or pandemic
374 disease, or novel and highly fatal infectious agents or biological
375 or other toxins that might pose a substantial risk of a
376 significant number of human or animal fatalities or incidents of
377 permanent or long-term disability.

378 (8) Any person other than a practicing or licensed
379 physician, or person in charge of a hospital or health care
380 facility, willfully failing to make the reports required under
381 this section shall be guilty of a misdemeanor and, upon
382 conviction, shall be punished by a fine of not more than Five
383 Hundred Dollars (\$500.00) or by confinement in the county jail for
384 not more than thirty (30) days, or both.

385 (9) The provisions of this section are cumulative and
386 supplemental to any other provision of law, and a conviction or
387 penalty imposed under this section shall not preclude any other
388 action at law, proceedings for professional discipline or other
389 criminal proceedings.

390 (10) Notwithstanding any law of this state to the contrary,
391 the State Board of Health is authorized to establish the rules by
392 which exceptions may be made to the confidentiality provisions of
393 the laws of this state for the notification of third parties of an
394 individual's infection with any Class 1 or Class 2 disease, as
395 designated by the State Board of Health, when exposure is
396 indicated or there exists a threat to the public health and
397 welfare. All notifications authorized by this section shall be
398 within the rules established according to this subsection. All
399 persons who receive notification of the infectious condition of an

400 individual under this subsection and the rules established under
401 this subsection shall hold such information in the strictest of
402 confidence and privilege, shall not reveal the information to
403 others, and shall take only those actions necessary to protect the
404 health of the infected person or other persons where there is a
405 foreseeable, real or probable risk of transmission of the disease.

406 (11) Each public or private correctional facility housing
407 state offenders, federal offenders or offenders from any other
408 jurisdiction shall require all offenders in the facility to be
409 tested for tuberculosis and Human Immunodeficiency Virus (HIV) in
410 conjunction with the rules and regulations of the State Department
411 of Health. The reporting shall be according to procedures and
412 shall include any information about the case that is required by
413 the State Board of Health. In order to carry out the provisions
414 of this section, the following shall apply:

415 (a) Any such public or private correctional facility
416 may contract with the Mississippi Department of Corrections, the
417 Mississippi State Department of Health, or other such appropriate
418 state, federal or local entity for the inspection, monitoring or
419 provision of any assistance necessary or desirable to maintain
420 appropriate facilities for the purpose of identification,
421 prevention, and treatment of communicable diseases and other
422 conditions considered prejudicial to public health; and

423 (b) Any such public or private correctional facility
424 shall grant representatives of the State Department of Health, in
425 the discharge of its duties, access to all areas of the facility
426 and to the offenders and staff at all times. The facility shall
427 reimburse the State Department of Health for all costs incurred
428 for the control of communicable diseases or other conditions
429 prejudicial to public health in the facility and for the costs
430 incurred for the control of communicable diseases or other
431 conditions prejudicial to public health spreading from the

432 facility, staff or inmates to other individuals or property in the
433 county or state.

434 **SECTION 6.** Section 41-23-2, Mississippi Code of 1972, is
435 amended as follows:

436 41-23-2. Any person who shall knowingly and willfully
437 violate the lawful order of the county, district or State Health
438 Officer where that person is afflicted with a life-threatening
439 communicable disease or condition or the causative agent thereof,
440 or who shall knowingly and willfully violate the lawful order of
441 the county, district or State Health Officer subsequent to the
442 issuance by the Governor of an order declaring a state of alert or
443 emergency due to the health threat where such order is intended to
444 prevent the spread of a disease, condition or threat which poses a
445 clear and present danger to the public health, shall be guilty of
446 a felony and, upon conviction, shall be punished by a fine not
447 exceeding Five Thousand Dollars (\$5,000.00) or by imprisonment in
448 the Penitentiary for not more than five (5) years, or by both.

449 **SECTION 7.** Section 41-23-5, Mississippi Code of 1972, is
450 amended as follows:

451 41-23-5. (1) The State Department of Health shall have the
452 authority to investigate and control the causes of epidemic,
453 infectious and other disease, condition or threat affecting the
454 public health, including the authority to establish, maintain and
455 enforce isolation and quarantine and decontaminate buildings, and
456 in pursuance thereof, to exercise such physical control over
457 property and individuals as the department may find necessary for
458 the protection of the public health.

459 (2) Notwithstanding any other provision of law to the
460 contrary, following a declaration of emergency or war emergency by
461 the Governor, the State Health Officer may exercise such authority
462 as he deems proper and necessary to protect the public health,
463 including investigation and certification as to the cause of

464 death, and may appoint private physicians to conduct said
465 investigations into and certifications of the cause of death.

466 **SECTION 8.** Section 41-3-15, Mississippi Code of 1972, is
467 amended as follows:

468 41-3-15. (1) There shall be a State Department of Health
469 which shall be organized into such bureaus and divisions as are
470 considered necessary by the executive officer, and shall be
471 assigned appropriate functions as are required of the State Board
472 of Health by law, subject to the approval of the board.

473 (2) The State Board of Health shall have the authority to
474 establish an Office of Rural Health within the department. The
475 duties and responsibilities of this office shall include the
476 following:

477 (a) To collect and evaluate data on rural health
478 conditions and needs;

479 (b) To engage in policy analysis, policy development
480 and economic impact studies with regard to rural health issues;

481 (c) To develop and implement plans and provide
482 technical assistance to enable community health systems to respond
483 to various changes in their circumstances;

484 (d) To plan and assist in professional recruitment and
485 retention of medical professionals and assistants; and

486 (e) To establish information clearinghouses to improve
487 access to and sharing of rural health care information.

488 (3) The State Board of Health shall have general supervision
489 of the health interests of the people of the state and to exercise
490 the rights, powers and duties of those acts which it is authorized
491 by law to enforce.

492 (4) The State Board of Health shall have authority:

493 (a) To make investigations and inquiries with respect
494 to the causes of disease and death, and to investigate the effect
495 of environment, including conditions of employment and other
496 conditions which may affect health, and to make such other

497 investigations as it may deem necessary for the preservation and
498 improvement of health.

499 (b) To make such sanitary investigations as it may,
500 from time to time, deem necessary for the protection and
501 improvement of health and to investigate nuisance questions which
502 affect the security of life and health within the state.

503 (c) To direct and control sanitary and quarantine
504 measures for dealing with all diseases within the state possible
505 to suppress same and prevent their spread.

506 (d) To obtain, collect and preserve such information
507 relative to mortality, morbidity, disease and health as may be
508 useful in the discharge of its duties or may contribute to the
509 prevention of disease or the promotion of health in this state.

510 (e) To enter into contracts or agreements with any
511 other state or federal agency, or with any private person,
512 organization or group capable of contracting, if it finds such
513 action to be in the public interest.

514 (f) To charge and collect reasonable fees for health
515 services, including immunizations, inspections and related
516 activities, and the board shall charge fees for such services;
517 provided, however, if it is determined that a person receiving
518 services is unable to pay the total fee, the board shall collect
519 any amount such person is able to pay.

520 (g) To accept gifts, trusts, bequests, grants,
521 endowments or transfers of property of any kind.

522 (h) To receive monies coming to it by way of fees for
523 services or by appropriations.

524 (i) (i) To establish standards for, issue permits and
525 exercise control over, any cafes, restaurants, food or drink
526 stands, sandwich manufacturing establishments, and all other
527 establishments, other than churches, church-related and private
528 schools, and other nonprofit or charitable organizations, where

529 food or drink is regularly prepared, handled and served for pay;
530 and

531 (ii) To require that a permit be obtained from the
532 Department of Health before such persons begin operation. If any
533 such person fails to obtain the permit required herein, the State
534 Board of Health, after due notice and opportunity for a hearing,
535 may impose a monetary penalty not to exceed One Thousand Dollars
536 (\$1,000.00) for each violation. However, the department is not
537 authorized to impose a monetary penalty against any person whose
538 gross annual prepared food sales are less than Five Thousand
539 Dollars (\$5,000.00). Money collected by the board under this item
540 shall be deposited to the credit of the State General Fund of the
541 State Treasury. This subparagraph (ii) shall stand repealed on
542 July 1, 2007.

543 (j) To promulgate rules and regulations and exercise
544 control over the production and sale of milk pursuant to the
545 provisions of Sections 75-31-41 through 75-31-49.

546 (k) On presentation of proper authority, to enter into
547 or onto and inspect any * * * place or building where the State
548 Health Officer or his representative deems it necessary and proper
549 to enter for the discovery and suppression of disease and for the
550 enforcement of any health or sanitary laws and regulations in the
551 state.

552 (l) To conduct investigations, inquiries and hearings,
553 and to issue subpoenas for the attendance of witnesses and the
554 production of books and records at any hearing when authorized and
555 required by statute to be conducted by the State Health Officer or
556 the State Board of Health.

557 (m) To employ, subject to the regulations of the State
558 Personnel Board, qualified professional personnel in the subject
559 matter or fields of each bureau, and such other technical and
560 clerical staff as may be required for the operation of the
561 department. The executive officer shall be the appointing

562 authority for the department, and shall have the power to delegate
563 the authority to appoint or dismiss employees to appropriate
564 subordinates, subject to the rules and regulations of the State
565 Personnel Board.

566 (n) To promulgate rules and regulations, and to collect
567 data and information, on (i) the delivery of services through the
568 practice of telemedicine; and (ii) the use of electronic records
569 for the delivery of telemedicine services.

570 (o) To enforce and regulate domestic and imported fish
571 as authorized under Section 69-7-601 et seq.

572 (5) (a) The State Board of Health shall have the authority,
573 in its discretion, to establish programs to promote the public
574 health, to be administered by the State Department of Health.
575 Specifically, such programs may include, but shall not be limited
576 to, programs in the following areas:

577 (i) Maternal and child health;

578 (ii) Family planning;

579 (iii) Pediatric services;

580 (iv) Services to crippled and disabled children;

581 (v) Control of communicable and noncommunicable

582 disease;

583 (vi) Child care licensure;

584 (vii) Radiological health;

585 (viii) Dental health;

586 (ix) Milk sanitation;

587 (x) Occupational safety and health;

588 (xi) Food, vector control and general sanitation;

589 (xii) Protection of drinking water;

590 (xiii) Sanitation in food handling establishments

591 open to the public;

592 (xiv) Registration of births and deaths and other

593 vital events;

594 (xv) Such public health programs and services as
595 may be assigned to the State Board of Health by the Legislature or
596 by executive order; and

597 (xvi) Regulation of domestic and imported fish for
598 human consumption.

599 (b) The State Board of Health and State Department of
600 Health shall not be authorized to sell, transfer, alienate or
601 otherwise dispose of any of the home health agencies owned and
602 operated by the department on January 1, 1995, and shall not be
603 authorized to sell, transfer, assign, alienate or otherwise
604 dispose of the license of any of those home health agencies,
605 except upon the specific authorization of the Legislature by an
606 amendment to this section. However, this paragraph (b) shall not
607 prevent the board or the department from closing or terminating
608 the operation of any home health agency owned and operated by the
609 department, or closing or terminating any office, branch office or
610 clinic of any such home health agency, or otherwise discontinuing
611 the providing of home health services through any such home health
612 agency, office, branch office or clinic, if the board first
613 demonstrates that there are other providers of home health
614 services in the area being served by the department's home health
615 agency, office, branch office or clinic that will be able to
616 provide adequate home health services to the residents of the area
617 if the department's home health agency, office, branch office or
618 clinic is closed or otherwise discontinues the providing of home
619 health services. This demonstration by the board that there are
620 other providers of adequate home health services in the area shall
621 be spread at length upon the minutes of the board at a regular or
622 special meeting of the board at least thirty (30) days before a
623 home health agency, office, branch office or clinic is proposed to
624 be closed or otherwise discontinue the providing of home health
625 services.

626 (c) The State Department of Health may undertake such
627 technical programs and activities as may be required for the
628 support and operation of such programs, including maintaining
629 physical, chemical, bacteriological and radiological laboratories,
630 and may make such diagnostic tests for diseases and tests for the
631 evaluation of health hazards as may be deemed necessary for the
632 protection of the people of the state.

633 (6) (a) The State Board of Health shall administer the
634 local governments and rural water systems improvements loan
635 program in accordance with the provisions of Section 41-3-16.

636 (b) The State Board of Health shall have authority:

637 (i) To enter into capitalization grant agreements
638 with the United States Environmental Protection Agency, or any
639 successor agency thereto;

640 (ii) To accept capitalization grant awards made
641 under the federal Safe Drinking Water Act, as amended;

642 (iii) To provide annual reports and audits to the
643 United States Environmental Protection Agency, as may be required
644 by federal capitalization grant agreements; and

645 (iv) To establish and collect fees to defray the
646 reasonable costs of administering the revolving fund or emergency
647 fund if the State Board of Health determines that such costs will
648 exceed the limitations established in the federal Safe Drinking
649 Water Act, as amended. The administration fees may be included in
650 loan amounts to loan recipients for the purpose of facilitating
651 payment to the board; however, such fees may not exceed five
652 percent (5%) of the loan amount.

653 **SECTION 9.** The following shall be codified as Section
654 41-39-55, Mississippi Code of 1972:

655 41-39-55. The Mississippi State Board of Health may
656 exercise, for such period as a state of emergency or public health
657 emergency exists, the following powers regarding the safe disposal
658 of corpses:

659 (a) Adopt and enforce measures to provide for the safe
660 disposal of corpses as may be reasonably necessary for emergency
661 response. Such measures may include, but are not limited to, the
662 embalming, burial, cremation, interment, disinterment,
663 transportation and disposal of corpses.

664 (b) Take possession of or control of any corpse or
665 other remains.

666 (c) Dispose of or order the disposal of any corpse or
667 other remains of a person who has died of an infectious disease,
668 communicable disease or other condition or threat to the public
669 health, through burial or cremation within a period of time to be
670 determined by the State Health Officer.

671 (d) Compel any business or facility authorized to
672 embalm, bury, cremate, inter, disinter, transport or dispose of
673 corpses to accept any corpse or provide the use of its business or
674 facility if such actions are reasonable and necessary for
675 emergency response. The use of the business or facility may
676 include transferring the management and supervision of such
677 business or facility to the State Health Officer for a limited or
678 unlimited period of time, but shall not exceed the termination of
679 the state of emergency or public health emergency.

680 (e) To procure, by condemnation or otherwise, any
681 business or facility authorized to embalm, bury, cremate, inter,
682 disinter, transport and dispose of corpses as may be reasonable
683 and necessary for emergency response, with the right to take
684 immediate possession thereof.

685 (f) Every corpse prior to disposal shall be clearly
686 labeled with all available information to identify the decedent
687 and the circumstances of death. Any corpse of a deceased person
688 with an infectious disease shall have an external, clearly visible
689 tag indicating that the corpse is infected and, if known, the
690 infectious disease.

691 (g) Every person in charge of disposing of any corpse
692 shall maintain a written and photographic record of each corpse
693 and all available information to identify the decedent and the
694 circumstances of death and disposal. If a corpse cannot be
695 identified, prior to disposal a qualified person shall, to the
696 extent possible, take fingerprints and one or more photographs of
697 the corpse, and collect a DNA specimen. All information gathered
698 under this paragraph shall be forwarded to the Department of
699 Health.

700 **SECTION 10.** Section 41-29-133, Mississippi Code of 1972, is
701 amended as follows:

702 41-29-133. (1) Persons registered to manufacture,
703 distribute or dispense controlled substances under this article
704 shall keep records and maintain inventories in conformance with
705 the record-keeping and inventory requirements of federal law and
706 with any additional rules the State Board of Pharmacy, the State
707 Board of Medical Licensure, the State Board of Dental Examiners,
708 the Mississippi Board of Nursing or the State Board of Optometry
709 may issue.

710 (2) Persons registered to dispense controlled substances
711 under this article may report any unusual or increased
712 prescription rates, unusual types of prescriptions, or unusual
713 trends in pharmacy visits that may be caused by bioterrorism,
714 epidemic or pandemic disease, or novel and highly fatal infectious
715 agents or biological or other toxins that might pose a substantial
716 risk of a significant number of human fatalities or incidents of
717 permanent or long-term disability. Prescription-related events
718 that suggest a report include, but are not limited to: an unusual
719 increase in the number of prescriptions to treat fever,
720 respiratory or gastrointestinal complaints; an unusual increase in
721 the number of prescriptions for antibiotics; an unusual increase
722 in the number of requests for information on over-the-counter
723 pharmaceuticals to treat fever, respiratory or gastrointestinal

724 complaints; and any prescription that treats a disease that is
725 relatively uncommon and has bioterrorism potential. The report
726 may be transmitted to the State Board of Pharmacy central
727 repository and include as much of the following information as
728 possible:

729 (a) Recipient's name, when feasible to submit;

730 (b) Recipient's identification number;

731 (c) National Drug Code number of the substance
732 dispensed;

733 (d) Date of the dispensation;

734 (e) Quantity of the substance dispensed;

735 (f) Prescriber's United States Drug Enforcement
736 Administration registration number; and

737 (g) Dispenser's registration number and location.

738 (3) The information collected at the central repository
739 pursuant to subsection (2) of this section shall be confidential
740 and shall not be open to the public. Access to the information
741 shall be limited to:

742 (a) Bureau of Narcotics agents and special contract
743 agents of the bureau pursuant to Section 41-29-112;

744 (b) The United States Drug Enforcement Administration
745 Diversion Group Supervisor; and

746 (c) The executive director or chief investigator as
747 designated by each board, of the State Boards of Dental Examiners,
748 Pharmacy, Medical Licensure, Nursing and Veterinary Medical
749 Examiners, provided, however, that the executive director or chief
750 investigator of each of these boards shall be limited to access to
751 information relevant to licensees of his employing board.

752 (4) Any unauthorized disclosure of any information collected
753 at the central repository shall be a misdemeanor. Violation of
754 the provisions of this subsection (4) shall be deemed willful
755 neglect of duty and shall be grounds for removal from office.

756 (5) All access to information in the central repository
757 shall be controlled by and made through the State Board of
758 Pharmacy, which shall develop criteria for the production of
759 exception reports out of the information collected at the central
760 repository in consultation with the State Boards of Dental
761 Examiners, Medical Licensure, Veterinary Medical Examiners,
762 Mississippi Dental Association, Mississippi Pharmaceutical
763 Association, Mississippi State Medical Association, Mississippi
764 Veterinary Medical Association and Bureau of Narcotics in
765 developing these criteria.

766 (6) The State Board of Pharmacy shall promulgate and adopt
767 rules to implement and enforce this section.

768 **SECTION 11.** Section 11-46-9, Mississippi Code of 1972, is
769 amended as follows:

770 11-46-9. (1) A governmental entity and its employees acting
771 within the course and scope of their employment or duties shall
772 not be liable for any claim:

773 (a) Arising out of a legislative or judicial action or
774 inaction, or administrative action or inaction of a legislative or
775 judicial nature;

776 (b) Arising out of any act or omission of an employee
777 of a governmental entity exercising ordinary care in reliance
778 upon, or in the execution or performance of, or in the failure to
779 execute or perform, a statute, ordinance or regulation, whether or
780 not the statute, ordinance or regulation be valid;

781 (c) Arising out of any act or omission of an employee
782 of a governmental entity engaged in the performance or execution
783 of duties or activities relating to police or fire protection
784 unless the employee acted in reckless disregard of the safety and
785 well-being of any person not engaged in criminal activity at the
786 time of injury;

787 (d) Based upon the exercise or performance or the
788 failure to exercise or perform a discretionary function or duty on

789 the part of a governmental entity or employee thereof, whether or
790 not the discretion be abused;

791 (e) Arising out of an injury caused by adopting or
792 failing to adopt a statute, ordinance or regulation;

793 (f) Which is limited or barred by the provisions of any
794 other law;

795 (g) Arising out of the exercise of discretion in
796 determining whether or not to seek or provide the resources
797 necessary for the purchase of equipment, the construction or
798 maintenance of facilities, the hiring of personnel and, in
799 general, the provision of adequate governmental services;

800 (h) Arising out of the issuance, denial, suspension or
801 revocation of, or the failure or refusal to issue, deny, suspend
802 or revoke any privilege, ticket, pass, permit, license,
803 certificate, approval, order or similar authorization where the
804 governmental entity or its employee is authorized by law to
805 determine whether or not such authorization should be issued,
806 denied, suspended or revoked unless such issuance, denial,
807 suspension or revocation, or failure or refusal thereof, is of a
808 malicious or arbitrary and capricious nature;

809 (i) Arising out of the assessment or collection of any
810 tax or fee;

811 (j) Arising out of the detention of any goods or
812 merchandise by any law enforcement officer, unless such detention
813 is of a malicious or arbitrary and capricious nature;

814 (k) Arising out of the imposition or establishment of a
815 quarantine, whether such quarantine relates to persons or
816 property;

817 (l) Of any claimant who is an employee of a
818 governmental entity and whose injury is covered by the Workers'
819 Compensation Law of this state by benefits furnished by the
820 governmental entity by which he is employed;

821 (m) Of any claimant who at the time the claim arises is
822 an inmate of any detention center, jail, workhouse, penal farm,
823 penitentiary or other such institution, regardless of whether such
824 claimant is or is not an inmate of any detention center, jail,
825 workhouse, penal farm, penitentiary or other such institution when
826 the claim is filed;

827 (n) Arising out of any work performed by a person
828 convicted of a crime when the work is performed pursuant to any
829 sentence or order of any court or pursuant to laws of the State of
830 Mississippi authorizing or requiring such work;

831 (o) Under circumstances where liability has been or is
832 hereafter assumed by the United States, to the extent of such
833 assumption of liability, including, but not limited to, any claim
834 based on activities of the Mississippi National Guard when such
835 claim is cognizable under the National Guard Tort Claims Act of
836 the United States, 32 USC 715 (32 USCS 715), or when such claim
837 accrues as a result of active federal service or state service at
838 the call of the Governor for quelling riots and civil
839 disturbances;

840 (p) Arising out of a plan or design for construction or
841 improvements to public property, including, but not limited to,
842 public buildings, highways, roads, streets, bridges, levees,
843 dikes, dams, impoundments, drainage channels, diversion channels,
844 harbors, ports, wharfs or docks, where such plan or design has
845 been approved in advance of the construction or improvement by the
846 legislative body or governing authority of a governmental entity
847 or by some other body or administrative agency, exercising
848 discretion by authority to give such approval, and where such plan
849 or design is in conformity with engineering or design standards in
850 effect at the time of preparation of the plan or design;

851 (q) Arising out of an injury caused solely by the
852 effect of weather conditions on the use of streets and highways;

853 (r) Arising out of the lack of adequate personnel or
854 facilities at a state hospital or state corrections facility if
855 reasonable use of available appropriations has been made to
856 provide such personnel or facilities;

857 (s) Arising out of loss, damage or destruction of
858 property of a patient or inmate of a state institution;

859 (t) Arising out of any loss of benefits or compensation
860 due under a program of public assistance or public welfare;

861 (u) Arising out of or resulting from riots, unlawful
862 assemblies, unlawful public demonstrations, mob violence or civil
863 disturbances;

864 (v) Arising out of an injury caused by a dangerous
865 condition on property of the governmental entity that was not
866 caused by the negligent or other wrongful conduct of an employee
867 of the governmental entity or of which the governmental entity did
868 not have notice, either actual or constructive, and adequate
869 opportunity to protect or warn against; provided, however, that a
870 governmental entity shall not be liable for the failure to warn of
871 a dangerous condition which is obvious to one exercising due care;

872 (w) Arising out of the absence, condition, malfunction
873 or removal by third parties of any sign, signal, warning device,
874 illumination device, guardrail or median barrier, unless the
875 absence, condition, malfunction or removal is not corrected by the
876 governmental entity responsible for its maintenance within a
877 reasonable time after actual or constructive notice; * * *

878 (x) Arising out of the administration of corporal
879 punishment or the taking of any action to maintain control and
880 discipline of students, as defined in Section 37-11-57, by a
881 teacher, assistant teacher, principal or assistant principal of a
882 public school district in the state unless the teacher, assistant
883 teacher, principal or assistant principal acted in bad faith or
884 with malicious purpose or in a manner exhibiting a wanton and
885 willful disregard of human rights or safety; or

886 (y) Arising out of a response to a terroristic threat
887 or act.

888 (2) A governmental entity shall also not be liable for any
889 claim where the governmental entity:

890 (a) Is inactive and dormant;

891 (b) Receives no revenue;

892 (c) Has no employees; and

893 (d) Owns no property.

894 (3) If a governmental entity exempt from liability by
895 subsection (2) becomes active, receives income, hires employees or
896 acquires any property, such governmental entity shall no longer be
897 exempt from liability as provided in subsection (2) and shall be
898 subject to the provisions of this chapter.

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