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To: Select Committee on
Civil Justice Reform

HOUSE BILL NO. 2
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 11-11-3, MISSISSIPPI CODE OF 1972, TO
2 REVISE VENUE IN MEDICAL MALPRACTICE ACTIONS; TO AMEND SECTION
3 11-46-1, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT CERTAIN HEALTH
4 CARE PRACTITIONERS ARE EMPLOYEES UNDER THE TORT CLAIMS ACT; TO
5 CREATE SECTION 11-1-62, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
6 PHYSICIANS, OPTOMETRISTS, NURSE PRACTITIONERS AND PHYSICIAN
7 ASSISTANTS SHALL BE PROTECTED FOR PRESCRIBING FDA APPROVED DRUGS;
8 TO AMEND SECTION 15-1-36, MISSISSIPPI CODE OF 1972, TO REDUCE THE
9 PERIOD FOR COMMENCING A MALPRACTICE ACTION AGAINST AN INSTITUTION
10 FOR THE AGED OR INFIRM; TO PROVIDE A SIXTY-DAY NOTICE FOR MEDICAL
11 MALPRACTICE ACTIONS; TO AMEND SECTION 85-5-7, MISSISSIPPI CODE OF
12 1972, TO REVISE THE LIMITATION OF JOINT AND SEVERAL LIABILITY FOR
13 DAMAGES CAUSED BY TWO OR MORE MEDICAL DEFENDANTS; TO REQUIRE
14 AFFIDAVITS IN MEDICAL MALPRACTICE ACTIONS; TO PROVIDE A LIMITATION
15 ON THE AWARD OF NONECONOMIC DAMAGES; TO REQUIRE THE COMMISSIONER
16 OF INSURANCE TO DETERMINE AND REPORT CERTAIN INFORMATION REGARDING
17 PHYSICIANS AND THE AVAILABILITY OF MEDICAL MALPRACTICE INSURANCE;
18 TO AMEND SECTION 43-11-1, MISSISSIPPI CODE OF 1972, TO DEFINE THE
19 TERM MEDICAL RECORDS; TO CREATE SECTION 43-11-16, MISSISSIPPI CODE
20 OF 1972, TO PROVIDE THAT MEDICAL RECORDS SHALL REMAIN THE PROPERTY
21 OF THE INSTITUTIONS FOR THE AGED AND INFIRM, SUBJECT TO REASONABLE
22 ACCESS TO THE INFORMATION CONTAINED THEREIN UPON REQUEST BY THE
23 RESIDENT, HIS PERSONAL REPRESENTATIVES OR HEIRS; TO PROVIDE
24 IMMUNITY FOR MEDICAL PERSONNEL PROVIDING VOLUNTEER SERVICE TO
25 SCHOOL PROGRAMS; AND FOR RELATED PURPOSES.

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

27 **SECTION 1.** Section 11-11-3, Mississippi Code of 1972, is
28 amended as follows:

29 11-11-3. (1) Civil actions of which the circuit court has
30 original jurisdiction shall be commenced in the county in which
31 the defendant or any of them may be found or in the county where
32 the cause of action may occur or accrue and, if the defendant is a
33 domestic corporation, in the county in which said corporation is
34 domiciled or in the county where the cause of action may occur or
35 accrue, except where otherwise provided, and except actions of
36 trespass on land, ejectment and actions for the statutory penalty
37 for cutting and boxing trees and firing woods and actions for the



38 actual value of trees cut which shall be brought in the county
39 where the land or some part thereof is situated.

40 (2) Any action against a licensed physician, osteopath,
41 dentist, nurse, nurse practitioner, physician assistant,
42 psychologist, pharmacist, podiatrist, optometrist, chiropractor,
43 institution for the aged or infirm, hospital or licensed pharmacy,
44 including any legal entity which may be liable for their acts or
45 omissions, for malpractice, negligence, error, omission, mistake,
46 breach of standard of care or the unauthorized rendering of
47 professional services shall be brought in the county in which the
48 alleged act or omission occurred.

49 (3) If a civil action is brought in an improper county, such
50 action may be transferred to the proper county pursuant to Section
51 11-11-17.

52 **SECTION 2.** Section 11-46-1, Mississippi Code of 1972, is
53 amended as follows:

54 11-46-1. As used in this chapter the following terms shall
55 have the meanings herein ascribed unless the context otherwise
56 requires:

57 (a) "Claim" means any demand to recover damages from a
58 governmental entity as compensation for injuries.

59 (b) "Claimant" means any person seeking compensation
60 under the provisions of this chapter, whether by administrative
61 remedy or through the courts.

62 (c) "Board" means the Mississippi Tort Claims Board.

63 (d) "Department" means the Department of Finance and
64 Administration.

65 (e) "Director" means the executive director of the
66 department who is also the executive director of the board.

67 (f) "Employee" means any officer, employee or servant
68 of the State of Mississippi or a political subdivision of the
69 state, including elected or appointed officials and persons acting
70 on behalf of the state or a political subdivision in any official



71 capacity, temporarily or permanently, in the service of the state
72 or a political subdivision whether with or without compensation.
73 The term "employee" shall not mean a person or other legal entity
74 while acting in the capacity of an independent contractor under
75 contract to the state or a political subdivision; provided,
76 however, that for purposes of the limits of liability provided for
77 in Section 11-46-15, the term "employee" shall include physicians
78 under contract to provide health services with the State Board of
79 Health, the State Board of Mental Health or any county or
80 municipal jail facility while rendering services under such
81 contract. The term "employee" shall also include any physician,
82 dentist or other health care practitioner employed by the
83 University of Mississippi Medical Center (UMMC) and its
84 departmental practice plans who is a faculty member and provides
85 health care services only for patients at UMMC or its affiliated
86 practice sites. The term "employee" shall also include any
87 physician, dentist or other health care practitioner employed by
88 any university under the control of the Board of Trustees of State
89 Institutions of Higher Learning who practices only on the campus
90 of any university under the control of the Board of Trustees of
91 State Institutions of Higher Learning. The term "employee" shall
92 also include any physician, dentist or other health care
93 practitioner employed by the State Veterans Affairs Board and who
94 provides health care services for patients for the State Veterans
95 Affairs Board. The term "employee" shall also include Mississippi
96 Department of Human Services licensed foster parents for the
97 limited purposes of coverage under the Tort Claims Act as provided
98 in Section 11-46-8.

99 (g) "Governmental entity" means and includes the state
100 and political subdivisions as herein defined.

101 (h) "Injury" means death, injury to a person, damage to
102 or loss of property or any other injury that a person may suffer
103 that is actionable at law or in equity.



104 (i) "Political subdivision" means any body politic or
105 body corporate other than the state responsible for governmental
106 activities only in geographic areas smaller than that of the
107 state, including, but not limited to, any county, municipality,
108 school district, community hospital as defined in Section
109 41-13-10, Mississippi Code of 1972, airport authority or other
110 instrumentality thereof, whether or not such body or
111 instrumentality thereof has the authority to levy taxes or to sue
112 or be sued in its own name.

113 (j) "State" means the State of Mississippi and any
114 office, department, agency, division, bureau, commission, board,
115 institution, hospital, college, university, airport authority or
116 other instrumentality thereof, whether or not such body or
117 instrumentality thereof has the authority to levy taxes or to sue
118 or be sued in its own name.

119 (k) "Law" means all species of law including, but not
120 limited to, any and all constitutions, statutes, case law, common
121 law, customary law, court order, court rule, court decision, court
122 opinion, court judgment or mandate, administrative rule or
123 regulation, executive order, or principle or rule of equity.

124 **SECTION 3.** The following shall be codified as Section
125 11-1-62, Mississippi Code of 1972:

126 11-1-62. In any civil action alleging damages caused by a
127 prescription drug that has been approved by the federal Food and
128 Drug Administration, a physician, optometrist, nurse practitioner
129 or physician assistant may not be sued unless the plaintiff pleads
130 specific facts which, if proven, amount to negligence on the part
131 of the medical provider. It is the intent of this section to
132 immunize innocent medical providers listed in this section who are
133 not actively negligent from forum-driven lawsuits.

134 **SECTION 4.** Section 85-5-7, Mississippi Code of 1972, is
135 amended as follows:



136 85-5-7. (1) As used in this section "fault" means an act or
137 omission of a person which is a proximate cause of injury or death
138 to another person or persons, damages to property, tangible or
139 intangible, or economic injury, including, but not limited to,
140 negligence, malpractice, strict liability, absolute liability or
141 failure to warn. "Fault" shall not include any tort which results
142 from an act or omission committed with a specific wrongful intent.

143 (2) Except as may be otherwise provided in subsections (6)
144 and (8) of this section, in any civil action based on fault, the
145 liability for damages caused by two (2) or more persons shall be
146 joint and several only to the extent necessary for the person
147 suffering injury, death or loss to recover fifty percent (50%) of
148 his recoverable damages.

149 (3) Except as otherwise provided in subsections (2) and (6)
150 of this section, in any civil action based on fault, the liability
151 for damages caused by two (2) or more persons shall be several
152 only, and not joint and several and a joint tort-feasor shall be
153 liable only for the amount of damages allocated to him in direct
154 proportion to his percentage of fault. In assessing percentages
155 of fault an employer and the employer's employee or a principal
156 and the principal's agent shall be considered as one (1) defendant
157 when the liability of such employer or principal has been caused
158 by the wrongful or negligent act or omission of the employee or
159 agent.

160 (4) Any defendant held jointly liable under this section
161 shall have a right of contribution against fellow joint
162 tort-feasors. A defendant shall be held responsible for
163 contribution to other joint tort-feasors only for the percentage
164 of fault assessed to such defendant.

165 (5) Nothing in this section shall eliminate or diminish any
166 defenses or immunities which currently exist, except as expressly
167 noted herein.



168 (6) Joint and several liability shall be imposed on all who
169 consciously and deliberately pursue a common plan or design to
170 commit a tortious act, or actively take part in it. Any person
171 held jointly and severally liable under this section shall have a
172 right of contribution from his fellow defendants acting in
173 concert.

174 (7) In actions involving joint tort-feasors, the trier of
175 fact shall determine the percentage of fault for each party
176 alleged to be at fault.

177 (8) Except as provided in subsection (6) of this section, in
178 any action against a licensed physician, psychologist, osteopath,
179 dentist, nurse, nurse practitioner, physician assistant,
180 pharmacist, podiatrist, optometrist, chiropractor, hospital,
181 institution for the aged or infirm, or licensed pharmacy,
182 including any legal entity which may be liable for their acts or
183 omissions, for malpractice, negligence, error, omission, mistake
184 or the unauthorized rendering of professional services which
185 involve joint tort-feasors, the trier of fact shall determine the
186 percentage of fault for each joint tort-feasor, including named
187 parties and absent tort-feasors, without regard to whether the
188 joint tort-feasor is immune from damages. For noneconomic
189 damages, a defendant's liability shall be several only. For
190 economic damages, for any defendant whose fault is determined to
191 be less than thirty percent (30%), liability shall be several only
192 and for any defendant whose fault is determined to be thirty
193 percent (30%) or more, liability shall be joint and several only
194 to the extent necessary for the person suffering injury, death or
195 loss to recover fifty percent (50%) of his recoverable damages.
196 Fault allocated under this subsection to an immune tort-feasor or
197 a tort-feasor whose liability is limited by law shall not be
198 reallocated to any other tort-feasor.



199 (9) Nothing in this section shall be construed to create a
200 cause of action. Nothing in this section shall be construed, in
201 any way, to alter the immunity of any person.

202 **SECTION 5.** Section 15-1-36, Mississippi Code of 1972, is
203 amended as follows:

204 15-1-36. (1) For any claim accruing on or before June 30,
205 1998, and except as otherwise provided in this section, no claim
206 in tort may be brought against a licensed physician, osteopath,
207 dentist, hospital, institution for the aged or infirm, nurse,
208 pharmacist, podiatrist, optometrist or chiropractor for injuries
209 or wrongful death arising out of the course of medical, surgical
210 or other professional services unless it is filed within two (2)
211 years from the date the alleged act, omission or neglect shall or
212 with reasonable diligence might have been first known or
213 discovered.

214 (2) For any claim accruing on or after July 1, 1998, and
215 except as otherwise provided in this section, no claim in tort may
216 be brought against a licensed physician, osteopath, dentist,
217 hospital, institution for the aged or infirm, nurse, pharmacist,
218 podiatrist, optometrist or chiropractor for injuries or wrongful
219 death arising out of the course of medical, surgical or other
220 professional services unless it is filed within two (2) years from
221 the date the alleged act, omission or neglect shall or with
222 reasonable diligence might have been first known or discovered,
223 and, except as described in paragraphs (a) and (b) of this
224 subsection, in no event more than seven (7) years after the
225 alleged act, omission or neglect occurred:

226 (a) In the event a foreign object introduced during a
227 surgical or medical procedure has been left in a patient's body,
228 the cause of action shall be deemed to have first accrued at, and
229 not before, the time at which the foreign object is, or with
230 reasonable diligence should have been, first known or discovered
231 to be in the patient's body.



232 (b) In the event the cause of action shall have been
233 fraudulently concealed from the knowledge of the person entitled
234 thereto, the cause of action shall be deemed to have first accrued
235 at, and not before, the time at which such fraud shall be, or with
236 reasonable diligence should have been, first known or discovered.

237 (3) Except as otherwise provided in subsection (4) of this
238 section, if at the time at which the cause of action shall or with
239 reasonable diligence might have been first known or discovered,
240 the person to whom such claim has accrued shall be six (6) years
241 of age or younger, then such minor or the person claiming through
242 such minor may, notwithstanding that the period of time limited
243 pursuant to subsections (1) and (2) of this section shall have
244 expired, commence action on such claim at any time within two (2)
245 years next after the time at which the minor shall have reached
246 his sixth birthday, or shall have died, whichever shall have first
247 occurred.

248 (4) If at the time at which the cause of action shall or
249 with reasonable diligence might have been first known or
250 discovered, the person to whom such claim has accrued shall be a
251 minor without a parent or legal guardian, then such minor or the
252 person claiming through such minor may, notwithstanding that the
253 period of time limited pursuant to subsections (1) and (2) of this
254 section shall have expired, commence action on such claim at any
255 time within two (2) years next after the time at which the minor
256 shall have a parent or legal guardian or shall have died,
257 whichever shall have first occurred; provided, however, that in no
258 event shall the period of limitation begin to run prior to such
259 minor's sixth birthday unless such minor shall have died.

260 (5) If at the time at which the cause of action shall or
261 with reasonable diligence might have been first known or
262 discovered, the person to whom such claim has accrued shall be
263 under the disability of unsoundness of mind, then such person or
264 the person claiming through him may, notwithstanding that the



265 period of time hereinbefore limited shall have expired, commence
266 action on such claim at any time within two (2) years next after
267 the time at which the person to whom the right shall have first
268 accrued shall have ceased to be under the disability, or shall
269 have died, whichever shall have first occurred.

270 (6) When any person who shall be under the disabilities
271 mentioned in subsections (3), (4) and (5) of this section at the
272 time at which his right shall have first accrued, shall depart
273 this life without having ceased to be under such disability, no
274 time shall be allowed by reason of the disability of such person
275 to commence action on the claim of such person beyond the period
276 prescribed under Section 15-1-55, Mississippi Code of 1972.

277 (7) For the purposes of subsection (3) of this section, and
278 only for the purposes of such subsection, the disability of
279 infancy or minority shall be removed from and after a person has
280 reached his sixth birthday.

281 (8) For the purposes of subsection (4) of this section, and
282 only for the purposes of such subsection, the disability of
283 infancy or minority shall be removed from and after a person has
284 reached his sixth birthday or from and after such person shall
285 have a parent or legal guardian, whichever occurs later, unless
286 such disability is otherwise removed by law.

287 (9) The limitation established by this section as to a
288 licensed physician, osteopath, dentist, hospital or nurse shall
289 apply only to actions the cause of which accrued on or after July
290 1, 1976.

291 (10) The limitation established by this section as to
292 pharmacists shall apply only to actions the cause of which accrued
293 on or after July 1, 1978.

294 (11) The limitation established by this section as to
295 podiatrists shall apply only to actions the cause of which accrued
296 on or after July 1, 1979.



297 (12) The limitation established by this section as to
298 optometrists and chiropractors shall apply only to actions the
299 cause of which accrued on or after July 1, 1983.

300 (13) The limitation established by this section as to
301 actions commenced on behalf of minors shall apply only to actions
302 the cause of which accrued on or after July 1, 1989.

303 (14) The limitation established by this section as to
304 institutions for the aged or infirm shall apply only to actions
305 the cause of which occurred on or after January 1, 2003.

306 (15) No action based upon the health care provider's
307 professional negligence may be begun unless the defendant has been
308 given at least sixty (60) days' prior written notice of the
309 intention to begin the action. No particular form of notice is
310 required, but it shall notify the defendant of the legal basis of
311 the claim and the type of loss sustained, including with
312 specificity the nature of the injuries suffered. If the notice is
313 served within sixty (60) days prior to the expiration of the
314 applicable statute of limitations, the time for the commencement
315 of the action shall be extended sixty (60) days from the service
316 of the notice for said health care providers and others. This
317 subsection shall not be applicable with respect to any defendant
318 whose name is unknown to the plaintiff at the time of filing the
319 complaint and who is identified therein by a fictitious name.

320 **SECTION 6.** (1) In any action against a licensed physician,
321 health care provider or health care practitioner for injuries or
322 wrongful death arising out of the course of medical, surgical or
323 other professional services where expert testimony is otherwise
324 required by law, the complaint shall be accompanied by a
325 certificate executed by the attorney for the plaintiff declaring
326 that:

327 (a) The attorney has reviewed the facts of the case and
328 has consulted with at least one (1) expert qualified pursuant to
329 the Mississippi Rules of Civil Procedure and the Mississippi Rules



330 of Evidence who is qualified to give expert testimony as to
331 standard of care or negligence and who the attorney reasonably
332 believes is knowledgeable in the relevant issues involved in the
333 particular action, and that the attorney has concluded on the
334 basis of such review and consultation that there is a reasonable
335 basis for the commencement of such action; or

336 (b) The attorney was unable to obtain the consultation
337 required by paragraph (a) of this subsection because a limitation
338 of time established by Section 15-1-36 would bar the action and
339 that the consultation could not reasonably be obtained before such
340 time expired. A certificate executed pursuant to this paragraph
341 (b) shall be supplemented by a certificate of consultation
342 pursuant to paragraph (a) or (c) within sixty (60) days after
343 service of the complaint or the suit shall be dismissed; or

344 (c) The attorney was unable to obtain the consultation
345 required by paragraph (a) of this subsection because the attorney
346 had made at least three (3) separate good faith attempts with
347 three (3) different experts to obtain a consultation and that none
348 of those contacted would agree to a consultation.

349 (2) Where a certificate is required pursuant to this section
350 only, a single certificate is required for an action, even if more
351 than one (1) defendant has been named in the complaint or is
352 subsequently named.

353 (3) A certificate under subsection (1) of this section is
354 not required where the attorney intends to rely solely on either
355 the doctrine of "res ipsa loquitur" or "informed consent." In
356 such cases, the complaint shall be accompanied by a certificate
357 executed by the attorney declaring that the attorney is solely
358 relying on such doctrine and, for that reason, is not filing a
359 certificate under subsection (1) of this section.

360 (4) If a request by the plaintiff for the records of the
361 plaintiff's medical treatment by the defendants has been made and
362 the records have not been produced, the plaintiff shall not be



363 required to file the certificate required by this section until
364 ninety (90) days after the records have been produced.

365 (5) For purposes of this section, an attorney who submits a
366 certificate of consultation shall not be required to disclose the
367 identity of the consulted or the contents of the consultation;
368 provided, however, that when the attorney makes a claim under
369 paragraph (c) of subsection (1) of this section that he was unable
370 to obtain the required consultation with an expert, the court,
371 upon the request of a defendant made prior to compliance by the
372 plaintiff with the provisions of this section, may require the
373 attorney to divulge to the court, in camera and without any
374 disclosure by the court to any other party, the names of
375 physicians refusing such consultation.

376 (6) The provisions of this section shall not apply to a
377 plaintiff who is not represented by an attorney.

378 (7) The plaintiff, in lieu of serving a certificate required
379 by this section, may provide the defendant or defendants with
380 expert information in the form required by the Mississippi Rules
381 of Civil Procedure. Nothing in this section requires the
382 disclosure of any "consulting" or nontrial expert, except as
383 expressly stated herein.

384 **SECTION 7.** (1) For the purposes of this section, the
385 following words and phrases shall have the meanings ascribed
386 herein unless the context clearly requires otherwise:

387 (a) "Noneconomic damages" means subjective,
388 nonpecuniary damages arising from death, pain, suffering,
389 inconvenience, mental anguish, worry, emotional distress, loss of
390 society and companionship, loss of consortium, bystander injury,
391 physical impairment, injury to reputation, humiliation,
392 embarrassment, loss of the enjoyment of life, hedonic damages,
393 other nonpecuniary damages, and any other theory of damages such
394 as fear of loss, illness or injury. The term "noneconomic



395 damages" shall not include damages for disfigurement, nor does it
396 include punitive or exemplary damages.

397 (b) "Actual economic damages" means objectively
398 verifiable pecuniary damages arising from medical expenses and
399 medical care, rehabilitation services, custodial care,
400 disabilities, loss of earnings and earning capacity, loss of
401 income, burial costs, loss of use of property, costs of repair or
402 replacement of property, costs of obtaining substitute domestic
403 services, loss of employment, loss of business or employment
404 opportunities, and other objectively verifiable monetary losses.

405 (c) "Provider of health care" means a licensed
406 physician, psychologist, osteopath, dentist, nurse, nurse
407 practitioner, physician assistant, pharmacist, podiatrist,
408 optometrist, chiropractor, institution for the aged or infirm,
409 hospital, licensed pharmacy or any legal entity which may be
410 liable for their acts or omissions.

411 (2) (a) In any action for injury based on malpractice or
412 breach of standard of care against a provider of health care,
413 including institutions for the aged or infirm, in the event the
414 trier of fact finds the defendant liable, they shall not award the
415 plaintiff more than the following for noneconomic damages:

416 (i) For claims for causes of action filed on or
417 after passage of House Bill No. 2, 3rd Extraordinary Session 2002,
418 but before July 1, 2011, the sum of Five Hundred Thousand Dollars
419 (\$500,000.00);

420 (ii) For claims for causes of action filed on or
421 after July 1, 2011, but before July 1, 2017, the sum of Seven
422 Hundred Fifty Thousand Dollars (\$750,000.00);

423 (iii) For claims for causes of action filed on or
424 after July 1, 2017, the sum of One Million Dollars
425 (\$1,000,000.00).

426 It is the intent of this section to limit all noneconomic
427 damages to the above.



428 (b) The trier of fact shall not be advised of the
429 limitations imposed by this subsection (2) and the judge shall
430 appropriately reduce any award of noneconomic damages that exceeds
431 the applicable limitation.

432 (3) The limitation on noneconomic damages set forth in
433 subsection (2) shall not apply in cases where the judge determines
434 that a jury may impose punitive damages.

435 (4) Nothing in this section shall be construed to impose a
436 limitation on damages for disfigurement or actual economic
437 damages.

438 **SECTION 8.** The Commissioner of Insurance shall determine the
439 number of physicians licensed by and practicing in the State of
440 Mississippi who are unable to obtain medical malpractice
441 insurance, and the commissioner shall report such information and
442 other information that the commissioner determines which impacts
443 the medical profession to the Legislature on or before January 5,
444 2003. The commissioner shall make recommendations to the
445 Legislature on or before January 5, 2003, concerning the
446 establishment of an actuarially sound joint underwriting medical
447 malpractice association for the purpose of making necessary
448 medical malpractice insurance available for physicians, registered
449 nurses and all other personnel who are duly licensed to practice
450 in a hospital, hospitals, nursing facilities or assisted living
451 facilities. The need and funding for such association shall be
452 determined by the Legislature.

453 **SECTION 9.** Section 43-11-1, Mississippi Code of 1972, is
454 amended as follows:

455 43-11-1. When used in this chapter, the following words
456 shall have the following meaning:

457 (a) "Institutions for the aged or infirm" means a place
458 either governmental or private which provides group living
459 arrangements for four (4) or more persons who are unrelated to the
460 operator and who are being provided food, shelter and personal



461 care whether any such place be organized or operated for profit or
462 not. The term "institution for aged or infirm" includes nursing
463 homes, pediatric skilled nursing facilities, psychiatric
464 residential treatment facilities, convalescent homes and homes for
465 the aged, provided that these institutions fall within the scope
466 of the definitions set forth above. The term "institution for the
467 aged or infirm" does not include hospitals, clinics or mental
468 institutions devoted primarily to providing medical service.

469 (b) "Person" means any individual, firm, partnership,
470 corporation, company, association or joint stock association, or
471 any licensee herein or the legal successor thereof.

472 (c) "Personal care" means assistance rendered by
473 personnel of the home to aged or infirm residents in performing
474 one or more of the activities of daily living, which includes, but
475 is not limited to, the bathing, walking, excretory functions,
476 feeding, personal grooming and dressing of such residents.

477 (d) "Psychiatric residential treatment facility" means
478 any nonhospital establishment with permanent facilities which
479 provides a twenty-four-hour program of care by qualified
480 therapists, including, but not limited to, duly licensed mental
481 health professionals, psychiatrists, psychologists,
482 psychotherapists and licensed certified social workers, for
483 emotionally disturbed children and adolescents referred to such
484 facility by a court, local school district or by the Department of
485 Human Services, who are not in an acute phase of illness requiring
486 the services of a psychiatric hospital, and are in need of such
487 restorative treatment services. For purposes of this paragraph,
488 the term "emotionally disturbed" means a condition exhibiting one
489 or more of the following characteristics over a long period of
490 time and to a marked degree, which adversely affects educational
491 performance:

492 1. An inability to learn which cannot be explained
493 by intellectual, sensory or health factors;



494 2. An inability to build or maintain satisfactory
495 relationships with peers and teachers;

496 3. Inappropriate types of behavior or feelings
497 under normal circumstances;

498 4. A general pervasive mood of unhappiness or
499 depression; or

500 5. A tendency to develop physical symptoms or
501 fears associated with personal or school problems. An
502 establishment furnishing primarily domiciliary care is not within
503 this definition.

504 (e) "Pediatric skilled nursing facility" means an
505 institution or a distinct part of an institution that is primarily
506 engaged in providing to inpatients skilled nursing care and
507 related services for persons under twenty-one (21) years of age
508 who require medical or nursing care or rehabilitation services for
509 the rehabilitation of injured, disabled or sick persons.

510 (f) "Licensing agency" means the State Department of
511 Health.

512 (g) "Medical records" mean, without restriction, those
513 medical histories, records, reports, summaries, diagnoses and
514 prognoses, records of treatment and medication ordered and given,
515 notes, entries, x-rays and other written or graphic data prepared,
516 kept, made or maintained in institutions for the aged or infirm
517 that pertain to residency in, or services rendered to residents
518 of, an institution for the aged or infirm.

519 **SECTION 10.** The following shall be codified as Section
520 43-11-16, Mississippi Code of 1972:

521 43-11-16. Medical records are and shall remain the property
522 of the various institutions for the aged or infirm, subject,
523 however, to reasonable access to the information contained therein
524 upon written request by the resident, his legally appointed
525 representatives, his attending medical personnel and his duly
526 authorized nominees, and upon payment of any reasonable charges



527 for such service. Nothing in this section shall be construed to
528 deny access to medical records by the Attorney General, the
529 licensing agency, or his or its agents and investigators in the
530 discharge of their official duties under this chapter. Except as
531 otherwise provided by law, medical records shall not constitute
532 public records and nothing in this section shall be deemed to
533 impair any privilege of confidence conferred by law or the
534 Mississippi Rules of Evidence on residents, their personal
535 representatives or heirs by Section 13-1-21.

536 **SECTION 11.** (1) Any licensed physician, certified nurse
537 practitioner, psychologist or physician assistant who voluntarily
538 provides needed medical or health services to any program at an
539 accredited school in the state without the expectation of payment
540 shall be immune from liability for any civil action arising out of
541 the provision of such medical or health services provided in good
542 faith on a charitable basis. This section shall not extend
543 immunity to willful acts or gross negligence. Except in cases of
544 rendering emergency care wherein the provisions of Section
545 73-25-37, Mississippi Code of 1972, apply, immunity under this
546 section shall be extended only if the physician, certified nurse
547 practitioner, psychologist or physician assistant and patient
548 execute a written waiver in advance of the rendering of such
549 medical services specifying that such services are provided
550 without the expectation of payment and that the licensed physician
551 or certified nurse practitioner, psychologist or physician
552 assistant shall be immune as provided herein.

553 (2) Any physician who voluntarily renders any medical
554 service under a special volunteer medical license authorized under
555 Section 73-25-18 without any payment or compensation or the
556 expectation or promise of any payment or compensation shall be
557 immune from liability for any civil action arising out of any act
558 or omission resulting from the rendering of the medical service
559 unless the act or omission was the result of the physician's gross



560 negligence or willful misconduct. In order for the immunity under
561 this subsection to apply, there must be a written or oral
562 agreement for the physician to provide a voluntary noncompensated
563 medical service before the rendering of the service by the
564 physician.

565 **SECTION 12.** If any provision of this act is held by a court
566 to be invalid, such invalidity shall not affect the remaining
567 provisions of this act, and to this end the provisions of this act
568 are declared severable.

569 **SECTION 13.** This act shall take effect and be in force from
570 and after January 1, 2003, and shall apply to all causes of action
571 filed on or after that date.

