

By: Representative Watson

To: Select Committee on
Civil Justice Reform

HOUSE BILL NO. 3

1 AN ACT TO AMEND SECTIONS 11-11-3, MISSISSIPPI CODE OF 1972,
2 TO REVISE VENUE IN MEDICAL MALPRACTICE ACTIONS; TO AMEND SECTION
3 11-46-1, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT CERTAIN MEDICAL
4 PRACTITIONERS ARE EMPLOYEES UNDER THE TORT CLAIMS ACT; TO CREATE
5 SECTION 11-1-62, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
6 PHYSICIANS AND PHARMACISTS SHALL BE INDEMNIFIED FOR PRESCRIBING
7 FDA APPROVED DRUGS; TO AMEND SECTION 11-1-63, MISSISSIPPI CODE OF
8 1972, IN CONFORMITY THERETO; TO AMEND SECTION 15-1-36, MISSISSIPPI
9 CODE OF 1972, TO REDUCE THE PERIOD FOR COMMENCING A MALPRACTICE
10 ACTION AGAINST A NURSING FACILITY; TO PROVIDE A NINETY-DAY NOTICE
11 FOR MEDICAL MALPRACTICE ACTIONS; TO AMEND SECTION 85-5-7,
12 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT MEDICAL PRACTITIONERS
13 COVERED UNDER THE TORT CLAIMS ACT ARE ONLY LIABLE FOR THE
14 PERCENTAGE OF THEIR FAULT IN CIVIL ACTIONS; TO REQUIRE AFFIDAVITS
15 IN MEDICAL MALPRACTICE ACTIONS; TO PROVIDE A LIMITATION ON THE
16 AWARD OF NONECONOMIC DAMAGES; TO CREATE A MEDICAL MALPRACTICE RISK
17 POOL TO PROVIDE NECESSARY MEDICAL MALPRACTICE FOR CERTAIN HEALTH
18 CARE PROVIDERS; TO AMEND SECTION 43-13-407, MISSISSIPPI CODE OF
19 1972, TO PROVIDE INITIAL FUNDING FOR THE MEDICAL MALPRACTICE RISK
20 POOL; TO AMEND SECTION 43-11-1, MISSISSIPPI CODE OF 1972, TO
21 DEFINE THE TERM MEDICAL RECORDS; TO CREATE SECTION 43-11-16,
22 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT MEDICAL RECORDS SHALL
23 REMAIN THE PROPERTY OF THE INSTITUTIONS FOR THE AGED AND INFIRM,
24 SUBJECT TO REASONABLE ACCESS TO THE INFORMATION CONTAINED THEREIN
25 UPON GOOD CAUSE SHOWN BY THE RESIDENT, HIS PERSONAL
26 REPRESENTATIVES OR HEIRS; TO CREATE THE MEDICAL MALPRACTICE
27 MEDIATION BOARD AND PROVIDE FOR ITS MEMBERSHIP; TO PROVIDE FOR
28 MEDIATION FOR MEDICAL MALPRACTICE AND NURSING FACILITY DISPUTES;
29 TO PROVIDE FOR THE APPOINTMENT AND CERTIFICATION OF MEDIATORS; TO
30 PROVIDE THAT MEDIATION SHALL BE NONBINDING UNLESS THE PARTIES
31 AGREE TO MAKE IT BINDING; TO REQUIRE THE COMMISSIONER OF INSURANCE
32 TO ANNUALLY COMPILE AND PROVIDE TO THE LEGISLATURE A REPORT
33 REGARDING MEDICAL MALPRACTICE CLAIMS; TO PROVIDE INCENTIVE FOR
34 MEDICAL SCHOOL GRADUATES TO PRACTICE IN THE STATE; TO PROVIDE
35 IMMUNITY FOR MEDICAL PERSONNEL PROVIDING VOLUNTEER SERVICE TO
36 SCHOOL PROGRAMS; AND FOR RELATED PURPOSES.

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

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

40 11-11-3. (1) Civil actions of which the circuit court has
41 original jurisdiction shall be commenced in the county in which
42 the defendant or any of them may be found or in the county where
43 the cause of action may occur or accrue and, if the defendant is a
44 domestic corporation, in the county in which said corporation is



45 domiciled or in the county where the cause of action may occur or
46 accrue, except where otherwise provided, and except actions of
47 trespass on land, ejectment and actions for the statutory penalty
48 for cutting and boxing trees and firing woods and actions for the
49 actual value of trees cut which shall be brought in the county
50 where the land or some part thereof is situated. If a civil
51 action is brought in an improper county, such action may be
52 transferred to the proper county pursuant to Section 11-11-17.

53 (2) Civil actions for claims of medical malpractice shall be
54 commenced in the county where the cause of action occurred.

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

57 11-46-1. As used in this chapter the following terms shall
58 have the meanings herein ascribed unless the context otherwise
59 requires:

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

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

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

66 (d) "Department" means the Department of Finance and
67 Administration.

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

70 (f) "Employee" means any officer, employee or servant
71 of the State of Mississippi or a political subdivision of the
72 state, including elected or appointed officials and persons acting
73 on behalf of the state or a political subdivision in any official
74 capacity, temporarily or permanently, in the service of the state
75 or a political subdivision whether with or without compensation.
76 The term "employee" shall not mean a person or other legal entity
77 while acting in the capacity of an independent contractor under



78 contract to the state or a political subdivision; provided,
79 however, that for purposes of the limits of liability provided for
80 in Section 11-46-15, the term "employee" shall include physicians
81 under contract to provide health services with the State Board of
82 Health, the State Board of Mental Health or any county or
83 municipal jail facility while rendering services under such
84 contract. The term "employee" shall also include any physician,
85 dentist or other medical practitioner under contract or affiliated
86 with or employed by the University of Mississippi Medical Center,
87 its departmental practice plans, or who practices on the campus of
88 any university under the control of the Board of Trustees of State
89 Institutions of Higher Learning only for the purposes of acting
90 within the course and scope of their contract, affiliation or
91 employment. The term "employee" shall also include any physician,
92 dentist or other medical practitioner under contract or affiliated
93 with or employed by the State Veterans Affairs Board only for the
94 purposes of acting within the course and scope of their contract,
95 affiliation or employment. The term "employee" shall also include
96 Mississippi Department of Human Services licensed foster parents
97 for the limited purposes of coverage under the Tort Claims Act as
98 provided 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 and absent any negligence on the part of the
128 physician or pharmacist, a physician or pharmacist shall be
129 indemnified by the manufacturer of the prescription drug for any
130 damages if the federal Food and Drug Administration (FDA) has
131 approved that drug for treatment of the condition, disease or
132 illness for which the drug was prescribed. It is the intent of
133 this section to indemnify innocent physicians and pharmacists who
134 are not actively negligent from forum-driven lawsuits and that, as
135 to any claim brought against a physician under this section, the
136 physician's insurer shall not count such claim against the
137 physician for the purposes of insurance underwriting or, in any
138 way, increase premiums for or deny insurance coverage.

139 **SECTION 4.** Section 11-1-63, Mississippi Code of 1972, is
140 amended as follows:

141 11-1-63. In any action for damages caused by a product
142 except for commercial damage to the product itself:



143 (a) Subject to the provisions of Section 11-1-62, the
144 manufacturer, seller, distributor or prescriber of the product
145 shall not be liable if the claimant does not prove by the
146 preponderance of the evidence that at the time the product left
147 the control of the manufacturer, seller, distributor or
148 prescriber:

149 (i) 1. The product was defective because it
150 deviated in a material way from the manufacturer's specifications
151 or from otherwise identical units manufactured to the same
152 manufacturing specifications, or

153 2. The product was defective because it
154 failed to contain adequate warnings or instructions, or

155 3. The product was designed in a defective
156 manner, or

157 4. The product breached an express warranty
158 or failed to conform to other express factual representations upon
159 which the claimant justifiably relied in electing to use the
160 product; and

161 (ii) The defective condition rendered the product
162 unreasonably dangerous to the user or consumer; and

163 (iii) The defective and unreasonably dangerous
164 condition of the product proximately caused the damages for which
165 recovery is sought.

166 (b) A product is not defective in design or formulation
167 if the harm for which the claimant seeks to recover compensatory
168 damages was caused by an inherent characteristic of the product
169 which is a generic aspect of the product that cannot be eliminated
170 without substantially compromising the product's usefulness or
171 desirability and which is recognized by the ordinary person with
172 the ordinary knowledge common to the community.

173 (c) (i) In any action alleging that a product is
174 defective because it failed to contain adequate warnings or
175 instructions pursuant to paragraph (a)(i)2 of this section, the



176 manufacturer, seller, distributor or prescriber shall not be
177 liable if the claimant does not prove by the preponderance of the
178 evidence that at the time the product left the control of the
179 manufacturer, seller, distributor or prescriber, the manufacturer,
180 seller, distributor or prescriber knew or in light of reasonably
181 available knowledge should have known about the danger that caused
182 the damage for which recovery is sought and that the ordinary user
183 or consumer would not realize its dangerous condition.

184 (ii) An adequate product warning or instruction is
185 one that a reasonably prudent person in the same or similar
186 circumstances would have provided with respect to the danger and
187 that communicates sufficient information on the dangers and safe
188 use of the product, taking into account the characteristics of,
189 and the ordinary knowledge common to an ordinary consumer who
190 purchases the product; or in the case of a prescription drug,
191 medical device or other product that is intended to be used only
192 under the supervision of a physician or other licensed
193 professional person, taking into account the characteristics of,
194 and the ordinary knowledge common to, a physician or other
195 licensed professional who prescribes the drug, device or other
196 product.

197 (d) For purposes of this section:

198 (i) "Seller" means any person or entity that sells
199 products of any kind.

200 (ii) "Prescriber" means any person licensed by the
201 State of Mississippi to prescribe medicine.

202 (e) In any action alleging that a product is defective
203 pursuant to paragraph (a) of this section, the manufacturer,
204 seller, distributor or prescriber shall not be liable if the
205 claimant (i) had knowledge of a condition of the product that was
206 inconsistent with his safety; (ii) appreciated the danger in the
207 condition; and (iii) deliberately and voluntarily chose to expose



208 himself to the danger in such a manner to register assent on the
209 continuance of the dangerous condition.

210 (f) In any action alleging that a product is defective
211 pursuant to paragraph (a)(i)2 of this section, the manufacturer,
212 seller, distributor or prescriber shall not be liable if the
213 danger posed by the product is known or is open and obvious to the
214 user or consumer of the product, or should have been known or open
215 and obvious to the user or consumer of the product, taking into
216 account the characteristics of, and the ordinary knowledge common
217 to, the persons who ordinarily use or consume the product.

218 (g) In any action alleging that a product is defective
219 because of its design pursuant to paragraph (a)(i)3 of this
220 section, the manufacturer or product seller shall not be liable if
221 the claimant does not prove by the preponderance of the evidence
222 that at the time the product left the control of the manufacturer
223 or seller:

224 (i) The manufacturer, seller, distributor or
225 prescriber knew, or in light of reasonably available knowledge or
226 in the exercise of reasonable care should have known, about the
227 danger that caused the damage for which recovery is sought; and

228 (ii) The product failed to function as expected
229 and there existed a feasible design alternative that would have to
230 a reasonable probability prevented the harm. A feasible design
231 alternative is a design that would have to a reasonable
232 probability prevented the harm without impairing the utility,
233 usefulness, practicality or desirability of the product to users
234 or consumers.

235 (h) (i) The manufacturer of a product who is found
236 liable for a defective product pursuant to subsection (a) shall
237 indemnify a product seller, distributor or prescriber for the
238 costs of litigation, any reasonable expenses, reasonable
239 attorney's fees and any damages awarded by the trier of fact
240 unless the seller, distributor or prescriber exercised substantial



241 control over that aspect of the design, testing, manufacture,
242 packaging or labeling of the product that caused the harm for
243 which recovery of damages is sought; the seller, distributor or
244 prescriber altered or modified the product, and the alteration or
245 modification was a substantial factor in causing the harm for
246 which recovery of damages is sought; the seller, distributor or
247 prescriber had actual knowledge of the defective condition of the
248 product at the time he supplied same; or the seller, distributor
249 or prescriber made an express factual representation about the
250 aspect of the product which caused the harm for which recovery of
251 damages is sought.

252 (ii) Subparagraph (i) shall not apply unless the
253 seller, distributor or prescriber has given prompt notice of the
254 suit to the manufacturer within thirty (30) days of the filing of
255 the complaint against the seller.

256 (i) An agent or employee of a disclosed principal who
257 directly participates in or authorizes the commission of a tort
258 shall be subject to liability for any tortious conduct committed
259 within the course and scope of employment.

260 (j) Nothing in this section shall be construed to
261 eliminate any common law defense to an action for damages caused
262 by a product.

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

265 15-1-36. (1) For any claim accruing on or before June 30,
266 1998, and except as otherwise provided in this section, no claim
267 in tort may be brought against a licensed physician, osteopath,
268 dentist, hospital, nursing facility, nurse, pharmacist,
269 podiatrist, optometrist or chiropractor for injuries or wrongful
270 death arising out of the course of medical, surgical or other
271 professional services unless it is filed within two (2) years from
272 the date the alleged act, omission or neglect shall or with
273 reasonable diligence might have been first known or discovered.



274 (2) For any claim accruing on or after July 1, 1998, and
275 except as otherwise provided in this section, no claim in tort may
276 be brought against a licensed physician, osteopath, dentist,
277 hospital, nursing facility, nurse, pharmacist, podiatrist,
278 optometrist or chiropractor for injuries or wrongful death arising
279 out of the course of medical, surgical or other professional
280 services unless it is filed within two (2) years from the date the
281 alleged act, omission or neglect shall or with reasonable
282 diligence might have been first known or discovered, and, except
283 as described in paragraphs (a) and (b) of this subsection, in no
284 event more than seven (7) years after the alleged act, omission or
285 neglect occurred:

286 (a) In the event a foreign object introduced during a
287 surgical or medical procedure has been left in a patient's body,
288 the cause of action shall be deemed to have first accrued at, and
289 not before, the time at which the foreign object is, or with
290 reasonable diligence should have been, first known or discovered
291 to be in the patient's body.

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

297 (3) Except as otherwise provided in subsection (4) of this
298 section, if at the time at which the cause of action shall or with
299 reasonable diligence might have been first known or discovered,
300 the person to whom such claim has accrued shall be six (6) years
301 of age or younger, then such minor or the person claiming through
302 such minor may, notwithstanding that the period of time limited
303 pursuant to subsections (1) and (2) of this section shall have
304 expired, commence action on such claim at any time within two (2)
305 years next after the time at which the minor shall have reached



306 his sixth birthday, or shall have died, whichever shall have first
307 occurred.

308 (4) If at the time at which the cause of action shall or
309 with reasonable diligence might have been first known or
310 discovered, the person to whom such claim has accrued shall be a
311 minor without a parent or legal guardian, then such minor or the
312 person claiming through such minor may, notwithstanding that the
313 period of time limited pursuant to subsections (1) and (2) of this
314 section shall have expired, commence action on such claim at any
315 time within two (2) years next after the time at which the minor
316 shall have a parent or legal guardian or shall have died,
317 whichever shall have first occurred; provided, however, that in no
318 event shall the period of limitation begin to run prior to such
319 minor's sixth birthday unless such minor shall have died.

320 (5) If at the time at which the cause of action shall or
321 with reasonable diligence might have been first known or
322 discovered, the person to whom such claim has accrued shall be
323 under the disability of unsoundness of mind, then such person or
324 the person claiming through him may, notwithstanding that the
325 period of time hereinbefore limited shall have expired, commence
326 action on such claim at any time within two (2) years next after
327 the time at which the person to whom the right shall have first
328 accrued shall have ceased to be under the disability, or shall
329 have died, whichever shall have first occurred.

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

337 (7) For the purposes of subsection (3) of this section, and
338 only for the purposes of such subsection, the disability of



339 infancy or minority shall be removed from and after a person has
340 reached his sixth birthday.

341 (8) For the purposes of subsection (4) of this section, and
342 only for the purposes of such subsection, the disability of
343 infancy or minority shall be removed from and after a person has
344 reached his sixth birthday or from and after such person shall
345 have a parent or legal guardian, whichever occurs later, unless
346 such disability is otherwise removed by law.

347 (9) The limitation established by this section as to a
348 licensed physician, osteopath, dentist, hospital or nurse shall
349 apply only to actions the cause of which accrued on or after July
350 1, 1976.

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

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

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

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

363 (14) The limitation established by this section as to
364 nursing facilities shall apply only to actions the cause of which
365 accrued after the passage of House Bill No. _____, Third
366 Extraordinary Session of 2002.

367 (15) No action based upon the health care provider's
368 professional negligence may be begun unless the defendant has been
369 given at least ninety (90) days' prior notice of the intention to
370 begin the action. No particular form of notice is required, but
371 it shall notify the defendant of the legal basis of the claim and



372 the type of loss sustained, including with specificity the nature
373 of the injuries suffered. If the notice is served within ninety
374 (90) days of the expiration of the applicable statute of
375 limitations, the time for the beginning of the action shall be
376 extended ninety (90) days from the service of the notice. This
377 subsection shall not be applicable with respect to any defendant
378 whose name is unknown to the plaintiff at the time of filing the
379 complaint and who is identified therein by a fictitious name.

380 **SECTION 6.** Section 85-5-7, Mississippi Code of 1972, is
381 amended as follows:

382 85-5-7. (1) As used in this section "fault" means an act or
383 omission of a person which is a proximate cause of injury or death
384 to another person or persons, damages to property, tangible or
385 intangible, or economic injury, including but not limited to
386 negligence, malpractice, strict liability, absolute liability or
387 failure to warn. "Fault" shall not include any tort which results
388 from an act or omission committed with a specific wrongful intent.

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

395 (3) Except as otherwise provided in subsections (2) and (6)
396 of this section, in any civil action based on fault, the liability
397 for damages caused by two (2) or more persons shall be several
398 only, and not joint and several and a joint tortfeasor shall be
399 liable only for the amount of damages allocated to him in direct
400 proportion to his percentage of fault. In assessing percentages
401 of fault an employer and the employer's employee or a principal
402 and the principal's agent shall be considered as one (1) defendant
403 when the liability of such employer or principal has been caused



404 by the wrongful or negligent act or omission of the employee or
405 agent.

406 (4) Any defendant held jointly liable under this section
407 shall have a right of contribution against fellow joint
408 tortfeasors. A defendant shall be held responsible for
409 contribution to other joint tortfeasors only for the percentage of
410 fault assessed to such defendant.

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

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

420 (7) In actions involving joint tortfeasors, the trier of
421 fact shall determine the percentage of fault for each party
422 alleged to be at fault.

423 (8) Physicians, dentists and other medical practitioners
424 covered under the provisions of Section 11-46-1 et seq. shall only
425 be liable for the amount of damages which is the percentage of
426 fault allocated to such physician, dentist and other medical
427 practitioners.

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

431 **SECTION 7.** Before any action for medical malpractice may be
432 brought, the attorney bringing such action shall sign an affidavit
433 as an officer of the court stating that he has had his case
434 reviewed by a medical expert and the medical expert has determined
435 there is a reasonable basis for the commencement of the action.



436 **SECTION 8.** (1) For the purposes of this section, the
437 following words and phrases shall have the meanings ascribed
438 herein unless the context clearly requires otherwise:

439 (a) "Noneconomic damages" means subjective,
440 nonpecuniary damages arising from death, pain, suffering,
441 inconvenience, physical impairment, disfigurement, mental anguish,
442 worry, emotional distress, loss of society and companionship, loss
443 of consortium, bystander injury, injury to reputation,
444 humiliation, loss of the enjoyment of life, hedonic damages, other
445 nonpecuniary damages, and any other theory of damages such as fear
446 of loss, illness or injury. The term "noneconomic damages" shall
447 not include punitive damages.

448 (b) "Actual economic damages" means objectively
449 verifiable pecuniary damages arising from medical expenses and
450 medical care, rehabilitation services, custodial care,
451 disabilities, loss of earnings and earning capacity, loss of
452 income, burial costs, loss of use of property, costs of repair of
453 replacement of property, costs of obtaining substitute domestic
454 services, loss of employment, loss of business or employment
455 opportunities, and other objectively verifiable monetary losses.

456 (c) "Provider of health care" means an individual
457 licensed, certified, or otherwise authorized or permitted by law
458 to provide health care in the ordinary course of business or
459 practice of a profession.

460 (2) (a) In any action for malpractice, negligence, error,
461 omission, mistake or the unauthorized rendering of professional
462 services against a provider of health care, the court shall
463 instruct the jury that in the event they find the defendant
464 liable, they shall not award the plaintiff more than Five Hundred
465 Thousand Dollars (\$500,000.00) for pain and suffering, loss of
466 companionship, embarrassment and other items of general damages
467 unless the judge determines by clear and convincing evidence that
468 there is substantial or permanent loss or impairment of a bodily



469 function, death or substantial disfigurement, or other special
470 circumstances in the case which warrant a finding that imposition
471 of such a limitation would deprive the plaintiff of just
472 compensation for the injuries sustained. In any such action which
473 is tried without a jury, the court shall not award the plaintiff
474 more than Five Hundred Thousand Dollars (\$500,000.00) for pain and
475 suffering, loss of companionship, embarrassment and other items of
476 general damages unless the aforesaid findings are made specially
477 by the court and stated separately in the judgment entered by the
478 court. It is the intent of this section to limit all noneconomic
479 damages to the above.

480 (b) The limitations on damages set forth in this
481 section shall be adjusted for inflation annually. The adjustment
482 shall be based on the cumulative annual adjustment for inflation
483 for each year since the effective date of the damages limitations
484 in this section. The adjustment made pursuant to this paragraph
485 shall be rounded upward or downward to the nearest increment of
486 Ten Dollars (\$10.00).

487 (c) As used in this section, "inflation" means the
488 annual percentage change in the United States Department of Labor,
489 Bureau of Labor Statistics, Consumer Price Index for the State of
490 Mississippi, all items, all urban consumers or its successor
491 index.

492 (d) The Secretary of State shall certify the adjusted
493 limitation on damages within fourteen (14) days after the
494 appropriate information is available.

495 **SECTION 9.** The Commissioner of Insurance shall establish a
496 medical malpractice risk pool for the purpose of making necessary
497 medical malpractice insurance available for physicians, registered
498 nurses and all other personnel who are duly licensed to practice
499 in a hospital and hospitals. Monies for the initial funding of
500 the Medical Malpractice Risk Pool shall be drawn from the Health
501 Care Expendable Fund established in Section 43-13-407. The



502 Commissioner of Insurance shall promulgate rules and regulations
503 necessary for the operation of the risk pool.

504 **SECTION 10.** Section 43-13-407, Mississippi Code of 1972, is
505 amended as follows:

506 43-13-407. (1) In accordance with the purposes of this
507 article, there is established in the State Treasury the Health
508 Care Expendable Fund, into which shall be transferred from the
509 Health Care Trust Fund the following sums:

510 (a) In fiscal year 2000, Fifty Million Dollars
511 (\$50,000,000.00);

512 (b) In fiscal year 2001, Fifty-five Million Dollars
513 (\$55,000,000.00);

514 (c) In fiscal year 2002, Sixty Million Five Hundred
515 Thousand Dollars (\$60,500,000.00);

516 (d) In fiscal year 2003, Sixty-six Million Five Hundred
517 Fifty Thousand Dollars (\$66,550,000.00);

518 (e) In fiscal year 2004 and each subsequent fiscal
519 year, a sum equal to the average annual amount of the income from
520 the investment of the funds in the Health Care Trust Fund since
521 July 1, 1999.

522 (2) In any fiscal year in which interest and dividends from
523 the investment of the funds in the Health Care Trust Fund are not
524 sufficient to fund the full amount of the annual transfer into the
525 Health Care Expendable Fund as required in subsection (1) of this
526 section, the State Treasurer shall transfer from tobacco
527 settlement installment payments an amount that is sufficient to
528 fully fund the amount of the annual transfer.

529 (3) (a) On March 6, 2002, the State Treasurer shall
530 transfer the sum of Eighty-seven Million Dollars (\$87,000,000.00)
531 from the Health Care Trust Fund into the Health Care Expendable
532 Fund. In addition, at the time the State of Mississippi receives
533 the 2002 calendar year tobacco settlement installment payment, the



534 State Treasurer shall deposit the full amount of that installment
535 payment into the Health Care Expendable Fund.

536 (b) If during any fiscal year after March 6, 2002, the
537 general fund revenues received by the state exceed the general
538 fund revenues received during the previous fiscal year by more
539 than five percent (5%), the Legislature shall repay to the Health
540 Care Trust Fund one-third (1/3) of the amount of the general fund
541 revenues that exceed the five percent (5%) growth in general fund
542 revenues. The repayment required by this paragraph shall continue
543 in each fiscal year in which there is more than five percent (5%)
544 growth in general fund revenues, until the full amount of the
545 funds that were transferred and deposited into the Health Care
546 Expendable Fund under the provisions of paragraph (a) of this
547 subsection have been repaid to the Health Care Trust Fund.

548 (4) All income from the investment of the funds in the
549 Health Care Expendable Fund shall be credited to the account of
550 the Health Care Expendable Fund. Any funds in the Health Care
551 Expendable Fund at the end of a fiscal year shall not lapse into
552 the State General Fund.

553 (5) The funds in the Health Care Expendable Fund shall be
554 available for expenditure under specific appropriation by the
555 Legislature beginning in fiscal year 2000, and shall be expended
556 exclusively for health care purposes, including, but not limited
557 to, the initial funding for the Medical Malpractice Risk Pool
558 established in House Bill _____, 2002 Third Extraordinary
559 Session.

560 (6) Subsections (1), (2), (4) and (5) of this section shall
561 stand repealed on July 1, 2004.

562 **SECTION 11.** Section 43-11-1, Mississippi Code of 1972, is
563 amended as follows:

564 43-11-1. When used in this chapter, the following words
565 shall have the following meaning:



566 (a) "Institutions for the aged or infirm" means a place
567 either governmental or private which provides group living
568 arrangements for four (4) or more persons who are unrelated to the
569 operator and who are being provided food, shelter and personal
570 care whether any such place be organized or operated for profit or
571 not. The term "institution for aged or infirm" includes nursing
572 homes, pediatric skilled nursing facilities, psychiatric
573 residential treatment facilities, convalescent homes and homes for
574 the aged, provided that these institutions fall within the scope
575 of the definitions set forth above. The term "institution for the
576 aged or infirm" does not include hospitals, clinics or mental
577 institutions devoted primarily to providing medical service.

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

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

586 (d) "Psychiatric residential treatment facility" means
587 any nonhospital establishment with permanent facilities which
588 provides a 24-hour program of care by qualified therapists
589 including, but not limited to, duly licensed mental health
590 professionals, psychiatrists, psychologists, psychotherapists and
591 licensed certified social workers, for emotionally disturbed
592 children and adolescents referred to such facility by a court,
593 local school district or by the Department of Human Services, who
594 are not in an acute phase of illness requiring the services of a
595 psychiatric hospital, and are in need of such restorative
596 treatment services. For purposes of this paragraph, the term
597 "emotionally disturbed" means a condition exhibiting one or more



598 of the following characteristics over a long period of time and to
599 a marked degree, which adversely affects educational performance:

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

602 2. An inability to build or maintain satisfactory
603 relationships with peers and teachers;

604 3. Inappropriate types of behavior or feelings
605 under normal circumstances;

606 4. A general pervasive mood of unhappiness or
607 depression; or

608 5. A tendency to develop physical symptoms or
609 fears associated with personal or school problems. An
610 establishment furnishing primarily domiciliary care is not within
611 this definition.

612 (e) "Pediatric skilled nursing facility" means an
613 institution or a distinct part of an institution that is primarily
614 engaged in providing to inpatients skilled nursing care and
615 related services for persons under twenty-one (21) years of age
616 who require medical or nursing care or rehabilitation services for
617 the rehabilitation of injured, disabled or sick persons.

618 (f) "Licensing agency" means the State Department of
619 Health.

620 (g) "Medical records" mean, without restriction, those
621 medical histories, records, reports, summaries, diagnoses and
622 prognoses, records of treatment and medication ordered and given,
623 notes, entries, x-rays and other written or graphic data prepared,
624 kept, made or maintained in institutions for the aged or infirm
625 that pertain to residency in, or services rendered to residents
626 of, an institution for the aged or infirm.

627 **SECTION 12.** The following shall be codified as Section
628 43-11-16, Mississippi Code of 1972:

629 43-11-16. Medical records are and shall remain the property
630 of the various institutions for the aged and infirm, subject



631 however to reasonable access to the information contained therein
632 upon good cause shown by the resident, his personal
633 representatives or heirs, his attending medical personnel and his
634 duly authorized nominees, and upon payment of any reasonable
635 charges for such service. Nothing in this section shall be
636 construed to deny access to medical records by the licensing
637 agency in the discharge of its official duties under this chapter.
638 Except as otherwise provided by law, medical records shall not
639 constitute public records and nothing in this section shall be
640 deemed to impair any privilege of confidence conferred by law or
641 the Mississippi Rules of Evidence on residents, their personal
642 representatives or heirs by Section 13-1-21.

643 **SECTION 13.** (1) There is created the Medical Malpractice
644 Mediation Board which shall be comprised of the following members:

645 (a) One (1) person appointed by the Governor;

646 (b) One (1) person appointed by the Mississippi Trial
647 Lawyers Association;

648 (c) One (1) person appointed by the Mississippi Bar;

649 (d) One (1) person appointed by the Mississippi
650 Hospital Association; and

651 (e) One (1) person appointed by the Mississippi Medical
652 Association.

653 (2) All members of the board shall be entitled to per diem
654 as provided in Section 25-3-69 and travel expenses as provided in
655 Section 25-3-41 for the performance of their duties as members of
656 the board.

657 (3) The board shall elect a chairman and other officers it
658 deems necessary to carry out the purposes of this act.

659 **SECTION 14.** Before any medical malpractice suit or suit
660 involving a nursing facility may be brought, the dispute must be
661 submitted for mediation. The board shall appoint and certify
662 mediators for such disputes. Mediators shall be members of the
663 Mississippi Bar who have been engaged in the active practice of



664 law for a minimum of five (5) years. The mediator shall make
665 every effort to help parties resolve their dispute in order to
666 avoid litigation. Mediation shall be informal and rules of Civil
667 Procedure and Evidence shall be relaxed. Mediation under this act
668 shall be nonbinding unless the parties agree in writing to make
669 the mediation binding. Any matter which is submitted for
670 mediation under this act which is not resolved may not be filed as
671 civil action until ninety (90) days after the termination of
672 mediation.

673 **SECTION 15.** Sections 13 and 14 of this act shall not be
674 construed to take away from the courts their power over awards,
675 nor to make invalid any award good at common law. Sections 13 and
676 14 of this act shall be liberally construed for the encouragement
677 of the settlement of disputes and the prevention of litigation.

678 **SECTION 16.** The Commissioner of Insurance annually for a
679 period of three (3) years shall compile and provide to the
680 Legislature a report on the number of medical malpractice claims,
681 the rate being charged for medical malpractice insurance premiums,
682 the number of physicians leaving the state and any other issues
683 that the commissioner determines impact the medical profession.

684 **SECTION 17.** If any graduate of the University of Mississippi
685 Medical Center decides to retain residency and practice medicine
686 in the state upon graduation from any accredited medical doctor
687 program or nurse practitioner program, then for a period of two
688 (2) years that physician or nurse practitioner shall be able to
689 receive from designated state funds an amount not to exceed twenty
690 percent (20%) of such physician's or nurse practitioner's medical
691 malpractice premium should those funds be made available by the
692 Legislature and if the physician's or nurse practitioner's
693 practice includes a minimum of twenty percent (20%) Medicaid paid
694 patients.

695 **SECTION 18.** (1) Any licensed physician or certified nurse
696 practitioner who voluntarily provides needed medical or health



697 services to any program at an accredited school in the state
698 without the expectation of payment due to the inability of such
699 person to pay for said services shall be immune from liability for
700 any civil action arising out of the provision of such medical or
701 health services provided in good faith on a charitable basis.
702 This section shall not extend immunity to acts of willful or gross
703 negligence. Except in cases of rendering emergency care wherein
704 the provisions of Section 73-25-37, Mississippi Code of 1972,
705 apply, immunity under this section shall be extended only if the
706 physician or certified nurse practitioner and patient execute a
707 written waiver in advance of the rendering of such medical
708 services specifying that such services are provided without the
709 expectation of payment and that the licensed physician or
710 certified nurse practitioner shall be immune as provided herein.

711 (2) Any physician who voluntarily renders any medical
712 service under a special volunteer medical license authorized under
713 Section 73-25-18 without any payment or compensation or the
714 expectation or promise of any payment or compensation shall be
715 immune from liability for any civil action arising out of any act
716 or omission resulting from the rendering of the medical service
717 unless the act or omission was the result of the physician's gross
718 negligence or willful misconduct. In order for the immunity under
719 this subsection to apply, there must be a written or oral
720 agreement for the physician to provide a voluntary noncompensated
721 medical service before the rendering of the service by the
722 physician.

723 **SECTION 19.** This act shall take effect and be in force from
724 and after its passage and shall apply only to causes of action
725 accruing on or after that date.

