

By: Representative Watson

To: Select Committee on
Civil Justice Reform

HOUSE BILL NO. 4

1 AN ACT TO CREATE NEW SECTION 11-11-4, MISSISSIPPI CODE OF
2 1972, TO REVISE VENUE FOR MEDICAL MALPRACTICE ACTIONS; TO CREATE
3 NEW SECTION 11-1-62, MISSISSIPPI CODE OF 1972, TO PROVIDE
4 INDEMNITY TO PHYSICIANS WHO PRESCRIBE AND PHARMACISTS WHO DISPENSE
5 PRESCRIPTIONS OF FDA APPROVED DRUGS; TO AMEND SECTION 73-25-33,
6 MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF "PRACTICE OF
7 MEDICINE"; TO PROVIDE IMMUNITY FROM LIABILITY TO PHYSICIANS AND
8 NURSE PRACTITIONERS WHO PROVIDE HEALTH SERVICES AT SCHOOLS, AND TO
9 PHYSICIANS WHO RENDER MEDICAL SERVICE UNDER A SPECIAL VOLUNTEER
10 MEDICAL LICENSE, ON A CHARITABLE BASIS; TO AMEND SECTION 85-5-7,
11 MISSISSIPPI CODE OF 1972, TO CONFORM THE GENERAL JOINT AND SEVERAL
12 LIABILITY STATUTE TO NEWLY CREATED SECTION 11-46-14, MISSISSIPPI
13 CODE OF 1972; TO AMEND SECTION 43-11-1, MISSISSIPPI CODE OF 1972,
14 TO DEFINE MEDICAL RECORDS MADE OR MAINTAINED IN INSTITUTIONS FOR
15 THE AGED OR INFIRM; TO CREATE NEW SECTION 43-11-16, MISSISSIPPI
16 CODE OF 1972, TO PROVIDE FOR CONFIDENTIALITY OF MEDICAL RECORDS
17 MADE OR MAINTAINED IN INSTITUTIONS FOR THE AGED OR INFIRM, AND TO
18 REQUIRE 90-DAY'S NOTICE OF INTENTION TO SUE; TO AMEND SECTION
19 15-1-36, MISSISSIPPI CODE OF 1972, TO REVISE THE STATUTE OF
20 LIMITATIONS APPLICABLE TO CLAIMS AGAINST NURSING FACILITIES; TO
21 CREATE NEW SECTION 11-46-14, MISSISSIPPI CODE OF 1972, TO LIMIT
22 JOINT AND SEVERAL LIABILITY UNDER THE TORT CLAIMS ACT WHEN A
23 PHYSICIAN IS A JOINT TORT-FEASOR; TO AMEND SECTION 11-46-1,
24 MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF "EMPLOYEE"
25 UNDER THE TORT CLAIMS ACT; TO CREATE NEW SECTION 41-105-1,
26 MISSISSIPPI CODE OF 1972, TO ENACT A SHORT TITLE FOR THE
27 MISSISSIPPI CARE ACCESS AND RELIABILITY ENHANCEMENT (CARE) ACT; TO
28 CREATE NEW SECTION 41-105-3, MISSISSIPPI CODE OF 1972, TO MAKE
29 LEGISLATIVE FINDINGS; TO CREATE NEW SECTION 41-105-5, MISSISSIPPI
30 CODE OF 1972, TO SPECIFY THE PURPOSE AND SCOPE OF THE MISSISSIPPI
31 CARE ACT; TO CREATE NEW SECTION 41-105-7, MISSISSIPPI CODE OF
32 1972, TO ENACT DEFINITIONS; TO CREATE NEW SECTION 41-105-9,
33 MISSISSIPPI CODE OF 1972, TO CREATE THE MISSISSIPPI CARE AUTHORITY
34 AND BOARD OF DIRECTORS; TO CREATE NEW SECTION 41-105-11,
35 MISSISSIPPI CODE OF 1972, TO SPECIFY THE POWERS AND DUTIES OF THE
36 AUTHORITY; TO CREATE NEW SECTION 41-105-13, MISSISSIPPI CODE OF
37 1972, TO INDEMNIFY THE CARE BOARD AND ITS EMPLOYEES FROM
38 LIABILITY; TO CREATE NEW SECTION 41-105-15, MISSISSIPPI CODE OF
39 1972, TO SPECIFY THE QUALIFICATIONS OF PARTICIPATING HEALTHCARE
40 PROVIDERS; TO CREATE NEW SECTION 41-105-17, MISSISSIPPI CODE OF
41 1972, TO SPECIFY REQUIREMENTS TO ESTABLISH FINANCIAL
42 RESPONSIBILITY OF A PARTICIPATING HEALTHCARE PROVIDER; TO CREATE
43 NEW SECTION 41-105-19, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
44 THE EXCLUSIVENESS OF THE REMEDIES AFFORDED BY THE MISSISSIPPI CARE
45 ACT; TO CREATE NEW SECTION 41-105-21, MISSISSIPPI CODE OF 1972, TO
46 PROVIDE FOR FUNDING OF THE AUTHORITY; TO BRING FORWARD SECTIONS
47 83-47-1, 83-47-3, 83-47-5, 83-47-7, 83-47-9, 83-47-11, 83-47-13,
48 83-47-15, 83-47-17, 83-47-19, 83-47-21, 83-47-23 AND 83-47-25,
49 MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR FORMATION AND
50 OPERATION OF NONPROFIT MEDICAL LIABILITY INSURANCE CORPORATIONS;
51 AND FOR RELATED PURPOSES.



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

53 **SECTION 1.** The following shall be codified as Section
54 11-11-4, Mississippi Code of 1972:

55 11-11-4. (1) Any action against a licensed physician for
56 injuries or death arising out of the course of medical, surgical
57 or other professional services shall be brought in the county in
58 which the act or omission giving rise to the cause of action
59 occurred except in the case of multiple defendants as hereinafter
60 provided.

61 (2) Notwithstanding any other provision, the venue of any
62 consolidated action brought pursuant to Miss.R.Civ.P.20 in which a
63 licensed physician is a defendant may be transferred to any other
64 judicial district where venue would be proper which has more
65 significant relationships to the cause of action and the parties
66 than the forum venue.

67 **SECTION 2.** The following shall be codified as Section
68 11-1-62, Mississippi Code of 1972:

69 11-1-62. (1) In any civil action alleging damages caused by
70 a prescription drug and absent any negligence on the part of the
71 physician or other licensed professional who prescribes drugs, a
72 physician or other licensed professional who prescribes drugs
73 shall be indemnified by the manufacturer of the prescription drug
74 for any damages if the federal Food and Drug Administration (FDA)
75 has approved that drug for treatment of the condition, disease or
76 illness for which the drug was prescribed.

77 (2) In any civil action alleging damages caused by a
78 prescription drug and absent any negligence on the part of the
79 pharmacist, a pharmacist who dispenses a prescription shall be
80 indemnified by the manufacturer of the prescription drug if the
81 federal Food and Drug Administration (FDA) has approved that drug.

82 **SECTION 3.** Section 73-25-33, Mississippi Code of 1972, is
83 amended as follows:



84 73-25-33. The practice of medicine shall mean to suggest,
85 recommend, prescribe, or direct for the use of any person, any
86 drug, medicine, appliance, or other agency, whether material or
87 not material, for the cure, relief, or palliation of any ailment
88 or disease of the mind or body, or for the cure or relief of any
89 wound or fracture or other bodily injury or deformity, or the
90 practice of obstetrics or midwifery, after having received, or
91 with the intent of receiving therefor, either directly or
92 indirectly, any bonus, gift, profit or compensation; provided,
93 that nothing in this section shall apply to females engaged solely
94 in the practice of midwifery. Notwithstanding any contrary
95 provision of this section, the act of prescribing any drug or
96 medicine shall constitute a sale under Mississippi law.

97 **SECTION 4.** (1) Any licensed physician or certified nurse
98 practitioner who voluntarily provides needed medical or health
99 services to any program at an accredited school in the state
100 without the expectation of payment due to the inability of such
101 person to pay for said services shall be immune from liability for
102 any civil action arising out of the provision of such medical or
103 health services provided in good faith on a charitable basis.
104 This section shall not extend immunity to acts of willful or gross
105 negligence. Except in cases of rendering emergency care wherein
106 the provisions of Section 73-25-37, Mississippi Code of 1972,
107 apply, immunity under this section shall be extended only if the
108 physician or certified nurse practitioner and patient execute a
109 written waiver in advance of the rendering of such medical
110 services specifying that such services are provided without the
111 expectation of payment and that the licensed physician or
112 certified nurse practitioner shall be immune as provided herein.

113 (2) Any physician who voluntarily renders any medical
114 service under a special volunteer medical license authorized under
115 Section 73-25-18 without any payment or compensation or the
116 expectation or promise of any payment or compensation shall be



117 immune from liability for any civil action arising out of any act
118 or omission resulting from the rendering of the medical service
119 unless the act or omission was the result of the physician's gross
120 negligence or willful misconduct. In order for the immunity under
121 this subsection to apply, there must be a written or oral
122 agreement for the physician to provide a voluntary noncompensated
123 medical service before the rendering of the service by the
124 physician.

125 **SECTION 5.** Section 85-5-7, Mississippi Code of 1972, is
126 amended as follows:

127 85-5-7. (1) As used in this section "fault" means an act or
128 omission of a person which is a proximate cause of injury or death
129 to another person or persons, damages to property, tangible or
130 intangible, or economic injury, including, but not limited to,
131 negligence, malpractice, strict liability, absolute liability or
132 failure to warn. "Fault" shall not include any tort which results
133 from an act or omission committed with a specific wrongful intent.

134 (2) Except as may be otherwise provided in subsection (6) of
135 this section, in any civil action based on fault, the liability
136 for damages caused by two (2) or more persons shall be joint and
137 several only to the extent necessary for the person suffering
138 injury, death or loss to recover fifty percent (50%) of his
139 recoverable damages, except as the liability for damages caused by
140 any persons covered under the provisions of Section 11-46-1 et
141 seq. shall be limited to such persons own percentage of fault.

142 (3) Except as otherwise provided in subsections (2) and (6)
143 of this section, in any civil action based on fault, the liability
144 for damages caused by two (2) or more persons shall be several
145 only, and not joint and several and a joint tort-feasor shall be
146 liable only for the amount of damages allocated to him in direct
147 proportion to his percentage of fault. In assessing percentages
148 of fault, an employer and the employer's employee or a principal
149 and the principal's agent shall be considered as one (1) defendant



150 when the liability of such employer or principal has been caused
151 by the wrongful or negligent act or omission of the employee or
152 agent.

153 (4) Any defendant held jointly liable under this section
154 shall have a right of contribution against fellow joint
155 tort-feasors. A defendant shall be held responsible for
156 contribution to other joint tort-feasors only for the percentage
157 of fault assessed to such defendant.

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

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

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

170 (8) Nothing in this section shall be construed to create a
171 cause of action. Nothing in this section shall be construed, in
172 any way, to alter the immunity of any person.

173 **SECTION 6.** Section 43-11-1, Mississippi Code of 1972, is
174 amended as follows:

175 43-11-1. When used in this chapter, the following words
176 shall have the following meaning:

177 (a) "Institutions for the aged or infirm" means a place
178 either governmental or private which provides group living
179 arrangements for four (4) or more persons who are unrelated to the
180 operator and who are being provided food, shelter and personal
181 care whether any such place be organized or operated for profit or
182 not. The term "institution for aged or infirm" includes nursing



183 homes, pediatric skilled nursing facilities, psychiatric
184 residential treatment facilities, convalescent homes and homes for
185 the aged, provided that these institutions fall within the scope
186 of the definitions set forth above. The term "institution for the
187 aged or infirm" does not include hospitals, clinics or mental
188 institutions devoted primarily to providing medical service.

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

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

197 (d) "Psychiatric residential treatment facility" means
198 any nonhospital establishment with permanent facilities which
199 provides a 24-hour program of care by qualified therapists
200 including, but not limited to, duly licensed mental health
201 professionals, psychiatrists, psychologists, psychotherapists and
202 licensed certified social workers, for emotionally disturbed
203 children and adolescents referred to such facility by a court,
204 local school district or by the Department of Human Services, who
205 are not in an acute phase of illness requiring the services of a
206 psychiatric hospital, and are in need of such restorative
207 treatment services. For purposes of this paragraph, the term
208 "emotionally disturbed" means a condition exhibiting one or more
209 of the following characteristics over a long period of time and to
210 a marked degree, which adversely affects educational performance:

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

213 2. An inability to build or maintain satisfactory
214 relationships with peers and teachers;



215 3. Inappropriate types of behavior or feelings
216 under normal circumstances;

217 4. A general pervasive mood of unhappiness or
218 depression; or

219 5. A tendency to develop physical symptoms or
220 fears associated with personal or school problems. An
221 establishment furnishing primarily domiciliary care is not within
222 this definition.

223 (e) "Pediatric skilled nursing facility" means an
224 institution or a distinct part of an institution that is primarily
225 engaged in providing to inpatients skilled nursing care and
226 related services for persons under twenty-one (21) years of age
227 who require medical or nursing care or rehabilitation services for
228 the rehabilitation of injured, disabled or sick persons.

229 (f) "Licensing agency" means the State Department of
230 Health.

231 (g) "Medical records" means, without restriction, those
232 medical histories, records, reports, summaries, diagnoses and
233 prognoses, records of treatment and medication ordered and given,
234 notes, entries, x-rays and other written or graphic data prepared,
235 kept, made or maintained in institutions for the aged or infirm
236 that pertain to residency in, or services rendered to residents
237 of, an institution for the aged or infirm.

238 **SECTION 7.** The following shall be codified as Section
239 43-11-16, Mississippi Code of 1972:

240 43-11-16. Medical records are and shall remain the property
241 of the various institutions for the aged and infirm, subject
242 however to reasonable access to the information contained therein
243 upon good cause shown by the resident, his personal
244 representatives or heirs, his attending medical personnel and his
245 duly authorized nominees, and upon payment of any reasonable
246 charges for such service. Nothing in this section shall be
247 construed to deny access to medical records by the licensing



248 agency in the discharge of its official duties under this chapter.
249 Except as otherwise provided by law, medical records shall not
250 constitute public records and nothing in this section shall be
251 deemed to impair any privilege of confidence conferred by law or
252 the Mississippi Rules of Evidence on residents, their personal
253 representatives or heirs by Section 13-1-21.

254 **SECTION 8.** Section 15-1-36, Mississippi Code of 1972, is
255 amended as follows:

256 15-1-36. (1) For any claim accruing on or before June 30,
257 1998, and except as otherwise provided in this section, no claim
258 in tort may be brought against a licensed physician, osteopath,
259 dentist, hospital, nursing facility, nurse, pharmacist,
260 podiatrist, optometrist or chiropractor for injuries or wrongful
261 death arising out of the course of medical, surgical or other
262 professional services unless it is filed within two (2) years from
263 the date the alleged act, omission or neglect shall or with
264 reasonable diligence might have been first known or discovered.

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

277 (a) In the event a foreign object introduced during a
278 surgical or medical procedure has been left in a patient's body,
279 the cause of action shall be deemed to have first accrued at, and
280 not before, the time at which the foreign object is, or with



281 reasonable diligence should have been, first known or discovered
282 to be in the patient's body.

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

288 (3) Except as otherwise provided in subsection (4) of this
289 section, if at the time at which the cause of action shall or with
290 reasonable diligence might have been first known or discovered,
291 the person to whom such claim has accrued shall be six (6) years
292 of age or younger, then such minor or the person claiming through
293 such minor may, notwithstanding that the period of time limited
294 pursuant to subsections (1) and (2) of this section shall have
295 expired, commence action on such claim at any time within two (2)
296 years next after the time at which the minor shall have reached
297 his sixth birthday, or shall have died, whichever shall have first
298 occurred.

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

311 (5) If at the time at which the cause of action shall or
312 with reasonable diligence might have been first known or
313 discovered, the person to whom such claim has accrued shall be



314 under the disability of unsoundness of mind, then such person or
315 the person claiming through him may, notwithstanding that the
316 period of time hereinbefore limited shall have expired, commence
317 action on such claim at any time within two (2) years next after
318 the time at which the person to whom the right shall have first
319 accrued shall have ceased to be under the disability, or shall
320 have died, whichever shall have first occurred.

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

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

332 (8) For the purposes of subsection (4) of this section, and
333 only for the purposes of such subsection, the disability of
334 infancy or minority shall be removed from and after a person has
335 reached his sixth birthday or from and after such person shall
336 have a parent or legal guardian, whichever occurs later, unless
337 such disability is otherwise removed by law.

338 (9) The limitation established by this section as to a
339 licensed physician, osteopath, dentist, hospital or nurse shall
340 apply only to actions the cause of which accrued on or after July
341 1, 1976.

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



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

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

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

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

358 (15) No action based upon the healthcare provider's
359 professional negligence may be begun unless the defendant has been
360 given at least ninety (90) days' prior notice of the intention to
361 begin the action. No particular form of notice is required, but
362 it shall notify the defendant of the legal basis of the claim and
363 the type of loss sustained, including with specificity the nature
364 of the injuries suffered. If the notice is served within ninety
365 (90) days of the expiration of the applicable statute of
366 limitations, the time for the beginning of the action shall be
367 extended ninety (90) days from the service of the notice. This
368 subsection shall not be applicable with respect to any defendant
369 whose name is unknown to the plaintiff at the time of filing the
370 complaint and who is identified therein by a fictitious name.

371 **SECTION 9.** The following shall be codified as Section
372 11-46-14, Mississippi Code of 1972:

373 11-46-14. (1) Notwithstanding the provision of Section
374 85-5-7, in any civil action brought under this chapter for money
375 damages as compensation for injuries or wrongful death arising out
376 of the course of medical, surgical or other professional medical
377 services by two (2) or more persons or entities, where one or more



378 joint tort-feasors is entitled to the limits of liability
379 described in Section 11-46-15 and one or more joint tort-feasors
380 is a licensed physician, any judgment against such joint
381 tort-feasors shall be several only, and not joint and several, and
382 such joint tort-feasors shall be liable only for the amount of
383 damages allocated in direct proportion of percentage of fault
384 determined by the finder of fact.

385 (2) Nothing in this section shall eliminate or diminish any
386 defense or immunities which exist herein, except as expressly
387 noted herein. Specifically, this shall not eliminate the
388 limitation of liability described in Section 11-46-15.

389 (3) In actions involving joint tort-feasors, the trier of
390 fact shall determine the percentage of fault for each party
391 alleged to be at fault.

392 (4) Nothing in this section shall be construed to create a
393 cause of action. Nothing in this section shall be construed, in
394 any way, to alter immunity of any person.

395 **SECTION 10.** Section 11-46-1, Mississippi Code of 1972, is
396 amended as follows:

397 11-46-1. As used in this chapter the following terms shall
398 have the meanings herein ascribed unless the context otherwise
399 requires:

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

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

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

406 (d) "Department" means the Department of Finance and
407 Administration.

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



410 (f) "Employee" means any officer, employee or servant
411 of the State of Mississippi or a political subdivision of the
412 state, including elected or appointed officials and persons acting
413 on behalf of the state or a political subdivision in any official
414 capacity, temporarily or permanently, in the service of the state
415 or a political subdivision whether with or without compensation.
416 The term "employee" shall not mean a person or other legal entity
417 while acting in the capacity of an independent contractor under
418 contract to the state or a political subdivision; provided,
419 however, that for purposes of the limits of liability provided for
420 in Section 11-46-15, the term "employee" shall include physicians
421 under contract to provide health services with the State Board of
422 Health, the State Board of Mental Health or any county or
423 municipal jail facility while rendering services under such
424 contract. The term "employee" shall also include any physician,
425 dentist or other medical practitioner under contract or affiliated
426 with or employed by the University of Mississippi Medical Center,
427 its departmental practice plans, or who practices on the campus of
428 any university under the control of the Board of Trustees of State
429 Institutions of Higher Learning. The term "employee" shall also
430 include any physician, dentist or other medical practitioner under
431 contract or affiliated with or employed by the State Veterans
432 Affairs Board. The term "employee" shall also include Mississippi
433 Department of Human Services licensed foster parents for the
434 limited purposes of coverage under the Tort Claims Act as provided
435 in Section 11-46-8.

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

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

441 (i) "Political subdivision" means any body politic or
442 body corporate other than the state responsible for governmental



443 activities only in geographic areas smaller than that of the
444 state, including, but not limited to, any county, municipality,
445 school district, community hospital as defined in Section
446 41-13-10, Mississippi Code of 1972, airport authority or other
447 instrumentality thereof, whether or not such body or
448 instrumentality thereof has the authority to levy taxes or to sue
449 or be sued in its own name.

450 (j) "State" means the State of Mississippi and any
451 office, department, agency, division, bureau, commission, board,
452 institution, hospital, college, university, airport authority or
453 other instrumentality thereof, whether or not such body or
454 instrumentality thereof has the authority to levy taxes or to sue
455 or be sued in its own name.

456 (k) "Law" means all species of law, including, but not
457 limited to, any and all constitutions, statutes, case law, common
458 law, customary law, court order, court rule, court decision, court
459 opinion, court judgment or mandate, administrative rule or
460 regulation, executive order, or principle or rule of equity.

461 **SECTION 11.** The following shall be codified as Section
462 41-105-1, Mississippi Code of 1972:

463 41-105-1. **Short title.** Sections 41-105-1 through 41-105-21
464 shall be known and may be cited as the "Mississippi Care Access
465 and Reliability Enhancement Act" or the "Mississippi CARE Act."

466 **SECTION 12.** The following shall be codified as Section
467 41-105-3, Mississippi Code of 1972:

468 41-105-3. **Legislative findings.** It is hereby declared:

469 (a) That there exists in the State of Mississippi a
470 severe shortage of quality, affordable healthcare;

471 (b) That this shortage contributes to the creation and
472 persistence of substandard healthcare for many Mississippians and
473 is damaging to the health, welfare and prosperity of all of the
474 residents of the State of Mississippi;



475 (c) That this shortage disproportionately affects
476 children, the poor, the elderly and public employees;

477 (d) That this shortage can be significantly ameliorated
478 through the creation and maintenance of a nonprofit authority with
479 powers to encourage the provision of healthcare to all
480 Mississippians, and particularly to children, the poor, the
481 elderly and public employees;

482 (e) That there now exists an emergency situation
483 created by this shortage; and

484 (f) That it is in the public interest that the creation
485 and funding of a nonprofit authority to address these issues be
486 implemented and effected immediately in order to remedy such
487 emergency situation.

488 **SECTION 13.** The following shall be codified as Section
489 41-105-5, Mississippi Code of 1972:

490 41-105-5. **Purpose and scope.** (1) The purpose of the
491 Mississippi CARE Act is to create a framework to ensure that
492 quality, affordable healthcare will be available to Mississippi's
493 patients, and particularly patients participating in the Medicaid,
494 Medicare, Children's Health Insurance Program, and State Health
495 Insurance Programs.

496 (2) The provisions of this act shall apply to all
497 participating healthcare providers as defined in Section 41-105-7.

498 **SECTION 14.** The following shall be codified as Section
499 41-105-7, Mississippi Code of 1972:

500 41-105-7. **Definitions.** As used in Sections 41-105-1 through
501 41-105-19, the following words shall have the meaning ascribed
502 herein unless the context clearly requires otherwise:

503 (a) "Authority" means the Mississippi Care Access and
504 Reliability Enhancement Authority created in Section 41-105-9.

505 (b) "Board" means the Mississippi CARE Board of
506 Directors created in Section 41-105-9.



507 (c) "Court" means a court of competent jurisdiction and
508 proper venue over the parties.

509 (d) "Gross malpractice" means failure to exercise the
510 required degree of care, skill or knowledge that amounts to: (i)
511 a conscious indifference to the consequences which may result from
512 the gross malpractice; and (ii) a disregard for and indifference
513 to the safety and welfare of the patient.

514 (e) "Healthcare" means any act, or treatment performed
515 or furnished, or which should have been performed or furnished, by
516 any healthcare provider for, to, or on behalf of a patient during
517 the patient's medical care, treatment or confinement.

518 (f) "Healthcare provider" means (i) a person,
519 partnership, limited liability entity or corporation licensed or
520 certified or authorized by state or federal law to provide
521 professional healthcare service in this state to an individual
522 during that individual's health care, treatment or confinement;
523 and (ii) a healthcare facility or institution, whether public or
524 private, proprietary or nonprofit, which offers diagnosis,
525 treatment, inpatient or ambulatory care to two (2) or more
526 unrelated persons.

527 (g) "Malpractice" means any unintentional tort or any
528 breach of contract based on healthcare or professional services
529 rendered, or which should have been rendered, by a healthcare
530 provider, to a patient, including failure to render services
531 timely and the handling of a patient, including loading and
532 unloading of a patient, and also includes all legal responsibility
533 of a healthcare provider arising from acts or omissions in the
534 training or supervision of healthcare providers, or from defects
535 in blood, tissue, transplants, drugs and medicines, or from
536 defects in or failures of prosthetic devices, implanted in or used
537 on or in the person of a patient.

538 (h) "Medical costs and related economic damages" means
539 all reasonable medical, surgical, hospitalization, physical



540 rehabilitation, custodial services and related economic damages,
541 including prescription drugs, care, custody, prosthetic devices
542 and other similar materials reasonably necessary in the provision
543 of such services, and loss of earnings and loss of earning
544 capacity after the date of the injury. Medical costs and related
545 economic damages shall not include any noneconomic damages.

546 (i) "Noneconomic damages" means any damages which
547 compensate for pain, suffering, inconvenience, physical
548 impairment, disfigurement and other nonpecuniary damages.

549 (j) "Participating healthcare provider" means any
550 healthcare provider who meets the qualification requirements set
551 forth in Section 41-105-15 and shall include all officers and
552 employees of such participating healthcare provider, provided that
553 in the event such officers or employees individually fall within
554 the definition of a healthcare provider as set forth in this
555 section, then such officers and employees must each individually
556 meet the qualification requirements set forth in Section
557 41-105-15.

558 (k) "Patient" means a natural person who receives or
559 should have received health care from a licensed healthcare
560 provider, under a contract, express or implied.

561 (l) "Patient's Lifetime Adequate Necessities Fund" or
562 "PLAN Fund" means the fund to be created pursuant to the
563 provisions of Section 41-105-11(2).

564 (m) "Person" means an individual, corporation, limited
565 liability entity, partnership, association, joint stock company,
566 trust, unincorporated organization, any similar entity or any
567 combination of the foregoing acting in concert.

568 **SECTION 15.** The following shall be codified as Section
569 41-105-9, Mississippi Code of 1972:

570 41-105-9. **Mississippi CARE Authority.** (1) There is hereby
571 created a nonprofit legal entity to be known as the Mississippi



572 Care Access and Reliability Enhancement Authority or the
573 authority.

574 (2) The authority shall be governed by and shall operate
575 subject to the supervision and approval of a nine-member board of
576 directors. All appointees shall be persons with related business,
577 financial, legal or other relevant expertise.

578 (3) The appointed board members shall be divided into three
579 (3) classes, designated Class A, Class B and Class C. Each class
580 shall consist of three (3) board members to be appointed by the
581 Governor. Except for initial appointments and appointments to
582 fill a vacancy, board members shall be appointed annually on
583 September 1 if a business day, and if not a business day, then on
584 the next business day following September 1. Terms shall expire
585 on August 31. Initial appointments shall be made within ten (10)
586 days of the effective date of this law and shall be as follows:
587 Class A board members shall be appointed for a term expiring
588 August 31, 2003; Class B board members for a term expiring August
589 31, 2004; and Class C board members for a term expiring August 31,
590 2005. Each succeeding appointment shall be for a three-year term.
591 Despite the expiration of a board member's term, the board member
592 shall continue to serve until a successor is appointed and
593 qualifies. If a vacancy arises, the Governor shall appoint a
594 successor to fill the unexpired portion of the term. A board
595 member must be a resident of this state.

596 (4) The Governor shall appoint one (1) board member to serve
597 as chairman of the board.

598 (5) Board members may be reimbursed from monies of the
599 association for actual and necessary expenses incurred by them as
600 members in the manner and amount provided in Section 25-3-41,
601 Mississippi Code of 1972, but shall not otherwise be compensated
602 for their services.

603 **SECTION 16.** The following shall be codified as Section
604 41-105-11, Mississippi Code of 1972:



605 41-105-11. **Mississippi CARE Authority powers and duties.**

606 (1) The authority shall create and administer a mandatory medical
607 review process in accordance with the requirements of this
608 section.

609 (a) The medical review process shall provide for the
610 review of all malpractice claims against participating healthcare
611 providers by a medical review panel. No action against a
612 participating healthcare provider or his insurer may be commenced
613 in any court before the claimant's proposed complaint has been
614 presented to a medical review panel.

615 (b) A medical review panel shall issue an expert
616 opinion concerning the malpractice claim which shall be admissible
617 as evidence in any action subsequently brought by the claimant in
618 a court of law. Such expert opinion shall not be conclusive.
619 Either party shall have the right to call, at his cost, any member
620 of the medical review panel as a witness. If called, the witness
621 shall be required to appear and testify.

622 (c) The members of a medical review panel shall consist
623 of three (3) participating healthcare providers who hold unlimited
624 licenses to practice their profession in Mississippi and one (1)
625 duly licensed attorney. The members of a medical review panel
626 shall be appointed by the board.

627 (d) The filing of a request for a review of a claim by
628 a medical review panel shall suspend the time within which suit
629 must be instituted until ninety (90) days following notification,
630 by certified mail, to the claimant or his attorney of the issuance
631 of the opinion by a medical review panel.

632 (e) The authority shall adopt policies and procedures
633 for the medical review process, including without limitation rules
634 and procedures for the appointment of the members of a medical
635 review panel, the presentation of evidence, payment of costs and
636 fees, witnesses, and the issuance of opinions by the medical
637 review panel.



638 (2) There shall be created in the State Treasury the
639 Patient's Lifetime Adequate Necessities Fund, to be known as the
640 PLAN Fund, in accordance with the requirements of this section.

641 (a) The authority shall collect surcharges from all
642 participating healthcare providers in such amounts as the board
643 determines to be necessary, together with other funds of the
644 authority available for such purpose, to provide for payments from
645 the PLAN Fund as provided in Section 41-105-11(2)(b).

646 (b) In the event that a judgment, settlement or final
647 award in an arbitration proceeding exceeds the total liability of
648 all participating healthcare providers as provided in Section
649 41-105-15(2)(b), then application may be made to the authority for
650 payment out of the PLAN Fund for that portion of such excess
651 judgment, settlement or final arbitration award that is determined
652 by the authority to constitute eligible medical costs and related
653 economic damages.

654 (c) The authority shall adopt policies and procedures
655 for the administration of the PLAN Fund. Such policies and
656 procedures shall be included in the plan of operation required by
657 Section 41-105-11(4).

658 (d) Jurisdiction for appeals of decisions of the
659 authority with respect to the PLAN Fund shall be exclusively with
660 the Chancery Court in the First Judicial District of Hinds County,
661 Mississippi. Such appeals shall be conducted based on the record
662 made with the authority and not as a trial de novo.

663 (3) The authority may exercise powers granted to insurers
664 under the laws of this state to write or otherwise make available
665 medical malpractice insurance in the State of Mississippi. The
666 insurance functions of the authority shall be subject to the
667 insurance laws of the State of Mississippi applicable to insurers
668 writing similar lines of insurance.

669 (4) The authority shall adopt a plan of operation for
670 purposes of implementing this chapter, including the provisions of



671 Section 41-105-19, and submit its plan of operation to the
672 Mississippi Commissioner of Insurance for approval.

673 (5) The authority may take any legal actions necessary or
674 proper to accomplish the purposes set forth in this chapter,
675 including without limitation, entering into contracts, suing or
676 being sued, and appointing appropriate administrative, legal,
677 accounting, actuarial and other persons as necessary to provide
678 assistance in the operation of the authority. The authority is
679 authorized to borrow money to effect the purposes of the
680 authority.

681 (6) The Mississippi Commissioner of Insurance may, by rule,
682 establish additional powers and duties of the board and may adopt
683 such rules as are necessary and proper to implement this chapter.
684 The Mississippi Commissioner of Insurance shall have the power to
685 retain accountants, attorneys, actuaries and any other experts he
686 deems necessary to carry out his responsibilities under this
687 chapter.

688 (7) The Mississippi Commissioner of Insurance shall examine
689 and investigate the authority and make an annual report to the
690 Legislature and the Governor thereon.

691 (8) If the board at any time determines that the authority
692 lacks sufficient funds to conduct all or any part of its
693 operations in accordance with the Mississippi CARE Act, then the
694 board may suspend or terminate all or any part of the operations
695 of the authority until such time as the board determines that
696 adequate funds are available to conduct such suspended or
697 terminated operations; provided, however, the board must have the
698 approval of the Mississippi Commissioner of Insurance prior to
699 suspending or terminating any insurance functions of the
700 authority. Notice of any such suspension or termination of
701 operations, and of the resumption of any suspended or terminated
702 operations, shall be given to the Governor, the Legislature, the



703 Mississippi Commissioner of Insurance and all participating
704 healthcare providers.

705 **SECTION 17.** The following shall be codified as Section
706 41-105-13, Mississippi Code of 1972:

707 41-105-13. **Liability, indemnification and legal**
708 **representation.** Neither the CARE Board nor its employees shall be
709 liable for any obligations of the authority. There shall be no
710 liability on the part of and no cause of action shall arise
711 against the authority or its agents or employees, members of the
712 board of directors, the Commissioner of Insurance or his
713 representatives for any action or omission by them in the
714 performance of their powers and duties under this chapter. The
715 board may provide in its bylaws or rules for indemnification of,
716 and legal representation for, its members, agents and employees.

717 **SECTION 18.** The following shall be codified as Section
718 41-105-15, Mississippi Code of 1972:

719 41-105-15. **Participating healthcare providers.** (1) In
720 order to be qualified as a participating healthcare provider and
721 to participate in the provisions of this chapter, a healthcare
722 provider must:

723 (a) Meet the proof of financial responsibility
724 requirements as set forth in Section 41-105-17.

725 (b) Cause to be filed with the board a written
726 agreement, the form and substance of which shall be determined by
727 the board, signed by a duly authorized representative, that the
728 healthcare provider will provide services to (i) Medicaid
729 recipients, (ii) Medicare recipients, (iii) Children's Health
730 Insurance Program participants, and (iv) State Health Insurance
731 Program participants. Such written agreement shall provide, among
732 other things, that the healthcare provider will provide services
733 to Medicaid recipients, Medicare recipients, Children's Health
734 Insurance Program participants, and State Health Insurance Program
735 participants in a manner that is comparable to the services



736 provided to all other patients and shall be made without balance
737 billing to the patient.

738 (c) Pay all surcharges assessed according to Section
739 41-105-11(2).

740 (2) Except as specifically set forth in Section
741 41-105-15(3), the total amount recoverable for all malpractice
742 claims brought against all participating healthcare providers
743 involved in any one (1) incident of injury to or death of any one
744 (1) patient, shall be limited to the following:

745 (a) Up to Two Hundred Fifty Thousand Dollars
746 (\$250,000.00) for noneconomic damages; and

747 (b) Up to Two Hundred Fifty Thousand Dollars
748 (\$250,000.00) for medical costs and related economic damages;
749 provided, however, that in the event that a judgment, settlement
750 or final award in an arbitration proceeding exceeds Two Hundred
751 Fifty Thousand Dollars (\$250,000.00) for medical costs and related
752 economic damages, then application may be made to the authority
753 for payment out of the PLAN Fund in accordance with the provision
754 of Section 41-105-11(2)(b). Payments from the PLAN Fund shall be
755 paid to the patient as periodic payments in such manner as
756 determined by the authority.

757 (3) The limitation on noneconomic damages as set forth in
758 Sections 41-105-15(2)(a) and 41-105-15(4) does not apply in the
759 following circumstances and types of cases:

760 (a) A case in which the conduct of the defendant is
761 determined to constitute gross malpractice; or

762 (b) A case in which, following return of a verdict by
763 the jury or a finding of damages in a bench trial, the court
764 determines, by clear and convincing evidence admitted at trial,
765 that an award in excess of Two Hundred Fifty Thousand Dollars
766 (\$250,000.00) for noneconomic damages is justified because of
767 exceptional circumstances.



768 (4) No more than Five Hundred Thousand Dollars (\$500,000.00)
769 in noneconomic damages may be recovered against a healthcare
770 provider who fails to qualify as a participating healthcare
771 provider or who does not make application to qualify as a
772 participating healthcare provider in connection with all
773 malpractice claims for any one incident of injury to or death of
774 any one patient. Except for the foregoing, a healthcare provider
775 who fails to qualify as a participating healthcare provider or who
776 does not make application to qualify as a participating healthcare
777 provider is not covered by the provisions of this chapter and is
778 subject to liability under the law without regard to the
779 provisions of this chapter.

780 (5) No liability shall be imposed upon any participating
781 healthcare provider on the basis of an alleged breach of contract,
782 whether by express or implied warranty, assuring results to be
783 obtained from any procedure undertaken in the course of
784 healthcare, unless such contract is expressly set forth in writing
785 and signed by such participating healthcare provider or by an
786 authorized agent of such participating healthcare provider.

787 (6) The liability limitations set forth in Section
788 41-105-15(2) and (4) shall be adjusted for inflation annually.
789 The adjustment made pursuant to this paragraph shall be rounded
790 upward or downward to the nearest increment of Ten Dollars
791 (\$10.00). The authority shall make available the cost of living
792 increase calculations, if any, as soon as such information becomes
793 available each year.

794 **SECTION 19.** The following shall be codified as Section
795 41-105-17, Mississippi Code of 1972:

796 41-105-17. **Proof of financial responsibility.** (1)

797 Financial responsibility of a participating healthcare provider
798 may be established by either:

799 (a) Filing with the board proof that the participating
800 healthcare provider is adequately insured for its exposure under



801 this chapter by a policy of malpractice liability insurance
802 approved by the board from an insurance company approved by the
803 board; or

804 (b) Maintaining on deposit with the board an amount
805 approved by the board to adequately cover its exposure under this
806 chapter in the form of cash or other collateral approved by the
807 board.

808 (2) The policy of malpractice liability insurance required
809 by Section 41-105-17(1)(a) may be issued, in form approved by the
810 authority, by any company created pursuant to Sections 83-47-1 et
811 seq. or any other insurance company approved by the board.

812 (3) Any properly licensed agent may sell any policy of
813 malpractice liability insurance approved by the board from an
814 insurance company approved by the board to participating
815 healthcare providers in accordance with this chapter.

816 **SECTION 20.** The following shall be codified as Section
817 41-105-19, Mississippi Code of 1972:

818 41-105-19. **Additional protections; exclusive remedy.** (1)
819 The Mississippi CARE Act shall not limit or preempt any
820 protections or liability limitations afforded to participating
821 healthcare providers.

822 (2) Except to the extent that other applicable law would
823 further limit the remedies available (and in such event such
824 limited remedy shall apply), the remedy provided by this chapter
825 against a participating healthcare provider is exclusive of any
826 other civil action or civil proceeding by reason of the same
827 subject matter against the participating healthcare provider for
828 the act or omission which gave rise to the claim or suit, and any
829 claim made or suit filed against a participating healthcare
830 provider to recover damages for any malpractice injury shall be
831 brought only under the provisions of this chapter, notwithstanding
832 the provisions of any other law to the contrary.



833 **SECTION 21.** The following shall be codified as Section
834 41-105-21, Mississippi Code of 1972:

835 41-105-21. **Funding of authority.** Reasonable expenses of the
836 authority incurred in connection with the execution of its
837 authority under this chapter, including without limitation,
838 expenses for start-up costs, operations and insurance reserves
839 shall be provided from any available funds, pursuant to
840 appropriation by the Legislature.

841 The plan of operation adopted by the board shall provide
842 that, from time to time, the board shall determine whether and to
843 what extent its income, including without limitation, any premiums
844 and surcharges collected, exceeds anticipated or actual expenses
845 and reasonable reserves and the board shall pay such excess
846 amounts to the Health Care Expendable Fund.

847 **SECTION 22.** Section 83-47-1, Mississippi Code of 1972, is
848 brought forward as follows:

849 83-47-1. The public health and welfare requires the adoption
850 of this chapter providing for the organization and operation of
851 nonprofit medical liability insurance corporations.

852 **SECTION 23.** Section 83-47-3, Mississippi Code of 1972, is
853 brought forward as follows:

854 83-47-3. Any seven (7) or more physicians licensed to
855 practice in Mississippi who are residents of this state, may form
856 a nonprofit corporation under this chapter for the purpose of
857 providing medical, professional, general and other liability
858 insurance to health care providers, health care facilities and
859 managed care organizations in Mississippi and any other state or
860 jurisdiction. The term "health care provider," when used in this
861 chapter, shall mean a physician, dentist, pharmacist, osteopath,
862 psychologist, podiatrist, optometrist, chiropractor, nurse,
863 medical technician or other health care provider licensed by the
864 State of Mississippi or any other state or jurisdiction. The term
865 "health care facility," when used in this chapter, shall mean a



866 medical clinic, nursing home, outpatient surgical center,
867 laboratory, pharmacy, dialysis clinic, hospital or other health
868 care facility licensed, if necessary, by the State of Mississippi
869 or any other state or jurisdiction. The term "managed care
870 organization," when used in this chapter, shall mean a health
871 maintenance organization (HMO), individual practice association
872 (IPA), preferred provider organization (PPO), competitive medical
873 plan (CMP), exclusive provider organization (EPO), integrated
874 delivery system (IDS), independent physician/provider organization
875 (IPO), management service organization (MSO), physician
876 hospital/provider organization (PHO) and any other type of managed
877 care organization. Members of the corporation shall consist of
878 only individuals under contracts which entitle such individuals to
879 medical liability insurance. Health care facilities and managed
880 care organizations need not be owned by or comprised of members of
881 the corporation in order to be insured by the corporation. All
882 such corporations shall be governed by this chapter and shall be
883 exempt from all other provisions of the insurance laws of this
884 state, unless otherwise specifically provided herein. Such a
885 corporation may be formed under this chapter in the following
886 manner:

887 (a) The proposed incorporators shall subscribe articles
888 of incorporation in which shall be stated:

889 (i) The proposed corporate name of the
890 corporation, which shall not so closely resemble the name of any
891 other corporation already transacting business in this state as to
892 mislead the public or lead to confusion;

893 (ii) The domicile of the proposed corporation;

894 (iii) The names and post office addresses of the
895 incorporators;

896 (iv) The fact that application for charter is
897 being made under this chapter and the corporation proposed to
898 operate under and subject to the provisions of this chapter;



899 (v) The purposes of the corporation.

900 (b) Such articles of incorporation shall be filed with
901 the Commissioner of Insurance, who shall refer the same to the
902 Attorney General for his opinion as to whether the same meet the
903 requirements of this chapter and are not otherwise violative of
904 the Constitution or laws of this state or of the United States.
905 The Attorney General shall examine the same and endorse his
906 opinion thereon and return the same to the Commissioner of
907 Insurance for approval. The Commissioner of Insurance shall (if
908 the same be approved by the Attorney General) thereupon endorse
909 his certificate of approval upon such articles of incorporation,
910 record the same in his office, and refer the same to the office of
911 the Secretary of State to be there recorded, whereupon said
912 corporation shall become and be considered an existing entity.
913 The articles of incorporation as thus approved and recorded shall
914 be and constitute the charter of incorporation of such
915 corporation. It shall not be necessary that such charter be
916 published, nor shall it be necessary that it be recorded in the
917 office of the chancery clerk.

918 **SECTION 24.** Section 83-47-5, Mississippi Code of 1972, is
919 brought forward as follows:

920 83-47-5. Corporations organized under this chapter shall not
921 have capital stock, but shall have members as prescribed and
922 contemplated by the terms and provisions of this chapter; and such
923 members shall have the privileges provided for in this chapter.
924 The subscribers to the articles of incorporation as the organizers
925 of the corporation shall have power to elect the first board of
926 directors, who shall serve for the terms prescribed in the next
927 sentence of this section, or until their successors are elected
928 and qualified. One-third (1/3) of the members of the first board
929 of directors shall be elected for a term of one (1) year,
930 one-third (1/3) for a term of two (2) years, and one-third (1/3)
931 for a term of three (3) years. Thereafterwards, directors shall



932 be elected for terms of three (3) years. Provisions shall be made
933 for subsequent elections of directors, including the time and
934 place of such elections and notice thereof to the membership by
935 (a) resolution of the directors entered upon the minutes not less
936 than sixty (60) days before such election, designating the time
937 and place of such election, such minutes to be open to the
938 membership as hereinafter provided, or (b) by the time and place
939 of such election being fixed by resolution of the directors, and
940 notice thereof being mailed to the members at least fifteen (15)
941 days before the time fixed for such election. All minutes of the
942 corporation with respect to the time and place fixed for any such
943 election of directors shall be open to members at all reasonable
944 times, but no notice of elections shall be necessary, other than
945 as herein provided. Each member shall be entitled to one (1) vote
946 in the election of directors. It shall be the duty of the
947 directors to provide for elections as the terms of office of
948 directors expire, and it shall be the duty of the Commissioner of
949 Insurance as a part of his supervisory jurisdiction over such
950 corporations to see that the directors faithfully perform this
951 duty. If such directors shall fail to so provide for the election
952 of directors, it shall be the duty of the Commissioner of
953 Insurance to report this fact to the membership of the corporation
954 and himself call a meeting of the membership for the election of
955 directors; and the corporation shall forthwith, upon demand of the
956 commissioner, reimburse him for all expenses incurred in the
957 performance of these duties. A majority vote of the members
958 present in person (or by proxy, if proxy be provided for) and
959 voting shall be required and shall be sufficient for the election
960 of directors.

961 The membership of the corporation shall consist of any
962 individual who has applied for, or been granted, a license to
963 practice medicine in the State of Mississippi, or any other state
964 or jurisdiction, provided he has first applied for membership on



965 the form prescribed by the board of directors and paid the
966 requisite fees, charges and premiums in advance therefor, and
967 agreed to comply with and be bound by the charter and bylaws and
968 amendments thereto, and the rules, regulations and guidelines
969 adopted from time to time by the board of directors or any
970 committee authorized by the board of directors to so act.

971 No person may own more than one (1) membership in the
972 corporation, nor shall any member be entitled to more than one (1)
973 vote upon any matter submitted to a vote at the meeting of the
974 members.

975 Membership shall not be granted until a membership
976 certificate in the form prescribed by the board of directors shall
977 have been duly issued.

978 The event of (a) death, or (b) revocation of license to
979 practice medicine, or (c) nonpayment of membership fees, dues,
980 assessments or premiums, or (d) failure to comply with and abide
981 by all provisions of the charter and bylaws and amendments
982 thereto, and the rules, regulations and guidelines adopted from
983 time to time by the board of directors or (e) termination of
984 insurance with the corporation for any reason, shall operate ipso
985 facto to terminate membership in the corporation, and all interest
986 of any such member in the assets of the corporation shall then and
987 thereby terminate and cease, except for the right to receive
988 benefits provided for under contracts or the bylaws of the
989 corporation.

990 The directors shall have power to adopt bylaws, elect
991 officers and manage the affairs of the corporation. They shall
992 also have the power to determine whether voting in the election of
993 directors may be done by proxy and, if so, the manner and method
994 thereof.

995 **SECTION 25.** Section 83-47-7, Mississippi Code of 1972, is
996 brought forward as follows:



997 83-47-7. (1) Each corporation established under the
998 provisions of this chapter shall furnish to the commissioner of
999 insurance all information that he may request concerning the
1000 number of members of any such corporation and the type of practice
1001 of each such member. After considering the number of members and
1002 the type of practice of each such member, the commissioner of
1003 insurance shall require a minimum capital of five hundred thousand
1004 dollars (\$500,000.00) and a minimum surplus of five hundred
1005 thousand dollars (\$500,000.00) for such corporation. All dues,
1006 fees and assessments to any member of the corporation shall be set
1007 and maintained at the lowest possible cost subject to sound
1008 business practice and shall be subject to review and approval of
1009 the commissioner of insurance. No corporation established under
1010 the provisions of this chapter shall transact any other business
1011 than that specified in its charter and articles of incorporation;
1012 and it shall not begin operation until it has fully complied with
1013 all rules and regulations promulgated by the commissioner of
1014 insurance with respect to such corporations and until it has
1015 established the capital and reserve set for it by the
1016 commissioner.

1017 (2) When necessary to effect the purposes of this section,
1018 in addition to all other remedies in law or equity, the attorney
1019 general and commissioner of insurance may be and are hereby
1020 authorized to petition the chancery court of the county in which a
1021 corporation established under this chapter is domiciled for a
1022 mandamus or injunction to prevent any violation of the provisions
1023 of this section, or the continuance of any such violation, or to
1024 enforce compliance herewith. The court is hereby vested with
1025 authority to entertain jurisdiction on any such petition to
1026 determine the cause and to issue such process as may be necessary
1027 to accomplish the purposes of this section.

1028 **SECTION 26.** Section 83-47-9, Mississippi Code of 1972, is
1029 brought forward as follows:



1030 83-47-9. Each member shall pay all dues, fees and
1031 assessments in such amounts as may be established from time to
1032 time by the resolution of the board of directors. The board of
1033 directors shall have the authority to provide for separate and
1034 distinct classes of insurance and groupings of members and
1035 insureds and to fix assessments and premiums at varying and
1036 different amounts for the various classes. No member or insured
1037 shall refuse or neglect to pay his or its assessment or premium
1038 because the amount thereof differs or varies from the amount of
1039 the assessment or premium of members in other classes or
1040 groupings. The board of directors shall endeavor to establish and
1041 fix assessments and premiums for the various classes and groupings
1042 which are reasonable in amount, relative to the benefits to be
1043 received by those members and insureds within the classes and
1044 groupings involved, and the action of the board of directors in so
1045 doing shall be conclusive and final. Each member shall also pay
1046 all obligations which may, from time to time, become due and
1047 payable by such member to the corporation as and when the same
1048 shall become due and payable. Such fees, assessments and premiums
1049 required of members and insureds shall contain an amount
1050 sufficient to pay three percent (3%) premium tax, the same as
1051 levied on all other domestic nonprofit insurance corporations.
1052 Such premium taxes shall be collected and paid into the treasury
1053 by the State Tax Commission.

1054 **SECTION 27.** Section 83-47-11, Mississippi Code of 1972, is
1055 brought forward as follows:

1056 83-47-11. The private property of the members of the
1057 corporation shall be exempt from the execution for the debts of
1058 the corporation, and no member shall be individually liable or
1059 responsible for any debts or liabilities of the corporation.

1060 **SECTION 28.** Section 83-47-13, Mississippi Code of 1972, is
1061 brought forward as follows:



1062 83-47-13. Every such corporation shall annually, on or
1063 before the first day of March, file in the office of the
1064 commissioner of insurance a statement verified by at least two (2)
1065 of the principal officers of said corporation, showing its
1066 condition on the thirty-first day of December of the preceding
1067 year, which shall be in such form and shall contain such matters
1068 as the commissioner shall prescribe.

1069 **SECTION 29.** Section 83-47-15, Mississippi Code of 1972, is
1070 brought forward as follows:

1071 83-47-15. The commissioner of insurance may appoint any
1072 deputy or examiner or other person who shall have the power of
1073 visitation and examination into the affairs of any such
1074 corporation and free access to all of the books, papers and
1075 documents that relate to the business of the corporation, and may
1076 summon and qualify witnesses under oath to examine its officers,
1077 agents, employees or other persons in relation to the affairs,
1078 transactions and conditions of the corporation.

1079 **SECTION 30.** Section 83-47-17, Mississippi Code of 1972, is
1080 brought forward as follows:

1081 83-47-17. Any dissolution or liquidation of a corporation,
1082 subject to the provisions of this chapter, shall be conducted
1083 under the supervision of the commissioner of insurance, who shall
1084 have all power with respect thereto under the provisions of law
1085 with respect to the dissolution and liquidation of insurance
1086 companies.

1087 **SECTION 31.** Section 83-47-19, Mississippi Code of 1972, is
1088 brought forward as follows:

1089 83-47-19. Every corporation organized pursuant to, or
1090 subject to, the provisions of this chapter is hereby declared to
1091 be a charitable and benevolent institution, and its funds and
1092 property shall be exempt from taxation, except from the premium
1093 tax levied in accordance with the provisions of this chapter and
1094 ad valorem taxes upon real estate and motor vehicles owned by it.



1095 **SECTION 32.** Section 83-47-21, Mississippi Code of 1972, is
1096 brought forward as follows:

1097 83-47-21. Any corporation heretofore or hereafter organized
1098 and operating under Chapter 11, Title 79, Mississippi Code of
1099 1972, desiring to become a nonprofit corporation of the kind and
1100 character described in this chapter, and to operate under and
1101 pursuant to the terms of this chapter, may convert its
1102 organization into such nonprofit corporation under this chapter in
1103 the following manner, to wit:

1104 (a) File a written application with the commissioner of
1105 insurance annexing thereto copies of (i) its articles of
1106 incorporation or new or amended articles of incorporation; (ii)
1107 its bylaws; (iii) its form of contract between the corporation and
1108 members, showing the terms under which medical liability insurance
1109 is to be furnished to members; (iv) its contracts with members,
1110 showing a table of assessments and the benefits to which members
1111 are entitled; and (v) a financial statement of the corporation,
1112 including the amounts of contributions paid or agreed to be paid
1113 to the corporation for working capital, the name or names of each
1114 contributor, and the terms of each contribution.

1115 (b) Submit any further data or evidence as may be
1116 required by the commissioner.

1117 (c) The commissioner shall refer the corporation's
1118 articles of incorporation to the attorney general for his opinion
1119 as to whether the same meet the requirements of this chapter. The
1120 attorney general shall, if in order to do so, endorse his approval
1121 thereon and return the same to the commissioner of insurance. The
1122 commissioner shall thereupon endorse upon said articles of
1123 incorporation his certificate of approval, whereupon said
1124 corporation shall be deemed to be converted under and existing and
1125 operating pursuant to the terms of this chapter. The articles of
1126 incorporation bearing such approval of the attorney general and
1127 the commissioner shall be recorded in the offices of the



1128 commissioner of insurance and of the secretary of state in like
1129 manner as in this chapter provided for recording the articles of
1130 incorporation of a corporation organized under this chapter in the
1131 first instance.

1132 **SECTION 33.** Section 83-47-23, Mississippi Code of 1972, is
1133 brought forward as follows:

1134 83-47-23. The organization as created under the authority of
1135 this chapter shall in no manner be covered under or included in
1136 the provisions of Sections 83-23-101 through 83-23-135.

1137 **SECTION 34.** Section 83-47-25, Mississippi Code of 1972, is
1138 brought forward as follows:

1139 83-47-25. (1) A corporation organized under this chapter
1140 may become a stock insurance corporation under such plan and
1141 procedure as may be approved by the Commissioner of Insurance.

1142 (2) The Commissioner of Insurance shall approve any such
1143 plan or procedure if:

1144 (a) It is equitable to the corporation's members;

1145 (b) It is subject to approval by vote of not less than
1146 three-fourths (3/4) of the corporation's current members voting
1147 thereon in person or by proxy at a meeting of members called for
1148 the purpose pursuant to such reasonable notice and procedure as
1149 may be approved by the Commissioner of Insurance; right to vote
1150 may be limited to members who hold policies at the time of the
1151 vote and whose policies have been in force for not less than one
1152 (1) policy year;

1153 (c) The equity of each member in the corporation is
1154 determinable under a fair formula approved by the Commissioner of
1155 Insurance, which such equity shall be based upon not less than the
1156 corporation's entire surplus as reported in the corporation's
1157 annual statement to the Commissioner of Insurance, after deducting
1158 borrowed surplus funds, plus all nonadmitted assets;

1159 (d) The members entitled to participate in the purchase
1160 of stock or distribution of assets shall include all current



1161 members who hold policies at the time of the vote and whose
1162 policies have been in force for not less than one (1) policy year;

1163 (e) The plan gives to each member, as specified in
1164 subsection (2)(d) of this section, a preemptive right to acquire
1165 his proportionate part of all of the proposed capital stock of the
1166 corporation, within a designated reasonable period, and to apply
1167 upon the purchase thereof the amount of his equity in the
1168 corporation as determined under subsection (2)(c) of this section;

1169 (f) Shares are so offered to members at a price not
1170 greater than to be thereafter offered to others;

1171 (g) The plan provides for payment to each member not
1172 electing to apply his equity in the corporation for, or upon, the
1173 purchase price of stock to which the member is preemptively
1174 entitled of cash in the amount of his equity not so used for the
1175 purchase of stock, and which case payment, together with stock so
1176 purchased, if any, shall constitute full payment and discharge of
1177 the member's equity as a member of such corporation; and

1178 (h) The plan, when completed, would provide for the
1179 converted corporation paid-in capital stock in an amount not less
1180 than the minimum paid-in capital required of a domestic stock
1181 insurer transacting like kinds of insurance, together with surplus
1182 funds in amount not less than one half (1/2) of such required
1183 capital.

1184 (3) Once conversion under this section is complete, the
1185 converted corporation shall no longer be governed by this chapter
1186 and shall be governed by the provisions of the insurance laws of
1187 this state applicable to general liability insurers.

1188 **SECTION 35.** This act shall take effect and be in force from
1189 and after its passage and shall apply only to causes of action
1190 accruing on or after that date.

