

By: Representatives Watson,
Blackmon, Eads, Flaggs, Jennings,
Masterson, Pierce, Simpson, Smith
(39th), Stevens

To: Select Committee on
Civil Justice Reform

HOUSE BILL NO. 6

1 AN ACT TO AMEND SECTIONS 11-11-3, 11-11-5, 11-11-7, 11-11-11
2 AND 11-11-13, MISSISSIPPI CODE OF 1972, TO REVISE VENUE IN CIVIL
3 ACTIONS; TO CLARIFY JOINDER OF CLAIMS; TO AMEND SECTION 11-46-1,
4 MISSISSIPPI CODE OF 1972, TO CLARIFY THAT CERTAIN MEDICAL
5 PRACTITIONERS ARE EMPLOYEES UNDER THE TORT CLAIMS ACT; TO CREATE
6 SECTION 11-1-62, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
7 PHYSICIANS AND PHARMACISTS SHALL NOT BE LIABLE FOR PRESCRIBING FDA
8 APPROVED DRUGS; TO CREATE SECTION 11-1-64, MISSISSIPPI CODE OF
9 1972, TO INSULATE INNOCENT SELLERS OF PRODUCTS; TO AMEND SECTION
10 11-1-63, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO AMEND
11 SECTION 15-1-36, MISSISSIPPI CODE OF 1972, TO REDUCE THE PERIOD
12 FOR COMMENCING A MALPRACTICE ACTION AGAINST A NURSING FACILITY; TO
13 PROVIDE A NINETY-DAY NOTICE FOR MEDICAL MALPRACTICE ACTIONS; TO
14 AMEND SECTION 85-5-7, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
15 PERSONS COVERED UNDER THE TORT CLAIMS ACT ARE ONLY LIABLE FOR THE
16 PERCENTAGE OF THEIR FAULT IN CIVIL ACTIONS; TO PROVIDE THAT
17 PAYMENTS FROM COLLATERAL SOURCES SHALL BE REDUCED FROM AWARDS IN
18 CIVIL ACTIONS; TO REQUIRE AFFIDAVITS IN MEDICAL MALPRACTICE
19 ACTIONS; TO PROVIDE FOR PERIODIC PAYMENTS FOR AWARDS OF \$50,000.00
20 OR MORE; TO PROVIDE A LIMITATION ON THE AWARD OF NONECONOMIC
21 DAMAGES; TO CREATE A MEDICAL MALPRACTICE RISK POOL TO PROVIDE
22 NECESSARY MEDICAL MALPRACTICE FOR CERTAIN HEALTH CARE PROVIDERS;
23 TO AMEND SECTION 43-13-407, MISSISSIPPI CODE OF 1972, TO PROVIDE
24 INITIAL FUNDING FOR THE MEDICAL MALPRACTICE RISK POOL; TO AMEND
25 SECTION 43-11-1, MISSISSIPPI CODE OF 1972, TO DEFINE THE TERM
26 MEDICAL RECORDS; TO CREATE SECTION 43-11-16, MISSISSIPPI CODE OF
27 1972, TO PROVIDE THAT MEDICAL RECORDS SHALL REMAIN THE PROPERTY OF
28 THE INSTITUTIONS FOR THE AGED AND INFIRM, SUBJECT TO REASONABLE
29 ACCESS TO THE INFORMATION CONTAINED THEREIN UPON GOOD CAUSE SHOWN
30 BY THE RESIDENT, HIS PERSONAL REPRESENTATIVES OR HEIRS; TO CREATE
31 THE MEDICAL MALPRACTICE MEDIATION BOARD AND PROVIDE FOR ITS
32 MEMBERSHIP; TO PROVIDE FOR MEDIATION FOR MEDICAL MALPRACTICE AND
33 NURSING FACILITY DISPUTES; TO PROVIDE FOR THE APPOINTMENT AND
34 CERTIFICATION OF MEDIATORS; TO PROVIDE THAT MEDIATION SHALL BE
35 NONBINDING UNLESS THE PARTIES AGREE TO MAKE IT BINDING; TO REQUIRE
36 THE COMMISSIONER OF INSURANCE TO ANNUALLY COMPILE AND PROVIDE TO
37 THE LEGISLATURE A REPORT REGARDING MEDICAL MALPRACTICE CLAIMS; TO
38 PROVIDE INCENTIVE FOR MEDICAL SCHOOL GRADUATES TO PRACTICE IN THE
39 STATE; TO PROVIDE IMMUNITY FOR MEDICAL PERSONNEL PROVIDING
40 VOLUNTEER SERVICE TO SCHOOL PROGRAMS; AND FOR RELATED PURPOSES.

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

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

44 11-11-3. (1) Civil actions of which the circuit court has
45 original jurisdiction shall be commenced in the county in which
46 the defendant resides or in the county where the cause of action



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

57 (2) In any civil action brought in the courts of this state,
58 venue must be proper as to each and every named defendant and
59 plaintiff unless the plaintiffs assert a claim to relief out of
60 the same transaction or occurrence brought in the county and
61 judicial district which has the greatest connection to the events
62 or omissions giving rise to the cause of action occurred or in
63 which a substantial part of property which is the subject of the
64 action is situated. In other cases where the claims may be
65 properly joined, such as cases involving the existence of a
66 substantial number of common questions of law or material fact,
67 venue shall be proper only if venue would be proper as to each
68 plaintiff if the plaintiff filed the case as the only plaintiff
69 and as to each defendant as if the defendant were the only
70 defendant. If the venue is improper as to any party, then the
71 claims involving that party shall be severed and transferred to a
72 county where venue is proper as to such claims.

73 **SECTION 2.** Section 11-11-5, Mississippi Code of 1972, is
74 amended as follows:

75 11-11-5. Actions against any railroad, express, steamboat,
76 power, superpower, telegraph or telephone corporation, or against
77 individuals owning, managing, operating or controlling a railroad,
78 express line or route, steamboat, power, superpower, telephone or
79 telegraph line, or against any corporation or individuals owning,



80 managing, operating or controlling a motor transportation line for
81 the conveyance of passengers, freight or express, for hire, over
82 the highways in the State of Mississippi, may be brought in the
83 county where the cause of action accrued or in the county where
84 the defendant has its principal place of business * * * at the
85 time that the cause of action accrued.

86 **SECTION 3.** Section 11-11-7, Mississippi Code of 1972, is
87 amended as follows:

88 11-11-7. Actions against insurance companies, groups of
89 insurance companies or an insurance association may be brought in
90 any county in which a loss may occur, or, if on a life policy, in
91 the county in which the beneficiary resides, and process may be
92 sent to any county, to be served as directed by law. Such actions
93 may also be brought in the county where the principal place of
94 business of such corporation or company may be. In case of a
95 foreign corporation or company, such actions may be brought in the
96 county where service of process may be had on an agent of such
97 corporation or company or service of process in any suit or
98 action, or any other legal process, may be served upon the
99 Insurance Commissioner of the State of Mississippi, and such
100 notice will confer jurisdiction on any court in any county in the
101 state where the suit is filed, provided the suit is brought in the
102 county where the loss occurred * * *.

103 **SECTION 4.** Section 11-11-11, Mississippi Code of 1972, is
104 amended as follows:

105 11-11-11. Any civil action for the recovery of damages
106 brought against a nonresident or the representative of the
107 nonresident in the State of Mississippi may be commenced in the
108 county in which the action accrued * * *, except as otherwise
109 provided by law.

110 **SECTION 5.** Section 11-11-13, Mississippi Code of 1972, is
111 amended as follows:



112 11-11-13. The venue of an action for damages brought against
113 a nonresident arising from his operation, either in person or by
114 agent or employee, of a motor vehicle upon any public street,
115 road, or highway of this state, or elsewhere in this state, shall
116 be * * * in the county where the cause of action accrued * * *.

117 **SECTION 6.** Section 11-46-1, Mississippi Code of 1972, is
118 amended as follows:

119 11-46-1. As used in this chapter the following terms shall
120 have the meanings herein ascribed unless the context otherwise
121 requires:

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

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

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

128 (d) "Department" means the Department of Finance and
129 Administration.

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

132 (f) "Employee" means any officer, employee or servant
133 of the State of Mississippi or a political subdivision of the
134 state, including elected or appointed officials and persons acting
135 on behalf of the state or a political subdivision in any official
136 capacity, temporarily or permanently, in the service of the state
137 or a political subdivision whether with or without compensation.
138 The term "employee" shall not mean a person or other legal entity
139 while acting in the capacity of an independent contractor under
140 contract to the state or a political subdivision; provided,
141 however, that for purposes of the limits of liability provided for
142 in Section 11-46-15, the term "employee" shall include physicians
143 under contract to provide health services with the State Board of
144 Health, the State Board of Mental Health or any county or



145 municipal jail facility while rendering services under such
146 contract. The term "employee" shall also include any physician,
147 dentist or other medical practitioner under contract or affiliated
148 with or employed by the University of Mississippi Medical Center,
149 its departmental practice plans, or who practices on the campus of
150 any university under the control of the Board of Trustees of State
151 Institutions of Higher Learning only for the purposes of acting
152 within the course and scope of their contract, affiliation or
153 employment. The term "employee" shall also include any physician,
154 dentist or other medical practitioner under contract or affiliated
155 with or employed by the State Veterans Affairs Board only for the
156 purposes of acting within the course and scope of their contract,
157 affiliation or employment. The term "employee" shall also include
158 Mississippi Department of Human Services licensed foster parents
159 for the limited purposes of coverage under the Tort Claims Act as
160 provided in Section 11-46-8.

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

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

166 (i) "Political subdivision" means any body politic or
167 body corporate other than the state responsible for governmental
168 activities only in geographic areas smaller than that of the
169 state, including but not limited to any county, municipality,
170 school district, community hospital as defined in Section
171 41-13-10, Mississippi Code of 1972, airport authority or other
172 instrumentality thereof, whether or not such body or
173 instrumentality thereof has the authority to levy taxes or to sue
174 or be sued in its own name.

175 (j) "State" means the State of Mississippi and any
176 office, department, agency, division, bureau, commission, board,
177 institution, hospital, college, university, airport authority or



178 other instrumentality thereof, whether or not such body or
179 instrumentality thereof has the authority to levy taxes or to sue
180 or be sued in its own name.

181 (k) "Law" means all species of law including but not
182 limited to any and all constitutions, statutes, case law, common
183 law, customary law, court order, court rule, court decision, court
184 opinion, court judgment or mandate, administrative rule or
185 regulation, executive order, or principle or rule of equity.

186 **SECTION 7.** The following shall be codified as Section
187 11-1-62, Mississippi Code of 1972:

188 11-1-62. In any civil action alleging damages caused by a
189 prescription drug and absent any negligence on the part of the
190 physician or pharmacist, a physician or pharmacist shall be
191 indemnified by the manufacturer of the prescription drug for any
192 damages if the federal Food and Drug Administration (FDA) has
193 approved that drug for treatment of the condition, disease or
194 illness for which the drug was prescribed. It is the intent of
195 this section to indemnify innocent physicians and pharmacists who
196 are not actively negligent from forum-driven lawsuits and that, as
197 to any claim brought against a physician under this section, the
198 physician's insurer shall not count such claim against the
199 physician for the purposes of insurance underwriting or, in any
200 way, increase premiums for or deny insurance coverage.

201 **SECTION 8.** Section 11-1-63, Mississippi Code of 1972, is
202 amended as follows:

203 11-1-63. In any action for damages caused by a product
204 except for commercial damage to the product itself:

205 (a) Subject to the provisions of Section 11-1-62, the
206 manufacturer, seller, distributor or prescriber of the product
207 shall not be liable if the claimant does not prove by the
208 preponderance of the evidence that at the time the product left
209 the control of the manufacturer, seller, distributor or
210 prescriber:



211 (i) 1. The product was defective because it
212 deviated in a material way from the manufacturer's specifications
213 or from otherwise identical units manufactured to the same
214 manufacturing specifications, or

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

217 3. The product was designed in a defective
218 manner, or

219 4. The product breached an express warranty
220 or failed to conform to other express factual representations upon
221 which the claimant justifiably relied in electing to use the
222 product; and

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

225 (iii) The defective and unreasonably dangerous
226 condition of the product proximately caused the damages for which
227 recovery is sought.

228 (b) A product is not defective in design or formulation
229 if the harm for which the claimant seeks to recover compensatory
230 damages was caused by an inherent characteristic of the product
231 which is a generic aspect of the product that cannot be eliminated
232 without substantially compromising the product's usefulness or
233 desirability and which is recognized by the ordinary person with
234 the ordinary knowledge common to the community.

235 (c) (i) In any action alleging that a product is
236 defective because it failed to contain adequate warnings or
237 instructions pursuant to paragraph (a)(i)2 of this section, the
238 manufacturer, seller, distributor or prescriber shall not be
239 liable if the claimant does not prove by the preponderance of the
240 evidence that at the time the product left the control of the
241 manufacturer, seller, distributor or prescriber, the manufacturer,
242 seller, distributor or prescriber knew or in light of reasonably
243 available knowledge should have known about the danger that caused



244 the damage for which recovery is sought and that the ordinary user
245 or consumer would not realize its dangerous condition.

246 (ii) An adequate product warning or instruction is
247 one that a reasonably prudent person in the same or similar
248 circumstances would have provided with respect to the danger and
249 that communicates sufficient information on the dangers and safe
250 use of the product, taking into account the characteristics of,
251 and the ordinary knowledge common to an ordinary consumer who
252 purchases the product; or in the case of a prescription drug,
253 medical device or other product that is intended to be used only
254 under the supervision of a physician or other licensed
255 professional person, taking into account the characteristics of,
256 and the ordinary knowledge common to, a physician or other
257 licensed professional who prescribes the drug, device or other
258 product.

259 (d) For purposes of this section:

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

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

264 (e) In any action alleging that a product is defective
265 pursuant to paragraph (a) of this section, the manufacturer,
266 seller, distributor or prescriber shall not be liable if the
267 claimant (i) had knowledge of a condition of the product that was
268 inconsistent with his safety; (ii) appreciated the danger in the
269 condition; and (iii) deliberately and voluntarily chose to expose
270 himself to the danger in such a manner to register assent on the
271 continuance of the dangerous condition.

272 (f) In any action alleging that a product is defective
273 pursuant to paragraph (a)(i)2 of this section, the manufacturer,
274 seller, distributor or prescriber shall not be liable if the
275 danger posed by the product is known or is open and obvious to the
276 user or consumer of the product, or should have been known or open



277 and obvious to the user or consumer of the product, taking into
278 account the characteristics of, and the ordinary knowledge common
279 to, the persons who ordinarily use or consume the product.

280 (g) In any action alleging that a product is defective
281 because of its design pursuant to paragraph (a)(i)3 of this
282 section, the manufacturer or product seller shall not be liable if
283 the claimant does not prove by the preponderance of the evidence
284 that at the time the product left the control of the manufacturer
285 or seller:

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

290 (ii) The product failed to function as expected
291 and there existed a feasible design alternative that would have to
292 a reasonable probability prevented the harm. A feasible design
293 alternative is a design that would have to a reasonable
294 probability prevented the harm without impairing the utility,
295 usefulness, practicality or desirability of the product to users
296 or consumers.

297 (h) (i) The manufacturer of a product who is found
298 liable for a defective product pursuant to subsection (a) shall
299 indemnify a product seller, distributor or prescriber for the
300 costs of litigation, any reasonable expenses, reasonable
301 attorney's fees and any damages awarded by the trier of fact
302 unless the seller, distributor or prescriber exercised substantial
303 control over that aspect of the design, testing, manufacture,
304 packaging or labeling of the product that caused the harm for
305 which recovery of damages is sought; the seller, distributor or
306 prescriber altered or modified the product, and the alteration or
307 modification was a substantial factor in causing the harm for
308 which recovery of damages is sought; the seller, distributor or
309 prescriber had actual knowledge of the defective condition of the



310 product at the time he supplied same; or the seller, distributor
311 or prescriber made an express factual representation about the
312 aspect of the product which caused the harm for which recovery of
313 damages is sought.

314 (ii) Subparagraph (i) shall not apply unless the
315 seller, distributor or prescriber has given prompt notice of the
316 suit to the manufacturer within thirty (30) days of the filing of
317 the complaint against the seller.

318 (i) Nothing in this section shall be construed to
319 eliminate any common law defense to an action for damages caused
320 by a product.

321 **SECTION 9.** The following shall be codified as Section
322 11-1-64, Mississippi Code of 1972:

323 11-1-64. (1) In any civil action alleging damages caused by
324 a product, a product seller other than a manufacturer shall not be
325 liable for a latent defect if the seller is a mere conduit who
326 purchased the product from a reputable manufacturer. It is the
327 intent of this section to insulate innocent sellers who are not
328 actively negligent from forum driven lawsuits.

329 (2) A product seller shall not be considered to have failed
330 to exercise reasonable care with respect to a product based upon
331 an alleged failure to inspect the product, if there was no
332 reasonable opportunity to inspect the product; or the inspection,
333 in the exercise of reasonable care, would not have revealed that
334 the product was defective.

335 (3) Nothing in this section shall be construed to eliminate
336 any common law defense to an action for damages caused by a
337 product.

338 **SECTION 10.** Section 15-1-36, Mississippi Code of 1972, is
339 amended as follows:

340 15-1-36. (1) For any claim accruing on or before June 30,
341 1998, and except as otherwise provided in this section, no claim
342 in tort may be brought against a licensed physician, osteopath,



343 dentist, hospital, nursing facility, nurse, pharmacist,
344 podiatrist, optometrist or chiropractor for injuries or wrongful
345 death arising out of the course of medical, surgical or other
346 professional services unless it is filed within two (2) years from
347 the date the alleged act, omission or neglect shall or with
348 reasonable diligence might have been first known or discovered.

349 (2) For any claim accruing on or after July 1, 1998, and
350 except as otherwise provided in this section, no claim in tort may
351 be brought against a licensed physician, osteopath, dentist,
352 hospital, nursing facility, nurse, pharmacist, podiatrist,
353 optometrist or chiropractor for injuries or wrongful death arising
354 out of the course of medical, surgical or other professional
355 services unless it is filed within two (2) years from the date the
356 alleged act, omission or neglect shall or with reasonable
357 diligence might have been first known or discovered, and, except
358 as described in paragraphs (a) and (b) of this subsection, in no
359 event more than seven (7) years after the alleged act, omission or
360 neglect occurred:

361 (a) In the event a foreign object introduced during a
362 surgical or medical procedure has been left in a patient's body,
363 the cause of action shall be deemed to have first accrued at, and
364 not before, the time at which the foreign object is, or with
365 reasonable diligence should have been, first known or discovered
366 to be in the patient's body.

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

372 (3) Except as otherwise provided in subsection (4) of this
373 section, if at the time at which the cause of action shall or with
374 reasonable diligence might have been first known or discovered,
375 the person to whom such claim has accrued shall be six (6) years



376 of age or younger, then such minor or the person claiming through
377 such minor may, notwithstanding that the period of time limited
378 pursuant to subsections (1) and (2) of this section shall have
379 expired, commence action on such claim at any time within two (2)
380 years next after the time at which the minor shall have reached
381 his sixth birthday, or shall have died, whichever shall have first
382 occurred.

383 (4) If at the time at which the cause of action shall or
384 with reasonable diligence might have been first known or
385 discovered, the person to whom such claim has accrued shall be a
386 minor without a parent or legal guardian, then such minor or the
387 person claiming through such minor may, notwithstanding that the
388 period of time limited pursuant to subsections (1) and (2) of this
389 section shall have expired, commence action on such claim at any
390 time within two (2) years next after the time at which the minor
391 shall have a parent or legal guardian or shall have died,
392 whichever shall have first occurred; provided, however, that in no
393 event shall the period of limitation begin to run prior to such
394 minor's sixth birthday unless such minor shall have died.

395 (5) If at the time at which the cause of action shall or
396 with reasonable diligence might have been first known or
397 discovered, the person to whom such claim has accrued shall be
398 under the disability of unsoundness of mind, then such person or
399 the person claiming through him may, notwithstanding that the
400 period of time hereinbefore limited shall have expired, commence
401 action on such claim at any time within two (2) years next after
402 the time at which the person to whom the right shall have first
403 accrued shall have ceased to be under the disability, or shall
404 have died, whichever shall have first occurred.

405 (6) When any person who shall be under the disabilities
406 mentioned in subsections (3), (4) and (5) of this section at the
407 time at which his right shall have first accrued, shall depart
408 this life without having ceased to be under such disability, no



409 time shall be allowed by reason of the disability of such person
410 to commence action on the claim of such person beyond the period
411 prescribed under Section 15-1-55, Mississippi Code of 1972.

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

416 (8) For the purposes of subsection (4) of this section, and
417 only for the purposes of such subsection, the disability of
418 infancy or minority shall be removed from and after a person has
419 reached his sixth birthday or from and after such person shall
420 have a parent or legal guardian, whichever occurs later, unless
421 such disability is otherwise removed by law.

422 (9) The limitation established by this section as to a
423 licensed physician, osteopath, dentist, hospital or nurse shall
424 apply only to actions the cause of which accrued on or after July
425 1, 1976.

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

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

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

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

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



442 (15) No action based upon the health care provider's
443 professional negligence may be begun unless the defendant has been
444 given at least ninety (90) days' prior notice of the intention to
445 begin the action. No particular form of notice is required, but
446 it shall notify the defendant of the legal basis of the claim and
447 the type of loss sustained, including with specificity the nature
448 of the injuries suffered. If the notice is served within ninety
449 (90) days of the expiration of the applicable statute of
450 limitations, the time for the beginning of the action shall be
451 extended ninety (90) days from the service of the notice. This
452 subsection shall not be applicable with respect to any defendant
453 whose name is unknown to the plaintiff at the time of filing the
454 complaint and who is identified therein by a fictitious name.

455 **SECTION 11.** Section 85-5-7, Mississippi Code of 1972, is
456 amended as follows:

457 85-5-7. (1) As used in this section "fault" means an act or
458 omission of a person which is a proximate cause of injury or death
459 to another person or persons, damages to property, tangible or
460 intangible, or economic injury, including but not limited to
461 negligence, malpractice, strict liability, absolute liability or
462 failure to warn. "Fault" shall not include any tort which results
463 from an act or omission committed with a specific wrongful intent.

464 (2) Except as may be otherwise provided in subsection (6) of
465 this section, in any civil action based on fault, the liability
466 for damages caused by two (2) or more persons shall be joint and
467 several only to the extent necessary for the person suffering
468 injury, death or loss to recover fifty percent (50%) of his
469 recoverable damages, except as the liability for damages caused by
470 any persons covered under the provisions of Section 11-46-1 et
471 seq. shall be limited to such person's own percentage of fault.

472 (3) Except as otherwise provided in subsections (2) and (6)
473 of this section, in any civil action based on fault, the liability
474 for damages caused by two (2) or more persons shall be several



475 only, and not joint and several and a joint tortfeasor shall be
476 liable only for the amount of damages allocated to him in direct
477 proportion to his percentage of fault. In assessing percentages
478 of fault an employer and the employer's employee or a principal
479 and the principal's agent shall be considered as one (1) defendant
480 when the liability of such employer or principal has been caused
481 by the wrongful or negligent act or omission of the employee or
482 agent.

483 (4) Any defendant held jointly liable under this section
484 shall have a right of contribution against fellow joint
485 tortfeasors. A defendant shall be held responsible for
486 contribution to other joint tortfeasors only for the percentage of
487 fault assessed to such defendant.

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

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

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

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

503 **SECTION 12.** After the jury makes an award in an action for
504 personal injury against a health care provider based upon
505 professional negligence, the defendant may present to the
506 presiding judge evidence of any amount payable as a benefit to the
507 plaintiff as a result of the personal injury under the United



508 States Social Security Act, any state or federal income disability
509 or worker's compensation act, any health, sickness or
510 income-disability insurance, accident insurance that provides
511 health benefits or income-disability coverage and any contract or
512 agreement of any group, organization, partnership or corporation
513 to provide, pay for or reimburse the cost of medical, hospital,
514 dental or other health care services. If the defendant elects to
515 present such evidence, the plaintiff may introduce evidence of any
516 amount which the plaintiff has paid or contributed to secure his
517 right to these insurance benefits. The plaintiff may also
518 introduce evidence of any leave time lost due to the personal
519 injury. The presiding judge shall reduce the jury award by the
520 amount of such benefits less any amount which the plaintiff has
521 paid or contributed to secure such benefits.

522 "Health care provider" means an individual licensed,
523 certified or otherwise authorized or permitted by law to provide
524 health care in the ordinary course of business or practice of a
525 profession. "Health care provider" also means any hospital or
526 nursing facility.

527 "Professional negligence" means a negligent act or omission
528 to act by a health care provider in the rendering of professional
529 services, which act or omission is the proximate cause of a
530 personal injury or wrongful death, provided that such services are
531 within the scope of services for which the provider is licensed
532 and which are not within any restriction imposed by the licensing
533 agency or licensed hospital.

534 **SECTION 13.** Before any action for medical malpractice may be
535 brought, the attorney bringing such action shall sign an affidavit
536 as an officer of the court stating that he has had his case
537 reviewed by a medical expert and the medical expert has determined
538 that medical malpractice is evident in such action.

539 **SECTION 14.** (1) In any action for injury or damages against
540 a provider of health care services, the court shall, at the



541 request of either party, enter a judgment ordering that money
542 damages or its equivalent for future damages of the judgment
543 creditor be paid in whole or in part by periodic payments rather
544 than by a lump-sum payment if the award equals or exceeds Fifty
545 Thousand Dollars (\$50,000.00) in future damages. In entering a
546 judgment ordering the payment of future damages by periodic
547 payments, the court shall make a specific finding as to the dollar
548 amount of periodic payments which will compensate the judgment
549 creditor for such future damages. As a condition to authorizing
550 period payments of future damages, the court shall require the
551 judgment debtor who is not adequately insured to post security
552 adequate to assure full payment of such damages awarded by the
553 judgment. Upon termination of periodic payments of future
554 damages, the court shall order the return of this security, or so
555 much as remains, to the judgment debtor.

556 (2) (a) The judgment ordering the payment of future damages
557 by periodic payments shall specify the recipient or recipients of
558 the payments, the dollar amount of the payments, the interval
559 between payments, and the number of payments or the period of time
560 over which payments shall be made. Such payments shall only be
561 subject to modification in the event of the death of the judgment
562 creditor.

563 (b) In the event that the court finds that the judgment
564 debtor has exhibited a continuing pattern of failing to make the
565 payments, as specified in paragraph (a), the court shall find the
566 judgment debtor in contempt of court and, in addition to the
567 required periodic payments, shall order the judgment debtor to pay
568 the judgment creditor all damages caused by the failure to make
569 such period payments, including court costs and attorney's fees.

570 (3) However, money damages awarded for loss of future
571 earnings shall not be reduced or payments terminated by reason of
572 the death of the judgment creditor, but shall be paid to persons
573 to whom the judgment creditor owed a duty of support, as provided



574 by law, immediately prior to his death. In such cases the court
575 which rendered the original judgment, may, upon petition of any
576 party in interest, modify the judgment to award and apportion the
577 unpaid future damages in accordance with this subsection.

578 (4) Following the occurrence or expiration of all
579 obligations specified in the periodic payment judgment, any
580 obligation of the judgment debtor to make further payments shall
581 cease and any security given, pursuant to subsection (1) shall
582 revert to the judgment debtor.

583 (5) As used in this section:

584 (a) "Future damages" includes damages for future
585 medical treatment, care or custody, loss of future earnings, loss
586 of bodily function, or future pain and suffering of the judgment
587 creditor.

588 (b) "Periodic payments" means the payment of money or
589 delivery of other property to the judgment creditor at regular
590 intervals.

591 (c) "Health care provider" means an individual
592 licensed, certified, or otherwise authorized or permitted by law
593 to provide health care in the ordinary course of business or
594 practice of a profession. "Health care provider" includes the
595 legal representatives of a health care provider. "Health care
596 provider" also means any hospital or nursing facility.

597 (d) "Professional negligence means a negligent act or
598 omission to act by a health care provider in the rendering of
599 professional services, which act or omission is the proximate
600 cause of a personal injury or wrongful death, provided that such
601 services are within the scope of services for which the provider
602 is licensed and which are not within any restriction imposed by
603 the licensing agency or licensed hospital.

604 (6) It is the intent of the Legislature in enacting this
605 section to authorize the entry of judgments in malpractice actions
606 against health care providers which provide for the payment of



607 future damages through periodic payments rather than lump-sum
608 payments. By authorizing periodic payment judgments, it is the
609 further intent of the Legislature that the courts will utilize
610 such judgments to provide compensation sufficient to meet the
611 needs of an injured plaintiff and those persons who are dependent
612 on the plaintiff for whatever period is necessary while
613 eliminating the potential windfall from a lump-sum recovery which
614 was intended to provide for the care of an injured plaintiff over
615 an extended period who then dies shortly after the judgment is
616 paid, leaving the balance of the judgment award to persons and
617 purposes for which it was not intended. It is also the intent of
618 the Legislature that all elements of the periodic payment program
619 be specified with certainty in the judgment ordering such payments
620 and that the judgment not be subject to modification at some
621 future time which might alter the specifications of the original
622 judgment.

623 **SECTION 15.** (1) For the purposes of this section, the
624 following words and phrases shall have the meanings ascribed
625 herein unless the context clearly requires otherwise:

626 (a) "Noneconomic damages" means subjective,
627 nonpecuniary damages arising from death, pain, suffering,
628 inconvenience, physical impairment, disfigurement, mental anguish,
629 worry, emotional distress, loss of society and companionship, loss
630 of consortium, bystander injury, injury to reputation,
631 humiliation, loss of the enjoyment of life, hedonic damages, other
632 nonpecuniary damages, and any other theory of damages such as fear
633 of loss, illness or injury. The term "noneconomic damages" shall
634 not include punitive damages.

635 (b) "Actual economic damages" means objectively
636 verifiable pecuniary damages arising from medical expenses and
637 medical care, rehabilitation services, custodial care,
638 disabilities, loss of earnings and earning capacity, loss of
639 income, burial costs, loss of use of property, costs of repair of



640 replacement of property, costs of obtaining substitute domestic
641 services, loss of employment, loss of business or employment
642 opportunities, and other objectively verifiable monetary losses.

643 (2) (a) In any action for malpractice, negligence, error,
644 omission, mistake or the unauthorized rendering of professional
645 services against a provider of health care, the court shall
646 instruct the jury that in the event they find the defendant
647 liable, they shall not award the plaintiff more than Five Hundred
648 Thousand Dollars (\$500,000.00) for pain and suffering, loss of
649 companionship, embarrassment and other items of general damages
650 unless the judge determines by clear and convincing evidence that
651 there is substantial or permanent loss or impairment of a bodily
652 function or substantial disfigurement, or other special
653 circumstances in the case which warrant a finding that imposition
654 of such a limitation would deprive the plaintiff of just
655 compensation for the injuries sustained. In any such action which
656 is tried without a jury, the court shall not award the plaintiff
657 more than Five Hundred Thousand Dollars (\$500,000.00) for pain and
658 suffering, loss of companionship, embarrassment and other items of
659 general damages unless the aforesaid findings are made specially
660 by the court and stated separately in the judgment entered by the
661 court. It is the intent of this section to limit all noneconomic
662 damages to the above.

663 (b) The limitations on damages set forth in this
664 section shall be adjusted for inflation annually. The adjustment
665 shall be based on the cumulative annual adjustment for inflation
666 for each year since the effective date of the damages limitations
667 in this section. The adjustment made pursuant to this paragraph
668 shall be rounded upward or downward to the nearest increment of
669 Ten Dollars (\$10.00).

670 (c) As used in this section, "inflation" means the
671 annual percentage change in the United States Department of Labor,
672 Bureau of Labor Statistics, Consumer Price Index for the State of



673 Mississippi, all items, all urban consumers or its successor
674 index.

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

678 **SECTION 16.** The Commissioner of Insurance shall establish a
679 medical malpractice risk pool for the purpose of making necessary
680 medical malpractice insurance available for physicians, registered
681 nurses and all other personnel who are duly licensed to practice
682 in a hospital and hospitals. Monies in the amount of One Dollar
683 (\$1.00) for the initial funding of the Medical Malpractice Risk
684 Pool shall be drawn from the Health Care Expendable Fund
685 established in Section 43-13-407. The Commissioner of Insurance
686 shall promulgate rules and regulations necessary for the operation
687 of the risk pool.

688 **SECTION 17.** Section 43-13-407, Mississippi Code of 1972, is
689 amended as follows:

690 43-13-407. (1) In accordance with the purposes of this
691 article, there is established in the State Treasury the Health
692 Care Expendable Fund, into which shall be transferred from the
693 Health Care Trust Fund the following sums:

694 (a) In fiscal year 2000, Fifty Million Dollars
695 (\$50,000,000.00);

696 (b) In fiscal year 2001, Fifty-five Million Dollars
697 (\$55,000,000.00);

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

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

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



706 (2) In any fiscal year in which interest and dividends from
707 the investment of the funds in the Health Care Trust Fund are not
708 sufficient to fund the full amount of the annual transfer into the
709 Health Care Expendable Fund as required in subsection (1) of this
710 section, the State Treasurer shall transfer from tobacco
711 settlement installment payments an amount that is sufficient to
712 fully fund the amount of the annual transfer.

713 (3) (a) On March 6, 2002, the State Treasurer shall
714 transfer the sum of Eighty-seven Million Dollars (\$87,000,000.00)
715 from the Health Care Trust Fund into the Health Care Expendable
716 Fund. In addition, at the time the State of Mississippi receives
717 the 2002 calendar year tobacco settlement installment payment, the
718 State Treasurer shall deposit the full amount of that installment
719 payment into the Health Care Expendable Fund.

720 (b) If during any fiscal year after March 6, 2002, the
721 general fund revenues received by the state exceed the general
722 fund revenues received during the previous fiscal year by more
723 than five percent (5%), the Legislature shall repay to the Health
724 Care Trust Fund one-third (1/3) of the amount of the general fund
725 revenues that exceed the five percent (5%) growth in general fund
726 revenues. The repayment required by this paragraph shall continue
727 in each fiscal year in which there is more than five percent (5%)
728 growth in general fund revenues, until the full amount of the
729 funds that were transferred and deposited into the Health Care
730 Expendable Fund under the provisions of paragraph (a) of this
731 subsection have been repaid to the Health Care Trust Fund.

732 (4) All income from the investment of the funds in the
733 Health Care Expendable Fund shall be credited to the account of
734 the Health Care Expendable Fund. Any funds in the Health Care
735 Expendable Fund at the end of a fiscal year shall not lapse into
736 the State General Fund.

737 (5) The funds in the Health Care Expendable Fund shall be
738 available for expenditure under specific appropriation by the



739 Legislature beginning in fiscal year 2000, and shall be expended
740 exclusively for health care purposes, including, but not limited
741 to, the initial funding for the Medical Malpractice Risk Pool
742 established in House Bill _____, 2002 Third Extraordinary
743 Session.

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

746 **SECTION 18.** Section 43-11-1, Mississippi Code of 1972, is
747 amended as follows:

748 43-11-1. When used in this chapter, the following words
749 shall have the following meaning:

750 (a) "Institutions for the aged or infirm" means a place
751 either governmental or private which provides group living
752 arrangements for four (4) or more persons who are unrelated to the
753 operator and who are being provided food, shelter and personal
754 care whether any such place be organized or operated for profit or
755 not. The term "institution for aged or infirm" includes nursing
756 homes, pediatric skilled nursing facilities, psychiatric
757 residential treatment facilities, convalescent homes and homes for
758 the aged, provided that these institutions fall within the scope
759 of the definitions set forth above. The term "institution for the
760 aged or infirm" does not include hospitals, clinics or mental
761 institutions devoted primarily to providing medical service.

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

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

770 (d) "Psychiatric residential treatment facility" means
771 any nonhospital establishment with permanent facilities which



772 provides a 24-hour program of care by qualified therapists
773 including, but not limited to, duly licensed mental health
774 professionals, psychiatrists, psychologists, psychotherapists and
775 licensed certified social workers, for emotionally disturbed
776 children and adolescents referred to such facility by a court,
777 local school district or by the Department of Human Services, who
778 are not in an acute phase of illness requiring the services of a
779 psychiatric hospital, and are in need of such restorative
780 treatment services. For purposes of this paragraph, the term
781 "emotionally disturbed" means a condition exhibiting one or more
782 of the following characteristics over a long period of time and to
783 a marked degree, which adversely affects educational performance:

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

786 2. An inability to build or maintain satisfactory
787 relationships with peers and teachers;

788 3. Inappropriate types of behavior or feelings
789 under normal circumstances;

790 4. A general pervasive mood of unhappiness or
791 depression; or

792 5. A tendency to develop physical symptoms or
793 fears associated with personal or school problems. An
794 establishment furnishing primarily domiciliary care is not within
795 this definition.

796 (e) "Pediatric skilled nursing facility" means an
797 institution or a distinct part of an institution that is primarily
798 engaged in providing to inpatients skilled nursing care and
799 related services for persons under twenty-one (21) years of age
800 who require medical or nursing care or rehabilitation services for
801 the rehabilitation of injured, disabled or sick persons.

802 (f) "Licensing agency" means the State Department of
803 Health.



804 (g) "Medical records" mean, without restriction, those
805 medical histories, records, reports, summaries, diagnoses and
806 prognoses, records of treatment and medication ordered and given,
807 notes, entries, x-rays and other written or graphic data prepared,
808 kept, made or maintained in institutions for the aged or infirm
809 that pertain to residency in, or services rendered to residents
810 of, an institution for the aged or infirm.

811 **SECTION 19.** The following shall be codified as Section
812 43-11-16, Mississippi Code of 1972:

813 43-11-16. Medical records are and shall remain the property
814 of the various institutions for the aged and infirm, subject
815 however to reasonable access to the information contained therein
816 upon good cause shown by the resident, his personal
817 representatives or heirs, his attending medical personnel and his
818 duly authorized nominees, and upon payment of any reasonable
819 charges for such service. Nothing in this section shall be
820 construed to deny access to medical records by the licensing
821 agency in the discharge of its official duties under this chapter.
822 Except as otherwise provided by law, medical records shall not
823 constitute public records and nothing in this section shall be
824 deemed to impair any privilege of confidence conferred by law or
825 the Mississippi Rules of Evidence on residents, their personal
826 representatives or heirs by Section 13-1-21.

827 **SECTION 20.** (1) There is created the Medical Malpractice
828 Mediation Board which shall be comprised of the following members:

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

830 (b) One (1) person appointed by the Mississippi Trial
831 Lawyers Association;

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

833 (d) One (1) person appointed by the Mississippi
834 Hospital Association; and

835 (e) One (1) person appointed by the Mississippi Medical
836 Association.



837 (2) All Members of the board shall be entitled to per diem
838 as provided in Section 25-3-69 and travel expenses as provided in
839 Section 25-3-41 for the performance of their duties as members of
840 the board.

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

843 **SECTION 21.** Before any medical malpractice suit or suit
844 involving a nursing facility may be brought, the dispute must be
845 submitted for mediation. The board shall appoint and certify
846 mediators for such disputes. Mediators shall be members of the
847 Mississippi Bar who have been engaged in the active practice of
848 law for a minimum of five (5) years. The mediator shall make
849 every effort to help parties resolve their dispute in order to
850 avoid litigation. Mediation shall be informal and rules of Civil
851 Procedure and Evidence shall be relaxed. Mediation under this act
852 shall be nonbinding unless the parties agree in writing to make
853 the mediation binding. Any matter which is submitted for
854 mediation under this act which is not resolved may not be filed as
855 civil action until ninety (90) days after the termination of
856 mediation.

857 **SECTION 22.** Sections 20 and 21 of this act shall not be
858 construed to take away from the courts their power over awards,
859 nor to make invalid any award good at common law. Sections 20 and
860 21 of this act shall be liberally construed for the encouragement
861 of the settlement of disputes and the prevention of litigation.

862 **SECTION 23.** The Commissioner of Insurance annually for a
863 period of three (3) years shall compile and provide to the
864 Legislature a report on the number of medical malpractice claims,
865 the rate being charged for medical malpractice insurance premiums,
866 the number of physicians leaving the state and any other issues
867 that the commissioner determines impact the medical profession.

868 **SECTION 24.** If any graduate of the University of Mississippi
869 Medical Center decides to retain residency and practice medicine



870 in the state upon graduation from any accredited medical doctor
871 program or nurse practitioner program, then for a period of two
872 (2) years that physician or nurse practitioner shall be able to
873 receive from designated state funds an amount not to exceed twenty
874 percent (20%) of such physician's or nurse practitioner's medical
875 malpractice premium should those funds be made available by the
876 Legislature and if the physician's or nurse practitioner's
877 practice includes a minimum of twenty percent (20%) Medicaid paid
878 patients.

879 **SECTION 25.** (1) Any licensed physician or certified nurse
880 practitioner who voluntarily provides needed medical or health
881 services to any program at an accredited school in the state
882 without the expectation of payment due to the inability of such
883 person to pay for said services shall be immune from liability for
884 any civil action arising out of the provision of such medical or
885 health services provided in good faith on a charitable basis.
886 This section shall not extend immunity to acts of willful or gross
887 negligence. Except in cases of rendering emergency care wherein
888 the provisions of Section 73-25-37, Mississippi Code of 1972,
889 apply, immunity under this section shall be extended only if the
890 physician or certified nurse practitioner and patient execute a
891 written waiver in advance of the rendering of such medical
892 services specifying that such services are provided without the
893 expectation of payment and that the licensed physician or
894 certified nurse practitioner shall be immune as provided herein.

895 (2) Any physician who voluntarily renders any medical
896 service under a special volunteer medical license authorized under
897 Section 73-25-18 without any payment or compensation or the
898 expectation or promise of any payment or compensation shall be
899 immune from liability for any civil action arising out of any act
900 or omission resulting from the rendering of the medical service
901 unless the act or omission was the result of the physician's gross
902 negligence or willful misconduct. In order for the immunity under



903 this subsection to apply, there must be a written or oral
904 agreement for the physician to provide a voluntary noncompensated
905 medical service before the rendering of the service by the
906 physician.

907 **SECTION 26.** This act shall take effect and be in force from
908 and after its passage and shall apply only to causes of action
909 accruing on or after that date.

