

By: Senator(s) Bryan

To: Select Senate Cmte on
Civil Justice Syst

SENATE BILL NO. 2008

1 AN ACT TO AMEND SECTION 11-11-3, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE VENUE IN MEDICAL MALPRACTICE ACTIONS; TO CREATE NEW
3 SECTION 11-1-62, MISSISSIPPI CODE OF 1972, TO PROVIDE IMMUNITY
4 UNDER CERTAIN CONDITIONS TO PHYSICIANS AND OTHER LICENSED
5 PROFESSIONALS IN CIVIL ACTIONS ALLEGING DAMAGES CAUSED BY
6 PRESCRIPTION DRUGS; TO AMEND SECTION 11-1-63, MISSISSIPPI CODE OF
7 1972, IN CONFORMITY THERETO; TO AMEND SECTION 73-25-33,
8 MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF "PRACTICE OF
9 MEDICINE"; TO PROVIDE IMMUNITY FROM LIABILITY TO PHYSICIANS AND
10 NURSE PRACTITIONERS WHO PROVIDE HEALTH SERVICES AT SCHOOLS, AND TO
11 PHYSICIANS WHO RENDER MEDICAL SERVICE UNDER A SPECIAL VOLUNTEER
12 MEDICAL LICENSE, ON A CHARITABLE BASIS; TO AMEND SECTION 85-5-7,
13 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT MEDICAL PRACTITIONERS
14 COVERED UNDER THE TORT CLAIMS ACT ARE ONLY LIABLE FOR THEIR
15 PERCENTAGE OF FAULT IN CIVIL ACTIONS; TO AMEND SECTION 43-11-1,
16 MISSISSIPPI CODE OF 1972, TO DEFINE MEDICAL RECORDS MADE OR
17 MAINTAINED IN INSTITUTIONS FOR THE AGED OR INFIRM; TO CREATE NEW
18 SECTION 43-11-16, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
19 CONFIDENTIALITY OF MEDICAL RECORDS MADE OR MAINTAINED IN
20 INSTITUTIONS FOR THE AGED OR INFIRM; TO AMEND SECTION 15-1-36,
21 MISSISSIPPI CODE OF 1972, TO REVISE THE STATUTE OF LIMITATIONS
22 APPLICABLE TO CLAIMS AGAINST INSTITUTIONS FOR THE AGED OR INFIRM,
23 AND TO REQUIRE 90-DAY'S WRITTEN NOTICE OF INTENTION TO SUE; TO
24 AMEND SECTION 11-46-1, MISSISSIPPI CODE OF 1972, TO REVISE THE
25 DEFINITION OF "EMPLOYEE" UNDER THE TORT CLAIMS ACT; TO PROVIDE
26 LIMITATIONS ON NONECONOMIC DAMAGES IN CIVIL ACTIONS; TO CREATE NEW
27 SECTION 41-105-1, MISSISSIPPI CODE OF 1972, TO ENACT A SHORT TITLE
28 FOR THE MISSISSIPPI CARE ACCESS AND RELIABILITY ENHANCEMENT (CARE)
29 ACT; TO CREATE NEW SECTION 41-105-3, MISSISSIPPI CODE OF 1972, TO
30 MAKE LEGISLATIVE FINDINGS; TO CREATE NEW SECTION 41-105-5,
31 MISSISSIPPI CODE OF 1972, TO SPECIFY THE PURPOSE AND SCOPE OF THE
32 MISSISSIPPI CARE ACT; TO CREATE NEW SECTION 41-105-7, MISSISSIPPI
33 CODE OF 1972, TO ENACT DEFINITIONS; TO CREATE NEW SECTION
34 41-105-9, MISSISSIPPI CODE OF 1972, TO CREATE THE MISSISSIPPI CARE
35 AUTHORITY AND BOARD OF DIRECTORS; TO CREATE NEW SECTION 41-105-11,
36 MISSISSIPPI CODE OF 1972, TO SPECIFY THE POWERS AND DUTIES OF THE
37 AUTHORITY; TO CREATE NEW SECTION 41-105-13, MISSISSIPPI CODE OF
38 1972, TO INDEMNIFY THE CARE BOARD AND ITS EMPLOYEES FROM
39 LIABILITY; TO CREATE NEW SECTION 41-105-15, MISSISSIPPI CODE OF
40 1972, TO SPECIFY THE QUALIFICATIONS OF PARTICIPATING HEALTH-CARE
41 PROVIDERS; TO CREATE NEW SECTION 41-105-17, MISSISSIPPI CODE OF
42 1972, TO SPECIFY REQUIREMENTS TO ESTABLISH FINANCIAL
43 RESPONSIBILITY OF A PARTICIPATING HEALTH-CARE PROVIDER; TO CREATE
44 NEW SECTION 41-105-19, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
45 THE EXCLUSIVENESS OF THE REMEDIES AFFORDED BY THE MISSISSIPPI CARE
46 ACT; TO CREATE NEW SECTION 41-105-21, MISSISSIPPI CODE OF 1972, TO
47 PROVIDE FOR FUNDING OF THE AUTHORITY; AND FOR RELATED PURPOSES.

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



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

51 11-11-3. (1) Civil actions of which the circuit court has
52 original jurisdiction shall be commenced in the county in which
53 the defendant or any of them may be found or in the county where
54 the cause of action may occur or accrue and, if the defendant is a
55 domestic corporation, in the county in which said corporation is
56 domiciled or in the county where the cause of action may occur or
57 accrue, except where otherwise provided, and except actions of
58 trespass on land, ejectment and actions for the statutory penalty
59 for cutting and boxing trees and firing woods and actions for the
60 actual value of trees cut which shall be brought in the county
61 where the land or some part thereof is situated. If a civil
62 action is brought in an improper county, such action may be
63 transferred to the proper county pursuant to Section 11-11-17.

64 (2) Notwithstanding any other provision of law to the
65 contrary, civil actions for claims of medical malpractice or
66 claims against institutions for the aged and infirm shall be
67 commenced in the county where the act or omission giving rise to
68 such cause or action occurred, and only in that county.

69 **SECTION 2.** The following shall be codified as Section
70 11-1-62, Mississippi Code of 1972:

71 11-1-62. (1) Absent any negligence on the part of the
72 physician or other licensed professional who prescribes drugs, a
73 cause of action alleging damages caused by a prescription drug
74 shall not arise against that physician or other licensed
75 professional, nor shall the physician or other licensed
76 professional who prescribes drugs be liable, if the federal Food
77 and Drug Administration (FDA) has approved that drug.

78 (2) Absent any negligence on the part of the pharmacist, a
79 cause of action alleging damages caused by a prescription drug
80 shall not arise against a pharmacist who dispenses a prescription



81 drug, nor shall the pharmacist be liable, if the federal Food and
82 Drug Administration (FDA) has approved that drug.

83 **SECTION 3.** Section 11-1-63, Mississippi Code of 1972, is
84 amended as follows:

85 11-1-63. In any action for damages caused by a product
86 except for commercial damage to the product itself:

87 (a) Subject to the provisions of Section 11-1-62, the
88 manufacturer, seller, distributor or prescriber of the product
89 shall not be liable if the claimant does not prove by the
90 preponderance of the evidence that at the time the product left
91 the control of the manufacturer, seller, distributor or
92 prescriber:

93 (i) 1. The product was defective because it
94 deviated in a material way from the manufacturer's specifications
95 or from otherwise identical units manufactured to the same
96 manufacturing specifications, or

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

99 3. The product was designed in a defective
100 manner, or

101 4. The product breached an express warranty
102 or failed to conform to other express factual representations upon
103 which the claimant justifiably relied in electing to use the
104 product; and

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

107 (iii) The defective and unreasonably dangerous
108 condition of the product proximately caused the damages for which
109 recovery is sought.

110 (b) A product is not defective in design or formulation
111 if the harm for which the claimant seeks to recover compensatory
112 damages was caused by an inherent characteristic of the product
113 which is a generic aspect of the product that cannot be eliminated



114 without substantially compromising the product's usefulness or
115 desirability and which is recognized by the ordinary person with
116 the ordinary knowledge common to the community.

117 (c) (i) In any action alleging that a product is
118 defective because it failed to contain adequate warnings or
119 instructions pursuant to paragraph (a)(i)2 of this section, the
120 manufacturer, seller, distributor or prescriber shall not be
121 liable if the claimant does not prove by the preponderance of the
122 evidence that at the time the product left the control of the
123 manufacturer, seller, distributor or prescriber, the manufacturer,
124 seller, distributor or prescriber knew or in light of reasonably
125 available knowledge should have known about the danger that caused
126 the damage for which recovery is sought and that the ordinary user
127 or consumer would not realize its dangerous condition.

128 (ii) An adequate product warning or instruction is
129 one that a reasonably prudent person in the same or similar
130 circumstances would have provided with respect to the danger and
131 that communicates sufficient information on the dangers and safe
132 use of the product, taking into account the characteristics of,
133 and the ordinary knowledge common to an ordinary consumer who
134 purchases the product; or in the case of a prescription drug,
135 medical device or other product that is intended to be used only
136 under the supervision of a physician or other licensed
137 professional person, taking into account the characteristics of,
138 and the ordinary knowledge common to, a physician or other
139 licensed professional who prescribes the drug, device or other
140 product.

141 (d) For purposes of this section:

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

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



146 (e) In any action alleging that a product is defective
147 pursuant to paragraph (a) of this section, the manufacturer,
148 seller, distributor or prescriber shall not be liable if the
149 claimant (i) had knowledge of a condition of the product that was
150 inconsistent with his safety; (ii) appreciated the danger in the
151 condition; and (iii) deliberately and voluntarily chose to expose
152 himself to the danger in such a manner to register assent on the
153 continuance of the dangerous condition.

154 (f) In any action alleging that a product is defective
155 pursuant to paragraph (a)(i)2 of this section, the manufacturer,
156 seller, distributor or prescriber shall not be liable if the
157 danger posed by the product is known or is open and obvious to the
158 user or consumer of the product, or should have been known or open
159 and obvious to the user or consumer of the product, taking into
160 account the characteristics of, and the ordinary knowledge common
161 to, the persons who ordinarily use or consume the product.

162 (g) In any action alleging that a product is defective
163 because of its design pursuant to paragraph (a)(i)3 of this
164 section, the manufacturer or product seller shall not be liable if
165 the claimant does not prove by the preponderance of the evidence
166 that at the time the product left the control of the manufacturer
167 or seller:

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

172 (ii) The product failed to function as expected
173 and there existed a feasible design alternative that would have to
174 a reasonable probability prevented the harm. A feasible design
175 alternative is a design that would have to a reasonable
176 probability prevented the harm without impairing the utility,
177 usefulness, practicality or desirability of the product to users
178 or consumers.



179 (h) (i) The manufacturer of a product who is found
180 liable for a defective product pursuant to paragraph (a) shall
181 indemnify a product seller, distributor or prescriber for the
182 costs of litigation, any reasonable expenses, reasonable
183 attorney's fees and any damages awarded by the trier of fact
184 unless the seller, distributor or prescriber exercised substantial
185 control over that aspect of the design, testing, manufacture,
186 packaging or labeling of the product that caused the harm for
187 which recovery of damages is sought; the seller, distributor or
188 prescriber altered or modified the product, and the alteration or
189 modification was a substantial factor in causing the harm for
190 which recovery of damages is sought; the seller, distributor or
191 prescriber had actual knowledge of the defective condition of the
192 product at the time he supplied same; or the seller, distributor
193 or prescriber made an express factual representation about the
194 aspect of the product which caused the harm for which recovery of
195 damages is sought.

196 (ii) Subparagraph (i) shall not apply unless the
197 seller, distributor or prescriber has given prompt notice of the
198 suit to the manufacturer within thirty (30) days of the filing of
199 the complaint against the seller.

200 (i) An agent or employee of a disclosed principal who
201 directly participates in or authorizes the commission of a tort,
202 shall be subject to liability for any tortious conduct committed
203 within the course and scope of employment. The principal shall
204 indemnify the agent or employee, for such acts committed as its
205 agent or employee.

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

209 **SECTION 4.** Section 73-25-33, Mississippi Code of 1972, is
210 amended as follows:



211 73-25-33. The practice of medicine shall mean to suggest,
212 recommend, prescribe, or direct for the use of any person, any
213 drug, medicine, appliance, or other agency, whether material or
214 not material, for the cure, relief, or palliation of any ailment
215 or disease of the mind or body, or for the cure or relief of any
216 wound or fracture or other bodily injury or deformity, or the
217 practice of obstetrics or midwifery, after having received, or
218 with the intent of receiving therefor, either directly or
219 indirectly, any bonus, gift, profit or compensation; provided,
220 that nothing in this section shall apply to females engaged solely
221 in the practice of midwifery. Notwithstanding any contrary
222 provision of this section, the act of prescribing any drug or
223 medicine shall constitute a sale under Mississippi law.

224 **SECTION 5.** (1) Any licensed physician or certified nurse
225 practitioner who voluntarily provides needed medical or health
226 services to any program at an accredited school in the state
227 without the expectation of payment due to the inability of such
228 person to pay for said services shall be immune from liability for
229 any civil action arising out of the provision of such medical or
230 health services provided in good faith on a charitable basis.
231 This section shall not extend immunity to acts of willful or gross
232 negligence. Except in cases of rendering emergency care wherein
233 the provisions of Section 73-25-37, Mississippi Code of 1972,
234 apply, immunity under this section shall be extended only if the
235 physician or certified nurse practitioner and patient execute a
236 written waiver in advance of the rendering of such medical
237 services specifying that such services are provided without the
238 expectation of payment and that the licensed physician or
239 certified nurse practitioner shall be immune as provided herein.

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



244 immune from liability for any civil action arising out of any act
245 or omission resulting from the rendering of the medical service
246 unless the act or omission was the result of the physician's gross
247 negligence or willful misconduct. In order for the immunity under
248 this subsection to apply, there must be a written or oral
249 agreement for the physician to provide a voluntary noncompensated
250 medical service before the rendering of the service by the
251 physician.

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

254 85-5-7. (1) As used in this section "fault" means an act or
255 omission of a person which is a proximate cause of injury or death
256 to another person or persons, damages to property, tangible or
257 intangible, or economic injury, including but not limited to
258 negligence, malpractice, strict liability, absolute liability or
259 failure to warn. "Fault" shall not include any tort which results
260 from an act or omission committed with a specific wrongful intent.

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

267 (3) Except as otherwise provided in subsections (2) and (6)
268 of this section, in any civil action based on fault, the liability
269 for damages caused by two (2) or more persons shall be several
270 only, and not joint and several and a joint tort-feasor shall be
271 liable only for the amount of damages allocated to him in direct
272 proportion to his percentage of fault. In assessing percentages
273 of fault an employer and the employer's employee or a principal
274 and the principal's agent shall be considered as one (1) defendant
275 when the liability of such employer or principal has been caused



276 by the wrongful or negligent act or omission of the employee or
277 agent.

278 (4) Any defendant held jointly liable under this section
279 shall have a right of contribution against fellow joint
280 tort-feasors. A defendant shall be held responsible for
281 contribution to other joint tort-feasors only for the percentage
282 of fault assessed to such defendant.

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

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

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

295 (8) Physicians, dentists and other medical practitioners
296 shall only be liable for the amount of damages which is the
297 percentage of fault allocated to such physician, dentist and other
298 medical practitioners.

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

302 **SECTION 7.** Section 43-11-1, Mississippi Code of 1972, is
303 amended as follows:

304 43-11-1. When used in this chapter, the following words
305 shall have the following meaning:

306 (a) "Institutions for the aged or infirm" means a place
307 either governmental or private which provides group living
308 arrangements for four (4) or more persons who are unrelated to the



309 operator and who are being provided food, shelter and personal
310 care whether any such place be organized or operated for profit or
311 not. The term "institution for aged or infirm" includes nursing
312 homes, pediatric skilled nursing facilities, psychiatric
313 residential treatment facilities, convalescent homes and homes for
314 the aged, provided that these institutions fall within the scope
315 of the definitions set forth above. The term "institution for the
316 aged or infirm" does not include hospitals, clinics or mental
317 institutions devoted primarily to providing medical service.

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

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

326 (d) "Psychiatric residential treatment facility" means
327 any nonhospital establishment with permanent facilities which
328 provides a 24-hour program of care by qualified therapists
329 including, but not limited to, duly licensed mental health
330 professionals, psychiatrists, psychologists, psychotherapists and
331 licensed certified social workers, for emotionally disturbed
332 children and adolescents referred to such facility by a court,
333 local school district or by the Department of Human Services, who
334 are not in an acute phase of illness requiring the services of a
335 psychiatric hospital, and are in need of such restorative
336 treatment services. For purposes of this paragraph, the term
337 "emotionally disturbed" means a condition exhibiting one or more
338 of the following characteristics over a long period of time and to
339 a marked degree, which adversely affects educational performance:

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



342 2. An inability to build or maintain satisfactory
343 relationships with peers and teachers;

344 3. Inappropriate types of behavior or feelings
345 under normal circumstances;

346 4. A general pervasive mood of unhappiness or
347 depression; or

348 5. A tendency to develop physical symptoms or
349 fears associated with personal or school problems. An
350 establishment furnishing primarily domiciliary care is not within
351 this definition.

352 (e) "Pediatric skilled nursing facility" means an
353 institution or a distinct part of an institution that is primarily
354 engaged in providing to inpatients skilled nursing care and
355 related services for persons under twenty-one (21) years of age
356 who require medical or nursing care or rehabilitation services for
357 the rehabilitation of injured, disabled or sick persons.

358 (f) "Licensing agency" means the State Department of
359 Health.

360 (g) "Medical records" means, without restriction, those
361 medical histories, records, reports, summaries, diagnoses and
362 prognoses, records of treatment and medication ordered and given,
363 notes, entries, x-rays and other written or graphic data prepared,
364 kept, made or maintained in institutions for the aged or infirm
365 that pertain to residency in, or services rendered to residents
366 of, an institution for the aged or infirm.

367 **SECTION 8.** The following shall be codified as Section
368 43-11-16, Mississippi Code of 1972:

369 43-11-16. Medical records are and shall remain the property
370 of the various institutions for the aged and infirm, subject
371 however to reasonable access to the information contained therein
372 upon request of the resident of the institution to whom the
373 medical records apply, his personal representatives or heirs, his
374 attending medical personnel and his duly authorized nominees, and



375 upon payment of any reasonable charges for such service. Nothing
376 in this section shall be construed to deny access to medical
377 records by the licensing agency in the discharge of its official
378 duties under this chapter. Except as otherwise provided by law,
379 medical records shall not constitute public records and nothing in
380 this section shall be deemed to impair any privilege of confidence
381 conferred by law or the Mississippi Rules of Evidence on
382 residents, their personal representatives or heirs by Section
383 13-1-21.

384 **SECTION 9.** Section 15-1-36, Mississippi Code of 1972, is
385 amended as follows:

386 15-1-36. (1) For any claim accruing on or before June 30,
387 1998, and except as otherwise provided in this section, no claim
388 in tort may be brought against a licensed physician, osteopath,
389 dentist, hospital, institution for the aged or infirm, nurse,
390 pharmacist, podiatrist, optometrist or chiropractor for injuries
391 or wrongful death arising out of the course of medical, surgical
392 or other professional services unless it is filed within two (2)
393 years from the date the alleged act, omission or neglect shall or
394 with reasonable diligence might have been first known or
395 discovered.

396 (2) For any claim accruing on or after July 1, 1998, and
397 except as otherwise provided in this section, no claim in tort may
398 be brought against a licensed physician, osteopath, dentist,
399 hospital, institution for the aged or infirm, nurse, pharmacist,
400 podiatrist, optometrist or chiropractor for injuries or wrongful
401 death arising out of the course of medical, surgical or other
402 professional services unless it is filed within two (2) years from
403 the date the alleged act, omission or neglect shall or with
404 reasonable diligence might have been first known or discovered,
405 and, except as described in paragraphs (a) and (b) of this
406 subsection, in no event more than seven (7) years after the
407 alleged act, omission or neglect occurred:



408 (a) In the event a foreign object introduced during a
409 surgical or medical procedure has been left in a patient's body,
410 the cause of action shall be deemed to have first accrued at, and
411 not before, the time at which the foreign object is, or with
412 reasonable diligence should have been, first known or discovered
413 to be in the patient's body.

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

419 (3) Except as otherwise provided in subsection (4) of this
420 section, if at the time at which the cause of action shall or with
421 reasonable diligence might have been first known or discovered,
422 the person to whom such claim has accrued shall be six (6) years
423 of age or younger, then such minor or the person claiming through
424 such minor may, notwithstanding that the period of time limited
425 pursuant to subsections (1) and (2) of this section shall have
426 expired, commence action on such claim at any time within two (2)
427 years next after the time at which the minor shall have reached
428 his sixth birthday, or shall have died, whichever shall have first
429 occurred.

430 (4) If at the time at which the cause of action shall or
431 with reasonable diligence might have been first known or
432 discovered, the person to whom such claim has accrued shall be a
433 minor without a parent or legal guardian, then such minor or the
434 person claiming through such minor may, notwithstanding that the
435 period of time limited pursuant to subsections (1) and (2) of this
436 section shall have expired, commence action on such claim at any
437 time within two (2) years next after the time at which the minor
438 shall have a parent or legal guardian or shall have died,
439 whichever shall have first occurred; provided, however, that in no



440 event shall the period of limitation begin to run prior to such
441 minor's sixth birthday unless such minor shall have died.

442 (5) If at the time at which the cause of action shall or
443 with reasonable diligence might have been first known or
444 discovered, the person to whom such claim has accrued shall be
445 under the disability of unsoundness of mind, then such person or
446 the person claiming through him may, notwithstanding that the
447 period of time hereinbefore limited shall have expired, commence
448 action on such claim at any time within two (2) years next after
449 the time at which the person to whom the right shall have first
450 accrued shall have ceased to be under the disability, or shall
451 have died, whichever shall have first occurred.

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

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

463 (8) For the purposes of subsection (4) of this section, and
464 only for the purposes of such subsection, the disability of
465 infancy or minority shall be removed from and after a person has
466 reached his sixth birthday or from and after such person shall
467 have a parent or legal guardian, whichever occurs later, unless
468 such disability is otherwise removed by law.

469 (9) The limitation established by this section as to a
470 licensed physician, osteopath, dentist, hospital or nurse shall
471 apply only to actions the cause of which accrued on or after July
472 1, 1976.



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

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

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

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

485 (14) The limitation established by this section as to
486 institutions for the aged or infirm shall apply only to actions
487 the cause of which accrued after the passage of Senate Bill No.
488 _____ , Third Extraordinary Session of 2002.

489 (15) No action based upon the health-care provider's
490 professional negligence may be begun unless the defendant has been
491 given at least ninety (90) days' prior written notice of the
492 intention to begin the action. No particular form of notice is
493 required, but it shall notify the defendant of the legal basis of
494 the claim and the type of loss sustained, including with
495 specificity the nature of the injuries suffered. If the notice is
496 served within ninety (90) days of the expiration of the applicable
497 statute of limitations, the time for the beginning of the action
498 shall be extended ninety (90) days from the service of the notice.
499 This subsection shall not be applicable with respect to any
500 defendant whose name is unknown to the plaintiff at the time of
501 filing the complaint and who is identified therein by a fictitious
502 name.

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



505 11-46-1. As used in this chapter the following terms shall
506 have the meanings herein ascribed unless the context otherwise
507 requires:

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

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

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

514 (d) "Department" means the Department of Finance and
515 Administration.

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

518 (f) "Employee" means any officer, employee or servant
519 of the State of Mississippi or a political subdivision of the
520 state, including elected or appointed officials and persons acting
521 on behalf of the state or a political subdivision in any official
522 capacity, temporarily or permanently, in the service of the state
523 or a political subdivision whether with or without compensation.
524 The term "employee" shall not mean a person or other legal entity
525 while acting in the capacity of an independent contractor under
526 contract to the state or a political subdivision; provided,
527 however, that for purposes of the limits of liability provided for
528 in Section 11-46-15, the term "employee" shall include physicians
529 under contract to provide health services with the State Board of
530 Health, the State Board of Mental Health or any county or
531 municipal jail facility while rendering services under such
532 contract. The term "employee" shall also include any physician,
533 dentist or other medical practitioner under contract or affiliated
534 with or employed by the University of Mississippi Medical Center,
535 its departmental practice plans, or who practices on the campus of
536 any university under the control of the Board of Trustees of State
537 Institutions of Higher Learning. The term "employee" shall also



538 include any physician, dentist or other medical practitioner under
539 contract or affiliated with or employed by the State Veterans
540 Affairs Board. The term "employee" shall also include Mississippi
541 Department of Human Services licensed foster parents for the
542 limited purposes of coverage under the Tort Claims Act as provided
543 in Section 11-46-8.

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

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

549 (i) "Political subdivision" means any body politic or
550 body corporate other than the state responsible for governmental
551 activities only in geographic areas smaller than that of the
552 state, including, but not limited to, any county, municipality,
553 school district, community hospital as defined in Section
554 41-13-10, Mississippi Code of 1972, airport authority or other
555 instrumentality thereof, whether or not such body or
556 instrumentality thereof has the authority to levy taxes or to sue
557 or be sued in its own name.

558 (j) "State" means the State of Mississippi and any
559 office, department, agency, division, bureau, commission, board,
560 institution, hospital, college, university, airport authority or
561 other instrumentality thereof, whether or not such body or
562 instrumentality thereof has the authority to levy taxes or to sue
563 or be sued in its own name.

564 (k) "Law" means all species of law, including, but not
565 limited to, any and all constitutions, statutes, case law, common
566 law, customary law, court order, court rule, court decision, court
567 opinion, court judgment or mandate, administrative rule or
568 regulation, executive order, or principle or rule of equity.

569 **SECTION 11.** (1) Except as provided in Section 41-105-15,
570 compensation for the noneconomic damages suffered by an injured



571 plaintiff in any action for malpractice, negligence, error,
572 omission, mistake or the unauthorized rendering of professional
573 services by a provider of health care shall not exceed the amount
574 of Five Hundred Thousand Dollars (\$500,000.00).

575 (2) If liability is found, then the trier of fact, in
576 addition to other appropriate findings, shall make separate
577 findings specifying the total amount of noneconomic damages and
578 the total amount of actual economic damages for each separate
579 claimant in a manner that the court may apply the restrictions of
580 this section.

581 (3) The trier of fact shall not be advised of the
582 limitations imposed by this section.

583 (4) For the purposes of this section, the following words
584 and phrases shall have the meanings ascribed herein unless the
585 context clearly requires otherwise:

586 (a) "Noneconomic damages" means subjective,
587 nonpecuniary damages arising from death, pain, suffering,
588 inconvenience, physical impairment, disfigurement, mental anguish,
589 worry, emotional distress, loss of society and companionship, loss
590 of consortium, bystander injury, injury to reputation,
591 humiliation, loss of the enjoyment of life, hedonic damages, other
592 nonpecuniary damages, and any other theory of damages such as fear
593 of loss, illness or injury. The term "noneconomic damages" shall
594 not include punitive damages.

595 (b) "Actual economic damages" means objectively
596 verifiable pecuniary damages arising from medical expenses and
597 medical care, rehabilitation services, custodial care,
598 disabilities, loss of earnings and earning capacity, loss of
599 income, burial costs, loss of use of property, costs of repair of
600 replacement of property, costs of obtaining substitute domestic
601 services, loss of employment, loss of business or employment
602 opportunities, and other objectively verifiable monetary losses.



603 **SECTION 12.** The following shall be codified as Section
604 41-105-1, Mississippi Code of 1972:

605 41-105-1. **Short title.** Sections 41-105-1 through 41-105-21
606 shall be known and may be cited as the "Mississippi Care Access
607 and Reliability Enhancement Act" or the "Mississippi CARE Act."

608 **SECTION 13.** The following shall be codified as Section
609 41-105-3, Mississippi Code of 1972:

610 41-105-3. **Legislative findings.** It is hereby declared:

611 (a) That there exists in the State of Mississippi a
612 severe shortage of quality, affordable health care;

613 (b) That this shortage contributes to the creation and
614 persistence of substandard health care for many Mississippians and
615 is damaging to the health, welfare and prosperity of all of the
616 residents of the State of Mississippi;

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

619 (d) That this shortage can be significantly ameliorated
620 through the creation and maintenance of a nonprofit authority with
621 powers to encourage the provision of health care to all
622 Mississippians, and particularly to children, the poor, the
623 elderly and public employees;

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

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

630 **SECTION 14.** The following shall be codified as Section
631 41-105-5, Mississippi Code of 1972:

632 41-105-5. **Purpose and scope.** (1) The purpose of the
633 Mississippi CARE Act is to create a framework to ensure that
634 quality, affordable health care will be available to Mississippi's
635 patients, and particularly patients participating in the Medicaid,



636 Medicare, Children's Health Insurance Program, and State Health
637 Insurance Programs.

638 (2) The provisions of this act shall apply to all
639 participating health-care providers as defined in Section
640 41-105-7.

641 **SECTION 15.** The following shall be codified as Section
642 41-105-7, Mississippi Code of 1972:

643 41-105-7. **Definitions.** As used in this chapter, the
644 following words shall have the meaning ascribed herein unless the
645 context clearly requires otherwise:

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

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

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

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

657 (e) "Health care" means any act, or treatment performed
658 or furnished, or which should have been performed or furnished, by
659 any health-care provider for, to, or on behalf of a patient during
660 the patient's medical care, treatment or confinement.

661 (f) "Health-care provider" means (i) a person,
662 partnership, limited liability entity or corporation licensed or
663 certified or authorized by state or federal law to provide
664 professional health-care service in this state to an individual
665 during that individual's health care, treatment or confinement;
666 and (ii) a health care facility or institution, whether public or
667 private, proprietary or nonprofit, which offers diagnosis,



668 treatment, inpatient or ambulatory care to two (2) or more
669 unrelated persons.

670 (g) "Malpractice" means any unintentional tort based on
671 health-care or professional services rendered, or which should
672 have been rendered, by a health-care provider, to a patient,
673 including failure to render services timely and the handling of a
674 patient, including loading and unloading of a patient, and also
675 includes all legal responsibility of a health-care provider
676 arising from acts or omissions in the training or supervision of
677 health-care providers, or from defects in blood, tissue,
678 transplants, drugs and medicines, or from defects in or failures
679 of prosthetic devices, implanted in or used on or in the person of
680 a patient.

681 (h) "Medical costs and related economic damages" means
682 all reasonable medical, surgical, hospitalization, physical
683 rehabilitation, custodial services and related economic damages,
684 including prescription drugs, care, custody, prosthetic devices
685 and other similar materials reasonably necessary in the provision
686 of such services, and loss of earnings and loss of earning
687 capacity after the date of the injury. Medical costs and related
688 economic damages shall not include any noneconomic damages.

689 (i) "Noneconomic damages" means any damages which
690 compensate for pain, suffering, inconvenience and other
691 nonpecuniary damages.

692 (j) "Participating health-care provider" means any
693 health-care provider who meets the qualification requirements set
694 forth in Section 41-105-15 and shall include all officers and
695 employees of such participating health-care provider, provided
696 that in the event such officers or employees individually fall
697 within the definition of a health-care provider as set forth in
698 this section, then such officers and employees must each
699 individually meet the qualification requirements set forth in
700 Section 41-105-15.



701 (k) "Patient" means a natural person who receives or
702 should have received health care from a licensed health-care
703 provider, under a contract, express or implied.

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

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

711 **SECTION 16.** The following shall be codified as Section
712 41-105-9, Mississippi Code of 1972:

713 41-105-9. **Mississippi CARE Authority.** (1) There is hereby
714 created a nonprofit legal entity to be known as the Mississippi
715 Care Access and Reliability Enhancement Authority or the
716 authority.

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

721 **SECTION 17.** The following shall be codified as Section
722 41-105-11, Mississippi Code of 1972:

723 41-105-11. **Mississippi CARE Authority powers and duties.**

724 (1) The authority shall create and administer a mandatory medical
725 review process in accordance with the requirements of this
726 section.

727 (a) The medical review process shall provide for the
728 review of all malpractice claims against participating health-care
729 providers by a medical review panel. No action against a
730 participating health-care provider or his insurer may be commenced
731 in any court before the claimant's proposed complaint has been
732 presented to a medical review panel.



733 (b) A medical review panel shall issue an expert
734 opinion concerning the malpractice claim which shall be admissible
735 as evidence in any action subsequently brought by the claimant in
736 a court of law. Such expert opinion shall not be conclusive.
737 Either party shall have the right to call, at his cost, any member
738 of the medical review panel as a witness. If called, the witness
739 shall be required to appear and testify.

740 (c) The members of a medical review panel shall consist
741 of three (3) participating health-care providers who hold
742 unlimited licenses to practice their profession in Mississippi and
743 one (1) duly licensed attorney. The members of a medical review
744 panel shall be appointed by the board.

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

750 (e) The authority shall adopt policies and procedures
751 for the medical review process, including without limitation rules
752 and procedures for the appointment of the members of a medical
753 review panel, the presentation of evidence, payment of costs and
754 fees, witnesses, and the issuance of opinions by the medical
755 review panel.

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

759 (a) In the event that a judgment, settlement or final
760 award in an arbitration proceeding exceeds the total liability of
761 all participating health-care providers as provided in Section
762 41-105-15(2)(b), then application may be made to the authority for
763 payment out of the PLAN Fund for that portion of such excess
764 judgment, settlement or final arbitration award that is determined



765 by the authority to constitute eligible medical costs and related
766 economic damages.

767 (b) The authority shall adopt policies and procedures
768 for the administration of the PLAN Fund. Such policies and
769 procedures shall be included in the plan of operation required by
770 Section 41-105-11(4).

771 (c) Jurisdiction for appeals of decisions of the
772 authority with respect to the PLAN Fund shall be exclusively with
773 the Chancery Court in the First Judicial District of Hinds County,
774 Mississippi. Such appeals shall be conducted based on the record
775 made with the authority and not as a trial de novo.

776 (3) The authority may exercise powers granted to insurers
777 under the laws of this state to write or otherwise make available
778 medical malpractice insurance in the State of Mississippi. The
779 insurance functions of the authority shall be subject to the
780 insurance laws of the State of Mississippi applicable to insurers
781 writing similar lines of insurance.

782 (4) The authority shall adopt a plan of operation for
783 purposes of implementing this chapter, including the provisions of
784 Section 41-105-19, and submit its plan of operation to the
785 Mississippi Commissioner of Insurance for approval.

786 (5) The authority may take any legal actions necessary or
787 proper to accomplish the purposes set forth in this chapter,
788 including without limitation, entering into contracts, suing or
789 being sued, and appointing appropriate administrative, legal,
790 accounting, actuarial and other persons as necessary to provide
791 assistance in the operation of the authority. The authority is
792 authorized to borrow money to effect the purposes of the
793 authority.

794 (6) The Mississippi Commissioner of Insurance may, by rule,
795 establish additional powers and duties of the board and may adopt
796 such rules as are necessary and proper to implement this chapter.
797 The Mississippi Commissioner of Insurance shall have the power to



798 retain accountants, attorneys, actuaries and any other experts he
799 deems necessary to carry out his responsibilities under this
800 chapter.

801 (7) The Mississippi Commissioner of Insurance shall examine
802 and investigate the authority and make an annual report to the
803 Legislature and the Governor thereon.

804 (8) If the board at any time determines that the authority
805 lacks sufficient funds to conduct all or any part of its
806 operations in accordance with the Mississippi CARE Act, then the
807 board may suspend or terminate all or any part of the operations
808 of the authority until such time as the board determines that
809 adequate funds are available to conduct such suspended or
810 terminated operations; provided, however, the board must have the
811 approval of the Mississippi Commissioner of Insurance prior to
812 suspending or terminating any insurance functions of the
813 authority. Notice of any such suspension or termination of
814 operations, and of the resumption of any suspended or terminated
815 operations, shall be given to the Governor, the Legislature, the
816 Mississippi Commissioner of Insurance and all participating
817 health-care providers.

818 **SECTION 18.** The following shall be codified as Section
819 41-105-13, Mississippi Code of 1972:

820 41-105-13. **Liability, indemnification and legal**
821 **representation.** Neither the CARE Board nor its employees shall be
822 liable for any obligations of the authority. There shall be no
823 liability on the part of and no cause of action shall arise
824 against the authority or its agents or employees, members of the
825 board of directors, the Commissioner of Insurance or his
826 representatives for any action or omission by them in the
827 performance of their powers and duties under this chapter. The
828 board may provide in its bylaws or rules for indemnification of,
829 and legal representation for, its members, agents and employees.



830 **SECTION 19.** The following shall be codified as Section
831 41-105-15, Mississippi Code of 1972:

832 41-105-15. **Participating health-care providers.** (1) In
833 order to be qualified as a participating health-care provider and
834 to participate in the provisions of this chapter, a health-care
835 provider must:

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

838 (b) Cause to be filed with the board a written
839 agreement, the form and substance of which shall be determined by
840 the board, signed by a duly authorized representative, that the
841 health-care provider will provide services to (i) Medicaid
842 recipients, (ii) Medicare recipients, (iii) Children's Health
843 Insurance Program participants, and (iv) State Health Insurance
844 Program participants. Such written agreement shall provide, among
845 other things, that the health-care provider will provide services
846 to Medicaid recipients, Medicare recipients, Children's Health
847 Insurance Program participants, and State Health Insurance Program
848 participants in a manner that is comparable to the services
849 provided to all other patients and shall be made without balance
850 billing to the patient.

851 (c) Pay all surcharges assessed according to Section
852 41-105-11(2).

853 (2) Except as specifically set forth in Section
854 41-105-15(3), the total amount recoverable for all malpractice
855 claims brought against all participating health-care providers
856 involved in any one (1) incident of injury to or death of any one
857 (1) patient, shall be limited to the following:

858 (a) Up to Five Hundred Thousand Dollars (\$500,000.00)
859 for noneconomic damages; and

860 (b) Up to Five Hundred Thousand Dollars (\$500,000.00)
861 for medical costs and related economic damages; provided, however,
862 that in the event that a judgment, settlement or final award in an



863 arbitration proceeding exceeds Five Hundred Thousand Dollars
864 (\$500,000.00) for medical costs and related economic damages, then
865 application may be made to the authority for payment out of the
866 PLAN Fund in accordance with the provision of Section
867 41-105-11(2) (b). Payments from the PLAN Fund shall be paid to the
868 patient as periodic payments in such manner as determined by the
869 authority.

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

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

875 (b) A case in which, following return of a verdict by
876 the jury or a finding of damages in a bench trial, the court
877 determines, by clear and convincing evidence admitted at trial,
878 that an award in excess of Five Hundred Thousand Dollars
879 (\$500,000.00) for noneconomic damages is justified because of
880 exceptional circumstances.

881 (4) No liability shall be imposed upon any participating
882 health-care provider on the basis of an alleged breach of
883 contract, whether by express or implied warranty, assuring results
884 to be obtained from any procedure undertaken in the course of
885 health care, unless such contract is expressly set forth in
886 writing and signed by such participating health-care provider or
887 by an authorized agent of such participating health-care provider.

888 (5) The liability limitations set forth in Section
889 41-105-15(2) shall be adjusted for inflation annually. The
890 adjustment made pursuant to this paragraph shall be rounded upward
891 or downward to the nearest increment of Ten Dollars (\$10.00). The
892 authority shall make available the cost of living increase
893 calculations, if any, as soon as such information becomes
894 available each year.



895 **SECTION 20.** The following shall be codified as Section
896 41-105-17, Mississippi Code of 1972:

897 41-105-17. **Proof of financial responsibility.** (1)

898 Financial responsibility of a participating health-care provider
899 may be established by either:

900 (a) Filing with the board proof that the participating
901 health-care provider is adequately insured for its exposure under
902 this chapter by a policy of malpractice liability insurance
903 approved by the board from an insurance company approved by the
904 board; or

905 (b) Maintaining on deposit with the board an amount
906 approved by the board to adequately cover its exposure under this
907 chapter in the form of cash or other collateral approved by the
908 board.

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

913 (3) Any properly licensed agent may sell any policy of
914 malpractice liability insurance approved by the board from an
915 insurance company approved by the board to participating
916 health-care providers in accordance with this chapter.

917 **SECTION 21.** The following shall be codified as Section
918 41-105-19, Mississippi Code of 1972:

919 41-105-19. **Additional protections; exclusive remedy.** (1)

920 The Mississippi CARE Act shall not limit or preempt any
921 protections or liability limitations afforded to participating
922 health-care providers.

923 (2) Except to the extent that other applicable law would
924 further limit the remedies available (and in such event such
925 limited remedy shall apply), the remedy provided by this chapter
926 against a participating health-care provider is exclusive of any
927 other civil action or civil proceeding by reason of the same



928 subject matter against the participating health-care provider for
929 the act or omission which gave rise to the claim or suit, and any
930 claim made or suit filed against a participating health-care
931 provider to recover damages for any malpractice injury shall be
932 brought only under the provisions of this chapter, notwithstanding
933 the provisions of any other law to the contrary.

934 **SECTION 22.** The following shall be codified as Section
935 41-105-21, Mississippi Code of 1972:

936 41-105-21. **Funding of authority.** Reasonable expenses of the
937 authority incurred in connection with the execution of its
938 authority under this chapter, including without limitation,
939 expenses for start-up costs, operations and insurance reserves
940 shall be provided from any available funds, pursuant to
941 appropriation by the Legislature.

942 The plan of operation adopted by the board shall provide
943 that, from time to time, the board shall determine whether and to
944 what extent its income, including without limitation, any premiums
945 and surcharges collected, exceeds anticipated or actual expenses
946 and reasonable reserves and the board shall pay such excess
947 amounts to the Health Care Expendable Fund.

948 **SECTION 23.** This act shall take effect and be in force from
949 and after its passage and shall apply only to causes of action
950 accruing on or after that date; provided, however, that Section 6
951 of this act shall take effect and be in force from and after its
952 passage and shall apply to all causes of action pending on, and
953 filed after, that date.

