

By: Senator(s) Bryan

To: Select Senate Cmte on  
Civil Justice Syst

SENATE BILL NO. 2010

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.

