

By: Representative Blackmon

To: Judiciary A

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2

1 AN ACT TO AMEND SECTION 11-11-3, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE VENUE IN GENERAL CIVIL ACTIONS; TO PROVIDE FOR CLASS
3 ACTIONS; TO AMEND SECTION 11-1-66, MISSISSIPPI CODE OF 1972, TO
4 REVISE PREMISES LIABILITY; TO AMEND SECTION 85-5-7, MISSISSIPPI
5 CODE OF 1972, TO REVISE JOINT AND SEVERAL LIABILITY; TO AMEND
6 SECTION 13-5-1, MISSISSIPPI CODE OF 1972, TO ELIMINATE CERTAIN
7 JUROR DISQUALIFICATIONS; TO AMEND SECTION 13-5-23, MISSISSIPPI
8 CODE OF 1972, TO PROVIDE THAT JURORS CAN ONLY BE EXCUSED FROM
9 SERVICE FOR ILLNESS OR UNDUE HARDSHIP; TO CODIFY SECTION 13-5-24,
10 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT JURORS CAN POSTPONE JURY
11 SERVICE ONE TIME ONLY; TO AMEND SECTION 13-5-25, MISSISSIPPI CODE
12 OF 1972, TO LIMIT THE FREQUENCY OF JURY SERVICE; TO AMEND SECTION
13 13-5-28, MISSISSIPPI CODE OF 1972, TO REQUIRE NOTICE OF JURY
14 SERVICE EXEMPTION ENTITLEMENT TO BE INCLUDED IN JUROR SUMMONSES;
15 TO AMEND SECTION 13-5-34, MISSISSIPPI CODE OF 1972, TO REVISE THE
16 PUNISHMENT FOR FAILURE TO APPEAR FOR JURY SERVICE; TO CODIFY
17 SECTION 13-5-99, MISSISSIPPI CODE OF 1972, TO PROVIDE EMPLOYMENT
18 PROTECTIONS FOR JURORS; TO AMEND SECTION 25-7-61, MISSISSIPPI CODE
19 OF 1972, TO CREATE A LENGTHY TRIAL FUND; TO AMEND SECTION 33-1-5,
20 MISSISSIPPI CODE OF 1972, TO ELIMINATE CERTAIN JUROR EXEMPTIONS;
21 TO REPEAL SECTIONS 41-17-7 AND 47-5-55, MISSISSIPPI CODE OF 1972,
22 WHICH PROVIDE CERTAIN EXEMPTIONS FROM JURY SERVICE; TO AMEND
23 SECTION 83-48-5, MISSISSIPPI CODE OF 1972, TO EXPAND THE MEDICAL
24 MALPRACTICE INSURANCE AVAILABILITY PLAN THAT IS ADMINISTERED BY
25 THE MISSISSIPPI TORT CLAIMS BOARD TO MAKE AVAILABLE PRIOR ACTS
26 EXTENDED REPORTING PERIOD COVERAGE TO ALL PARTICIPANTS OF THE PLAN
27 AT ADDITIONAL PREMIUM ASSESSMENTS FOR SUCH COVERAGE AND TO PAY ALL
28 MEDICAL MALPRACTICE INSURANCE PREMIUMS FOR CERTAIN RETIRED
29 PHYSICIANS WHO PROVIDE VOLUNTEER UNPAID HEALTH CARE SERVICES; TO
30 AMEND SECTION 11-46-1, MISSISSIPPI CODE OF 1972, TO REVISE THE
31 DEFINITION OF "EMPLOYEE" FOR PURPOSES OF LIMITED LIABILITY UNDER
32 THE TORT CLAIMS BOARD TO INCLUDE THOSE PHYSICIANS WHO PROVIDE
33 HEALTH CARE SERVICES TO MEDICAID RECIPIENTS, STATE AND SCHOOL
34 EMPLOYEES HEALTH INSURANCE PLAN PARTICIPANTS AND CHILDREN'S HEALTH
35 INSURANCE PROGRAM PARTICIPANTS IF AT LEAST THIRTY-FIVE PERCENT OF
36 THE PHYSICIAN'S PATIENTS ARE MEDICAID RECIPIENTS, OR NOT TO EXCEED
37 ONE HUNDRED TWENTY-FIVE PHYSICIANS; TO INCLUDE CERTAIN RETIRED
38 PHYSICIANS WHO PROVIDE VOLUNTEER UNPAID HEALTH CARE SERVICES TO
39 ANY PUBLIC ENTITY OR PRIVATE ENTITY; TO CREATE IN THE STATE
40 TREASURY A SPECIAL FUND TO THE CREDIT OF THE MISSISSIPPI TORT
41 CLAIMS BOARD WHICH SHALL BE COMPRISED OF ANY FUNDS MADE AVAILABLE
42 FOR THE FUND BY THE LEGISLATURE; TO PROVIDE THAT MONIES IN THE
43 SPECIAL FUND SHALL BE EXPENDED BY THE MISSISSIPPI TORT CLAIMS
44 BOARD TO PROVIDE ADDITIONAL FUNDS FOR PRIOR ACT COVERAGE FOR PLAN
45 PARTICIPANTS AND TO PAY THE MEDICAL MALPRACTICE PREMIUMS FOR THOSE
46 RETIRED PHYSICIANS DESCRIBED HEREIN; TO CREATE AN ADVISORY COUNCIL
47 TO ASSIST THE MISSISSIPPI TORT CLAIMS BOARD IN DETERMINING WHETHER
48 A PHYSICIAN MEETS THE PERCENTAGE REQUIREMENT NECESSARY TO QUALIFY
49 AS AN EMPLOYEE FOR LIMITED LIABILITY PURPOSES; TO PROVIDE RATES
50 FOR COPIES OF MEDICAL RECORDS THAT MAY BE CHARGED BY MEDICAL
51 PROVIDERS AND FACILITIES; TO PROVIDE FOR MEDICAL PRACTICE OF
52 DISCLOSURE; TO IMPOSE POWERS AND DUTIES ON THE STATE BOARD OF

53 MEDICAL LICENSURE AND THE STATE DEPARTMENT OF HEALTH; TO PROVIDE
54 FOR PENALTIES; TO AMEND SECTIONS 73-43-11 AND 41-3-15, MISSISSIPPI
55 CODE OF 1972, IN CONFORMITY; TO AMEND SECTION 73-25-27,
56 MISSISSIPPI CODE OF 1972, TO PROVIDE THE RIGHT FOR HARMED PATIENTS
57 TO ATTEND DISCIPLINARY PROCEEDINGS INVOLVING THE PHYSICIAN
58 RESPONSIBLE FOR THE HARM; TO REQUIRE INSURANCE COMPANIES WRITING
59 MEDICAL MALPRACTICE INSURANCE IN THE STATE TO ROLL BACK PREMIUM
60 RATES TO THE AMOUNT CHARGED ON JULY 1, 2001; TO REQUIRE STATEWIDE
61 PUBLICATION OF RECALL NOTICES; TO PROVIDE FOR A DIRECT ACTION
62 AGAINST AN INSURER; TO PROVIDE THAT POLICY SHALL CONTAIN
63 PROVISIONS THAT INSOLVENCY OR BANKRUPTCY OF THE INSURED SHALL NOT
64 RELEASE THE INSURER FROM LIABILITY; TO PROVIDE THAT ACTIONS MAY BE
65 BROUGHT AGAINST THE INSURER ALONE IN CERTAIN SITUATIONS; TO
66 PROVIDE THAT THE INSURANCE POLICY SHALL BE ADMISSIBLE INTO
67 EVIDENCE; AND FOR RELATED PURPOSES.

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

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

71 11-11-3. (1) (a) (i) Civil actions of which the circuit
72 court has original jurisdiction shall be commenced in the county
73 where the defendant resides, or, if a corporation, in the county
74 of its principal place of business, or in the county where a
75 substantial alleged act or omission occurred or where a
76 substantial event that caused the injury occurred.

77 (ii) Civil actions alleging a defective product
78 may also be commenced in the county where the plaintiff obtained
79 the product.

80 (b) If venue in a civil action against a nonresident
81 defendant cannot be asserted under paragraph (a) of this
82 subsection (1), a civil action against a nonresident may be
83 commenced in the county where the plaintiff resides or is
84 domiciled.

85 (2) In any civil action where more than one (1) plaintiff is
86 joined, each plaintiff shall independently establish proper venue;
87 it is not sufficient that venue is proper for any other plaintiff
88 joined in the civil action.

89 **SECTION 2.** (1) One or more members of a class may sue or be
90 sued as representative parties on behalf of all only if (a) the
91 class is so numerous that joinder of all members is impracticable,
92 (b) there are questions of law or fact common to the class, (c)

93 the claims or defenses of the representative parties are typical
94 of the claims or defenses of the class, and (d) the representative
95 parties will fairly and adequately protect the interests of the
96 class.

97 (2) An action may be maintained as a class action if the
98 prerequisites of subsection (1) are satisfied, and in addition:

99 (a) The prosecution of separate actions by or against
100 individual members of the class would create a risk of:

101 (i) Inconsistent or varying adjudications with
102 respect to individual members of the class which would establish
103 incompatible standards of conduct for the party opposing the
104 class, or

105 (ii) Adjudications with respect to individual
106 members of the class which would as a practical matter be
107 dispositive of the interests of the other members not parties to
108 the adjudications or substantially impair or impede their ability
109 to protect their interests; or

110 (b) The party opposing the class has acted or refused
111 to act on grounds generally applicable to the class, thereby
112 making appropriate final injunctive relief or corresponding
113 declaratory relief with respect to the class as a whole; or

114 (c) The court finds that the questions of law or fact
115 common to the members of the class predominate over any questions
116 affecting only individual members, and that a class action is
117 superior to other available methods for the fair and efficient
118 adjudication of the controversy. The matters pertinent to the
119 findings include: (i) the interest of members of the class in
120 individually controlling the prosecution or defense of separate
121 actions; (ii) the extent and nature of any litigation concerning
122 the controversy already commenced by or against members of the
123 class; (iii) the desirability or undesirability of concentrating
124 the litigation of the claims in the particular forum; (iv) the

125 difficulties likely to be encountered in the management of a class
126 action.

127 (3) (a) As soon as practicable after the commencement of an
128 action brought as a class action, the court shall determine by
129 order whether it is to be so maintained. An order under this
130 subdivision may be conditional, and may be altered or amended
131 before the decision on the merits.

132 (b) In any class action maintained under subsection
133 (2)(c), the court shall direct to the members of the class the
134 best notice practicable under the circumstances, including
135 individual notice to all members who can be identified through
136 reasonable effort. The notice shall advise each member that (i)
137 the court will exclude the member from the class if the member so
138 requests by a specified date; (ii) the judgment, whether favorable
139 or not, will include all members who do not request exclusion; and
140 (iii) any member who does not request exclusion may, if the member
141 desires, enter an appearance through counsel.

142 (c) The judgment in an action maintained as a class
143 action under subsection (2)(a) or (2)(b), whether or not favorable
144 to the class, shall include and describe those whom the court
145 finds to be members of the class. The judgment in an action
146 maintained as a class action under subsection (2)(c), whether or
147 not favorable to the class, shall include and specify or describe
148 those to whom the notice provided in subsection (3)(b) was
149 directed, and who have not requested exclusion, and whom the court
150 finds to be members of the class.

151 (d) When appropriate (i) an action may be brought or
152 maintained as a class action with respect to particular issues, or
153 (ii) a class may be divided into subclasses and each subclass
154 treated as a class, and the provisions of this rule shall then be
155 construed and applied accordingly.

156 (4) (a) When a person sues or is sued as a representative
157 of a class, the court must, at an early practicable time,

158 determine by order whether to certify the action as a class
159 action.

160 (b) An order certifying a class action must define the
161 class and the class claims, issues or defenses and must appoint
162 class counsel under subsection (9).

163 (c) An order under this subsection may be altered or
164 amended before final judgment.

165 (d) (i) For any class certified under this section or
166 the court may direct appropriate notice to the class.

167 (ii) For any class certified under this section,
168 the court must direct to class members the best notice practicable
169 under the circumstances, including individual notice to all
170 members who can be identified through reasonable effort. The
171 notice must concisely and clearly state in plain, easily
172 understood language:

- 173 1. The nature of the action;
- 174 2. The definition of the class certified;
- 175 3. The class claims, issues or defenses;
- 176 4. That a class member may enter an
177 appearance through counsel if the member so desires;
- 178 5. That the court will exclude from the class
179 any member who requests exclusion, stating when and how members
180 may elect to be excluded; and
- 181 6. The binding effect of a class judgment on
182 class members under this section.

183 (e) The judgment in an action maintained as a class
184 action under subsection (3)(a) or (3)(b), whether or not favorable
185 to the class, shall include and describe those whom the court
186 finds to be members of the class. The judgment in an action
187 maintained as a class action under subsection (3)(c), whether or
188 not favorable to the class, shall include and specify or describe
189 those to whom the notice provided in subsection (4)(b) was

190 directed, and who have not requested exclusion, and whom the court
191 finds to be members of the class.

192 (f) When appropriate (i) an action may be brought or
193 maintained as a class action with respect to particular issues, or
194 (ii) a class may be divided into subclasses and each subclass
195 treated as a class, and the provisions of this rule shall then be
196 construed and applied accordingly.

197 (5) In the conduct of actions to which this rule applies,
198 the court may make appropriate orders:

199 (a) Determining the course of proceedings or
200 prescribing measures to prevent undue repetition or complication
201 in the presentation of evidence or argument;

202 (b) Requiring, for the protection of the members of the
203 class or otherwise for the fair conduct of the action, that notice
204 be given in such manner as the court may direct to some or all of
205 the members of any step in the action, or of the proposed extent
206 of the judgment, or of the opportunity of members to signify
207 whether they consider the representation fair and adequate, to
208 intervene and present claims or defenses, or otherwise to come
209 into the action;

210 (c) Imposing conditions on the representative parties
211 or on intervenors;

212 (d) Requiring that the pleadings be amended to
213 eliminate therefrom allegations as to representation of absent
214 persons, and that the action proceed accordingly;

215 (e) Dealing with similar procedural matters. The
216 orders may be combined and may be altered or amended as may be
217 desirable from time to time.

218 (6) A class action shall not be dismissed or compromised
219 without the approval of the court, and notice of the proposed
220 dismissal or compromise shall be given to all members of the class
221 in such manner as the court directs.

222 (7) (a) (i) The court must approve any settlement,
223 voluntary dismissal or compromise of the claims, issues or
224 defenses of a certified class.

225 (ii) The court must direct notice in a reasonable
226 manner to all class members who would be bound by a proposed
227 settlement, voluntary dismissal or compromise.

228 (iii) The court may approve a settlement,
229 voluntary dismissal or compromise that would bind class members
230 only after a hearing and on finding that the settlement, voluntary
231 dismissal or compromise is fair, reasonable and adequate.

232 (b) The parties seeking approval of a settlement,
233 voluntary dismissal or compromise must file a statement
234 identifying any agreement made in connection with the proposed
235 settlement, voluntary dismissal or compromise.

236 (c) In an action previously certified as a class
237 action, the court may refuse to approve a settlement unless it
238 affords a new opportunity to request exclusion to individual class
239 members who had an earlier opportunity to request exclusion but
240 did not do so.

241 (d) (i) Any class member may object to a proposed
242 settlement, voluntary dismissal or compromise that requires court
243 approval.

244 (ii) An objection made under this subsection may
245 be withdrawn only with the court's approval.

246 (8) A court of appeals may in its discretion permit an
247 appeal from an order of a district court granting or denying class
248 action certification under this rule if application is made to it
249 within ten (10) days after entry of the order. An appeal does not
250 stay proceedings in the district court unless the district judge
251 or the court of appeals so order.

252 (9) (a) Unless a statute provides otherwise, a court that
253 certifies a class must appoint class counsel.

254 (b) An attorney appointed to serve as class counsel
255 must fairly and adequately represent the interests of the class.

256 (c) In appointing class counsel, the court:

257 (i) Must consider:

258 1. The work counsel has done in identifying
259 or investigating potential claims in the action;

260 2. Counsel's experience in handling class
261 actions, other complex litigation and claims of the type asserted
262 in the action;

263 3. Counsel's knowledge of the applicable law;
264 and

265 4. The resources counsel will commit to
266 representing the class;

267 (ii) May consider any other matter pertinent to
268 counsel's ability to fairly and adequately represent the interests
269 of the class;

270 (iii) May direct potential class counsel to
271 provide information on any subject pertinent to the appointment
272 and to propose terms for attorney fees and nontaxable costs; and

273 (iv) May make further orders in connection with
274 the appointment.

275 (d) The court may designate interim counsel to act on
276 behalf of the putative class before determining whether to certify
277 the action as a class action.

278 (e) The court may appoint one or more individual
279 attorneys or one or more law firms as class counsel which the
280 court determines is best able to represent the interests of the
281 class.

282 (f) The order appointing class counsel may include
283 provisions about the award of attorney fees or nontaxable costs.

284 (10) In an action certified as a class action, the court may
285 award reasonable attorney fees and nontaxable costs authorized by
286 law or by agreement of the parties as follows:

287 (a) A claim for an award of attorney fees and
288 nontaxable costs must be made by motion, subject to the provisions
289 of this subsection, at a time set by the court. Notice of the
290 motion must be served on all parties and, for motions by class
291 counsel, directed to class members in a reasonable manner.

292 (b) A class member, or a party from whom payment is
293 sought, may object to the motion.

294 (c) The court may hold a hearing and must find the
295 facts and state its conclusions of law on the motion.

296 (d) The court may refer issues related to the amount of
297 the award to a special master or to a magistrate judge.

298 **SECTION 3.** Section 11-1-66, Mississippi Code of 1972, is
299 amended as follows:

300 11-1-66. (1) No owner, occupant, lessee or managing agent
301 of property shall be civilly liable for the criminal acts of a
302 third party, unless such owner, occupant, lessee or managing agent
303 knew or, with the exercise of reasonable care, should have known
304 of the risk of criminal conduct on such property and the failure
305 to exercise reasonable care to deter such foreseeable conduct is a
306 proximate cause of damages to an individual or entity.

307 (2) No owner, occupant, lessee or managing agent of property
308 shall be liable for the death or injury of an independent
309 contractor or the independent contractor's employees resulting
310 from dangers of which the contractor knew or reasonably should
311 have known.

312 **SECTION 4.** Section 85-5-7, Mississippi Code of 1972, is
313 amended as follows:

314 85-5-7. (1) As used in this section "fault" means an act or
315 omission of a person which is a proximate cause of injury or death
316 to another person or persons, damages to property, tangible or
317 intangible, or economic injury, including, but not limited to,
318 negligence, malpractice, strict liability, absolute liability or

319 failure to warn. "Fault" shall not include any tort which results
320 from an act or omission committed with a specific wrongful intent.

321 * * *

322 (2) Except as otherwise provided in subsection (4) of this
323 section, in any civil action based on fault, the liability for
324 damages caused by two (2) or more persons shall be several only,
325 and not joint and several and a joint tort-feasor shall be liable
326 only for the amount of damages allocated to him in direct
327 proportion to his percentage of fault. In assessing percentages
328 of fault an employer and the employer's employee or a principal
329 and the principal's agent shall be considered as one (1) defendant
330 when the liability of such employer or principal has been caused
331 by the wrongful or negligent act or omission of the employee or
332 agent.

333 * * *

334 (3) Nothing in this section shall eliminate or diminish any
335 defenses or immunities which currently exist, except as expressly
336 noted herein.

337 (4) Joint and several liability shall be imposed on all who
338 consciously and deliberately pursue a common plan or design to
339 commit a tortious act, or actively take part in it. Any person
340 held jointly and severally liable under this section shall have a
341 right of contribution from his fellow defendants acting in
342 concert.

343 (5) In actions involving joint tort-feasors, the trier of
344 fact shall determine the percentage of fault for each party
345 alleged to be at fault.

346 * * *

347 (6) Nothing in this section shall be construed to create a
348 cause of action. Nothing in this section shall be construed, in
349 any way, to alter the immunity of any person.

350 **SECTION 5.** Section 13-5-1, Mississippi Code of 1972, is
351 amended as follows:

352 13-5-1. Every citizen not under the age of twenty-one (21)
353 years, who is either a qualified elector, or a resident freeholder
354 of the county for more than one (1) year, is able to read and
355 write, and has not been convicted of a felony within the past ten
356 (10) years is a competent juror. * * * The lack of any such
357 qualifications on the part of one or more jurors shall not,
358 however, vitiate an indictment or verdict. Moreover, * * * no
359 juror shall serve on any jury who has served as such for the last
360 preceding two (2) years. No juror * * * who has a case of his own
361 pending in that court shall serve in his own case.

362 In order to determine that prospective jurors can read and
363 write, the presiding judge shall, with the assistance of the
364 clerk, distribute to the jury panel a form to be completed
365 personally by each juror prior to being empaneled as follows:

- 366 "1. Your name _____ Last _____ First _____ Middle
367 initial
368 2. Your home address _____
369 3. Your occupation _____
370 4. Your age _____
371 5. Your telephone number _____ If none, write 'None'
372 6. If you live outside the county seat, the number of miles
373 you live from the courthouse _____ miles
374 _____

375 Sign your name"

376 The judge shall personally examine the answers of each juror
377 prior to empaneling the jury and each juror who cannot complete
378 the above form shall be disqualified as a juror and discharged.

379 A list of any jurors disqualified for jury duty by reason of
380 inability to complete the form shall be kept by the circuit clerk
381 and their names shall not be placed in the jury box thereafter
382 until such person can qualify as above provided.

383 **SECTION 6.** Section 13-5-23, Mississippi Code of 1972, is
384 amended as follows:

385 13-5-23. (1) All qualified persons shall be liable to serve
386 as jurors, unless excused by the court for one (1) of the
387 following causes:

388 (a) When the juror is ill and, on account of the
389 illness, is incapable of performing jury service; or

390 (b) When the juror's attendance would cause undue or
391 extreme physical or financial hardship to the prospective juror or
392 a person under his or her care or supervision.

393 * * *

394 (2) An excuse of illness under subsection (1)(a) of this
395 section may be made to the clerk of court outside of open court by
396 providing the clerk with * * * a certificate of a licensed
397 physician * * *, stating that the juror is ill and is unfit for
398 jury service, in which case the clerk may excuse the juror. If
399 the excuse of illness is not supported by a physician's
400 certificate, a judge of the court for which the individual was
401 called to jury service shall decide whether to excuse an
402 individual under subsection (1)(a) of this section.

403 (3) (a) The test of an excuse under subsection (1)(b) of
404 this section for undue or extreme physical or financial hardship
405 shall be whether the individual would either:

406 (i) Be required to abandon a person under his or
407 her personal care or supervision due to the impossibility of
408 obtaining an appropriate substitute caregiver during the period of
409 participation in the jury pool or on the jury; or

410 (ii) Incur costs that would have a substantial
411 adverse impact on the payment of the individual's necessary daily
412 living expenses or on those for whom he or she provides the
413 principal means of support; or

414 (iii) Suffer physical hardship that would result
415 in illness or disease.

416 (b) "Undue or extreme physical or financial hardship"
417 does not exist solely based on the fact that a prospective juror

418 will be required to be absent from his or her place of employment
419 or business.

420 (c) A judge of the court for which the individual was
421 called to jury service shall decide whether to excuse an
422 individual under subsection (1)(b) of this section.

423 (d) A person asking to be excused based on a finding of
424 undue or extreme physical or financial hardship must take all
425 actions necessary to have obtained a ruling on that request by no
426 later than the date on which the individual is scheduled to appear
427 for jury duty.

428 (e) A person asking a judge to grant an excuse under
429 subsection (1)(b) of this section shall be required to provide the
430 judge with documentation such as, but not limited to, federal and
431 state income tax returns or other information which verifies
432 income, medical statements from licensed physicians, proof of
433 dependency or guardianship and similar documents, which the judge
434 finds to clearly support the request to be excused. Failure to
435 provide satisfactory documentation shall result in a denial of the
436 request to be excused. Any documentation produced under this
437 paragraph shall not be a public record.

438 (4) After two (2) years, a person excused from jury service
439 shall become eligible once again for qualification as a juror
440 unless the person was excused from service permanently. A person
441 is excused from jury service permanently only when the deciding
442 judge determines that the underlying grounds for being excused are
443 of a permanent nature.

444 (5) * * * A tales juror * * * shall not be compelled to
445 serve two (2) days successively unless the case in which the juror
446 is impaneled continues longer than one (1) day. Grand jurors
447 shall serve until discharged by the court.

448 **SECTION 7.** The following provision shall be codified as
449 Section 13-5-24, Mississippi Code of 1972:

450 13-5-24. (1) Notwithstanding any other provisions of this
451 chapter, individuals scheduled to appear for jury service have the
452 right to postpone the date of their initial appearance for jury
453 service one (1) time only. Postponements shall be granted upon
454 request, provided that:

455 (a) The juror has not been granted a postponement
456 within the past two (2) years;

457 (b) The prospective juror appears in person or contacts
458 the clerk of the court by telephone, electronic mail or in writing
459 to request a postponement; and

460 (c) Prior to the grant of a postponement with the
461 concurrence of the clerk of the court, the prospective juror fixes
462 a date certain to appear for jury service that is within the next
463 two (2) terms of court but not more than twelve (12) months after
464 the date on which the prospective juror originally was called to
465 serve and on which date the court will be in session.

466 (2) A subsequent request to postpone jury service may be
467 approved by a judicial officer only in the event of an extreme
468 emergency, such as a death in the family, sudden illness, or a
469 natural disaster or a national emergency in which the prospective
470 juror is personally involved, that could not have been anticipated
471 at the time the initial postponement was granted. Prior to the
472 grant of a second postponement, the prospective juror must fix a
473 date certain on which the individual will appear for jury service
474 within twelve (12) months of the postponement on a date when the
475 court will be in session.

476 **SECTION 8.** Section 13-5-25, Mississippi Code of 1972, is
477 amended as follows:

478 13-5-25. Every citizen over sixty-five (65) years of age,
479 and everyone who has served on the regular panel as a juror in the
480 actual trial of one or more litigated cases within two (2) years,
481 shall be exempt from service if he claims the privilege * * *. No
482 qualified juror shall be excluded because of any such reasons, but

483 the same shall be a personal privilege to be claimed by any person
484 selected for jury duty. Any citizen over sixty-five (65) years of
485 age may claim this personal privilege outside of open court by
486 providing the clerk of court with information that allows the
487 clerk to determine the validity of the claim.

488 Provided, however, that no person who has served on the
489 regular panel as a juror in the actual trial of one or more
490 litigated cases in one (1) court may claim the exemption in any
491 other court where he may be called to serve.

492 **SECTION 9.** Section 13-5-28, Mississippi Code of 1972, is
493 amended as follows:

494 13-5-28. If a grand, petit or other jury is ordered to be
495 drawn, the clerk thereafter shall cause each person drawn for jury
496 service to be served with a summons, either personally or by mail,
497 addressed to him at his usual residence, business or post office
498 address, requiring him to report for jury service at a specified
499 time and place. The summons shall include instructions to the
500 potential jurors that explain, in layman's terms, the provisions
501 of Sections 13-5-23 and 13-5-99.

502 **SECTION 10.** Section 13-5-34, Mississippi Code of 1972, is
503 amended as follows:

504 13-5-34. (1) A person summoned for jury service who fails
505 to appear or to complete jury service as directed, and who has
506 failed to obtain a postponement in compliance with the provisions
507 for requesting a postponement, or who fails to appear on the date
508 set pursuant to Section 13-5-24 shall be ordered by the court to
509 appear forthwith and show cause for his failure to comply with the
510 summons. If he fails to show good cause for noncompliance with
511 the summons he is in civil contempt of court and * * * may be
512 fined not more than Five Hundred Dollars (\$500.00) or imprisoned
513 not more than three (3) days, or both. The prospective juror may
514 be excused from paying sanctions for good cause shown or in the
515 interest of justice.

516 (2) In addition to, or in lieu of, the fine or imprisonment
517 provided in subsection (1) of this section, the court may order
518 that the prospective juror complete a period of community service
519 for a period no less than if the prospective juror would have
520 completed jury service, and provide proof of completion of this
521 community service to the court.

522 **SECTION 11.** The following provision shall be codified as
523 Section 13-5-99, Mississippi Code of 1972:

524 13-5-99. (1) It shall be unlawful for any employer or any
525 other person to persuade or attempt to persuade any juror to avoid
526 jury service; to intimidate or to threaten any juror in that
527 respect; or to remove or otherwise subject an employee to adverse
528 employment action as a result of jury service if the employee
529 notifies his or her employer that he or she has been summoned to
530 serve as a juror within a reasonable period of time after receipt
531 of a summons.

532 (2) It shall be unlawful for an employer to require or
533 request an employee to use annual, vacation or sick leave for time
534 spent responding to a summons for jury duty, time spent
535 participating in the jury selection process, or time spent
536 actually serving on a jury. Nothing in this provision shall be
537 construed to require an employer to provide annual, vacation or
538 sick leave to employees under the provisions of this statute who
539 otherwise are not entitled to such benefits under company
540 policies.

541 (3) Any violation of subsection (1) or (2) of this section
542 shall be deemed an interference with the administration of justice
543 and a contempt of court and punishable as such.

544 (4) A court shall automatically postpone and reschedule the
545 service of a summoned juror employed by an employer with five (5)
546 or fewer full-time employees, or their equivalent, if another
547 employee of that employer has previously been summoned to appear
548 during the same period. Such postponement will not constitute the

549 excused individual's right to one (1) automatic postponement under
550 Section 13-5-24.

551 **SECTION 12.** Section 25-7-61, Mississippi Code of 1972, is
552 amended as follows:

553 25-7-61. (1) Fees of jurors shall be payable as follows:

554 (a) Grand jurors and petit jurors in the chancery,
555 county, circuit and special eminent domain courts shall be paid an
556 amount to be set by the board of supervisors, not to be less than
557 Twenty-five Dollars (\$25.00) per day and not to be greater than
558 Forty Dollars (\$40.00) per day, plus mileage authorized in Section
559 25-3-41. In the trial of all cases where jurors are in charge of
560 bailiffs and are not permitted to separate, the sheriff with the
561 approval of the trial judge may pay for room and board of jurors
562 on panel for actual time of trial.

563 No grand juror shall receive any compensation except mileage
564 unless he shall have been sworn as provided by Section 13-5-45;
565 and no petit juror except those jurors called on special venires
566 shall receive any compensation authorized under this subsection
567 except mileage unless he shall have been sworn as provided by
568 Section 13-5-71.

569 (b) Jurors making inquisitions of idiocy, lunacy or of
570 unsound mind and jurors on coroner's inquest shall be paid Five
571 Dollars (\$5.00) per day plus mileage authorized in Section 25-3-41
572 by the county treasurer on order of the board of supervisors on
573 certificate of the clerk of the chancery court in which such
574 inquisition is held.

575 (c) Jurors in the justice courts shall be paid an
576 amount of not less than Ten Dollars (\$10.00) per day and not more
577 than Fifteen Dollars (\$15.00) per day, to be established by the
578 board of supervisors. In all criminal cases in the justice court
579 wherein the prosecution fails, the fees of jurors shall be paid by
580 the county treasurer on order of the board of supervisors on

581 certificate of the county attorney in all counties that have
582 county attorneys, otherwise by the justice court judge.

583 (2) Any juror may return the fees provided as compensation
584 for service as a juror to the county which paid for such person's
585 service as a juror. The fees returned to the county may be
586 earmarked for a particular purpose to be selected by the juror,
587 including:

588 (a) The local public library;

589 (b) Local law enforcement;

590 (c) The Mississippi Fire Fighters Memorial Burn Center
591 Fund created in Section 7-9-70, Mississippi Code of 1972; or

592 (d) Any other governmental agency.

593 (3) The Administrative Office of Courts shall promulgate
594 rules to establish a Lengthy Trial Fund to be used to provide full
595 or partial wage replacement or wage supplementation to jurors who
596 serve as petit jurors in civil cases for more than ten (10) days.

597 (a) The court rules shall provide for the following:

598 (i) The selection and appointment of an
599 administrator for the fund.

600 (ii) Procedures for the administration of the
601 fund, including payments of salaries of the administrator and
602 other necessary personnel.

603 (iii) Procedures for the accounting, auditing and
604 investment of money in the Lengthy Trial Fund.

605 (iv) A report by the Administrative Office of
606 Courts on the administration of the Lengthy Trial Fund in its
607 annual report on the judicial branch, setting forth the money
608 collected for and disbursed from the fund.

609 (b) The administrator shall use any monies deposited in
610 the Lengthy Trial Fund to pay full or partial wage replacement or
611 supplementation to jurors whose employers pay less than full
612 regular wages when the period of jury service lasts more than ten
613 (10) days.

614 (c) The court may pay replacement or supplemental wages
615 of up to Three Hundred Dollars (\$300.00) per day per juror
616 beginning on the eleventh day of jury service. In addition, for
617 any jurors who qualify for payment by virtue of having served on a
618 jury for more than ten (10) days, the court, upon finding that
619 such service posed a significant financial hardship to a juror,
620 even in light of payments made with respect to jury service after
621 the tenth day, may award replacement or supplemental wages of up
622 to One Hundred Dollars (\$100.00) per day from the fourth to the
623 tenth day of jury service.

624 (d) Any juror who is serving or has served on a jury
625 that qualifies for payment from the Lengthy Trial Fund, provided
626 the service commenced on or after the July 1, 2004, may submit a
627 request for payment from the Lengthy Trial Fund on a form that the
628 administrator provides. Payment shall be limited to the
629 difference between the state-paid jury fee and the actual amount
630 of wages a juror earns, up to the maximum level payable, minus any
631 amount the juror actually receives from the employer during the
632 same time period.

633 (i) The form shall disclose the juror's regular
634 wages, the amount the employer will pay during the term of jury
635 service starting on the eleventh day and thereafter, the amount of
636 replacement or supplemental wages requested, and any other
637 information the administrator deems necessary for proper payment.

638 (ii) The juror also shall be required to submit
639 verification from the employer as to the wage information provided
640 to the administrator, for example, the employee's most recent
641 earnings statement or similar document, prior to initiation of
642 payment from the fund.

643 (iii) If an individual is self-employed or
644 receives compensation other than wages, the individual may provide
645 a sworn affidavit attesting to his or her approximate gross weekly

646 income, together with such other information as the administrator
647 may require, in order to verify weekly income.

648 **SECTION 13.** Section 33-1-5, Mississippi Code of 1972, is
649 amended as follows:

650 33-1-5. Any member of the Mississippi National Guard on
651 active duty shall be exempt from jury duty upon presenting a
652 current written statement from his superior officer that such jury
653 service will be likely to interfere with his military duties.

654 **SECTION 14.** Section 41-17-7, Mississippi Code of 1972, which
655 provides for the exemption from jury service of state insane
656 hospital personnel, is repealed.

657 **SECTION 15.** Section 47-5-55, Mississippi Code of 1972, which
658 provides for the exemption from jury service of state correctional
659 system employees and officers, is repealed.

660 **SECTION 16.** The Legislature recognizes the importance of
661 assuring adequate health care services for all Mississippians, and
662 it acknowledges that physicians are a vital component of providing
663 such services. The Legislature finds that because of the makeup
664 of the citizenry of the state and the percentage of citizens who
665 are (a) Medicaid recipients, (b) State and School Employees Health
666 Insurance Plan participants and (c) Children's Health Insurance
667 Program participants, physicians who provide health care services
668 to such individuals are providing an essential public service and
669 that it is in the public interest to provide funding to further
670 address medical malpractice insurance needs of these physicians.

671 **SECTION 17.** Section 83-48-5, Mississippi Code of 1972, is
672 amended as follows:

673 83-48-5. (1) There is created the Medical Malpractice
674 Insurance Availability Plan that shall be funded by the
675 participants in the plan. The plan shall be administered by the
676 Tort Claims Board created under Section 11-46-18.

677 (2) (a) The plan shall provide coverage for medical
678 malpractice to hospitals, institutions for the aged or infirm, or

679 other health care facilities licensed by the State of Mississippi,
680 physicians, nurses or other personnel who are duly licensed to
681 practice in a hospital or other health care facility licensed by
682 the State of Mississippi. Participation in the plan shall be
683 voluntary for any hospital, institution for the aged or infirm, or
684 other health care facilities licensed by the State of Mississippi,
685 physicians, nurses and any other personnel who are duly licensed
686 to practice in a hospital or other health care facility licensed
687 by the State of Mississippi. However, no state entity may
688 participate in the plan. The term "state" as used in this
689 subsection has the meaning ascribed to that term under Section
690 11-46-1. The plan shall make available tail (extended reporting
691 period) coverage for participants of the plan at an additional
692 premium assessment for such coverage. The plan shall make
693 available prior acts extended reporting period coverage
694 (retroactive to the inception date of the physician's last medical
695 malpractice policy) for participants of the plan at an additional
696 premium assessment for such coverage. The board shall encourage
697 participation in the insurance industry market. Any duly licensed
698 qualified Mississippi agent who writes a policy under the plan may
699 receive a commission not to exceed five percent (5%) of the
700 premium assessment as full compensation.

701 (b) The limits of coverage under the plan shall be as
702 follows:

703 (i) For participants who are "political
704 subdivisions" and participants who are "employees" of political
705 subdivisions, as such terms are defined under Section 11-46-1, a
706 maximum of Five Hundred Thousand Dollars (\$500,000.00), per single
707 occurrence, and Two Million Dollars (\$2,000,000.00), in the
708 aggregate, per year, for all occurrences;

709 (ii) For all other participants, a maximum of One
710 Million Dollars (\$1,000,000.00), per single occurrence, and Three

711 Million Dollars (\$3,000,000.00), in the aggregate, per year, for
712 all occurrences; and

713 (iii) For tail coverage, the plan shall provide
714 the same limits of coverage as designated in subparagraphs (i) and
715 (ii) of this paragraph (b).

716 (iv) For prior acts extended reporting period
717 coverage, the plan shall provide the same limits of coverage as
718 designated in subparagraphs (i) and (ii) of this paragraph (b).
719 For the purpose of providing funds, in addition to assessments,
720 for prior acts extending reporting period coverage, the
721 Mississippi Tort Claims Board shall use monies in the special fund
722 created under Section 19 of House Bill No. _____, First
723 Extraordinary Session of 2004.

724 (3) Policies may be underwritten based on participant
725 history. All rates applicable to the coverage provided herein
726 shall be on an actuarially sound basis and calculated to be
727 self-supporting. Policies for prior acts extended reporting
728 period coverage shall be underwritten at the lowest premium rates
729 possible on an actuarially sound basis.

730 (4) Every participant in the plan shall:

731 (a) File with the board a written agreement, the form
732 and substance of which shall be determined by the board, signed by
733 a duly authorized representative of the participant, that the
734 participant will provide services to (i) Medicaid recipients, (ii)
735 State and School Employees Health Insurance Plan participants, and
736 (iii) Children's Health Insurance Program participants. The
737 agreement must provide, among other things, that the participant
738 will provide services to Medicaid recipients, State and School
739 Employees Health Insurance Plan participants, and Children's
740 Health Insurance Program participants in a manner that is
741 comparable to the services provided to all other patients and
742 shall be made without balance billing to the patient; and

743 (b) Pay all assessments and premiums established by the
744 board.

745 (5) This chapter shall not preclude any hospital,
746 institution for the aged or infirm, or other health care
747 facilities licensed by the State of Mississippi, physician, nurse
748 or other personnel who are duly licensed to practice in a hospital
749 or other health care facility licensed by the State of Mississippi
750 from procuring medical malpractice insurance from any source other
751 than the plan.

752 (6) Notwithstanding any other provision of this section to
753 the contrary, the Mississippi Tort Claims Board shall use so much
754 of the monies in the special fund created in Section 19 of House
755 Bill No. _____, First Extraordinary Session of 2004, as may be
756 necessary to pay all medical malpractice insurance premiums for
757 not more than an aggregate of twenty-five (25) physicians
758 described in Section 11-46-1(f)(ii).

759 (7) The Tort Claims Board shall have the following powers
760 and duties:

761 (a) To expend money from a loan from the Tort Claims
762 Fund in an amount not to exceed Five Hundred Thousand Dollars
763 (\$500,000.00) for the start-up costs of administering the Medical
764 Malpractice Insurance Availability Plan;

765 (b) To approve and pay claims of participants;

766 (c) To charge and collect assessments and fees from
767 participants in the plan;

768 (d) To contract with accountants, attorneys, actuaries
769 and any other experts deemed necessary to carry out the
770 responsibilities under the plan. The outsourcing of any function
771 of the board shall be provided by Mississippi residents or
772 Mississippi domicile corporations, if available;

773 (e) To employ not more than five (5) persons in
774 time-limited positions to assist the board in the administration
775 of the plan;

776 (f) To contract for administration of the claims and
777 service of the plan to a third party. The outsourcing of any
778 function of the board shall be provided by Mississippi residents
779 or Mississippi domicile corporations, if available;

780 (g) To use monies in the special fund created under
781 Section 19 of House Bill No. _____, First Extraordinary Session of
782 2004, for the purposes provided in subsections (2)(b)(iv) and (6)
783 of this section.

784 (h) To adopt and promulgate rules and regulations to
785 implement the provisions of the plan. The Tort Claims Board shall
786 adopt such rules and regulations as may be necessary to ensure
787 that the plan remains actuarially sound. The board shall retain
788 the limited liability established by Section 11-46-15; and

789 (i) To submit an annual report on or before March 1
790 each year to the House and Senate Insurance Committees. Such
791 report shall contain:

792 (i) Certification by a qualified actuary that the
793 plan is solvent;

794 (ii) The number of participants in the plan;

795 (iii) The number of claims filed and paid by the
796 plan; and

797 (iv) The amount of all assessments and fees
798 collected from the participants in the plan.

799 (8) Nothing contained in this section shall be construed as
800 repealing, amending or superseding the provisions of any other law
801 and, if the provisions of this section conflict with any other
802 law, then the provisions of such other law shall govern and
803 control to the extent of the conflict.

804 **SECTION 18.** Section 11-46-1, Mississippi Code of 1972, is
805 amended as follows:

806 11-46-1. As used in this chapter the following terms shall
807 have the meanings herein ascribed unless the context otherwise
808 requires:

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

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

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

815 (d) "Department" means the Department of Finance and
816 Administration.

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

819 (f) "Employee" means:

820 (i) Any officer, employee or servant of the State
821 of Mississippi or a political subdivision of the state, including
822 elected or appointed officials and persons acting on behalf of the
823 state or a political subdivision in any official capacity,
824 temporarily or permanently, in the service of the state or a
825 political subdivision whether with or without compensation. The
826 term "employee" shall not mean a person or other legal entity
827 while acting in the capacity of an independent contractor under
828 contract to the state or a political subdivision; provided,
829 however, that for purposes of the limits of liability provided for
830 in Section 11-46-15, the term "employee" shall include physicians
831 under contract to provide health services with the State Board of
832 Health, the State Board of Mental Health or any county or
833 municipal jail facility while rendering services under such
834 contract. The term "employee" shall also include any physician,
835 dentist or other health care practitioner employed by the
836 University of Mississippi Medical Center (UMMC) and its
837 departmental practice plans who is a faculty member and provides
838 health care services only for patients at UMMC or its affiliated
839 practice sites. The term "employee" shall also include any
840 physician, dentist or other health care practitioner employed by
841 any university under the control of the Board of Trustees of State

842 Institutions of Higher Learning who practices only on the campus
843 of any university under the control of the Board of Trustees of
844 State Institutions of Higher Learning. The term "employee" shall
845 also include any physician, dentist or other health care
846 practitioner employed by the State Veterans Affairs Board and who
847 provides health care services for patients for the State Veterans
848 Affairs Board. The term "employee" shall also include Mississippi
849 Department of Human Services licensed foster parents for the
850 limited purposes of coverage under the Tort Claims Act as provided
851 in Section 11-46-8. For the purposes of the limits of liability
852 provided for in Section 11-46-15 and for no other purpose under
853 this chapter, the term "employee" also shall include any physician
854 who provides health care services to Medicaid recipients, State
855 and School Employees Health Insurance Plan participants and
856 Children's Health Insurance Program participants, provided that at
857 least thirty-five percent (35%) of the physician's patients, as
858 determined by the board, are Medicaid recipients, however, not to
859 exceed one hundred twenty-five (125) physicians; and

860 (ii) Any retired physician who provides volunteer
861 unpaid health care services to any public entity or private
862 entity. For the purposes of this subparagraph (ii), "public
863 entity" means any agency, department, institution, instrumentality
864 or political subdivision of the state, or any agency, department,
865 institution or instrumentality of any political subdivision of the
866 state; and "private entity" means any business, organization,
867 corporation, association or other legal entity which is not a
868 public entity.

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

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

874 (i) "Political subdivision" means any body politic or
875 body corporate other than the state responsible for governmental
876 activities only in geographic areas smaller than that of the
877 state, including, but not limited to, any county, municipality,
878 school district, community hospital as defined in Section
879 41-13-10, Mississippi Code of 1972, airport authority or other
880 instrumentality thereof, whether or not such body or
881 instrumentality thereof has the authority to levy taxes or to sue
882 or be sued in its own name.

883 (j) "State" means the State of Mississippi and any
884 office, department, agency, division, bureau, commission, board,
885 institution, hospital, college, university, airport authority or
886 other instrumentality thereof, whether or not such body or
887 instrumentality thereof has the authority to levy taxes or to sue
888 or be sued in its own name.

889 (k) "Law" means all species of law including, but not
890 limited to, any and all constitutions, statutes, case law, common
891 law, customary law, court order, court rule, court decision, court
892 opinion, court judgment or mandate, administrative rule or
893 regulation, executive order, or principle or rule of equity.

894 **SECTION 19.** There is created in the State Treasury a special
895 fund to the credit of the Mississippi Tort Claims Board, which
896 shall be comprised of any funds that may be made available for the
897 fund by the Legislature. Monies in the fund shall be expended by
898 the Mississippi Tort Claims Board, upon appropriation by the
899 Legislature, only for the purpose of providing additional funds
900 for prior acts extended reporting period coverage as provided in
901 Section 83-48-5 and for paying the medical malpractice premiums
902 for those physicians described in Section 11-46-1(f)(ii) as
903 provided for in Section 83-48-5. Unexpended amounts remaining in
904 the special fund at the end of a fiscal year shall not lapse into
905 the State General Fund, and any interest earned or investment

906 earnings on amounts in the special fund shall be deposited to the
907 credit of the special fund.

908 **SECTION 20.** The Tort Claims Board shall develop methods and
909 promulgate rules and regulations to verify whether a physician
910 meets the percentage requirement under Section 11-46-1(f) to
911 qualify as an employee. There is created an advisory council to
912 assist the Mississippi Tort Claims Board in determining whether a
913 physician meets the percentage requirement under Section
914 11-46-1(f) to qualify as an employee. The advisory council shall
915 be composed of the Executive Director of the Mississippi Medical
916 Association or his designee; the President of the Mississippi
917 Medical and Surgical Association or his designee; the
918 administrator of the Mississippi Tort Claims Board or his
919 designee; two (2) physicians appointed by the Lieutenant Governor;
920 two (2) physicians appointed by the Speaker of the House of
921 Representatives and three (3) nonphysician members, one (1) from
922 each Supreme Court district, appointed by the Governor.

923 **SECTION 21.** That any medical provider or hospital or nursing
924 home or other medical facility shall charge no more than the
925 following amounts to patients or their representatives for
926 photocopying any patient's records: Twenty Dollars (\$20.00) for
927 pages one (1) through twenty (20); One Dollar (\$1.00) per page for
928 the next eighty (80) pages; Fifty Cents (50¢) per page for all
929 pages thereafter. Ten percent (10%) of the total charge may be
930 added for postage and handling. Fifteen Dollars (\$15.00) may be
931 recovered by the medical provider or hospital or nursing home or
932 other medical facility for retrieving medical records in archives
933 at a location off the premises where the facility/office is
934 located.

935 **SECTION 22.** **Short title.**

936 Sections 22 through 31 of this act shall be known and may be
937 cited as the Medical Practice Disclosure Act.

938 **SECTION 23.** **Legislative intent.**

939 The State of Mississippi hereby recognizes the necessity of
940 allowing individuals to make informed and educated choices
941 regarding health care services and the essential need to provide
942 information to facilitate these important decisions. It further
943 recognizes that public disclosure of certain health care
944 information would lower the cost of health care through the use of
945 the most appropriate provider and improve the quality of health
946 care services by mandating the reporting of information regarding
947 health care providers.

948 It is the intention of the Legislature to establish a
949 procedure by which the general public may obtain essential and
950 basic information concerning potential health care providers,
951 while ensuring the accuracy and disclosure of all relevant
952 information that would enable individuals to informatively select
953 their health care provider.

954 **SECTION 24. Collection of information.**

955 (1) The State Board of Medical Licensure (board) and the
956 State Department of Health (department) shall collect for each
957 physician licensed or otherwise practicing medicine in the State
958 of Mississippi the following information, in a format developed by
959 the department that shall be available for dissemination to the
960 public:

961 (a) A description of any criminal convictions for
962 felonies and violent misdemeanors as determined by the department.
963 For the purposes of this paragraph, a person shall be deemed to be
964 convicted of a crime if that person pleaded guilty or if that
965 person was found or adjudged guilty by a court of competent
966 jurisdiction.

967 (b) A description of any charges to which a physician
968 pleads nolo contendere or where sufficient facts of guilt were
969 found and the matter was continued without a finding by a court of
970 competent jurisdiction.

971 (c) A description of any final disciplinary actions
972 taken by the State Board of Medical Licensure.

973 (d) A description of any final disciplinary actions by
974 licensing boards in other states or reported in the National
975 Practitioner Data Bank.

976 (e) A description of revocation or involuntary
977 restriction of hospital privileges that have been taken by a
978 hospital's governing body and any other official of a hospital
979 after procedural due process has been afforded, or the resignation
980 from or nonrenewal of medical staff membership or the restriction
981 of privileges at a hospital taken in lieu of or in settlement of a
982 pending disciplinary case.

983 (f) Notwithstanding any law to the contrary, all
984 medical malpractice court judgments and all medical malpractice
985 arbitration awards in which a payment is awarded to a complaining
986 party and all settlements of medical malpractice claims in which a
987 payment is made to a complaining party. Settlement of a claim may
988 occur for a variety of reasons which do not necessarily reflect
989 negatively on the professional competence or conduct of the
990 physician. A payment in settlement of a medical malpractice
991 action or claim should not be construed as creating a presumption
992 that medical malpractice has occurred.

993 (g) All civil court awards or settlements arising from
994 allegations of sexual misconduct filed by patients, employees or
995 hospital staff.

996 (h) A paragraph describing the malpractice experience
997 of each medical specialty and an explanation that some high risk
998 specialties experience more malpractice claims than less risky
999 specialties. This information shall be updated on an annual basis
1000 to reflect the most recent malpractice claims experience of each
1001 specialty.

1002 (i) Names of medical schools and dates of graduation.

1003 (j) Graduate medical education.

1004 (k) Specialty board certification(s).
1005 (l) Number of years in practice.
1006 (m) Name of hospitals where the physician has
1007 privileges.
1008 (n) Appointments to medical school faculties and
1009 indication as to whether the physician has a responsibility for
1010 graduate medical education.
1011 (o) Information regarding publications in peer-reviewed
1012 medical literature.
1013 (p) Information regarding professional or community
1014 service activities and awards.
1015 (q) The location of the physician's primary practice
1016 location.
1017 (r) The indication of any translating services that may
1018 be available at the physician's primary practice location.
1019 (s) An indication of whether the physician participates
1020 in the Medicaid program.
1021 (2) The department shall provide each physician with a copy
1022 of that physician's profile prior to the release to the public.
1023 (3) A physician shall be provided a reasonable time, not to
1024 exceed sixty (60) days, to correct factual inaccuracies or
1025 omissions that may appear in the profile.
1026 (4) (a) A physician may petition the board for permission
1027 to temporarily omit certain information for a period not to exceed
1028 one (1) year.
1029 (b) If the physician demonstrates to the board that
1030 disclosure of the information would represent an undue risk of
1031 injury to the physician or the property of the physician, the
1032 board may grant the request and the information shall be withheld
1033 until such time as the situation is resolved, based on the
1034 presentation of evidence to the board, for a period not to exceed
1035 one (1) year.

1036 (5) The board or the department shall not disclose any
1037 pending malpractice claims to the public, and nothing in this
1038 section shall be construed to prohibit the board or the department
1039 from investigating and disciplining a physician on the basis of
1040 pending medical malpractice claim information obtained under this
1041 act.

1042 **SECTION 25. Report of criminal convictions and pleas of nolo**
1043 **contendere.**

1044 (1) The clerk of any court in which a physician is convicted
1045 of any crime or in which any unregistered practitioner is
1046 convicted of holding himself out as a practitioner of medicine or
1047 of practicing medicine shall, within one (1) week thereafter,
1048 report the same to the State Medical Licensure Board, together
1049 with a copy of the court proceedings in the case.

1050 (2) For the purposes of this section, a person shall be
1051 deemed to be convicted of a crime if he pleaded guilty or was
1052 found or adjudged guilty by a court of competent jurisdiction.

1053 (3) Upon review, the State Board of Medical Licensure shall
1054 provide the information to the department for purposes consistent
1055 with this act.

1056 (4) If a physician pleads nolo contendere to charges or
1057 where sufficient facts of guilt were found and the matter was
1058 continued without a finding by a court of competent jurisdiction,
1059 the clerk shall, within one (1) week thereafter, report the same
1060 to the Medical Licensure Board, together with a copy of the court
1061 proceedings in the case. Upon review, the Medical Licensure Board
1062 shall provide the information to the department for purposes
1063 consistent with this act.

1064 **SECTION 26. Reports to hospitals and health care facilities.**

1065 (1) Each licensed hospital or health care facility shall
1066 report to the board and the department if the hospital or facility
1067 denies, restricts, revokes or fails to renew staff privileges or
1068 accepts the resignation of a physician for any reason related to

1069 the physician's competence to practice medicine or for any other
1070 reason related to a complaint or allegation regarding any
1071 violation of law, regulation, rule or bylaw of the hospital or
1072 facility regardless of whether the complaint or allegation
1073 specifically states a violation of a specific law, regulation,
1074 rule or bylaw. The report shall be filed within thirty (30) days
1075 of the occurrence of the reportable action and include details
1076 regarding the nature and circumstances of the action, its date and
1077 the reasons for it.

1078 (2) Each licensed hospital or health care facility shall
1079 file an annual disciplinary report with the board no later than
1080 January 31 and shall send the report by certified or registered
1081 mail. The report shall summarize the action reports submitted for
1082 the previous calendar year and shall be signed under oath. If the
1083 hospital or facility submitted no action reports for the previous
1084 calendar year, then the report required by this subsection shall
1085 state that no action reports were required.

1086 (3) No hospital, health care facility or person reporting
1087 information to the board or the department under this section
1088 shall be liable to the physician referenced in the report for
1089 making the report, provided that the report is made in good faith
1090 and without malice.

1091 **SECTION 27. Reports of disciplinary action by professional**
1092 **medical organizations.**

1093 (1) A professional medical association, society, body,
1094 professional standards review organization or similarly
1095 constituted professional organization, whether or not such
1096 association, society, body or organization is local, regional,
1097 state, national or international in scope, shall report to the
1098 Medical Licensure Board the disciplinary action taken against any
1099 physician. Such report of disciplinary action shall be filed with
1100 the board within thirty (30) days of such disciplinary action,

1101 shall be in writing and shall be mailed to the board by certified
1102 or registered mail.

1103 (2) As used in this section, the term "disciplinary action"
1104 includes, but is not limited to, revocation, suspension, censure,
1105 reprimand, restriction, nonrenewal, denial or restriction of
1106 privileges or a resignation shall be reported only when the
1107 resignation or the denial or restriction of privileges is related
1108 in any way to:

1109 (a) The physician's competence to practice medicine; or

1110 (b) A complaint or allegation regarding any violation
1111 of law or regulation, including, but not limited to, the
1112 regulations of the department or the Medical Licensure Board or
1113 hospital, health care facility or professional medical association
1114 bylaws, whether or not the complaint or allegation specifically
1115 cites violation of a specified law, regulation or by law.

1116 **SECTION 28. Reports by insurers of malpractice claims or**
1117 **actions.**

1118 (1) Every insurer or risk management organization which
1119 provides professional liability insurance to a physician shall
1120 report to the department any claim or action for damages for
1121 personal injuries alleged to have been caused by error, omission
1122 or negligence in the performance of the physician's professional
1123 services where the claim resulted in:

1124 (a) Final judgment in any amount;

1125 (b) Settlement in any amount; or

1126 (c) Final disposition not resulting in payment on
1127 behalf of the insured.

1128 (2) Reports shall be filed with the board no later than
1129 thirty (30) days following the occurrence of any event listed
1130 under this section.

1131 (3) The reports shall be in writing on a form prescribed by
1132 the department and shall contain the following information.

1133 (a) The name, address, specialty coverage and policy
1134 number of the physician against whom the claim is made.

1135 (b) The name, address and age of the claimant or
1136 plaintiff.

1137 (c) The nature and substance of the claim.

1138 (d) The date when and place where the claim arose.

1139 (e) The amounts paid, if any, and the date, manner of
1140 disposition, judgment and settlement.

1141 (f) The date and reason for final disposition, if no
1142 judgment or settlement.

1143 (g) Such additional information as the department shall
1144 require. No insurer or its agents or employees shall be liable in
1145 any cause of action arising from reporting to the department as
1146 required in this section.

1147 **SECTION 29. Reports by physicians of settlements or**
1148 **arbitration awards.**

1149 (1) A physician who does not possess professional liability
1150 insurance shall report to the department every settlement or
1151 arbitration award of a claim or action for damages for death or
1152 personal injury caused by negligence, error or omission in
1153 practice, or the unauthorized rendering of professional services
1154 by the physician. The report shall be made within thirty (30)
1155 days after the settlement agreement has been reduced to writing or
1156 thirty (30) days after service of the arbitration award on the
1157 parties as long as it is signed by all the parties.

1158 (2) (a) Except as otherwise provided in this section, a
1159 physician who fails to comply with the provisions of this section
1160 shall be subject to a civil penalty of not more than Five Hundred
1161 Dollars (\$500.00).

1162 (b) A physician who makes a knowing or intentional
1163 failure to comply with the provisions of this section, or
1164 conspires or colludes not to comply with the provisions of this
1165 section, or hinders or impedes any other person in such

1166 compliance, shall be subject to a civil penalty of not less than
1167 Five Thousand Dollars (\$5,000.00) nor more than Fifty Thousand
1168 Dollars (\$50,000.00).

1169 **SECTION 30. Public access to information.**

1170 (1) Effective July 1, 2004, a fee of not more than Twenty
1171 Dollars (\$20.00) shall be assessed to all physicians, and the fee
1172 shall be collected by the department every two (2) years to offset
1173 the costs associated with this act.

1174 (2) The department shall make available to the public, upon
1175 request by any person or entity and upon payment of a reasonable
1176 copy charge not to exceed One Dollar (\$1.00) per page, the
1177 information compiled by the board in Section 24 of this act.

1178 (3) Each physician shall make available to the public, free
1179 of charge, information compiled by the board in Section 24 of this
1180 act. All physicians shall conspicuously post at their primary
1181 place of practice a notice stating, "free background information
1182 available upon request."

1183 (4) The department shall disseminate information of Section
1184 24 of this act by posting the information on the state's website
1185 on the Internet. The fees collected under subsection (1) may be
1186 used to pay for the expenses of complying with this subsection.

1187 **SECTION 31. Rules and regulations.**

1188 The board and the department shall in the manner provided by
1189 law promulgate the rules and regulations necessary to carry out
1190 the provisions of this act, including, but not limited to, the
1191 exchange of information between the board and the department and
1192 other relevant state agencies, insurance carriers, hospitals and
1193 judicial administrative offices.

1194 **SECTION 32.** Section 73-43-11, Mississippi Code of 1972, is
1195 amended as follows:

1196 73-43-11. The State Board of Medical Licensure shall have
1197 the following powers and responsibilities:

1198 (a) Setting policies and professional standards
1199 regarding the medical practice of physicians, osteopaths,
1200 podiatrists and physician assistants practicing with physician
1201 supervision;
1202 (b) Considering applications for licensure;
1203 (c) Conducting examinations for licensure;
1204 (d) Investigating alleged violations of the medical
1205 practice act;
1206 (e) Conducting hearings on disciplinary matters
1207 involving violations of state and federal law, probation,
1208 suspension and revocation of licenses;
1209 (f) Considering petitions for termination of
1210 probationary and suspension periods, and restoration of revoked
1211 licenses;
1212 (g) To promulgate and publish reasonable rules and
1213 regulations necessary to enable it to discharge its functions and
1214 to enforce the provisions of law regulating the practice of
1215 medicine;
1216 (h) To enter into contracts with any other state or
1217 federal agency, or with any private person, organization or group
1218 capable of contracting, if it finds such action to be in the
1219 public interest and in the furtherance of its
1220 responsibilities; * * *
1221 (i) Perform the duties prescribed by Sections 73-26-1
1222 through 73-26-5; and
1223 (j) Perform the duties prescribed by the Medical
1224 Practice Disclosure Act.

1225 **SECTION 33.** Section 41-3-15, Mississippi Code of 1972, is
1226 amended as follows:

1227 41-3-15. (1) There shall be a State Department of Health
1228 which shall be organized into such bureaus and divisions as are
1229 considered necessary by the executive officer, and shall be

1230 assigned appropriate functions as are required of the State Board
1231 of Health by law, subject to the approval of the board.

1232 (2) The State Board of Health shall have the authority to
1233 establish an Office of Rural Health within the department. The
1234 duties and responsibilities of this office shall include the
1235 following:

1236 (a) To collect and evaluate data on rural health
1237 conditions and needs;

1238 (b) To engage in policy analysis, policy development
1239 and economic impact studies with regard to rural health issues;

1240 (c) To develop and implement plans and provide
1241 technical assistance to enable community health systems to respond
1242 to various changes in their circumstances;

1243 (d) To plan and assist in professional recruitment and
1244 retention of medical professionals and assistants; and

1245 (e) To establish information clearinghouses to improve
1246 access to and sharing of rural health care information.

1247 (3) The State Board of Health shall have general supervision
1248 of the health interests of the people of the state and to exercise
1249 the rights, powers and duties of those acts which it is authorized
1250 by law to enforce.

1251 (4) The State Board of Health shall have authority:

1252 (a) To make investigations and inquiries with respect
1253 to the causes of disease and death, and to investigate the effect
1254 of environment, including conditions of employment and other
1255 conditions which may affect health, and to make such other
1256 investigations as it may deem necessary for the preservation and
1257 improvement of health.

1258 (b) To make such sanitary investigations as it may,
1259 from time to time, deem necessary for the protection and
1260 improvement of health and to investigate nuisance questions which
1261 affect the security of life and health within the state.

1262 (c) To direct and control sanitary and quarantine
1263 measures for dealing with all diseases within the state possible
1264 to suppress same and prevent their spread.

1265 (d) To obtain, collect and preserve such information
1266 relative to mortality, morbidity, disease and health as may be
1267 useful in the discharge of its duties or may contribute to the
1268 prevention of disease or the promotion of health in this state.

1269 (e) To enter into contracts or agreements with any
1270 other state or federal agency, or with any private person,
1271 organization or group capable of contracting, if it finds such
1272 action to be in the public interest.

1273 (f) To charge and collect reasonable fees for health
1274 services, including immunizations, inspections and related
1275 activities, and the board shall charge fees for such services;
1276 provided, however, if it is determined that a person receiving
1277 services is unable to pay the total fee, the board shall collect
1278 any amount such person is able to pay.

1279 (g) To accept gifts, trusts, bequests, grants,
1280 endowments or transfers of property of any kind.

1281 (h) To receive monies coming to it by way of fees for
1282 services or by appropriations.

1283 (i) (i) To establish standards for, issue permits and
1284 exercise control over, any cafes, restaurants, food or drink
1285 stands, sandwich manufacturing establishments, and all other
1286 establishments, other than churches, church-related and private
1287 schools, and other nonprofit or charitable organizations, where
1288 food or drink is regularly prepared, handled and served for pay;
1289 and

1290 (ii) To require that a permit be obtained from the
1291 Department of Health before such persons begin operation.

1292 (j) To promulgate rules and regulations and exercise
1293 control over the production and sale of milk pursuant to the
1294 provisions of Sections 75-31-41 through 75-31-49.

1295 (k) On presentation of proper authority, to enter into
1296 and inspect any public place or building where the State Health
1297 Officer or his representative deems it necessary and proper to
1298 enter for the discovery and suppression of disease and for the
1299 enforcement of any health or sanitary laws and regulations in the
1300 state.

1301 (l) To conduct investigations, inquiries and hearings,
1302 and to issue subpoenas for the attendance of witnesses and the
1303 production of books and records at any hearing when authorized and
1304 required by statute to be conducted by the State Health Officer or
1305 the State Board of Health.

1306 (m) To employ, subject to the regulations of the State
1307 Personnel Board, qualified professional personnel in the subject
1308 matter or fields of each bureau, and such other technical and
1309 clerical staff as may be required for the operation of the
1310 department. The executive officer shall be the appointing
1311 authority for the department, and shall have the power to delegate
1312 the authority to appoint or dismiss employees to appropriate
1313 subordinates, subject to the rules and regulations of the State
1314 Personnel Board.

1315 (n) To promulgate rules and regulations, and to collect
1316 data and information, on (i) the delivery of services through the
1317 practice of telemedicine; and (ii) the use of electronic records
1318 for the delivery of telemedicine services.

1319 (o) To enforce and regulate domestic and imported fish
1320 as authorized under Section 69-7-601 et seq.

1321 (5) (a) The State Board of Health shall have the authority,
1322 in its discretion, to establish programs to promote the public
1323 health, to be administered by the State Department of Health.
1324 Specifically, such programs may include, but shall not be limited
1325 to, programs in the following areas:

1326 (i) Maternal and child health;

1327 (ii) Family planning;

1328 (iii) Pediatric services;
1329 (iv) Services to crippled and disabled children;
1330 (v) Control of communicable and noncommunicable
1331 disease;
1332 (vi) Child care licensure;
1333 (vii) Radiological health;
1334 (viii) Dental health;
1335 (ix) Milk sanitation;
1336 (x) Occupational safety and health;
1337 (xi) Food, vector control and general sanitation;
1338 (xii) Protection of drinking water;
1339 (xiii) Sanitation in food handling establishments
1340 open to the public;
1341 (xiv) Registration of births and deaths and other
1342 vital events;
1343 (xv) Such public health programs and services as
1344 may be assigned to the State Board of Health by the Legislature or
1345 by executive order; and
1346 (xvi) Regulation of domestic and imported fish for
1347 human consumption.

1348 (b) The State Board of Health and State Department of
1349 Health shall not be authorized to sell, transfer, alienate or
1350 otherwise dispose of any of the home health agencies owned and
1351 operated by the department on January 1, 1995, and shall not be
1352 authorized to sell, transfer, assign, alienate or otherwise
1353 dispose of the license of any of those home health agencies,
1354 except upon the specific authorization of the Legislature by an
1355 amendment to this section. However, this paragraph (b) shall not
1356 prevent the board or the department from closing or terminating
1357 the operation of any home health agency owned and operated by the
1358 department, or closing or terminating any office, branch office or
1359 clinic of any such home health agency, or otherwise discontinuing
1360 the providing of home health services through any such home health

1361 agency, office, branch office or clinic, if the board first
1362 demonstrates that there are other providers of home health
1363 services in the area being served by the department's home health
1364 agency, office, branch office or clinic that will be able to
1365 provide adequate home health services to the residents of the area
1366 if the department's home health agency, office, branch office or
1367 clinic is closed or otherwise discontinues the providing of home
1368 health services. This demonstration by the board that there are
1369 other providers of adequate home health services in the area shall
1370 be spread at length upon the minutes of the board at a regular or
1371 special meeting of the board at least thirty (30) days before a
1372 home health agency, office, branch office or clinic is proposed to
1373 be closed or otherwise discontinue the providing of home health
1374 services.

1375 (c) The State Department of Health may undertake such
1376 technical programs and activities as may be required for the
1377 support and operation of such programs, including maintaining
1378 physical, chemical, bacteriological and radiological laboratories,
1379 and may make such diagnostic tests for diseases and tests for the
1380 evaluation of health hazards as may be deemed necessary for the
1381 protection of the people of the state.

1382 (6) (a) The State Board of Health shall administer the
1383 local governments and rural water systems improvements loan
1384 program in accordance with the provisions of Section 41-3-16.

1385 (b) The State Board of Health shall have authority:

1386 (i) To enter into capitalization grant agreements
1387 with the United States Environmental Protection Agency, or any
1388 successor agency thereto;

1389 (ii) To accept capitalization grant awards made
1390 under the federal Safe Drinking Water Act, as amended;

1391 (iii) To provide annual reports and audits to the
1392 United States Environmental Protection Agency, as may be required
1393 by federal capitalization grant agreements; and

1394 (iv) To establish and collect fees to defray the
1395 reasonable costs of administering the revolving fund or emergency
1396 fund if the State Board of Health determines that such costs will
1397 exceed the limitations established in the federal Safe Drinking
1398 Water Act, as amended. The administration fees may be included in
1399 loan amounts to loan recipients for the purpose of facilitating
1400 payment to the board; however, such fees may not exceed five
1401 percent (5%) of the loan amount.

1402 (7) The State Board of Health and the State Department of
1403 Health shall perform those duties prescribed in the Medical
1404 Practice Disclosure Act.

1405 **SECTION 34.** Section 73-25-27, Mississippi Code of 1972, is
1406 amended as follows:

1407 73-25-27. The Mississippi State Board of Medical Licensure
1408 after notice and opportunity for a hearing to the licentiate, is
1409 authorized to suspend or revoke for any cause named herein any
1410 license it has issued, or the renewal thereof, that authorizes any
1411 person to practice medicine, osteopathy, or any other method of
1412 preventing, diagnosing, relieving, caring for, or treating, or
1413 curing disease, injury or other bodily condition. The procedure
1414 for suspension of a license for being out of compliance with an
1415 order for support, and the procedure for the reissuance or
1416 reinstatement of a license suspended for that purpose, and the
1417 payment of any fees for the reissuance or reinstatement of a
1418 license suspended for that purpose, shall be governed by Section
1419 93-11-157 or 93-11-163, as the case may be. If there is any
1420 conflict between any provision of Section 93-11-157 or 93-11-163
1421 and any provision of this chapter, the provisions of Section
1422 93-11-157 or 93-11-163, as the case may be, shall control.

1423 Such notice shall be effected by registered mail or personal
1424 service setting forth the particular reasons for the proposed
1425 action and fixing a date not less than thirty (30) days or more
1426 than sixty (60) days from the date of such mailing or such

1427 service, at which time the licentiate shall be given an
1428 opportunity for a prompt and fair hearing. For the purpose of
1429 such hearing the board, acting by and through its executive
1430 office, may subpoena persons and papers on its own behalf and on
1431 behalf of licentiate, including records obtained pursuant to
1432 Section 73-25-28, may administer oaths and such testimony when
1433 properly transcribed, together with such papers and exhibits,
1434 shall be admissible in evidence for or against the licentiate. At
1435 such hearing licentiate may appear by counsel and personally in
1436 his own behalf. Any person sworn and examined as a witness in
1437 such hearing shall not be held to answer criminally, nor shall any
1438 papers or documents produced by such witness be competent evidence
1439 in any criminal proceedings against such witness other than for
1440 perjury in delivering his evidence. Any patient or a
1441 representative of the patient who has suffered harm by a physician
1442 subject to a hearing under this section shall have the right to
1443 attend all proceedings regarding such physician. Notice shall be
1444 provided to the patient or his representative at the same time and
1445 in the same manner as the notice is made to the physician. On the
1446 basis of any such hearing, or upon default of the licentiate, the
1447 Board of Medical Licensure shall make a determination specifying
1448 its findings of fact and conclusions of law.

1449 A copy of such determination shall be sent by registered mail
1450 or served personally upon the licentiate. The decision of the
1451 Board of Medical Licensure revoking or suspending the license
1452 shall become final thirty (30) days after so mailed or served
1453 unless within said period the licentiate appeals the decision to
1454 the chancery court, pursuant to the provisions hereof, and the
1455 proceedings in chancery shall be conducted as other matters coming
1456 before the court. All proceedings and evidence, together with
1457 exhibits, presented at such hearing before the Board of Medical
1458 Licensure in the event of appeal shall be admissible in evidence
1459 in said court.

1460 The Board of Medical Licensure may subpoena persons and
1461 papers on its own behalf and on behalf of the respondent,
1462 including records obtained pursuant to Section 73-25-28, may
1463 administer oaths, and may compel the testimony of witnesses. It
1464 may issue commissions to take testimony, and testimony so taken
1465 and sworn to shall be admissible in evidence for and against the
1466 respondent. The Board of Medical Licensure shall be entitled to
1467 the assistance of the chancery court or the chancellor in
1468 vacation, which, on petition by the board, shall issue ancillary
1469 subpoenas and petitions and may punish as for contempt of court in
1470 the event of noncompliance therewith.

1471 Unless the court otherwise decrees, a license that has been
1472 suspended by the Board of Medical Licensure for a stated period of
1473 time shall automatically become valid on the expiration of that
1474 period and a license that has been suspended for an indefinite
1475 period shall become again valid if and when the Board of Medical
1476 Licensure so orders, which it may do on its own motion or on the
1477 petition of the respondent. A license that has been revoked shall
1478 not be restored to validity except: (1) after a rehearing by the
1479 Board of Medical Licensure, on petition of the respondent, for
1480 good cause shown, filed within ten (10) days, immediately
1481 following the service on him of the order or judgment of the Board
1482 of Medical Licensure revoking his license or (2) by order of the
1483 court, on petition as aforesaid. Any licentiate whose license
1484 becomes again valid after a period of suspension or after it has
1485 been restored to validity after a rehearing or by an order of the
1486 court, shall record it again in the office of the clerk of the
1487 circuit court of the county in which he resides in conformity with
1488 the requirements of Section 73-25-13. Nothing in this chapter
1489 shall be construed as limiting or revoking the authority of any
1490 court or of any licensing or registering officer or board, other
1491 than the State Board of Medical Licensure, to suspend, revoke and

1492 reinstate licenses and to cancel registrations under the
1493 provisions of Section 41-29-311.

1494 **SECTION 35.** All insurance companies writing medical
1495 malpractice insurance in the State of Mississippi shall roll back
1496 premium rates to the amount charged on July 1, 2001, unless such
1497 roll back shall result in an increase in premium rates. The
1498 Commissioner of Insurance shall enforce compliance with the
1499 provisions of this section. Any insurance company who violates
1500 the provisions of this section shall, upon conviction, be fined
1501 Fifty Thousand Dollars (\$50,000.00) for each violation.

1502 **SECTION 36.** Any product sold or distributed in Mississippi
1503 by any manufacturer or distributor licensed to do business or
1504 doing business in Mississippi shall publish statewide notice of
1505 any recall of any product or its component parts within thirty
1506 (30) days of the recall. Any manufacturer or distributor who
1507 fails to provide notice of a recall as required by this section
1508 shall, upon conviction, be fined Fifty Thousand Dollars
1509 (\$50,000.00) for each violation. The Attorney General shall
1510 enforce compliance with the provisions of this section.

1511 **SECTION 37.** (1) No policy or contract of liability
1512 insurance shall be issued or delivered in this state unless it
1513 contains provisions to the effect that the insolvency or
1514 bankruptcy of the insured shall not release the insurer from the
1515 payment of damages for injuries sustained or loss occasioned
1516 during the existence of the policy. Any judgment which may be
1517 rendered against the insured for which the insurer is liable which
1518 shall have become executory shall be deemed prima facie evidence
1519 of the insolvency of the insured, and an action may thereafter be
1520 maintained within the terms and limits of the policy by the
1521 injured person or his or her survivors or heirs against the
1522 insurer.

1523 (2) (a) The injured person or his or her survivors or heirs
1524 mentioned in subsection (1) of this section, at their option,

1525 shall have a right of direct action against the insurer within the
1526 terms and limits of the policy; and such action may be brought
1527 against the insurer alone, or against both the insured and insurer
1528 jointly and in solido, in the county in which the accident or
1529 injury occurred or in the county in which an action could be
1530 brought against either the insured or the insurer under the
1531 general rules of venue prescribed by the Rules of Civil Procedure
1532 only. However, such action may be brought against the insurer
1533 alone only when:

1534 (i) The insured has been adjudged a bankrupt by a
1535 court of competent jurisdiction or when proceedings to adjudge an
1536 insured a bankrupt have been commenced before a court of competent
1537 jurisdiction;

1538 (ii) The insured is insolvent;

1539 (iii) Service of citation or other process cannot
1540 be made on the insured;

1541 (iv) When the cause of action is for damages as a
1542 result of an offense or quasi-offense between children and their
1543 parents or between married persons; or

1544 (v) When the insurer is an uninsured motorist
1545 carrier.

1546 (b) This right of direct action shall exist whether or
1547 not the policy of insurance sued upon was written or delivered in
1548 the State of Mississippi and whether or not such policy contains a
1549 provision forbidding such direct action, provided the accident or
1550 injury occurred within the State of Mississippi. Nothing
1551 contained in this section shall be construed to affect the
1552 provisions of the policy or contract if such provisions are not in
1553 violation of the laws of this state.

1554 (3) The policy or contract of liability insurance shall be
1555 admissible into evidence in any proceeding regarding such policy
1556 or contract of liability insurance.

1557 (4) It is the intent of this section that any action brought
1558 under the provisions of this section shall be subject to all of
1559 the lawful conditions of the policy or contract and the defenses
1560 which could be urged by the insurer to a direct action brought by
1561 the insured, provided the terms and conditions of such policy or
1562 contract are not in violation of the laws of this state.

1563 (5) It is also the intent of this section that all liability
1564 policies within their terms and limits are executed for the
1565 benefit of all injured persons and their survivors or heirs to
1566 whom the insured is liable and that it is the purpose of all
1567 liability policies to give protection and coverage to all
1568 insureds, whether they are named insureds or additional insureds
1569 under the omnibus clause, for any legal liability such insured may
1570 have as or for a tort-feasor within the terms and limits of such
1571 policy.

1572 **SECTION 38.** If any provision of this act is held by a court
1573 to be invalid, such invalidity shall not affect the remaining
1574 provisions of this act, and to this end the provisions of this act
1575 are declared severable.

1576 **SECTION 39.** This act shall take effect and be in force from
1577 and after July 1, 2004, and Sections 1 through 4 of this act shall
1578 apply to all causes of action filed on or after that date.