

By: Representative Blackmon

To: Judiciary A

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 AMEND SECTION
3 11-1-65, MISSISSIPPI CODE OF 1972, TO REVISE PUNITIVE DAMAGE
4 AWARDS; TO AMEND SECTION 11-1-66, MISSISSIPPI CODE OF 1972, TO
5 REVISE PREMISES LIABILITY; TO AMEND SECTION 85-5-7, MISSISSIPPI
6 CODE OF 1972, TO REVISE JOINT AND SEVERAL LIABILITY; TO AMEND
7 SECTION 13-5-1, MISSISSIPPI CODE OF 1972, TO ELIMINATE CERTAIN
8 JUROR DISQUALIFICATIONS; TO AMEND SECTION 13-5-23, MISSISSIPPI
9 CODE OF 1972, TO PROVIDE THAT JURORS CAN ONLY BE EXCUSED FROM
10 SERVICE FOR ILLNESS OR UNDUE HARDSHIP; TO CODIFY SECTION 13-5-24,
11 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT JURORS CAN POSTPONE JURY
12 SERVICE ONE TIME ONLY; TO AMEND SECTION 13-5-25, MISSISSIPPI CODE
13 OF 1972, TO LIMIT THE FREQUENCY OF JURY SERVICE; TO AMEND SECTION
14 13-5-28, MISSISSIPPI CODE OF 1972, TO REQUIRE NOTICE OF JURY
15 SERVICE EXEMPTION ENTITLEMENT TO BE INCLUDED IN JUROR SUMMONSES;
16 TO AMEND SECTION 13-5-34, MISSISSIPPI CODE OF 1972, TO REVISE THE
17 PUNISHMENT FOR FAILURE TO APPEAR FOR JURY SERVICE; TO CODIFY
18 SECTION 13-5-99, MISSISSIPPI CODE OF 1972, TO PROVIDE EMPLOYMENT
19 PROTECTIONS FOR JURORS; TO AMEND SECTION 25-7-61, MISSISSIPPI CODE
20 OF 1972, TO CREATE A LENGTHY TRIAL FUND; TO AMEND SECTION 33-1-5,
21 MISSISSIPPI CODE OF 1972, TO ELIMINATE CERTAIN JUROR EXEMPTIONS;
22 TO REPEAL SECTIONS 41-17-7 AND 47-5-55, MISSISSIPPI CODE OF 1972,
23 WHICH PROVIDE CERTAIN EXEMPTIONS FROM JURY SERVICE; TO AMEND
24 SECTION 83-48-5, MISSISSIPPI CODE OF 1972, TO EXPAND THE MEDICAL
25 MALPRACTICE INSURANCE AVAILABILITY PLAN THAT IS ADMINISTERED BY
26 THE MISSISSIPPI TORT CLAIMS BOARD TO MAKE AVAILABLE PRIOR ACTS
27 EXTENDED REPORTING PERIOD COVERAGE TO ALL PARTICIPANTS OF THE PLAN
28 AT ADDITIONAL PREMIUM ASSESSMENTS FOR SUCH COVERAGE AND TO PAY ALL
29 MEDICAL MALPRACTICE INSURANCE PREMIUMS FOR CERTAIN RETIRED
30 PHYSICIANS WHO PROVIDE VOLUNTEER UNPAID HEALTH CARE SERVICES; TO
31 AMEND SECTION 11-46-1, MISSISSIPPI CODE OF 1972, TO REVISE THE
32 DEFINITION OF "EMPLOYEE" FOR PURPOSES OF LIMITED LIABILITY UNDER
33 THE TORT CLAIMS BOARD TO INCLUDE THOSE PHYSICIANS WHO PROVIDE
34 HEALTH CARE SERVICES TO MEDICAID RECIPIENTS, STATE AND SCHOOL
35 EMPLOYEES HEALTH INSURANCE PLAN PARTICIPANTS AND CHILDREN'S HEALTH
36 INSURANCE PROGRAM PARTICIPANTS IF AT LEAST THIRTY-FIVE PERCENT OF
37 THE PHYSICIAN'S PATIENTS ARE MEDICAID RECIPIENTS, OR NOT TO EXCEED
38 ONE HUNDRED TWENTY-FIVE PHYSICIANS; TO INCLUDE CERTAIN RETIRED
39 PHYSICIANS WHO PROVIDE VOLUNTEER UNPAID HEALTH CARE SERVICES TO
40 ANY PUBLIC ENTITY OR PRIVATE ENTITY; TO CREATE IN THE STATE
41 TREASURY A SPECIAL FUND TO THE CREDIT OF THE MISSISSIPPI TORT
42 CLAIMS BOARD WHICH SHALL BE COMPRISED OF ANY FUNDS MADE AVAILABLE
43 FOR THE FUND BY THE LEGISLATURE; TO PROVIDE THAT MONIES IN THE
44 SPECIAL FUND SHALL BE EXPENDED BY THE MISSISSIPPI TORT CLAIMS
45 BOARD TO PROVIDE ADDITIONAL FUNDS FOR PRIOR ACT COVERAGE FOR PLAN
46 PARTICIPANTS AND TO PAY THE MEDICAL MALPRACTICE PREMIUMS FOR THOSE
47 RETIRED PHYSICIANS DESCRIBED HEREIN; TO CREATE AN ADVISORY COUNCIL
48 TO ASSIST THE MISSISSIPPI TORT CLAIMS BOARD IN DETERMINING WHETHER
49 A PHYSICIAN MEETS THE PERCENTAGE REQUIREMENT NECESSARY TO QUALIFY
50 AS AN EMPLOYEE FOR LIMITED LIABILITY PURPOSES; TO PROVIDE RATES
51 FOR COPIES OF MEDICAL RECORDS THAT MAY BE CHARGED BY MEDICAL
52 PROVIDERS AND FACILITIES; TO PROVIDE FOR MEDICAL PRACTICE OF

53 DISCLOSURE; TO IMPOSE POWERS AND DUTIES ON THE STATE BOARD OF
54 MEDICAL LICENSURE AND THE STATE DEPARTMENT OF HEALTH; TO PROVIDE
55 FOR PENALTIES; TO AMEND SECTIONS 73-43-11 AND 41-3-15, MISSISSIPPI
56 CODE OF 1972, IN CONFORMITY; TO AMEND SECTION 73-25-27,
57 MISSISSIPPI CODE OF 1972, TO PROVIDE THE RIGHT FOR HARMED PATIENTS
58 TO ATTEND DISCIPLINARY PROCEEDINGS INVOLVING THE PHYSICIAN
59 RESPONSIBLE FOR THE HARM; TO REQUIRE INSURANCE COMPANIES TO ROLL
60 BACK PREMIUM RATES TO THE AMOUNT CHARGED ON JULY 1, 2001; TO
61 REQUIRE STATEWIDE PUBLICATION OF RECALL NOTICES; AND FOR RELATED
62 PURPOSES.

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

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

66 11-11-3. (1) (a) (i) Civil actions of which the circuit
67 court has original jurisdiction shall be commenced in the county
68 where the defendant resides, or, if a corporation, in the county
69 of its principal place of business, or in the county where a
70 substantial alleged act or omission occurred or where a a
71 substantial event that caused the injury occurred.

72 (ii) Civil actions alleging a defective product
73 may also be commenced in the county where the plaintiff obtained
74 the product.

75 (b) If venue in a civil action against a nonresident
76 defendant cannot be asserted under paragraph (a) of this
77 subsection (1), a civil action against a nonresident may be
78 commenced in the county where the plaintiff resides or is
79 domiciled.

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

84 **SECTION 2.** Section 11-1-65, Mississippi Code of 1972, is
85 amended as follows:

86 11-1-65. (1) In any action in which punitive damages are
87 sought:

88 (a) Punitive damages may not be awarded if the claimant
89 does not prove by clear and convincing evidence that the defendant
90 against whom punitive damages are sought acted with actual malice,

91 gross negligence which evidences a willful, wanton or reckless
92 disregard for the safety of others, or committed actual fraud.

93 (b) In any action in which the claimant seeks an award
94 of punitive damages, the trier of fact shall first determine
95 whether compensatory damages are to be awarded and in what amount,
96 before addressing any issues related to punitive damages.

97 (c) If, but only if, an award of compensatory damages
98 has been made against a party, the court shall promptly commence
99 an evidentiary hearing before the same trier of fact to determine
100 whether punitive damages may be considered.

101 (d) The court shall determine whether the issue of
102 punitive damages may be submitted to the trier of fact; and, if
103 so, the trier of fact shall determine whether to award punitive
104 damages and in what amount.

105 (e) In all cases involving an award of punitive
106 damages, the fact finder, in determining the amount of punitive
107 damages, shall consider, to the extent relevant, the following:
108 the defendant's financial condition and net worth; the nature and
109 reprehensibility of the defendant's wrongdoing, for example, the
110 impact of the defendant's conduct on the plaintiff, or the
111 relationship of the defendant to the plaintiff; the defendant's
112 awareness of the amount of harm being caused and the defendant's
113 motivation in causing such harm; the duration of the defendant's
114 misconduct and whether the defendant attempted to conceal such
115 misconduct; and any other circumstances shown by the evidence that
116 bear on determining a proper amount of punitive damages. The
117 trier of fact shall be instructed that the primary purpose of
118 punitive damages is to punish the wrongdoer and deter similar
119 misconduct in the future by the defendant and others while the
120 purpose of compensatory damages is to make the plaintiff whole.

121 (f) (i) Before entering judgment for an award of
122 punitive damages the trial court shall ascertain that the award is
123 reasonable in its amount and rationally related to the purpose to

124 punish what occurred giving rise to the award and to deter its
125 repetition by the defendant and others.

126 (ii) In determining whether the award is
127 excessive, the court shall take into consideration the following
128 factors:

129 1. Whether there is a reasonable relationship
130 between the punitive damage award and the harm likely to result
131 from the defendant's conduct as well as the harm that actually
132 occurred;

133 2. The degree of reprehensibility of the
134 defendant's conduct, the duration of that conduct, the defendant's
135 awareness, any concealment, and the existence and frequency of
136 similar past conduct;

137 3. The financial condition and net worth of
138 the defendant; and

139 4. In mitigation, the imposition of criminal
140 sanctions on the defendant for its conduct and the existence of
141 other civil awards against the defendant for the same conduct.

142 (2) The seller of a product other than the manufacturer
143 shall not be liable for punitive damages unless the seller
144 exercised substantial control over that aspect of the design,
145 testing, manufacture, packaging or labeling of the product that
146 caused the harm for which recovery of damages is sought; the
147 seller altered or modified the product, and the alteration or
148 modification was a substantial factor in causing the harm for
149 which recovery of damages is sought; the seller had actual
150 knowledge of the defective condition of the product at the time he
151 supplied same * * *.

152 (3) (a) In any civil action where an entitlement to
153 punitive damages shall have been established under applicable
154 laws, no award of punitive damages shall exceed the following:

155 (i) Twenty Million Dollars (\$20,000,000.00) for a
156 defendant with a net worth of more than One Billion Dollars
157 (\$1,000,000,000.00);

158 (ii) Fifteen Million Dollars (\$15,000,000.00) for
159 a defendant with a net worth of more than Seven Hundred Fifty
160 Million Dollars (\$750,000,000.00) but not more than One Billion
161 Dollars (\$1,000,000,000.00);

162 (iii) Five Million Dollars (\$5,000,000.00) for a
163 defendant with a net worth of more than Five Hundred Million
164 Dollars (\$500,000,000.00) but not more than Seven Hundred Fifty
165 Million Dollars (\$750,000,000.00);

166 (iv) Three Million Seven Hundred Fifty Thousand
167 Dollars (\$3,750,000.00) for a defendant with a net worth of more
168 than One Hundred Million Dollars (\$100,000,000.00) but not more
169 than Five Hundred Million Dollars (\$500,000,000.00);

170 (v) Two Million Five Hundred Thousand Dollars
171 (\$2,500,000.00) for a defendant with a net worth of more than
172 Fifty Million Dollars (\$50,000,000.00) but not more than One
173 Hundred Million Dollars (\$100,000,000.00); or

174 (vi) Two percent (2%) of the defendant's net worth
175 for a defendant with a net worth of Fifty Million Dollars
176 (\$50,000,000.00) or less.

177 (b) For the purposes of determining the defendant's net
178 worth in paragraph (a), the amount of the net worth shall be
179 determined in accordance with Generally Accepted Accounting
180 Principles.

181 (c) The limitation on the amount of punitive damages
182 imposed by this subsection (3) shall not be disclosed to the trier
183 of fact, but shall be applied by the court to any punitive damages
184 verdict.

185 (d) The limitation on the amount of punitive damages
186 imposed by this subsection (3) shall not apply to actions brought

187 for damages or an injury resulting from an act or failure to act
188 by the defendant:

189 (i) If the defendant was convicted of a felony
190 under the laws of this state or under federal law which caused the
191 damages or injury; or

192 (ii) While the defendant was under the influence
193 of alcohol or under the influence of drugs other than lawfully
194 prescribed drugs administered in accordance with a prescription.

195 (e) The exceptions provided in paragraph (d) shall not
196 apply to an employer of a person acting outside the scope of such
197 person's employment or responsibility as an agent or employee.

198 (4) Nothing in this section shall be construed as creating a
199 right to an award of punitive damages or to limit the duty of the
200 court, or the appellate courts, to scrutinize all punitive damage
201 awards, ensure that all punitive damage awards comply with
202 applicable procedural, evidentiary and constitutional
203 requirements, and to order remittitur where appropriate.

204 * * *

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

207 11-1-66. (1) No owner, occupant, lessee or managing agent
208 of property shall be civilly liable for the criminal acts of a
209 third party, unless such owner, occupant, lessee or managing agent
210 knew or, with the exercise of reasonable care, should have known
211 of the risk of criminal conduct on such property and the failure
212 to exercise reasonable care to deter such foreseeable conduct is a
213 proximate cause of damages to an individual or entity.

214 (2) No owner, occupant, lessee or managing agent of property
215 shall be liable for the death or injury of an independent
216 contractor or the independent contractor's employees resulting
217 from dangers of which the contractor knew or reasonably should
218 have known.

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

221 85-5-7. (1) As used in this section "fault" means an act or
222 omission of a person which is a proximate cause of injury or death
223 to another person or persons, damages to property, tangible or
224 intangible, or economic injury, including, but not limited to,
225 negligence, malpractice, strict liability, absolute liability or
226 failure to warn. "Fault" shall not include any tort which results
227 from an act or omission committed with a specific wrongful intent.

228 * * *

229 (2) Except as otherwise provided in subsection (4) of this
230 section, in any civil action based on fault, the liability for
231 damages caused by two (2) or more persons shall be several only,
232 and not joint and several and a joint tort-feasor shall be liable
233 only for the amount of damages allocated to him in direct
234 proportion to his percentage of fault. In assessing percentages
235 of fault an employer and the employer's employee or a principal
236 and the principal's agent shall be considered as one (1) defendant
237 when the liability of such employer or principal has been caused
238 by the wrongful or negligent act or omission of the employee or
239 agent.

240 * * *

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

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

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

253 * * *

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

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

259 13-5-1. Every citizen not under the age of twenty-one (21)
260 years, who is either a qualified elector, or a resident freeholder
261 of the county for more than one (1) year, is able to read and
262 write, and has not been convicted of a felony within the past ten
263 (10) years is a competent juror. * * * The lack of any such
264 qualifications on the part of one or more jurors shall not,
265 however, vitiate an indictment or verdict. Moreover, * * * no
266 juror shall serve on any jury who has served as such for the last
267 preceding two (2) years. No juror * * * who has a case of his own
268 pending in that court shall serve in his own case.

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

273 "1. Your name _____ Last _____ First _____ Middle
274 initial

275 2. Your home address _____

276 3. Your occupation _____

277 4. Your age _____

278 5. Your telephone number _____ If none, write 'None'

279 6. If you live outside the county seat, the number of miles
280 you live from the courthouse _____ miles

281 _____

282 Sign your name"

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

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

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

292 13-5-23. (1) All qualified persons shall be liable to serve
293 as jurors, unless excused by the court for one (1) of the
294 following causes:

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

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

300 * * *

301 (2) An excuse of illness under subsection (1)(a) of this
302 section may be made to the clerk of court outside of open court by
303 providing the clerk with * * * a certificate of a licensed
304 physician * * *, stating that the juror is ill and is unfit for
305 jury service, in which case the clerk may excuse the juror. If
306 the excuse of illness is not supported by a physician's
307 certificate, a judge of the court for which the individual was
308 called to jury service shall decide whether to excuse an
309 individual under subsection (1)(a) of this section.

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

313 (i) Be required to abandon a person under his or
314 her personal care or supervision due to the impossibility of

315 obtaining an appropriate substitute caregiver during the period of
316 participation in the jury pool or on the jury; or

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

321 (iii) Suffer physical hardship that would result
322 in illness or disease.

323 (b) "Undue or extreme physical or financial hardship"
324 does not exist solely based on the fact that a prospective juror
325 will be required to be absent from his or her place of employment
326 or business.

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

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

335 (e) A person asking a judge to grant an excuse under
336 subsection (1)(b) of this section shall be required to provide the
337 judge with documentation such as, but not limited to, federal and
338 state income tax returns or other information which verifies
339 income, medical statements from licensed physicians, proof of
340 dependency or guardianship and similar documents, which the judge
341 finds to clearly support the request to be excused. Failure to
342 provide satisfactory documentation shall result in a denial of the
343 request to be excused. Any documentation produced under this
344 paragraph shall not be a public record.

345 (4) After two (2) years, a person excused from jury service
346 shall become eligible once again for qualification as a juror
347 unless the person was excused from service permanently. A person

348 is excused from jury service permanently only when the deciding
349 judge determines that the underlying grounds for being excused are
350 of a permanent nature.

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

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

357 13-5-24. (1) Notwithstanding any other provisions of this
358 chapter, individuals scheduled to appear for jury service have the
359 right to postpone the date of their initial appearance for jury
360 service one (1) time only. Postponements shall be granted upon
361 request, provided that:

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

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

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

373 (2) A subsequent request to postpone jury service may be
374 approved by a judicial officer only in the event of an extreme
375 emergency, such as a death in the family, sudden illness, or a
376 natural disaster or a national emergency in which the prospective
377 juror is personally involved, that could not have been anticipated
378 at the time the initial postponement was granted. Prior to the
379 grant of a second postponement, the prospective juror must fix a
380 date certain on which the individual will appear for jury service

381 within twelve (12) months of the postponement on a date when the
382 court will be in session.

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

385 13-5-25. Every citizen over sixty-five (65) years of age,
386 and everyone who has served on the regular panel as a juror in the
387 actual trial of one or more litigated cases within two (2) years,
388 shall be exempt from service if he claims the privilege * * *. No
389 qualified juror shall be excluded because of any such reasons, but
390 the same shall be a personal privilege to be claimed by any person
391 selected for jury duty. Any citizen over sixty-five (65) years of
392 age may claim this personal privilege outside of open court by
393 providing the clerk of court with information that allows the
394 clerk to determine the validity of the claim.

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

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

401 13-5-28. If a grand, petit or other jury is ordered to be
402 drawn, the clerk thereafter shall cause each person drawn for jury
403 service to be served with a summons, either personally or by mail,
404 addressed to him at his usual residence, business or post office
405 address, requiring him to report for jury service at a specified
406 time and place. The summons shall include instructions to the
407 potential jurors that explain, in layman's terms, the provisions
408 of Sections 13-5-23 and 13-5-99.

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

411 13-5-34. (1) A person summoned for jury service who fails
412 to appear or to complete jury service as directed, and who has
413 failed to obtain a postponement in compliance with the provisions

414 for requesting a postponement, or who fails to appear on the date
415 set pursuant to Section 13-5-24 shall be ordered by the court to
416 appear forthwith and show cause for his failure to comply with the
417 summons. If he fails to show good cause for noncompliance with
418 the summons he is in civil contempt of court and * * * may be
419 fined not more than Five Hundred Dollars (\$500.00) or imprisoned
420 not more than three (3) days, or both. The prospective juror may
421 be excused from paying sanctions for good cause shown or in the
422 interest of justice.

423 (2) In addition to, or in lieu of, the fine or imprisonment
424 provided in subsection (1) of this section, the court may order
425 that the prospective juror complete a period of community service
426 for a period no less than if the prospective juror would have
427 completed jury service, and provide proof of completion of this
428 community service to the court.

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

431 13-5-99. (1) It shall be unlawful for any employer or any
432 other person to persuade or attempt to persuade any juror to avoid
433 jury service; to intimidate or to threaten any juror in that
434 respect; or to remove or otherwise subject an employee to adverse
435 employment action as a result of jury service if the employee
436 notifies his or her employer that he or she has been summoned to
437 serve as a juror within a reasonable period of time after receipt
438 of a summons.

439 (2) It shall be unlawful for an employer to require or
440 request an employee to use annual, vacation or sick leave for time
441 spent responding to a summons for jury duty, time spent
442 participating in the jury selection process, or time spent
443 actually serving on a jury. Nothing in this provision shall be
444 construed to require an employer to provide annual, vacation or
445 sick leave to employees under the provisions of this statute who

446 otherwise are not entitled to such benefits under company
447 policies.

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

451 (4) A court shall automatically postpone and reschedule the
452 service of a summoned juror employed by an employer with five (5)
453 or fewer full-time employees, or their equivalent, if another
454 employee of that employer has previously been summoned to appear
455 during the same period. Such postponement will not constitute the
456 excused individual's right to one (1) automatic postponement under
457 Section 13-5-24.

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

460 25-7-61. (1) Fees of jurors shall be payable as follows:

461 (a) Grand jurors and petit jurors in the chancery,
462 county, circuit and special eminent domain courts shall be paid an
463 amount to be set by the board of supervisors, not to be less than
464 Twenty-five Dollars (\$25.00) per day and not to be greater than
465 Forty Dollars (\$40.00) per day, plus mileage authorized in Section
466 25-3-41. In the trial of all cases where jurors are in charge of
467 bailiffs and are not permitted to separate, the sheriff with the
468 approval of the trial judge may pay for room and board of jurors
469 on panel for actual time of trial.

470 No grand juror shall receive any compensation except mileage
471 unless he shall have been sworn as provided by Section 13-5-45;
472 and no petit juror except those jurors called on special venires
473 shall receive any compensation authorized under this subsection
474 except mileage unless he shall have been sworn as provided by
475 Section 13-5-71.

476 (b) Jurors making inquisitions of idiocy, lunacy or of
477 unsound mind and jurors on coroner's inquest shall be paid Five
478 Dollars (\$5.00) per day plus mileage authorized in Section 25-3-41

479 by the county treasurer on order of the board of supervisors on
480 certificate of the clerk of the chancery court in which such
481 inquisition is held.

482 (c) Jurors in the justice courts shall be paid an
483 amount of not less than Ten Dollars (\$10.00) per day and not more
484 than Fifteen Dollars (\$15.00) per day, to be established by the
485 board of supervisors. In all criminal cases in the justice court
486 wherein the prosecution fails, the fees of jurors shall be paid by
487 the county treasurer on order of the board of supervisors on
488 certificate of the county attorney in all counties that have
489 county attorneys, otherwise by the justice court judge.

490 (2) Any juror may return the fees provided as compensation
491 for service as a juror to the county which paid for such person's
492 service as a juror. The fees returned to the county may be
493 earmarked for a particular purpose to be selected by the juror,
494 including:

495 (a) The local public library;

496 (b) Local law enforcement;

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

499 (d) Any other governmental agency.

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

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

505 (i) The selection and appointment of an
506 administrator for the fund.

507 (ii) Procedures for the administration of the
508 fund, including payments of salaries of the administrator and
509 other necessary personnel.

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

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

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

521 (c) The court may pay replacement or supplemental wages
522 of up to Three Hundred Dollars (\$300.00) per day per juror
523 beginning on the eleventh day of jury service. In addition, for
524 any jurors who qualify for payment by virtue of having served on a
525 jury for more than ten (10) days, the court, upon finding that
526 such service posed a significant financial hardship to a juror,
527 even in light of payments made with respect to jury service after
528 the tenth day, may award replacement or supplemental wages of up
529 to One Hundred Dollars (\$100.00) per day from the fourth to the
530 tenth day of jury service.

531 (d) Any juror who is serving or has served on a jury
532 that qualifies for payment from the Lengthy Trial Fund, provided
533 the service commenced on or after the July 1, 2004, may submit a
534 request for payment from the Lengthy Trial Fund on a form that the
535 administrator provides. Payment shall be limited to the
536 difference between the state-paid jury fee and the actual amount
537 of wages a juror earns, up to the maximum level payable, minus any
538 amount the juror actually receives from the employer during the
539 same time period.

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

545 (ii) The juror also shall be required to submit
546 verification from the employer as to the wage information provided
547 to the administrator, for example, the employee's most recent
548 earnings statement or similar document, prior to initiation of
549 payment from the fund.

550 (iii) If an individual is self-employed or
551 receives compensation other than wages, the individual may provide
552 a sworn affidavit attesting to his or her approximate gross weekly
553 income, together with such other information as the administrator
554 may require, in order to verify weekly income.

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

557 33-1-5. Any member of the Mississippi National Guard on
558 active duty shall be exempt from jury duty upon presenting a
559 current written statement from his superior officer that such jury
560 service will be likely to interfere with his military duties.

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

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

567 **SECTION 16.** The Legislature recognizes the importance of
568 assuring adequate health care services for all Mississippians, and
569 it acknowledges that physicians are a vital component of providing
570 such services. The Legislature finds that because of the makeup
571 of the citizenry of the state and the percentage of citizens who
572 are (a) Medicaid recipients, (b) State and School Employees Health
573 Insurance Plan participants and (c) Children's Health Insurance
574 Program participants, physicians who provide health care services
575 to such individuals are providing an essential public service and
576 that it is in the public interest to provide funding to further
577 address medical malpractice insurance needs of these physicians.

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

580 83-48-5. (1) There is created the Medical Malpractice
581 Insurance Availability Plan that shall be funded by the
582 participants in the plan. The plan shall be administered by the
583 Tort Claims Board created under Section 11-46-18.

584 (2) (a) The plan shall provide coverage for medical
585 malpractice to hospitals, institutions for the aged or infirm, or
586 other health care facilities licensed by the State of Mississippi,
587 physicians, nurses or other personnel who are duly licensed to
588 practice in a hospital or other health care facility licensed by
589 the State of Mississippi. Participation in the plan shall be
590 voluntary for any hospital, institution for the aged or infirm, or
591 other health care facilities licensed by the State of Mississippi,
592 physicians, nurses and any other personnel who are duly licensed
593 to practice in a hospital or other health care facility licensed
594 by the State of Mississippi. However, no state entity may
595 participate in the plan. The term "state" as used in this
596 subsection has the meaning ascribed to that term under Section
597 11-46-1. The plan shall make available tail (extended reporting
598 period) coverage for participants of the plan at an additional
599 premium assessment for such coverage. The plan shall make
600 available prior acts extended reporting period coverage
601 (retroactive to the inception date of the physician's last medical
602 malpractice policy) for participants of the plan at an additional
603 premium assessment for such coverage. The board shall encourage
604 participation in the insurance industry market. Any duly licensed
605 qualified Mississippi agent who writes a policy under the plan may
606 receive a commission not to exceed five percent (5%) of the
607 premium assessment as full compensation.

608 (b) The limits of coverage under the plan shall be as
609 follows:

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

616 (ii) For all other participants, a maximum of One
617 Million Dollars (\$1,000,000.00), per single occurrence, and Three
618 Million Dollars (\$3,000,000.00), in the aggregate, per year, for
619 all occurrences; and

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

623 (iv) For prior acts extended reporting period
624 coverage, the plan shall provide the same limits of coverage as
625 designated in subparagraphs (i) and (ii) of this paragraph (b).
626 For the purpose of providing funds, in addition to assessments,
627 for prior acts extending reporting period coverage, the
628 Mississippi Tort Claims Board shall use monies in the special fund
629 created under Section 19 of House Bill No. _____, First
630 Extraordinary Session of 2004.

631 (3) Policies may be underwritten based on participant
632 history. All rates applicable to the coverage provided herein
633 shall be on an actuarially sound basis and calculated to be
634 self-supporting. Policies for prior acts extended reporting
635 period coverage shall be underwritten at the lowest premium rates
636 possible on an actuarially sound basis.

637 (4) Every participant in the plan shall:

638 (a) File with the board a written agreement, the form
639 and substance of which shall be determined by the board, signed by
640 a duly authorized representative of the participant, that the
641 participant will provide services to (i) Medicaid recipients, (ii)
642 State and School Employees Health Insurance Plan participants, and

643 (iii) Children's Health Insurance Program participants. The
644 agreement must provide, among other things, that the participant
645 will provide services to Medicaid recipients, State and School
646 Employees Health Insurance Plan participants, and Children's
647 Health Insurance Program participants in a manner that is
648 comparable to the services provided to all other patients and
649 shall be made without balance billing to the patient; and

650 (b) Pay all assessments and premiums established by the
651 board.

652 (5) This chapter shall not preclude any hospital,
653 institution for the aged or infirm, or other health care
654 facilities licensed by the State of Mississippi, physician, nurse
655 or other personnel who are duly licensed to practice in a hospital
656 or other health care facility licensed by the State of Mississippi
657 from procuring medical malpractice insurance from any source other
658 than the plan.

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

666 (7) The Tort Claims Board shall have the following powers
667 and duties:

668 (a) To expend money from a loan from the Tort Claims
669 Fund in an amount not to exceed Five Hundred Thousand Dollars
670 (\$500,000.00) for the start-up costs of administering the Medical
671 Malpractice Insurance Availability Plan;

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

673 (c) To charge and collect assessments and fees from
674 participants in the plan;

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

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

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

687 (g) To use monies in the special fund created under
688 Section 19 of House Bill No. _____, First Extraordinary Session of
689 2004, for the purposes provided in subsections (2)(b)(iv) and (6)
690 of this section.

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

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

699 (i) Certification by a qualified actuary that the
700 plan is solvent;

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

702 (iii) The number of claims filed and paid by the
703 plan; and

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

706 (8) Nothing contained in this section shall be construed as
707 repealing, amending or superseding the provisions of any other law

708 and, if the provisions of this section conflict with any other
709 law, then the provisions of such other law shall govern and
710 control to the extent of the conflict.

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

713 11-46-1. As used in this chapter the following terms shall
714 have the meanings herein ascribed unless the context otherwise
715 requires:

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

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

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

722 (d) "Department" means the Department of Finance and
723 Administration.

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

726 (f) "Employee" means:

727 (i) Any officer, employee or servant of the State
728 of Mississippi or a political subdivision of the state, including
729 elected or appointed officials and persons acting on behalf of the
730 state or a political subdivision in any official capacity,
731 temporarily or permanently, in the service of the state or a
732 political subdivision whether with or without compensation. The
733 term "employee" shall not mean a person or other legal entity
734 while acting in the capacity of an independent contractor under
735 contract to the state or a political subdivision; provided,
736 however, that for purposes of the limits of liability provided for
737 in Section 11-46-15, the term "employee" shall include physicians
738 under contract to provide health services with the State Board of
739 Health, the State Board of Mental Health or any county or
740 municipal jail facility while rendering services under such

741 contract. The term "employee" shall also include any physician,
742 dentist or other health care practitioner employed by the
743 University of Mississippi Medical Center (UMMC) and its
744 departmental practice plans who is a faculty member and provides
745 health care services only for patients at UMMC or its affiliated
746 practice sites. The term "employee" shall also include any
747 physician, dentist or other health care practitioner employed by
748 any university under the control of the Board of Trustees of State
749 Institutions of Higher Learning who practices only on the campus
750 of any university under the control of the Board of Trustees of
751 State Institutions of Higher Learning. The term "employee" shall
752 also include any physician, dentist or other health care
753 practitioner employed by the State Veterans Affairs Board and who
754 provides health care services for patients for the State Veterans
755 Affairs Board. The term "employee" shall also include Mississippi
756 Department of Human Services licensed foster parents for the
757 limited purposes of coverage under the Tort Claims Act as provided
758 in Section 11-46-8. For the purposes of the limits of liability
759 provided for in Section 11-46-15 and for no other purpose under
760 this chapter, the term "employee" also shall include any physician
761 who provides health care services to Medicaid recipients, State
762 and School Employees Health Insurance Plan participants and
763 Children's Health Insurance Program participants, provided that at
764 least thirty-five percent (35%) of the physician's patients, as
765 determined by the board, are Medicaid recipients, however, not to
766 exceed one hundred twenty-five (125) physicians; and
767 (ii) Any retired physician who provides volunteer
768 unpaid health care services to any public entity or private
769 entity. For the purposes of this subparagraph (ii), "public
770 entity" means any agency, department, institution, instrumentality
771 or political subdivision of the state, or any agency, department,
772 institution or instrumentality of any political subdivision of the
773 state; and "private entity" means any business, organization,

774 corporation, association or other legal entity which is not a
775 public entity.

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

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

781 (i) "Political subdivision" means any body politic or
782 body corporate other than the state responsible for governmental
783 activities only in geographic areas smaller than that of the
784 state, including, but not limited to, any county, municipality,
785 school district, community hospital as defined in Section
786 41-13-10, Mississippi Code of 1972, airport authority or other
787 instrumentality thereof, whether or not such body or
788 instrumentality thereof has the authority to levy taxes or to sue
789 or be sued in its own name.

790 (j) "State" means the State of Mississippi and any
791 office, department, agency, division, bureau, commission, board,
792 institution, hospital, college, university, airport authority or
793 other instrumentality thereof, whether or not such body or
794 instrumentality thereof has the authority to levy taxes or to sue
795 or be sued in its own name.

796 (k) "Law" means all species of law including, but not
797 limited to, any and all constitutions, statutes, case law, common
798 law, customary law, court order, court rule, court decision, court
799 opinion, court judgment or mandate, administrative rule or
800 regulation, executive order, or principle or rule of equity.

801 **SECTION 19.** There is created in the State Treasury a special
802 fund to the credit of the Mississippi Tort Claims Board, which
803 shall be comprised of any funds that may be made available for the
804 fund by the Legislature. Monies in the fund shall be expended by
805 the Mississippi Tort Claims Board, upon appropriation by the
806 Legislature, only for the purpose of providing additional funds

807 for prior acts extended reporting period coverage as provided in
808 Section 83-48-5 and for paying the medical malpractice premiums
809 for those physicians described in Section 11-46-1(f)(ii) as
810 provided for in Section 83-48-5. Unexpended amounts remaining in
811 the special fund at the end of a fiscal year shall not lapse into
812 the State General Fund, and any interest earned or investment
813 earnings on amounts in the special fund shall be deposited to the
814 credit of the special fund.

815 **SECTION 20.** The Tort Claims Board shall develop methods and
816 promulgate rules and regulations to verify whether a physician
817 meets the percentage requirement under Section 11-46-1(f) to
818 qualify as an employee. There is created an advisory council to
819 assist the Mississippi Tort Claims Board in determining whether a
820 physician meets the percentage requirement under Section
821 11-46-1(f) to qualify as an employee. The advisory council shall
822 be composed of the Executive Director of the Mississippi Medical
823 Association or his designee; the President of the Mississippi
824 Medical and Surgical Association or his designee; the
825 administrator of the Mississippi Tort Claims Board or his
826 designee; two (2) physicians appointed by the Lieutenant Governor;
827 two (2) physicians appointed by the Speaker of the House of
828 Representatives and three (3) nonphysician members, one (1) from
829 each Supreme Court district, appointed by the Governor.

830 **SECTION 21.** That any medical provider or hospital or nursing
831 home or other medical facility shall charge no more than the
832 following amounts to patients or their representatives for
833 photocopying any patient's records: Twenty Dollars (\$20.00) for
834 pages one (1) through twenty (20); One Dollar (\$1.00) per page for
835 the next eighty (80) pages; Fifty Cents (50¢) per page for all
836 pages thereafter. Ten percent (10%) of the total charge may be
837 added for postage and handling. Fifteen Dollars (\$15.00) may be
838 recovered by the medical provider or hospital or nursing home or
839 other medical facility for retrieving medical records in archives

840 at a location off the premises where the facility/office is
841 located.

842 **SECTION 22. Short title.**

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

845 **SECTION 23. Legislative intent.**

846 The State of Mississippi hereby recognizes the necessity of
847 allowing individuals to make informed and educated choices
848 regarding health care services and the essential need to provide
849 information to facilitate these important decisions. It further
850 recognizes that public disclosure of certain health care
851 information would lower the cost of health care through the use of
852 the most appropriate provider and improve the quality of health
853 care services by mandating the reporting of information regarding
854 health care providers.

855 It is the intention of the Legislature to establish a
856 procedure by which the general public may obtain essential and
857 basic information concerning potential health care providers,
858 while ensuring the accuracy and disclosure of all relevant
859 information that would enable individuals to informatively select
860 their health care provider.

861 **SECTION 24. Collection of information.**

862 (1) The State Board of Medical Licensure (board) and the
863 State Department of Health (department) shall collect for each
864 physician licensed or otherwise practicing medicine in the State
865 of Mississippi the following information, in a format developed by
866 the department that shall be available for dissemination to the
867 public:

868 (a) A description of any criminal convictions for
869 felonies and violent misdemeanors as determined by the department.
870 For the purposes of this paragraph, a person shall be deemed to be
871 convicted of a crime if that person pleaded guilty or if that

872 person was found or adjudged guilty by a court of competent
873 jurisdiction.

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

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

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

883 (e) A description of revocation or involuntary
884 restriction of hospital privileges that have been taken by a
885 hospital's governing body and any other official of a hospital
886 after procedural due process has been afforded, or the resignation
887 from or nonrenewal of medical staff membership or the restriction
888 of privileges at a hospital taken in lieu of or in settlement of a
889 pending disciplinary case.

890 (f) Notwithstanding any law to the contrary, all
891 medical malpractice court judgments and all medical malpractice
892 arbitration awards in which a payment is awarded to a complaining
893 party and all settlements of medical malpractice claims in which a
894 payment is made to a complaining party. Settlement of a claim may
895 occur for a variety of reasons which do not necessarily reflect
896 negatively on the professional competence or conduct of the
897 physician. A payment in settlement of a medical malpractice
898 action or claim should not be construed as creating a presumption
899 that medical malpractice has occurred.

900 (g) All civil court awards or settlements arising from
901 allegations of sexual misconduct filed by patients, employees or
902 hospital staff.

903 (h) A paragraph describing the malpractice experience
904 of each medical specialty and an explanation that some high risk

905 specialties experience more malpractice claims than less risky
906 specialties. This information shall be updated on an annual basis
907 to reflect the most recent malpractice claims experience of each
908 specialty.

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

910 (j) Graduate medical education.

911 (k) Specialty board certification(s).

912 (l) Number of years in practice.

913 (m) Name of hospitals where the physician has
914 privileges.

915 (n) Appointments to medical school faculties and
916 indication as to whether the physician has a responsibility for
917 graduate medical education.

918 (o) Information regarding publications in peer-reviewed
919 medical literature.

920 (p) Information regarding professional or community
921 service activities and awards.

922 (q) The location of the physician's primary practice
923 location.

924 (r) The indication of any translating services that may
925 be available at the physician's primary practice location.

926 (s) An indication of whether the physician participates
927 in the Medicaid program.

928 (2) The department shall provide each physician with a copy
929 of that physician's profile prior to the release to the public.

930 (3) A physician shall be provided a reasonable time, not to
931 exceed sixty (60) days, to correct factual inaccuracies or
932 omissions that may appear in the profile.

933 (4) (a) A physician may petition the board for permission
934 to temporarily omit certain information for a period not to exceed
935 one (1) year.

936 (b) If the physician demonstrates to the board that
937 disclosure of the information would represent an undue risk of

938 injury to the physician or the property of the physician, the
939 board may grant the request and the information shall be withheld
940 until such time as the situation is resolved, based on the
941 presentation of evidence to the board, for a period not to exceed
942 one (1) year.

943 (5) The board or the department shall not disclose any
944 pending malpractice claims to the public, and nothing in this
945 section shall be construed to prohibit the board or the department
946 from investigating and disciplining a physician on the basis of
947 pending medical malpractice claim information obtained under this
948 act.

949 **SECTION 25. Report of criminal convictions and pleas of nolo**
950 **contendere.**

951 (1) The clerk of any court in which a physician is convicted
952 of any crime or in which any unregistered practitioner is
953 convicted of holding himself out as a practitioner of medicine or
954 of practicing medicine shall, within one (1) week thereafter,
955 report the same to the State Medical Licensure Board, together
956 with a copy of the court proceedings in the case.

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

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

963 (4) If a physician pleads nolo contendere to charges or
964 where sufficient facts of guilt were found and the matter was
965 continued without a finding by a court of competent jurisdiction,
966 the clerk shall, within one (1) week thereafter, report the same
967 to the Medical Licensure Board, together with a copy of the court
968 proceedings in the case. Upon review, the Medical Licensure Board
969 shall provide the information to the department for purposes
970 consistent with this act.

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

972 (1) Each licensed hospital or health care facility shall
973 report to the board and the department if the hospital or facility
974 denies, restricts, revokes or fails to renew staff privileges or
975 accepts the resignation of a physician for any reason related to
976 the physician's competence to practice medicine or for any other
977 reason related to a complaint or allegation regarding any
978 violation of law, regulation, rule or bylaw of the hospital or
979 facility regardless of whether the complaint or allegation
980 specifically states a violation of a specific law, regulation,
981 rule or bylaw. The report shall be filed within thirty (30) days
982 of the occurrence of the reportable action and include details
983 regarding the nature and circumstances of the action, its date and
984 the reasons for it.

985 (2) Each licensed hospital or health care facility shall
986 file an annual disciplinary report with the board no later than
987 January 31 and shall send the report by certified or registered
988 mail. The report shall summarize the action reports submitted for
989 the previous calendar year and shall be signed under oath. If the
990 hospital or facility submitted no action reports for the previous
991 calendar year, then the report required by this subsection shall
992 state that no action reports were required.

993 (3) No hospital, health care facility or person reporting
994 information to the board or the department under this section
995 shall be liable to the physician referenced in the report for
996 making the report, provided that the report is made in good faith
997 and without malice.

998 **SECTION 27. Reports of disciplinary action by professional**
999 **medical organizations.**

1000 (1) A professional medical association, society, body,
1001 professional standards review organization or similarly
1002 constituted professional organization, whether or not such
1003 association, society, body or organization is local, regional,

1004 state, national or international in scope, shall report to the
1005 Medical Licensure Board the disciplinary action taken against any
1006 physician. Such report of disciplinary action shall be filed with
1007 the board within thirty (30) days of such disciplinary action,
1008 shall be in writing and shall be mailed to the board by certified
1009 or registered mail.

1010 (2) As used in this section, the term "disciplinary action"
1011 includes, but is not limited to, revocation, suspension, censure,
1012 reprimand, restriction, nonrenewal, denial or restriction of
1013 privileges or a resignation shall be reported only when the
1014 resignation or the denial or restriction of privileges is related
1015 in any way to:

1016 (a) The physician's competence to practice medicine; or
1017 (b) A complaint or allegation regarding any violation
1018 of law or regulation, including, but not limited to, the
1019 regulations of the department or the Medical Licensure Board or
1020 hospital, health care facility or professional medical association
1021 bylaws, whether or not the complaint or allegation specifically
1022 cites violation of a specified law, regulation or by law.

1023 **SECTION 28. Reports by insurers of malpractice claims or**
1024 **actions.**

1025 (1) Every insurer or risk management organization which
1026 provides professional liability insurance to a physician shall
1027 report to the department any claim or action for damages for
1028 personal injuries alleged to have been caused by error, omission
1029 or negligence in the performance of the physician's professional
1030 services where the claim resulted in:

1031 (a) Final judgment in any amount;
1032 (b) Settlement in any amount; or
1033 (c) Final disposition not resulting in payment on
1034 behalf of the insured.

1035 (2) Reports shall be filed with the board no later than
1036 thirty (30) days following the occurrence of any event listed
1037 under this section.

1038 (3) The reports shall be in writing on a form prescribed by
1039 the department and shall contain the following information.

1040 (a) The name, address, specialty coverage and policy
1041 number of the physician against whom the claim is made.

1042 (b) The name, address and age of the claimant or
1043 plaintiff.

1044 (c) The nature and substance of the claim.

1045 (d) The date when and place where the claim arose.

1046 (e) The amounts paid, if any, and the date, manner of
1047 disposition, judgment and settlement.

1048 (f) The date and reason for final disposition, if no
1049 judgment or settlement.

1050 (g) Such additional information as the department shall
1051 require. No insurer or its agents or employees shall be liable in
1052 any cause of action arising from reporting to the department as
1053 required in this section.

1054 **SECTION 29. Reports by physicians of settlements or**
1055 **arbitration awards.**

1056 (1) A physician who does not possess professional liability
1057 insurance shall report to the department every settlement or
1058 arbitration award of a claim or action for damages for death or
1059 personal injury caused by negligence, error or omission in
1060 practice, or the unauthorized rendering of professional services
1061 by the physician. The report shall be made within thirty (30)
1062 days after the settlement agreement has been reduced to writing or
1063 thirty (30) days after service of the arbitration award on the
1064 parties as long as it is signed by all the parties.

1065 (2) (a) Except as otherwise provided in this section, a
1066 physician who fails to comply with the provisions of this section

1067 shall be subject to a civil penalty of not more than Five Hundred
1068 Dollars (\$500.00).

1069 (b) A physician who makes a knowing or intentional
1070 failure to comply with the provisions of this section, or
1071 conspires or colludes not to comply with the provisions of this
1072 section, or hinders or impedes any other person in such
1073 compliance, shall be subject to a civil penalty of not less than
1074 Five Thousand Dollars (\$5,000.00) nor more than Fifty Thousand
1075 Dollars (\$50,000.00).

1076 **SECTION 30. Public access to information.**

1077 (1) Effective July 1, 2004, a fee of not more than Twenty
1078 Dollars (\$20.00) shall be assessed to all physicians, and the fee
1079 shall be collected by the department every two (2) years to offset
1080 the costs associated with this act.

1081 (2) The department shall make available to the public, upon
1082 request by any person or entity and upon payment of a reasonable
1083 copy charge not to exceed One Dollar (\$1.00) per page, the
1084 information compiled by the board in Section 24 of this act.

1085 (3) Each physician shall make available to the public, free
1086 of charge, information compiled by the board in Section 24 of this
1087 act. All physicians shall conspicuously post at their primary
1088 place of practice a notice stating, "free background information
1089 available upon request."

1090 (4) The department shall disseminate information of Section
1091 24 of this act by posting the information on the state's website
1092 on the Internet. The fees collected under subsection (1) may be
1093 used to pay for the expenses of complying with this subsection.

1094 **SECTION 31. Rules and regulations.**

1095 The board and the department shall in the manner provided by
1096 law promulgate the rules and regulations necessary to carry out
1097 the provisions of this act, including, but not limited to, the
1098 exchange of information between the board and the department and

1099 other relevant state agencies, insurance carriers, hospitals and
1100 judicial administrative offices.

1101 **SECTION 32.** Section 73-43-11, Mississippi Code of 1972, is
1102 amended as follows:

1103 73-43-11. The State Board of Medical Licensure shall have
1104 the following powers and responsibilities:

1105 (a) Setting policies and professional standards
1106 regarding the medical practice of physicians, osteopaths,
1107 podiatrists and physician assistants practicing with physician
1108 supervision;

1109 (b) Considering applications for licensure;

1110 (c) Conducting examinations for licensure;

1111 (d) Investigating alleged violations of the medical
1112 practice act;

1113 (e) Conducting hearings on disciplinary matters
1114 involving violations of state and federal law, probation,
1115 suspension and revocation of licenses;

1116 (f) Considering petitions for termination of
1117 probationary and suspension periods, and restoration of revoked
1118 licenses;

1119 (g) To promulgate and publish reasonable rules and
1120 regulations necessary to enable it to discharge its functions and
1121 to enforce the provisions of law regulating the practice of
1122 medicine;

1123 (h) To enter into contracts with any other state or
1124 federal agency, or with any private person, organization or group
1125 capable of contracting, if it finds such action to be in the
1126 public interest and in the furtherance of its
1127 responsibilities; * * *

1128 (i) Perform the duties prescribed by Sections 73-26-1
1129 through 73-26-5; and

1130 (j) Perform the duties prescribed by the Medical
1131 Practice Disclosure Act.

1132 **SECTION 33.** Section 41-3-15, Mississippi Code of 1972, is
1133 amended as follows:

1134 41-3-15. (1) There shall be a State Department of Health
1135 which shall be organized into such bureaus and divisions as are
1136 considered necessary by the executive officer, and shall be
1137 assigned appropriate functions as are required of the State Board
1138 of Health by law, subject to the approval of the board.

1139 (2) The State Board of Health shall have the authority to
1140 establish an Office of Rural Health within the department. The
1141 duties and responsibilities of this office shall include the
1142 following:

1143 (a) To collect and evaluate data on rural health
1144 conditions and needs;

1145 (b) To engage in policy analysis, policy development
1146 and economic impact studies with regard to rural health issues;

1147 (c) To develop and implement plans and provide
1148 technical assistance to enable community health systems to respond
1149 to various changes in their circumstances;

1150 (d) To plan and assist in professional recruitment and
1151 retention of medical professionals and assistants; and

1152 (e) To establish information clearinghouses to improve
1153 access to and sharing of rural health care information.

1154 (3) The State Board of Health shall have general supervision
1155 of the health interests of the people of the state and to exercise
1156 the rights, powers and duties of those acts which it is authorized
1157 by law to enforce.

1158 (4) The State Board of Health shall have authority:

1159 (a) To make investigations and inquiries with respect
1160 to the causes of disease and death, and to investigate the effect
1161 of environment, including conditions of employment and other
1162 conditions which may affect health, and to make such other
1163 investigations as it may deem necessary for the preservation and
1164 improvement of health.

1165 (b) To make such sanitary investigations as it may,
1166 from time to time, deem necessary for the protection and
1167 improvement of health and to investigate nuisance questions which
1168 affect the security of life and health within the state.

1169 (c) To direct and control sanitary and quarantine
1170 measures for dealing with all diseases within the state possible
1171 to suppress same and prevent their spread.

1172 (d) To obtain, collect and preserve such information
1173 relative to mortality, morbidity, disease and health as may be
1174 useful in the discharge of its duties or may contribute to the
1175 prevention of disease or the promotion of health in this state.

1176 (e) To enter into contracts or agreements with any
1177 other state or federal agency, or with any private person,
1178 organization or group capable of contracting, if it finds such
1179 action to be in the public interest.

1180 (f) To charge and collect reasonable fees for health
1181 services, including immunizations, inspections and related
1182 activities, and the board shall charge fees for such services;
1183 provided, however, if it is determined that a person receiving
1184 services is unable to pay the total fee, the board shall collect
1185 any amount such person is able to pay.

1186 (g) To accept gifts, trusts, bequests, grants,
1187 endowments or transfers of property of any kind.

1188 (h) To receive monies coming to it by way of fees for
1189 services or by appropriations.

1190 (i) (i) To establish standards for, issue permits and
1191 exercise control over, any cafes, restaurants, food or drink
1192 stands, sandwich manufacturing establishments, and all other
1193 establishments, other than churches, church-related and private
1194 schools, and other nonprofit or charitable organizations, where
1195 food or drink is regularly prepared, handled and served for pay;
1196 and

1197 (ii) To require that a permit be obtained from the
1198 Department of Health before such persons begin operation.

1199 (j) To promulgate rules and regulations and exercise
1200 control over the production and sale of milk pursuant to the
1201 provisions of Sections 75-31-41 through 75-31-49.

1202 (k) On presentation of proper authority, to enter into
1203 and inspect any public place or building where the State Health
1204 Officer or his representative deems it necessary and proper to
1205 enter for the discovery and suppression of disease and for the
1206 enforcement of any health or sanitary laws and regulations in the
1207 state.

1208 (l) To conduct investigations, inquiries and hearings,
1209 and to issue subpoenas for the attendance of witnesses and the
1210 production of books and records at any hearing when authorized and
1211 required by statute to be conducted by the State Health Officer or
1212 the State Board of Health.

1213 (m) To employ, subject to the regulations of the State
1214 Personnel Board, qualified professional personnel in the subject
1215 matter or fields of each bureau, and such other technical and
1216 clerical staff as may be required for the operation of the
1217 department. The executive officer shall be the appointing
1218 authority for the department, and shall have the power to delegate
1219 the authority to appoint or dismiss employees to appropriate
1220 subordinates, subject to the rules and regulations of the State
1221 Personnel Board.

1222 (n) To promulgate rules and regulations, and to collect
1223 data and information, on (i) the delivery of services through the
1224 practice of telemedicine; and (ii) the use of electronic records
1225 for the delivery of telemedicine services.

1226 (o) To enforce and regulate domestic and imported fish
1227 as authorized under Section 69-7-601 et seq.

1228 (5) (a) The State Board of Health shall have the authority,
1229 in its discretion, to establish programs to promote the public

1230 health, to be administered by the State Department of Health.

1231 Specifically, such programs may include, but shall not be limited
1232 to, programs in the following areas:

1233 (i) Maternal and child health;

1234 (ii) Family planning;

1235 (iii) Pediatric services;

1236 (iv) Services to crippled and disabled children;

1237 (v) Control of communicable and noncommunicable
1238 disease;

1239 (vi) Child care licensure;

1240 (vii) Radiological health;

1241 (viii) Dental health;

1242 (ix) Milk sanitation;

1243 (x) Occupational safety and health;

1244 (xi) Food, vector control and general sanitation;

1245 (xii) Protection of drinking water;

1246 (xiii) Sanitation in food handling establishments
1247 open to the public;

1248 (xiv) Registration of births and deaths and other
1249 vital events;

1250 (xv) Such public health programs and services as
1251 may be assigned to the State Board of Health by the Legislature or
1252 by executive order; and

1253 (xvi) Regulation of domestic and imported fish for
1254 human consumption.

1255 (b) The State Board of Health and State Department of
1256 Health shall not be authorized to sell, transfer, alienate or
1257 otherwise dispose of any of the home health agencies owned and
1258 operated by the department on January 1, 1995, and shall not be
1259 authorized to sell, transfer, assign, alienate or otherwise
1260 dispose of the license of any of those home health agencies,
1261 except upon the specific authorization of the Legislature by an
1262 amendment to this section. However, this paragraph (b) shall not

1263 prevent the board or the department from closing or terminating
1264 the operation of any home health agency owned and operated by the
1265 department, or closing or terminating any office, branch office or
1266 clinic of any such home health agency, or otherwise discontinuing
1267 the providing of home health services through any such home health
1268 agency, office, branch office or clinic, if the board first
1269 demonstrates that there are other providers of home health
1270 services in the area being served by the department's home health
1271 agency, office, branch office or clinic that will be able to
1272 provide adequate home health services to the residents of the area
1273 if the department's home health agency, office, branch office or
1274 clinic is closed or otherwise discontinues the providing of home
1275 health services. This demonstration by the board that there are
1276 other providers of adequate home health services in the area shall
1277 be spread at length upon the minutes of the board at a regular or
1278 special meeting of the board at least thirty (30) days before a
1279 home health agency, office, branch office or clinic is proposed to
1280 be closed or otherwise discontinue the providing of home health
1281 services.

1282 (c) The State Department of Health may undertake such
1283 technical programs and activities as may be required for the
1284 support and operation of such programs, including maintaining
1285 physical, chemical, bacteriological and radiological laboratories,
1286 and may make such diagnostic tests for diseases and tests for the
1287 evaluation of health hazards as may be deemed necessary for the
1288 protection of the people of the state.

1289 (6) (a) The State Board of Health shall administer the
1290 local governments and rural water systems improvements loan
1291 program in accordance with the provisions of Section 41-3-16.

1292 (b) The State Board of Health shall have authority:

1293 (i) To enter into capitalization grant agreements
1294 with the United States Environmental Protection Agency, or any
1295 successor agency thereto;

1296 (ii) To accept capitalization grant awards made
1297 under the federal Safe Drinking Water Act, as amended;

1298 (iii) To provide annual reports and audits to the
1299 United States Environmental Protection Agency, as may be required
1300 by federal capitalization grant agreements; and

1301 (iv) To establish and collect fees to defray the
1302 reasonable costs of administering the revolving fund or emergency
1303 fund if the State Board of Health determines that such costs will
1304 exceed the limitations established in the federal Safe Drinking
1305 Water Act, as amended. The administration fees may be included in
1306 loan amounts to loan recipients for the purpose of facilitating
1307 payment to the board; however, such fees may not exceed five
1308 percent (5%) of the loan amount.

1309 (7) The State Board of Health and the State Department of
1310 Health shall perform those duties prescribed in the Medical
1311 Practice Disclosure Act.

1312 **SECTION 34.** Section 73-25-27, Mississippi Code of 1972, is
1313 amended as follows:

1314 73-25-27. The Mississippi State Board of Medical Licensure
1315 after notice and opportunity for a hearing to the licentiate, is
1316 authorized to suspend or revoke for any cause named herein any
1317 license it has issued, or the renewal thereof, that authorizes any
1318 person to practice medicine, osteopathy, or any other method of
1319 preventing, diagnosing, relieving, caring for, or treating, or
1320 curing disease, injury or other bodily condition. The procedure
1321 for suspension of a license for being out of compliance with an
1322 order for support, and the procedure for the reissuance or
1323 reinstatement of a license suspended for that purpose, and the
1324 payment of any fees for the reissuance or reinstatement of a
1325 license suspended for that purpose, shall be governed by Section 4
1326 or 7 of this act, as the case may be. If there is any conflict
1327 between any provision of Section 4 or 7 of this act and any

1328 provision of this chapter, the provisions of Section 4 or 7 of
1329 this act, as the case may be, shall control.

1330 Such notice shall be effected by registered mail or personal
1331 service setting forth the particular reasons for the proposed
1332 action and fixing a date not less than thirty (30) days or more
1333 than sixty (60) days from the date of such mailing or such
1334 service, at which time the licentiate shall be given an
1335 opportunity for a prompt and fair hearing. For the purpose of
1336 such hearing the board, acting by and through its executive
1337 office, may subpoena persons and papers on its own behalf and on
1338 behalf of licentiate, including records obtained pursuant to
1339 Section 73-25-28, may administer oaths and such testimony when
1340 properly transcribed, together with such papers and exhibits,
1341 shall be admissible in evidence for or against the licentiate. At
1342 such hearing licentiate may appear by counsel and personally in
1343 his own behalf. Any person sworn and examined as a witness in
1344 such hearing shall not be held to answer criminally, nor shall any
1345 papers or documents produced by such witness be competent evidence
1346 in any criminal proceedings against such witness other than for
1347 perjury in delivering his evidence. Any patient or a
1348 representative of the patient who has suffered harm by a physician
1349 subject to a hearing under this section shall have the right to
1350 attend all proceedings regarding such physician. Notice shall be
1351 provided to the patient or his representative at the same time and
1352 in the same manner as the notice is made to the physician. On the
1353 basis of any such hearing, or upon default of the licentiate, the
1354 Board of Medical Licensure shall make a determination specifying
1355 its findings of fact and conclusions of law.

1356 A copy of such determination shall be sent by registered mail
1357 or served personally upon the licentiate. The decision of the
1358 Board of Medical Licensure revoking or suspending the license
1359 shall become final thirty (30) days after so mailed or served
1360 unless within said period the licentiate appeals the decision to

1361 the chancery court, pursuant to the provisions hereof, and the
1362 proceedings in chancery shall be conducted as other matters coming
1363 before the court. All proceedings and evidence, together with
1364 exhibits, presented at such hearing before the Board of Medical
1365 Licensure in the event of appeal shall be admissible in evidence
1366 in said court.

1367 The Board of Medical Licensure may subpoena persons and
1368 papers on its own behalf and on behalf of the respondent,
1369 including records obtained pursuant to Section 73-25-28, may
1370 administer oaths, and may compel the testimony of witnesses. It
1371 may issue commissions to take testimony, and testimony so taken
1372 and sworn to shall be admissible in evidence for and against the
1373 respondent. The Board of Medical Licensure shall be entitled to
1374 the assistance of the chancery court or the chancellor in
1375 vacation, which, on petition by the board, shall issue ancillary
1376 subpoenas and petitions and may punish as for contempt of court in
1377 the event of noncompliance therewith.

1378 Unless the court otherwise decrees, a license that has been
1379 suspended by the Board of Medical Licensure for a stated period of
1380 time shall automatically become valid on the expiration of that
1381 period and a license that has been suspended for an indefinite
1382 period shall become again valid if and when the Board of Medical
1383 Licensure so orders, which it may do on its own motion or on the
1384 petition of the respondent. A license that has been revoked shall
1385 not be restored to validity except: (1) after a rehearing by the
1386 Board of Medical Licensure, on petition of the respondent, for
1387 good cause shown, filed within ten (10) days, immediately
1388 following the service on him of the order or judgment of the Board
1389 of Medical Licensure revoking his license or (2) by order of the
1390 court, on petition as aforesaid. Any licentiate whose license
1391 becomes again valid after a period of suspension or after it has
1392 been restored to validity after a rehearing or by an order of the
1393 court, shall record it again in the office of the clerk of the

1394 circuit court of the county in which he resides in conformity with
1395 the requirements of Section 73-25-13. Nothing in this chapter
1396 shall be construed as limiting or revoking the authority of any
1397 court or of any licensing or registering officer or board, other
1398 than the State Board of Medical Licensure, to suspend, revoke and
1399 reinstate licenses and to cancel registrations under the
1400 provisions of Section 41-29-311.

1401 **SECTION 35.** All insurance companies doing business in the
1402 State of Mississippi shall roll back premium rates to the amount
1403 charged on July 1, 2001, unless such roll back shall result in an
1404 increase in premium rates. The Commissioner of Insurance shall
1405 enforce compliance with the provisions of this section. Any
1406 insurance company who violates the provisions of this section
1407 shall, upon conviction, be fined Fifty Thousand Dollars
1408 (\$50,000.00) for each violation.

1409 **SECTION 36.** Any product sold or distributed in Mississippi
1410 by any manufacturer or distributor licensed to do business or
1411 doing business in Mississippi shall publish statewide notice of
1412 any recall of any product or its component parts within thirty
1413 (30) days of the recall. Any manufacturer or distributor who
1414 fails to provide notice of a recall as required by this section
1415 shall, upon conviction, be fined Fifty Thousand Dollars
1416 (\$50,000.00) for each violation. The Attorney General shall
1417 enforce compliance with the provisions of this section.

1418 **SECTION 37.** If any provision of this act is held by a court
1419 to be invalid, such invalidity shall not affect the remaining
1420 provisions of this act, and to this end the provisions of this act
1421 are declared severable.

1422 **SECTION 38.** This act shall take effect and be in force from
1423 and after July 1, 2004, and Sections 1 through 4 of this act shall
1424 apply to all causes of action filed on or after that date.