

By: Representative Blackmon

To: Judiciary A

HOUSE BILL NO. 4

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 13-5-23, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT JURORS
7 CAN ONLY BE EXCUSED FROM SERVICE FOR ILLNESS OR UNDUE HARDSHIP; TO
8 CODIFY SECTION 13-5-24, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
9 JURORS CAN POSTPONE JURY SERVICE ONE TIME ONLY; TO AMEND SECTION
10 13-5-25, MISSISSIPPI CODE OF 1972, TO LIMIT THE FREQUENCY OF JURY
11 SERVICE; TO AMEND SECTION 13-5-28, MISSISSIPPI CODE OF 1972, TO
12 REQUIRE NOTICE OF JURY SERVICE EXEMPTION ENTITLEMENT TO BE
13 INCLUDED IN JUROR SUMMONSES; TO AMEND SECTION 13-5-34, MISSISSIPPI
14 CODE OF 1972, TO REVISE THE PUNISHMENT FOR FAILURE TO APPEAR FOR
15 JURY SERVICE; TO CODIFY SECTION 13-5-99, MISSISSIPPI CODE OF 1972,
16 TO PROVIDE EMPLOYMENT PROTECTIONS FOR JURORS; TO AMEND SECTION
17 25-7-61, MISSISSIPPI CODE OF 1972, TO CREATE A LENGTHY TRIAL FUND;
18 TO AMEND SECTION 33-1-5, MISSISSIPPI CODE OF 1972, TO ELIMINATE
19 CERTAIN JUROR EXEMPTIONS; TO REPEAL SECTIONS 41-17-7 AND 47-5-55,
20 MISSISSIPPI CODE OF 1972, WHICH PROVIDE CERTAIN EXEMPTIONS FROM
21 JURY SERVICE; TO AMEND SECTION 11-46-1, MISSISSIPPI CODE OF 1972,
22 TO REVISE THE DEFINITION OF "EMPLOYEE" FOR PURPOSES OF LIMITED
23 LIABILITY UNDER THE TORT CLAIMS BOARD TO INCLUDE THOSE PHYSICIANS
24 WHO PROVIDE HEALTH CARE SERVICES TO MEDICAID RECIPIENTS, STATE AND
25 SCHOOL EMPLOYEES HEALTH INSURANCE PLAN PARTICIPANTS AND CHILDREN'S
26 HEALTH INSURANCE PROGRAM PARTICIPANTS IF AT LEAST THIRTY-FIVE
27 PERCENT OF THE PHYSICIAN'S PATIENTS ARE MEDICAID RECIPIENTS, OR
28 NOT TO EXCEED ONE HUNDRED TWENTY-FIVE PHYSICIANS; TO INCLUDE
29 CERTAIN RETIRED PHYSICIANS WHO PROVIDE VOLUNTEER UNPAID HEALTH
30 CARE SERVICES TO ANY PUBLIC ENTITY OR PRIVATE ENTITY; TO CREATE IN
31 THE STATE TREASURY A SPECIAL FUND TO THE CREDIT OF THE MISSISSIPPI
32 TORT CLAIMS BOARD WHICH SHALL BE COMPRISED OF ANY FUNDS MADE
33 AVAILABLE FOR THE FUND BY THE LEGISLATURE; TO PROVIDE THAT MONIES
34 IN THE SPECIAL FUND SHALL BE EXPENDED BY THE MISSISSIPPI TORT
35 CLAIMS BOARD TO PROVIDE ADDITIONAL FUNDS FOR PRIOR ACT COVERAGE
36 FOR PLAN PARTICIPANTS AND TO PAY THE MEDICAL MALPRACTICE PREMIUMS
37 FOR THOSE RETIRED PHYSICIANS DESCRIBED HEREIN; TO CREATE AN
38 ADVISORY COUNCIL TO ASSIST THE MISSISSIPPI TORT CLAIMS BOARD IN
39 DETERMINING WHETHER A PHYSICIAN MEETS THE PERCENTAGE REQUIREMENT
40 NECESSARY TO QUALIFY AS AN EMPLOYEE FOR LIMITED LIABILITY
41 PURPOSES; TO PROVIDE FOR MEDICAL PRACTICE OF DISCLOSURE; TO IMPOSE
42 POWERS AND DUTIES ON THE STATE BOARD OF MEDICAL LICENSURE AND THE
43 STATE DEPARTMENT OF HEALTH; TO PROVIDE FOR PENALTIES; TO AMEND
44 SECTION 73-43-11, MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO
45 AMEND SECTION 73-25-27, MISSISSIPPI CODE OF 1972, TO PROVIDE THE
46 RIGHT FOR HARMED PATIENTS TO ATTEND DISCIPLINARY PROCEEDINGS
47 INVOLVING THE PHYSICIAN RESPONSIBLE FOR THE HARM; TO REQUIRE
48 STATEWIDE PUBLICATION OF RECALL NOTICES; TO PROVIDE FOR A DIRECT
49 ACTION AGAINST AN INSURER; TO PROVIDE THAT POLICY SHALL CONTAIN
50 PROVISIONS THAT INSOLVENCY OR BANKRUPTCY OF THE INSURED SHALL NOT
51 RELEASE THE INSURER FROM LIABILITY; TO PROVIDE THAT ACTIONS MAY BE
52 BROUGHT AGAINST THE INSURER ALONE IN CERTAIN SITUATIONS; TO

53 PROVIDE THAT THE INSURANCE POLICY SHALL BE ADMISSIBLE INTO
54 EVIDENCE; AND FOR RELATED PURPOSES.

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

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

58 11-11-3. (1) (a) (i) Civil actions of which the circuit
59 court has original jurisdiction shall be commenced in the county
60 where the defendant resides, or, if a corporation, in the county
61 of its principal place of business, or in the county where a
62 substantial alleged act or omission occurred or where a
63 substantial event that caused the injury occurred.

64 (ii) Civil actions alleging a defective product
65 may also be commenced in the county where the plaintiff obtained
66 the product.

67 (b) If venue in a civil action against a nonresident
68 defendant cannot be asserted under paragraph (a) of this
69 subsection (1), a civil action against a nonresident may be
70 commenced in the county where the plaintiff resides or is
71 domiciled.

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

76 **SECTION 2.** (1) One or more members of a class may sue or be
77 sued as representative parties on behalf of all only if (a) the
78 class is so numerous that joinder of all members is impracticable,
79 (b) there are questions of law or fact common to the class, (c)
80 the claims or defenses of the representative parties are typical
81 of the claims or defenses of the class, and (d) the representative
82 parties will fairly and adequately protect the interests of the
83 class.

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

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

88 (i) Inconsistent or varying adjudications with
89 respect to individual members of the class which would establish
90 incompatible standards of conduct for the party opposing the
91 class, or

92 (ii) Adjudications with respect to individual
93 members of the class which would as a practical matter be
94 dispositive of the interests of the other members not parties to
95 the adjudications or substantially impair or impede their ability
96 to protect their interests; or

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

101 (c) The court finds that the questions of law or fact
102 common to the members of the class predominate over any questions
103 affecting only individual members, and that a class action is
104 superior to other available methods for the fair and efficient
105 adjudication of the controversy. The matters pertinent to the
106 findings include: (i) the interest of members of the class in
107 individually controlling the prosecution or defense of separate
108 actions; (ii) the extent and nature of any litigation concerning
109 the controversy already commenced by or against members of the
110 class; (iii) the desirability or undesirability of concentrating
111 the litigation of the claims in the particular forum; (iv) the
112 difficulties likely to be encountered in the management of a class
113 action.

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

119 (b) In any class action maintained under subsection
120 (2)(c), the court shall direct to the members of the class the
121 best notice practicable under the circumstances, including
122 individual notice to all members who can be identified through
123 reasonable effort. The notice shall advise each member that (i)
124 the court will exclude the member from the class if the member so
125 requests by a specified date; (ii) the judgment, whether favorable
126 or not, will include all members who do not request exclusion; and
127 (iii) any member who does not request exclusion may, if the member
128 desires, enter an appearance through counsel.

129 (c) The judgment in an action maintained as a class
130 action under subsection (2)(a) or (2)(b), whether or not favorable
131 to the class, shall include and describe those whom the court
132 finds to be members of the class. The judgment in an action
133 maintained as a class action under subsection (2)(c), whether or
134 not favorable to the class, shall include and specify or describe
135 those to whom the notice provided in subsection (3)(b) was
136 directed, and who have not requested exclusion, and whom the court
137 finds to be members of the class.

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

143 (4) (a) When a person sues or is sued as a representative
144 of a class, the court must, at an early practicable time,
145 determine by order whether to certify the action as a class
146 action.

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

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

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

154 (ii) For any class certified under this section,
155 the court must direct to class members the best notice practicable
156 under the circumstances, including individual notice to all
157 members who can be identified through reasonable effort. The
158 notice must concisely and clearly state in plain, easily
159 understood language:

- 160 1. The nature of the action;
- 161 2. The definition of the class certified;
- 162 3. The class claims, issues or defenses;
- 163 4. That a class member may enter an
164 appearance through counsel if the member so desires;
- 165 5. That the court will exclude from the class
166 any member who requests exclusion, stating when and how members
167 may elect to be excluded; and
- 168 6. The binding effect of a class judgment on
169 class members under this section.

170 (e) The judgment in an action maintained as a class
171 action under subsection (3)(a) or (3)(b), whether or not favorable
172 to the class, shall include and describe those whom the court
173 finds to be members of the class. The judgment in an action
174 maintained as a class action under subsection (3)(c), whether or
175 not favorable to the class, shall include and specify or describe
176 those to whom the notice provided in subsection (4)(b) was
177 directed, and who have not requested exclusion, and whom the court
178 finds to be members of the class.

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

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

186 (a) Determining the course of proceedings or
187 prescribing measures to prevent undue repetition or complication
188 in the presentation of evidence or argument;

189 (b) Requiring, for the protection of the members of the
190 class or otherwise for the fair conduct of the action, that notice
191 be given in such manner as the court may direct to some or all of
192 the members of any step in the action, or of the proposed extent
193 of the judgment, or of the opportunity of members to signify
194 whether they consider the representation fair and adequate, to
195 intervene and present claims or defenses, or otherwise to come
196 into the action;

197 (c) Imposing conditions on the representative parties
198 or on intervenors;

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

202 (e) Dealing with similar procedural matters. The
203 orders may be combined and may be altered or amended as may be
204 desirable from time to time.

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

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

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

215 (iii) The court may approve a settlement,
216 voluntary dismissal or compromise that would bind class members

217 only after a hearing and on finding that the settlement, voluntary
218 dismissal or compromise is fair, reasonable and adequate.

219 (b) The parties seeking approval of a settlement,
220 voluntary dismissal or compromise must file a statement
221 identifying any agreement made in connection with the proposed
222 settlement, voluntary dismissal or compromise.

223 (c) In an action previously certified as a class
224 action, the court may refuse to approve a settlement unless it
225 affords a new opportunity to request exclusion to individual class
226 members who had an earlier opportunity to request exclusion but
227 did not do so.

228 (d) (i) Any class member may object to a proposed
229 settlement, voluntary dismissal or compromise that requires court
230 approval.

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

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

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

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

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

244 (i) Must consider:

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

247 2. Counsel's experience in handling class
248 actions, other complex litigation and claims of the type asserted
249 in the action;

250 3. Counsel's knowledge of the applicable law;
251 and

252 4. The resources counsel will commit to
253 representing the class;

254 (ii) May consider any other matter pertinent to
255 counsel's ability to fairly and adequately represent the interests
256 of the class;

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

260 (iv) May make further orders in connection with
261 the appointment.

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

265 (e) The court may appoint one or more individual
266 attorneys or one or more law firms as class counsel which the
267 court determines is best able to represent the interests of the
268 class.

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

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

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

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

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

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

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

287 11-1-66. (1) No owner, occupant, lessee or managing agent
288 of property shall be civilly liable for the criminal acts of a
289 third party, unless such owner, occupant, lessee or managing agent
290 knew or, with the exercise of reasonable care, should have known
291 of the risk of criminal conduct on such property and the failure
292 to exercise reasonable care to deter such foreseeable conduct is a
293 proximate cause of damages to an individual or entity.

294 (2) No owner, occupant, lessee or managing agent of property
295 shall be liable for the death or injury of an independent
296 contractor or the independent contractor's employees resulting
297 from dangers of which the contractor knew or reasonably should
298 have known.

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

301 85-5-7. (1) As used in this section "fault" means an act or
302 omission of a person which is a proximate cause of injury or death
303 to another person or persons, damages to property, tangible or
304 intangible, or economic injury, including, but not limited to,
305 negligence, malpractice, strict liability, absolute liability or
306 failure to warn. "Fault" shall not include any tort which results
307 from an act or omission committed with a specific wrongful intent.

308 * * *

309 (2) Except as otherwise provided in subsection (4) of this
310 section, in any civil action based on fault, the liability for
311 damages caused by two (2) or more persons shall be several only,
312 and not joint and several and a joint tort-feasor shall be liable
313 only for the amount of damages allocated to him in direct
314 proportion to his percentage of fault. In assessing percentages
315 of fault an employer and the employer's employee or a principal

316 and the principal's agent shall be considered as one (1) defendant
317 when the liability of such employer or principal has been caused
318 by the wrongful or negligent act or omission of the employee or
319 agent.

320 * * *

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

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

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

333 * * *

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

337 **SECTION 5.** Section 13-5-23, Mississippi Code of 1972, is
338 amended as follows:

339 13-5-23. (1) All qualified persons shall be liable to serve
340 as jurors, unless excused by the court for one (1) of the
341 following causes:

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

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

347 * * *

348 (2) An excuse of illness under subsection (1)(a) of this
349 section may be made to the clerk of court outside of open court by
350 providing the clerk with * * * a certificate of a licensed
351 physician * * *, stating that the juror is ill and is unfit for
352 jury service, in which case the clerk may excuse the juror. If
353 the excuse of illness is not supported by a physician's
354 certificate, a judge of the court for which the individual was
355 called to jury service shall decide whether to excuse an
356 individual under subsection (1)(a) of this section.

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

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

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

368 (iii) Suffer physical hardship that would result
369 in illness or disease.

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

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

377 (d) A person asking to be excused based on a finding of
378 undue or extreme physical or financial hardship must take all
379 actions necessary to have obtained a ruling on that request by no

380 later than the date on which the individual is scheduled to appear
381 for jury duty.

382 (e) A person asking a judge to grant an excuse under
383 subsection (1)(b) of this section shall be required to provide the
384 judge with documentation such as, but not limited to, federal and
385 state income tax returns or other information which verifies
386 income, medical statements from licensed physicians, proof of
387 dependency or guardianship and similar documents, which the judge
388 finds to clearly support the request to be excused. Failure to
389 provide satisfactory documentation shall result in a denial of the
390 request to be excused. Any documentation produced under this
391 paragraph shall not be a public record.

392 (4) After two (2) years, a person excused from jury service
393 shall become eligible once again for qualification as a juror
394 unless the person was excused from service permanently. A person
395 is excused from jury service permanently only when the deciding
396 judge determines that the underlying grounds for being excused are
397 of a permanent nature.

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

402 **SECTION 6.** The following provision shall be codified as
403 Section 13-5-24, Mississippi Code of 1972:

404 13-5-24. (1) Notwithstanding any other provisions of this
405 chapter, individuals scheduled to appear for jury service have the
406 right to postpone the date of their initial appearance for jury
407 service one (1) time only. Postponements shall be granted upon
408 request, provided that:

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

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

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

420 (2) A subsequent request to postpone jury service may be
421 approved by a judicial officer only in the event of an extreme
422 emergency, such as a death in the family, sudden illness, or a
423 natural disaster or a national emergency in which the prospective
424 juror is personally involved, that could not have been anticipated
425 at the time the initial postponement was granted. Prior to the
426 grant of a second postponement, the prospective juror must fix a
427 date certain on which the individual will appear for jury service
428 within twelve (12) months of the postponement on a date when the
429 court will be in session.

430 **SECTION 7.** Section 13-5-25, Mississippi Code of 1972, is
431 amended as follows:

432 13-5-25. Every citizen over sixty-five (65) years of age,
433 and everyone who has served on the regular panel as a juror in the
434 actual trial of one or more litigated cases within two (2) years,
435 shall be exempt from service if he claims the privilege * * *. No
436 qualified juror shall be excluded because of any such reasons, but
437 the same shall be a personal privilege to be claimed by any person
438 selected for jury duty. Any citizen over sixty-five (65) years of
439 age may claim this personal privilege outside of open court by
440 providing the clerk of court with information that allows the
441 clerk to determine the validity of the claim.

442 Provided, however, that no person who has served on the
443 regular panel as a juror in the actual trial of one or more

444 litigated cases in one (1) court may claim the exemption in any
445 other court where he may be called to serve.

446 **SECTION 8.** Section 13-5-28, Mississippi Code of 1972, is
447 amended as follows:

448 13-5-28. If a grand, petit or other jury is ordered to be
449 drawn, the clerk thereafter shall cause each person drawn for jury
450 service to be served with a summons, either personally or by mail,
451 addressed to him at his usual residence, business or post office
452 address, requiring him to report for jury service at a specified
453 time and place. The summons shall include instructions to the
454 potential jurors that explain, in layman's terms, the provisions
455 of Sections 13-5-23 and 13-5-99.

456 **SECTION 9.** Section 13-5-34, Mississippi Code of 1972, is
457 amended as follows:

458 13-5-34. (1) A person summoned for jury service who fails
459 to appear or to complete jury service as directed, and who has
460 failed to obtain a postponement in compliance with the provisions
461 for requesting a postponement, or who fails to appear on the date
462 set pursuant to Section 13-5-24 shall be ordered by the court to
463 appear forthwith and show cause for his failure to comply with the
464 summons. If he fails to show good cause for noncompliance with
465 the summons he is in civil contempt of court and * * * may be
466 fined not more than Five Hundred Dollars (\$500.00) or imprisoned
467 not more than three (3) days, or both. The prospective juror may
468 be excused from paying sanctions for good cause shown or in the
469 interest of justice.

470 (2) In addition to, or in lieu of, the fine or imprisonment
471 provided in subsection (1) of this section, the court may order
472 that the prospective juror complete a period of community service
473 for a period no less than if the prospective juror would have
474 completed jury service, and provide proof of completion of this
475 community service to the court.

476 **SECTION 10.** The following provision shall be codified as
477 Section 13-5-99, Mississippi Code of 1972:

478 13-5-99. (1) It shall be unlawful for any employer or any
479 other person to persuade or attempt to persuade any juror to avoid
480 jury service; to intimidate or to threaten any juror in that
481 respect; or to remove or otherwise subject an employee to adverse
482 employment action as a result of jury service if the employee
483 notifies his or her employer that he or she has been summoned to
484 serve as a juror within a reasonable period of time after receipt
485 of a summons.

486 (2) It shall be unlawful for an employer to require or
487 request an employee to use annual, vacation or sick leave for time
488 spent responding to a summons for jury duty, time spent
489 participating in the jury selection process, or time spent
490 actually serving on a jury. Nothing in this provision shall be
491 construed to require an employer to provide annual, vacation or
492 sick leave to employees under the provisions of this statute who
493 otherwise are not entitled to such benefits under company
494 policies.

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

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

505 **SECTION 11.** Section 25-7-61, Mississippi Code of 1972, is
506 amended as follows:

507 25-7-61. (1) Fees of jurors shall be payable as follows:

508 (a) Grand jurors and petit jurors in the chancery,
509 county, circuit and special eminent domain courts shall be paid an
510 amount to be set by the board of supervisors, not to be less than
511 Twenty-five Dollars (\$25.00) per day and not to be greater than
512 Forty Dollars (\$40.00) per day, plus mileage authorized in Section
513 25-3-41. In the trial of all cases where jurors are in charge of
514 bailiffs and are not permitted to separate, the sheriff with the
515 approval of the trial judge may pay for room and board of jurors
516 on panel for actual time of trial.

517 No grand juror shall receive any compensation except mileage
518 unless he shall have been sworn as provided by Section 13-5-45;
519 and no petit juror except those jurors called on special venires
520 shall receive any compensation authorized under this subsection
521 except mileage unless he shall have been sworn as provided by
522 Section 13-5-71.

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

529 (c) Jurors in the justice courts shall be paid an
530 amount of not less than Ten Dollars (\$10.00) per day and not more
531 than Fifteen Dollars (\$15.00) per day, to be established by the
532 board of supervisors. In all criminal cases in the justice court
533 wherein the prosecution fails, the fees of jurors shall be paid by
534 the county treasurer on order of the board of supervisors on
535 certificate of the county attorney in all counties that have
536 county attorneys, otherwise by the justice court judge.

537 (2) Any juror may return the fees provided as compensation
538 for service as a juror to the county which paid for such person's
539 service as a juror. The fees returned to the county may be

540 earmarked for a particular purpose to be selected by the juror,
541 including:

- 542 (a) The local public library;
- 543 (b) Local law enforcement;
- 544 (c) The Mississippi Fire Fighters Memorial Burn Center
545 Fund created in Section 7-9-70, Mississippi Code of 1972; or
- 546 (d) Any other governmental agency.

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

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

552 (i) The selection and appointment of an
553 administrator for the fund.

554 (ii) Procedures for the administration of the
555 fund, including payments of salaries of the administrator and
556 other necessary personnel.

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

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

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

568 (c) The court may pay replacement or supplemental wages
569 of up to Three Hundred Dollars (\$300.00) per day per juror
570 beginning on the eleventh day of jury service. In addition, for
571 any jurors who qualify for payment by virtue of having served on a
572 jury for more than ten (10) days, the court, upon finding that

573 such service posed a significant financial hardship to a juror,
574 even in light of payments made with respect to jury service after
575 the tenth day, may award replacement or supplemental wages of up
576 to One Hundred Dollars (\$100.00) per day from the fourth to the
577 tenth day of jury service.

578 (d) Any juror who is serving or has served on a jury
579 that qualifies for payment from the Lengthy Trial Fund, provided
580 the service commenced on or after the July 1, 2004, may submit a
581 request for payment from the Lengthy Trial Fund on a form that the
582 administrator provides. Payment shall be limited to the
583 difference between the state-paid jury fee and the actual amount
584 of wages a juror earns, up to the maximum level payable, minus any
585 amount the juror actually receives from the employer during the
586 same time period.

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

592 (ii) The juror also shall be required to submit
593 verification from the employer as to the wage information provided
594 to the administrator, for example, the employee's most recent
595 earnings statement or similar document, prior to initiation of
596 payment from the fund.

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

602 **SECTION 12.** Section 33-1-5, Mississippi Code of 1972, is
603 amended as follows:

604 33-1-5. Any member of the Mississippi National Guard on
605 active duty shall be exempt from jury duty upon presenting a

606 current written statement from his superior officer that such jury
607 service will be likely to interfere with his military duties.

608 **SECTION 13.** Section 41-17-7, Mississippi Code of 1972, which
609 provides for the exemption from jury service of state insane
610 hospital personnel, is repealed.

611 **SECTION 14.** Section 47-5-55, Mississippi Code of 1972, which
612 provides for the exemption from jury service of state correctional
613 system employees and officers, is repealed.

614 **SECTION 15.** The Legislature recognizes the importance of
615 assuring adequate health care services for all Mississippians, and
616 it acknowledges that physicians are a vital component of providing
617 such services. The Legislature finds that because of the makeup
618 of the citizenry of the state and the percentage of citizens who
619 are (a) Medicaid recipients, (b) State and School Employees Health
620 Insurance Plan participants and (c) Children's Health Insurance
621 Program participants, physicians who provide health care services
622 to such individuals are providing an essential public service and
623 that it is in the public interest to provide funding to further
624 address medical malpractice insurance needs of these physicians.

625 **SECTION 16.** Section 11-46-1, Mississippi Code of 1972, is
626 amended as follows:

627 11-46-1. As used in this chapter the following terms shall
628 have the meanings herein ascribed unless the context otherwise
629 requires:

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

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

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

636 (d) "Department" means the Department of Finance and
637 Administration.

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

640 (f) "Employee" means:

641 (i) Any officer, employee or servant of the State
642 of Mississippi or a political subdivision of the state, including
643 elected or appointed officials and persons acting on behalf of the
644 state or a political subdivision in any official capacity,
645 temporarily or permanently, in the service of the state or a
646 political subdivision whether with or without compensation. The
647 term "employee" shall not mean a person or other legal entity
648 while acting in the capacity of an independent contractor under
649 contract to the state or a political subdivision; provided,
650 however, that for purposes of the limits of liability provided for
651 in Section 11-46-15, the term "employee" shall include physicians
652 under contract to provide health services with the State Board of
653 Health, the State Board of Mental Health or any county or
654 municipal jail facility while rendering services under such
655 contract. The term "employee" shall also include any physician,
656 dentist or other health care practitioner employed by the
657 University of Mississippi Medical Center (UMMC) and its
658 departmental practice plans who is a faculty member and provides
659 health care services only for patients at UMMC or its affiliated
660 practice sites. The term "employee" shall also include any
661 physician, dentist or other health care practitioner employed by
662 any university under the control of the Board of Trustees of State
663 Institutions of Higher Learning who practices only on the campus
664 of any university under the control of the Board of Trustees of
665 State Institutions of Higher Learning. The term "employee" shall
666 also include any physician, dentist or other health care
667 practitioner employed by the State Veterans Affairs Board and who
668 provides health care services for patients for the State Veterans
669 Affairs Board. The term "employee" shall also include Mississippi
670 Department of Human Services licensed foster parents for the

671 limited purposes of coverage under the Tort Claims Act as provided
672 in Section 11-46-8. For the purposes of the limits of liability
673 provided for in Section 11-46-15 and for no other purpose under
674 this chapter, the term "employee" also shall include any physician
675 who provides health care services to Medicaid recipients, State
676 and School Employees Health Insurance Plan participants and
677 Children's Health Insurance Program participants, provided that at
678 least thirty-five percent (35%) of the physician's patients, as
679 determined by the board, are Medicaid recipients, however, not to
680 exceed one hundred twenty-five (125) physicians; and

681 (ii) Any retired physician who provides volunteer
682 unpaid health care services to any public entity or private
683 entity. For the purposes of this subparagraph (ii), "public
684 entity" means any agency, department, institution, instrumentality
685 or political subdivision of the state, or any agency, department,
686 institution or instrumentality of any political subdivision of the
687 state; and "private entity" means any business, organization,
688 corporation, association or other legal entity which is not a
689 public entity.

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

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

695 (i) "Political subdivision" means any body politic or
696 body corporate other than the state responsible for governmental
697 activities only in geographic areas smaller than that of the
698 state, including, but not limited to, any county, municipality,
699 school district, community hospital as defined in Section
700 41-13-10, Mississippi Code of 1972, airport authority or other
701 instrumentality thereof, whether or not such body or
702 instrumentality thereof has the authority to levy taxes or to sue
703 or be sued in its own name.

704 (j) "State" means the State of Mississippi and any
705 office, department, agency, division, bureau, commission, board,
706 institution, hospital, college, university, airport authority or
707 other instrumentality thereof, whether or not such body or
708 instrumentality thereof has the authority to levy taxes or to sue
709 or be sued in its own name.

710 (k) "Law" means all species of law including, but not
711 limited to, any and all constitutions, statutes, case law, common
712 law, customary law, court order, court rule, court decision, court
713 opinion, court judgment or mandate, administrative rule or
714 regulation, executive order, or principle or rule of equity.

715 **SECTION 17.** There is created in the State Treasury a special
716 fund to the credit of the Mississippi Tort Claims Board, which
717 shall be comprised of any funds that may be made available for the
718 fund by the Legislature. Monies in the fund shall be expended by
719 the Mississippi Tort Claims Board, upon appropriation by the
720 Legislature, only for the purpose of providing additional funds
721 for prior acts extended reporting period coverage as provided in
722 Section 83-48-5 and for paying the medical malpractice premiums
723 for those physicians described in Section 11-46-1(f)(ii) as
724 provided for in Section 83-48-5. Unexpended amounts remaining in
725 the special fund at the end of a fiscal year shall not lapse into
726 the State General Fund, and any interest earned or investment
727 earnings on amounts in the special fund shall be deposited to the
728 credit of the special fund.

729 **SECTION 18.** The Tort Claims Board shall develop methods and
730 promulgate rules and regulations to verify whether a physician
731 meets the percentage requirement under Section 11-46-1(f) to
732 qualify as an employee. There is created an advisory council to
733 assist the Mississippi Tort Claims Board in determining whether a
734 physician meets the percentage requirement under Section
735 11-46-1(f) to qualify as an employee. The advisory council shall
736 be composed of the Executive Director of the Mississippi Medical

737 Association or his designee; the President of the Mississippi
738 Medical and Surgical Association or his designee; the
739 administrator of the Mississippi Tort Claims Board or his
740 designee; two (2) physicians appointed by the Lieutenant Governor;
741 two (2) physicians appointed by the Speaker of the House of
742 Representatives and three (3) nonphysician members, one (1) from
743 each Supreme Court district, appointed by the Governor.

744 **SECTION 19. Short title.**

745 Sections 19 through 28 of this act shall be known and may be
746 cited as the Medical Practice Disclosure Act.

747 **SECTION 20. Legislative intent.**

748 The State of Mississippi hereby recognizes the necessity of
749 allowing individuals to make informed and educated choices
750 regarding health care services and the essential need to provide
751 information to facilitate these important decisions. It further
752 recognizes that public disclosure of certain health care
753 information would lower the cost of health care through the use of
754 the most appropriate provider and improve the quality of health
755 care services by mandating the reporting of information regarding
756 health care providers.

757 It is the intention of the Legislature to establish a
758 procedure by which the general public may obtain essential and
759 basic information concerning potential health care providers,
760 while ensuring the accuracy and disclosure of all relevant
761 information that would enable individuals to informatively select
762 their health care provider.

763 **SECTION 21. Collection of information.**

764 (1) The State Board of Medical Licensure (board) and the
765 State Department of Health (department) shall collect for each
766 physician licensed or otherwise practicing medicine in the State
767 of Mississippi the following information, in a format developed by
768 the department that shall be available for dissemination to the
769 public:

770 (a) A description of any criminal convictions for
771 felonies and violent misdemeanors as determined by the department.
772 For the purposes of this paragraph, a person shall be deemed to be
773 convicted of a crime if that person pleaded guilty or if that
774 person was found or adjudged guilty by a court of competent
775 jurisdiction.

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

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

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

785 (e) A description of revocation or involuntary
786 restriction of hospital privileges that have been taken by a
787 hospital's governing body and any other official of a hospital
788 after procedural due process has been afforded, or the resignation
789 from or nonrenewal of medical staff membership or the restriction
790 of privileges at a hospital taken in lieu of or in settlement of a
791 pending disciplinary case.

792 (f) Notwithstanding any law to the contrary, all
793 medical malpractice court judgments and all medical malpractice
794 arbitration awards in which a payment is awarded to a complaining
795 party and all settlements of medical malpractice claims in which a
796 payment is made to a complaining party. Settlement of a claim may
797 occur for a variety of reasons which do not necessarily reflect
798 negatively on the professional competence or conduct of the
799 physician. A payment in settlement of a medical malpractice
800 action or claim should not be construed as creating a presumption
801 that medical malpractice has occurred.

802 (g) All civil court awards or settlements arising from
803 allegations of sexual misconduct filed by patients, employees or
804 hospital staff.

805 (h) A paragraph describing the malpractice experience
806 of each medical specialty and an explanation that some high risk
807 specialties experience more malpractice claims than less risky
808 specialties. This information shall be updated on an annual basis
809 to reflect the most recent malpractice claims experience of each
810 specialty.

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

812 (j) Graduate medical education.

813 (k) Specialty board certification(s).

814 (l) Number of years in practice.

815 (m) Name of hospitals where the physician has
816 privileges.

817 (n) Appointments to medical school faculties and
818 indication as to whether the physician has a responsibility for
819 graduate medical education.

820 (o) Information regarding publications in peer-reviewed
821 medical literature.

822 (p) Information regarding professional or community
823 service activities and awards.

824 (q) The location of the physician's primary practice
825 location.

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

828 (s) An indication of whether the physician participates
829 in the Medicaid program.

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

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

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

838 (b) If the physician demonstrates to the board that
839 disclosure of the information would represent an undue risk of
840 injury to the physician or the property of the physician, the
841 board may grant the request and the information shall be withheld
842 until such time as the situation is resolved, based on the
843 presentation of evidence to the board, for a period not to exceed
844 one (1) year.

845 (5) The board or the department shall not disclose any
846 pending malpractice claims to the public, and nothing in this
847 section shall be construed to prohibit the board or the department
848 from investigating and disciplining a physician on the basis of
849 pending medical malpractice claim information obtained under this
850 act.

851 **SECTION 22. Report of criminal convictions and pleas of nolo**
852 **contendere.**

853 (1) The clerk of any court in which a physician is convicted
854 of any crime or in which any unregistered practitioner is
855 convicted of holding himself out as a practitioner of medicine or
856 of practicing medicine shall, within one (1) week thereafter,
857 report the same to the State Medical Licensure Board, together
858 with a copy of the court proceedings in the case.

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

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

865 (4) If a physician pleads nolo contendere to charges or
866 where sufficient facts of guilt were found and the matter was
867 continued without a finding by a court of competent jurisdiction,

868 the clerk shall, within one (1) week thereafter, report the same
869 to the Medical Licensure Board, together with a copy of the court
870 proceedings in the case. Upon review, the Medical Licensure Board
871 shall provide the information to the department for purposes
872 consistent with this act.

873 **SECTION 23. Reports to hospitals and health care facilities.**

874 (1) Each licensed hospital or health care facility shall
875 report to the board and the department if the hospital or facility
876 denies, restricts, revokes or fails to renew staff privileges or
877 accepts the resignation of a physician for any reason related to
878 the physician's competence to practice medicine or for any other
879 reason related to a complaint or allegation regarding any
880 violation of law, regulation, rule or bylaw of the hospital or
881 facility regardless of whether the complaint or allegation
882 specifically states a violation of a specific law, regulation,
883 rule or bylaw. The report shall be filed within thirty (30) days
884 of the occurrence of the reportable action and include details
885 regarding the nature and circumstances of the action, its date and
886 the reasons for it.

887 (2) Each licensed hospital or health care facility shall
888 file an annual disciplinary report with the board no later than
889 January 31 and shall send the report by certified or registered
890 mail. The report shall summarize the action reports submitted for
891 the previous calendar year and shall be signed under oath. If the
892 hospital or facility submitted no action reports for the previous
893 calendar year, then the report required by this subsection shall
894 state that no action reports were required.

895 (3) No hospital, health care facility or person reporting
896 information to the board or the department under this section
897 shall be liable to the physician referenced in the report for
898 making the report, provided that the report is made in good faith
899 and without malice.

900 **SECTION 24. Reports of disciplinary action by professional**
901 **medical organizations.**

902 (1) A professional medical association, society, body,
903 professional standards review organization or similarly
904 constituted professional organization, whether or not such
905 association, society, body or organization is local, regional,
906 state, national or international in scope, shall report to the
907 Medical Licensure Board the disciplinary action taken against any
908 physician. Such report of disciplinary action shall be filed with
909 the board within thirty (30) days of such disciplinary action,
910 shall be in writing and shall be mailed to the board by certified
911 or registered mail.

912 (2) As used in this section, the term "disciplinary action"
913 includes, but is not limited to, revocation, suspension, censure,
914 reprimand, restriction, nonrenewal, denial or restriction of
915 privileges or a resignation shall be reported only when the
916 resignation or the denial or restriction of privileges is related
917 in any way to:

- 918 (a) The physician's competence to practice medicine; or
919 (b) A complaint or allegation regarding any violation
920 of law or regulation, including, but not limited to, the
921 regulations of the department or the Medical Licensure Board or
922 hospital, health care facility or professional medical association
923 bylaws, whether or not the complaint or allegation specifically
924 cites violation of a specified law, regulation or by law.

925 **SECTION 25. Reports by insurers of malpractice claims or**
926 **actions.**

927 (1) Every insurer or risk management organization which
928 provides professional liability insurance to a physician shall
929 report to the department any claim or action for damages for
930 personal injuries alleged to have been caused by error, omission
931 or negligence in the performance of the physician's professional
932 services where the claim resulted in:

933 (a) Final judgment in any amount;
934 (b) Settlement in any amount; or
935 (c) Final disposition not resulting in payment on
936 behalf of the insured.

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

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

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

944 (b) The name, address and age of the claimant or
945 plaintiff.

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

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

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

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

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

956 **SECTION 26. Reports by physicians of settlements or**
957 **arbitration awards.**

958 (1) A physician who does not possess professional liability
959 insurance shall report to the department every settlement or
960 arbitration award of a claim or action for damages for death or
961 personal injury caused by negligence, error or omission in
962 practice, or the unauthorized rendering of professional services
963 by the physician. The report shall be made within thirty (30)
964 days after the settlement agreement has been reduced to writing or

965 thirty (30) days after service of the arbitration award on the
966 parties as long as it is signed by all the parties.

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

971 (b) A physician who makes a knowing or intentional
972 failure to comply with the provisions of this section, or
973 conspires or colludes not to comply with the provisions of this
974 section, or hinders or impedes any other person in such
975 compliance, shall be subject to a civil penalty of not less than
976 Five Thousand Dollars (\$5,000.00) nor more than Fifty Thousand
977 Dollars (\$50,000.00).

978 **SECTION 27. Public access to information.**

979 (1) The department shall make available to the public, upon
980 request by any person or entity, the information compiled by the
981 board in Section 21 of this act.

982 (2) Each physician shall make available to the public, free
983 of charge, information compiled by the board in Section 21 of this
984 act. All physicians shall conspicuously post at their primary
985 place of practice a notice stating, "free background information
986 available upon request."

987 (3) The department shall disseminate information of Section
988 21 of this act by posting the information on the state's website
989 on the Internet.

990 **SECTION 28. Rules and regulations.**

991 The board and the department shall in the manner provided by
992 law promulgate the rules and regulations necessary to carry out
993 the provisions of this act, including, but not limited to, the
994 exchange of information between the board and the department and
995 other relevant state agencies, insurance carriers, hospitals and
996 judicial administrative offices.

997 **SECTION 29.** Section 73-43-11, Mississippi Code of 1972, is
998 amended as follows:

999 73-43-11. The State Board of Medical Licensure shall have
1000 the following powers and responsibilities:

1001 (a) Setting policies and professional standards
1002 regarding the medical practice of physicians, osteopaths,
1003 podiatrists and physician assistants practicing with physician
1004 supervision;

1005 (b) Considering applications for licensure;

1006 (c) Conducting examinations for licensure;

1007 (d) Investigating alleged violations of the medical
1008 practice act;

1009 (e) Conducting hearings on disciplinary matters
1010 involving violations of state and federal law, probation,
1011 suspension and revocation of licenses;

1012 (f) Considering petitions for termination of
1013 probationary and suspension periods, and restoration of revoked
1014 licenses;

1015 (g) To promulgate and publish reasonable rules and
1016 regulations necessary to enable it to discharge its functions and
1017 to enforce the provisions of law regulating the practice of
1018 medicine;

1019 (h) To enter into contracts with any other state or
1020 federal agency, or with any private person, organization or group
1021 capable of contracting, if it finds such action to be in the
1022 public interest and in the furtherance of its
1023 responsibilities; * * *

1024 (i) Perform the duties prescribed by Sections 73-26-1
1025 through 73-26-5; and

1026 (j) Perform the duties prescribed by the Medical
1027 Practice Disclosure Act.

1028 **SECTION 30.** Section 73-25-27, Mississippi Code of 1972, is
1029 amended as follows:

1030 73-25-27. The Mississippi State Board of Medical Licensure
1031 after notice and opportunity for a hearing to the licentiate, is
1032 authorized to suspend or revoke for any cause named herein any
1033 license it has issued, or the renewal thereof, that authorizes any
1034 person to practice medicine, osteopathy, or any other method of
1035 preventing, diagnosing, relieving, caring for, or treating, or
1036 curing disease, injury or other bodily condition. The procedure
1037 for suspension of a license for being out of compliance with an
1038 order for support, and the procedure for the reissuance or
1039 reinstatement of a license suspended for that purpose, and the
1040 payment of any fees for the reissuance or reinstatement of a
1041 license suspended for that purpose, shall be governed by Section
1042 93-11-157 or 93-11-163, as the case may be. If there is any
1043 conflict between any provision of Section 93-11-157 or 93-11-163
1044 and any provision of this chapter, the provisions of Section
1045 93-11-157 or 93-11-163, as the case may be, shall control.

1046 Such notice shall be effected by registered mail or personal
1047 service setting forth the particular reasons for the proposed
1048 action and fixing a date not less than thirty (30) days or more
1049 than sixty (60) days from the date of such mailing or such
1050 service, at which time the licentiate shall be given an
1051 opportunity for a prompt and fair hearing. For the purpose of
1052 such hearing the board, acting by and through its executive
1053 office, may subpoena persons and papers on its own behalf and on
1054 behalf of licentiate, including records obtained pursuant to
1055 Section 73-25-28, may administer oaths and such testimony when
1056 properly transcribed, together with such papers and exhibits,
1057 shall be admissible in evidence for or against the licentiate. At
1058 such hearing licentiate may appear by counsel and personally in
1059 his own behalf. Any person sworn and examined as a witness in
1060 such hearing shall not be held to answer criminally, nor shall any
1061 papers or documents produced by such witness be competent evidence
1062 in any criminal proceedings against such witness other than for

1063 perjury in delivering his evidence. Any patient or a
1064 representative of the patient who has suffered harm by a physician
1065 subject to a hearing under this section shall have the right to
1066 attend all proceedings regarding such physician. Notice shall be
1067 provided to the patient or his representative at the same time and
1068 in the same manner as the notice is made to the physician. On the
1069 basis of any such hearing, or upon default of the licentiate, the
1070 Board of Medical Licensure shall make a determination specifying
1071 its findings of fact and conclusions of law.

1072 A copy of such determination shall be sent by registered mail
1073 or served personally upon the licentiate. The decision of the
1074 Board of Medical Licensure revoking or suspending the license
1075 shall become final thirty (30) days after so mailed or served
1076 unless within said period the licentiate appeals the decision to
1077 the chancery court, pursuant to the provisions hereof, and the
1078 proceedings in chancery shall be conducted as other matters coming
1079 before the court. All proceedings and evidence, together with
1080 exhibits, presented at such hearing before the Board of Medical
1081 Licensure in the event of appeal shall be admissible in evidence
1082 in said court.

1083 The Board of Medical Licensure may subpoena persons and
1084 papers on its own behalf and on behalf of the respondent,
1085 including records obtained pursuant to Section 73-25-28, may
1086 administer oaths, and may compel the testimony of witnesses. It
1087 may issue commissions to take testimony, and testimony so taken
1088 and sworn to shall be admissible in evidence for and against the
1089 respondent. The Board of Medical Licensure shall be entitled to
1090 the assistance of the chancery court or the chancellor in
1091 vacation, which, on petition by the board, shall issue ancillary
1092 subpoenas and petitions and may punish as for contempt of court in
1093 the event of noncompliance therewith.

1094 Unless the court otherwise decrees, a license that has been
1095 suspended by the Board of Medical Licensure for a stated period of

1096 time shall automatically become valid on the expiration of that
1097 period and a license that has been suspended for an indefinite
1098 period shall become again valid if and when the Board of Medical
1099 Licensure so orders, which it may do on its own motion or on the
1100 petition of the respondent. A license that has been revoked shall
1101 not be restored to validity except: (1) after a rehearing by the
1102 Board of Medical Licensure, on petition of the respondent, for
1103 good cause shown, filed within ten (10) days, immediately
1104 following the service on him of the order or judgment of the Board
1105 of Medical Licensure revoking his license or (2) by order of the
1106 court, on petition as aforesaid. Any licentiate whose license
1107 becomes again valid after a period of suspension or after it has
1108 been restored to validity after a rehearing or by an order of the
1109 court, shall record it again in the office of the clerk of the
1110 circuit court of the county in which he resides in conformity with
1111 the requirements of Section 73-25-13. Nothing in this chapter
1112 shall be construed as limiting or revoking the authority of any
1113 court or of any licensing or registering officer or board, other
1114 than the State Board of Medical Licensure, to suspend, revoke and
1115 reinstate licenses and to cancel registrations under the
1116 provisions of Section 41-29-311.

1117 **SECTION 31.** Any product sold or distributed in Mississippi
1118 by any manufacturer or distributor licensed to do business or
1119 doing business in Mississippi shall publish statewide notice of
1120 any recall of any product or its component parts within thirty
1121 (30) days of the recall. Any manufacturer or distributor who
1122 fails to provide notice of a recall as required by this section
1123 shall, upon conviction, be fined Fifty Thousand Dollars
1124 (\$50,000.00) for each violation. The Attorney General shall
1125 enforce compliance with the provisions of this section.

1126 **SECTION 32.** (1) No policy or contract of liability
1127 insurance shall be issued or delivered in this state unless it
1128 contains provisions to the effect that the insolvency or

1129 bankruptcy of the insured shall not release the insurer from the
1130 payment of damages for injuries sustained or loss occasioned
1131 during the existence of the policy. Any judgment which may be
1132 rendered against the insured for which the insurer is liable which
1133 shall have become executory shall be deemed prima facie evidence
1134 of the insolvency of the insured, and an action may thereafter be
1135 maintained within the terms and limits of the policy by the
1136 injured person or his or her survivors or heirs against the
1137 insurer.

1138 (2) (a) The injured person or his or her survivors or heirs
1139 mentioned in subsection (1) of this section, at their option,
1140 shall have a right of direct action against the insurer within the
1141 terms and limits of the policy; and such action may be brought
1142 against the insurer alone, or against both the insured and insurer
1143 jointly and in solido, in the county in which the accident or
1144 injury occurred or in the county in which an action could be
1145 brought against either the insured or the insurer under the
1146 general rules of venue prescribed by the Rules of Civil Procedure
1147 only. However, such action may be brought against the insurer
1148 alone only when:

1149 (i) The insured has been adjudged a bankrupt by a
1150 court of competent jurisdiction or when proceedings to adjudge an
1151 insured a bankrupt have been commenced before a court of competent
1152 jurisdiction;

1153 (ii) The insured is insolvent;

1154 (iii) Service of citation or other process cannot
1155 be made on the insured;

1156 (iv) When the cause of action is for damages as a
1157 result of an offense or quasi-offense between children and their
1158 parents or between married persons; or

1159 (v) When the insurer is an uninsured motorist
1160 carrier.

1161 (b) This right of direct action shall exist whether or
1162 not the policy of insurance sued upon was written or delivered in
1163 the State of Mississippi and whether or not such policy contains a
1164 provision forbidding such direct action, provided the accident or
1165 injury occurred within the State of Mississippi. Nothing
1166 contained in this section shall be construed to affect the
1167 provisions of the policy or contract if such provisions are not in
1168 violation of the laws of this state.

1169 (3) The policy or contract of liability insurance shall be
1170 admissible into evidence in any proceeding regarding such policy
1171 or contract of liability insurance.

1172 (4) It is the intent of this section that any action brought
1173 under the provisions of this section shall be subject to all of
1174 the lawful conditions of the policy or contract and the defenses
1175 which could be urged by the insurer to a direct action brought by
1176 the insured, provided the terms and conditions of such policy or
1177 contract are not in violation of the laws of this state.

1178 (5) It is also the intent of this section that all liability
1179 policies within their terms and limits are executed for the
1180 benefit of all injured persons and their survivors or heirs to
1181 whom the insured is liable and that it is the purpose of all
1182 liability policies to give protection and coverage to all
1183 insureds, whether they are named insureds or additional insureds
1184 under the omnibus clause, for any legal liability such insured may
1185 have as or for a tort-feasor within the terms and limits of such
1186 policy.

1187 **SECTION 33.** If any provision of this act is held by a court
1188 to be invalid, such invalidity shall not affect the remaining
1189 provisions of this act, and to this end the provisions of this act
1190 are declared severable.

1191 **SECTION 34.** This act shall take effect and be in force from
1192 and after July 1, 2004, and Sections 1 through 4 of this act shall
1193 apply to all causes of action filed on or after that date.